

A MISLEADING QUESTION

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It is not a matter of dispute that the Constitution of 1973 either in its original form or with the subsequent amendments including the one called as 'Eighth Amendment', is in need of modifications to be viable in the present socio-political environment of the country. A Committee has been constituted by the Cabinet to consider the provisions of 'Eighth Amendment' with reference to their implications and overall impact on the Constitution and the political culture. An apposition of certain provisions of the Constitution will, therefore, be worth its while, before the Committee submits a report to the Cabinet for consideration.

2. Article 48(6) of the Constitution, as it now stands after the 'Eighth Amendment' provides that "if, at anytime, the President, in his discretion, or on the advice of the Prime Minister, considers that it is desirable that any matter of national importance should be referred to a referendum, the President may cause the matter to be referred to a referendum in the form of a question that is capable of being answered either by "Yes" or "No".

3. One wonders as to whether there can be a question which does not admit 'Yes' or 'No' as answer and what in fact was the necessity of making these provisions. It would have been sufficient to provide that the President may cause the matter to be referred to a referendum in the form of a question. That such a question should be capable of being answered either by 'Yes' or 'No' seems to be rather redundant, considering that every question is bound to have 'Yes' or 'No' as answer.

4. This aspect of the matter apart, it seems to me that the provisions in respect of capability of the question being answered by 'Yes' or 'No', bear a special significance. It is not difficult to understand that their object was to put a constitutional limit on the discretion of those who are supposed to answer the question referred to referendum, in that it will extend only to the saying of 'Yes' or 'No' to the question and nothing more. They will have no right to raise any objection either against its form or substance.

5. Yet another aspect is presented by the aforementioned considerations. Since the scope of public competency has been limited only to the saying of 'Yes' or 'No', the form of question to be referred to referendum assumes a considerable importance. It is worth notice that there is no limitation on what can possibly be the form. The question may be simple, complicated or complex. It may be leading or misleading. It must always be borne in mind that no complex, leading or misleading question can, in all fairness, have 'Yes' or 'No' as answer; which is much more so if any such question is to put to the people, majority of whom is not in a position to understand its implications.

6. Leading question can be put to a witness under the law by a party against whom he goes into the witness box. But this concession to unfairness is allowed under entirely different circumstances, with promotion of the ends of justice as the ultimate goal. In a referendum, the question cannot be allowed even to be leading; what with its being complex or misleading. If any such question is made the subject of referendum, the opinion expressed will be far from being that of the public; which will be so, for the obvious reason that those who will answer the question by saying 'Yes' or 'No', are ignorant of what is being asked. Further, in that situation, they are necessarily led or misled to say 'Yes' or 'No', which cannot deserve the name or title of an 'answer' in any ethics including that of Islam.

7. We might look at the matter from another point. Leading or misleading questions seldom allow an opportunity for expression of opinion, particularly when they are put to the public with a limitation on the form of its answer. They lead them to answers they never intend to make. The result is that things are attributed to them, which they never say. This being so, the provisions of Article 48(6) of the Constitution imposing restrictions on the scope and form of answer, involve a violation of Article 19 of the Constitution which, inter-alia, lays down that every citizen shall have the right to freedom of speech and expression subject to reasonable restrictions imposed by law. By virtue of this circumstance, they are void under Article 8 of the Constitution being inconsistent with and in derogation of the fundamental rights of freedom of expression.

8. For a background of how they found place in the Book, reference may be made to the Referendum of 19th December 1984 held in pursuance of the Referendum Order 1984, enforced on the 1st of December

1984. The question referred to referendum under Para-4 of the Order was to the following effect: “Whether the people of Pakistan endorse the process initiated by General Muhammad Zia-ul-Haq, the President of Pakistan, for bringing the laws of Pakistan in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (Peace be upon him) and for the preservation of the Ideology of Pakistan, for the continuation and consolidation of that process and for the smooth and orderly transfer of power to the elected representative of the people”. Para-5 of the Order said that it shall be answered either by ‘Yes’ or ‘No’.

9. The question framed in Para-4 incidentally provides us with an illustration of what kind of question can possibly be put in exercise of discretionary power conferred by Article 48(6) of the Constitution. The people of Pakistan were asked by this question whether (a) they endorse the process initiated by the President, (i) for bringing the laws of Pakistan in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (Peace Be Upon Him), and (ii) for the preservation of the ideology of Pakistan; (b) they endorse the steps being taken (i) for continuation and consolidation of the process and (ii) for the smooth and orderly transfer of power to the elected representatives of the people.

10. It was evidently a multi-featured complex question. The most pertinent feature is that the draftsman appears to have taken pains to make a specific mention of name of General Muhammad Zia-ul-Haq as “the President of Pakistan”. Then it says that the President has initiated some process and that this process is of Islamisation of Laws and for preservation of the Ideology of Pakistan. It speaks of the steps being taken for consolidation of that process. It also indicates that the process includes the smooth and orderly transfer of power. This is not all. It further suggests that this transfer of power will be in favour of the elected representatives of the people.

11. Complexity aspect aside, it is worth notice that it is based on the presumption that the President had in fact initiated a process of Islamisation of Laws and for preservation of the Ideology of Pakistan. Another presumption was that steps were being taken by him for continuation and consolidation of that process. Yet another is that orderly transfer of power was intended in favour of the elected representatives of the people.

12. There was no justification for all these presumptions. There might have been quite a few who were of the opinion that the President had no intention of Islamising the Laws and that in any case, the process initiated by him will not achieve the desired result. Obviously so because one could have had his own concept of what is in conformity with the Islamic injunctions as laid down in the Holy Quran and Sunnah. Then, there might have been others of the opinion that the process initiated by him will not result in the preservation of the Ideology of Pakistan. Further, there might as well have been those who were of the opinion that no election could be held without restoration of 1973 Constitution in its original form and that those returned to the Assemblies under any other law will not be the representatives of the people.

13. It hardly requires an under scoring that besides being ambiguous, the question was hypothetical in nature, with a misleading tendency. The purpose in view can be spelled out of Para-7 of the Order which makes an interesting reading. Amongst other things it says that if a majority of the votes cast in the referendum is in favour of the answer ‘Yes’, the people of Pakistan shall be deemed to have endorsed the aforementioned steps presumed to have been taken by the President of Pakistan regarding Islamisation of laws, the preservation of the Ideology of Pakistan, the continuation and consolidation of that process and for the smooth and orderly transfer of power to the elected representatives of the people.

14. The question being clearly hypothetical, the deeming provisions were absolutely out of place. This in spite, however, you might say one could still put up with them. But what follows is atrocious. The paragraph proceeds to say that in the event of ‘Yes’ answer by majority of the votes cast in the referendum, General Muhammad Zia-ul-Haq shall be deemed to have been duly elected President of Pakistan, and that too for a term of five years from the day of the first meeting of the Houses of Parliament in joint sitting.

15. These provisions do not deserve even a comment or criticism. Anyway, we may assume it was a valid question with majority of the votes cast in favour of ‘Yes’ as answer. How then, in God’s name, could the people of Pakistan be deemed to have elected him as President of Pakistan and that too for a period of five years from a particular day?. The fact of election as President had no nexus whatsoever with the substance of the question which did not even remotely convey the suggestion that the people were being

asked by it to elect any person as President for a period of five years. No amount of strain on jurisprudence could justify these provisions, so enormous in their rankness and absurdity that even the word illegal will be shy of its application to them.

16. Yet another aspect worth notice is that the preamble left no room for any doubt what was to follow in the Order. It provided that the President had decided to ascertain the views of the people of Pakistan, by means of a referendum, because for continuation and consolidation of the aforesaid process for Islamisation and revival of Democracy, it is considered necessary that General Muhammad Zia-ul-Haq

17. continues to hold the Office of President of Pakistan for a further period of five years from the date of first meeting of the Houses of Parliament in joint sitting.

18. By whom all this was considered 'necessary' was obviously left to the imagination of the people. Anyway, the point is that the preamble left no doubt that the President was bound to stay in office even though hell should bar the way. The Referendum Order was only an instrument of manipulation and the consequential referendum was a sham affair and without any legally binding force. The deeming provisions of Para-7 of the Order regarding election of General Muhammad Zia-ul-Haq as President of Pakistan for a term of five years, were never brought to the notice of the people and they had no idea whatsoever of what will be the result of saying 'Yes' to the question and the referendum was nothing more than a palpable fraud against them. No such law, if at all it can be so called, was even witnessed by the legislative history of the world.

19. What kind of Islam was going to be the result of referendum where a misleading and perverse question was put to the people for an answer. I wish somebody in position would have had the courage to apprise the President that this is not the done thing and that misleading questions are ignoble, immoral and thus against the Quranic Injunctions. The 'Yes' or 'No' provisions and those in respect of the form of the question are in abuse of the Constitution. So long as they are allowed to remain a part of the Book, there is no guarantee that similar questions will not be repeated in future to mislead the people to wrong and incorrect answers. The Committee concerned will, therefore, do well to recommend their expunction.