

## ARTICLE 58(2B) AND ITS IMPACTS ON THE DEMOCRATIC GOVERNMENTS OF PAKISTAN

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### Abstract

*The study describes the plan of action of including section 58-2(b) in the 1973 Constitution of Pakistan, and also highlights the reasons to cause the amendment in the constitution. The study also explains that how democratic governments were affected by this constitutional clause at different time periods, overlooked by historians and how to fill this gap. The section 58-2(b) was removed from the 1973 constitution through thirteenth amendment but through the seventeenth amendment it again was made the part of the constitution. At last, through the eighteenth amendment in the constitution of 1973 this article was removed from the Pakistan's constitution. Article 58-2(b) has been seen as a turning point in Pakistan's constitutional history. This transition modified Pakistan's system of government towards parliamentary democracy to a semi-presidential regime. Continuous changes in democratic governments through this article has directly affected the state. It is also argued that the removal of this article is sound for the future of Pakistan's democracy, to help resolve Pakistan's difficult challenges of terrorism, insurgency, declining economic conditions, and internal security.*

**Key Words:** Amendments, Constitution, Democratic, Government, President.

### Introduction

Pakistan has established an inherent Westminster-style governance system with four provinces (Punjab, Sindh, and NWFP & Baluchistan). Pakistan constitution of 1973 is recognized as the supreme law of Pakistan, and there have been

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several amendments to it so far. The eighth amendment is therefore the most important amendment to the Constitution.

Article 58-2(b) is considered as being the most impactful action of constitutional development in the parliamentary history of the country. It gave Pakistan's President the power to dissolve democratically elected leaders on the grounds of a highly subjective assessment of their results. Never before has the President had such authority. In comparison to the implementation of overt martial laws that have dominated the country in the past, the supporters of the Article depict it as a 'safety valve'. 'It was amended in the constitution in 1985 and remained the part of it till 1997. They claim that, by invoking Article 58-2(b), the stalemates can now be dealt with by law rather than by entering the army, as they have done in the past. At the other hand, there is also a clear contrary view that Article 58-2(b) was the basis for a solution to the acute political turmoil in Pakistan, as four elected governments were dissolved within eight years of Zia's proclamation. Thus, the critics of the Article said that this article had a very negative impact on the emerging democratic culture. Objective of the article is to analyze the involvement of 58-2(b) in the democratization process and to investigate the whole procedure of exclusion of 58-2(b) from constitution. Study would further answer the Research Question that why and when 58-2(b) was adopted in the 1973 constitution? And what was the role of 58-2(b) in the democratic process of Pakistan?

### **Paradigm of the Study**

This research paper, entitled 'Causes and Effects of Article 58-2(b) on Democratic Governments of Pakistan,' would be descriptive and exploratory in nature, and its content analysis would be based on deductive reasoning and logic. It would be based on qualitative deductive methods and would deal with multiple issues arising from this phenomenon, as indicated above

in the Research Question heading. Both secondary and primary sources are also used.

### **Origination of 8<sup>th</sup> Amendment in the Constitution of 1973 (1985)**

A constitutional amendment was proposed on 2 March 1985 and did not change the basic legislative structure of the 1973's Constitution. The balance of power between the executive, the legislature and the judiciary was also preserved. While it proposed a compromise between the authority of the Prime Minister and President, the position of the Prime Minister as Head of Government has not changed in any way. But at the other hand, the federal units will continue to enjoy the independence provided for in the Constitution of 1973, while the power of the provinces have been extended, involving them in the process for the election of the President and in the constitutional amendments. Pakistan's parliamentary Government turned into sem-Presidential for of Government. The Presidential Order was issued on the same date and went into effect at once. The amendments can, however, be repealed by the National Assembly (Akhtar, p. 244).

Mohammad Khan Junejo said he was frequently criticized for postponing the bill but he ignored those claims because in the broader national interest he needed a majority in the House of Commons. The Eighth Amendment Bill was adopted because it warranted major constitutional changes(khan', 1989). He said he has given necessary attention to the members' opinions, and the bill has been presented. It was made more successful at the debate and accepted by the Assembly. He said that the country would suffer if there were no equilibrium in the balance of powers between the Prime Minister and the President, and with this change, that stability had been attained. Mr. Junejo affirmed that Martial Law would be removed by December 31 and that the Political Parties Bill would soon be presented and expected to be approved with the collaborations of the members. (Dawn, 1885)

**First Dismissal (Junejo 1988)**

In Islamabad, 29 May, President General Zia-ul-Haq declared at a news conference on Sunday evening that the National Assembly and the Cabinet had been disbanded under the constitution. The President told a group of journalists that he would name a caretaker government on Monday. He said that the forthcoming parliamentary elections would be held in accordance with the Constitution on a "constitutional basis." The President said that, in his opinion, the Assembly had failed to fulfill its duties, to push towards the goals of Islamization, and could not protect the lives and properties of the people of Pakistan, so he decided to dissolve the Assembly. When questioned to the President as long as the Prime Minister had taken confidence in his decision, he responded that he would soon be seen. Responding to another question on Mr. Junejo's current position, he answered that it was close to that of the other member of the dissolved Assembly.

The President stated that he had taken a decision pursuant to Cause 2-(b) of Article 58 (58-2) to dissolve the Assembly which gave him power, to dissolve the Assembly if, in his view "a condition has emerged where the government of the country could not be worked out even in complying with the requirements of the Constitution and an appeal to the electors is required." President Zia stated that the disbandment of the Assembly was seen by him as a major step towards the establishment of democracy in Pakistan. (Yusuf, 1999, pp. 246, 247) He said it will be his challenge to see the right kind of general representatives come back to the next election. The President said he clarified his next decision when he talked to the Radio and Television Network on Monday. The President clarified that the Senate and the Constitution remained the same as he had taken steps to dissolve the National Assembly under his legislative powers (Dawn, 1988).

**Second Dismissal(Benazir 1st term 1990)**

In Islamabad, on Monday August 6, 1990, President Ghulam Ishaq ousted the government of Benazir and also disbanded the Assembly and appointed Mustafa Jatoi the opposition leader to be Prime Minister. The President declared that now the elections were held on October 24, in accordance with the Constitution, which mandated the holding of elections beyond 90 days of a dismissal of the Assembly. Although suspending the National Assembly, the President made strong charges of favoritism and corruption against the Bhutto Government. Senator Javed Jabbar said on 6 August in Islamabad that he would like to move a privilege motion in the Upper House of Parliament against the removal of the Assembly by President. Speaking to Dawn on Monday after the declaration of dissolution of the National Assembly, Mr. Jabbar noted that he did not accept the constitutional explanation that the President had given for taking such intensive action. He said that Miss Bhutto was preparing to lead the international conference, which is likely to be attended by 50 prime ministers and presidents of different states, and thus the dismissal of the assembly was a great loss for country (Dawn, 1990).

The deposed Prime Minister, said in Islamabad on Monday 6 August 1990 that the dissolution of the Assembly and its expulsion were unconstitutional and that the order of the President was unconstitutional and illegal. She was comfortably taking part in a packed news conference at the Prime Minister's House, which was guarded by a different battle-dressed army, and Benazir Bhutto avoided calling her party or the people to agitate against the presidential intervention.

Chief of PDP, Nawabzada Nasrullah Khan, has specified the dissolution of the National Assembly as an early death of democratic practices. He said after the dissolution circumstances may be disadvantageous to the cause of freedom fighters of

Afghanistan and Kashmir because their campaign needed political unity in Pakistan.

The environment before statement of dissolution of National Assembly in the Capital was the same as a military coup was about to be arranged, with communication technology connections cut off from the remaining of the world. Western reporters claimed that before the President's statement of dissolving assembly, their international telephone lines were disconnected. The inter-city fax linkages were also cut down and the newspapers had to face a lot of problems in transmitting their stories to their head offices, especially the photographs. In Prime Minister's House and in another important places Army was posted.

It is expected that it was a really good preplanned scheme as was evident from the accurately written and constitutionally dissolution Order of the President. President's 25-pages speech which hedelivered (Javed, *The Challenges to Political Stability in Pakistan (1947-2012)*, 2012) under his address to the nation, even the English version of the speech was given well before the President's address to the newspapers. Former Chief Minister, Punjab, Mohammad Hanif Ramay when contacted termed Mr. Ishaq's decision as ridiculous and as 'death' for the democratic institutions. Ex-Chief Minister of Punjab Mian Nawaz Sharif in his brief comments which he passed after the dissolution of the assemblies said that downfall of PPP was due to its immature leadership and wrong policies. (Khan, 2009)

### **Third Dismissal(Nawaz 1st term 1993)**

President Ishaq Khan dismiss the govt of Nawaz Sharif and also dissolved the National Assembly, and installed a new national government which contain the PPP and PML (Junejo group), on 18<sup>th</sup> April 1993. The back bencher of Islami Jamhori Itehad (IJI), Mir Balakh Sher Mazari, from Rajanpur, a peaceful,

amiable moderate politician was promptly take the oath as the new Prime Minister who explained that his government was a "national and not a caretaker government". The presidential action is the result of three weeks of political disturbance and disorder between the two greatest offices of state and brought to an end the 30-month-old government of Mr. Nawaz Sharif who was charged of overturning the Constitution. Mr. Khan enjoyed his power given him under section 58-2(b) of the constitution, since more than 100 MNAS presented their resignations, the last group carried to him by Ms. Benazir Bhutto, who called on him for the first time after her government's dissolution in August 1990. The dismissed Prime Minister and his cabinet ministers brought together at the PM House in Islamabad immediately after the dissolution order was proclaimed by the President and pledged to fightback, lawfully, politically and legally (Javed, 2012).

In Islamabad, April 18, Sharif has labelled the dissolution of his government as "unlawful, amoral and illegitimate" and pledged to struggle against the dissolution order both in Supreme Court along with in the peoples' Court. He said that he did not admit the order of dissolution of the assemblies which is dishonest and based on personal resentment against him and his government". (Sehbani, 1993) The deposed prime minister said that his government placed the country along the road of the development where foreign sponsors were coming in a big way but president has pulled the country 50 years back.(Dawn, 1993)

The President said the style of governance of the former Prime Minister had upset the balance between the Federation and the provinces. He ignored the need to call the CCI before taking important decisions, affecting the provinces, and refused to listen to the complaints of the provinces against the NFC Award." The President felt that the greatest mistake of the previous government was on the economic front, as its strategies brought

the nation to the verge of economic crisis. "The prices were going up. Rich were becoming richer; poor were becoming poorer. Country's wealth was put into the hands of only several personal favorites. The process of privatization was being used to dispose of important public-interest State owned industrial units", He said the economic managers of the Nawaz Government were going for privatization faster than even the authors of the privatization like Britain and America, where the people have now realized that public sector was as important as the private sector. "In fact, in America, the last election was fought on this theme," he added. (Dawn, 1993) President of PNP has strongly denounced the removal of the govt of Nawaz Sharif and described President Action as unconstitutional and unlawful. In a statement issued here on Monday night, he said that dissolution of Assembly and an "elected government" has pushed the country into a deep political crisis. He said PNP cannot support this "unconstitutional move" of Ishaq Khan and supported Nawaz Sharif in his struggle against this unlawful act. He said the "so-called" 8<sup>th</sup> amendment has been used for dismissing the third government in a row. The practice has shaken the confidence of the masses over sanctity of ballot and utility of democracy above all, he added. Keeping in view the fast-changing political situation, PNP has decided to convene its Central Executive Committee meeting here on April 25 to evolve future strategy. Mir Bizenjo also said that the PNP will not compromise on its principle and will continue to fight for the full restoration of democracy in the country.

Pushtoonkhawa Milli Awami Party also condemned the dissolution of national assembly and said that it was an "undemocratic step" of President (Dawn, 199).

The Chairman of MQM (H), Mr. Afaq Ahmed, has welcomed the dismissal of Assembly and said this action had become imperative to bring an end to prevailing uncertain conditions in the country. In a statement Mr. Afaq Ahmed said



that because of continued uncertainty, the Nawaz Sharif said that the restoration of the Assembly and his government was great victory for the entire nation and a total defeat of the forces of evil. He was speaking at a huge gathering of prayers at the historic Badshahi Mosque after offering the congregational prayers. Thousands of people, including a large number of women, had thronged the spacious Badshahi Mosque to hear Nawaz Sharif who was to make first public appearance in the city after Supreme Court judgment restoring him to power. Nawaz Sharif saluted the people for their resolute stand against the presidential order of 18 April, and added that his return to power was the result of their devoted citizens, industrialists and businessmen had plunged into a quandary. (Dawn, 1993)

#### **Fourth Dismissal (Benazir 2nd Term 1996)**

President Farooq Ahmed Khan Laghari dissolved the National Assembly at 2 a.m. on Tuesday, 5 November 1996. Former Speaker Malik Meraj Khalid was caretaker Prime Minister, a presidential spokesperson said. In Islamabad, the army was called out and deployed at all major installations, as well as around the house of the Prime Minister. All the phone connections of the federal ministers were cut late into the night. The declaration declared that new general elections are to be held within 90 days. The presidential statement issued here late Monday night pursuant to Article 58-2(b) of the Constitution introduces to a sudden close the disturbed three-year rule of the Pakistan Democratic Front (PDF) alliance. Deposed Prime Minister Benazir Bhutto has repudiated all charges against her saying that the dismissal of her government is undemocratic, uncalled for and unconstitutional. Talking to PPI, after restoration of two phone lines for her, she said that the only way to remove a democratically elected government is either through a vote of no confidence or general elections. she sounded optimistic that the Supreme Court would restore her government as well as the

assemblies, as was done in the case of Nawaz Sharif in 1993. Ms. Bhutto had no explanation for her optimism about the Supreme Court's judgment because in the Nawaz Sharif case her party had termed it the result of "Chamak." She said: "When the assembly is restored, I hope Mian Nawaz Sharif would join us in finding a way out of the crisis through parliament." We demand that the assemblies be restored, the government and the opposition join hands in repealing the Eighth Amendment, the prime minister and the leader of the opposition should decide about the dissolution of the assembly to pave the way for fresh elections and work out details about a caretaker administration." (Sayeed, 1959)

### **Thirteenth Amendment in the Constitution of 1973(1997)**

Prime Minister Mian Nawaz Sharif on Monday declared that his party would undo the controversial parts of the Eighth Amendment, including the power of the president to dissolve the assemblies, in order to restore true democracy. (Shafqat)"After consulting my colleagues in the Pakistan Muslim League and leaders of our coalition parties, I have decided to restore the supremacy of parliament, "the prime minister told the nation in his address over radio and television. Although Mr. Nawaz Sharif did not say that he would divest the president of his dismiss the assemblies under the controversial amendment, a PML spokesman said the prime minister meant to strike down Article 58-2(b) relying on which three presidents had sent the assemblies packing four times in less than a decade. (Bahadur, 1998)

### **Seventeenth Amendment in the Constitution of Pakistan 1973 (2003)**

Amendment of Article 58 of the Constitution: In Article 58 of the Constitution the following new provision is inserted after clause 2, namely: -

- '(3) Where the National Assembly is disbanded according to subsection (b) of clause 2, the President shall appeal the decision to the Supreme Court within 15 days of its dissolution, and the Supreme Court shall rule on the appeal within 30 days of the decision of which the decision is valid.'  
(Mahmood, 2012)
- (b) Article 58 is to be revised to ensure that the President referred the issue to the Supreme Court on dismissal of the National Assembly pursuant to paragraph (b) of Article 58(2). (Dawn, 2003 ')

The National Assembly set on Sunday night to approve the government's amendment bill by more than the needed two-thirds majority in a landmark agreement by the opposition Muttahida Majlis-i- Amal (MMA) to acknowledged President Pervez Musharraf with broad powers.(Debates of the constitution Assembly, 1986)

### **Eighteenth Amendment in the Constitution of Pakistan 1973(2010)**

Friday, 30 December 2010, proved to be a momentous day in Pakistan's parliamentary history when Raza Rabbani forwarded to the National Assembly the report of the Parliamentary Committee on constitutional changes, which reinstated the Constitution in its democratic form by removing any changes passed by military rulers to the LFO 2002. (Farzana Arshad, 2018) It was also planned to turn the House of Prime Minister into the center of government. In all, the summary of the Parliamentary Committee contains 100 recommendations for the restoration of the Constitution of 1973 in its original context. When Mian Raza Rabbani finished his address, he was welcomed by members from both sides of the Assembly. Soon after the report was debated at the National Assembly, Raza Rabbani

moved to the Senate to present the report to the Upper House of Parliament, following which the sessions of both Houses were prorogued. Opposition leader Chaudhry Nisar and law minister Dr Babar Awan were notable for their absence on this historic day. Identifying important aspects of the report, Mian Raza Rabbani said that Assembly declared the 17th amendment to the Constitution and the LFO of the dictator without even any constitutional jurisdiction and must be repealed. It was also suggested that the NWFP be renamed Pakhtoonkhwa.' The Committee recommended that the suspension and keeping of the Constitution be considered an act of crimes against the state in accordance with Article 6 of the Constitution. It was also modified section 58-2(b) of the Constitution.

The Committee has agreed to amend Article 58-2(b) and substitute it with "Dissolution of the National Assembly." Substitution stipulates that, if consulted by the Prime Minister, the President shall dissolve the National Assembly and, unless dissolved sooner, the National Assembly shall be dissolved at the end of forty-eight hours after such consultation by the Prime Minister. (The News, 2002)

### **Conclusions**

The Eighth Amendment has been seen as a turning point in Pakistan's constitutional history. The transition modified Pakistan's system of government towards parliamentary democracy to a semi-presidential regime. The eighth amendment consolidated the power of the President as well as added extra powers to bring an end to the government of the elected leader. President Zia originally used the provision for suspected corruption to remove Prime Minister Mohammad Khan Junejo in May 1988. The prime minister tried to remove Zia's power.

In 1988, Benazir vowed to revoke the change in her election manifesto. The amendment remained in the books,

however because it did not have enough seats in 1988 and again in 1993. President Ishaq Khan made a liberal use of the eight amendments and of Article 58 2(b) to abolish the National Assembly from 1988 to 1996. President Khan used the provision to overthrow the elected governments of Prime Minister Benazir and Mohammad Sharif. Initially, on 6 August 1990, President Khan applied the Eighth Amendment against Bhutto on accused cases of corruption and nepotism. In 1993, President Ishaq Khan once more used that provision to overthrow Prime Minister Nawaz Sharif's widely elected government. In the second case, the Supreme Court reinstated Prime Minister Nawaz Sharif, but the resulting stalemate ended with both the resignations of President Khan and Prime Minister Sharif. The President justified the use of Article 58 2(b) as being almost exclusively necessary to remove corrupt governments which, it was claimed, had lost the confidence of the people. In the National Assembly, elections were held each time which caused the ruling party to lose its majority or plurality. In November 1996, President Farooq Ahmad Khan Leghari used it again, against Prime Minister Benazir Bhutto, his own party leader.

Finally, in Pakistan's political history, Article 58-2(b) was the primary and very powerful element in destabilizing the democratic governments. The Thirteenth amendment was ratified in 1997, eliminating the right of the President to dissolve the National Assembly and arranging for fresh elections, effectively limiting the president to a ceremonial position. Pakistan's democracy provides citizens with no way of directly recalling members of parliament until their term of office expires. The 17th amendment briefly returned the office of the President to power. The authority to disband the National Assembly and remove the PM are now subject to approval by the Supreme Court. Pakistan's parliament passed the Eighteenth Amendment in 2010, reverting the 17th amendment to a suitable and immediate course. Also, the revocation of Article 58-2(b) would be a fulfillment of the PPP's

repeated commitments to the people of Pakistan to restore full democracy within the country. It will improve the image of the party as a true champion of democracy as provided for in the Constitution of 1973. The removal of this clause along with all those provisions of the 17th Constitutional Amendment that corrupted the parliamentary character of the constitution. It will not only augur well for the future of Pakistan's democracy, but will also help resolve Pakistan's difficult challenges in the form of terrorism, insurgency, declining economic conditions, and internal security.

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