

A CONSTITUTIONAL HUMBUG

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Article 51 of the 1956 Constitution provided that there shall be atleast two sessions of the National Assembly every year, and six months shall not intervene between the last sitting of the Assembly in one session and its first sitting in the next session. It was almost on the pattern of Article 85 of the Indian Constitution, which says that the President shall, from time to time, summon each House of the Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

2. Article 54(2) of the 1973 Constitution made an improvement by providing that there shall be at least two 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. The addition of a proviso made it still better, in that it placed the Assembly under a constitutional obligation to meet at least for one hundred and thirty working days each year.

3. These provisions were further amended by the late General Muhammad Zia-ul-Haq with the promulgation of “The Revival of the Constitution of 1973 Order 1985”. It laid down that there shall be three, instead of two, sessions of the National Assembly every year and that it shall meet, for not less than one hundred and sixty working days, instead of one hundred and thirty working days, in each year. This period was again reduced to one hundred and thirty working days by section 2 of the Constitution (Tenth Amendment) Act of 1987.

4. However, what we are now concerned with is the “explanation” added to Article 54(2) by the Constitution (Fourth Amendment) Act 1975. It says that “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”.

5. No excogitation is required to realize what has been conceded to the Assembly by these provisions. It has now the Constitutional allowance to meet on the first day of a particular month and adjourn its proceedings to the Fourth day of that month and then go on doing like this all through the period during which it is bound to remain in session in one calendar year. In this manner it will meet in actual fact only for forty-four days in a year, but constitutionally be taken to have so met for one hundred and thirty days. The requirement of Article 54(2) will be adequately satisfied in each year even if the Assembly remains practically in session only for forty-four days.

6. What usually happens is that they remain in session for five days in a week from Sunday to Thursday and then adjourn their proceedings to the next Sunday with a gap of two days, which falls on Friday and Saturday. These five days in a week are thus counted as seven working days, with the result that the constitutional requirement of remaining in session for one hundred and thirty days is fully satisfied even if the total number of working days does not exceed ninety-four days in a year.

7. It may also be mentioned as a relevant fact that under section 4 of the Members of the Parliament (Salaries and Allowances) Act 1974 (as amended from time to time by Act XII of 1985, Act III of 1988 and Act III of 1993 which received the President’s assent on 18.3.1993) the Members are entitled to receive daily allowance at the rate of Rs.300/- and Conveyance Allowance at the rate of Rs.200/- even for the aforementioned two intervening days during which they are not actually in working session, for they too are taken as period of residence on duty within the meaning of this section.

8. This so called “explanation”, the result of ingeniousness par excellence, is nothing more than humbug. In the first place, one wonders where was the need of an explanation, considering that the provisions of clause (2) are quite explicit. It says that the National Assembly shall meet for not less than one hundred and thirty working days in each year. It can easily be understood by all and sundry that the phrase one hundred and thirty working days means one hundred and thirty working days and nothing less or more. There was hardly any ambiguity about the expression ‘working days’, so as to necessitate the rendering of an explanation, like it has been done in this case.

9. There is another aspect. A working day means a day during which one actually works, whatever be the nature of that work. And the most important thing about it is that it is so taken by those who have the franchise to send people to the National Assembly. If it be so taken, as I do take, even the most frantic effort on the part of the National Assembly may not have been sufficient to justify the attribution of a different import to the expression. A working day has to be a working day, as it is being taken by the people through the ages, and I have serious reservations about whether it was within the legislative competence of the Parliament to give such a meaning to it, as would force the people to take a non-working or leisure day as a day during which a particular work was performed or business was transacted.

10. Further more, the so-called explanation brings about a paradox, in that it involves an offence against what has been said in the proviso to clause (2) of the Article. As noticed before, it says that the National Assembly shall meet at least for one hundred and thirty days in a year, But the manner in which the Draftsman has chosen to express himself was loud and clear in conveying a constitutional direction to the Assembly that the duration of its meeting must in no case be less than one hundred and thirty working days in each year. More crucial is the fact that it conveyed a constitutional prohibition to put such an interpretation on the expression “working days”, as to curtail their duration. Therefore, the result of this explanation is that the provisions of Article 54 (2) have become self-contradictory.

11. If you come to think of it, the provisions of the “explanation” give a clear lie to those of the proviso to clause (2) of the Article to an extent that they virtually have been reduced to a misrepresentation of facts. So because after actually working only for ninety four days in a year the Assembly is taken to have worked for one hundred and thirty days by the constitutional fiction of this explanation. The Assembly is presumed to have fulfilled the constitutional requirement of remaining in session for the full period of one hundred and thirty days, by actually remaining so only for ninety four or even lesser number of days in a particular year. What it comes to is that since the Parliament can never misrepresent, the provisions of explanation are ultra vires of its legislative competency.

12. That is not to say that the honourable Members of the Assembly must work for no less than one hundred and thirty days in each year. Nor is there any intention to suggest that they must remain in session continuously all through the week, or that they should not attend to the problems of their constituencies back home. The purpose is only to point out that working day is not synonymous with a ‘non-working day’ and that an off day should not be called a ‘working day’ and that too in the constitution itself.

13. We are rather constrained to concede that it may not be possible for the members to work for six successive days in a week and that there must be a recess of two days, not only because of the onerous and cumbersome nature of their functions, but also because they should make themselves available to the people. Be it as it may, this consideration alone is not enough to provide the explanation with a rationale, for the point is why one working day should be counted as three working days. We are not concerned with whether or not it is possible for the Honourable Members to remain in session for one hundred and thirty days in a year. What we do care about is that if it is not so possible, it should then be specifically laid down in the Constitution that the Assembly shall meet and work only for a period of ninety days or whatever during each year. The element of factual incorrectness should be scoured from the Statute Book, for it is a slur on its otherwise fair name.

14. We believe that the Constitution was framed by our chosen representatives with the consciousness that Sovereignty over the entire Universe belongs to Allah Almighty alone and the authority to be exercised by the people of Pakistan is a sacred trust which is to be discharged within the limits prescribed by him. We also believe that they were aware of the fact that they had been entrusted with the task of giving us a Constitution which would enable us to order our lives in the individual and collective spheres in accordance with the teachings and requirements of Islam, as set out in the Holy Quran and Sunnah. If viewed in the light of these considerations, pray let us know what is Islamic about the provisions, which sanction a constitutional humbug to legalize an attempt to represent and constrain the people to believe something which is not there in actual fact. It rather puts paid to the claim that the constitutional provisions are in accordance with the dictates of Holy Quran and Sunnah. In this view of the matter, the provisions of explanation to Article 54 (2) are ultra vires of the Objectives Resolution, which is everything to go by, and undoubtedly a basic document to sustain the edifice of our Constitution.

15. I do hope and go with the optimism that the Honourable Members of the present August Assembly will waste no time in taking this matter into consideration and efface this ham-handed hoax from the Book without ado, in acknowledgement of the magnitude and sanctity of the trust which allows them to legislate even in respect of their own privileges.