

VOL-III

RULINGS
OF
THE CHAIR
(1998-2014)



SENATE OF PAKISTAN

Chairmen during this Period



Mr. Wasim Sajjad
24-12-1988 to 12-10-1999



Mr. Mohammed Mian Soomro
12-03-2003 to 11-03-2009



Mr. Farooq Hamid Naek
12-03-2009 to 11-03-2012



Syed Nayyer Hussain Bokhari
12-03-2012 to 11-03-2015

Contents

Point of Order	07
Absence of officials'	13
Adjournment Motion	14
Question Hour	20
Expunction	24
Privilege Motion	25
Ministers or officials'	73
Appointment of Leader	75
Miscellaneous	102
Expunction	103
Resolution	104
Quorum:	105
Live telecasting or proceedings of the House	106

1. *Point of Order: Responsibility to ensure compliance with Supreme Court decisions lies with the Government, not the Senate.-*

Ruling

On 25th June, 1998, Senator Asif Ali Zardari, who was in Adiala Jail, came to attend the Senate session, as per directions of the Supreme Court of Pakistan. However, upon his appearance before the House, he raised the question before Chairman Mr. Waseem Sajjad regarding why the jail authorities allowed him to attend the session at 4 o'clock and sought the reason for such a delay. "The Chairman held that "compliance with Supreme Court orders is the responsibility of the Federal Government and not mine and they complied with it, if they delay you can go to Supreme Court, it has nothing to do with him".

Senate Debates (Vol-III)
25th June, 1998
P 48

2. *Point of Order: detention of MPA of Sindh Assembly — matter referred to the Committee on Human Rights.*

Ruling

Senator Dr Safdar Ali Abbasi raised an issue regarding arrest of an MPA named Zahid Bhargari from Sindh. Minister for Interior, Senator Dr Shehzad Waseem briefed the House that he has been arrested under the charges of explosive act and anti-terrorism Act.

Senator Dr Safdar Ali Abbasi stressed that the information being provided by the Minister for Interior is sketchy. He is a member of Provincial Assembly and is facing troubles in the custody of Police. Senator Mian Raza Rabbani also took part in the discussion and explained the incident and termed it as political victimization. The Presiding Officer after hearing the members ruled that "The cases are referred to the Human Rights Committee, who would look into the matter in accordance with the rules".

Senate Debate
16 June, 2005
P 16-22

3. *Points of order: Miserable condition of aircrafts in PIA—matter referred to the concerned Standing Committee.*

Ruling

Senator Rehmatullah Kakar, raised a point of order contending that the Ministry of Defence had announced that Fokker aircrafts have been expired but they did not ground them until the Multan incident has occurred. It has been announced that 737,747 and 300 aircrafts are also expired due to non-availability of maintenance so kindly don't wait for next Multan incident. All headquarters of the country Peshawar, Lahore, DG Khan, have been cut off due to non-availability of night schedules. It is duty of CAA to arrange night landing facility.”

Senator Nisar Ali Meman contended that it should be referred to Committee being a matter of public importance.

Senator Mian Raza Rabbani, Leader of the Opposition contended that “there have been precedents that points of orders have been referred to the concerned Standing Committees and I hereby move on behalf of the joint opposition that it should be referred to the Defence Committee.”

Senator Kamil Ali Agha, Minister for Information did not oppose the referral of matter the Standing Committee.

The Chairman then ruled that the matter is referred to the Standing Committee on Defence for consideration and report.

Senate Debate
19th December, 2006
P 16-25

4. *Point of order: Lack of oxygen masks and seat belts in the C130 planes—matter of urgent importance—referred to the concerned Committee.*

Ruling

Senator Muhammad Enver Baig, during the Senate sitting held on 19.12.2006, raised a point of order regarding lack of oxygen masks and seat belts in the C130 planes. He contended that “The Defence Minister was supposed to give a statement but he isn't here. My concerns are that whether the CAA has given them a worthiness certificate and moreover about C-130 I would like to mention that there are neither oxygen masks nor seat belts in the plane. What if there happen some emergency. It is hereby requested to take a serious note as the matter is of great concern.”

Senator Sardar Muhammad Jamal Khan Leghari stated the incident of DG Khan and stated that DG Khan has been cut off with Islamabad and other cities, so kindly ask the Minister to take a note. Senator Nisar Ali Memon contended that “the C-130 planes have been deployed to northern areas and I think the Government has done well. Because the northern areas are far away and the people of Gilgit are being obliged for such steps.”

Senator Mian Raza Rabbani, Leader of the Opposition contended that “there have been precedents that points of orders have been referred to the concerned Standing Committees and I hereby move on behalf of the joint opposition that it should be referred to the Defence Committee.”

Senator Kamil Ali Agha, Minister for Information did not oppose the referral of matter to the Standing Committee.

The Chairman then ruled that the matter is referred to the Standing Committee on Defence for consideration and report.

Senate Debate
19th December, 2006
P 13-25

5. *Point of Order: Advisors to Prime Minister are eligible to deal with Government affairs and participate in the proceedings of the Senate.*

Rulnig

On 18th May, 2010, Nawabzada Ghazanfar Ali Gul, Advisor to the Prime Minister moved that the Bill to provide for the establishment of Earthquake Reconstruction and Rehabilitation Authority (ERRA) [The Earthquake Reconstruction and Rehabilitation Authority Bill, 2010] as reported back by the Committee should be taken into consideration at once.

However, at that stage, Senator Zafar Ali Shah raised an objection that only a Minister can move a Bill and neither the Constitution nor any rules permit any other person to move a Government Bill. Prof. Khursheed Ahmed seconded this point raised by Senator Zafar Ali Shah.

Senator Mian Raza Rabbani opposed on the following contentions:-

“Sir, as far as the question of the Finance Advisor is concerned, that is more for the reason that it should be an elected representative who would move the Bill.

Mr. Chairman, I would take you first to Article 93. Mr. Chairman, Article 93 is, “The President may on the advice of the Prime Minister appoint not more than five advisors on such terms and conditions as he may determine.”

No. 2, “The provisions of Article 57, shall also apply to an advisor.” Now, Mr. Chairman, I would take you to Article 57 of the Constitution. Article 57 reads, Mr. Chairman, “The Prime Minister, a Federal Minister, a Minister of State and the Attorney General shall have the right to speak and otherwise take part in the proceedings of either House.”

Now, I lay emphasis here, Mr. Chairman, on “Otherwise take part in the proceedings of either House or a Joint Sitting or any committee thereof, of which he may be named a member but shall not by virtue of this Article be entitled to vote.”

Now, Mr. Chairman, as I laid emphasis on “Take part in the proceedings of either House”, right now, I am sorry, I don’t have it with me, but I would like to take you probably to its P 236 of P 237 of Kaul and P 236 or 237 of Kaul deals with the term “proceedings” and “proceedings” have been defined to include giving a notices for a Bill and for moving of a Bill and this has been further substantiated by two or three judgments of the Indian jurisdiction where the terms “proceedings” have been defined and which include the giving of notice of a Bill and the piloting of a Bill.

So, therefore, I would lay reliance on Kaul, as you know, that whenever a question of interpretation has arisen then in a number of rulings of the Chair, Kaul has been taken into consideration. I can give you the exact P in two or three minutes after I get it from my office but it is either P 236 or, 237 in which the Indian Jurisdiction High Court Rulings are also mentioned.”

After hearing the arguments, Senator Farooq Hameed Naik, the Chairman Senate, held as under:

“Nawabzada Ghazanfar Ali is an Advisor to the Prime Minister appointed under Article 93 of the Constitution. The Provisions of Article 57 of the Constitution are also applicable to an Advisor under which he has a right to take part in the proceedings of either House at par with the Ministers. Therefore, in my opinion the Advisor is competent to handle any Government business including the Government Bills in this House. The objections are therefore, overruled.”

Senate Debates
18th May, 2010
Vol. V
P 65

33. Point of Order: Points of Order must be genuine and vital in nature.

During sitting of the Senate on 30th July, 2012, the Chairman directed the Parliamentary Leaders that they should convey to their honorable members that at the start of the proceedings until and unless there are some irregularities in the procedure, they should not raise point of order but if there is truly point of order then they should raise their hands otherwise permit the chair to proceed with the Orders of the Day.

Senate Debate
30th July, 2012
Vol 3
P 15

34. Point of Order: Laying off workers in KESC—Minister to make a statement.

Ruling

During the sitting of Senate held on 19th January, 2012, on a point of order, Senator Afrasayab Khattak raised the issue of Karachi Electric Supply Corporation (KESC) laying off workers without notice. He urged that the unemployed workers be reinstated to their positions and insisted to walk out of session in protest.

The Chairman gave his ruling that the Minister of Water and Power be summoned to the Senate session the next day to make some statement proposing the solutions for KESC issue.

Senate Debate
19th January, 2012

6. *Point of Order: Matter of closure of Sindh University—Minister hailing from Sindh to investigate the issue, hold discussions with the Chief Minister and present the report in the House.*

Ruling

On 17th February, 2012, on a point of order, Senator Khalid Mehmood Soomro brought up the matter of closure of Sindh University since last forty days. In response, Senator Maula Bakhsh Chandio, Federal Minister of Law and Justice urged the Chairman to interfere in the matter and give ruling in this regard. He also requested the Chairman to nominate members who could formulate negotiating channels with the Chief Minister Sindh since it was a provincial subject.

The Chairman ruled:

“Since Senator Maula Bakhsh Chanido is from Sindh and a Federal Minister, this responsibility was delegated to him to investigate the issue at hand, hold discussions with the Chief Minister and present the report in the House”.

Senate Debate
17th February, 2012

7. *Point of Order: Issues relating to the Senate Secretariat cannot be discussed in the House.*

Ruling

On 27th August, 2013 Senator Molana Abdul Ghafoor Haideri raised a point of order about fatal accident of an employee of the Senate and his having been admitted to PIMS hospital. In response, the Chair held as under:

“Molana Sahib, rules do not permit that Secretariat issues be discussed in the House, so according to the Rules we cannot discuss this issue in the House.”

Senate Debate
27th August, 2013

8. *Point of Order: Secretariat issues cannot be discussed in the House*

Ruling

On 27th August, 2013, during the proceedings Senator Molana Abdul Ghafoor Haideri while speaking on a point of order drew attention of the Chair towards an employee of the Senate named Ali Hassan Brohi who stood seriously injured in an accident and is admitted in PIMS. Upon which the Chair held as under:-

“Molana Sahib rules could not permit that Secretariat issues could be discussed in the House so according to Rules we cannot discuss this issue in the House.”

9. *Absence of officials: Secretary of concerned Ministry to remain present in the galleries in the absence of Ministers concerned.*

Ruling

On 30th July, 1999, Senator Hussain Shah Rashidi pointed out that there is a need to deal with the issue of absence of responsible officials of concerned Ministries. The Chairman, Mr. Waseem Sajjad ruled:

“The concerned Secretary should be made responsible for that as it is his job and when he came to know that the concerned Minister is not available, then the Secretary should remain in the House personally and it is not the responsibility of a Section Officer.”

Senate Debates (Vol-VII)
30th July, 1999

10. *Adjournment Motion: An Adjournment Motion cannot be moved on the matters under investigation*

Ruling

On 9th August, 1999, Senator Habib Jalib Baloch moved an Adjournment Motion that the “normal business of the House be suspended to discuss a matter of urgent public importance regarding the siege of Shahi Mahal of Qalat by the F.C. and other Forces.

Mian Muhammad Yasin Khan Wattoo Minister for Parliamentary Affairs opposed the Motion on the following grounds:-

The report I received from the provincial government is like this. On 23rd July, 1999, at about 12.45 hours when the elections for Chairman District Council Qalat, were being conducted, one of the candidates for the post of Chairman, Prince Muhammad Umer Jan Ahmed Zai alongwith one Ali Haider Muhammad Hassani, entered the office of the Deputy Commission, Qalat, Prince Muhammad Umer asked the Deputy Commission to stop the elections. He also slapped the Deputy Commissioner and started firing on the Deputy Commission. Case has been registered and police is investigating. “Naka Bandi” of the town and District has been made for apprehension of the accused. Qalat Scouts have been requisitioned to augment Police and levy forces. The Superintendent Police, Qalat and the SHO of concerned Police Station have been suspended on account of the negligence of their duties and Additional Home Secretary has been appointed to conduct inquiry into this incident. The Provincial Government has also confirmed that no siege of the “Mehal” of Qalat, Khan of Qalat took place.

The Minister further apprised the House that inquiry report against the suspended police officers has been submitted to the Chief Minister, Balochistan for action under the law.

The Chair ruled as under:

“When an FIR is registered and investigation is under process, then Adjournment Motion on the subject is not competent.”

Senate Debates (Vol-VII)
9th August, 1999
P 23-31

11. *Adjournment Motion: Increase in prices of petroleum — referred to the concerned Committee*

Ruling

Senator Prof. Ibrahim opened the discussion on an Adjournment Motion for increase in price of petroleum products in the country. He contended that the increase in petroleum products caused a vicious circle of inflation. Other members also supported his contention. After hearing the suggestions and views of all Honorable Members, the Chairman then ruled out “as it has been established beyond doubt that this is a matter of national importance. This is referred to the concerned Committee, as and when it is formed and I am hoping that this will be formed within this week.”

Senate Debate
18th February, 2004
P 118-154

12. *Adjournment Motion: Misuse of powers by Frontier Constabulary (FC) in Balochistan — does not fulfill the conditions of admissibility as provided in Rule 75, Rules of Procedure and Conduct of Business at the Senate, 1988 — ruled out of order.*

Ruling

Senator Professor Khursheed Ahmad moved an Adjournment Motion regarding misuse of powers by FC in Balochistan. Movers contended that FC is victimizing the common people and residents feel that FC is not there to protect them but to suppress them. Movers also pointed out an incident of a village where FC had made indiscriminate firing and abducted 14 people and took them into their camp.

Senator Dr. Shehzad Waseem, Minister for Interior opposed it and contended that FC is looking after the border of 2100 Km and also assisting the State in combating smuggling and law and order situation. Makran scouts are performing their duties over there and helping the people in flood affected areas also. The above mentioned scouts also donated their pays to such situations. The incident which has been pointed out occurred wherein convoy of these scouts were ambushed and 5 FC scouts have been martyred and some injured. Those arrested s have been released after investigation.

Senator Mian Raza Rabbani drew the attention of the House to Rule 75, Rules of Procedure and Conduct of Business in the Senate, 1988, which is the condition of admissibility of an Adjournment Motion.

The Presiding Officer after hearing the Honorable members and Minister ruled out the

Adjournment Motion in the following terms,-

“I think this Adjournment Motion, to my mind, is not covered by Rule 75. The reasons are subject to, the rule has to be read injunctively and not disjunctively, every clause ends with the semi colon and there is a full stop at the end of them. I rule it out of order”.

Senate Debate
14th June, 2005
P 40-51

13. *Adjournment Motion: Sudden increase in electricity prices—matter of public importance—admitted for two hours discussion.*

Ruling

Senator Professor Khurshid Ahmed raised an Adjournment Motion by contending that the sudden 10% rise in the price of electricity has jolted the economy of the country and life of a common man as well. The hon’ble member shared following brief facts:-

“This matter is important by in aspects likewise it is one of the basic needs of the common people secondly it is relates to the agriculture and industry. Electricity should be provided at cheap rates because it directly relates to the basic needs of the public. It should be managed through good policy regarding mega project and mini projects. secondly the white elephant if assessed there is lime losses and mismanagement is behind such excess to cost of production. The effect of such excessive cost of production is to penalize the consumer, the industry. This matter should be discussed in detail.”

Other members also supported the contentions of the mover.

Mr. Liaquat Jatoi, Minister for Water and Power responded that the tariff has been increased due to increase in prices of oil and gas. He also explained that the tariff is under NEPRA and in the existing scenario NEPRA has recommended to increase 33% but we have just increased it by 10%.

After hearing the arguments of Hon’ble Minister and Hon’ble Members from opposition, the Deputy Chairman admitted the motion for two hours discussion.

Senate Debate
9th May, 2007
P 57-75

14. *Adjournment Motion: Matter of proactive and interventionist statements of President of USA about Pakistan—admitted for two hours discussion*

Ruling

During sitting of the Senate held on 8th June, 2009 (54th session) Senator Prof. Khursheed Ahmed moved the following Adjournment Motion:-

“The US leadership has unleashed highly proactive and interventionist statement during the last three days. The civil government has been targeted and even denigrated. They have also played up the armed forces and played down the civil government. The US President has also pontificated as to what threat Pakistan faces. All these provocations and interventions are onslaughts on our sovereignty and nascent democracy. These are matter of urgent national importance and we seek the leave of the House to move that the normal business of the House be suspended to discuss these statements.”

Mr. Zaheer-ud-Din Babar Awan, Minister for Parliamentary Affairs, argued that if the Mover wants to discuss any statement made with reference to present democratic regime in the country then he will not support it as whatever being said in foreign media should not be treated as gospel truth and we should not reproduce or magnify the same as it is the same foreign media which during invasion of USA over Iraq highlighted the things in such a way that it seems that all the weapons of mass destruction are present in Iraq but the reality was in contrast. He further stated that the present democratic Government in Pakistan has for the first time convinced the world to see the whole situation with the eye of Pakistan. The Minister stated that if the discussion is to be made to suggest the measures to deal with the prevailing situation in the country then he will not oppose it.

Senator Prof. Khursheed Ahmed stated that, technically, the Minister has not opposed the motion.

The Adjournment Motion was held in order for discussion of two hours.

Senate Debates
8th June, 2009
P 3-6

15. *Adjournment Motion: Regarding extremely excessive and inhuman load shedding of electricity in the country—admitted for two hours discussion.*

Ruling

On 18th April, 2013 Senator Col (R) Syed Tahir Hussain Mashhadi sought leave to move an Adjournment Motion regarding the extremely excessive and inhuman load

shedding of electricity in the country due to which the people of Pakistan are undergoing unprecedented hardships and misery. The mover contended that the load shedding up to 18 hours a day has become a routine practice since the caretaker government has taken charge. The textile industry which is the most import and export earner and engine of industrial growth in the country has been forced to close down one shift of their production which has caused huge losses to our textile exports and balance of payment. The mover further contended that the excessive load shedding has not only caused grave harassment and difficulty to the people but has also closed down the electricity generating units as no arrangement has been made to produce electricity through furnace oil. He argued that although a halfhearted attempt has been made to clear the circular debt but the need is that the more competent and professional people should be appointed to deal with the affairs and the electricity production should at least be restored to its normal capability which at present is far below its natural capacity. He urged the House to demand action against the responsible of this neglect and callous attitude.

Senator Muhammad Zahid Khan while participating in the discussion stated that in some rural areas the period of load shedding is up to 22 hours. He also referred the efforts made by him as Chairman Standing Committee on Water & Power to dig out the causes of such grave load shedding and urged the government to make some positive moves for reduction in the period of load shedding. He contended that all this disaster is the result of bad practices of bureaucracy.

Senator Mushahid Hussain Sayed highlighted the non seriousness of the government towards construction of Kalabagh Dam, wind power and solar energy projects.

Dr. Mussadaq Malik, Caretaker Federal Minister for Water & Power submitted that there is 18 hours of load shedding in the country partially and in some parts of the country it is probably more than 18 hours but at an average there is about 12 hours load shedding in urban areas and 14 hours in rural areas. He apprised the House that there is no attempt to clear the circular debt. He said that the PSO has become bankrupt because of government and the government is in default under all international treaties of the IPPs. He although appreciated the involvement of the members in the national issue and their concern about miseries of the people of the Pakistan yet he asked the House that despite taking of keen interest in the issues of people of Pakistan what were the reasons that these issues could not be resolved since decades. He said that the issue of load shedding is cropping since 2006. He also narrated the causes of the load shedding.

The Chairman admitted the Adjournment Motion for two hours discussion and ruled further that now the time has come to devolve the issue of electricity generation to the

Provinces and let it be done at that level and that can be one way out. He asked the House not to fix the whole responsibility on care taker set up as there are cartels and mafias which need to be controlled and there has to be a national strategy to address the issue. However, he urged the Minister to disclose the real facts.

Senate Debate
18th April, 2013

16. *Question Hour: The Government must ensure accuracy of answers given during the Question Hour.*

Ruling

On 5th December, 2003, during Question Hour, Senator Babar Ghauri drew the attention of Chairman Senate towards the matter of departments answering questions in a careless manner. Chairman Senate, while agreeing with the observation of the Member ruled that “answers should be accurate and even the categorization should be accurate and they should be checked, double checked, and if there is any delinquency then it should be seriously looked into.”

Senate Debate
5th th December, 2003

17. *Question Hour: Absence of Ministers during the question hour should be discouraged and Ministers should inform the House about deferment of their questions 48 hours before their questions are placed in Order of the Day for answering.*

Ruling

During sitting of the Senate on 30th July, 2010, Senator Dr. Safdar Ali Abbasi drew attention of the Chair towards non-presence of Ministers of the Government during the Question Hour and he asked the Chair to pass a stricture on it.

Consequently, the Chair directed the Leader of the House to convey the same to the Prime Minister that the Ministers are not coming in the House due to which the House is not working. He stated that it is very unfortunate as public exchequer is expended on the proceedings of the House but due to absence of the Ministers the time and money is being wasted. He ruled that if some Minister wants to defer his questions then he must give 48 hours' notice and inform the House well before time.

Senate Debate
30th July, 2010

18. *Question hour: Questions not in the prescribed form should be revised as per consent of the concerned Member.*

Ruling

During sitting of the Senate on 14th December, 2012, the Chairman issued the following direction:-

“In future if the question of any member is not in prescribed form the office should not delete or add anything. They should have a consultation with the members and then they should proceed. That is a proper procedure. In future it will be done. If question is not in prescribed form and it does not relate to a particular ministry and there are some other deficiencies as well the office should get in touch with the honourable member and get it rectified as per consent of the member.”

Senate Debate
14th December, 2012
Volume-XII
P 34

19. *Question hour: Members must be present during Question Hour.*

Ruling

During sitting of the Senate on 20th December, 2012, due to absence of the concerned members whose questions were listed the Chairman observed that “when we criticize the Ministers then members are also equally responsible. When they ask questions then they should be in the House and rules are very clear on it.”

Senate Debate
20th December, 2012
Volume-XII
P 6

20. *Question Hour: Ministers must ensure their presence in the House on time.*

Ruling

On 13th July, 2012, during question hour, the Ministers did not appear in the House on time. The Chairman lamented that despite a grace period of 30 minutes being given; the Ministers had not reached yet. The Chairman then ruled:

“Normally this is our procedure that we give grace periods of 30 minutes. Now it should be ensured that the Minister is here and they are supposed to be in the House now.

Senate Debate
13th July, 2012

21. *Question Hour: Members must be present when their questions are called upon.*

Ruling

On 20th December, 2012, the Chairman indicated the absence of the concerned members whose questions were listed to be answered, and observed as under:

“When we criticize the Ministers, then members are also equally responsible. When they ask questions then they should be in the House and rules are very clear on it.”

Senate Debate
20th December, 2012

22. *Question Hour: Officials of concerned Ministries must ensure their presence during the proceedings of the House*

Ruling

On 12th March, 2012, on the very day of his election as Chairman, Senator Syed Nayyer Hussain Bokhari, Chairman Senate, asked the Ministers and other officials of the Ministries/Divisions to ensure their presence during the proceedings of the House particularly during question hour in the following terms:

“Officials of Concerned Ministries, whose business is pending before the House should make sure their presence in the Senate”.

Senate Debate
12th March, 2012

23. *Question Hour: Ministers should inform the House about deferment of their questions one day before their questions are placed in the Orders of the Day for answering.*

Ruling

On 29th October, 2013, during question hour, the Minister for Water & Power requested to defer the questions about his Ministry, upon which the Chairman held that the honorable Minister has made this request at a belated stage. The Minister should have informed the House or the Secretariat earlier. He further directed that Ministers, who want to defer their questions, must inform the House at least one day prior.

Senate Debate
29th October, 2013

24. *Question Hour: Ministers should inform the House about deferment of their questions one day before their questions are placed in Order of the Day for answering.*

Ruling

On 29th October, 2013, at the start of the question hour a request was made from the Minister for Water & Power to defer the questions relating to his Ministry. Upon which the Chairman held that it is a very belated stage as all the process of printing of questions booklets has already been done. The Minister should have informed the House or the Secretariat at an appropriate time. The Chair further directed that if any Minister wants to have his question deferred, he should inform at least one day earlier.

Senate Debates
29th October, 2013
P 2-3

25. *Question Hour: Question Hour cannot be extended beyond one hour*

Ruling

On 29th October, 2013, at the end of question hour when the Chairman said that the remaining questions and their printed replies placed on the table of the House shall be taken as read, some members requested the Chair to take the remaining questions upon which the Chair held as under:-

“Question hour cannot be extended beyond one hour and this is immaterial whether how many questions are taken up. The question hour is over and that is mentioned in the rules and I can't go beyond that and cannot extend the question hour from one hour”.

Senate Debates
29 October, 2013
P 33

26. *Expunction: Personal references can be expunged from the record, but not the entire speech*

Ruling

On 30th December, 2003, during a discussion on the Constitution (17th Amendment) Bill, certain remarks passed by Senator Rahat Hussain were expunged by the Chairman. However, Senator Raza Rabbani intervened and requested for the expunction of the entire speech from the record, but the Chairman did not accede to his request and ruled that,-

“Any personal references are expunged from the record not the entire speech, only personal references are expunged from the record.”

Senate Debate
30th December, 2003

27. *Privilege Motion: Breach of Privilege must be related to interruption in official work.*

Ruling

On 9th August, 1999, Senator Haji Abdul Rehman moved his Privilege Motion on an incident of protest outside the Parliament House on 7th August, 1999, whereby women protestors raised slogans against the Senate and its members on the allegation that the Senators have opposed the Resolution against the murder of Samia Imran. The Chairman ruled as under:

“The privilege is said to be breached only when there is interruption of official work from somebody, but mere criticism on a member cannot be treated as breach of privilege.

Senate Debates (Vol-VII)
9th August, 1999
P 31

28. *Privilege Motion: Confinement of members in the Parliament Lodges — breach of privilege — matter referred to the Committee on Privileges.*

Ruling

Senator Sana Ullah Baloch contended that on 22nd February, 2004, some sitting and former members planned a gathering regarding Federalism at Parliament Lodges and sought permission from the Honorable Speaker, National Assembly but unfortunately despite all this, an officer of grade 16 or 17 harassed us and rapt the Honorable Senators in illegal detention.

Makhdoom Syed Faisal Saleh Hayat, Minister for Interior made a statement in that regard, he contended that in actual there is no breach of privilege, even then the final decision is upto the Chair. After hearing the contentions of both the sides the Chairman, Senate then ruled out:-

“We will refer this matter to the Privileges Committee as and when formed.”

Senate Debate
23rd February, 2004
P 02-10

29. *Privilege Motion: Senator Prof. Khurshed Ahmad, Senator raised a question of breach of his privilege under Article 73 of the Constitution of Islamic Republic of Pakistan, brief facts are as under:-*

Ruling

On 17th June, 2005, Senator Prof. Khurshed Ahmad, raised a question of breach of privilege of the House on the following grounds:-

- a. Money Bills are to be transmitted to the Senate for its comments and recommendations.
- b. Money Bills i.e. Benevolent Fund and Group Insurance Bill 2004 and Members of Parliament Salaries and Allowances Bill 2005 have been assented to by the President without the Senate considering these Bills and giving its recommendations and without the National Assembly waiting for Senate recommendations.
- c. This involves failure on the part of the Senate, the National Assembly, the Ministry of Parliamentary Affairs and President to fulfill the requirements of Constitution. The Senate has been by-passed in this respect and this constitutes the violation of the Privilege of the Senate. I, therefore, move that this infringement of the rights of the Senate be discussed in the House or sent to the Privilege Committee for necessary deliberations and action.

Dr. Sher Afghan Niazi, Minister for Parliamentary Affairs opposed the motion and contended that the mover has quoted only one Article but that does not make sense as there is a procedure prescribed in the Article 70 of the Constitution. He pointed out that this August House has nothing to do with other bills except Finance Bill plus Annual Budget statement; therefore, there is no breach of privilege of this August House.

Senator Wasim Sajjad, Leader of the House, also took part in the discussion on admissibility of the Privilege Motion and contended that admissibility is governed by Rule 62, Rules of Procedure and Conduct of Business in the Senate, 1988. In terms of Rule 62(ii), the Privilege Motion should have been moved at the earliest opportunity under and it should have been a matter which requires the intervention of the Senate.

The Presiding Officer admitted the Privilege Motion in the following terms:-

“As the matter is of grave concern I am conscious of impediment of the rules but to

my mind the Constitution is very important as I see it, the arguments from both the sides, it is to be seen to what extent 73(i) is regulated or controlled by its proviso. I am referring this matter to the Committee.”

Senate Debate
17th June, 2005
P 03-16

30. *Privilege Motion: Illegal detention and harassment of a member — breach of Privilege — referred to the Committee on Privileges.*

Ruling

Senator Latif Khosa raised a question of breach of his privilege. He briefed the House and Chair that on 16th April, 2005, he was going to Lahore Airport, the Police detained him and lodged him in lockup without showing warrant. They harassed and misbehaved with the hon'ble Senator, therefore, he requested the Senate that the matter may be referred to the Committee on Privileges.

Dr. Shahzad Wasim, Minister of State for Interior, did not oppose the motion.

The Presiding Officer ruled that “Since the Minister is not opposing it, he has shown his indulgence, therefore, I refer this matter to the Committee on Privileges.”

Senate Debate
17th June, 2005
P 18-19

31. *Privilege Motion: Against Hindrance Created by Political Agent in Kuram Agency -- Breach of Privilege — referred to the Committee on Privileges*

Ruling

Senator Muhammad Hussain raised a question of breach of his privilege by contending that political administration didn't allow him to enter into Kuram Agency. While stating the basis of privilege he stated that,

“Yesterday on Sunday I was going towards Kuram Agency, but when I reached at “Chatri Park” the political administration over there stopped me and didn't allow to move on. I requested them to let me talk to the Political Agent, initially they refused but afterwards the Agent called on me and I had to attend his office. I asked him to let me go but he pushed back and

didn't allow me to continue my travel. I requested him that I have shortage of diesel but he forcefully asked me to get back. On my return due to diesel shortage I had to stay in the of Jungle. In light of these circumstances this is not only breach of the privilege of a Senator; but rather of this August House.”

Dr. Sher Afghan Niazi, Minister for Parliamentary Affairs did not oppose the motion and requested the chair to refer the matter to the Committee.

The Chairman appreciated the view of Minister and referred the question to the Committee on Rules of Procedure and Privileges.

Senate Debate
07th August, 2006
P 03-07

32. *Privilege Motion: Against Misbehavior by PIA Officials with a Senator -- Breach of Privilege — Referred to the Committee on Privileges.*

Ruling

Senator Kalsoom Parveen raised a question of breach of her privilege by contending that some PIA official misbehaved with her when she demanded her boarding pass against her reservation at the PIA desk. While stating the basis of privilege she stated that, “I had to travel through PK-369 on 11th September, 2006 and in that regard I got reconfirmation of my reservation through the office of PIA situated in Parliament. But unfortunately upon my arrival at the airport, one official Irfan Shah didn't give me my boarding pass and upon my requests he misbehaved. The said incident has also been reported in the Daily “The Nation” on 12th September, 2006 copy of which is hereby annexed. As a member of this August House I request to refer the matter to the concerned committee so that the responsible may be taken to task.”

Dr. Sher Afghan Niazi, Minister for Parliamentary Affairs did not oppose rather supported this motion.

After hearing both sides the Chairman then ruled that “The motion is in order. It is referred to the Committee on Rules of Procedure and Privileges”.

Senate Debate
14th September, 2006
P 62-65

33. *Privilege Motion: Refusal by the security agencies to permit the Senator to See Dr. A.Q. Khan at Agha Khan Hospital Karachi Breach of Privilege — referred to the Committee on Privileges.*

Ruling

Senator Professor Khursheed raised a question of breach of his Privilege by contending that the security agencies have not allowed him to see Mr. Dr. A.Q Khan who has been admitted in Agha Khan Hospital Karachi. While stating the grounds of privilege the honorable member stated that,-

“I had to visit Mr. Khan as he was admitted in Agha Khan Hospital Karachi. I asked for permission and finally with the sincere efforts of Chairman Senate and Senate Secretariat I got the permission to visit him. I received a call from Advisor to the Prime Minister, Mr. Khalid Latif on 13th September. He informed me that I may see Mr. Khan on 14th September, 2006 at 11:00 am. But unfortunately upon my arrival the compliance of that commitment failed. The agencies concerned didn't allow me to see Mr. Khan and I had to get back after an effort of one hour and twenty-five minutes.

Mr. Chairman I never presented a Privilege Motion during 16 years as a member of this House. But this time I request you to forward my matter to the Committee so that an inquiry is conducted and to determine who is responsible for the aforementioned circumstances. Mr. Chairman this matter is also of a grave concern because Mr. A.Q Khan is the person who served this country with sincerity.

On the ground of attitude demonstrated by security agencies I beg to move the Senate and its Privilege Committee kindly consider the issue and take necessary steps so that this kind of breach may not take place in future.

After hearing the contention of Senator Professor Khursheed, the Honorable Chairman ruled the motion in order and referred the matter to the Committee on Rules of Procedure and Privileges.

Senate Debate
18th September, 2006
P 04-06

34. *Privilege Motion: Inaccurate reply to question an attempt to mislead the House breach of privilege — referred to the Committee on Privileges.*

Ruling

Senator Safdar Ali Abbasi raised a question of breach of privilege, contending that Ministry of Interior had given an improper reply to his question, which is an attempt to mislead the House. While stating basis of breach of privilege he stated that,

“He asked a question from CDA regarding substandard work carried out at street 44 F-6/1, Islamabad, the said question was replied by the Interior Ministry and the answer was that no substandard work was carried out on street 44 F-6/1, Islamabad and it was confirmed after test conducted by central engineering laboratory.”

But after publishing the reply to the question the residents of the area called upon the concerned officials to visit the site and after visiting the site the CDA officials admitted the fact raised in the question and assured to remove the defect immediately. More than one year has elapsed but nothing is done by the CDA. The question is that as the answer published by the CDA the carpeting was according to the specifications then why the patches were placed and despite placing the patches defect could not be removed.”

In view of above, the Senator sought that the matter may be referred to the Committee.

Senator Kamil Ali Agha, Minister for Information did not oppose the motion.

The chair held the motion in order and referred the same to the Committee on Rules of Procedure and Privileges.

Senate Debate
16th January, 2007
P 128-130

35. *Privilege Motion: Failure of PIA staff to arrange an ambulance at Heathrow airport London in emergency situation breach of privilege — Referred to the Committee on Privileges.*

Ruling

Senator Ammar Ahmed Khan raised a question of breach of his privilege against the failure of PIA staff to arrange an ambulance at Heathrow airport London by stating the fact as,

“During my travel from Lahore to London on 28th September, 2006 by PIA flight No.

PK-757 along with father-in-law (Ex-Senator), he felt heart pain and I requested the Captain to ask PIA staff to arrange an ambulance at airport. But PIA staff did not, hence I myself approached the Information Desk and arranged the ambulance but due to the late arrangements the condition of patient became serious.”

Dr. Sher Afghan Khan Niazi Minister of Parliamentary Affairs did not oppose it and requested to refer it to the Committee.

The Chairman held the motion in order and referred the matter to the Committee on Rules of Procedure and Privileges for consideration and report.

Senate Debate
16th January, 2007
P 130-131

36. *Privilege Motion: Misconduct of a Police Officer at the entry gate of Parliament House breach of privilege — referred to the Committee on Privileges..*

Ruling

Senator Saadia Abbasi raised a question of breach of privilege against the misbehavior of a police officer while entering Parliament House. The honorable Senator provided following grounds:-

“About two weeks ago at about 10:30, I was to enter Parliament House for a Committee meeting, a police officer stopped me and asked my business there. I explained that I am a Member of Parliament but he refused to listen. The question is that my car is duly registered by the Senate Secretariat and has a sticker on its wind screen. I even mentioned my name but that officer did not let me in. This is not only deliberate misconduct but harassment; therefore, the matter may be referred to the committee.”

Senator Kamil Ali Agha, Minister for Information, did not oppose the motion, however, explained that the said police officer has apologized on the incident though he had adopted the prescribed procedure.

The Chairman held the motion in order and referred the matter to the Committee on Rules of Procedure and Privileges for report.

Senate Debate
16th January, 2007
P 131-133

37. *Privilege Motion: Offensive attitude of Assistant Political Agent of Landi Kotal Khyber Agency with an honorable Member of Senate breach of privilege — referred to the Committee on Privileges.*

Ruling

Senator Abdul Razaq raised a question of breach of his privilege against the offensive attitude of the Assistant Political Agent of Landi Kotal, Khyber Agency in response to a Parliamentary Question asked by the member in the House. The hon'ble member submitted following facts in the matter:-

On 17th February, 2007, Saturday at about 11:43 am I received a call from Riaz Masood APA Khyber Agency through his official telephone No. 0924210947 on my mobile phone in lieu of a question which was asked by me in this August House. He asked why I asked such question upon which I responded that this is my Constitutional right. The said APA said that nobody has asked such question before as I have been here since the last five years. Furthermore, my father is of high official standing and I will let you know after getting a transfer to your F.R Kohat. He has not only misbehaved with me but has also breached the privilege of this August House, therefore, this motion may kindly be forwarded to the concerned Committee”.

Senator Kamil Ali Agha, Minister for Parliamentary Affairs, did not oppose the Motion.

The Chairman held the motion in order and referred it to the Committee on Rules of Procedure and Privileges.

Senate Debate
19th February, 2007
P 6-7

38. *Privilege Motion: Unwarranted attitude and conduct of the Assistant Political Agent of Mohmand Agency breach of privilege — referred to the Committee on Privileges.*

Ruling

During the Senate sitting held on 10th May, 2007, Senator Hafiz Rashid Ahmed raised a question of breach of his privilege against the misconduct of Assistant Political Agent of Mohmand Agency by stating the fact as under:-

“On 6th April, 2007 I talked to the Assistant Political Agent, Mohmand Agency to inform him of the issues of the area and he asked me to visit his office. On 7th April, I visited his office but he was not there. Then he

asked me to visit his Guest House where guards did not let me enter and I had to wait on the gate. I again talked to him over the phone and informed him that I will raise the matter in the Senate upon which he misbehaved with me again and said that I am not under the Senate or any other such authority. This is not only breach of my privilege but of the House as well. Kindly may this be forwarded to the committee.”

Dr. Sher Afghan Khan Niazi Minister for Parliamentary Affairs did not oppose the motion. He also informed the House that FATA Secretariat has contacted him to convey that whenever any Hon’ble Member of this House wish to visit, they may inform the FATA Secretariat Peshawar so that such inconvenience may be avoided in future.

The Chairman held the motion in order and referred it to the Committee on Rules of Procedure and Privileges for report.

Senate Debate
10th May, 2007
P 80-82

39. *Privilege Motion: Not allowing the Senate to meet for minimum 90 days— violation of requirements of Article 54 read with Article 61, Constitution, 1973 matter referred to the Committee on Privileges with the direction that the Committee should come up with recommendations to establish conventions and traditions in this regard.*

Ruling

During sitting of the Senate held on 4th February, 2008, the following Privilege Motion was moved by Senator Mian Raza Rabbani and Prof. Khurshid Ahmad Khan others by stating as under:-

“This is a Privilege Motion which has been moved by Prof. Khurshid Ahmed and myself and in fact on behalf of the entire Opposition and I would say in fact on behalf of the House. Sir, a breach of Privilege of the undersigned Senators and the Senate of Pakistan has accrued and continues to accrue due to the violation of the provisions of clause 2 of Article 54, read with Article 61 of the Constitution of the Islamic Republic of Pakistan, by the Federal Government. The facts that stated herein are as under:

- a. The clause 2 of the Article 54, read with Article 61 of the Constitution of the Islamic Republic of Pakistan provides that the Senate of Pakistan shall meet for not less than 90 days in a Parliamentary Year. The relevant Articles are produced as under: Article 54(1) The President may from time to time, summon either House or both Houses or

[Majlis-e-Shoora (Parliament) in a joint sitting to meet at such time and place as he thinks fit and may also prorogue the same.

- b. There shall be at least [three] sessions of the National Assembly every year, and not more than one hundred and twenty days shall intervene between the last sitting of the Assembly in one session and the date appointed for its first sitting in the next session:

Provided, and this is I would draw your attention sir, provided that the National Assembly shall meet for not less than one hundred and thirty working days in each year

Explanation, in this clause, “working days” includes any day on which there is a joint sitting and any period, not exceeding two days, for which the National Assembly is adjourned. Now Sir, having read this with, a clause (2) of Article 54m I take you to Article 61 of the Constitution and Article 61 of the Constitution states that the provisions of clauses (2) to (7) of Article 53, clauses (2) and (3) of Article 54 and I have read to you the Proviso to clause (2) of Article 54. So clauses (2) and (3) of Article 54 of the Constitution and Article 55 shall apply to the Senate as they apply to the National Assembly and, in their application to the Senate shall have effect as if references therein to the National Assembly, Speaker and Deputy Speaker were references, respectively, to the Senate Chairman and Deputy Chairman [and as if, in the Proviso, and now this is the relevant part Sir, and if in the Proviso to the said clause (2) of Article 54m for the words [one hundred and thirty] the word “ninety” were substituted.

So, therefore Sir, I take you back to the Proviso of clause 2 of Article 54 and now reading in conjunction with Article 61, it would read:

“Provided that the Senate shall meet for not less than ninety working days in each year”.

Having said that Sir, I move back to the Privilege Motion no. 2 and that in fact the Senate of Pakistan has been in session for only 35, I have written but now it is 36 today, the 37th day, that if Senate has been in session for only 37 days, that in order to meet the requirements of the aforesaid Article, the Senate has to meet for another 54 or now 53 days before the 12th of March, 2008, that is the date of the commencement of the new Parliamentary Year. So, Mr. Chairman! In actual fact, even if we were to continue to be meeting on a daily basis from now till the 11th of March which is the last day of this Parliamentary Year, we will still not be in a position to meet this Constitutional requirement of 53 days. That in order to meet the requirements of the aforesaid Article. The Senate has to meet for another 55 days from the 12th of March, 2008, that is the day of commencement of the new Parliamentary Year. That from the instant date till the culmination of the present Parliamentary Year that is on 11th March, 2008. It is not possible to meet the aforesaid Constitutional requirements.

That under the Rule of Business 1973 issued by the Cabinet Secretariat, it is the responsibility of the Federal Government to summon the session of the Senate unless requisitioned under clause 3 of Article 54 of the Constitution. Article 54 read with Article 51 of the Constitution provides that the President may from time to time summon either House or both Houses. The Rules of Business 1973 provides that the Federal Government through the Prime Minister shall prepare a summary for the summoning of the Session and its referring to the President but the caretaker Minister for Parliamentary Affairs made a statement to the press on the 30th January, 2008 and which is attached at Annexure-A to the question of Privilege that the summary for summing of the Senate Session on 14th January, 2008 has been approved. The statement substantiated that the Federal Government was aware of the fact that if the session was not summoned, it would culminate in violation of the Constitution. That on the 14th January, 2008 the said Minister resiled from the aforesaid statement which is again attached and marked as Annexure D to this motion that the Federal Government has deliberately and with malafide intent failed to meet the requirements of clause 3 of Article 54, read with Article 51 of the Constitution of the Islamic Republic of Pakistan has thus circumvented and violated a specific provision of the Constitution that a breach of privilege of the undersigned and the Senate accrued and continue to accrue by not allowing the Senate to meet for the minimum of 90 days thus depriving the individual Senators and the House from transact in business which it would have if the House has met. Therefore, the Privilege Motion may be admitted and sent to the Standing Committee of Rules and Privileges.

Mr. Chairman, I would very quickly, read out to you the relevant provisions of the Constitution which make that abundantly clear. Now, I would draw your attention Sir, to the Rules of Business 1973 and Rules of Business 1973, state, this is Rules 51 (a), Rules 15 (a) states, reference to the President.

Notwithstanding the provisions made in these rules where in terms of any provision of the Constitution, any function is to be performed by or any order has to be issued by the President or his specific approval is required, the Division concerned and here it is the Parliamentary Affairs, the Division concerned shall incorporate the paragraph to this effect in a summary entitled as summary for the Prime Minister. The Prime Minister shall render his advice and submit the case to the President. After the President has seen the approved case, it shall be returned to the Prime Minister, the case to which this sub Rule applies and enumerated in Schedule 5 (b) from 15 (a), Mr. Chairman, I will now take you to part F of the Rules of Business 1973 and this is issued by the Cabinet Division. Part F deals with relation with Majlis-e-Shoora (Parliament), Rule 32 is the relevant rule, Mr. Chairman and Rule 32 says, Summoning of Majlis-e-Shoora (Parliament) a House or Joint Sitting by the President. There they say that at appropriate time, the Secretary Parliamentary Affairs Division shall ascertain the State of Business sending for the consideration of the Assembly the Senate, both Houses or Majlis-e-Shoora Parliament in Joint Sitting as the case may be and communicate the date, time and place of commencement of the session.

2 (b) is relevant to us. In the case of the Senate, to the Secretary Senate, 3 says upon receipt of a communication under sub Rule 2 the date, time and place for the commencement of the session shall be notified in the official gazette, in the case of the Senate, by the Secretary of the Senate. Therefore, Mr. Chairman, it is abundantly clear that under the provisions of the Constitution, the government was duty bound to call the Senate session for a minimum period of 90 days and I have read out to you the relevant Rules of Procedure of the Federal Government which make incumbent upon them to summon that session until and unless it is a session which is requisitioned by the Opposition or by the Members of the House and then falls upon the Chair or the Chairman to requisition that House. So, therefore, Sir, there has been and I have read out the statement of the Minister. He has subsequently resiled from that statement, that is a different point but nonetheless there is a clear violation of the Constitution of the Islamic Republic of Pakistan by this Caretaker Government and this is now becoming a habit. Mr. Chairman, to emphasize my point, let me very quickly point out to you the violations only in terms of Parliament. Forget the other things only in terms of the Parliament, the violation of the Constitution that this Government has been doing that 130 days of the National Assembly would not be completed. Therefore, there was again the violation of Article 54 (ii). They are becoming habitual in the violation of this. That means National Assembly was not allowed to meet for its minimum period of 130 days. The Senate is not being allowed for its minimum period of 90 days. That clearly shows that they want to make Parliament redundant. They want to make Parliament subservient. That there is no haseyat of Parliament at all. Then Mr. Chairman, there is the violation or continued violation of Article 56 of the Constitution, where we have not had the commencement of the Parliament subservient. That there is no haseyat of Parliament at all.

Then Mr. Chairman, there is the violation or continued violation of Article 56 of the Constitution, where we have not had the commencement of the Parliamentary Year with the address of the President. Then there is another violation of the Constitution by this Caretaker Government and that is that they have gone ahead and amended the Constitution by way of an executive fiat, over riding Article 238 and 239. We are not ready to accept that an individual has the right to amend the Constitution of Pakistan. No individual, General Musharraf does not have the right to amend the Constitution of the Islamic Republic of Pakistan. We will deal with that in more detail when we are talking on the PCO but in the presence of Article 238 and 239, this is another Constitutional violation that they have done. Then the election were postponed, which is again a violation of Article 224 of the Constitution so, therefore, Mr. Chairman, my humble request would be to you to admit this Privilege Motion and to send this Privilege Motion for further consideration to the Privileges Committee because the government cannot be allowed to violate the Constitution at will, which it is doing. Thank you very much.

Senator Professor Khurshid endorsed the arguments made by Senator Mian Raza Rabbani and stated that the main issue is that is a Constitutional requirement that

the National Assembly and Senate shall meet for 130 days and 90 days, respectively, in a Parliamentary Year, second requirement is that minimum three sessions shall take place and thirdly they should not be a gap of more than 120 days between two sessions. These are clear and categorical provisions; whatever has been done is a sheer violation of explicit provisions of the Constitution. We have only met for 37 days whereas, Constitutional requirement is yet to be fulfilled as 53 days are left, which are physically possible to achieve. Article 254, Constitution, 1973 is being exploited by the Government to violate the Constitution provisions, which is uncalled for.

Mr. Afzal Haider made following statement:-

“I would like to make submission for that. My first submission is that the allegation of malafide or bad intentions cannot be attributed for the simple reason that certain factors which intervened have not been considered by the gentlemen. Sir, the emergency was proclaimed, elections had been announced, and there was trouble in certain areas of Pakistan. And then there was sad incident of the assassination, the Muherram had intervened and a lot of arrangements had been made, these factors have not been considered. “

Now, sir I may be permitted to say that Article which would require that the House should meet also contemplates that's on requisition, the Opposition could have asked for summoning of the House, they never did it, what does it mean, it means, they acquiesce this article contemplates responsibility on both the sides, from the side of the Government as well as on the members, if the members agree, basically agree this means, they have almost approved it. Therefore, the question of malafide does not rise, is in fact, a case where both parties have agreed on this proposal. And then it might as well be said that the Constitution consciously does not make any penal provision for not summoning the Assembly for particular period. The things do not become void, they do not become invalid because a certain thing has not happened and unless and until that is mentioned, no such allegation can be made. And so far as the question of the report appended as annexed to motion, I might as well say that I don't have the file before me but I distinctly recollect that when I was returning from Lahore, I was in the car when I received a telephone call from one of the correspondent in the town. I did not use the word "approved". I said summary has been prepared and it is on its way to the Senate. I do not remember the date exactly, because the file is not before me. So, if there is anything said by the reporter, well I am not responsible for that for the simple reason that what I did not choose the word, I can say it myself. I did not use the word "approved", and the one point that I might as well say that one of the reasons was that elections had also been announced and when the elections have been announced, most of the members go to the constituencies for the support of their parties. As far as the question of the Caretaker Government is concerned, I might as well state that the concept of Caretaker Government is not given in the PCO. It is a Constitutional concept for that we have to read Articles 191 and 224.

Secondly, it has been said that we took oath under the PCO. I might as well bring it to the notice of the honourable Member that we took oath under the Constitution, it's a misconception. So, with these remarks I would seek permission to conclude it and would request that it should not be accepted. Thank you."

Senator Mian Raza Rabbani, Leader of the Opposition further contended as under:-

"Mr. Chairman, I am really amazed at the line of argument that has been forwarded by the Minister for Law and at a total of words to try and counter as he said, but first of all he has stated that there was certain factor which came in the way of the summoning of the session of the Senate, which have not been taken into consideration and there were the imposition of emergency and trouble in some areas and the assassination Mohtarma, but the assassination of Mohtarma took place on the 27th December, 2007. I would also like to point out Mr. Chairman, that no matter what the factors may be; England was at war but parliament was meeting. I have here before me a record of that very period in which you have had 26 Standing Committee meetings taking place. This is a record of the Senate. So, if Standing Committee meetings can take place then why cannot the Senate meet in a session. It cannot meet in a session because they did not have the legs to stand on to defend the policies that they are pursuing. Therefore, in order to circumvent that they violated the provisions of the Constitution. Then it was said Mr. Chairman! That the reference was drawn to Article 254 and said that no act was illegal, nothing was void and nothing illegal.

The point is that here they have failed to perform a duty, we are not saying that an act has been committed that is illegal or is void. It was the Constitutional responsibility upon them and I think that the argument that takes the cake is that it is co-responsibility of the Opposition and of the Government to ensure that 90 days are met with. Finally, we are meeting today under requisition of the opposition, but it is most certainly not a duty cast on the opposition to ensure that the 90 day period is met with. It is very clearly under the Rules of Procedure, the responsibility of the government to ensure that the Senate is summoned, and the provision of a requisition is provided as an alternative to the opposition that in case of an emergency or in case the Opposition the House to be summoned and the government is not willing to do it, then the Opposition can use the question of requisition. It is not that the government is absolved of its responsibility of summoning the Senate Session.

So, therefore, I would request you Mr. Chairman that this is a matter which needs to be looked into. It needs to be gone into and therefore, it be referred to the Standing Committee."

After hearing the arguments from both sides of the aisle, Senator Mir Jan Muhammad Khan Jamali, Acting Chairman referred the matter to the Committee on Privileges with the direction that the Committee should come up with recommendations to establish conventions and traditions in this regard.

Senate Debate
4th February, 2008
P 18-35

40. *Privilege Motion: Amending substantive laws through Finance Bill — deliberate attempt to bypass Senate of Pakistan — breach of privilege of the House — referred to the Committee on Privileges*

Ruling

During the sitting of the Senate held on 18th June, 2008, Senator Ch. Muhammad Anwar Bhinder on his behalf and on behalf of others raised a question of breach of privilege stating therein that the Ministry of Finance while preparing the Finance Bill, 2008, have included 27 Acts and Ordinances as Money Bill whereas those Bills do not fall within the definition of Money Bill, as provided in Article 73 of the Constitution. The Members contended that this is a deliberate attempt to bypass the Senate from considering the said enactments or amendments and an authorized or shortcut method of legislation by one House only has been adopted as against the provision of the Constitution which amounts to breach of privilege of the Senate of Pakistan.

Senator Mian Raza Rabbani, Leader of the House, though argued that the Privilege Motion is pre-mature because it is based on the assumption that all those laws which are enumerated in the Finance Bill, 2008, would be passed so it is premature hence no cause of action has occurred so far, however, he did not oppose the Motion and raised no objection on its referral to the Committee.

After hearing the arguments, the Chairman referred the Privilege Motion to the Committee on Rules of Procedure and Privileges.

Senate Debate
18th June, 2008
P 3-8

41. *Privilege Motion: Against misbehavior by the Chief Executive Uch Power Plant – Minister contended that this is a private institution— breach of privilege — referred to the Committee on Privileges.*

Ruling

During the sitting of the Senate held on 29th August, 2008, Senator Molana Abdul Ghafoor Haideri raised a question of breach of privilege conducted by the Chief Executive Uch Power Plant. The hon'ble member contended that he tried to telephonically contact Mr. Pervez Khan, Chief Executive Uch Power Plant regarding some issues being faced by the public at large but despite all his efforts he remained unsuccessful to contact him. Thereafter, he wrote a letter to him explaining the issues and also expressing his concerns over the Chief Executive's lack of response, which speaks volumes about his dealings with the common people of Pakistan. In response, Mr. Pervez Khan, called office and threatened my Private Secretary and stated that he is not under the influence of anyone and never ever dare to write such a letter to him in future.

The Mover pressed that being a public representative it is his privilege to contact every department for redressal of the grievance of the public; therefore, the display of annoyance and threats by Mr. Pervez Khan Chief Executive Uch Power Plant is a breach of his privilege being Member Parliament.

Raja Pervez Ashraf, Minister for Water and Power, despite regretting the attitude of the officer towards Member Parliament, yet he stated that the said institute was under the private sector and therefore he cannot take action against Mr. Pervez Khan. However, he stated that he had no objection on referring the matter to the Privilege Committee.

Mir Jan Muhammad Khan Jamali, the Acting Chairman, after hearing the arguments, referred the matter to the Committee on Rules of Procedure and Privileges.

Senate Debate
29th August, 2008
P 74-76

42. *Privilege Motion: Non-provision of requisite information to the Senate Committee — deliberate attempt to circumvent the proceedings of Committee — breach of privilege — referred to the Committee on Privileges.*

Ruling

During sitting of the Senate held on 26th January, 2009, Senator Muhammad Azam Khan Swati raised a question of breach of the privilege regarding the irresponsible behavior of the Mansehra Development Authority (MDA). The honorable Senator

contended that on 3rd January, 2009, the Senate Functional Committee on Problems of less-developed areas visited Hazara University, Mansehra. Besides other matters on the agenda of the meeting, the Committee desired to discuss the affairs of Mansehra Development Authority, with special reference to allotment, transfer, sale and purchase of residential/commercial plots, allotted by the Authority since 2001 with complete documentary details. During the meeting an irrelevant brief was presented by MDA with deliberate attempt to conceal the facts. The Committee again directed the management to provide the record of the lease/sale/purchase deeds since 2001 along with detailed information about buyers/lessees/sellers including their National Identity Card numbers, plot numbers, addresses. The Management of MDA assured the Committee that the requisite information will be provided to the Senate Secretariat within 7 days positively. However, the Committee granted 10 days' time for the same.

After the expiry of the stipulated period, the Senate Secretariat contacted Mr. Asad Ali Shah, Project Director, MDA several times to furnish the record to the Senate secretariat as promised but each time the information was not furnished on one pretext or the other.

Since 16th January the Management of the said Authority has not been answering telephone calls, so much so that Secretary Senate personally asked Mr. Asad Ali Shah to produce the record latest by 24th January as required by the Committee but no heed was paid. This irresponsible and unacceptable behavior of MD, MDA is tantamount to breach of privilege of the members of the whole committee, therefore, the matter may be referred to the Committee on Rules of Procedure and Privileges for strict action against the delinquents.

The Leader of the House and the Leader of the Opposition did not oppose the Motion.

Thereafter, Mr. Mohammadmian Soomro, the Chairman Senate, after taking sense of the House referred the matter to the Committee on Rules of Procedure and Privileges.

Senate Debate
Vol. I
1st June, 2009
P 2-4

43. *Privilege Motion: Laying of ordinance in either House after four months of its promulgation in violation of Constitution of Pakistan breach of privilege of the House — referred to the Committee on Privileges.*

Ruling

During sitting of the Senate held on 5th October, 2009, Senator Prof. Muhammad Ibrahim Khan raised a question of breach of Privilege of the House stating that the Daily Express in its edition dated 31st July, 2009 has published that the Ordinance for prevention of Electronic Crimes was laid in the House during the session that ended on 29th July, 2009. He stated that the President promulgated the said Ordinance on 27th February, 2009 and under Article 89(2)(a) of the Constitution an Ordinance comes to an end after four months of its promulgation if the same was not laid before either House so the said Ordinance ceased to exist on 27th June, 2009. In these circumstances laying of such an Ordinance after completion of its Constitutional tenure is violation of the Constitution and is also breach of privilege of this House.

Mr. Zaheer-ud-Din Babar Awan, Minister for Law did not oppose the Motion, therefore, after hearing the arguments, Mr. Farooq Hamid Naek, Chairman Senate, referred the matter to the Committee on Rules of Procedure and Privileges.

Senate Debate
5th October, 2009
P 4-5

44. *Privilege Motion: Privilege Motion not to be referred to Ministries for comments and decided on the floor of the House*

Ruling

On 17th April, 2009, Senator Mian Raza Rabbani vehemently opposed referral of his Privilege Motion for comments to the concerned Ministry by the Secretariat and stated that nowhere in the Rules of Procedure and Conduct of Business in the Senate, 1988, it is provided that a Privilege Motion will first be referred to the department concerned and then it will be considered by the Senate; it is a sheer violation of rules to refer the Privilege Motion to the concerned Department/Ministry for comments. The honorable Senator further contended in the following terms:-

“Chapter viii deals with privileges; Rule 60 provides that ‘A member may, with the consent of the Chairman, raise the question involving the breach of privilege either of a member or of the Senate or of the Committee thereof’. Rule 61 which is the operative part ‘A member wishing to raise a question of privilege shall give notice in writing to the Secretary before the commencement of the sitting on the day the question is proposed to be raised’. Provided that the Chairman may if he is satisfied about the urgency

of the matter allow a question of privilege to be raised at any time during the course of the sitting after the disposal of a question. Rule 62 “The right to raise a question of privilege shall be governed by the following conditions namely:-

- a. not more than one question shall be raised by the same member at the same sitting;
- b. the question shall relate to a specific matter and shall be raised at the earliest opportunity;
- c. the matter shall be such as requires the intervention of the Senate; and
- d. the question shall not reflect on the personal conduct of the President.

Read from 60, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 72(a) and show me Mr. Chairman, where is the provision that a Privilege Motion will be referred to the concerned Department for comments. I want to know Mr. Chairman who is the person, who referred my Privilege Motion for comments because that person has committed another breach of my privilege which is more serious than my original Privilege Motion. It is my right. It is the right of this House to know that who is that man who referred my Privilege Motion to the concerned Department.”

Senator Dr. Zaheer-ud-Din Babar Awan, Minister for Parliamentary Affairs also opposed this unwarranted and unprecedented move to refer the Privilege Motion for comments and stressed that “what is not provided into the rules should not be imported into the rules for the benefit of anybody because nobody is above the law.”

After hearing the arguments, the Acting Chairman ruled that no such matter shall be referred to the Ministries for comments from now onwards; rather it shall be decided on the floor of the House, in terms of the Rules of Procedure and Conduct of Business in the Senate, 1988.

Senate Debate
17th April, 2009
P 5-12

45. *Privilege Motion: Laying Swat Peace Agreement (Nizam-e-Adl Regulation, 2009) only in the National Assembly breach of privilege of the House — referred to the Committee on Privileges.*

Ruling

During the Senate sitting held on 17th April, 2009, Senator Abdur Raheem Mandokhail raised a question of breach of privilege of the House arising out of laying of the Swat Peace Agreement (Nizam-e-Adl Regulation, 2009) only in the National Assembly, wherein the Senate was not taken into confidence although it is the Upper House representing the Federation and the Federating Units.

The Acting Chairman Senate held the motion in order and referred the matter to the Committee on Rules of Procedure and Privileges.

Senate Debate
17th May, 2009

46. *Privilege Motion: Promulgation of twelve Ordinances (Ordinance No. IV to XV of 2010) by the President Issuance of an Ordinance is essentially a law-making process vires or the legality of a law including an Ordinance could not be questioned before this forum the Motion, thus, not apparently raising any question of breach of privilege requiring intervention of the Senate held inadmissible.*

Ruling

During sitting of the Senate held on 18th June, 2010 (62nd Session), Mr. Farooq Hamid Naek, the Chairman Senate gave the following ruling on the Privilege Motion No.1(61)/2010-M moved by Professor Khursheed Ahmed on 30th April, 2010 and held the Privilege Motion out of order.

“On 30th April, 2010, Senator Prof. Khursheed Ahmed raised a question of breach of Privilege arising out of promulgation of 12 Ordinances (Ordinance No. IV to XV of 2010) by the President. The mover argued that Constitution (Eighteenth Amendment) Bill, 2010 was signed by the President on 19th April, 2010 which inter alia amended Article 89 of the Constitution which provided that an Ordinance shall not be re-promulgated without Resolution of any of two Houses of the parliament. According to the mover this constitutes the first major violation of the Constitution within three days of the operationization of the recent Eighteenth Constitutional Amendment and the Ordinances in question have been re-promulgated in gross violation of the Constitution by-passing the two Houses of the Parliament, particularly the Senate. As such it violates the Privilege of Senate as an institution as well as the members of the Senate.

Senator Prof. Khursheed Ahmed while dilating upon the issue placed

reliance on a Commentary on the Indian Constitution by Arvind P. Datar, 2nd Edition 2007, which reads:-

“That the Constituent Assembly debate shows that the power to issue Ordinances was regarded as a necessary evil and was to be used to deal with extraordinary situations and not perverse to serve political end. The power shall not be used to perpetuate a fraud on the Constitution which had been conceived with so much faith and wish”.

The Mover stated that military dictatorship in Pakistan had through Ordinances hardly any proper legislation and was against the spirit of the Constitution.

Relying on a case law reported in PLD 1994, Supreme Court 363, on the re-enactment of an expired Ordinance Prof. Khursheed Ahmed cited the relevant extract of the Judgment which reads as under:-

“If the National Assembly does not stand dissolved, the President cannot usurp the legislative power of Ordinance without submitting in terms of Article 89 of the Constitution to the National Assembly. Where, however, the National Assembly stands dissolved, and its elections could not take place within the stipulated period, for reasons not attributable to the President and such delay was found by the competent Court justifiable, the President would be competent to re-enact an Ordinance. The underlined idea/philosophy seems to be that the legislative power vests in an Assembly, this power cannot be usurped by a Head of the State or a Province while the Assembly exists. The above reasons will not hold good if any Assembly stands dissolved for justifiable reasons...”

“The National Assembly does not stand dissolved; the President cannot usurp the legislative power of the National Assembly by repeating the same Ordinance without submitting it in terms of Article 89 of the Constitution, to the National Assembly.”

Senator Prof. Khursheed Ahmed has also disclosed that during the deliberations of Parliamentary Committee on Constitutional Reforms on Article 89 of the Constitution, he was not in favour of the legislation through Ordinance promulgated by the President as it was against the spirit of the basic principle of the supremacy of the Parliament.

Senator Prof. Khursheed Ahmed further argued that existing Article 89 of the Constitution (as it stands after 18th Amendment) provides that either House may by a Resolution extend an ordinance for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period of it before the expiration of the period, a Resolution disapproving it, is passed by a House, upon the

passing of that Resolution. He contended that an extension for a further period may only be made once. Senator Prof. Khursheed Ahmed invited our attention to the fact that the Constitution Eighteenth Amendment Bill 2010 was signed by the President on 19th April, 2010 and after the assent, this amendment has become part of the Constitution. Consequently, re-promulgation of 12 Ordinances after that date was in violation of the Constitution.

Senator Prof. Khursheed Ahmed has also pointed out that the Ordinances were signed/promulgated on 18th April, 2010 but Gazette notification was published on 20th April, 2010 which never happened in the past as the date of promulgation and Gazette notifications of an ordinance were always the same.

Senator Syed Nayyer Hussain Bokhari, Leader of the House stated that the Ordinances in question were promulgated on 18th Bill 2010 prior the assent of the 18th Constitutional Amendment Bill, 2010 which was accorded by the President on 19th April, 2010. The other thing which Prof. Khursheed Ahmed pointed out is that in past it has never been a practice to mention the date of assent examined. Apparently a new practice had been followed but on the face of it, these Ordinances were issued prior to the assent of the Constitution Eighteenth Amendment Bill, 2010.

I have carefully examined the record including the Gazetted copies of all the Ordinances in question and arguments advance by the mover, Leader of the House and other honourable members. Article 89 of the Constitution of Islamic Republic of Pakistan was amended through Constitution (Eighteen Amendment) and as exited before the said amendment reads as under:-

- a. The President may, except when the 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.
- b. 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 shall be laid-
- c. 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 form 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.
- d. Before both Houses if [does not contain provisions dealing with any of the matters referred to in sub-paragraph(i)], 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 either House, upon the passing of that Resolution; and may be withdrawn at any time by the President.

- e. without prejudice to the provisions of clause (2), an ordinance laid before the National Assembly shall be deemed to be a Bill introduced in the National Assembly.

“The record reveals that most of these ordinance were made on 18th April, 2010 except for Ordinances No. VI, XIII and XV Gazette notifications. Admittedly the Constitution (Eighteenth Amendment) Act 2010 received assent of the President on 19th April, 2010. The assumption of Prof. Khursheed Ahmed, mover of this motion that the Ordinances in question were made and promulgated after the said assent, does not appear to be a correct assumption. The Ordinances in question were promulgated by the President, in exercise of his powers under Article 89 (1) of the Constitution. The issuance of an ordinance is essentially a law-making process and it is a well-established practice that the vires or the legality of a law including an ordinance could not be questioned before this forum. The motion, thus, not apparently raising any question of breach of privilege requiring intervention of the Senate is inadmissible. I, therefore, hold the Privilege Motion to be out of order.”

Senate Debates

Vol.VI
1st December,2010
P 4-9

47. *Privilege Motion: Reports, which are required to be laid in terms of the Constitution of Pakistan, 1973, should be laid in the House within time.*

Ruling

During the sitting of Senate on 3rd February, 2012, Senator Professor Khursheed Ahmed requested the Chairman to give ruling on the question of breach of privilege raised by him. According to the hon’ble member, breach of privilege of the House had occurred due to non-laying of reports, which were obligatory under the Constitution, before the Senate. He further requested that such a ruling be given that leaves room for no further violation of the privilege of the House. He demanded all concerned reports be laid in the House within time.

The Chairman ruled as under:

“Let the remaining reports be laid before the prorogation of this Session and in future all reports as required by the Constitution and Law must be laid within the time frame before this House”

Senate Debate
3rd February, 2012

48. *Privilege Motion: Against misbehavior by the Peshawar Cantonment Board Administration and senior police officials with a Senator—referred to the Committee on Privileges.*

Ruling

On 17th June, 2013, Senator Haji Mohammad Adeel sought leave to raise a question of privilege stating that on 26th May, 2013, the officials of Peshawar Cantonment Board along with the local police high ups came to break the seals of 29 shops, offices and workshops despite the fact that the occupants were having the stay order of status quo issued by the Peshawar High Court and next date was 5th June, 2013 in Peshawar High Court. The officials of Cantonment Board threw away the goods lying in the shops and when he along with the new elected Member National Assembly Mrs. Nighat Orakzai told them about the stay order of the Peshawar High Court they make fun of them. Moreover, the driver of an Additional Executive Officer pointed out the gun on him and his son and when he asked the SHO Police Station Gharbi Mr. Dost Muhammad to intervene, he instead also misbehaved him and gave pushes. When Mrs. Nighat Orakzai agitated that how can a Member Parliament be dealt with in such a manner, the police also misbehaved her and SHO ordered to arrest her son. In this way, the following persons breached his privilege as Member parliament:-

- a. Mr. Faisal S.P Cantt. Peshawar.
- b. Mr. Dost Muhammad, SHO P/S Gharbi Peshawar Cantt.
- c. Magistrate Cantt. Board Peshawar.
- d. Revenue Officer, Cantt. Board Peshawar.
- e. Additional Cantt. Executive Officer along with his driver.

Senator Raja Muhammad Zafar-ul-Haq, Leader of the House did not oppose the Privilege Motion.

Thereafter, the Chairman referred the matter to the Committee on Rules of Procedure and Privileges for consideration and report.

Senate Debate
17th June, 2013
P 33

49. *Privilege Motion: Concealing facts and misleading committee about early retirement of MD Pakistan Security Papers, against whom a breach of privilege has already been moved by Senator Saeed Ghani—referred to the Committee on Privileges.*

Ruling

On 20th August, 2013, Senator Saeed Ghani sought leave to raise a question of privilege stating therein that on 25th February, 2013 he has moved a Privilege Motion against the irresponsible and non-cooperative behavior of MD Pakistan Security Papers which matter was referred to the Committee on Rules of Procedure and Privileges. Thereafter, the Committee summoned the said officer in its meeting held on 19th March, 2013 but she did not bother to appear before the Committee and Finance Division informed the Committee that the said officer has moved an application for her early retirement and transfer to Finance Division Islamabad. The Committee directed the officials of Finance Division to conduct an inquiry against the MD PSP through the Establishment Division.

In the next meeting of the Committee, held on 10th April, 2013, the officials of Finance Division submitted a letter regarding the acceptance of request of early retirement of MD PSP and requested for closure of the matter pending against her on the ground that the lady officer is no more in service. However, he apprised the Committee that the MD PSP was still on her job and the officials of the Finance Division have misinformed the Committee by way of concealment of facts. It has further been stated by Senator Saeed Ghani that he let the issue at the discretion of the Chairman Committee who by accepting the wrong information of the officials of Finance Division as correct, finally closed the matter on the ground that as the officer complained against is no more in service. Therefore, it would be a futile exercise to proceed further against her.

Senator Saeed Ghani further stated that the MD PSP and the officials of Finance Division deliberately concealed the facts and misguided the Committee, therefore, being Member of the Senate his privilege as well as the privilege of the Committee has seriously been breached. He has requested that the instant Privilege Motion against the officials of Finance Division and Mrs. Nayyer Muzaffar, MD Pakistan Security

Papers may be admitted and referred to the Committee concerned.

Senator Raja Muhammad Zafar-ul-Haq, Leader of the House stated that the matter is of very serious nature, hence, it may be sent to the Committee.

The Acting Chairman held that the matter be referred to the Privilege Committee. He also asked the Leader of the House to look into such matter personally as there are a lot of complaints against such careless attitude of bureaucracy which needs to be controlled.

Senate Debate
20 August, 2013
P 26

50. *Privilege Motion: Non-appointment of technical staff to operate machine for dialysis and MRI installed in the OPD of District Headquarter Hospital, Teemar Girah, provided by a member of Senate out of his development funds— Privilege Motion against Chief Secretary, Khyber Pakhtunkhwa, Deputy Commissioner, Lower Dir, Secretary Health department, Peshawar and Medical Superintendent referred to the Committee on Privileges*

Ruling

On 3rd December, 2013, Senator Muhammad Zahid Khan sought leave to raise a question of privilege stating therein that out of his development funds he had provided a machine for dialysis and MRI to the OPD of District Headquarter Hospital, Teemar Girah. On 30th April, 2013 when he along with DCO and M.S of the Hospital visited the said Hospital, he came to know that said machinery was not operational. The administration of the hospital told that due to non-availability of the technical experts, the machine is lying non-functional due to which the people of the area are facing hardships and it is the negligence of the concerned Department.

He further stated that he contacted the Chief Secretary, Khyber Pakhtunkhwa to take necessary steps in this regard and also wrote letters to the Deputy Commissioner, Lower Dir, Secretary Health department, Peshawar and Medical Superintendent but the situation is still the same.

He said that despite his repeated efforts to contact the said officers and leaving of the messages, no one even bothered to contact him and due to the irresponsible attitude of the said officers, the machinery worth rupees millions is lying idle. He said that due to such hibernating attitude of the said officers towards his calls and messages, his

privilege as member of the Senate has been breached, hence, the matter may be referred to the Privilege Committee.

Senator Raja Muhammad Zafar-ul-Haq, the Leader of the House said that he has no objection on referring of the matter to the Privilege Committee. He further stated that sometimes the bureaucracy does not behave properly.

The Chairman referred the matter to the Committee on Rules of Procedure and Privileges.

Senate Debate
03rd December, 2013
P 46

51. *Privilege Motion: Misleading the House by giving wrong and inaccurate reply to a Parliamentary question referred to the Committee on Privileges*

Ruling

On 11th December, 2013, Senator Saleem Mandviwalla sought leave to raise a question of privilege stating therein that he asked a question (Question No.119 replied in the House on 30th August, 2013) regarding financial implications and status of the decisions of last ex-advisor PIA under whose orders/directives, charter license was issued to RAS. In reply to the said question, it was informed that the said Advisor have not issued any such direction which has any financial implication.

Senator Saleem Mandviwalla stated that the factual position was that the said Advisor passed the orders for the promotion of Mr. Rashidullah Khan and Mr. Sajidullah Khan, amongst others and also made a presentation to the ECC regarding bailout package of Rs.7 billions, outside his mandate.

Senator Saleem Mandviwalla agitated that in view of the above submissions, the reply submitted by the Ministry concerned is totally false and actual facts have been concealed from the House which is the breach of his privilege as member of the Senate as well as of this August House, therefore, the Privilege Motion may be referred to the Privilege Committee to take action against the delinquents.

Sheikh Aftab Ahmad, Minister of State for Parliamentary Affairs did not oppose the motion.

The Acting Chairman referred the matter to the Privilege Committee.

Senate Debate
11th December, 2013
P 36

52. *Privilege Motion: Matter of blocking entry and exit roads to Parliament Lodges due to movement of Judges and Generals—Leader of the House was asked to look into the matter The Chief Commissioner, ICT has made solid commitment that such eventuality will never happen in future—Privilege Motion stood disposed off.*

Ruling

On 12th December, 2013, Senator Haji Mohammad Adeel sought leave to raise a question of breach of privilege stating that on 11.12.2013, Islamabad Police had blocked the entry and exit roads of Parliament Lodges from 8 p.m. to 9 p.m. and the Members Parliament and other persons residing in Parliament Lodges were ordained to come in and out of the Parliament Lodges. He said that despite their requests, the Members Parliament were not allowed by the police to enter or exit the Parliament Lodges. He further stated that every time a General or a Judge passes in front of the Parliament Lodges, the way of the Parliamentarians is blocked and it is a daily routine which is a breach of Privilege of the Members Parliament. He also suggested that the alternate route should be opened during such eventualities.

Raja Muhammad Zafar-ul-Haq, the Leader of the House responded that as the situation mentioned by Haji Mohammad Adeel is a routine exercise, therefore, it becomes more serious as the Members Parliament can in no way be detained for some time on daily basis rather some permanent arrangements are needed to be made in this regard. He also suggested that an alternate route should be there during such eventuality. The Leader of the House assured that he will take up the matter with the Ministry of Interior.

The Chairman held that the matter will be prolonged in this way, therefore, he suggested the Leader of the House to call the Inspector General of Islamabad Police and the Chief Commissioner, ICT to make them understand the seriousness of the issue. He further said that there is no doubt that arrival of dignitaries on the Constitution Avenue is a daily routine but in that case there must be some alternate route. The Chairman held that he will keep pending the Privilege Motion till such time the Leader of the House have a meeting with the said officers to discuss the matter.

On 18th December, 2013, Raja Muhammad Zafar-ul-Haq, the Leader of the House, apprised the House that he had called the Chief Commissioner ICT and asked him not to block the entry/exit of Parliament Lodges in any way rather the Members Parliament should be facilitated in approaching the Parliament House. The Chief Commissioner, ICT has made solid commitment that such eventuality will never happen in future.

After the assurance of the Chief Commissioner ICT, as stated by the Leader of the House, the Privilege Motion stands disposed off as borne fruit.

Senate Debate
1 2th Decenber,2013
P 32-34

Senate Debate
Date: 18th December,2013
P 68-69

53. *Privilege Motion: Matter of defaming, harassing and illegal actions taken against a Member of Senate by Embassy of Pakistan in Saudi-Arabia and Consulate General of Pakistan in Jeddah referred to the Committee on Privileges*

Ruling

On 3rd January, 2014, Senator Mrs. Sehar Kamran sought leave to raise a question of breach of her privilege stating that the Embassy of Pakistan in Kingdome of Saudi Arabia and the Consulate General of Pakistan in Jeddah have initiated a defaming campaign against her to damage her image as a Senator and to justify their illegal actions, the Embassy and Consulate staff have been leveling baseless allegations against her and also propagating in press.

She further said that she is serving as Principal of the Pakistan International School (English Section) Jeddah, KSA which is a community school being run by the parents Body duly elected by the parents of the students of the school. The Government of Pakistan and the Embassy of Pakistan in Saudi Arabia has no role to play in the helm of affairs of the school. Only a nominee of Pakistan Embassy attends the meetings of the parents Body as an observer. All appointments and policy decisions are being taken by the Body and the school generates its funds itself. The employees of the school are not the employees of the Government of Pakistan or its Embassy in KSA.

She alleged that with the change of Government in Pakistan, the Pakistan Embassy officials started illegal interference in the affairs of the school with only motive to force her to relieve the charge of the school which was perhaps their political assignment. In order to achieve their ulterior motive, the officers of Pakistan Embassy named Mr. Muhammad Naeem Khan (Ambassador), Mr. Aftab Ahmad Khokhar (Counsel General)

and Mr. Sohail Ali Khan (Press Council) exceeded their authority to damage her and also initiated a filthy media campaign in Saudi Arabia and Pakistan. However, she did not respond to such cheap tactics and kept quite in the best interest of the image of the country as well as in respect of the Pak-Saudi relations and repute of educational institutes of Pakistan in Saudi Arabia. But the Embassy of Pakistan undermined the esteem of our country by using unlawful means and misused the powers to victimize her.

They also approached the Education Ministry of Saudi Arabia in this connection but they took a legal stand and refused to support any illegal move of the Embassy of Pakistan, thereafter, the officers of Embassy of Pakistan started conspiracy against the Parent's Body of the school and tried to establish the Body of the people of their own choice and also harassed the employees of the school in order to achieve their illegal goals. They went to the school and at her residence to serve the unauthorized termination notice at midnight at 1:00 a.m. and also publicized the same in media. In short they used all illegal and immoral tactics to remove her from the post held by her in the school.

She further elaborated that she honorably resigned from the post by submitting her resignation to the Education Ministry of the Kingdom of Saudi Arabia and in protest many other teachers and staff members of the school have also resigned. This was not the end of the illegal actions of the Diplomatic Mission rather they twice cancelled her entry/exit visa in order to restrict her traveling due to which she remained unable to attend the Senate Sessions and the meetings of the Standing Committee. Her transfer of sponsorship was also illegally hindered and the school staff was also pressurized to fabricate false cases against her and whoever refused to comply with the Embassy directions, was penalized. Moreover, to give a cover to their nasty actions, false allegations have been leveled through media campaign which is a great insult to her as well as to this August House.

The Senator stated that her privilege as a Senator has been breached due to the above said behavior and illegal actions of the officers of the Pakistan Embassy. She has requested that the matter may be referred to the Privilege Committee.

Raja Muhammad Zafar-ul-Haq, the Leader of the House stated that the issue was going on between the Embassy, Government of Pakistan, Ministry of Education and Foreign Office for the several months which should reach to its culminating point now. He stated that let him get the facts from these concerned Ministries or officials and then he will inform the House.

On question by the Chairman that is it a school under the domain of the Federal Government? The Leader of the House replied that it is Pakistan Embassy School who make the recruitment in it.

Senator Zaheer-ud-Din Babar Awan commented that prima facie it is a fit case of breach of privilege which should be referred to the concerned Committee as the Member of the Senate was illegally stopped due to which she remained unable to attend the sessions of the Senate. He also stated that the Embassy of Pakistan is under the Federal Government.

Senator Haji Mohammad Adeel stated that the matter under discussion was in the Foreign Affairs Committee and the said Committee has also written letter to the Foreign Office that till the final settlement of the matter, no proceedings should be initiated against the Senator but as reported by the Senator she was forcefully restricted and media campaign was also initiated against her. He also suggested that the matter should be referred to the Privilege Committee.

The Hon'ble Chairman after hearing the Mover, the Leader of the House and other Members, held the motion in order and referred the same to the Committee on Rules of Procedure and Privilege.

Senate Debate
3rd January, 2014
P 22-26

54. *Privilege Motion: Matter of recording telephonic conversation of Senators by Intelligence Agencies of Pakistan referred to the Committee on Privileges*

Rulnig

On 12th February, 2014, Senator Haji Mohammad Adeel sought leave to raise a question of breach of privilege stating that as per news report of Mr. Ansar Abbasi published in Daily Jang dated 12.02.2014, the Intelligence Agencies of Pakistan records the telephonic conversations of the Prime Minister, Ministers, senior Bureaucrats and politicians which is the breach of his privilege being the Member Parliament.

The Chairman enquired from the Mover, that please specifically explain that how did breach of your privilege has been committed?

Senator Haji Mohammad Adeel stated that as the politicians are also named in the report so, being a politician he apprehends that his telephone calls have also been recorded.

The Chairman said that without getting into controversies, let the response of Leader of the House be obtained.

Senator Aitzaz Ahsan, the Leader of the Opposition also corroborated the stance of Haji Mohammad Adeel as it is the privilege of the politicians to talk to each other with

confidence, therefore, the Privilege Motion may be referred to the Privilege Committee for detailed examination of the issue.

Raja Muhammad Zafar-ul-Haq, the Leader of the House, stated that it is a very important issue not only in Pakistan but throughout the world and the Agencies accesses the private documents and conversations of the people and every citizen is vulnerable to this phenomenon, therefore, keeping in view the sensitivity of the matter, the same may be referred to the Privilege Committee.

The Chairman after hearing all the participants in discussion, held the Motion in order and referred it to the Committee on Rules of Procedure and Privilege.

Senate Debate
12th February, 2014
P 43-46

55. *Privilege Motion: Use of derogatory remarks about the involvement of money in the election of the Senators by Chairman, Pakistan Tehreek-e-Insaf, Imran Khan*

Rulnig

On 17th February, 2014, Senator Muhammad Zahid Khan sought leave of the House to raise the question of breach of his Privilege as well as of Privilege of the Upper House by referring to a statement made by Chairman Pakistan Tehreek-e-Insaf, Mr. Imran Khan during a T.V Interview in which he had given derogatory remarks about the involvement of money in the elections of the Senators. He said that Imran Khan has categorically stated that Senators obtained the seat in Senate after giving bribe money.

The Members belonging to all the parties, both opposition and treasury benches, vehemently objected such statement of Mr. Imran Khan and were of the view that such a statement is breach of privilege of this House, therefore, the matter may be referred to the Privilege Committee.

The Acting Chairman said that Tehreek-e-Insaf has no representation in the Senate and no one is available to respond on his behalf. As Mr. Imran Khan is Member of the National Assembly so, only displeasure can be shown to the Speaker National Assembly by way of writing a letter in this respect.

However, all the Members were of the strong view that the matter must be referred to the Privilege Committee as serious breach of this House has been committed by Mr. Imran Khan and he has disgraced the Upper House of Parliament.

Raja Muhammad Zafar-ul-Haq, the Leader of the House, stated that the Privilege

Motion has been signed by more than 30 Members of Senate, therefore, keeping in view the sense of the House the matter may be decided.

On the suggestion of the Acting Chairman about writing of letter to the Speaker National Assembly, the Leader of the House stated that it would not be the proper course as it is the responsibility of this House to probe into the matters of breach of privilege of its members.

After hearing the Members, with sense of the House, the Acting Chairman referred the matter to the Privilege Committee.

(Note:- upon reconsideration, the Chairman Senate of Pakistan, keeping in view earlier Ruling of the Chair, international practices and scheme of the Constitution regarding sovereignty of each House, referred the matter, from Chamber, to the Speaker National Assembly to look into it and take such action as he may deem appropriate in accordance with the law, Rules of Procedure and established parliamentary practice.)

Senate Debate
17th February, 2014
P 30

56. *P.M No.04(101)/2014-M: Privilege Motion: Matter of reduction in security of the Chairman Senate*

Ruling

On 17th February, 2014, during the sitting of the Senate, Senator Mrs. Saeeda Iqbal on point of order raised the question of breach of Privilege of the Chairman Senate, being custodian of the House, stating that the Government has reduced the security of the Chairman Senate who comes in No.3 in order of precedence. She was of the view that despite deteriorating law & order situation in the country, the Government instead of beefing up the security of Chairman Senate has reduced the same which is breach of his Privilege, therefore, the matter may be referred to the Privilege Committee for probing into the matter and identifying the responsables.

Raja Muhammad Zafar-ul-Haq, the Leader of the House although acknowledged the sensitivity of the matter yet he suggested that instead of referring the matter to the Committee, the same may be taken up with the Ministry of Interior directly as unnecessary delay would cause in the procedure of the Committees.

However, the Acting Chairman held that the matter be referred to the Committee on Rules of Procedure and Privilege for report.

Senate Debate
17th February, 2014

57. *Privilege Motion: Matter of unlawful increase in the prices of petroleum and other related items and imposition of taxation by OGRA*

Ruling

On 15th June, 2013, Senator Mian Raza Rabbani sought leave to raise a question of breach of privilege stating that the breach of privilege of the House has been committed by OGRA when it enhanced the prices of petroleum and other related items on 13th June, 2013. This increase in price is as a consequence of the proposal made by the Minister of Finance in his Budget Speech on 12.06.2013 when he announced 1% increase in GST. The said increase is a proposal pending before the Parliament and has not been enacted as law. Therefore, the OGRA has pre-empted the right of the Parliament to legislate and has acted on a proposal. This Privilege Motion may be referred to the Standing Committee on Rules of Procedure and Privilege.

He argued that the urgency of the matter is that the right of the Parliament which includes the Senate and the National Assembly has been infringed upon and this is also in violation of Article 77 of the Constitution which clearly says that no tax shall be levied for the purposes of the Federation except by or under the Authority of Act of Majlis-e-Shoora (Parliament).

He further argued that the OGRA is relying upon Act of 1931 or 1935 but the Constitution of 1973 has come after the Act of 1931 or 1935. The Act is subordinate to the Constitution and Constitutional provision will prevail. Article 77 of the Constitution is very clear that it has to be an Act of Parliament which can levy a tax and therefore, OGRA has preempted the right of Parliament. The proposal with respect of Sales Tax may be passed by this House or it should continue to be @ 16 %. It is the prerogative of the National Assembly whether to accept that proposal of the Senate or not? But cannot act on its own and preempt the Parliament by going ahead and increasing prices of petroleum products on the 30th of June 2013. So there has been a gross violation of the privileges of this House. Therefore, the Privilege Motion may kindly be referred to the Standing Committee concerned.

Senator Ilyas Ahmed Bilour added that FBR should also be included because it is the FBR which is charging this tax.

Senator Raja Muhammad Zafar-ul-Haq, the Leader of the House, said that the matter is already with the Supreme Court of Pakistan, hence, it is sub judice, therefore, we should not hurry up and preempt the decision of the Supreme Court of Pakistan.

The Chairman said that there are certain obligations of the Members of the Parliament. When the things are taken at the different forums and if you kindly see the preamble of this Finance Bill, I will be referring to that, kindly see that, when it is experienced to make provisions to give effect to the financial proposals of the Federal Government

for the year beginning on the 01st July, 2013 and to amend certain laws for the purpose hereinafter. This is the preamble of the Finance Bill which is before both the Houses right now. He referred clause 1 of this Bill, that is short title, extend and commencement. This Act may be called the Finance Act, 2013, it extends to whole of Pakistan. It shall unless otherwise provided come into force on the 1st day of July, 2013. Apart from this, legal document which is before both the Houses. Is there any instrument which enables the Government or any department to collect the GST which has been enhanced under section 2 of this Finance Bill. Probably some plea has been taken before the Supreme Court, there are some other legal instruments which have been invoked by the Government and probably under that provisions of law, they are collecting that but as far as the matter of privilege is concerned, according to you, it is sub judice. So, it can be examined in the Finance Committee also, this issue could be examined over there also and they could bring, recommendations these proposals rather moving a Privilege Motion because already the House is seized with the recommendations. Those recommendations are to be sent to the Standing Committee on Finance. They are going to examine the recommendations. Certainly this is an issue which could be examined by that Standing Committee and they can give the recommendations which could be brought before the House and ultimately those could be sent to the National Assembly for consideration.

Senator Mian Raza Rabbani said , Sir, with due respect, you are absolutely correct that the Standing Committee on Finance is seized with the proposal and that it may make a proposal that the GST should continue at its old rate of 16% but that is totally a different question. That is the question which is pertaining to whether GST should be enhanced, the question involved here in this Privilege Motion is that a right of Parliament has been infringed upon and it has been infringed upon by the “Babbos”. Are “Babbos” going to sit and be allowed to infringe upon and put trackers on the working of the Parliament? That is the question that is involved in this Privilege Motion. So, with due respect, the two matters are totally different. They may go ahead and finally get it passed that GST is to be increased by 1%. That is a different matter but OGRA and FBR are in a position to give effect to proposal because the Finance Bill is a proposal of taxation. Were they in a position to give effect to proposals on the very next day that the bill had been laid and while the National Assembly and the Senate is seized of those proposals, they have given effect to it? What if tomorrow Parliament decides in its wisdom not to apply this tax? Then what will happen to all those thousands and millions of people who have already make purchases of petroleum, its related products and other products from the 13th till the time Parliament decides that GST is not to be applied. What will happen to them? It is very serious question in which the right of Parliament has been infringed upon and with great respect and great regard for the hon’ble Leader of the Hose, I would say that it is correct that certain matters which are sub judice should not be taken up but here it will be an anomaly and it will be an irony that the Houses of which the right are being affected and those Houses have a remedy to set that wrong right should say that no, we will not exercise this remedy and let the honourable Supreme Court exercise this remedy for us. It is our right which has been

infringed upon. Our Rules of Procedure provide a mechanism for us to look into it and come to a conclusion that yes or no, whether that right has been infringed upon or not? I am invoking that procedures and therefore, with due respect the plea of sub judice would not apply.

The Chairman said that apart from this Finance Bill probably what I have read in papers also and you have also mentioned the Act of 1935. Let the Finance Minister come and if he wants to clarify all these things that part from this document if there is any other document which enables the OGRA or the government to collect tax that can be seen first. This is not a law so far, this is a proposal but they have taken a plea which I have learnt that probably there is some provision of law which has been invoked. The Chairman preferred that Finance Minister should come.

Senator Raja Muhammad Zafar-ul-Haq, Leader of the House, said, "I will say only this much that there are several aspect of this question. No.1 as I said earlier that the Supreme Court of Pakistan is already seized of the matter. It is not only simultaneously jurisdiction, the Supreme Court of Pakistan is already seized of the matter and examining whether immediately after the speech of the Finance Minister, it is leviable or not? Now comes the question whether this cannot discussed in the Senate of Pakistan or not? firstly, there is a bar on discussion on a matter which is sub judice and secondly we desire that Senate should have more power in financial matters also. But powers have been given to the Senate under various amendments is that we can only send our recommendations to the National Assembly because that is the real forum where financial matters can be discussed." He argued that the matter should be referred to the Finance Committee of the Senate for its examination and let them recommend what they want to recommend and this House should not assume the jurisdiction of the National Assembly and this is also what the Constitution says. He stated that if this question is decided now it would be beyond our jurisdiction.

Senator Mian Raza Rabbani while responding to Senator Raja Muhammad Zafar-ul-Haq said that it is not a question of the speaker certifying that where this is a Finance Bill or not rather it is my Privilege Motion involving the infringement of my right as a Senator. I am not asking to ascertain that whether this is a money bill or not. Instead I am asking that whether a bureaucrat can issue a notification and collect tax on budgetary proposal. And if someone does so, then whether is not a breach of the Parliament? He further argued that if the matter goes to the Committee, then the government would be in a better position to put their stance.

Senator Zaheer-ud-Din Babar Awan while agreeing to the submissions of Senator Mian Raza Rabbani said that throughout the world the breach of privilege of the parliamentarians is given much importance and even otherwise if we see the system of courts, if a writ habeas is lying before a court then the court take up that writ before any other item lying in the cause list.

Senator Haji Muhammad Adeel stated that the OGRA has not only imposed 1% tax on petroleum products rather the FBR has increased the rate of General Sales Tax to 17%

on each and every item and this fact further increase the urgency of the matter.

Senator Muhammad Ishaq Dar, Federal Minister for Finance said that he is well aware of the situation. He apprised the House that it is previous practice in Pakistan that the budget proposals take effect on very next day. He referred section 3 of the Provisional Collection of Taxes Act, 1931 which says that where a Bill to be introduced in the Central Legislature on behalf of the government provides for the imposition or increase of a duty or excise or sales tax, the Federal Government may cause to be inserted into the Bill a declaration which shall have immediate effect under this Act. He further added that this is not a practice in Pakistan only but also in the surrounding countries even in western countries this practice is followed. The moment you increase the custom duty or you propose the sales tax immediately the prices of the shopkeepers jack up next day. He said that if you want to change that law the government would no objection on it. But do not forget that all the previous government and even the dictators used to follow this practice which is legal and lawful. However, he said that it is unfair to consider it as breach of privilege on very next day and I have never expected that this will happen. He urged the movers of the Privilege Motion to withdraw the same and assured them that no unlawful and unConstitutional action will be taken by the government.

Mr. Zahid Hamid Khan, Federal Minister for Law & Justice further added that the similar matter was also raised before the National Assembly. He said that he had an opportunity to look at the Finance Bills 2008, 2009, 2010 and of 2012 which clearly shows that this practice was very much followed in all these years. He further said that although the Supreme Court has taken a suo moto on this point but that law still very much in the field therefore no question of breach of privilege arises.

Senator Mian Raza Rabbani added that although this was the previous practice but two wrongs cannot make a right and this government has come on this mandate that it will make everything in order so let's start from this point. The law on which they are relying is a law of 1931 but the Constitution of Pakistan is of 1973. He further said that the factum that the Supreme Court has taken suo moto on a matter does not deprive me of exercising my right as a parliamentarian. He pressed that let this matter be referred to the Committee where the other lawyers who are members of this august House can evaluate this matter more comprehensively and can reach to a just and proper solution.

The Chairman after hearing the members, rules that, "I have come to a conclusion that the subject matter before the Supreme Court is the same, whether the collection of taxes is legal or illegal? And certainly I would like to refer this to the Standing Committee on Finance to examine that the tax which is being recovered before passing the Bill, whether that is legal or illegal? As far as the Privilege Motion is concerned I will consider it later on."

Senate Debate
15th June, 2013

58. *Privilege Motion: Ordinances laid in the National Assembly—the Ordinances should have been laid before the Senate first because the Senate was the first House which met after promulgation of these Ordinances.*

Ruling

On 3rd December, 2013, Senator Mian Raza Rabbani sought leave to raise a question of breach of privilege of the Upper House of Parliament by stating that the government seeks to lay on the floor three Ordinances. No.1 is the Anti-Terrorism (Amendment) Ordinance, 2013 (Ordinance No VII) which was promulgated on 10th of October, 2013 and published in the gazette on 14th of October, 2013. No.2 is the Ordinance Anti-Terrorism (Amendment) Ordinance, 2013 (Ordinance No VIII) which was promulgated on the 12th of October, 2013 and published in the gazette on 14th of October, 2013. No.3 is the Protection of Pakistan Ordinance, 2013 (Ordinance No IX) which was promulgated on the 28th of October, 2013 and published in the gazette on 31st of October, 2013.

He pointed out that the Senate met in session from 28th October to 8th November, 2013. He referred the dates when these Ordinances were promulgated and stated that the dates of promulgation of the Ordinances were prior to the Senate being summoned. So, these Ordinances had been promulgated before the Senate was summoned into session on the 28th of October, 2013 but the Federal Government failed to lay these Ordinances on the floor of the House which is violation of Article 89 of the Constitution which reads as under:- 89

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-
 1. 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 [one hundred and twenty days] from its promulgated or, 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 be 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.

2. before both Houses if it [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 Resolution disapproving it is passed by either House upon 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 be 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 further period may be made only once; and may be withdrawn at any time by the President.

- a. without prejudice to the provisions of clause (2),---
- b. 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
- c. 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.

He contended that on 28th October, 2013, when the Senate was in session these three Ordinances had already been promulgated and gazetted, therefore, the first House which met after the promulgation of these Ordinances was the Senate of Pakistan. Under Article 89 of the Constitution the government was duty bound to lay these Ordinances on the floor of the Senate but the government adopted the policy of pick and choose between the Houses and they laid these Ordinances on the floor of the National Assembly on 7th of November, 2013. As a consequence of this act of the government two things happened which is breach of privilege of this House. No.1 that from the date of 28th of October, 2013 till date i.e when these Ordinances are now proposed to be laid before the Senate i.e. from the 28th of October, till the 3rd of November, 2013 the Senate of Pakistan has been denied its Constitutional right of being able to move a Resolution of disapproval against these three Ordinances and I, as a Member

have been denied that right from 28th of October till today. No.2 as a consequences of these Ordinance being laid in the National Assembly and as a consequence of Clause-3 or Article 89 of the Constitution when they will lay in the National Assembly, they were converted into a Bill and referred to the Standing Committee of the National Assembly. Now, had these Ordinances being laid in the 28th October Session of the Senate, it would have been the right of the Senate to have a first go at this legislation. Therefore, on these two accounts, there is a serious breach of privilege of this House as well as blatant violation of Article 89 of the Constitution. He referred the relevant portion of “Practice & Procedure of Parliament” by M.N. Kaul which deals of question of Ordinances and how in India the Speaker has had taken this question up by writing to the Minister of the Parliamentary Affairs and what he said about an Ordinance is as under:-

“The procedure of promulgation of Ordinances is inherently un-democratic. Whether an Ordinance is justifiable or not, the issue of a large of Ordinances has psychologically a bad effect. The people carry an impression that the government is carried on by Ordinances. The House carries a sense of being ignored and the Central Secretariat perhaps gets into the habit of slackness which necessitates the Ordinances and an impression is created that it is desired to commit the House to a particular legislation as the House as no alternative but to put seal on matters that have been legislated upon by Ordinances. Such a state is not conducive to the development of the best parliamentary traditions.”

During his arguments he also referred the section 3 of Protection of Pakistan Ordinance, 2013 (Ordinance of IX) of 2013 which gives the right to a law enforcing agencies or an officer to open fire at any person whom he suspects that he may be involved or he may be abetting an act of terrorist. He also referred section 5 of the said Ordinance which says that the remand period can be extended upto 90 days. He contended that the said two sections of the Ordinance are clearly in contravention of Article 10 of the Constitution.

He further stated that normally Ordinances are laid on the day of the first sitting of the House held after promulgation of the Ordinances on which formal business is transacted and therefore the first day of the first sitting was the 28th of October, 2013. when it is not a money Bill then it is not for the government to choose that in which House the Ordinance is to be laid and if the Senate is convened earlier after the promulgation of the Ordinance the Ordinance will be laid in the Senate first and if the National Assembly is convened earlier it will be laid in the National Assembly.

By summing up his arguments he stated that on account of legislation and on account of Resolution of disapproval there has been a breach of privilege of the Senate and mine as a member of the Senate and there is a flaggerent violation of the Constitution as well. Therefore, prima facie there is a fit case of breach of privilege and he requested the

Chairman to refer the matter to the Privileges Committee for further consideration.

Raja Muhammad Zafar-ul-Haq, the Leader of the House while responding of the arguments of Senator Mian Raza Rabbani stated that as far as the substance of the Ordinance is concerned, this is no stage to discuss the same as that stage would come later. However, as far as laying of Ordinance in either House is concerned, these Ordinances were laid before the National Assembly on 7th November, 2013 because of certain mishaps in the Senate. He said that during those days the atmosphere in the House was not very congenial and proper and the Opposition was on continuous walk out during that session as protest against some remarks of the Minister of Interior. He further stated that the government made efforts that the Opposition come in the House but unfortunately it could not be done on 8th of November, 2013 these Ordinance were on agenda but because of lack of quorum the House was prorogued sine a die and the same could not be discussed. He clarified that the government has no intention to deprive the Senate of its discussion or passing of a Resolution.

Answering to the stance of the Leader of the House, Senator Mian Raza Rabbani stated that the congeniality of the House has nothing to do with this because even when the boycott of the Opposition was continuing they were running the House with or without quorum and the proceedings of the House were running even without the Opposition so the excuse that the government was waiting for the Opposition for consideration of these three Ordinances is not plausible excuse.. He further stated that the Ordinances were to be laid on the floor of the House and simply were to be referred to the Standing Committees concerned. The House was in session from 28th October till 8th November, 2013 i.e. for ten days and on the 10th day it is kept with the intent that anybody wants to move a Resolution of disapproval then first let them requisition the session, let the requisitioned session be summoned then let them move the Resolution for disapproval and thereof in the light of Article 89, the past precedence, rulings of the Chair, the Ordinances should have been laid before the Senate first because the Senate was the first House which met after promulgation of these Ordinances.

Senator Aitzaz Ahsan, the Leader of the Opposition also corroborated the stance taken by Senator Mian Raza Rabbani during his arguments and supported his version.

The Chairman after hearing the arguments reserved his ruling on the Privilege Motion. The said Ruling was announced in the open House on 17th January, 2014, in the following terms:-

On 3rd December, 2013, Senator Mian Raza Rabbani sought leave to raise a question of breach of privilege arising out of the alleged failure of the Government to timely lay following Ordinance before the Senate of Pakistan during the 98th Session which commence on 28th October, 2013:-

- a. The Anti-Terrorism (Amendment) Ordinance, 2013. (Ordinance No. VII of 2013)
- b. The Anti-Terrorism (Amendment) Ordinance, 2013. (Ordinance No. VIII of 2013)
- c. The Protection of Pakistan Ordinance, 2013, (Ordinance No. IX of 2013)

The Hon'ble Senator further contended that said Ordinances, instead of being laid before Senate (in its Session which commenced from 28th October, 2013) were laid before the National Assembly of Pakistan in its Session which commenced on 7th November, which is in violation of the provisions of Article 89 of the Constitution of Pakistan. The Hon'ble Senator relied on following grounds for establishing breach of privilege:-

- a. That the Senate and its Members were deprived from moving a Resolution of Disapproval under sub-para (ii) of paragraph (a) of clause (2) of Article 89 of the Constitution. 1973.
- b. That had the provisions of Article 89 of the Constitution, 1973, been complied with the said Ordinances on being laid on the floor of the Senate would have been converted into Bills and referred to the relevant Committees of the Senate. Thus the Senate has been deprived with malafide intent from making amendments, alterations or rejecting the said legislation before the National Assembly.

3. It is pertinent to make reference to Article 89 of the Constitution of Pakistan, which provides as under:-

89. Power of President to promulgate Ordinances.-(1) The President may, except when the 2[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.

1. 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 shall be laid.
2. 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 one hundred and twenty days] 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.

3. 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:
 - a. Provided further that extension for further period may be made only once.
 - b. before both Houses if it [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.

4. The Anti-Terrorism (Amendment) Ordinance, 2013, (Ordinance No. VII of 2013) was promulgated on the 10th of October, 2013, and published in the Gazette on the 14th October, 2013; the Anti-Terrorism (Amendment) Ordinance, 2013, (Ordinance No. VIII of 2013) was promulgated on the 12th of October, 2013, and published in the Gazette on the 14th October, 2013 and the Protection of Pakistan Ordinance, 2013,

(Ordinance No. IX of 2013), promulgated on the 28th of October, 2013, and published in the Gazette on the 31st October, 2013.

5. It is appropriate to make reference to the statement of Senator Raja Muhammad Zafar-ul-Haq, Leader of the House made during the proceedings of Senate Sitting dated 3rd December, 2013, which is reproduced as under:-

“Sir, I will do it. Sir, there are two aspects as you had already pointed out that the substance of the Ordinances, this is no stage to refer to them because that would come later but as far as the laying of the Ordinances in the either houses is concerned, these Ordinances were laid before the National Assembly on the 7th of November and because of certain mishaps in the Senate despite that it was on the 8th of November that it came up on the agenda of this House and even earlier on that was the last day of the Senate but even before that the atmosphere in the house was not very congenial and proper. But we did not legislate because we always thought and we made efforts that the opposition comes in the House and serious business in done. But unfortunately it could not be done. On the 8th of November, it was on the agenda but because of the lack of quorum the House was prorogued sine die and it could not come up for discussion. So, this is the situation, nobody has planned that it would be done first in the National Assembly and then deprived Senate of its discussion or passing a Resolution”

6. Now coming to the question whether the instant question of privilege is in order or not, contentions of the hon'ble member are required to be examined on the touchstone of rule 70 of the Rules of Procedure and Conduct of Business in the Senate, 2012.

7. First contention, that by first laying said Ordinances in the National Assembly the Senate and its Members were deprived from moving Resolution for Disapproval under sub-para (ii) of paragraph (a) of clause (2) of Article 89 of the Constitution, 1973, is not maintainable as under Article 89 of the Constitution laying of Ordinance before either of the House first does not debar members of other House to move a Resolution for disapproval of ordinance. (Reference may also be made to Notice of Resolution for disapproval of the Protection of Pakistan Ordinance, 2013, (Ordinance No. IX of 2013), given by Senator Farhatullah Babar pursuant to laying of said Ordinance before either of the House)

8. Second contention of the Hon'ble member is that the Senate has been deprived from making amendments, alterations or rejecting the said legislation before the National Assembly. The instant argument is also not sustainable as introduction of Bill in one House does not curtail powers of the other House vis-à-vis making amendments,

alterations or rejecting the said legislation.

9. In view of the aforementioned legal and factual position, it is established that this question of privilege does not fulfil requirements or rule 70 of the Rules of Procedure and Conduct of Business in the Senate, 2012, therefore, same cannot be held in order.

10. However, subject matter of the instant Privilege Motion i.e. delay in laying of Ordinances after commencement of Session is an intricate matter which requires vigilant intervention of the government, although, no time limit, for laying down an Ordinance before either of the House, is stipulated vide Article 89 of the Constitution, however, as a rule of propriety and in view of international parliamentary practices in this regard, said Ordinances were expected to be laid before the Senate immediately after commencement of 98th Sessions, subject to Gazette notification. Whereas said Ordinances were brought on the Orders of Day for 8th November, 2013 by the Government (period of eleven days had already lapsed). In this context reliance may be made to Indian Practice and Procedure wherein Article 123 of the Indian Parliament, does not mention any time period for laying of an Ordinance before the House, however, Parliamentary Rulings have bound the government that Ordinances shall be laid on the first day of the sitting of the House held after the promulgation of the Ordinances on which formal business is transacted. Reference may be made to “Practice & Procedure of Parliament by M.N. Kaul and S.L. Shakhder, Sixth Edition at P 650 which provides as under:-

“Ordinance promulgated by the President are required to be laid before both Houses of Parliament. Normally, Ordinances are laid on the first day of the sitting of the House held after the promulgation of the Ordinances on which formal business is transacted.”

11. It is therefore desirable that unnecessary delays in laying of Ordinances before the Houses under Article 89 of the Constitution should be discouraged and Ordinances shall be laid on the first day of the sitting of the House held after the promulgation of the Ordinances. Furthermore, in this regard, the Prime Minister of Pakistan may be apprised on the situation.

Syed Nayyer Hussain Bokhari
(Chairman)

Senate Debate
3rd December, 2013

59. *Privilege Motion: Breach of Privilege of the Senate of Pakistan for not abiding the Constitution and decisions of Supreme Court for convening meeting of Council of Common Interests to discuss the large scale privatization of state-owned enterprises by the Federal government.*

Ruling

On 30th January, 2014, Senator Mian Raza Rabbani sought leave to raise a question of breach of privilege of the Senate of Pakistan by the Federal Government on the following grounds:-

1. That it has been reported in the national print media dated 9th January 2014, that the Privatization Commission has decided to privatize 26% shares of the Pakistan International Airlines Corporation.
2. That the Privatization Commission in its meeting held on the 8th January 2014, has also decided to appoint a Financial Advisor who will be given a task to determine the base share of PIA.
3. That the Pakistan International Airlines Corporation and other Federal institutions, which are to be privatized by the Government, correspondent to various entries of the Federal Legislative List, Part II, in the Fourth Schedule of the Constitution, 1973.
4. That under clause (1) of Article 154 of the Constitution, 1973, the Council of Common Interests, shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions.
5. That the approval or otherwise, of the Privatization of institutions, bodies autonomous, semi-autonomous under the Federal Legislative List Part II, are required to be taken from the Council of Common Interests as per Clause (1) of Article 154 of the Constitution, 1973 and also various Judgments of the Supreme Court of Pakistan and I will be referring that judgment also.
6. That under Clause (4) of Article 153 of the Constitution, 1973, the Council of Common Interests is responsible to the Parliament.
7. That under Clause (4) of Article 153 of the Constitution 1973, the Council of Common Interests, shall submit an Annual Report to both Houses of the Parliament.

8. That by not referring the said matters for decision to the Council of Common Interests constituted under Article 153 of the Constitution, 1973, the Federal Government has not only violated and continues to violate the Constitution of the Islamic Republic of Pakistan but also shall deny the Senate of Pakistan the right to discuss and debate , whatsoever decision the Council may take in respect of the privatization of the Pakistan International Airlines Corporation and the other such institutions mentioned herein, as the same shall not be a part of the annual report to be submitted to both the Houses of Parliament by the Council of Common Interests.

In addition to the above mentioned facts, Senator Mian Raza Rabbani further argued that under the Article 154 clause (1), the process of privatization of 70 entities which is under consideration of the government cannot be completed until passed by the Council of Common Interests. He further added that according to the Constitution it is the responsibility of the Council of Common Interests to submit its annual report before both the Houses of the Parliament. It has been contended that when this issue of privatization will not be taken up at the forum of CCI then how it will be shown in its annual report and when it will not be reflected in annual report then how the members of Parliament would have a discussion on this issue. He stated that by doing so the government is actually depriving the Parliamentarians to have a debate on the issue of privatization which is breach of the privilege of the members of Parliament. He also referred in his arguments a decision of a full Bench of the Supreme Court of Pakistan headed by Chief Justice of Pakistan which decision was reported in PLD 2006 titled *Watan Party Vs... Federation of Pakistan* in which the Supreme Court held that “it is equally important to note here that there is no doubt that the government can independently form a policy for the purpose of privatization but here in Pakistan the policies have to be framed in pursuance to the decisions of the CCI”.

Senator Raja Muhammad Zafar-ul-Haq, the Leader of the House stated that there is no doubt that the government of the PML (N) was the part of the process of 18th amendment and we consider it as a sanctified document and we are bound to act upon every provision of the Constitution. He further stated that he has already drew attention of the Federal government on this issue but he was told that government would not in any case taken any action which contravenes the provisions of the Constitution and the judgments of the Supreme Court of Pakistan. He assured that probably within a week or so meeting of the CCI will be convened and therefore he suggested that instead of giving a ruling on the instant Privilege Motion it should be deferred till meeting of the CCI.

In view of the statement of the Leader of the House, Senator Mian Raza Rabbani contended that he does not want to embarrass everybody rather he wants that the Constitution is followed in its letter and spirits. However, he acceded to the suggestion of the Leader of the House and asked the Chair to pend the ruling on the matter for ten

to twelve days and if nothing comes about then the ruling on the matter may be given.

The Deputy Chairman after hearing both the sides deferred consideration of admissibility of the Privilege Motion.

Senate Debates
30th January, 2014
P 60-67
Senate Debates
27th August, 2013
P 22

60. *Ministers or officials of concerned ministries, whose business is before the House should be in the galleries*

Ruling

On 30th July, 2012 the Chairman issued the following instruction:

“If minister is not here, at least the officials of the Ministry were supposed to sit in the gallery and if they are not here, kindly take notice of this thing. Please ensure in future that if the concerned minister is not available then the officials of the concerned ministries whose business is before the House should be in the galleries. Otherwise take action against them.”

Senate Debate
30th July, 2012
Volume-VIII
P 20

61. *Officials of the concerned Ministries must be present in the galleries*

Ruling

On 30th October, 2014, the Chairman observed as under:

“I have time and again given my ruling on this point. The officials of the concerned Ministries must be present in the galleries”.

Senate Debate
30th October, 2014

62. *Absence of officials: Officials of the concerned Ministers must ensure their presence in galleries*

Ruling

On 5th January, 2015 , during a debate on a Motion under rule 218, the Chairman observed as under:

“I am surprised that no official from the concerned ministry is in the galleries. It is so unfortunate. Who is taking the notes to be provided to the minister so that he can respond to it? It is so unfortunate.

In response, the Leader of the House stated that he will convey the reservations of members to concerned Minister. Afterwards, the Chairman further observed as under:

“You are the Leader of the House but the officials of the Ministry are supposed to be in the galleries. Kindly ask the Prime Minister to convey to the Ministers that they should ask the officials to be present in the galleries. It is not the responsibility of the Leader of the House to give briefing to the Minister.”

Senate Debate
5th January, 2015

63. *Appointment of Leader of the Opposition in the Senate: Leader of the Opposition is an important position-- Rule 2 of Rules of Procedure and Conduct of Business in the Senate, 1988, defines leader of the opposition as" a member of a House who, in the opinion of the Chairman of the Senate, is for the time being the leader of the members in Opposition to the Government in that House"-- the words "for the time being" do not necessarily refer to the past and may well have reference to what is to happen in future—in the opinion of Chairman Senator Mohammad Ishaq Dar of PML (N) has the support of 15. On the other hand Senator Maulana Abdul Ghafoor Haideri has the support and confidence of 25 Members in the Senate-- Committee on Rules of Procedure and Privileges may recommend such amendments in the Rules of Procedure and Conduct of Business in the Senate 1988 so as to provide for a mechanism.*

Ruling

On 2nd May, 2011 Pakistan Muslim League (Q), which was a party in opposition to the government, joined the coalition government headed by PPPP and as a consequence, Senator Chaudhry Shujaat Hussain, Head of the Parliamentary Party of PML (Q) made a request for allocation of seats to members of PML (Q) on treasury benches.

Five Senators belonging to PML (Q) namely Senator Tariq Azim Khan, Senator Naeem Hussain Chattha, Senator Mrs. Gulshan Saeed, Senator Sardar Mohammad Jamal Khan Leghari, and Senator Syed Javed Ali Shah filed an application dated 4th May, 2011 with Secretary Senate of Pakistan stating therein that notwithstanding the decision by the Leader of PML (Q) to sit on treasury benches, they would like to continue to sit on the opposition seats as separate group of PML (Q).

On 12th May, 2011 Senator Moulana Gul Naseeb Khan as Parliamentary Leader of JUI (F) submitted a written request to the Chairman Senate that his party on the basis of strength in the Senate was the largest single party in the opposition with a strength of 13 members besides enjoying the support of other groups. He proposed the name of Senator Moulana Abdul Ghafoor Haideri for the stint of Leader of the Opposition in the Senate. However, Senator Maulana Gul Naseeb Khan was advised to submit a detailed list of proposers for the position of Leader of the Opposition in the Senate, so that the request could be processed in accordance with the relevant rules.

On 14s May, 2011, a nomination signed by 24 members of the Senate was submitted to the Senate Secretariat proposing the name of Senator Mohammad Ishaq Dar as Leader of the Opposition in the Senate. This list included 7 members from the PML (N), 3 members from JI, 2 members from National Party, 1 member from PKMAP, 1 member from PPP(S) and an independent member from Balochistan namely Senator Muhammad Hamayun Khan Mandokhel. In addition, 9 members belonging to PML (Q) proposed the name of Senator Mohammad Ishaq Dar as Leader of the Opposition in the Senate.

On 18th May, 2011, Senator Moulana Gul Naseeb Khan Parliamentary Leader of JUI (F) submitted a request to the Chairman Senate that some of their member were abroad and, therefore, could not sign the proposal for nomination of Senator Maulana Abdul Ghafoor Haideri as Leader of the Opposition in the Senate. He sought one week time for submitting the list of proposers, Later in the evening of 18h May, 2011, JUI (F) submitted a list containing signature of 14 Senators which included ten members from JUL, three members from FATA namely Senator Hafiz Rashid Ahmad, Senator Abdul Rashid and Senator Maulana Muhammad Saleh Shah and one independent member from Balochietan Province namely Senator Muhammad Hamayun Khan Mandokhel.

Senator Muhammad Hamayun Khan Mandokhel had signed as proposer for both the contenders viz Senator Mohammad Ishaq Dar and Senator Maulana Abdul Ghafoor Haideri for the position of Leader of the Opposition and Senator Hafiz Rashid Ahmad had been purportedly sitting on the treasury benches and Senators belonging to from PML (Q), which had joined Treasury Benches, had signed nomination papers in favour of Senator Mohammad Ishaq Dar. In this view of the matter it was ruled by the Chairman Senate on 19th May, 2011 that they may be called for explaining their position before any final decision is taken in accordance with rules.

Five Senators of PML (Q) namely Senator Mrs. Gulshan Saeed, Senator Saleem Saifullah Khan, Senator Mst. Fauzia Fakhar-uz-Zaman, Senator Abdul Ghaffar Qureshi and Senator Haroon Khan filed an application dated 20th May, 2011 addressed to the Chairman Senate of Pakistan informing him that they had decided to retain seats on opposition benches of Senate of Pakistan.

Pursuant to the Ruling passed on 19th May, 2011 Senator Muhammad Hamayun Khan Mandokhel, Senator Hafiz Rashid Ahmad and Senator Saleem Saifullah Khan, who claimed to be the leader of aforementioned 9 members of PML (Q), were heard. Senator Muhammad Hamayun Khan Mandokhel stated that he was an independent member having been elected from the province of Balochistan and has never been affiliated with the government. Senator Hafiz Rashid Ahmed stated that although he was an independent member having been elected from FATA but was affiliated with JUI (F). Senator Saleem Saifullah Khan stated that he had been elected on ticket of PML (Q) and is still member of political party PML (Q) on whose ticket he had been elected.

Senator Wasim Sajjad, Leader of the Opposition in the Senate, vide letter dated 21st May, 2011 informed that as a consequence of PML (Q) having joined the Cabinet he had tendered his resignation which may be accepted and notified w.e.f. 21st May, 2011. The said resignation was accepted by Acting Chairman Mir Jan Muhammad Khan Jamali on the same day and Notification with respect thereto was issued by the Senate Secretariat on 21st May, 2011.

On 25th May, 2011 Senator Hafiz Rashid Ahmed submitted an application stating

therein that he was an independent member and his sympathies and support has always been with JUI (F).

On 6th June, 2011 Senator Chaudhry Shujaat Hussain in his capacity as Parliamentary Leader of PML (Q) made an application addressed to the Chairman Senate of Pakistan stating therein that the list of Senators for naming Leader of the Opposition also included the names of PML(Q) Senators belonging to the treasury benches. In the same letter, he furnished a list of 44 members containing names of members of PML(Q), ANP, MQM and JUL, stating that in case the names of members belonging to treasury benches were counted for naming Leader of Opposition, then these names may also be counted in support of Senator Maulana Abdul Ghafoor Haideri as Leader of the Opposition.

Through undated letters, received on 6h June, 2011 by Senate Secretariat, four independent members from FATA namely Senator Eng. Malik Rashid Ahmed Khan, Senator Muhammad Idrees Khan Safi, Senator Abbas Khan Afridi and Senator Haji Khan Afridi stated that they had been elected as independent members from FATA and had served as such throughout the tenure. They proposed the name of Senator Maulana Abdul Ghafoor Haideri as Leader of the Opposition in the Senate of Pakistan.

On 6th June, 2011 Senate Secretariat received two more letters from Senators Mir Wali Muhammad Badini dated 28th May, 2011 and Senator Nawabzada Muhammad Akbar Magsi dated 27th May, 2011 both elected as independent members from Balochistan, proposing the name of Senator Maulana Abdul Ghafoor Haideri as Leader of the Opposition in the Senate of Pakistan.

On 6th June, 2011, Chairman Senate of Pakistan in pursuance of the provisions of rule 2 of the Rules of Procedure and Conduct of Business in the Senate, 1988, passed an order recognizing Senator Maulana Abdul Ghafoor Haideri as Leader of the Opposition in the Senate.

On 8th June 2011 during the proceedings of the House, Chairman of the Senate made the following observation. "I have been hearing the members on the issue with regard to the notification which has been issued appointing Senator Maulana Abdul Ghafoor Haideri as Leader of the Opposition. There is a division in the House. I can see that, which is very visible. Legal complexities are involved in the matter which I feel must be resolved as per rules, law and Constitution. Suggestions came yesterday that the legal experts be heard and the issue be determined after hearing the legal experts in the House. In my view, these proceedings will have a very long and historical impact on the future parliamentary traditions and practices in Pakistan. Keeping everything in mind, I have decided in the interest of justice, equity and fair play to hear the legal experts in matter." This decision/Ruling was approved by the entire House.

In consultation with Senator Mohammad Ishaq Dar, Senator Maulana Abdul Ghafoor

Haideri and other members it was decided to hear some members having legal background in order to assist the chair in arriving at a just conclusion of the issue raised in the House.

The debate took place in the House from 16th June 2011 to 22nd June 2011. With the sense of the House following members participated in the debate:-

- i. Senator Syed Zafar Ali Shah of PML(N)
- ii. Senator Naeem Hussain Chattha of PLM(Q)
- iii. Senator S.M. Zafar of PML(Q)
- iv. Senator Haroon Khan of PML(Q)
- v. Senator Dr. Zaheer-uddin Babar Awan of PPPP
- vi. Senator Mian Raza Rabbani of PPPP
- vii. Senator Muhammad Azam Khan Swati of JUI(F)
- viii. Senator Haji Mohammad Adeel of ANP, (i)
- ix. Senator Prof. Khurshid Ahmed of JI
- x. Senator Hafiz Abdul Rashid from FATA
- xi. Senator Maulana Muhammed Saleh Shah from FATA.
- xii. Senator Tariq Azim Khan of PML(Q)
- xiii. Senator Syed Nayyer Hussain Bokhari of PPPP
- xiv. Senator Wasim Sajjad of PML(Q)
- xv. Senator Muhammad Ishaq Dar of PML(N).

Senator Farooq H. Naek, Chairman Senate, gave his ruling in the following terms:-

“ In my opinion in order to put the controversy at rest it is of utmost importance to decide as to who should be the Leader of the Opposition in the Senate between the two contenders namely Senator Muhammad Ishaq Dar of PML(N) and Senator Moulana Abdul Ghafoor Haideri of JUI. Following issues were formulated for consideration in the light of various points of view presented by various Members of the Senate during the

course of the debate:-

- a. Whether Chairman of the Senate has the power to reconsider/review his Ruling once it has been announced?
- b. Whether I PML (Q) members of Senate are entitled to support a member for the position of Leader of the Opposition in the Senate?
- c. What is the position of independent members elected from FATA with respect to forming the opinion by the Chairman Senate for recognition of the Leader of Opposition in the Senate?
- d. What is the position of independent members elected from provinces with respect to forming the opinion by the Chairman Senate for recognition of Leader of the Opposition in the Senate?
- e. Who should be the Leader of the Opposition?

ISSUE NO. 1

1. It has been contended by Senator Syed Zafar Ali Shah of PML (N) and Senator Prof. Khurshid Ahmed of Jamaat-i-Islami Pakistan that Chairman's Ruling can be changed on a substantive motion moved in this regard and on discovery of new facts and documents which have come to light after the Ruling has been announced by the Chairman Senate. Senator Mian Raza Rabbani of PPPP has also submitted that the Chairman has the power to reconsider, recall or amend his Ruling once it has been announced. He has placed his reliance on Rule 237 of the Rules of Procedure and Conduct of Business in Senate 1988 and Section 21 of General Clauses Act. He has further submitted that as no appeal is provided for in the rules against the Ruling of the Chair same can be reviewed where there is an error apparent on the face of the record, disclosure of new facts and where important questions are involved. To substantiate his contentions he has cited relevant paras of Chapter VIII of the book titled "Practice and Procedure of Parliament" by M.N Kaul Sixth Edition 2009, enunciating the powers and functions of the Speaker, Lok Sabha, India.
2. Senator Mohammad Ishaq Dar of PML (N) submitted that the Ruling can be re-considered or amended by the Chair as reasonable opportunity for hearing was not given before passing of the Ruling. He has also relied upon Section 21 of General Clauses Act. Both Senator Mian Raza Rabbani

and Senator Mohammad Ishaq Dar relied upon case law reported in 2010 SCMR 1301, 1995 SCMR 650, PLD 1994 SC 739, PLD 1995 SC 281, 2000 CLC 1535, 2000 CLC 443, PLD 1991 Lahore 230, PLD 1969 SC 407, PLJ 1983 Lahore 195, 2002 PLC (CS) 696.

3. On the other hand Senator Muhammad Azam Khan Swati of JUI (F) contended that a Ruling once announced by the Chairman Senate cannot be changed. According to him it is the prerogative of Chairman Senate to pass Ruling which becomes final and conclusive once it has been passed. According to him rule 237 of the Rules of Procedure and Conduct of Business in the Senate, 1988 was not attracted as it pertained to residuary powers. In support his contention, he has also relied upon Chapter VIII of the book titled "Practice and Procedure of Parliament" by M.N Kaul, wherein it has been mentioned that the Ruling of Speaker cannot be criticized and questioned.
4. Senator Syed Nayyer Hussain Bokhari of PPPP contended that the Ruling of the Chairman Senate cannot be questioned. According to him no motion has been moved for amendment of the Ruling which has become the property of the House. In the absence of any motion the question of reconsideration of Ruling does not arise at all and rule 237 of Rules of Procedure and Conduct of Business in the Senate 1988, is inapplicable at all to the present case. He has further contended that the Review is a substantive right which can only be exercised, if so permitted by the statute. In the absence of specific right, the residuary powers of Chairman of the Senate under Rule 237 *ibid* cannot be invoked. He placed reliance upon PLD 2007 SC, 121(b) and NLR 1992 (Lab. L) 127.
5. M.N. Kaul in his book titled 'Practice and Procedure of Parliament' Sixth Edition, stated in Chapter XXVI that Motion covers several distinct forms of proceedings in the Parliament and may be classified as a substantive motion, substitute motion, subsidiary motion, ancillary motion and superseding motion. Substantive motion has been defined as a motion which is self contained independent proposal submitted for the approval of the House and drafted in such a manner as to be capable of expressing a decision of the House. Thus the motion, if any, requesting the Chairman of the Senate to re-consider or amend his Ruling recognizing Senator Maulana Abdul Ghafoor Haideri as Leader of the Opposition cannot be termed as a substantive motion.
6. Chairman Senate is the custodian of the House. All powers vested in the Chairman of the Senate are intended to enable him to ensure the smooth functioning of the House. The fundamental principle is that the Senate subject to the provisions of the Constitution and the Rules of

Procedure and Conduct of Business is sovereign in its functions. Hence whatever powers have been conferred by the Rules on the Chairman are meant to serve the primary purpose i.e. the Senate / House should be enabled to function at all times in the best interest of the country and powers entrusted to the Chairman should be discharged by him with a view to enhance the prestige and dignity of the House. I would go a step further and say that Chairman is an integral part of the House, drawing his authority from the Constitution, law and the House/ Senate for the proper functioning of the House. Chairman has to be sensitive to the atmosphere in the House. Keeping all this in mind I had observed on 8th June 2011 that legal experts be heard.

7. There is no doubt that there is no specific Rule in the Rules of Procedure and Conduct of Business in the Senate, 1988 which gives power to the Chairman Senate to reconsider, review and amend his Ruling once it has been announced. However subject to well recognized limitations and exceptions the principle of locus poenitentine can be pressed into service in that an authority which passes an order can amend, vary, add and rescind its order- Inherent and Ancillary powers have been conferred by Rule 237 of the Rules of Procedure and conduct of business in the Senate, 1988 which lays down that “All matters not specifically provided for in these rules and all questions relating to the detailed wording of these rules shall be regulated in such manner as the Chairman may, from time to time, direct”.
8. Admittedly Rules are silent with respect to reconsideration of Ruling once it has been announced by Chairman of the Senate. There is no doubt consistent with the Parliamentary practice Ruling of the Chair cannot be questioned. However the present scenario is very rare, peculiar, exceptional and extraordinary. The matter of recognition of Leader of the Opposition in the Senate by the Chairman needs a fresh and threadbare look especially when during the course of hearing some more facts, questions of law, the Constitution and parliamentary practice have been highlighted.
9. In view of the above, I am inclined to exercise my discretion by using my residuary powers as laid down in rule 237 of Rules of Procedure and Conduct of Business in the Senate 1988, for a fair and transparent decision on the questions involving the recognition of Leader of the Opposition in the Senate.
10. I, therefore, hold with respect to forming an opinion for recognition of Leader of the Opposition needs to be decided afresh.

Issue No. 2

1. Senator Syed Zafar Ali Shah of PML (N) contended that 9 PML(Q) members namely Senator Tariq Azim Khan, Senator Naeem Hussain Chattha, Senator Mrs. Gulshan Saeed, Senator Sardar Mohammad Jamal Khan Leghari, Senator Syed Javed Ali Shah, Senator Saleem Saifullh Khan, Senator Fauzia Fakhar-uz-Zanan Khan, Senator Abdul Ghaffar Qureshi and Senator Haroon Khan have split from their party and formed a group which cannot be ignored and as no number has been fixed for the formation of a group in the Parliament in Pakistan these 9 PML(Q) members be recognized as a group with the right to propose the name of the Leader of the Opposition failing which it would amount to their disenfranchisement.
2. Senator Prof. Khurshid Ahmed of Jamaat-i-Islami contended that there can be many groups in a Parliamentary party and by formation of groups defection does not take place in terms of Article 63-A of the Constitution of Islamic Republic of Pakistan 1973. According to him by allotting seats on the opposition benches to the 9 PML (Q) members a formal recognition has been given to them by Senate Secretariat. He has relied upon Chapter XIV concerning "Recognition of Political Parties in the Parliament" of the book titled "Practice and Procedure of Parliament" by M.N Kaul. He further contended that these 9 members satisfy the requisite conditions as mentioned in the said Chapter for the formation of the group. He has also relied upon Table 19 under the heading 'Parliamentary Parties and Groups' in the book titled "Parliaments of the World" according to him, if these 9 PML (Q) members are not given the right to propose the name for the Leader of the Opposition in the Senate it would lead to their disenfranchisement.
3. Senator Naeem Hussain Chattha, Senator Tariq Azim Khan, and Senator Mrs, Gulshan Saeed of PML (Q) contended that by means of their applications they have expressed their decision to remain as separate group within PML (Q) They have been allotted seats on the opposition benches and stand recognized as members of the opposition in the Senate of Pakistan. They have further contended that denial of their right of franchise for the position of Leader of the Opposition would tantamount to their disenfranchisement.
4. Senator Haroon Khan of PML (Q) contended that they are part of PML (Q) although some members of party have decided to join government whereas they would continue to remain in opposition. According to him it is their right to sit wherever they want to sit and it is the party and not the Chairman which can take disciplinary action against them. He

has relied upon Article 175-A (10) of Constitution of Islamic Republic of Pakistan, 1973 which pertains to formation of Committees comprising of treasury benches and opposition benches.

5. Senator Mohammad Ishaq Dar of PML (N) contended that a Writ Petition No. 63771/2010 filed by certain members of PML (Q) is already pending before Lahore High Court, Lahore, and 25 % of the Opposition would be disenfranchised by not giving them the right to vote for the position of Leader of the Opposition. He further contended that by giving them seats in the opposition benches on the request of 9 members of PML (Q) the Chair acknowledged their status as opposition members. According to him defection has not taken place as provisions of Article 63-A of Constitution of Islamic Republic of Pakistan 1973 have not been violated by these 9 PML (Q) members. According to him in Balochistan Provincial Assembly a Like Minded Group has alliance with the Government separately from PML (Q). Therefore these 9 members of the Senate should be given right to vote for the position of Leader of the Opposition. In support of his contention he has relied upon a document issued by Balochistan Provincial Assembly in which government alliance of various parties has been shown which include Like Minded Group and PML (Q) separately. He has also further contended that the independent Members from FATA have been recognized as a group on the basis of two applications filed by Senator Muhammad Idrees Khan Safi, Senator Haii Khan Afridi and Senator Hafiz Rashid Ahmed Khan addressed to the Chairman Senate and Deputy Chairman Senate and Senator Abbas Khan Afridi have been issued notices by Senate secretariat for meetings of Parliamentary Party Leaders.
6. Senator S.M Zafar of PML (Q) argued that in Pakistan, the Constitution and Rules of Procedure and conduct of Business in the Senate, 1988 do not recognize separate groups in the Parliament whereas they are duly recognized in India after the insertion of 14th Schedule in the Constitution of India w.e.f 3rd March, 1985. He has further contended that there is concept of single political party as provided in Article 63-A of Constitution of Islamic Republic of Pakistan .1973. Thus oneness of a political party is provided for in the Parliament of Pakistan and not groups. According to him 9 PML (Q) members through their application have requested for seats in the opposition benches by remaining in PML (Q) and a division in the party cannot be allowed by the Chair. Allocation of seats is an administrative power vested in the Chairman under rule I of the Rules of Procedure and conduct of Business in the Senate, 1988 and allotment of seats on the opposition side to these 9 PML (Q) members cannot be termed as their recognition as Members of the opposition as long as they are the members of PML (Q) which is a

coalition partner of government and Senator Chaudhry Shujaat Hussain is the Party Head without any dispute. In support of his contention he has relied upon Articles 3,4 and 16 of Political Parties Order, 2002 and Article 17 (2) of Constitution of Islamic Republic of Pakistan 1973.

7. Senator Syed Nayyer Hussain Bokhari of PPPP contended that the controversy between the members of PML (Q), is an intra- party dispute and decision of majority members would prevail. He contended that there is a concept of single political party in Parliament of Pakistan and in this connection he relied upon Articles 3, 4 and 5 of Political Parties Order 2002 and Article 17 (2) of the Constitution of Islamic Republic of Pakistan 1973.
8. Senator Main Raza Rabbani of PPPP contended that I PML (Q) members accepted that they continue to be part and parcel of original party viz of PML (Q) and Parliamentary Head of their party is Senator Chaudhry Shujaat Hussain. However, due to policy dispute within the party they want to sit separately. According to him this is an intra-party dispute and it is for the party leader to resolve it or proceed under the law for a disciplinary action. As they continue to claim to be members of their original political party it is not within the domain of the Chairman to determine their status differently. According to him overall scheme of the Constitution of Pakistan and the law provide for a single political party and that these I PML (Q) members cannot propose the name for Leader of the Opposition.
9. Senator Wasim Sajjad of PML(Q) contended that said 9 PML(Q) members are admittedly part of PML(Q). There is no concept to recognize a fraction of a Parliamentary Party as a separate entity, in the laws and Constitution of the Islamic Republic of Pakistan 1973, According to him defection has brought dictatorship. Thus decision of the chair must support the spirit of the Constitution and not to fragment political party leading to horse trading and its deleterious effects.
10. It is pertinent to mention here that an application by Senator Chaudhry Shujaat Hussain Head of PML (Q) was received on 9th June, 2011 by the Senate secretariat. Through the said application Senator Chaudhry Shujaat Hussain had questioned the allocation of separate seats to I PML (Q) members without his permission and thus made a request to recall the same. Senator Chaudhry Shujaat Hussain wrote another letter dated 9th June, 2011 to the Senate Secretariat on the same day wherein he clarified the earlier letter regarding the appointment of Leader of the opposition in the Senate. According to him he had listed 30 Senators who should be consulted before the decision on the appointment of the

Leader of the Opposition.

11. In chapter 4 of the Book titled “House of Commons Procedure and Practice” authored by Audrey O’Brien and Marc Bosc on the issue of “Assignment of seats in the House” it is thus stated that, “Members are allocated seats and desks in the House under the authority of the speaker but on the advice of the whips of the recognized parties and the members representing the governing party traditionally occupy these seats to the right of the chair. If the number of members representing the governing party exceeds the number of desks on the right side, the overflow, or “rump” of government members occupy those seats across the aisle. This section may, at the discretion of the Speaker be near the Chair or at the far end of the Chamber. Members who represent the parties in Parliament against the government usually sit to the left of the Chair. Those members who do not have party designation or who represent a party not recognized by the House are seated subject to the discretion of the Speaker in the remaining seats. These Members typically occupy the desks to the left of the Speaker along the rows, often but not necessarily near the end of the Chamber.”
12. In Chapter 6 of the same Book under the title “The Physical and Administrative Setting” it has been mentioned that “Government Members sit to the Speaker’s right, opposition members to the left. Traditionally the front row seats to the left of the Speaker are reserved for leading members of the opposition parties and opposition parties are allocated front row seats in proportion to their numbers in the House. When there are more government members than can be accommodated on the Speaker’s right, some are seated on the left usually in the seats closest to the Speaker. Similarly when there are more opposition members than can be accommodated on the speaker’s left, the remaining opposition members are seated on the right, closer to the Bar of the House. Members of parties not recognized in the House and Independent Members are assigned seats at the discretion of the Speaker”.
13. In the Senate, Members sit in the House in such manner as may be determined by the Chairman of the Senate in terms of rule 8 of the Rules of Procedure and conduct of Business in the Senate 1999. Members who express their desire to sit together at a certain place are, as far as possible, allotted seats accordingly. Senior members of the House who have earned a distinctive position by virtue of their long service to the House are allotted prominent seats, and in appropriate case, in the front rows above party affiliations. In Senate prominent seats have been allotted to Senator Wasim Sajjad, Senator Dr. Zaheer-uddin Babar Awan, Senator Abdul Razik and front rows seats to Senator Raja

Muhammad Zalar-ulhaq and Senator Dr. Abdur Malik. Nine members of PML (Q) who consider themselves as a separate group never made a request to be recognized as a separate group or association. Moreover, in the context of breakaway groups, if any, that emerge due to split in the parliamentary parties in Parliament, their formal recognition comes within the domain of Election commission of Pakistan in accordance with relevant laws and not within the domain of Chairman Senate of Pakistan.

14. Since a limited question relating to the recognition of Leader of the Opposition, is under review I do not feel it necessary to express my opinion on the disability or disqualification of a member under the provisions of Article 63 of Constitution of Islamic Republic of Pakistan 1973. In the instant case nine members of PML (Q) are admittedly members of the parliamentary party of PML(Q). Their dispute, if any, is within their own party. This intra-party dispute cannot be settled by the Chairman Senate. A member in a parliamentary party which is a coalition partner of the government cannot take a volta face to be also part of opposition. A Parliamentary Party as such can either be in the government or in the opposition. Its members thus cannot sail in two boats. As a matter of Parliamentary practice it is the Parliamentary party as a whole which is recognized and not its splinter group or sub-group otherwise it would set unhealthy precedent in politics of Pakistan leading to horse trading. Division or dissensions in party, groups or forward block are not recognized by Pakistani laws and the Constitution of Pakistan.
15. “Crossing the floor” is an expression used to describe a Member’s decision to break all ties binding him or her to a particular political party. Floor crossing is not permitted by the laws of Pakistan. Betrayal and defection by members of Parliament which lead to horse trading is abhorred and not considered right. Reliance in this regard is placed upon cases of Khawaja Ahmed Tariq Rahim versus Federation of Pakistan PLD 1992 SC 646 and Pir Sabir Shah versus Federation of Pakistan PLD 1995 SC 66.
16. The contention raised by 9 members of PML (Q) that as Chairman of the Senate has assigned them seats on opposition benches they have become members in opposition to the government is devoid of any force or legal basis. Seats were allocated to them on the opposition benches due to paucity of seats on the Treasury Benches. This was an administrative arrangement under Rule 8 of Rules of Procedure and Conduct of Business in the Senate, 1988. These members neither moved an application to be recognized formally as a separate group nor could be recognized by Chairman Senate. Reference made to the provisions of

Article 175-(A) (10) of the Constitution of Islamic Republic of Pakistan, 1973 is, therefore not relevant in the present case.

17. Paragraph (4) of the Tenth Schedule of the Constitution of India exempts a member of the House from disqualification if his original political party merges with another political party and he claims to have become a member of such other political party or as the case may be of a new political party formed by such merger or has not accepted the merger and opted to function as a separate group.

18. In Chapter XIV concerning “Recognition of Political Parties in the Parliament” in the book titled “Practice and Procedure of Parliament” by M.N. Kaul, it has been mentioned that concept of recognition of Parliamentary Party/Group in India has materially changed vis-a-vis the recognition of Parliamentary Party and Group by the Speaker on the basis of numerical strength of a party in the House after the passage of 10th Schedule of the Constitution of India, which came into effect from 3d March, 1985 and the Representation of Peoples (Amendment) Act 1988, which introduced Section 29- A providing for compulsory registration of all political parties. Even otherwise one of the conditions of recognition in India was that association of members who propose to form a political party in Lok Sabha must command the required minimum strength viz one-tenth of total membership of the House, before it is recognized as a Parliamentary Group. In the instant case initially nine members of PML (Q) claimed recognition as a Group but later on two Senators namely Senator Mst. Fauzia F akhar-uz-Zaman, and Senator Mrs. Rehana Yahya Baloch disassociated themselves from the said group through their written communication received by Senate Secretariat on 10th June, 2011. Be that as it may, even nine members of the said Group constitute less than one tenth of the total membership of the Senate. Furthermore, in the context of the breakaway groups that emerged due to splits in the Legislature Parties in the Lok Sabha, India, a view came to be established during the Tenth Lok Sabha that matter of recognition to political parties would fall within the domain of Election Commission of India and as such breakaway group that came into existence consequent upon a split in the Janata Dal in 1994 was not accorded any formal recognition and from Eleventh Lok Sabha onwards the procedure of recognition of breakaway groups by Speaker was done away with.

19. A perusal of Table 19-A in the Book “Parliaments of the World” relied upon by Senator Prof. Khurshid Ahmed would show that in most of the countries recognition of groups is provided for either in Constitution or Rules of Procedure or Impliedly Exist but not formally Recognized.

20. In Pakistan the recognition of political splinter groups within the Parliament has neither been provided for in the Constitution of Islamic Republic of Pakistan 1973 nor in the Rules of Procedure and Conduct of Business of both the Houses. There seems to be no legal basis for the formation of any group in the Senate of Pakistan. Thus the contention of Senator Prof. Khurshid Ahmed is without any substance.
21. Article 63-A of Constitution of Islamic Republic of Pakistan, 1973 or for that matter any other provision of the Constitution of Pakistan or the law neither regulate nor recognize merger of political parties nor formation of separate groups. It only lays down four conditions which can lead to disqualification of a member of a Parliamentary Party composed of a single political party in the House. Had the Parliament wanted to follow the Indian route of allowing the formation of groups then this would have been incorporated in the Constitution of Islamic Republic of Pakistan, 1973 or the rules made thereunder. In our Constitutional scheme of things there is no recognition of splinter groups as a separate legal entity apart from a Parliamentary Party. In the instant case 9 members of PML (Q) got elected as members of Senate on the ticket of PML (Q). Thus they are deemed to be members of parliamentary party of PML (Q) by virtue of clause (2) of Article 63-A of Constitution of Islamic Republic of Pakistan, 1973 unless they had made a declaration in writing that they have become members of some other parliamentary party after election which is not the case. The fact that they are still members of PML(Q) and Senator Chaudhry Shujaat Hussain is their parliamentary leader in Senate is accepted by them in their application for allocation of seats on opposition benches and also orally by some members during the debate in the House on the issue. It is also an admitted position that since 2nd May, 2011 PML(Q) has joined the treasury benches and some of its members have become members of the cabinet. There appears to be an intra-party dispute. This is for the party leader to take steps to resolve the issue or proceed according to law. As they continue to claim to be the members of their original party it is not within the competence of Chairman Senate to accept their different status.
22. Thus when neither our laws nor Constitution allow merger or formation of separate groups, it does not appeal to reason that I PML(Q) members can split from their parliamentary party and form a separate group and become members of opposition party. In Pakistan only a Parliamentary Party is recognized and not the groups or scions. In India it is the Tenth Schedule to the Constitution of India which provides basis for the recognition of groups. Article 17 (2) of Constitution of Islamic Republic of Pakistan, 1973 provides that every citizen not being in the service of Pakistan shall have the right to form or be a member of a political

party subject to any reasonable restriction imposed by law. According to Article 3 of Political Parties Order, 2002 it shall be lawful for anybody or individual or association of citizens to form, organize or set up a political party which shall have a distinct identity and distinct name. Article 4 of the Political Parties Order, 2002 lays down every political party including a political party already in existence shall formulate its Constitution with whatever name it may be referred. Article 5 *ibid* provides that every citizen subject to restrictions and qualification mentioned therein have a right to form or be a member of a political party and take part in political activities. One of the restrictions imposed is that a member shall not be a member of more than one political party at a time. Article 63-4 of Constitution of Islamic Republic of Pakistan also provides for single Political Party in Pakistan and not off-shoots. The aforesaid provisions of law and the Constitution make it abundantly clear that there is a concept of a political party as a whole in Parliament of Pakistan and not its groups. These 9 members of PML (Q) are not independent Members who are not subject to any party discipline. independent Members win their seats on their own and they can join either the government or opposition at any time and vote as they may wish. On the other hand 9 members of PML (Q) are part of a party they contested election on the PML (Q) ticket and are subject to party discipline and obey the instructions issued by their party Head. They cannot overnight convert themselves into independent Members or group. This is contrary to accepted Parliamentary norms in Pakistan.

23. A perusal of memo of Writ Petition No. 6377/2010 pending before Lahore High Court, Lahore, shows that it was filed by Hamayun Akhtar Khan against Election Commission of Pakistan and PML (Q) leader Senator Chaudhry Shujaat Hussain for setting aside the order dated 31-10-2009 passed by Chief Election Commissioner with respect to intra-party election of PML (Q). Thus it is apparent that said writ petition is an out-come of intra-party dispute between the members of PML (Q) and has nothing to do with the issue in hand.
24. As regards the document of Balochistan Provincial Assembly relied upon by Senator Mohammad Ishaq Dar, my view is that this is an internal document of Balochistan Provincial Assembly. It cannot override the provisions of law and the Constitution of the Islamic Republic of Pakistan, 1973 relating to political parties in Parliament and thus cannot be relied upon or cited as a binding precedent.
25. A perusal of the said two applications, which have been signed by three Senators viz Senator Haji Khan Afridi, Senator Hafiz Rashid Ahmed and Senator Muhammad Idrees Khan Safi show that they had given

information with respect to the appointment of Senator Abbas Khan Afridi as their Parliamentary recognizing the said four Senators as a group nor any direction was issued in this regard. The notices issued by the Senate secretariat to Senator Abbas Khan Afridi have been done by Senate secretariat of its own accord and that too only for the purpose of proper conduct of business in the Senate. The perusal of the said notices would show that they contain the names of many Senators who are not Parliamentary Leaders viz Senator Raja Muhammad Zafar-ul-Haq, Senator Mohammad Jahangir Badar, Senator Muhammad Kazim Khan, Senator Mohammad Zahid Khan, Senator Nawabzada Mir Haji Lashkari Raisani, Senator Islam-ud-din sheikh and Senator sardar Ali Khan. Furthermore through the said notices the Senate secretariat has requested the ‘Members, named therein and not ‘Parliamentary Leaders” to attend the meeting. The argument advanced by Senator Mohammad Ishaq Dar is thus devoid of any force and legal basis.

26. In view of the above discussion I hold that g members of PML (Q) are not members of opposition to the government. Furthermore as their parliamentary party has joined the government, they cannot be recognized as a group separate from their Parliamentary party. They cannot propose any person for the position of Leader of the opposition in the Senate. They have a right to vote in the manner and of the choice they have but subject to such restrictions that may be imposed by law or the Constitution of Islamic Republic of Pakistan 1973. Thus it would be a fallacy to advert that they stand dis-enfranchised as they do not have the right which they want to exercise.

ISSUE NO. 3 & 4

1. Both these issues have been taken up together as they are inter-related.
2. Senator Mohammad Ishaq Dar of PML (N) contended that after the election of Senate in March, 2009, eight Senators were elected as independent Members from FATA and four Senators were elected as independent Members from Balochistan Province including a woman elected on reserved seat namely Senator Kalsoom Parveen who joined BNP (A) in accordance with the provisions of clause (2) of Article 63-A of the Constitution of Islamic Republic of Pakistan 1973 whereas rest of three independent Members from Balochistan did not join any political party within the stipulated period laid down in clause (2) of Article 63-A of Constitution of Islamic Republic of Pakistan 1973. He has further contended that the Senate Secretariat has prepared many party wise lists of all members including Independent Members. In the party wise lists dated 13th March 2009, 20th April 2009, 5th June, 2009,

18th April 2011 and 3^d May, 2011 under the heading 'Independents' Senator Abdul Raziq Khan and Senator Hafiz Rashid Ahmed have been shown having alliance with the Treasury Benches and Senator Abdul Rashid and Senator Maulana Mohammad Saleh Shah with JUI(F). With respect to the rest of Independent Members only list dated 13th March, 2009 does not show their alliance either with the Treasury or opposition but the rest of the party-wise lists as mentioned above show their alliance with the Treasury Benches. In the party wise list dated 19th May, 2011 under the heading, Independents, Senator Abdul Rashid and Senator Maulana Mohammad Saleh have been shown to have alliance with JUI (F) while remaining 9 members are shown as having alliance with no one. placing reliance on the said lists, except the list dated 19th May, 2011, the contention of Senator Mohammad Ishaq Dar is that Independent Members who have been shown in the lists having alliance with the government have got no right to propose Senator Morana Abdur Ghafoor Haideri as Leader of the Opposition.

3. Senator Syed Zafar Ali Shah of PML (N) contended that the Independent Members who have alliance with the Treasury Benches cannot vote for the position of Leader of Opposition.
4. Senator Prof. Khurshid Ahmed of Jamat-i-Islami contended that Independent Members cannot vote for the position of Leader of the opposition.
5. Senator Mian Raza Rabbani of PPPP relying upon Article 59 (1), 62,63,246 and 247 of the Constitution of Islamic Republic of Pakistan 1973, chief Executive order 40 of 2002, Senate (Election) Act 1975 and PLD 1995 SC 281 contended that Independent Members elected from provinces and FATA do not have the right to propose the name for the Leader of the opposition. According to him the status of the member elected from FATA is not different from the member who sits on the Independent Benches in the House.
6. Senator Naeem Hussain Chattha of PML (Q) contended that if Independent Members convey in writing that they are with treasury Benches or with opposition Benches they should be considered accordingly. However they cannot vote for position of Leader of the Opposition.
7. Senator Hafiz Rashid Ahmed from FATA contended that in 20056 he was elected as an Independent Member from FATA but on 14.12.2010 when JUI (F) left the government, he became member of opposition because since beginning he had sympathies with JUI (F) and he has

right to vote for Senator Molana Abdul Ghafoor Haideri for the position of Leader of the Opposition.

8. Senator S.M Zafar of PML (Q) contended that Independents Members from FATA and Independent Members elected from Settled Areas/Provinces stand on separate footing. He has relied upon Article 59 (1) (b), 246 and 247 of the Constitution of the Islamic Republic of Pakistan 1973, Chief Executive order 40 Of 2002, section 8-B and Section 8-F of conduct of General Election order, 2002. Section 8 of Allocation of symbols order, section 14 of Political Parties order, 2002 and section 47-A of the Representation of the People Act, 1976. According to him there is a proper political regime in the Settled Areas/Provinces which is not the case in FATA. He finally contended that Independent Members from FATA as well as from settled Areas/Provinces have the right to propose the name for Leader of the opposition, if they decide to become members of the opposition.
9. Senator Dr. Zaheer-ud-din Babar Awan in his argument has relied upon aforesaid provisions of law and has contended that Independent Members will stand disenfranchised if their right to propose the name of Leader of the Opposition in the Senate is not given to them.
10. Senator Mohammad Azam Khan Swati has also mostly relied upon aforesaid provisions of law and has contended that no one had objected to the authenticity of the Party-Wise list of members issued by the Senate Secretariat and as such the list that was issued on 19th May, 2011 should be considered as the final list for purpose of recognition of Leader of the Opposition in terms of Rule 2 of Rules of Procedure and Conduct of Business in the Senate'1988 He has also contended that JUI (F) being the single largest party in the Opposition its candidate must be recognized as Leader of the Opposition in the Senate of Pakistan.
11. Senator Syed Nayyer Hussain Bokhari of PPPP contended that Independents have the right to propose the name for the position of Leader of the Opposition in the Senate.
12. Party system is an integral part of the parliamentary form of government. Banning a few members who may not be attached to any party' most of the members of the Senate are tied to various political parties. There is always a political party or coalition of parties in power as well as in opposition.
13. In Pakistan members are elected to the Parliament i.e. National Assembly or Senate either on the basis of party affiliation or as Independents.

However, Independent Senators fall in two categories viz Independent Senators elected from the settled Areas/Provinces or Independent Senators elected from Federally Administered Tribal Areas (FATA).

14. Article 59 (1)(b) of Constitution of Islamic Republic of Pakistan 1973 and Article 8-B of Conduct of General Election order, 2002 lay down that eight members of Senate shall be elected from Federally Administered Tribal Areas in such manner as President may, by Order, prescribe. The mode of election for the members of Senate from FATA has been prescribed by the President by promulgation of Chief Executive Order No. 40 of 2002 which is also called "Senate Election of Members from the Federally Administered Tribal Areas". A perusal thereof would show that the election of members from FATA for Senate is entirely different from the election of its members from Settled Areas/Provinces.
15. FATA is a part of territory of Pakistan as provided in Article 1 (2) (c) of the Constitution of Islamic Republic of Pakistan, 1973 but no law passed by the Parliament would, in relation to FATA apply to it, unless so directed by the President as provided by Article 247 (3) of Constitution of Islamic Republic of Pakistan 1973. Clause (7) of the said Article also provides that neither the Supreme Court of Pakistan nor a High Court shall exercise any jurisdiction under the Constitution in relation to Tribal Areas unless the Parliament by law otherwise provide. Thus it is apparent that Constitution of Pakistan deals with and treat FATA in a manner different from the Settled Areas of Pakistan.
16. Article 1 (2) of Political Parties Order 2002 lays down that it extends to whole of Pakistan except Federally Administered Tribal Areas. Article 8-F of conduct of General Election order 2002 and section 47-A of Representation of the People Act, 1976 provide for the political parties to submit a separate list of candidates for seats reserved for women and non-Muslims but there is no mention for women and non-Muslims domiciled in FATA.
17. According to Article 17 (2) of the Constitution of Islamic Republic of Pakistan 1973 every citizen has the right to form or be a member of a political party subject to any reasonable restriction imposed by law. Article 5 (1) of Political Parties Order 2002 also allow every citizen of Pakistan the said right. Nevertheless, the Political Parties Order 2002 does not extend to FATA by virtue of Section 1 (2) Ibid. Thus a resident of FATA may not be a member of a political party in terms of Political Parties Order 2002.
18. Thus it is evident from the aforesaid provisions of law that organized

political regime does not exist for Independent Members elected from FATA. However it is a different position with respect to Members elected as Independent Members from Settled Areas/Provinces as all laws governing elections are applicable to them.

19. It can thus be safely concluded that position of an Independent Member elected from FATA is different from a Member elected as an Independent Member from Settled Area/Province.

20. Senate has been maintaining record without rules. Senate Secretariat has been issuing lists of their own accord showing affiliation of various Independent Members either with the government or some political party. The said lists were never communicated to the said Independent Members. The party-wise lists that have been prepared by Senate Secretariat has done so without knowledge and consultation with the Independent Members from FATA as well as Balochistan and without any legal basis. Neither Rules of Procedure and Conduct of Business in the Senate 1988 nor any other law require on the Senate Secretariat to prepare such lists pertaining to Independent Members. List provided by Election Commission of Pakistan is the authentic list concerning the status of a Member of the Senate with respect to party affiliation and / or his election as an Independent Member from FATA or Settled Area/Province. Status of an Independent Member cannot be changed of its own by Senate Secretariat. The status of a Member as to whether he is an Independent Member or belong to any political party can only be changed by Election Commission of Pakistan. Thus all the afore described party-wise lists pertaining to Independent Members prepared by the Senate Secretariat cannot be considered as final. For all practical purposes and legal consequences Members elected as Independent from FATA and those elected as Independent Members from Settled Areas/Provinces retain their status and position as Independent Members in the absence of any communication from them regarding any change in their status as Independent or any communication from Election Commission of Pakistan in this regard.

21. In Chapter I Parliamentary Institutions under the sub heading “ The Opposition” in the book titled “ House of Commons Procedure and Practice” authored by Audrey O’ Brein and Marc Bosc it is stated that “Functionally the House is divided into three groups: the Ministry and its Parliamentary Secretaries, Members who support the Government and Members who oppose the Government. Members in the opposition may belong to registered parties or may be independent of any party affiliation.”

22. There is neither any rule nor any law governing the position or status of Independent Members from FATA after they are elected and have made oath and or after Independent Members having been elected from Province have not made use of Article 63-A (2) of Constitution of Pakistan. The position of the Independent Members of the Senate is a floating one. They are free to take or change side either with the Treasury or Opposition Benches. To bring stability to the parliamentary system of democracy in Pakistan, it is essential that necessary legislation must be put in place in this regard. At present, in the absence of any rule or law, an Independent member of the Senate cannot be stopped from exercising his or her right to propose the name for the position of Leader of the Opposition if he decides to be a member in opposition to the government for the time being. In the definition of Leader of Opposition as laid down in Rule 2 of Rules of Procedure and Conduct of Business in the Senate '1988, emphasis is on the words "for the time being" and "members in the opposition to the government" and not on party or group in opposition. The word 'party or parties in opposition' does not figure at all in the definition which is the case in many countries including U.K., India, Canada etc. Thus in the context of Leader of the Opposition in the Senate, Chairman Senate has to form an opinion, keeping in mind members who express their choice for a certain person to be Leader of the Opposition. Thus Independent Members who express such a choice are deemed to be members in opposition to the government for the time being, and this right cannot be taken away from them as there are neither any rule or law nor any parliamentary practice governing them. Failure to allow them to exercise such a right would tantamount to disenfranchising them.
23. In March 2008 after the general election when government was formed it was a coalition government comprising of members from PPPP, PML (N), ANP, JUI(F), MOM as well as some Independent Members from FATA. Senator Wasim Sajjad of PML (Q) was the Leader of Opposition in the Senate and Ch. Pervez Illahi of PML (Q) was the Leader of the Opposition in the National Assembly. After some time due to political differences PML (N) quit the government and joined the opposition. In the National Assembly Chaudhry Nisar Ali Khan of PML (N) became Leader of Opposition replacing Chaudhry Pervez Illahi of PML (Q) in the Senate, however Senator Wasim Sajjad of PML (Q) continued to be the Leader of the Opposition. On 14-12-2010 JUI (F) also left the government and joined the opposition. MQM has also many times left the Government and joined the Opposition and on 30-06-2011 it has again left the government and joined the opposition and made an application for allocation of seats on the Opposition Benches in the Senate.

24. It is apparent from the above scenario that members of political parties have the right either to be in the government or opposition and that on the change of stance by the political party its members also change their stance or status to be either in the government or opposition. On joining the opposition benches the Members of the concerned political party are vested with the right to propose for Leader of the Opposition.
25. Thus a member of a political party on his party leaving the government can become a member of opposition. An Independent Member on leaving alliance with the government can become member of opposition, Constitution of Islamic Republic of Pakistan, 1973 and the laws do not stop him from doing so at any time. His vacillating position is quite deferent from member of a political party who is subject to party discipline and the rigors of Article 63-A of Constitution of Islamic Republic of Pakistan 1973 are applicable to him.
26. In view of the above I am of the opinion that an Independent Member, whether he has been elected from FATA or Settled Area/Province, is free to join Treasury Benches or Opposition Benches at any time. He cannot be restrained from siding either with Treasury or Opposition Benches or making any alliance or becoming part of the Government or Opposition at any time. He is vested with the right to propose Leader of the Opposition. Denial of this right to him would tantamount to disenfranchising him.
27. I, therefore, hold that an Independent Member, elected either from FATA or Settled Areas/Province, who has decided to be part of the Opposition, for the time being, has a right to express his choice or propose a person for the position of Leader of the Opposition and Chairman Senate has to form his opinion keeping into view the right so exercised by the Independent Member.

ISSUE NO. 5

1. Senator Mohammad Ishaq Dar of PML (N) contended that it is for the Chairman Senate to form an opinion for the recognition of Leader of the opposition in the Senate and opinion means a judgment and it cannot be equated with discretion. He further contended that once vacancy has occurred for the position of leader of the Opposition, which occurred on 2nd May 2011, the day PML(Q) joined the government, therefore, the position and strength for the contenders prevailing and existing on the said date only may be taken its consideration. Subsequent change of events are not relevant to the formation of opinion in the context of the position of Leader of the Opposition.

2. Senator Syed Zafar Ali Shah of PML (N) contended that Rule 2 of Rules of Procedure and Conduct of Business in the Senate, 1988 lays down that the Chairman while forming an opinion has to consider members in opposition to the government and not the parties.
3. Senator Prof. Khurshid Ahmed of J.I contended only known members fall within the definition of rule 2 of Rules of Procedure and Conduct of Business in the Senate, 1988 for the purpose of forming an opinion by the Chairman Senate and Independent Members cannot vote for the position of Leader of the Opposition.
4. Senator Abdul Rashid, Senator Hafiz Rashid Ahmed and Senator Maulana Muhammad Saleh Shah, who are elected Independent Members from FATA and support JUI(F), contended that they have a right to propose the name of Senator Molana Abdul Ghafoor Haideri for the position of Leader of the Opposition.
5. Senator S.M. Zafar of PML(Q) contended that Independent Members from FATA and Settled Areas/provinces if they are members in opposition for the time being then they have the right to propose the name for the position of Leader of the Opposition.
6. Senator Haji Mohammad Adeel contended that ANP is on Treasury Benches and not in Opposition, therefore, members of ANP cannot support any candidate for the position of the Leader of the Opposition.
7. Senator Dr. Zaheer-uddin Babar Awan contended that Independent Members have a right to propose the name of Leader of the Opposition failing thereof they would be disenfranchised.
8. Senator Muhammad Azam Khan Swati contended party-wise list was issued by Senate Secretariat on 19th May 2011 which is authentic and shows all 11 Senators from FATA and Balochistan as Independent Members which is the only list that should be considered for the decision. According to him Independent Members have a right to propose a name for the position of Leader of the Opposition. He further contended that JUI (F) being the single largest party in opposition, their candidate should be recognized as Leader of the Opposition.
9. Senator Mian Raza Rabbani contended that Rule 2 of Rules of Procedure and Conduct of Business in the Senate, 1988 pertaining to Leader of Opposition is ascertainment and not election. According to him, word ascertainment fits in with the word opinion. He has also contended that the single largest party does not have the right to have

the Leader of the Opposition from their rank as the words used in Rule 2 *ibid* do not mention the largest party but refers to the members in the opposition. According to him a member who is unattached can only support government or opposition on case to case basis and has no right to propose any one for Leader of the Opposition in the Senate. He also argued once a vacancy has occurred, it cannot be changed and members who are sitting in Separate Benches should remain there. According to him, vacancy occurred, the day PML (Q) joined the government, on 2d May, 20'11, after which Senator Wasim Sajjad could not continue as Leader of Opposition. In this regard he has relied upon Section 20 of Electoral Roles Act 1974 and Article 58 of Constitution of Islamic Republic of Pakistan, 1973.

10. Senator Wasim Sajjad contended that there are four offices in Senate of Pakistan viz Chairman, Deputy Chairman, Leader of the House and Leader of the Opposition. Chairman and Deputy Chairman of the Senate are elected in terms of rule 9 and 10 of the Rules of Procedure and Conduct of Business in the Senate, 1988. Whereas Leader of the House is nominated by Prime Minister as defined in rule 2 of Rules of Procedure and Conduct of Business in the Senate, 1988. As far as the slot of Leader of the Opposition is concerned, he is neither elected nor nominated. He is essentially a member who in the opinion of Chairman Senate is for the time being Leader of the members in the Opposition to the Government in the Senate.
11. PML (Q) joined government on 2nd May, 2011. However Senator Wasim Sajjad who is part of PML (Q) resigned as Leader of the Opposition on 21st May, 2011. On the same day his resignation was accepted by the Acting Chairman. Rules of Procedure and Conduct of Business in the Senate, 1988 are silent with regard to the date on which vacancy for the position of Leader of the Opposition occurs. However Article 6a (1) of Constitution of Islamic Republic of Pakistan 1973 provides that "a member of Parliament may, by writing under his hand addressed to the Speaker or, as the case may be, the Chairman resign his seat, and thereupon his seat shall become vacant" However. there is no mention in the Rules as to how a Leader of the Opposition may submit his resignation. In my view vacancy occurred for the position of leader of the Opposition when Senator Wasim Sajjad tendered his resignation from the position of Leader of the Opposition in the Senate i.e 21st May 2011.
12. In a parliamentary system of government, there will always be struggle for power. It is obligatory on the opposing forces to struggle for power on the floor of the House by recognized parliamentary methods. One of

the biggest parliamentary achievements of the present century is that the role of the opposition has been formally recognized and is given due place in the parliamentary system. The Leader of the Opposition is thus an important position.

13. In India and in many other countries of the world including UK and Canada leader of the largest recognized opposition party (whether a regular party or party composed of different parties or groups) is recognized as Leader of the Opposition. However, the situation is different in Pakistan. Rule 2 of Rules of Procedure and Conduct of Business in the Senate, 1988 defines leader of the opposition as” a member of a House who, in the opinion of the Chairman of the Senate, is for the time being the leader of the members in Opposition to the Government in that House”. Thus the emphasis in the said Rules is on the wording “who in the opinion of the Chairman of the Senate, is for the time being the leader of the members in opposition to the Government in the House.” The words ‘for the time being’ used in rule 2 of Rules of Procedure and Conduct of Business in the Senate, 1988 are not without significance. By definition there can be no cut-off date as to who may be the Leader of Opposition as the situation is fluid which may change from time to time. The political parties keep on changing their status from the Government to Opposition Benches and vice versa in Pakistan and very recently on 30th June, 2011 MQM said good-bye to the government and joined Opposition Benches.
14. In Volume IV of Stroud’s Judicial Dictionary the word “for the time being” has been defined as ‘The phrase ‘for the time being’ may according to its context mean the time present or denote a single period of time but its general sense is that of time indefinite and refers to an indefinite state of facts which will arise in the future and which may (and probably will) vary from time to time”. It has been held in the case of Mian Iftikharuddin and others (PLD 1961 SC 585) that the words “for the time being” do not necessarily refer to the past and may well have reference to what is to happen in future”. In the case of Mst Amina Begum and other versus Mehar Ghulam Dastagir (PLD 1978 SC 220) a notice was taken of the subsequent events.
15. Keeping in view the above discussion I will thus have to analyse as to who are the members for the time being in opposition to the Government in the Senate and how many are supporting either Senator Muhammad Ishaq Dar or Senator Molana Abdul Ghafoor Haideri for the position of Leader of the Opposition in the Senate
16. Senator Mohammad Ishaq Dar has the support of fifteen members

which include seven members from PML (N) , three members from Jamali-Islami, two members from National Party, one member from PKMAP, one member from PPP (S) and an Independent Member from Balochistan namely Senator Mohammad Hamayun Khan Mondokhel. Besides above, nine members belonging to PML (Q) have also signed proposal to support Senator Mohammad Ishaq Dar for the position of Leader of the Opposition in the Senate.

17. Senator Maulana Abdul Ghafoor Haideri has the support of nineteen members which include ten members of JUI (F), two Independent Members from FATA namely Senator Abdul Rashid and Senator Maulana Saleh Shah who have been supporting JUI (F) from the beginning. Besides above, five Independent Members from FATA namely Senator Abbas Khan Afridi, Senator Muhammad Idrees Khan Safi, Senator Haji Khan Afridi and Senator Eng. Rashid Ahmed Khan and Senator Hafiz Rashid Ahmed as well as two Independent Members elected from Balochistan namely Senator Mir Wali Muhammad Badini and Senator Nawabzada Muhammad Akbar Magsi have signed the proposals to support Senator Maulana Abdul Ghafoor Haideri of JUI (F). In a related development, MQM, which has joined the Opposition Benches w.e.f. 30-06-2011, vide its letter dated 14th July 2011 duly signed by the Deputy Parliamentary Leader Senator Col. (Retd) Syed Tahir Hussain Mashhadi informed the Chairman Senate about the support of six if its Party Members to Senator Maulana Abdul Ghafoor Haideri of JUI (F). Thus Senator Maulana Abdul Ghafoor Haideri has the support of altogether 25 members in Opposition to the government.

18. I have already held hereinabove that an Independent Member, elected either from FATA or from Settled Areas/Provinces, has right to propose and support a member for the position of Leader of the Opposition. The aforementioned Independent members by proposing the name of candidates for the position of Leader of Opposition are deemed to be ‘for the time being members in opposition to the government in the House.’ Thus all the Independent Members from FATA as well as from Balochistan have the right to support candidates for the position of Leader of the Opposition in the Senate. As far as 9 PML (Q) members are concerned I have already held that PML (Q) is an ally of the Government, therefore, its members do not have the right to support any candidate for the position of Leader of the Opposition in the Senate. If the stance of nine members of PML (Q) is accepted then by manipulation and manoeuvring the position of Leader of the Opposition may remain with the political party or political parties in power which may thwart the interest of genuine opposition.

19. In view of the aforementioned discussion I am of the opinion that Mohammad Ishaq Dar of PML (N) has the support of 15. On the other hand Senator Maulana Abdul Ghafoor Haideri has the support and confidence of 25 Members/Senators in the Senate.
20. I, therefore, hold that Senator Maulan Abdul Ghafoor Haideri has been validly recognized as Leader of the Opposition in the Senate in terms of rule 2 of Rules of Procedure and Conduct of Business in the Senate 1988.

Taking this opportunity, I suggest that the Committee on Rules of Procedure and Privileges may recommend such amendments in the Rules of Procedure and Conduct of Business in the Senate 1988 so as to provide for a mechanism:-

- a. Defining the status of Independent Members, whether elected from Federally Administered Tribal Areas or Settled Areas/Provinces, inter alia, providing for their right to propose a member for the position of Leader of the Opposition
- b. For allocation of separate seats in the House to these Independent Members for the purpose of properly regulating the business of the House.
- c. For formation of group or association, if any, by these Independent Members and for which certain privileges or facilities may be granted to them as may be deemed appropriate on the basis of their numerical strength.
- d. Maintenance of proper and updated record by the Senate Secretariat, inter alia, of all the communications/ intimations, if any, received from various members of the Senate, from time to time, conveying their affiliation with Treasury or Opposition Benches, as the case may be.

This Ruling may be circulated for the information of all members of the Senate.”

FAROOQ H. NAEK
Chairman Senate
19th July, 2011
Islamabad.

64. *Miscellaneous: Use of inherent powers by the Chairman—Special powers—a specific provision barring something—no need to exercise inherent powers.*

Ruling

During sitting of the Senate on 11th October, 2012, during the question hour some members raised an issue that if ministers can respond to the questions on behalf of each other then the members may also be allowed to ask the question on behalf of each other in case of absence of the concerned member.

After taking point of view of both the sides on this issue, the Chairman held as under:-

“This has to be examined by the Committee on rules. Earlier prior to march, 2012 “on behalf” was permissible but subsequently the rules were amended. Now you have to go back for the amendment in the rules. As far as the Leader of the House says about “the proxy” then there is no such provision in the rules for the proxy or somebody should give an authority to another person to ask a question. It can be examined in the committee and the committee comes with the suggestion. The House is sovereign and it can approve it.”

At this stage, Senator Raza Rabbani and other members insisted upon the chair to use his inherent powers and allow the other members to ask for supplementary questions even when the member in whose name question has been asked is absent.

After hearing the members on that issue the chair held as under:-

“There is a specific provision barring something, then I don’t think there is a need to exercise the inherent powers”.

The chair while referring rule 56(3) further held as under:-

“So, the issue is this that it has been specifically given in these rules, if at all the House is sovereign and they want to amend it, let it be examined by the Committee on rules of procedure and let the report come back to the House and the House may take a decision on the issue.

Senate Debate
11th October, 2012
Volume-VIII
P 15

65. *Expunction: Expunction of remarks about members of the other House*

Ruling

On 11th July, 2012, Senator Muhammad Hamayun Khan passed some remarks about the members of the other House upon which the Chair, while expunging those remarks, ruled as under:

“Let’s not talk about the honorable members of the other House.

Senate Debate
11th July, 2012
Volume-VI
P 77

66. *Ruling cannot be given on un-moved and un-debated Resolution*

Ruling

During sitting of the Senate on 31st July, 2012, Senator Zahid Khan asked the Chair to give his ruling on a Resolution having been submitted by some members on the subject matter of powers of the Parliament. The Chairman observed as under:-

“Until and unless the Resolution is moved in the House and debated upon I cannot give a ruling. Simply by writing a letter to me and asking for a ruling on that is not appropriate. If you intend to have ruling from the Chair, certainly you move that Resolution and then there can be a debate from both sides. After that I can come to a conclusion then I can give my verdict or ruling. Simply giving a letter to the Secretary saying you give us a ruling that whether the Parliament is sovereign or the Supreme Court is sovereign or the Constitution is sovereign won't be workable.

That would not be a ruling of the Chairman of the Senate. It can be my personal opinion but not of the Chair.”

Senate Debate
31st July, 2012
Volume-VIII
P 42-43

67. *Quorum: Member, who points out the quorum, must remain present in the House during the count*

Ruling

On November, 1st 2013, during the proceedings Senator Muhammad Zahid Khan pointed out the quorum. On his pointation the count of the members was made and after the count the Chairman held as under:-

“As 25 honourable members are in the House and according to Rule 5 of the Rules of Procedure and Conduct of Business in the Senate the person who point out the quorum has to be remained present in the House. So, by including the person who pointed out the quorum the count is 26. The House is in order we proceed now.”

Senator Saeed Ghani raised objection on the inclusion of the member who pointed out the quorum. Upon which the Chairman again referred Rule 5 and also read the same in the house and also ordained Senator Saeed Ghani not to get into debate with the Chair as decision has already been made on it.

Senate Debates
01st November, 2013
P 08-11

68. *Live telecasting or proceedings of the House: Treasury and opposition Benches should have equal opportunity.*

Ruling

On 18th December, 2013, during the statement of Senator Muhammad Ishaq Dar, Minister for Finance on “Memorandum of Economic & Financial Policies 2013-14” and “Technical Memorandum of Understanding (TMU)” the members belonging to Opposition raised objection that the statement of Minister of Finance is being telecasted live on PTV and they demanded from the Chair that the speeches of Opposition benches should also be telecasted live, otherwise it would be a discrimination. Upon this the Chairman ruled as under:-

“I want to give an equal opportunity to both sides. The request came from the Finance Minister and I conceded to that request but there are feelings and sentiments of the members of the Opposition of also. Kindly convey to the Minister for Information”.

“We cannot have all these things on live. One person from this side and he should make a statement that should come live. The statement of one Minister has come live and its live response by one member only should also come from the other side”.

Senate Debates
18th December, 2013
P 53-54