P L D 1998 Supreme Court 388

Present: Sajjad Ali Shah, C.J., Saleem Akhtar,
Fazal Ilahi Khan, Zia Mahmood Mirza, Irshad Hasan Khan,
Raja Afrasiab Khan and Munawar Ahmad Mirza, JJ

Mohtarma BENAZIR BHUTTO and another---Petitioners

versus

PRESIDENT OF PAKISTAN
and others---Respondents

Constitutional Petitions Nos.58 and 59 and Civil Miscellaneous Applications Nos.805, 935, 806 and 848 of 1996, decided on 29th January, 1997, reasons released on 13th September, 1997.

Per Saiiad Ali Shah, C.J.; Saleem Akhtar, Fazal Ilahi Khan, Irshad Hasan Khan, Raja Afrasiab Khan and Munawar Ahmad Mirza, JJ. agreeing: Zia Mahmood Mirza, J. Contra-

(a) Constitution of Pakistan (1973)---

----Preamble & Art.239---Constitution (Eighth Amendment) Act (XVIII of 1985), Preamble---Eighth Amendment to the Constitution has come to stay in the Constitution unless it is amended in the manner prescribed in the Constitution.

(b) Constitution of Pakistan (1973)---

----Arts. 58(2)(b) & 184(3)---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Grounds---Validity---President, under Art.58(2)(b) of the Constitution of Pakistan (1973), in his discretion can dissolve the National Assembly where he forms opinion on the basis of material before him having nexus with the Dissolution Order and Art.58(2)(b) of the Constitution that situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and appeal to the electorate is necessary---Once the evil is identified, remedial and corrective measures within the Constitutional framework must follow---Theory of total breakdown of Constitutional machinery as the only ground for dissolution of National Assembly having been rejected in the case of Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473, was no more in the field-Contention that the President can invoke Art. 58(2)(b) of the Constitution to dissolve the National Assembly only in such a grave situation in which Martial Law can be imposed as in 1977 and there is complete breakdown of Constitutional machinery, was repelled.

It is not correct to say that the President can invoke Article 58(2)(b) to dissolve the National Assembly only in such a grave situation in which Martial Law can be imposed as in 1977 and there is complete breakdown of Constitutional machinery. Under the said provision, the President in his discretion may dissolve the National Assembly where he forms opinion on the basis of material before him having nexus with the Dissolution Order and Article 58(2)(b), that situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and appeal to the electorate is necessary.

Once the evil is identified, remedial and corrective measures within the Constitutional framework must follow. Public functionaries, holding public power in trust, under oath to discharge the same impartially and to the best of their ability must react as they cannot remain silent spectators. There may be occasion for the exercise of such power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional. The theory of total breakdown of Constitutional machinery as the only ground for dissolution of National Assembly has been rejected in the case of Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473.

Muhammad Nawaz Sharif v President of Pakistan PLD 1993 SC 473 distinguished.

(c) Constitution of Pakistan (1973)---

----Art. 58(2)(b)---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Material for grounds of Dissolution Order---Requisites, sufficiency and validity---Not necessary that material produced in support of the grounds of the Dissolution Order in its totality must be present before the President at the time of forming opinion and must be scrutinized by him in detail---Sufficient if there is material having nexus with the order of dissolution and Art.58(2)(b) of the Constitution before the President after perusal of which he forms his opinion and passes order of dissolution---Nothing is wrong with the production of corroborative or confirmatory material in support of the grounds which have been made available after the date of the order of dissolution.

(d) Constitution of Pakistan (1973)---

----Art. 58(2)(b)---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Grounds---Material for---Newspaper cuttings can be relied upon by the President as material in support of the grounds for dissolution.

(e) Constitution of Pakistan (1973)---

.----Art. 58(2)(b)---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Grounds of order of such dissolution and dismissal ---Validity--Sufficient material with regard to the ground of extra judicial killings by the Government had been produced which had been properly and justifiably considered by the President; enough material was produced in support of the ground with regard to the belated implementation of the judgment in the case of appointment of Judges which was short of total compliance, the non implementation of which violated Arts.190 & 2A of the Constitution of Pakistan; adequate material was produced in favour of the ground of dissolution that the Prime Minister in her speech before the National Assembly had ridiculed the judgment of the Supreme Court in the appointment of the Judges' case which was also repeatedly telecast and in order to harass the Judges of the Supreme Court, Constitution (Fifteenth Amendment) Bill was introduced in the Parliament for initiating the process of accountability against -the Judges by sending the Judges of the superior Courts on forced leave if fifteen per cent. of the members moved a motion against them which Bill ran counter to Art.209 of the Constitution which was already in existence for taking action against Judges before the body of Supreme Judicial Council; record was also available in favour of the ground of dissolution to show that complete separation of Judiciary from the Executive was being delayed and by law Executive Magistrates were given powers to sentence to imprisonment for three years, which was against the spirit of judgment of the Supreme Court; sufficient material was also available on the record in support of the ground of dissolution showing that under the orders of the Prime Minister telephones of the Judges of the Supreme Court, Leaders of the Political Parties and high ranking military and civil officials were being tapped and transcripts sent to the Prime Minister for reading and enough material was produced in support of the ground of the dissolution which covered the subject of corruption, nepotism and violation of rules---Supreme Court, in circumstances, upheld the order of dissolution of National Assembly and dismissal of the Cabinet passed by the President under Art.58(2)(b) of the Constitution of Pakistan (1973).

Per Saiiad Ali Shah, C.J.; Afrasiab Khan and Munawar Ahmad Mirza, JJ. agreeing Zia Mahmood Mirza, J. Contra-

(f) Constitution of Pakistan (1973)---

----Preamble & Art. 2A---Basic structure of the Constitution of Pakistan (1973)---Prominent characteristics of the Constitution are amply reflected in the Objectives Resolution (Art. 2A) which is a substantive part of the Constitution---Main features reflected in the Objectives Resolution are Federalism and Parliamentary form of Government blended with Islamic provisions.

(g) Constitution of Pakistan (1973)--

----Art. 239---Constitutional amendment---constitution can be amended in the manner contemplated under Art.239 of the Constitution.

(h) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Provisions of Art.58(2)(b) of the Constitution [since omitted by Constitution (Thirteenth Amendment) Act (I of 1997)] had provided checks

and balances between the powers of the President and the Prime Minister to let the system work without let or hindrance to forestall a situation in which Martial Law could be imposed.

(i) Constitution of Pakistan (1973)---

----Art. 186---Reference to Supreme Court by the President---Physical act of filing a Reference is a ministerial action which is routinely done---Where Reference was only physically filed in the Supreme Court on 21st and it was registered with the Registrar's office as late as the 25th in such circumstances, wild insinuations and casting aspersions in 'relation to a wholly innocuous act were an called for and there was no justification for imagining conspiracies and pre-determined plans which had not the remotest connection with reality.

(j) Constitution of Pakistan (1973)---

----Art. 186---Reference to Supreme Court by the President---Grant of ex post facto approval by the Cabinet to the filing of Reference amounted to the approval of the same after which raising of objection was not proper and Prime Minister could not be allowed to approbate and reprobate in the same breath.

(k) Constitution of Pakistan (1973)---

----Arts. 148 & 149---Object of Arts. 148 & 149 of the Constitution of Pakistan (1973).

Provisions of Articles 148 and 149 of the Constitution regulate relationship between the Federation and a Province in a situation in which Federal law is applicable in that Province and a situation has arisen in which it is to be considered as to how the Federal law is to be made applicable so that it should bring about the desired result and be effective so that proper remedial measures are adopted to contain and control the situation in which the Federal Government has to adopt supervisory role and give directions to the Province in which the Federal law is being applied.

(1) Equity---

----Definition---"Law" and "equity"---Distinction---Equity is merged in the law in Pakistan but the principles are recognized and relief can be granted or refused on the basis of such principles.,

There is difference between law and equity as law is based upon set rules which may not be attracted when justice is done on the basis of equity. Equity is defined as justice administered according to fairness as contrasted with the strictly formulated rules of common law. In Pakistan equity is merged in the law but the principles are recognised and relief can be granted or not on the basis of such principles.

Black's Law Dictionary ref.

(m) Constitution of Pakistan (1973)---

----Arts. 184(3) & 199---Constitutional petition---Jurisdiction of Supreme Court and High Court---Scope---Petitioner who seeks equity must come to the Court with clean hands---Conduct of the petitioner is to be taken into consideration and if he has suppressed any material fact from the Court or has come to the Court with unclean hands, then relief under the Constitutional jurisdiction can be denied to him---Making such statement by petitioner which is factually incorrect and so proved as borne out from the record, cannot be approbated.

????????? Jurisdiction of the Supreme Court under Article 184(3) of the Constitution of Pakistan is akin to and co-related with the jurisdiction of the High Court under Article 199 where under relief is granted or not in the form of writs. One very famous maxim of equity is that petitioner who seeks equity must come to the Court with clean hands. Conduct of the petitioner is to be taken into consideration and if he has suppressed any material fact from the Court or has come to the Court with unclean hands, then relief under the Constitutional jurisdiction can be denied to him.

Making such statement which is factually incorrect and so proved as borne out from the record cannot be approbated.

Manzoor Hussain v. Zulfiqar Ali 1983 SCMR 137; Abdul Hafeez v. Board of Intermediate and Secondary Education 1983 SCMR 566; Muhammad Sharif v. Mst. Zubaida Begum 1983 SCMR 1197; Muhammad Ashraf Qadri v. Principal, King Edward Medical College, Lahore PLD 1982 SC 131 and Abdul Ghani v. Abdul Ghafoor 1968 SCMR 1378 ref.

(n) Extra judicial killing---

---- Meaning.

"Extra judicial killing" means a killing which has no sanction or permission under the law or which cannot be covered or defended under any provision of law.

(o) Custodial killing--

----Meaning---Burden of proof.

"Custodial killing" means killing of a person who is* in custody of investigating agency. For that burden is upon the investigating agency to explain as to how that person, who was in their custody, met his death and whether that death was natural or unnatural and in what circumstances it had come about.

Custodial killings are to be explained satisfactorily as is required under the law.

(p) Extra judicial killing---

---- Killing in encounter with police or law enforcing agencies ---Justification--Such Agency has to show that the killing had come about during exercise of right of private defence by that Agency which was in fact first attacked by the deceased and the Court has to give finding whether the killing was justified.

(q) Administration of justice---

---- Law to be allowed to take its normal course---Forums where cases are pending are to be allowed to decide them and other forums provided under the law for hearing of appeal are to be allowed to be approached as laid down and specifically provided in that law.

(r) Custodial killing---

---- If a person is taken into custody then he is bound to be dealt with strictly according to law and is to be punished only when the case is proved against him---Such person cannot be allowed to be killed by any person while he is in custody and if this is done then that clearly shows that there is no writ of law but law of jungle.

(s) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution of Pakistan---Ground---Validity---If both the Provincial Government and the Federal Government dealing with a situation where there was large scale killings and persons in custody were allegedly being killed by unknown persons in a Province and material on record beyond doubt connected the Federal Government and the Prime Minister with the handling of law and order situation then it could be said that the ground was available to the President to come to the conclusion that a situation had arisen in which the Government of the Federation could not be run in accordance with the provisions of the Constitution and the Constitutional machinery had failed.

(t) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Such power of the President was to be exercised by him in his discretion where, in his opinion, a situation had arisen in which the Government of the Federation could not be carried on in accordance with the provisions of the Constitution---President, therefore, had to be objective and must have material to form his opinion in order to take the action as was contemplated under Art.58(2)(b) of the Constitution.

(u) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Power of dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Nature---Availability of material in support of the grounds---Law and order situation could be one of the many grounds which could be collectively and jointly considered by the President to form opinion objectively that the situation was such that the Government of the Federation could not be carried on according to the provisions of the Constitution.

While exercising power under Article 58(2)(b) of the Constitution, discretion of the President was not absolute but was qualified one and he had to act on the material in support of the grounds and then form opinion in objective manner.

The power given to the President under Article 58(2)(b) was the power which is to be exercised by him in his discretion. No doubt the President has to form his opinion objectively which was different from subjective satisfaction and the discretion was not absolute but is qualified one, but the said provision did not say that the President had to act as a Court of law and had to form opinion on the same lines as the Courts do and give adjudication on issues of facts and laws. There is difference between the exercise of discretion by the President as provided in the Constitution and the Court of law where documents are to be produced and admitted in evidence after stringent judicial scrutiny.

What was important in the context of dissolution of National Assembly by the President under Article 58(2)(b) of the Constitution was availability of material in support of the grounds and law and order. situation could be one of many grounds which could be collectively and jointly considered by the President to form opinion objectively that the situation was such that the Government of the Federation could not be carried on according to the provisions of the Constitution. This power was given to the President in the Constitution and not only that but it was to be used by him and this power was to be exercised by him in his discretion for which his objective assessment of the situation was required but he could not be equated with a Court of Law but only it was expected from him that he would act as per rules of prudence because he was exercising a very important power which had been conferred upon him by the Constitution and the discretion exercisable by .him was not absolute but was deemed to be qualified one and was circumscribed by the object of the law that conferred it.

Ahmad Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646 ref

(v) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997))---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---If some documents on the. same subject of one of the grounds of dissolution were produced subsequent to the date of dissolution, such documents could be used as corroboratory material. and there was nothing wrong with relying upon such documents which only confirmed the fact which was already in the knowledge of-the President.

???? State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157 and Tarapada and others v. The State of West Bengal AIR 1951 SC 174 ref.

(w) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President under Art.58(2)(b) of the Constitution--Grounds---Validity---Extra judicial killings---President had considered sufficient material on the subject and more than adequate material had been produced in the Court which showed that there were killings going on in Karachi and Sindh to such an extent that the people started feeling unsafe and unsecured and both the Federal and Provincial Government of Sindh failed to control the situation---President, in consequence, held, was justified in using that ground as the ground for dissolution of National Assembly.

(x) Civil Procedure Code (V of 1908)---

----0. VIII, R.1---Expunction of words from written statement---Respondent in his written statement had remarked about petitioner, who is a lady and remained Prime Minister of Pakistan twice to the effect that "it is strange that the petitioner who likes to portray herself as the daughter of the East and the darling of the West "---Objection of the petitioner was to the word "darling" ---Validity--Held, use of word "darling" should have been avoided particularly when the reference was in respect of the petitioner who was not only a lady but had remained Prime Minister of the country twice---Supreme Court directed that words "darling of the West" be deleted from the written statement of the respondent.

(y) Constitution of Pakistan (1973)--- ,

-- -Arts. 2, 2A & 227---Provisions of Arts. 2, 2A & 227 of the Constitution of Pakistan have given Islamic character to the Constitution by fully securing the independence of Judiciary and by providing that all existing laws should be brought in conformity with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 ref.

(z) Constitution of Pakistan (1973)---

----Arts. 177 & 193---Appointment of Judges of Supreme Court and High Courts---Independence of Judiciary---Appointments of Judges and the manner in which such appointments are made have close nexus with the independence of Judiciary.

Al-Jeliad Trust v. Federation of Pakistan PLD 1996 SC 324 ref.

(aa) Constitution of Pakistan (1973)---

----Arts. 177 & 193---Appointment of Supreme Court and High Court Judges--Procedure---Essentials---Word "consultation" occurring in Arts. 177 & 193 of the Constitution---Connotation.

The word "consultation" occurring in Articles 173 and 193 of the Constitution is defined as effective, meaningful, purposive, consensus-oriented, leaving no room for complaint of arbitrariness or unfair play. Recommendations made by the Chief Justice of the High Court and the Chief Justice of Pakistan in respect of appointments of Judges in the High Courts are to be accepted by the President/Executive in the absence of very sound reasons to be recorded. Acting Chief Justices are not consults within the Constitutional scheme. Ad hoc Judges can be appointed in the Supreme Court only after the sanctioned strength is exhausted. Vacancies are to be filled ordinarily within 30 days and in extraordinary circumstances within 90 days. Senior-most Judge in the High Court has legitimate expectancy to become Chief Justice and Additional Judges in the High Courts have legitimate expectancy to be made permanent Judges. Transfer of a Judge of the High Court without his consent and induction in the Federal Shariat Court is violative of Article 209. Ten years' active practice as Advocate of the High Court is mandatory for a member of Bar for appointment as a Judge in the High Court as against enrolment simpliciter. Judge of the Supreme Court may not be sent as Acting Chief Justice of the High Court.

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 quoted.

(bb) Constitution of Pakistan (1973)--

----Art. 189---Decision of Supreme Court---Binding nature---Short order of the apex Court, when it is speaking order particularly if the same contains specific directions, is to be acted upon without waiting for detailed reasons.

(cc) Constitution of Pakistan (1973)---

----Art. 63(1)(g)---Fair comment on the judgment of Supreme Court in Parliament---Extent---Intention of the maker of speech in the Parliament can be gathered from the tenor of the speech and also from the subsequent conduct.

No doubt in the Parliament fair comment can be made on the judgment of the apex Court but that comment is to be made in good faith with bona fide intention and is to be made in the language which is temperate and manner which is befitting to the member of the Parliament. Article 63(1)(g) envisages that a person shall be disqualified from being elected or chosen as member of the Parliament if he is propagating any opinion which is prejudicial to the integrity or independence of the Judiciary of Pakistan or which defames or brings into ridicule the Judiciary or Armed Forces of Pakistan. Of course intention of the maker can be gathered from the tenor of the speech and also from the subsequent conduct.

(dd) Fact--

----Proof---Newspaper cuttings---Facts given in newspapers having not been denied, would be considered as undisputed facts.

(ee) Constitution of Pakistan (1973)---

----Arts. 177, 193 & 48(1)---Appointment of Supreme Court and High Court Judges---President to act on advice---Advice of the Cabinet or the Prime Minister under Art.48(1) of the Constitution is attracted to the appointments of Judges as contemplated under Arts.177 & 193 of the Constitution which is further qualified by and subject to ratio decidendi contained in Supreme Court judgment in AI-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324.

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 and AlJehad Trust v. Federation of Pakistan PLD 1997 SC 84 quoted.

(ff) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President under Art.58(2)(b) of the Constitution--Ground---Validity---Open defiance and non-implementation of the judgment of the Supreme Court by Prime Minister indicating violation of Arts.2A & 190 0: the Constitution and introducing Bill in the National Assembly with mala fide intention of scaring and harassing the Supreme Court Judges in order to take revenge from them on account of judgment in the case of appointment of Judge; which the Government did not want to implement and thus deliberately and intentionally ridiculed the Judiciary---President, in circumstances, was justified in taking action under Art.58(2)(b) on the ground of such steps by Prime Minister as she had violated her oath in which it was stated that she would discharge her duties and perform her functions honestly to the best of her ability faithfully in accordance with the Constitution of Pakistan and law.

Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84 ref.

(gg) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President under Art. 58(2)(b) of the Constitution--Ground---Validity---Government failed to separate Judiciary from the Executive in violation of Art. 175(3) of the Constitution and the deadline of such separation was fixed by the Supreme Court within which complete separation had not taken place---Federal Government was party to the proceedings in the Supreme Court and failed to persuade the Provincial Governments to develop consensus among themselves, with regard to sentence which should be allowed to be imposed by the Executive Magistrates, in respect of cases triable under the Minor Acts and on the other hand Federal Government had promulgated an Ordinance which was contrary to the spirit of the judgment of the Supreme Court---Dissolution of National Assembly and dismissal of Prime Minister and Cabinet under Art.58(2)(b) of the Constitution by the President was upheld by Supreme Court in circumstances.

(hh) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before .its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President under Art.58(2)(b) of the Constitution--Ground---Validity---Telephone tapping and eavesdropping techniques were adopted in respect of Judges of the Supreme Court, leaders of political parties and high ranking military and civil officials under the order of the Prime Minister and transcripts of such telephone conversations were being sent directly to Prime Minister for perusal---President in circumstances was justified in taking action under Art.58(2)(b) of the Constitution on the ground of such steps taken by the Prime Minister.

(ii) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Corruption, nepotism and violation of rules in administration of the affairs of the Government and its various bodies, authorities, and corporations, which was done in such a manner that orderly functioning of Government in accordance with the provisions of the Constitution and law became impossible and in some cases national security was challenged--Violation of rules and regulations in respect of corruption and nepotism had been carried out on such a widespread, pervasive and systematic basis that such charges could validly form basis for action under Art.58(2)(b) of the Constitution.

Government of Sindh v. Sharaf Faridi and others PLD 1994 SC 105 distinguished.

(jj) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Innumerable appointments, transfers and postings of the Government servants made at the instance of members of National Assembly in violation of law declared by the Supreme Court that allocation of quotas to M.N.As. and M.P.As. for recommendation to various posts was offensive to the Constitution and the law and that all appointments were to be made on merits honestly and objectively and in the public interest--President, in circumstances, was justified in taking action under Art.58(2)(b) of the Constitution on the ground of such steps taken by the Government.

Munawar Khan v. Niaz Muhammad and others 1993 SCMR 1287 ref.

(kk) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Taking up in the Cabinet a Minister against whom criminal cases were pending, which the Interior Minister had refused to withdraw---Such ground alone may not be sufficient to invoke Art.58(2)(b) of the Constitution to dismiss the Government and dissolve the National Assembly on the ground that a situation had arisen in which the Government of the Federation could not be carried on in accordance with the provisions of the Constitution and an appeal to electorate was necessary but President could consider same in conjunction with the material produced on other grounds to arrive at a general finding that a situation had arisen in which the Government of the Federation could not be carried on in accordance with the provisions of the Constitution.

(11) Constitution of Pakistan (1973)---

----Art. 184(1)---Original jurisdiction of Supreme Court---Scope---Supreme Court shall, to the exclusion of every other Court, have original jurisdiction in any dispute between any two or more Governments.

(mm) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Interpretation, scope and object of Art.58(2)(b), Constitution of Pakistan---Expressions "opinion" and "Government of the Federation cannot be carried on" occurring in Art.58(2)(b)---Connotation---Words "opinion" and "satisfaction"---Distinction---Formation of opinion and exercise of discretion by the President---Essentials---Judicial review---Principles.

Constitution is the supreme law of the land to which all laws are subordinate. Constitution is an instrument by which Government can be controlled. The provisions in the Constitution are to be construed in such a way which promotes harmony between different provisions and should not render any particular provision to be redundant as the intention is that the Constitution should be workable to ensure survival of the system which is enunciated therein for the governance of the country. Effect should be given to every part and every word of the Constitution. Hence, as a general rule, the Courts should avoid a construction which renders any provision meaningless or inoperative and must lean in favour of a construction which will render every word operative rather than one which makes some words idle and nugatory.

While interpreting fundamental rights, the approach of the Court should be dynamic, progressive and liberal, keeping in view ideals of the people, socioeconomic and politico-cultural values, which in Pakistan are enshrined in the Objectives Resolution so as to extend the benefit of the same to the maximum possible.

Approach of the Court while interpreting a Constitutional provision has to be dynamic, progressive and oriented with the desire to meet the situation, which has arisen, effectively. Court's efforts should be to construe the provision broadly, so that it may be able to meet the requirement of ever-changing society. General words cannot be construed in isolation but the same are to be construed in the context in which they are employed.

The Constitution is a living organism and has to be interpreted to keep alive the traditions of the past blended in the happening of the present and keeping an eye on the future. Constitution is the symbol of statehood keeping united people of different races, diverse cultural, social, economic and historical traditions. It provides a method of legitimacy to the Government. It is the power behind the organs and institutions created by it. Constitution must be interpreted keeping in view the entire canvass of national fabric be it political, social, economic or religious.

Article 58(2)(b) of the Constitution empowers the Executive head to destroy the Legislature and to remove the chosen representatives. It is an exceptional power provided for an exceptional situation and must receive the narrowest interpretation.

What is to be seen is the language used in Article 58(2)(b) which provides that the President may dissolve the National Assembly in his discretion where, in his opinion, a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. It is manifest that in the language used in this provision, there is no mention of total breakdown of Constitutional machinery or a dead-lock or stalemate.

Stalemate and dead-lock mean more or less same thing, while breakdown can be on account of stalemate or dead-lock, and stalemate and deadlock can include or can occur on account of breakdown as well. Hence meaning of these words are interchangeable. The Court has to see whether there is enough material in support of the grounds for dissolution and the President was right in his opinion and has exercised his discretion justifiably and in that exercise the President is not to be equated with Court of law but it can be expected from him that he would act within the rules of prudence and fairplay.

Article 58(2)(b) was inserted in the Constitution on I1-11-1985 by the Constitution (Eighth Amendment) Act, 1985. The background of this amendment was that President wanted to strike balance between the powers of the President and the Prime Minister, hence some extra powers were given to the President to be used by him in his own discretion including the above mentioned provision.

Article 58(2)(b) was inserted in the Constitution on 11-11-1985 which envisages that the President may also dissolve the - National Assembly in his discretion where in his opinion a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

Article 58(2)(b) provides a remedial measure which takes care of situation in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. The remedy is that the President can dismiss the Government of the Prime Minister and dissolve the National Assembly and hold election within 90 days. In such circumstances, against the dissolution of the National Assembly, appeal is heard by the people who can cast their votes and bring back the same Government and the same National Assembly or not and elect other members, who can bring about or set up new Government. All this is done within 90 days. Now the question arises as to who is going to decide whether such situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. This is to be decided by the President whose constitutional role and supervisory powers have been increased and improved by the Eighth Amendment. As President, he is consulted in Governmental affairs and the Prime Minister is supposed to apprise him of all the legislative measures which are proposed to be taken by the Government. It is the duty of the Prime Minister under Article 46 to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation. In Article 58(2) (b) the words stalemate, dead-lock or complete breakdown of constitutional machinery are not mentioned and what is mentioned in very clear language is the fact that the situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution.

The scope of Article 58(2)(b) can be understood more clearly only after one traces the historical background of this provision.

In Article 58(2)(b), Constitution of Pakistan (1973) two words used are very pivotal in nature which purport to define the scope of this provision and the powers of the President in that respect. It is apparent that action can be taken under this provision by the President in his discretion for which he has to form "opinion" which is at lesser pedestal than "satisfaction". One can form opinion without touch of finality as opinion lacks the element of absolutism and can always be . differentiated from satisfaction which has a touch of finality containing the element of absolutism. In other words it can be said that opinion has lesser responsibility than satisfaction from the point of view of burden of proof. For satisfaction proof is required but for opinion some thing lesser than proof is required. For example, after seeing the clouds one may form the opinion that it may rain, but this may not come true as it was just an opinion without a touch of finality. On the other hand after seeing a wet road from a window one can say that it has rained today. Satisfaction has touch of finality for which proof has been considered. On this line of reasoning it can be said that for opinion, evidence may not be conclusive, definitive and overwhelming. The President has to form opinion on the basis of material which may include knowledge of official transactions with which he has some nexus and the Court must not substitute its own opinion with the opinion of the President, nor can the Court sit in appeal on the opinion of the President. In such circumstances opinion of the Court differs from the opinion of the President because in forming the opinion the Court has to examine the evidence and some times has to record the evidence including examination-in-chief, cross-examination and reexamination as happens in the proceedings before the Court of law for which proper procedure is prescribed.

'Satisfaction' is by no means a term of art and appears to have been used in its ordinary dictionary sense. 'Satisfaction' is the existence of a state of mental persuasion much higher than a mere opinion and when used in the context of judicial proceedings, has to be arrived at in compliance with the prescribed statutory provision and other legal requirements. Far from being a subjectively or capriciously arrived at conclusion, it presumes observance of certain well-settled judicial principles and is a firm state of mind admitting of no doubt or indecision or oscillation. To be 'satisfied' with a state of things is to be honestly convinced in one's own mind. Apart from the 'legal satisfaction', which is a term of art and connotes discharge of a claim, debt or legal demand, to satisfy in the ordinary sense is to convince. Satisfactory evidence is sufficient evidence meaning an amount of proof which ordinarily satisfies an unprejudiced mind beyond a reasonable doubt. 'Satisfy' is synonymous with, 'convince beyond a reasonable doubt' and 'satisfaction' is a state of mind, which connotes a sense of certainty, and conviction or release from suspense, doubt or uncertainty. 'To satisfy' means to furnish with sufficient proof or information or to assure or set free from doubt or uncertainty to convince.

It is in the light of the legal position stated above that one has to consider as to how the President is supposed to form his opinion for taking action contemplated under Article 58(2)(b) which stands at lesser pedestal than satisfaction. Whereas the opinion of the President is not legal opinion formed by the Court, hence the President cannot be equated with the Court of law so far the degree of proof is concerned in forming his opinion. It is in this context that the material available before the President for forming such opinion is to be considered whether it was sufficient or not to help him to form such opinion.

The President can dismiss the Government and dissolve the National Assembly in his discretion only when there is complete breakdown of constitutional machinery.

Action of the President under Article 58(2)(b) was open to question by the Court and was not beyond their jurisdiction. The Court could question the action of the President in dissolving the National Assembly to find out whether it was based on facts or not. "Discretion" and formation of "opinion" had to be based on facts and reasons which are objective realities. The discretion can be exercised by the President when machinery of the Government has broken down completely and its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution. Discretion conferred by Article 58(2)(b) on the President cannot, therefore, be regarded as absolute one but is to be deemed as qualified one in the sense that it is circumscribed by the object of law that confers it.

The discretion of the President is not absolute but is to be deemed as qualified one and is circumscribed by the object of law that confers it. The Court can go into the question whether the discretion is exercised justifiably or not and whether there is material in support of the grounds. 4n other words discretion is put in strait-jacket and is made open to judicial review. Emphasis is on the fact that exercise of discretion to dissolve the National Assembly is closely co-related with appeal to the electorate which is to be done within 90 days as provided under Article 48(5) of the Constitution.

Discretion of the President is not absolute but is deemed to be qualified one and is circumscribed by the object of law that has conferred it. 'Further, opinion can be formed objectively on the basis of material which must have nexus with the grounds of the order of dissolution.

Article 58(2)(b) though added by the Eighth Amendment is integral part of the Constitution and could be removed or repealed by the Parliament according to the procedure prescribed in the Constitution. Apart from that, in each case of dissolution of the Assembly by the President and dismissal of the Government of the Prime Minister, the discretion is not absolute but is qualified and the President has to be objective in assessment of the situation and everything depends upon the material which is produced in support of the grounds.

The expression 'cannot be carried on' sandwiched as it is between 'Federal Government' and ' in accordance with the provisions of the Constitution', acquires a very potent, a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of the progress, the shade of the, quality or the degree of the performance or the quantum of the achievement. It concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution. The historical perspective in which such a provision found a place in the Constitution reinforces this interpretation.

It is an extreme power to be exercised where there is an actual or imminent breakdown of the constitutional machinery as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the

Constitution creating the impression that the country is governed not so much by the Constitution but by the methods extra-constitutional.

The expression 'the Government of Federation cannot be carried on in accordance with the provisions of the Constitution' in Article 58(2)(b) contemplates a situation where the affairs of the Government are not capable of being run in accordance with the provisions of the Constitution either on account of persistent, deliberate and continued violation of various provisions of the Constitution by the Government in power, or on account of some defect in the structure of the Government, its functioning in accordance with the provisions of the Constitution is rendered impossible. The use of expression 'cannot be carried on' necessarily imports an element of impossibility and disability and refers to a irretrievable and irreversible situation. An unintentional and bona fide omission to follow a particular provision of the Constitution, not resulting in the breakdown of Government machinery or creating a situation of a stalemate or dead-lock in the working of the Government, will not be covered in the situations contemplated under Article 58(2)(b) of the Constitution.

Even otherwise this is a remedial provision in the Constitution which prevents the country from plunging into the disaster as was witnessed in 1977 and if the President is of the opinion that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution, then this provision can be invoked because this is a much better provision to prevent Martial Law. After the dismissal of the Government, remedy of elections is available, and such elections can be held within 90 days in which the people have to return their verdict on the question of dissolution of the Assembly and dismissal of the Government. The order of dissolution is also subject to judicial review of the Court.

Now if the language used in Article 58(2)(b) is to be construed liberally not in favour of the President but against him who is supposed to exercise his discretion as allowed by the Constitution, even then in every situation in which it is not possible for the Government of the Federation to be carried on in accordance with the provisions of the Constitution, there will be a stalemate, dead-lock and breakdown of the constitutional mechanism which may be not on the same lines and not on the same scale and not with same gravity and not of the same magnitude as in 1977 which warranted imposition of Martial Law. For example the Supreme Court has rendered a judgment giving interpretation of Articles of the Constitution relating to appointment of Judges in the superior Courts and it is held that the President has to act on the advice of the Prime Minister in respect of appointments of Judges in the superior Courts subject to the judgment of the Supreme Court and if the Prime Minister refuses to comply with the judgment, then the situation can be called a dead-lock because the Prime Minister, by not complying with the judgment, also violates Article 190 of the Constitution which envisages that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. The Prime Minister also violates his/her oath of office which is to the effect that "I will discharge my duties and perform my functions, honestly, to the best of my ability, faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan and the law ??That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan". If the Prime Minister ridicules the Judiciary, then there is violation of Article 63(1)(g) which does not allow propagating any opinion affecting the integrity or independence of the Judiciary of Pakistan which amounts to bringing into ridicule the Judiciary or the Armed Forces of Pakistan. If such thing is done by any member of the Parliament, then such member could be disqualified from being elected as member of the Parliament as is contemplated under Article 63(1) of the Constitution. Other examples are telephone tapping, extra judicial killings and so on, which can give rise to the impression that the country is governed not so much by the Constitution but the methods extra-constitutional. In every case what is to be seen is the material in support of the grounds mentioned in the order of dissolution.

Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 16.6; Kh. Ahmad Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646; Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473; Saeed Hassan v. Pyar Ali PLD 1976 SC 6; Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1976 SC 57; Federation of Pakistan v. Maulvi Tamizuddin Khan PLD 1955 FC 240; Begum Nusrat Bhutto v. Chief of Army Staff and others PLD 1977 SC 657; Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84; Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324; Federation of Pakistan v. Aftab Ahmad Khan Sherpao PLD 1992 SC 723; Reference No.l of 1957 PLD 1957 SC 219; State v. Zia-ur-Rehman PLD 1973 SC 49; Federation of Pakistan v. Saeed Ahmad Khan PLD 1974 SC 151 and Khalid Malik v. Federation of Pakistan PLD 1991 Kar. 1 ref.

(nn) Constitution of Pakistan (1973)---

----Arts. 177 & 193---Appointment of Supreme Court and High Court Judges--Principles---Word "consultation" used in Arts. 177 & 193---Meaning.

The word "consultation" used in Articles 177 and 193 of the Constitution means consultation which is effective, meaningful, purposive, consensus-oriented, leaving no room for complaint of arbitrariness or unfair play. The opinion of the Chief Justice of Pakistan and the Chief Justice of the High Court as to -the fitness and suitability of a candidate for judgeship is entitled to be accepted in the absence of very sound reasons to be recorded by the President/Executive.

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 quoted.

(oo) Constitution of Pakistan (1973)---

----Arts. 177, 193, 197 & 48---Appointment of Supreme Court and High Court Judges--- "Consultation" occurring in Arts.177 & 193---Definition---Advice of the Prime Minister to the President as contemplated under Art.48 of the Constitution is binding on the President subject to the Judgment of Supreme Court in Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324.

The Constitution of 1973 contemplated Parliamentary form of Government in which the Prime Minister is the Head of the Government and advice of the Prime Minister, as contemplated under Article 48, is binding on the President.

The advice of the Prime Minister to the President as contemplated under Article 48 of the Constitution is binding on the President in respect of appointment of Judges in the superior Courts as provided under Articles 177, 193 and 197 subject to the judgment in the

case of appointment of Judges in which definition of the word "consultation" is given by the Court.

Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84 ref.

(pp) Interpretation of Constitution--

----Construction of provisions of Constitution---Principles.

The Constitution is a living organism and has to be interpreted to keep alive the traditions of the past blended in the happening of the present and keeping an eye on the future. Constitution is the symbol of statehood keeping united people of different races, diverse cultural, social, economic and historical traditions. It provides a method of legitimacy to the Government. It is the power behind the organs and institutions created by it. Constitution must be interpreted keeping in view the entire canvass of national fabric be it political, social, economic or religious.

Constitution is the supreme law of the land to which all laws are subordinate. Constitution is an instrument by which Government can be controlled. The provisions in the Constitution are to be construed in such a way which promotes harmony between different provisions and should not render any particular provision to be redundant as the intention is that the Constitution should be workable to ensure survival of the system which is enunciated therein for the governance of the country. Effect should be given to every part and every word of the Constitution. Hence, as a general rule, the Courts should avoid a construction which renders any provision meaningless or inoperative and must lean in favour of a construction which will render every word operative rather than one which may make some words idle and nugatory.

While interpreting fundamental rights, the approach of the Court should be dynamic, progressive and liberal keeping in view ideals of the people, socioeconomic and politico-cultural values which in Pakistan are enshrined in the Objectives Resolution so as to extend the benefit of the same to the maximum possible.

Approach of the Court while interpreting a Constitutional provision has to be dynamic, progressive and oriented with the desire to meet the situation, which has arisen, effectively. Court's efforts should be to construe the provision broadly, so that it may be able to meet the requirement of ever changing society. General words cannot be construed in isolation but the same are to be construed in the context in which they are employed.

Special Reference No. l of 1957 PLD 1957 SC 219; State v. Zia-urRehman PLD 1973 SC 49; Federation of Pakistan v. Saeed Ahmad Khan PLD 1974 SC 151; Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 and Khalid Malik v. Federation of Pakistan PLD 1991 Kar. l ref.

(qq) Words and phrases---

?????????? .....????? Stalemate" and "dead-lock" ---Meanings.

(rr) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly, dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Prime Minister as Head of the Government has to see that the Government of the Federation is carried on in accordance with the provisions of the Constitution and if this is not done, then it amounts to failure of constitutional machinery creating dead-lock and stalemate.

(ss) Constitution of Pakistan (1973)---

----Arts. 184(3), 17(2) & 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minster and the Cabinet by the President under Art.58(2)(b) of the Constitution---Constitutional petition under Art. 184(3) of the Constitution---Maintainability---Factors to be considered---Petitioner claimed infringement of her fundamental right guaranteed under Art.17 of the Constitution---Scope of Art. 17(2), extends from right to form or be a member of a political party which means that functioning is implicit in the formation of party---Right to form political party contemplates right of that political party to contest elections and-right to form the Government and to complete its normal tenure and if removed earlier it could constitute infringement of Art. 17(2)--Petition directly filed in the Supreme Court under Art. 184(3) of the Constitution was thus maintainable---Petition was additionally maintainable for the reason that dissolution of National Assembly under Art.58(2)(b) of the Constitution and dismissal of the Government was to be followed immediately with general elections to be held within 90 days as contemplated under Art.48(5) of the Constitution and in-between the two events the time left was only 90 days in which the question of validity of order of dissolution was to be decided by the competent forum for which direct petition in the Supreme Court was more ideal, convenient and efficacious.

Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416; Benazir Bhutto v. Federation of Pakistan PLD 1989 SC 66 and Ahmad Tariq Rahim v. Federation of Pakistan and others PLD 1992 SC 646 ref.

(tt) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Supreme Court upheld the action of the President for the reasons that sufficient material had been produced in support of the grounds in the order of dissolution.

Per Saleem Akhtar J.; Fazal Hahi Khan. J. aereeing--

(uu) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Scope and application of Art.58(2)(b) of the Constitution--Every breach or stray violation may not attract Art.58(2)(b) of the Constitution, but whether the breach and its effect had nexus with Art.58(2)(b), depended upon the nature of breach and the circumstances in which it had been caused.

Article 58(2)(b) of the Constitution of Pakistan no doubt empowers the President to take action, but only where it is shown that 'a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution'.

The President does not possess unfettered or unlimited power under Article 58(2)(b). It is restricted and circumscribed by preconditions. First he has to form opinion objectively on the material before him having nexus with the preconditions laid down by Article 58(2)(b) sufficient to satisfy any prudent man of normal intelligence that the Government cannot be carried on in accordance with the provisions of the Constitution and appeal to electorate is necessary. Thereafter, the President may exercise discretion to dissolve the Assembly. The situation which arises and leads to formation of opinion that the Government cannot be carried on in accordance with the Constitution may not be restricted to any one solitary instance of war-like conditions. There may be various and many situations. It is not possible to give an exhaustive list. Human nature, conduct, tactics, strategy, mechanism and political manoeuvring always change, fluctuate and create unpredictable situations to which Article 58(2)(b) may be applied.

Article 58(2)(b) requires the President first to form his opinion that the Government cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. This Article does not provide whether the basis for forming such opinion should be evidence as required in a Court of Law or material having nexus with the reasons mentioned in the Dissolution Order, sufficient to form an opinion. There should be sufficient material available to the President before forming the opinion. Proved evidence according to the Qanun-e-Shahadat or repealed Evidence Act to be the basis for forming opinion by the President is not required by the Court. It, therefore, does not require the standard of proof of evidence as required during a trial in a Court of Law. There should be material having nexus with Article 58(2)(b) sufficient to satisfy the President before forming the opinion. This does not mean that the material relied upon be vague, irrelevant, false, forged, concocted or which did not exist at the time of forming opinion. The material should be trustworUiy prima facie authentic relating to the incidents, events and happenings relied or referred on the basis of which a person of ordinary prudence, intellect and knowledge is able to form the same opinion.

Apart from the fact that Article 58(2)(b) of the Constitution of Pakistan can be used where there is a complete dead-lock and stalemate in observance of the provisions of the Constitution it can be invoked in circumstances where there exists constant, repeated and continued failure to observe the provisions of the Constitution to the extent that it creates an impression on a prudent man of ordinary intelligence that the Government of the Federation is not carried on in accordance with the provisions of the Constitution, but by extra-constitutional methods and devices.

A dead-lock can be caused due to non-observance or breach of the Constitution in such a manner* that the Government seems to be carried on in violation of the. provisions of the Constitution. However, every breach or stray violation may not attract Article 58(2)(b), but whether the breach and its effect have nexus with the said Article, depends upon the nature of breach and the circumstances in which it has been caused.

Stalemate or breakdown is the result of incidents, occurrences, causes, happenings, conduct and several other factors which may lead to it. Such causes and instances may be many and several but the limitation is that it may result in stalemate, breakdown and serious violations of the provisions of the Constitution adversely affecting the functioning of the Government according to the Constitution.

The first consideration, therefore, will be whether situation has arisen in which Government cannot be carried on in accordance with the provisions of the Constitution and law. Where a Government cannot be run in accordance with the provisions of the Constitution then it indicates the failure of the constitutional machinery. Such situation arises when the writ of the Government is not enforceable, a climate of uncertainty and diffidence has been created on different levels of administration, there is general flouting and disrespect to the organs and Departments of the State; the institutions, organs and authorities constituted under the Constitution and the law, flout of law, external aggression bringing the entire machinery of the Government at a standstill; internal disturbances, insurgency, revolt, rebellion or civil war and economic crises which may paralyse the life and administration. Another situation may cover it when the Legislature no longer reflects the wishes or views of the electorate and they are at variance. There is large scale civil disobedience movement in which Government servants and employees of corporations, companies, banks and authorities connected with the day to day administration of the State refuse to cooperate and subjects refuse to pay taxes. The majority ruling power refutes, violates or refuses to run the Government according to Constitution and law. The writ of Government is no longer respected and is not enforceable. These are some situations during which machinery of the Government cannot be run in accordance with the Constitution. No exhaustive list can be provided but it entirely depends on the circumstances, facts and events which may happen.

Muhammad Nawaz Sharif v. Federation of Pakistan and others PLD 1993 SC 473 affirmed.

Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 166; Ahmad Tariq Rahim's case PLD 1992 SC 626; Aftab Ahmad Khan Sherpao's case PLD 1992 SC 723; State of Rajasthan and others v. Union of India AIR 1977 SC 1361; Muhammad Nawaz Sharif v. Federation of Pakistan and others PLD 1993 SC 473 and Khalid Malik v. Federation of Pakistan PLD 1991 Kar. 1 ref.

J(vv) Qanun-e-Shahadat (10 of 1984)---

----Art. 164---Press clippings and newspaper reports---Admissibility as evidence---Factors.

In the present day media revolution, accessibility and investigative nature of reporting, unless the report is immediately contradicted or is palpably false and is contradicted by some similar contemporaneous reports, the Courts and Tribunals and persons, who are not required to form an opinion on the basis of strictly proved evidence as required by law of evidence, can rely upon such reports.

Press clippings, magazines, comments published in newspapers can be 'considered, accepted, examined and taken note of and not excluded from consideration.

Such documents could be considered without requiring strict proof as required by the Law of Evidence applicable to trial .of cases. The authentic and uncontradicted news items published in the newspapers or magazines of contemporaneous events can form basis for drawing inferences and can be accepted as material for forming opinion,

Muhammad Nawaz Sharif's case PLD 1993 SC 473 ref.

(ww) Constitution of Pakistan (1973)---

----Arts. 9, 14 & 25---Right to life---Inviolability of dignity of man---Equality before law---"Life"---Meanings---Extra judicial killings or custodial deaths, arrests and torture---Such acts by the State machinery violate Fundamental Rights under which a person is entitled to be treated according to law and equally before law---Human dignity being inviolable, the right to life could not be taken away except as provided by law, for there was no law to justify such an act perpetrated by the State machinery.

The Constitution guarantees Fundamental Rights, which are inviolable. Under Article 9 every person in Pakistan is guaranteed a "right to life" and he cannot be deprived of life and liberty except in accordance with law. Thus, it is a sacred right, which cannot be violated, discriminated or abused by any authority.

The word 'life' is very significant as it covers all facets of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.

The Constitutional Law in America provides an extensive and wide meaning to the word 'life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law.

Article 9 of the Constitution which guarantees life and liberty according to law is not to be construed in a restricted and pendantic manner. Life has a larger concept which includes the right of enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights.

Extra judicial killings or custodial deaths cannot be justified as valid, legal or proper. Explanation had been given by the Authorities that such persons were hardened criminals and were killed during encounters. Even hardened criminals have a right to be prosecuted and charges to be proved against them according to law. Who is to decide that a particular person under arrest is a terrorist or a hardened criminal. This is not the authority of the Executive or any Agency to decide it beforehand and start operation to kill him. It is the domain of the Court to decide the offence committed by 'a particular person and according to the law we are governed, a person alleged to have committed any crime shall be treated as innocent till the Court announces its verdict holding him guilty. This principle has been provided to safeguard the interest of the accused and also to protect the citizens from the highhandedness of the investigating/police authorities. When the agencies charged with the duty to protect the life and property of the citizens indulge in extra-judicial killings, then starts State terrorism in which the Police Authorities, the Rangers or any other agency is permitted by an executive order to execute, eliminate or kill a particular person. The crime becomes more heinous where persons are arrested under any charge, false or true, and then they are killed while in custody of the Police/Rangers. This law of jungle cannot be allowed to be perpetuated nor any civilized Government can be allowed to continue with it without any check. Such acts violate Article 9 of the Constitution which confers, protects and preserves life, liberty and property of the citizens. The Law of Nations does not allow to kill even an enemy soldier except in battle. So it is only in war that the persons who are fighting facing each other can be killed, but it does not permit the killing wholesale or en masse or even an individual if he is not in the battlefield. Even the prisoners of war are not allowed to be killed.

Such acts by the State machinery violate Fundamental Rights under which a person is entitled to be treated according to law and equally before law. The human dignity is inviolable and that the right to life cannot be taken away except as provided by law. There is no law to justify such an act perpetrated by the State machinery.

The object of guaranteeing Fundamental Rights and providing for their enforcement under Article 184(3) is intended to promote social, economic and cultural conditions, which promote life, liberty and dignity. The right to life, therefore, not only guarantees genuine freedom, but freedom from wants, illiteracy, ignorance, poverty and above all freedom from arbitrary restraint from authority. The right to life includes the right of personal security and safety, the right to have clean and lawful administration, the right to have honest and incorruptible actions by the authorities. All Government Authorities, civil, military or paramilitary are bound by the Constitution to enforce, respect and protect such rights and do not have the authority, power or right to destroy it, trample it or make a mockery of such right. All persons who are found responsible for such actions and violations must suffer prosecution and should be brought to book according to law. The right to life includes the right to live with respect, honour and dignity. Even a person, who violates any law, has the right to be treated and dealt with according to law. If a person is denied the

right to life, then all rights which emanate from being a living human being, also vanish. In a State where extra-judicial killings are made at the orders of the Government at the helm of affairs, it cannot be treated as constitutional, legal or civilized.

Such extra-judicial killings, seizure and search not only violate the right to life, but impinge on the dignity of man and privacy of home as conferred by Article 14 of the Constitution. Such actions also violate Article 25 as the victims being citizens of Pakistan cannot be discriminated and have to be treated according to law and given equal protection of law.

Shehla Zia v. WAPDA PLD 1994 SC 693 and Pakistan Law Commission v. Ministry of Works 1994 SCMR 1548 ref.

(xx) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Extra-judicial killings and custodial deaths?Evdience and instances of extra judicial killings and custodial deaths were so enormous that President was justified in forming the opinion after being satisfied that the Government could not be carried on according to the provisions of the Constitution.

(yy) Constitution of Pakistan (1973)---

----Art. 63---Ridiculing the Judiciary or judgment of Court -Effect

To ridicule the Judiciary in any manner exhibits the greatest disrespect to an Institution which is a pillar in the State management and is a constitutional organ with powers conferred on it particularly to preserve, protect and defend the Constitution. It also interprets the Constitution and the law and can declare a law void and actions taken by the Executive and in certain cases by the Legislature to be without jurisdiction and of no legal effect.

All the institutions of the State, be it Legislature, Executive or the Judiciary, deserve full respect and cannot be ridiculed publicly or privately.

A judgment cannot be publicly ridiculed nor can anybody under the garb of fair comment criticise a judgment to degrade the Judiciary and the Judges in the eye of public. Any person ridiculing the judgment, or Judiciary making disparaging remarks about the Judges and their conduct in Court could be hauled up for contempt of Court. However, the elected representatives of the Houses have more burden to share because under the Constitution Article 63 clearly provides that any person, if he propagates any opinion or acts in any manner prejudicial to the integrity or independence of the Judiciary of Pakistan, shall be disqualified from being elected, chosen as and from being a member of the Majlis-e-Shoora (Parliament). Any person who has ridiculed the Judiciary would be disqualified even from seeking election to any of the Houses or being a member of a House.

(zz) Constitution of Pakistan (1973)---

----Art. 204---Contempt of Court---Any person ridiculing the judgment, or Judiciary making disparaging remarks about the Judges and their conduct, could be hauled up for contempt of Court.

(aaa) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Grounds---Validity---Non-implementation of Supreme Court judgments and ridiculing the judgment, Judiciary and making disparaging remarks about the Judges and their conduct by the Prime Minister---Sufficient material on record was available with regard to Judiciary that the President, in order to save the violation of the Constitution and to save the damage which was being caused to the Judiciary as an institution, dissolved the National Assembly and dismissed the Government.

(bbb) Constitution of Pakistan (1973)---.

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---If the happenings of certain incidents or occurrence of a certain act in respect of grounds of dissolution is established and is in the knowledge of the President before the date of dissolution, then in respect of such incidents, documents and material can be obtained at a later stage which will not render the order of Dissolution by the President as illegal.

(ccc) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Grounds---Validity---Link was established between the Prime Minister and the illegal and unconstitutional act of tapping phones and eavesdropping of citizens, Judges of the superior Courts, leaders of political parties and high ranking military and civil officers---Tapping or eavesdropping of citizens to whatever class, group or status they may belong, was not only an offence under Telegraph Act but it also offended against Arts. 9 & 14 of the Constitution of Pakistan---Such ground alone, held, was sufficient to dissolve the National Assembly by the President under Art.58(2)(b) of the Constitution.

(ddd) Constitution of Pakistan (1973)---

----Arts. 14, 9 & 19---Interpretation and scope of Arts. 9 & 14 of the Constitution---Inviolability of dignity of man and security of a person--Concept---Telephone tapping and eavesdroppings mar the protection afforded and guaranteed to the right to life and infringe the secrecy and privacy of a man---"Privacy of home"---Connotation---Telephone tapping and eavesdroppings being unconstitutional, appropriate mode of its regulation was desired by the Supreme Court---Supreme Court, however, observed that so long proper law was not legislated in the field which may protect the violation of Constitutional rights, in future whenever any telephone is required to be tapped, intruded or eavesdropping exercise is to be carried on, it should be done with the prior permission of the Supreme Court or by a Commission constituted by the Supreme Court which shall examine each case on its marits---Permission if granted by the Supreme Court or the Commission as the case may be, shall not exceed a period of six weeks and shall be reviewed immediately on expiry of six weeks.

Article 14 of the Constitution of Pakistan guarantees to protect dignity of man and the privacy of home which shall be inviolable subject to law. This provision providing for the dignity of man as a Fundamental Right, is unparalleled in the Constitutions and hardly Constitutions of a few countries provide for it. Dignity of man is not only provided by Constitution of Pakistan, but according to history and belief under Islam great value has been attached to the dignity of man and the privacy of home. If a person intrudes into the privacy of any man, pries into the private life, it injures the dignity of man, it violates the privacy of home, it disturbs the peace and tranquillity of the family and above all it puts such person to serious danger of being blackmailed. Such acts are not permissible under law and if any occasion arises for such operation, then it can be only in cases of defence and national security.

Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. Here the Constitution guarantees against any attack on life or liberty of a person subject to law. The word 'life' is not restricted to animal life or vegetative life. It carries with it the right to live in a clean atmosphere, a right to live where all Fundamental Rights are guaranteed, a right to have rule of law, a right to have clean and incorruptible administration to govern the country and the right to have protection from encroachment on privacy and liberty. With this definition of the word 'life' one would not deter to state that telephone-tapping and eavesdropping mar the protection afforded and guaranteed to the right to life. It infringes the secrecy and privacy of a man which may ultimately be a source of danger and insecurity. In this way the liberty guaranteed to a person is also invaded, restricted and circumvented. Therefore, if this exercise is to be considered from any angle, be it constitutional, legal or moral, no justification can be afforded for such reprehensible acts by the officials or the persons at the helm of governance of the country. History is replete with incidents when on breach of such rights Governments have been toppled. Not too far is the incident of Watergate when the President of America for conducting and interfering with the telephones and communication system of the Opposition had to resign and he was thrown out of office.

It is unlawful to intercept, reveal the existence of and disclose or divulge the contents of, wire or oral communications, unless the interceptor has previously obtained an order of a Court permitting a wiretap or other interception of the communication, or one party has consented to the interception.

Constitution in clear terms guarantees that the dignity of man and subject to law, the privacy of home, shall be inviolable and further that no person shall be deprived of life or liberty save in accordance with law. One may on strict interpretation of the words "the privacy of home" say that such guarantee is restricted to privacy of home and not office or any other premises outside home. This would be a restricted, illogical and completely out of context interpretation. The Constitution is to be interpreted in a liberal and beneficial manner which may engulf and incorporate the spirit behind the Constitution and also the Fundamental Rights guaranteed by the Constitution. The dignity of man and privacy of home is inviolable, it does not mean that except in home, his privacy is vulnerable and can be interfered or violated. Home in literal sense will mean a place of abode--a place where a person enjoys personal freedom and feels secure. The emphasis is not on the boundaries of home but the person who enjoys the right wherever he may be. The term 'home' connotes meaning of privacy, security and non-interference by outsiders which a person enjoys. According to Ballentine's Law Dictionary, "in ancient law French, the word (home) also signified a man". It also defines as "sometimes including not only a place of abode, but also support and maintenance". Wider meaning should be given to the word 'home'. The term 'privacy of home' also symbolises the security and privacy of a nature which a person enjoys in his home. The term "privacy of home" cannot be restricted to the privacy in respect of home, the privacy within the four walls of the home. It refers to .the privacy, which is sacred and secure like the privacy a person enjoys in his home. Such privacy of home a person is entitled to enjoy wherever he lives or works, inside the premises or in open land. Even the privacy of a person cannot be intruded in public places.

The inviolability of privacy is directly linked with the dignity of man. If a man is to preserve his dignity, if he is to live with honour and reputation, his privacy, whether in home or outside the home has to be saved from invasion and protected from illegal intrusion. The right conferred under Article 14 is not to any premises, home or office, but to the person, the man/woman wherever he/she may be.

An unauthorized intrusion into a person's home and the disturbance caused to him thereby, is, as it were, the violation of a common law right of a man - an ultimate essential of ordered liberty, if not of the very concept of civilization.

Another aspect of the case in terms of the constitutional provision cannot be ignored that once any person's telephone is subjected to eavesdropping,, tapping, intrusion or interference of any kind, it interferes with the right of free speech and expression. Normally a person talking on telephone always presumes that his voice is heard only by the person at the other end of the telephone. The telephonic system itself presumes that except the speaker and the listener no one else can hear the talks from one end to the other. This ensures privacy and freedom of speech as a person in the presence of others may not be able to talk so freely or to express himself without any restriction or hesitation. Therefore, the tapping and eavesdropping of telephone also infringes Article 19 which guarantees that every citizen shall have the right to freedom of speech and expression subject to any reasonable restriction imposed by law in the interest of glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality or in, relation to contempt of Court, commission of or incitement to an offense.

No procedure has been laid down for regulating the tapping, taping or eavesdropping of private or official telephones. Mere S.R.Os., official directions, rules or orders of the President, Prime Minister, Ministers, or other members of the Executive cannot

permit or validate violation of the constitutional provisions. So long proper law is not legislated in this field which may protect the violation of constitutional rights, Supreme Court directed that in future whenever any telephone is required to be tapped, taped, intruded or eavesdropping exercise is to be carried on, it should be done with the prior permission of the Supreme Court or by a Commission constituted by the Supreme Court which shall examine each case on its merits. The permission if granted by the Supreme Court, or the Commission as the case tray be, shall not exceed a period of six weeks and shall be reviewed immediately on expiry of six weeks.

Tapping of telephones and eavesdropping of any person is reprehensible, immoral, illegal and unconstitutional act which the Authorities, finding that there is no clear provision to stop it, have indulged in such illegal activities. Constitution in clear terms gives guarantee against such violation. Therefore, such acts are unconstitutional and appropriate mode for its regulation should be legislated. Till such time it is duly regulated by any legislative act, Supreme Court would be justified to issue such direction to protect violation of Fundamental Rights.

Kh. Ahmed Tariq Rahim v. Federation of Paksitan PLD 1991 Lah. 78; Shehla Zia's case PLD 1994 SC 693; American Jurisprudence, 2nd Edn., Vo1.74; Ballentine's Law Dictionary; Charles Katz v. United States 389 US 347 = 19 L Ed: 2d. 576 = 88 S Ct 507; Olmstead v. United States 277 US 438, 457, 464, 466, 72 L Ed 944; 947, 950, 951, 48 S Ct 564, 66 ALR 376; Goldman v. United States, 316 US 129, 134-136, 86 L Ed. 1322, 1327, 1328, 62 S Ct 993; Warden v. Hayden 387 US 294, 304, 18 L Ed 2d 782, 790, 87 S Ct 1642; People's Union for Civil Liberties (PUCL) v. The Union of India and another (1996) 9 SCALE 318; Munn v. Illinois (1877) 94 US 113, 142 and Wolf v. Colorado (1949) 338 US 25 ref.

(gee) Interpretation of Constitution---

---- Fundamental Rights---Constitution is to be interpreted in a liberal and beneficial manner which may engulf and incorporate the spirit behind the Constitution and also the Fundamental Rights guaranteed by the Constitution.

(fff) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Extensive and widespread corruption, nepotism and violation of rules in the administration of affairs of the Government and its various bodies, Authorities and corporations by which orderly functioning of the Government in accordance with provisions of the Constitution and law had become impossible; public faith in the integrity and honesty of the Government had disappeared and members of the Government and ruling parties were either directly or indirectly involved in such corruption, nepotism and violation of rules---Held, there was sufficient material and the corruption was so rampant and widespread that an order of dissolution could be passed individually on this basis or collectively together with other substantial grounds.
Khalid Malik v. Federation of Pakistan PLD 1991 Kar. 1; Ahmad Tariq Rahim's case PLD 1992 SC 646 and Muhammad Nawaz Sharif v. Federation of Pakistan PLD 1993 SC 473 ref.

Ahmad Tariq Rahim's case PLD 1992 SC 646 distinguished.

(ggg) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Action of President under Art.58(2)(b) of the Constitution--Ingredients to be present---Material having nexus with Art.58(2)(b) of the Constitution to the satisfaction of the President on the basis of which opinion could be formed that an appeal to electorate was necessary had to be there---Not necessary that for each of the grounds of Art.58(2)(b) separate grounds and
materials was to be stated under each category, if the material was common and both the ingredients could be satisfied, requirement would be fulfilled.

Muhammad Nawaz Sharif v. Federation of Pakistan PLD 1993 SC 473 ref.

(hhh) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Grounds---Validity---Extra judicial killings, ridiculing Judiciary, corruption, bribery, withdrawal of money from Bait-ul-Maal and the Banks and similar instances which had been given showed that the people had lost faith in the services, the administration and in the impartiality and legality of the Assembly as well---Members of the Assembly were not required to remain mute spectators of violation of the Constitution and infraction of Fundamental Rights at a massive scale rather they had their duty to discharge as required by the Constitution---President, in circumstances, was justified in forming an opinion that an appeal to the electorate was necessary.

(iii) Words and phrases--

??????????? .....????? Home" and "privacy of home" ---Meaning elaborated.

Ballentine's Law Dictionary ref.

Per Irshad Hassan Khan, J.; Raia Afrasiab Khan and Munawar Ahmad Mirza, JJ. a2reeina-

(jjj) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Grounds---Material including newspaper clippings etc. relied upon by the President in dissolving the National Assembly was, of course, relevant and could be taken into consideration as admissible material on the basis of which a person of ordinary prudence would conclude that the matters and events narrated therein did occur but not a strict proof of the matters stated therein as is adjudicated in a regular trial.

(kkk) Constitution of Pakistan (1973)

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Interpretation, scope and application of Art.58(2)(b) of the Constitution---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---For exercising such powers by the President the requirement was not "satisfaction" of the President that situation had arisen in which the Government of Federation could not be carried on in accordance with the provisions of the Constitution and an appeal to the electorate was necessary but that of formation of "opinion" to the same effect---" Opinion" and "satisfaction" ---Connotation and distinction---Standard of proof in the form of material---Court was merely required to examine as to whether or not the President had exercised his power in accordance with the provisions of Art.58(2)(b) and that the action taken by him was bona fide and in doing so Court was not required to hold an enquiry with the charges levelled in the dissolution order, as if it was a Criminal Court.

For exercising power by the President under Article 58(2)(b) of the Constitution the requirement is not 'satisfaction' of the President that situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary but that of formation of 'opinion' to the same effect. The Framers of the Constitution deliberately chose a lesser word of 'opinion' instead of 'satisfaction'. For example, under sub-clause (b) of clause (1) of Article 199 of the Constitution, on the application of any person the High Court may issue an appropriate writ, if it is 'satisfied' that no other adequate remedy is provided by law. Similarly, under Articles 232 and 233 of the Constitution relating to proclamation of emergency on account of war, internal disturbances etc. and power to suspend fundamental rights etc. during emergency period, there is concept of Presidential satisfaction and not that of formation of opinion. where the President is so satisfied he can assume power of Provincial Government. Whereas under Article 58(2)(b), the requirement is not 'satisfaction' but formation of 'opinion' by the President. There is, thus, clear distinction as to the connotation of these two words. For formation of 'opinion' lesser burden of proof is required than that of 'satisfaction'. It is not to be based on overwhelming and conclusive evidence but on some material on the basis of which a reasonable man can form an opinion that the Government of the Federation cannot be run in accordance with the Constitution. The standard of proof in the form of material to support the charges cannot be the same as required for the proof of a criminal charge. On the other hand, 'satisfaction' is the existence of a state of mental persuasion much higher than a mere 'opinion' and when used in the context of judicial proceedings has to be arrived at in compliance with the prescribed statutory provisions.

The President can, therefore, exercise his power under Article 58(2)(b) of the Constitution if there is some material before him showing that the affairs of the Government of the Federation cannot be run in accordance with the Constitution. The words 'stalemate' or 'dead-lock' do not appear in the provisions of Article 58(2)(b). These concepts are to be read in the said Article in view of the process of judicial pronouncements.

Clearly, for formation of an opinion, the President can take note o! what the world says about State terrorism or other affairs of the Government. Of course, for forming opinion on the basis of such information he has to apply his independent mind. Contemporaneous acts can also be looked into by the President. He can also take judicial notice of press reports.

Press reports etc. can be relied upon, not as a strict proof of the matters stated therein as required by the law of evidence during a trial in a Court of law, but as a part of the material on the basis of which a person of ordinary prudence would conclude that the matters and the events narrated therein, did occur.

Court has, however, no concern with the quantity or sufficiency of the material nor can it sit in appeal on dissolution order passed by the President provided that the grounds stated therein have nexus with Article 58(2)(b) of the Constitution. The Court is merely required to examine as to whether or not the President has exercised his power in accordance with the provisions of Article 58(2)(b) and that the action taken by him is bona fide and in doing so the Court is not required to hold an enquiry into the charges levelled in the Dissolution Order, as if it was a criminal Court.

It is difficult to enumerate exhaustively the circumstances which may indicate the failure of the Constitutional machinery within the ambit of Article 58(2)(b). It. depends upon the facts and circumstances of each case. The principles laid down in Muhammad Nawaz Sharif's case still hold the field. These principles do not envisage dissolution of the National Assembly on ground of complete breakdown of the Constitutional machinery alone.

It is not correct to say that Article 58(2)(b) can be invoked only when there is a state of war in the country, life has completely paralysed and the conditions are such as were prevalent in 1977 which had brought the country to the brink of disaster necessitating Martial Law. Clearly, the President in his discretion may dissolve the National Assembly where he forms an opinion on the basis of material before him having direct nexus with the conditions laid down in Article 58(2)(b), that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. Once the evil is identified, remedial and corrective measures within the constitutional framework must follow. There is also no force in the contention that the President should have resorted to alternate constitutional remedies before taking a drastic step of dissolving the National Assembly. No alternate remedy was available to the President but the alternate constitutional remedies are only available to the Prime Minister on whose advice the President has to act.

The President has to form the opinion objectively on the basis of the material having nexus with the grounds mentioned in the order which in turn, has to have nexus with the grounds laid down in Article 58(2)(b) of the Constitution, manifesting conscious and bona fide application of his mind. A Court could not sit as a Court of Appeal while examining the order of dissolution of the Assembly

under the Constitution nor it could substitute or go into the question of sufficiency or otherwise of the material relied upon by the President, provided the material forming the basis of his opinion had nexus with the grounds of dissolution order as well as Article 58(2)(b). Newspaper clippings etc. could be relied upon as material in support of the grounds of dissolution. The President could also produce corroborative or confirmative material in support of the grounds which had been made available after the order of dissolution.

Newspaper cuttings can be relied upon as material in support of the dissolution of the National Assembly. However, Court has no concern with the quantity or sufficiency of the material nor can it sit in appeal on Dissolution Order passed by the President, provided the material relied upon has nexus with the grounds mentioned in the impugned order which in turn has nexus with Article 58(2)(b) manifesting application of mind by the President.

Federation of Pakistan v. Haji Muhammad Saifullah Khan PLD 1989 SC 166; Khawaja Ahmad Tariq Rahim's case PLD 1992 SC 646; Mian Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473; AIR 1977 SC 1361; Durgadas v. Rex AIR 1949 All. 148; S.S. Yusuf v.Rex AIR 1950 All. 69; Mohit Lal Pandit v. The State AIR 1951 Pat. 439(2); Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1976 SC 57; Federation of Pakistan v. Aftab Ahmad Khan Sherpao PLD 1992 SC 723; T.N. Educational Department Ministerial and General Subordinate Services Association v. State of T.N. AIR 1980 SC 379; Tata Cellular v. Union of India (1994) 6 SCC 651; Administrative Law by Sir William Wade and Christopher Forsyth, 7th Edn., 1994, p.400; Chairman, East Pakistan Railway Board, Chittagong and another v. Abdul Majid Sardar, Ticket Collector PLD 1966 SC 725; Lahore Improvement Trust, Lahore through its Chairman v. The Custodian, Evacuee Property, West Pakistan, Lahore PLD 1971 SC 811 and Khalid Malik v. Federation of Pakistan PLD 1991 Kar. 1 ref.

(lll) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Extra judicial killings in Karachi and other parts of Pakistan---President had formed opinion objectively on the basis of the material having nexus with the said ground, which in turn, had nexus with the grounds laid down in Art.58(2)(b) of the Constitution manifesting conscious and bona fide application of his mind---No exception could be taken to the opinion of the President in circumstances.

(mmm) Constitution of Pakistan (1973)

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Delayed implementation of Supreme Court judgment and ridiculing the Judiciary by the Prime Minister---Prime Minister's belated implementation in the case of appointment of Judges and ridiculing the Judiciary, being violative of Arts.190 & 2A of the Constitution of Pakistan and the material relied upon by the President having nexus with the ground of dissolution, no exception could be taken to the opinion of the President to dissolve the National Assembly.

(nnn) Constitution of Pakistan (1973)---

----Art. 190---Executive Authority cannot be allowed to disregard the orders of Supreme Court and express displeasure in respect thereof in public for a including the National Assembly.

(ooo) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (1 of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by President under Art.58(2)(b) of the Constitution--Ground---Validity---Prime Minister, though not having required majority in the House, moved a Bill in the National Assembly designed to embarrass and humiliate the superior Judiciary initiating the process of accountability against the Judges by sending the Judges of the superior Courts on forced leave if fifteen per cent. of the members moved a motion against them---Moving such a Bill being counter to Art.209 of the Constitution, which was already in existence for taking action against. Judges before the body of Supreme Judicial Council, no exception could be taken to the opinion of the President to take action under Art.58(2)(b) of the Constitution of Pakistan in circumstances.

(ppp) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act t of 1997)]---Dissolution of National Assembly and dismissal of the Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Complete separation of Judiciary from the Executive was delayed in defiance of Supreme Court judgment---Material available on record in support of such ground had clear nexus with the ground of dissolution of National Assembly under Art. 58(2)(b) of the Constitution.

(qqq) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Illegal phone tapping and eavesdropping techniques had been adopted by the Government of the Prime Minister on a massive scale in the case of Judiciary, high Government functionaries, political leaders including those in opposition, in violation of fundamental rights of privacy granted by Arts. 9, 14 & 19 of the Constitution, which was also offense under S.25 of the Telegraph Act---Material also showed that there was a systematic intrusion into and violation of the rights of the Judiciary as an institution---No exception could be taken to the opinion of the President to take action of dissolution of Assembly under Art.58(2)(b) of -the Constitution in circumstances.

Manzoor Ahmad v. The State 1990 MLD 1488; United States v. United States District Court for the Eastern District of Michigan 407 US 297, 32 L Ed 2d 752, 92 S Ct 2125; A. v. France (1993) 17 EHRP 462; Malone v. United Kingdom (1984) 7 EHRR 14, (1983) 5 EHRR 385; Klass and others v. Federal Republic of Germany (1978) 2 EHRR 214; Charles Katz v. United States (1967) 389 US 347; United States v. Richard M. Nixon (974) 418 US 683; American Jurisprudence, 2nd Edn., Vol. 74, 1974; Administrative Law by Wade and Bradley and Constitutional Practice by Rodney Brazier ref.

(rrr) Constitution of Pakistan (1973)

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Widespread, pervasive corruption, nepotism and violation of rules in the administration of the affairs of the Government and its various bodies, authorities and corporations carried out on systematic basis--Held, such charges could validly form the basis for action under Art.58(2)(b) of the Constitution.

Federation of Pakistan v. Haji Muhammad Saifullah Khan PLD 1989 SC 166 Mian Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473 ref.

(sss) Constitution of Pakistan (1973)---

----Art. 58(2)(b) [before its omission by Constitution (Thirteenth Amendment) Act (I of 1997)]---Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution---Ground---Validity---Induction of a Minister in the Cabinet against whom criminal cases were pending which the interior Minister had refused to withdraw---Such charge alone, held, could not form the basis of action in terms
of Art.58(2)(b) of the Constitution but in view of the charge and its nature, if read in conjunction with the other grounds, it was relevant for action under Art.58(2)(b) of the Constitution.

Constitutional and Administrative Law by Wade and Bradley, 11th Edn., pp.120-121 and Constitutional Practice by Rodney Brazier, pp.136-137 ref.

Per Zia Mahmood Mirza, J. Contra--

----As to interpretation, scope and application of Art.58(2)(b) of the Constitution.

----As to the grounds forming basis of Dissolution Order.

----As to Dissolution Order being not sustainable.

----As to admissibility of and weight to be attached to the press-clippings which formed the material in support of charge of extra judicial killings.

----As to whether grounds of extra judicial killings were legally or factually available to the President for exercise of power under Art. 58(2)(b) of the Constitution.

----As to allegations with regard to murder of Mir Murtaza Bhutto bearing no nexus with Art.58(2)(b) of the Constitution.

----As to ground of ridiculing the judgment of Supreme Court and its non implementation/deliberate delay in implementation of same being not available to the President for taking the step of dissolving tile National Assembly.

----As to mere moving a Bill in the National Assembly by the Government could not be made a ground for dissolving the National Assembly under Art.58(2)(b).

----As to non-separation of Judiciary from the Executive by the Government being not a ground available to the President for taking action under Art.58(2)(b) of the Constitution.

----As to illegal phone-tapping and eavesdropping techniques; President having no material available with him, at the time of passing the Dissolution Order in support of the allegation, could not dissolve the Assembly under Art;58(2)(b).

----As to corruption, nepotism and violation of rules having become rampant and widespread, President had no valid basis for forming such opinion and order of dissolution of Assembly under Art.58(2)(b) of the Constitution being not justified.

----As to induction of Minister in the Cabinet who was facing criminal charge being not a ground for dissolution of Assembly or having no nexus with Art.58(2)(b) of the Constitution.

----As to failure to comply with the requirement/directions of the President to place the matter of sale of shares in Government-owned Corporations before the Cabinet for consideration/reconsideration of the decision taken by E.C.C. being not a sustainable ground for action of the President under Art.58(2)(b) of the Constitution.

Aitzaz Ahsan, Advocate Supreme Court with Mehr Khan Malik, Advocate-on-Record for Petitioner (in Constitutional Petition No.59 of 1996).

Khalid Anwar, Mian Saqib Nisar, Advocates Supreme Court, Makhdoom Ali Khan and M.A. Zaidi, Advocates-on-Record for Respondents (in both the Petitions).

Syed Iftikhar Hussain Gilani, Advocate Supreme Court and Ejaz M. Khan, Advocate-on-Record for Petitioner (in Consitutional Petition No.58 of 1996).

Sahehzad Jehangir, Attorney-General for Pakistan (on Court Notice)

Dr. Farooq Hassan, Senior Advocate Supreme Court with Syed Inayat Hussain Shah, Advocate-on-Record for Applicant (in Criminal Miscellaneous Applications Nos. 805 and 806 of 1996).

Applicant in person (in C.M.As. Nos. 848 and 935 of 1996)

Dates of hearing: 13th January to 29th January, 1997.

???????????????? SHORT ORDER

By majority of 6 to ., for reasons to be recorded later, we pass this short order as under.

2. On 5-11-1996 the President of Pakistan passed the dissolution order under Article 58(2)(b) of the Constitution whereby he dissolved the National Assembly of Pakistan ordering further that the Prime Minister and her Cabinet shall cease to hold office forthwith. He also appointed 3rd February, 1997 as the date for holding general elections to the National Assembly as contemplated under Article 48(5) of the Constitution. On 11-11-1996 Syed Yousaf Raza Gillani, Speaker of the National Assembly, filed Constitutional Petition No.58 of 1996 directly in this Court under Article 184(3) impleading Mr. Farooq Ahmed Khan Leghari, President of Pakistan, as respondent No. 1 and Federation of Pakistan and Malik Miraj Khalid, Caretaker Prime Minister, as respondents Nos.2 and 3 respectively. On 13-11-1996 Mohtrama Benazir Bhutto filed Constitutional Petition No.59 of 1996 directly in this Court impleading the President of Pakistan, Federation of Pakistan and Malik Meraj Khalid as respondents Nos. l, 2 and 3 respectively. The office returned this petition on two occasions for modification of the language and finally it was fixed for hearing alongwith Constitutional Petition No.58 of 1996 on 3-12-1996 as in both these petitions validity of the dissolution order has been called in question.

3. Preliminary objection was raised that Syed Yousaf Raza Gilani as Speaker could not invoke the jurisdiction of this Court directly under Article 184(3) and that he could seek remedy in the High Court. He insisted for hearing on the question of maintainability and after a detailed hearing order was passed on 11-1-1997 that the question of maintainability would be decided alongwith merits as has been held in the case of Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473 to be heard alongwith Constitutional Petition No. 59 of 1996, Constitutional Petition No.60 of 1996 was filed on 23-11-1996 by Mr. Mehmood Khan Achakzai in which respondents are same as in Constitutional Petitions Nos.58' of 1996 and 59 of 1996. He has challenged the Eighth Amendment in the Constitution to the extent of Article 58(2)(b) only alleging that the dissolution order, dated 5-11-1996 could not be passed under that provision. Since there was challenge to the part of the Eighth Amendment and there were other matters pending in this Court in which the Eighth Amendment was challenged, all such cases were clubbed together and detailed hearing was given to decide finally the question of challenge to the Eighth Amendment made in the Constitution. These cases relating to the Eighth Amendment were heard by a Bench of seven Judges as is presently constituted and short order was passed on 12-1-1997 holding that the Eighth Amendment has come to stay in the Constitution unless it is amended in the manner prescribed in the Constitution. In the result the Civil Appeals and the Constitutional petitions on the subject were dismissed by a short order. The counsel for Mr. Mehmood Khan Achakzai stated that he does not challenge the validity of the dissolution order passed under Article 58(2)(b) on merits. Hence Constitutional Petition No.60 of 1996 was also dismissed.

4. Now remains Constitutional Petitions Nos. 58 and 59 of 1996 filed by Syed Yousaf Raza Gilani and Mohtarma Benazir Bhutto respectively which were taken up for hearing. At the initial stage in both these petitions notices were issued to the respondents and the Attorney-General for Pakistan as contemplated under Order XXVII-A, Rule 1, C.P.C. On the direction of the Court in Constitutional Petition No.59 of 1996 the respondents have filed written statement on 12-12-1996 supported by material in Volumes 1 to 9 further split in parts which are twenty-four in number. Rejoinder was filed on 7-1-1997 in two parts.

5. On 14-12-1996 Mr. Aitzaz Ahsan expressed apprehension that since election schedule was going to be announced, it was possible that the finding in Saifullah's case PLD 1989 SC 166 to the effect that relief being discretionary in writ jurisdiction may be refused to him on the ground that the whole election machinery was in full gear. He was assured that this will be kept in view while proceeding with the case.

6. Both these petitions were heard for thirteen working days as the election day fixed for 3-2-1997 is fast approaching and during the last days the Court extended the sitting up to 1-30 and even after 2-00 p.m. From thirteen working days, nine days were given to Mr. Aitzaz Ahsan minus half day given to Dr. Farooq Hassan who appeared for M.Q.M. as intervener in both the petitions. Four days were given to Mr. Khalid Anwar, learned counsel for the respondents. The learned Attorney-General was busy in other cases and he gave the time allocated to him to Mr. Khalid Anwar who appeared for the respondents.

7. Dr. Farooq Hassan has filed C.M.A. 806 of 1996 under Order XXXIII, Rule 6, Supreme Court Rules, 1980 read with Order I, Rule 10, C.P.C. with prayer that M.Q.M. may be allowed to be joined as party as respondent. He has filed this application in Constitutional Petition No.59 of 1996 and has also filed C.M.A. No.805 of 1996 in Constitutional Petition No.58 .of 1996. Prayer in both the applications is same. According to Dr. Farooq Hassan, M.Q.M. wants to be joined as necessary party to produce record and documents in support of ground No. 1 in the dissolution order with regard to extra-judicial killings/custodial killings in Karachi. He has further stated that on the same subject he has already filed Constitutional Petition No.46 of 1994 in this Court directly which is pending. Syed Iqbal Haider is another intervener. He has filed C.M.A. No.848 of 1996 in Constitutional Petition No.59 of 1996 and C.M.A. No.939 of 1996 in Constitutional Petition No.58 of 1996 and wants to be joined as necessary party but has not been able to

satisfy us that he is necessary party. Since the same documents as are produced by M.Q.M. in support of the ground in the dissolution order on the subject of extra-judicial killings are produced by the respondents in both these petitions, we do not feel inclined to pass any orders on the four civil miscellaneous applications filed in both the petitions mentioned above.

8????????? Our findings are as under;--

Firstly, we do not accept the contention of Mr. Aitzaz Ahsan that the President can invoke Article 58(2)(b) to dissolve the National Assembly only in such a grave situation in which Martial Law can be imposed as in 1977 and there is complete breakdown of Constitutional machinery. We are of the view that under the said provision, the President in his discretion may dissolve the National Assembly where he forms opinion on the basis of material before him having nexus with the dissolution order and Article 58(2)(b), that situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and appeal to the electorate is necessary. In support of the proposition reference can be made to the case of Khawaja Ahmad Tariq Rahim v. Federation of Pakistan and another PLD 1992 SC 646 in which it is held by majority that once the evil is identified, remedial and, corrective measures within . the Constitutional framework must follow. Public functionaries, holding public power in trust, under oath to discharge the same impartially and to the best of their ability must react as they cannot remain silent spectators. There may be occasion for the exercise of such power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional. The theory of total breakdown of Constitutional machinery as the only ground for dissolution of National Assembly has been rejected in the case of Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473.

Secondly, it is not correct to say as submitted by Mr. Aitzaz Ahsan, counsel for the petitioner, that her case is on all fours with the case of Muhammad Nawaz Sharif (supra), hence she is also entitled to the same relief of restoration as was given in that case. In the case of Nawaz Sharif it was conceded by the Attorney-General for Pakistan that the dissolution order was mainly based upon the speech made by the deposed Prime Minister on 17-4-1993 on electronic media which was an act of subversion and further that session of National Assembly was called hurriedly and the President thought that it was done to initiate proceedings of impeachment against him. In such circumstances it was held that the dissolution order was not sustainable.

Thirdly, it is not correct to say that the material produced in support of the grounds of the dissolution in its totality must be present before the President at the time of forming opinion and must be scrutinized by him in detail. It would be sufficient if there is material having nexus with the order of dissolution and Article 58(2)(b) before the President after perusal of which he forms his opinion and passes order of dissolution and further there is nothing wrong with production of corroborative or confirmatory material in support of the grounds which has been made available after the date of the order of dissolution.

Fourthly, newspaper cuttings can be relied upon as material in support of the grounds.

Fifthly, in the instant case the order of dissolution on the first ground of extra judicial killings sufficient material has been produced, which has' been properly and justifiably considered.

Sixthly, we do not feel inclined to give any finding on the second ground in the dissolution order on the subject of murder of Mir Murtaza Bhutto, brother of the petitioner, and his seven other companions for the reason that the matter is sub judice before the Tribunal of enquiry set up which is being presided over by a Judge of this Court and also F.I.Rs. have been filed which are being investigated in accordance with the law.

Seventhly, enough material is produced in support of the third ground with regard to the belated implementation of the judgment in the case of appointment of Judges, which is short of total compliance. By this non implementation Articles 190 and 2A of the Constitution are violated. There is also adequate material produced by the respondents to show that the petitioner in her speech before the National Assembly had ridiculed the judgment of the Supreme Court in the Judges' case which was telecast also repeatedly and in order to harass the Judges of this Court, Constitution (Fifteenth Amendment) Bill was introduced in the Parliament for initiating the process of accountability against the Judges by sending the Judges of the superior Courts on forced leave if fifteen per cent. of the members moved a motion against them. This bill ran counter to Article 209 of the Constitution which is already in existence for taking action against Judges before the body of Supreme Judicial Council. Complete separation of judiciary from the executive is being delayed and by law Executive Magistrates are given powers to sentence to imprisonment for three years, which is against the spirit of the judgment.

Eighthly, there is sufficient material available on the record in support of the fifth ground showing that under the orders of the petitioner telephones of the Judges of the Supreme Court, leaders of the political parties and high ranking military and civil officials were being taped and transcripts sent to the petitioner for reading.

A???????? Lastly, there is also enough material produced in support of the fifth ground in the dissolution order which covers the subject of corruption, nepotism and violation of rules.

9. For the facts and reasons stated above, we uphold the order of dissolution passed by the President and dismiss the petitions.

ZIA MAHMOOD MIRZA, J.--- I regret my inability to agree with this
order dismissing the captioned petitions, as in my humble view for which I shall record reasons later on, the order, dated 5th November, 1996 impugned in these petitions cannot be sustained, with the result, that the National Assembly, the Prime Minister and the Cabinet stand restored.

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Zia Mahmood Mirza, J

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????????????????????????????????? JUDGMENT

SAJJAD ALI SHAH, C J.---Both the Constitutional petitions captioned above have been filed under Article 184(3) of the Constitution in which is challenged the proclamation dated 5th November, 1996 whereby the President of Pakistan has dissolved the National Assembly exercising his power under Article 58(2)(b) of the Constitution and further directing therein that the Prime Minister and her Cabinet. shall cease to hold office forthwith. Petitioner Mohtrama Benazir Bhutto filed her petition directly in this Court on 13-11-1996 while petitioner Yousaf Raza Gilani, who was Speaker of the National Assembly at the relevant time when the Proclamation was issued, filed his petition directly in this Court on 11-11-1996, which was two days before the filing of the petition by Mohtrama Benazir Bhutto. It would be worthwhile to mention here at the very outset that Mohajir Qoumi Movement (MQM) filed Civil Miscellaneous Application No.805 of 1996 in Constitutional Petition No.58 of 1996 and Civil Miscellaneous Application No.806 of 1996 in Constitutional Petition No.59 of 1996 on 7-12-1996 under Order 1, Rule 10, C.P.C. with prayer that MQM should be impleaded as necessary party as respondent in these petitions. Likewise, Syed Iqbal Haider filed Civil Miscellaneous Application No.848 of 1996 in C.P. No.59 of 1996 and Civil Miscellaneous Application No.935 of 1996 in C.P. No.58 of 1996 on 11-12-1996 under Order 1, Rule 10, C.P.C. with prayer to be joined in the proceedings as one of the necessary parties. Syed Iqbal Haider has filed these civil miscellaneous applications in his capacity as a Pakistani citizen and also as Chairman of Muslim Welfare Movement of Pakistan which, he claims, works for human rights, fundamental rights, rule of law and supremacy of the Constitution. Mr. Aitzaz Ahsan, learned counsel in C. P. No. 59 of 1996 also filed Civil Miscellaneous Application No.6 of 1997 seeking dismissal of the application filed by MQM for impleadment as a party in the proceedings against which reply is filed by MQM which is registered by the office unnecessarily as C.M.A. No.7 of 1997. Since it is a reply, there was no need of giving it a separate number as it can be considered as reply to C.M.A. No.6 of 1997. We shall come to these civil miscellaneous applications a little later.

2. It would be pertinent to mention here that Constitutional Petition No.60 of 1996 was filed by Mahmood Khan Achakzai under Article 184(3] of the Constitution, challenging the dissolution order passed by the President on 5-11-1996 and questioning the validity of the Eighth Amendment to the extent of Article 58(2)(b) of the Constitution taking stance that such provision is nonexistent in the Constitution and, therefore, the President was not competent to exercise his discretionary power under the provision which was not validly available in the Constitution. Qazi Muhammad Jamil, learned Advocate Supreme Court, appeared for petitioner Mahmood Khan Achakzai and at his request his petition was tagged alongwith two other Constitutional petitions which are under consideration right now as in all the three common order impugned is the Proclamation dated 5-11-1996 issued by the President of Pakistan under Article 58(2)(b) of the Constitution. Qazi Muhammad Jamil further stated that apart from challenging the dissolution order he had also challenged the validity of Article 58(2)(b) and to that extent the validity of the Eighth Amendment is also called in question. The Eighth Amendment was in challenge in many other cases which are pending. In such circumstances, it was considered proper to hear the cases in which there was challenge to the validity of the Eighth Amendment. Hence all such cases were directed to be bunched together for hearing and such order was passed by a Bench of three Judges on 3-12-1996. Later, all such cases in which the Eighth Amendment was challenged, including C.P. No.60 of 1996, were heard together by a Bench of seven Judges of this Court and after a detailed hearing, short order was passed on 12-1-1997.

3. It was held in the short order mentioned above that the question as to what is the basic structure of the Constitution is a question of academic nature which cannot be answered authoritatively with a touch of finality bur. it can be said that the prominent characteristics of the Constitution are amply reflected in the Objectives Resolution which is now substantive part of the Constitution as Article 2A inserted by the Eighth Amendment. It was also held that the main features reflected in the Objectives Resolution are federalism and parliamentary form of Government blended with Islamic provisions. The Eighth Amendment was inserted in the Constitution in 1985, after which three elections were held on party basis and since those parliaments did not touch this amendment, it has come to stay in the Constitution unless amended in the manner contemplated under Article 239 of the Constitution. It was also held that Article 58(2)(b) has provided checks and balances between the powers of the President and the Prime Minister to let the system work without let or hindrance to forestall a situation in which martial law could be imposed. Resultantly, two civil appeals and three Constitutional petitions including C.P. No.60 of 1996 were dismissed.

4. Now we take up the question of maintainability of the petitions which are pending before us. They have been filed directly in this Court under Article 184(3) of the Constitution. In fact this question as such was raised when C.P. No.58 of 1996 was filed by petitioner Yousaf Raza Gilani as Speaker of the National Assembly which was dissolved by the Proclamation dated 5-11-1996. He was asked as to which of his fundamental rights was violated by the dissolution order dated 5-11-1996 as in the memorandum of the petition .he has not specifically stated so. The counsel for the petitioner submitted that in the petition it is mentioned that Article 4 of the Constitution was violated, which is right of individual to be dealt with according to law, and the petitioner invoked jurisdiction of this Court under Article 187 for complete justice after invocation of Article 190 which requires that all executive and administrative agencies shall act in aid of the Supreme Court. He further submitted that the petitioner claimed violation of his fundamental right under Article 17 of the Constitution and heavily relied upon the case of Mian Muhammad Nawaz Sharif v. President of Pakistan and others (PLD 1993 SC 473). In the said case it was held that Article 17 included not merely the right to form a political party but also comprised consequential rights. In respect of Article 17(2), which envisages right to form or be a member of a political party, it was held that it not only guarantees the right to form or be a member of political party but also to operate a political party and the forming of a political party necessarily implies the right of carrying on of all of its activities as otherwise formation itself would be of no consequence. In other words functioning is impliedly allowed in the formation of the party. When it was put to Syed Iftikhar Hussain Gilani, learned counsel for petitioner Yousaf Raza Gilani, that the right under Article 17(2) of the Constitution enunciated in the case of Mian Muhammad Nawaz Sharif (supra) could be invoked by a leader of a political party which had formed the Government and could not be invoked by the Speaker of the National Assembly, who continued as Speaker of the defunct National Assembly and as head of the Secretariat of that Assembly continued to enjoy all the perks and fringe benefits which went with that post including flying of the National flag, it was submitted by the learned counsel that this right as contemplated under Article 17(2) can be invoked even by a member of the political party and since in the case of Mian Muhammad Nawaz Sharif the facility was allowed that the question of maintainability would be considered alongside the merit, the same facility should be given to the petitioner as well. It is correct that in the case of Mian Muhammad Nawaz Sharif this Court had allowed the question of maintainability of the petition to be considered alongwith merits. The same benefit could be

given to petitioner Yousaf Raza Gilani in C.P. No.58 of 1996 particularly when the order of dissolution in his petition and that of Mohtrama Benazir Bhutto in C.P. No.59 of 1996 is common and time was running out as the elections were to be held on 3rd February, 1997. Hence, it was ordered that both the petitions be heard together on the same lines as allowed in the case of Mian Muhammad Nawaz Sharif. When the hearing of these Constitutional petitions commenced the learned counsel for the Speaker did not appear and in fact neither he nor any body else appeared on his behalf to pursue the matter further and lost interest.

5. Since in both the petitions which are under consideration challenge is made to the validity of the Proclamation dated 5-11-1996 whereby the President has dissolved the National Assembly exercising his power under Article 58(2)(b) of the Constitution, the Proclamation of dissolution is reproduced verbatim as under:-

"Whereas during the last three years thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. They have been killed in Police encounters and Police custody. In the speech to Parliament on 29th October, 1995 the President warned that the law enforcing agencies must ensure that there is no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected. This advice was not heeded. The killings continued unabated. The Government's fundamental duty to maintain law and order has to be performed by proceeding in accordance with law. The coalition of political parties which comprise the Government of the Federation are also in power in Sindh, Punjab and N.-W.F.P. but no meaningful steps have been taken either by the Government of the Federation or at the instance of the Government of the Federation, by the Provincial Governments to put an end to the crime of extra judicial killings which is an evil abhorrent to our Islamic faith and all canons of civilized Government. Instead of ensuring proper investigation of these extra judicial killings and punishment for those guilty of such crimes, the Government has taken pride that, in this manner, the law and order situation has been controlled. These killings coupled with the fact of widespread interference by the members of the Government, including members of the ruling parties in the National Assembly, in the appointment, transfer and posting of officers and staff of the law enforcing agencies, both at the Federal and Provincial levels, has destroyed the faith of the public in the integrity and impartiality of the law-enforcing agencies and in their ability to protect the lives, liberties and properties of the average citizen.

And whereas on 20th September, 1996 Mir Murtaza Bhutto, the brother of the Prime Minister', was killed at Karachi alongwith seven of his companions including the brother-in-law of a former Prime Minister, ostensibly in an encounter with the Karachi Police. The Prime Minister and her Government claim that Mir Murtaza Bhutto has been murdered as a part of a conspiracy. Within days of Mir Murtaza Bhutto's death the Prime Minister appeared on television insinuating that the Presidency and other agencies of State were involved in this conspiracy. These malicious insinuations, which were repeated on different occasions, were made without any factual basis whatsoever. Although the Prime Minister subsequently denied that the Presidency or the Armed Forces were involved, the institution of the Presidency, which represents the unity of the Republic, was undermined and damage caused to the reputation of the agencies entrusted with the sacred duty of defending Pakistan. In the events that have followed, the widow of Mir Murtaza Bhutto and the friends and supporters of the deceased have accused Ministers of the Government, including the spouse of the Prime Minister, the Chief Minister of Sindh, the Director of the Intelligence Bureau and other high officials of involvement in the conspiracy which, the Prime Minister herself alleged led to Mir Murtaza Bhutt&s 'murder. A situation has thus arisen in which justice, which is a fundamental requirement of our Islamic Society, cannot be ensured because powerful members of the Federal and Provincial Government who are themselves accused of the crime, influence and control the law-enforcing agencies entrusted with the duty of investigating the offenses and bringing to book the conspirators.

And whereas on 20th March, 1996 the Supreme Court of Pakistan delivered its judgment in the case popularly known as the Appointment of Judges case. The Prime Minister ridiculed this judgment in a speech before the National Assembly which was shown more than once on nationwide television. The implementation of the judgment was resisted and deliberately delayed in violation of the Constitutional mandate that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. The directions of the Supreme Court with regard to regularization and removal of Judges of the High Courts were finally implemented on 30th September, 1996 with a deliberate delay of six months and ten days and only after the President informed the Prime Minister that if advice was not submitted in accordance with the judgment by end (of) September, 1996 then the President would himself proceed further in this matter to fulfill the Constitutional requirement.

The Government has, in this manner, not only violated Article 190 of the Constitution but also sought to undermine the independence of the judiciary guaranteed by Article 2A of the Constitution read with the Objectives Resolution.

And whereas the sustained assault on the judicial organ of State has continued under the garb of a Bill moved in Parliament for prevention of corrupt practices. This Bill was approved by the Cabinet and introduced in the National Assembly without informing the President as required under Article 46(c) of the Constitution. The Bill proposes inter alia that on a motion moved by fifteen per cent. of the total membership of the National Assembly, that is any thirty-two members, a Judge of the Supreme Court or High Court can be sent on forced leave. Thereafter, if on reference made by the proposed' special committee, the Special Prosecutor appointed by such Committee, forms the opinion that the Judge is prima facie guilty of criminal misconduct, the special committee is to refer this opinion to the National Assembly which can, by passing a vote of no confidence, remove the Judge from office. The decision of the Cabinet is evidently an attempt to destroy the independence of the judiciary guaranteed by Article 2A of the Constitution and the Objectives Resolution. Further, as the Government does not have a two-third majority in Parliament and as the Opposition Parties have openly and vehemently opposed the Bill approved by the Cabinet, the Government's persistence with the Bill is designed not only to embarrass and humiliate the superior judiciary but also to frustrate and set at naught all efforts made, including the initiative taken by the President, to combat corruption and to commence the accountability process.

And whereas the judiciary has still not been fully separated from the executive in violation of the provisions of Article 175(3) of the Constitution and the dead-line for such separation fixed by the Supreme Court of Pakistan.

And whereas the Prime Minister and her Government have deliberately violated, on a massive scale, the fundamental right of privacy guaranteed by Article 14 of the Constitution. This has been done through illegal phone-tapping and eaves-dropping techniques. The phones which have been tapped and the conversations that have been monitored in this unconstitutional manner includes the phones and conversations of Judges of the Superior Courts, leaders of political parties and high-ranking military and civil officers.

And whereas corruption, nepotism and violation of rules in the administration of the affairs of the Government and its various bodies, authorities and corporations has become so extensive and widespread that the orderly functioning of Government in accordance of the provisions of the Constitution and the law has become impossible and in some cases, national security has been endangered. Public faith in the integrity and honesty of the Government has disappeared. Members of the Government and the ruling parties are either directly or indirectly involved in such corruption, nepotism and rule violations. Innumerable appointments have been made at the instance of members of the National Assembly in violation of the law declared by the Supreme Court that allocation of quotas to MNAs and MPAs for recruitment to various posts was offensive to the Constitution and the law and that all appointments were to be made on merit, honestly and objectively and in the public interest. The transfers and postings of Government servants have similarly been made, in equally large numbers, at the behest of members of National Assembly and other members of the ruling parties. The members have violated their oaths of office and the Government has not for three years taken any effective steps to ensure that the legislators do not interfere in the orderly executive functioning of Government.

And whereas the Constitutional requirement that the Cabinet together with the Ministers of State shall be collectively responsible to the National Assembly has been violated by the induction of a Minister against whom criminal cases are pending which the Interior Minister has refused to withdraw. In fact, at an earlier stage, the Interior Minister had announced his intention to resign if the former was inducted into the Cabinet. A Cabinet in which one Minister is responsible for the prosecution of a Cabinet colleague cannot be collectively responsible in any matter whatsoever.

And whereas in the matter of the sale of Burmah Castrol Shares in PPL and BONE/PPL shares in Qadirpur Gas Field involving national assets valued in several billions of rupees, the President required the Prime Minister to place the matter before the Cabinet for consideration/reconsideration of the decisions taken in this matter by the ECC. This has still not been done, despite lapse of over four months, in violation of the provisions of Articles 46 and 48 of the Constitution.

And whereas for the foregoing reasons, taken individually and collectively, I am satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

Now therefore, in exercise of my powers under Article 58(2)(b) of the Constitution I, Farooq Ahmad Khan Lxghari, President of the Islamic Republic of Pakistan do hereby dissolve the National Assembly with immediate effect and the Prime Minister and her Cabinet shall cease to hold office forthwith.

Further, in exercise of my powers under Article 48(5) of the Constitution I hereby appoint 3rd February 1997 as the date on which general elections shall be held to the National Assembly.

(Sd.)

Farooq Ahmad Khan Leghari, President."

6. In C.P. No.59 of 1996 petitioner Mohtrama Benazir Bhutto has stated the facts that she as the Chairperson of Pakistan People's Party (PPP) had entered into an agreement with Pakistan Muslim League, Junejo Group, PML(J), in September, 1993 and formed Pakistan Democratic Front (PDF) with her as its Chairperson and this agreement provided for electoral alliance between the two parties on the basis of which the elections of October, 1993 were contested and having won from NA-161 (Larkana III) Sindh, she commanded support of the majority of the members of the National Assembly and became the Prime Minister. She continued to enjoy the support of the majority in the National Assembly as Leader of the House until 5-11-1996. She appointed respondent No.l, Sardar Farooq Ahmad Khan Leghari, as Federal Minister for Foreign Affairs and subsequently nominated him as candidate of PDF to contest for the office of the President. He was elected as President of Pakistan with her fullest support as PDF backed candidate. There was turning point in relationship between the two when allegations were hurled against the President by the opposition that he made a fictitious land deal while he was Federal Minister with Mr. Younus Habib of Mahran Bank and Mr. Leghari came to believe that his wrong doings had been exposed deliberately by the husband of the petitioner. She assured him several times that she or her husband had nothing to do with
exposure but he became bitter and gradually became hostile and adversarial. Mr. Leghari started showing utter disregard for the petitioner and started sending sages to the Houses of the parliament and filing withdrawing references in Supreme Court without advice or consultation of the Prime Minister. On the September, 1996 petitioner's brother Mir Murtaza Bhutto was brutally ordered near his house in Clifton Karachi and on the following day, which was Saturday (21st September, 1996) when it was a closed holiday of the Supreme Court, a reference was filed by the President in the Supreme Court. On 23rd September, 1996 when it was Soyem of late Mir Murtaza Bhutto, the President chose to send his message to the two Houses of the Parliament again without the petitioner's required advice. Such acts showed vindictive and malicious mind of the respondent/President. On 25th September, 1996 the President sent letters to e Governors of Sindh and Punjab, complaining about law and order situation On 26th September, 1996 the President wrote to the petitioner informing her that he was not accepting any more resignations of the Judges affected by the judgment of the Supreme Court and required her to denotify all of them. It is mentioned in the petition that these irrefutable facts prove beyond any shadow of doubt the most hostile, biased, pre-determined and vindictive state of mind of the respondent/President who was in no position to act in a fair, just and reasonable manner as required by the oath of his office. All subsequent acts on the part of respondent No.l/President including the impugned order have been issued by him in the same state of mind with clear mala fide, hostile, and vindictive motives to harm the petitioner in her office, career, person, reputation and dignity. As such they are violative of Articles 9, 14 and 17 of the constitution. It is further stated in the petition that without justification in fact or in law, and moved only by a consuming personal malice towards the petitioner, respondent No.l (President), in the early hours of November 5,

1996, passed the impugned order purporting to dissolve the National Assembly of Pakistan and further declaring that the petitioner and her Cabinet shall cease to hold office at once. He thereafter appointed respondent No.3 (Malik Meraj Khalid) to be the caretaker Prime Minister of Pakistan.

7. In C.P. No.58 of 1996 petitioner Yousaf Raza Gilani has narrated the facts in his own way and stated that in the last couple of months before the dissolution order, campaign was launched by certain quarters that the Assemblies were likely to be dissolved by the President who would invoke his discretionary powers under Article 58(2)(b) of the Constitution. The newspapers were full of such speculations and the President kept on meeting, entertaining and supporting such persons who were known to be hostile to the present system of the parliamentary democracy in the country. The petitioner also made a grievance that the National Assembly was functioning smoothly, which could be judged from the fact that the President had sent a message to the petitioner as Speaker of the National Assembly on 23-9-1996 to consider and pass legislation regarding accountability. On 3-11-1996 the session of the National Assembly commenced to finalize composition of the select committee for the purpose of preparing a final draft accountability bill to be tabled before the National Assembly as expeditiously as possible. However, to forestall such a laudable move by the National Assembly, the President dissolved the National Assembly by the impugned order dated 5-11-1996. It was further averred in the petition that the powers conferred by Article 58(2)(b) of the Constitution are not to be subjectively applied but required existence of such objective conditions that show that the Government of the Federation cannot be carried out in accordance with the Constitution. In the instant case there was no justification legal or otherwise for exercise of such discretionary power as everything went smoothly and there was no apprehension of total collapse of Constitutional machinery and particularly there was no justification at all for dissolution of the National Assembly which was performing its functions quite satisfactorily.

8. On behalf of the respondents in C.P. No.59 of 1996 a very detailed and voluminous written statement has been filed, which runs into 200 pages. Attempt has been made to give reply in like manner in which the memorandum of the petition has been drafted. The sum total, very briefly stated, is that the allegations made by the petitioner with regard to the mala fides of the President or his misuse or abuse of power under Article 58(2)(b) of the Constitution are denied and endeavour is made to justify the Proclamation of dissolution of the National Assembly on the grounds specified therein and further amplified with supportive facts and documents. It is submitted in the written statement that the Proclamation of dissolution was justified as there was abuse of power by the Government resulting into corruption which had been institutionalized. Deliberate attempt was made to weaken the institutions and to bring about their collapse and downfall. The judgment of the Supreme Court in the case of appointment of Judges was disobeyed and the Judiciary was ridiculed. There was tapping of the telephones including Judges of the superior Courts and in order to undermine the independence of the Judiciary a Bill was moved in the Parliament to take action against the Judges by initiating proceedings against them in the National Assembly. The Federal Government had failed to separate the judiciary from the executive, and there were extra judicial killings in Karachi. Even the brother of the Prime Minister was killed by the Police and she claimed it to be a conspiracy and defended the Police. ?200,000 were spent to engage private detectives under the guise of engaging Scotland Yard to solve the mystery of the murder in which Mir Murtaza Bhutto was killed alongwith his other seven companions. Illegal appointments were made on the recommendations of the public representatives like MNAs and MPAs. The public exchequer was treated as personal kitty of the Prime Minister and her cohorts. The nationalised banks were looted and the banking sector was bffectively destroyed. Even funds from Bait-ul-Mal were not spared. The Capital Development Authority's plots were distributed amongst the favourites in disregard of the rules and regulations. Large scale illegalities were committed in Oil and Gas Development Corporation and Pakistan Steel Mills, and there were write offs of bank loans. Multi-Million dollar properties were acquired by the Prime Minister, her spouse, and her in laws in foreign lands. In such circumstances, a situation had arisen in which the President came to the conclusion that the Government of the Federation was not being carried on in accordance with the Constitution and an appeal to the electorate was necessary.

9. In the second part of the written statement, facts as stated in the petition, are denied paradise. Allegation in paragraph 3 of the petition is denied by asserting that the petitioner did not enjoy the support or could claim the confidence of any clear majority in the National Assembly and she did not have any stable, long term majority in the National Assembly or Senate. She was only able to cobble together short-term, fluctuating "working" majorities as and when the need arose. This is borne out, inter alia, by the legislative record of the Government headed by the petitioner. The necessary legislative work was, in fact, carried out by the petitioner's Government by means of repeated promulgation of Ordinances. The petitioner made rare appearances in the Parliament.

10. Assertion in paragraph 4 of the petition is that the petitioner nominated Sardar Farooq Ahmed Khan Leghari as candidate of PDF to contest election to the office of the President. In the written statement, it is submitted that respondent No. l was PDF candidate for president ship, which is normal function in the system of parliamentary democracy, but after his election as President, he resigned from the membership of Pakistan People's Party. It is further claimed that, as President, he was obliged to act always in the national interest, free from all narrow and parochial loyalties or party concerns of any nature whatsoever. Allegation in paragraph 5 of the petition is denied that a turning point came between the President and the Prime Minister when the opposition parties levelled allegations against the President of corruption that he had made a fictitious land deal with Mr. Younus Habib of Mehran Bank while the former was Federal Finance Minister. It is asserted that the petitioner's Government itself had set up a judicial commission to investigate the entire matter and in the report of the Commission the President has been completely exonerated. The report of the. Commission was not published by the Federal Government for mala fide intention. It is denied in the written statement that there was any conceivable nexus between the allegations in the petition and the dissolution order. It is denied in the written statement that there was any element of personal hostility, and it was imperative to understand the concept of an institutional responsibility which transcends personal feelings.

11. Allegation in paragraph 6 of the petition is denied that the petitioner showed the President due respect and regard but he showed utter disregard for her. It is asserted in the written statement that the petitioner should not choose to personalize every Constitutional, or legal relationship. The President was and is fully cognizant of his Constitutional role, duties and obligations, including, inter alia, his oath of office, which required him to discharge his duties without illwill or favour to any person. It is further stated in the written statement that the petitioner, however, unfortunately regarded the President only as "part" of her Government, and indeed went to the extent of proclaiming that the Supreme Court was also "part" of her Government, and failed to realize that the office of the President, and judicial institutions, exist independently of the Government of the day. It is further stated that the petitioner should not have objected to the sending of the messages by the President to the Parliament and filing of the

Reference in the Supreme Court without her advice. Nor was it correct for the petitioner to say that she obtained ex post facto approval of the Cabinet to the Reference just to placate the President hoping to avoid any conflict as these acts were done as permitted under the Constitution and the law. It is also stated in the written statement that when there was ex post facto approval of the Cabinet to the filing of the Reference, then what was the need of holding grievance against the filing of such Reference in the Supreme Court without advice of the Prime Minister.

12. Allegations in paragraphs 7, 8 and 9 of the petition are that the President had acted with "timing", which exposed the malice and prejudice in his mind. He filed Reference in the Supreme Court on the following day of the tragedy in which Mir Murtaza Bhutto and his other companions were brutally murdered. It was Saturday and a closed holiday for the Supreme Court. On 23rd September, 1996 when there was "Soyem" of Mit: Murtaza Bhutto, the President sent the message to the two Houses of the Parliament without required advice of the Prime Minister. These allegations are denied in the written statement on the ground that no doubt Mir Murtaza Bhutto's murder was a tragedy, genuinely mourned all over the country, but it was regrettable that the petitioner attempted to gain political mileage from it and squeezed the last drop of public sympathy from this tragedy. She rushed to Karachi, but did not proceed straight away to hospital and instead went to Bilawal House where she spent more than two hours before arriving at the hospital at around 5.00 a.m., Subsequently, Mir Murtaza's widow levelled the responsibility for the murder of her husband on the law enforcing agencies and also on the petitioner's husband, which are matters of public record.

13. It is stated in the written statement that so far filing of the Reference is concerned, no conceivable benefit could accrue to the President from filing the Reference on Saturday and not on Sunday. It is a well-known-fact that although Saturdays were holidays at the relevant time, the Chief Justice of Pakistan routinely attended his office on Saturdays and the Supreme Court building was not kept closed on that day or other Saturdays. The officers and the staff attended the office of the Court on Saturdays. There is a reception section which is kept open 24 hours a day throughout the year. The physical act of filing a reference is a ministerial action which was routinely done. Indeed, contrary to what the petitioner is asserting, the Reference was only physically filed on the 21st, and it was registered with the Registrar's office as late as the 25th. In such circumstances the wild insinuations and casting aspersions in relation to a wholly
innocuous act are an called for and there is no justification for imagining conspiracies and pre-determined plans which have no remotest connection with reality. In fact grant of ex post facto approval by the Cabinet to the filing of the Reference amounts to the approval of the same after which raising of objection is not proper and the petitioner cannot be allowed to approbate and reprobate in the same breath.

14. Allegation is denied that sending of message to the Parliament is part of a timetable or in that respect the President was in any manner vindictive or actuated with malice towards the petitioner or any other person. The message related to the issue of corruption by holders of public offices and - executive posts. The message was not directed against any particular individual or party. It had no conceivable connection with Mir Murtaza's murder. The message to the Parliament as well as Reference to the Supreme Court had been drafted much earlier than the day on which the tragedy of the murder of Mir Murtaza Bhutto took place. The petitioner claims grief and agony but she gave numerous public interviews which were to her political advantage, and objected to the sending of the message to the Parliament in discharge of his Constitutional responsibility and attributed this to be an act of callous indifference shown to her by the President. It is stated in the written statement that whenever issue of corruption is raised, the petitioner regards it as personal threat and affront and whoever speaks of accountability is considered at once as her adversary.

15. Allegations in paragraphs 10, 11 and 12 in the petition are denied in the written statement which are suggestive of predetermined plan under which the President acted to justify issue of the Proclamation of dissolution of the National Assembly. It is stated in the written statement that the President wrote letters to the Governors in connection with the deterioration of law and order situation which was more responsibility of the executive Government. It is averred that she petitioner should not have linked the matter of appointments of Judges of the Superior Courts with the condolence ceremony in relation to Mir Murtaza's death particularly when the petitioner's Government had been openly defying and disobeying the orders of the Supreme Court in the Judges case. Things had come to such a pass that finally the President was impelled to take action. There was no bias or hostility, nor was there any pre-determined or vindictive state of mind so far the President is concerned who acted fairly, justly and reasonably in accordance with his oath of office.

16.???? In C.P. No.59 of 1996, the impugned order of dissolution dated 5-11-1996 is appended as annexure 'A' which has been reproduced verbatim in paragraph 5 of this judgment. On the same day, in the evening, the President addressed the nation, which got coverage on Radio and Television. In this address he has given details of the grounds on the basis of which the Proclamation in dispute was issued. It is not necessary to go into those details at this stage but it would be pertinent to point out the part of the address in which it is stated as to how and why the President felt it necessary to act as he did:

"My dear countrymen, Asslamo-allakum. This morning, in the supreme national interest under Article 58(2)(b) of the Constitution I have dissolved the National Assembly and the Prime Minister and her Cabinet have ceased to hold office forthwith. Further, in exercise of my powers under Article 48(5), I have declared that fresh elections to the National Assembly be held on February 3, 1997.1 have also appointed Malik Meraj Khalid as the Caretaker Prime Minister.

As the elected President of your country and a crusader for the restoration of democracy in Pakistan, my belief in the appropriateness of a democratic system of Government is without doubt and unflinching. I have taken this difficult decision within the Constitution to dissolve the National Assembly to save democracy from subversion from within. My paramount loyalty is to Allah, to my country and its Constitution. All office holders including the President, the Prime Minister and other high functionaries of the State are under oath to uphold the law and the Constitution. Elected representatives are under an additional obligation to their electorate to work for their interest and to respect the trust reposed in them. The act of voting, and the election to office of the majority party or group is only one part of the democratic process. The proper and efficient functioning of the Government, respect for the law, honest conduct of the affairs of the Government, and then to stand the test of accountability when called to do so, is as much part of the essence of democracy as the right to hold office and govern on behalf of the people. In Islamic tradition and under our Constitution, no individual or party is above the law. When a Government and its functionaries continuously and repeatedly

violate the very law which forms the basis of its legality, then it is guilty of violating not only the Constitution but also the norms of democracy and the trust which has been reposed in them by the electorate.

After very careful consideration of the growing evidence, and without malice or favour towards anyone. I have become convinced that the Government of the PDF coalition headed by Mrs. Benazir Bhutto was violating a number of provisions of the Constitution."

17. In the dissolution order dated 5-11-1996, grounds are mentioned but they are not enumerated. The first ground in the dissolution order pertains to extra judicial killings in Karachi. It is alleged that during the last three years, thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. They have been killed in police encounters and police custody. In the speech to the Parliament on
29th October, 1995, the President warned that the law enforcing agencies must ensure that there is no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected. The advice was not heeded. The killings continued unabated. No meaningful steps were taken either by the Government of the Federation or, at the instance of the Government of the Federation, by the Provincial Government to put an end to the crime of extra judicial killings which is an evil abhorrent to our Islamic faith and all canons of civilized Government. Instead of ensuring proper investigation of these extra-judicial killings, the Government has taken pride in proclaiming that the law and order situation has been controlled. These killings coupled with the fact of widespread interference by the members of the Government, including members of the ruling parties in the National Assembly, in the appointments, transfers and postings of officers and staff of the law-enforcing agencies, both at the Federal and Provincial levels, has destroyed the faith of the public in the integrity and impartiality of the law-enforcing agencies and in their ability to protect the lives, liberties and properties of the average citizen.

18. Extra judicial killings or killings in encounters as a ground for dissolution of the National Assembly is severely criticized and assailed in the petition as unsustainable for the following reasons. Firstly, it is a matter which relates to law and order situation which is a subject not in the Federal domain but relates to Provincial Governments. Secondly, on this subject as far as Karachi is concerned, Mr. Kamaluddin Azfar, who was then Governor of Sindh and later retained as such by the President under the caretaker set-up, defended these killings in his speech made on September 12, 1996 before an important forum of National Defence College. The copy of that speech was sent by the Governor to Syed Iqbat Haider, the then Minister for Human Rights vide Governor's D.O. No.PS/Gov/P/96/5308 dated 14th September, 1996. The daily News of November 9, 1996 also reported on the subject and the earlier and present views of the Governor. The copy of the letter dated 14th September, 1996 of Governor Kamaluddin Azfar to Syed Iqbal Haider is at page 54 of Volume II of the petition. The copy of the speech delivered by the Governor at the National Defence College on 12th September, 1996 is in the same volume from pages 55 to 98 and the caption of the speech is 'Karachi, Past, Present and Future' by Kamal Azfar.

19. It is not necessary to reproduce the whole speech but it is worth -mentioning that in the beginning of the speech the history of the city of Karachi is traced from the days of Alexander the Great to the Port of Karachi which was established under the Karachi Port Trust Act, 1881. In 1947, after partition, Karachi was declared as capital of Pakistan and its population has increased by twenty times from half a million to over 10 million after partition. Under another sub-heading of Political Developments since 1947 it is stated that after partition, Karachi, as federal capital, remained a Muslim League city and after shifting of capital from there, the inhabitants of Karachi felt the sense of rejection which paved the way for ethnic discontent. In 1965 elections, Muslim League was split into Convention Muslim League headed by President Ayub Khan and the Council Muslim League which was the part of the Combined Opposition Parties. The Council Muslim League stood for restoration of 1956Constitution, which was parliamentary in nature, and opposed indirect election system under the Basic Democracies introduced in the 1962-Constitution which envisaged Presidential form of Government. The Convention Muslim League won the elections in Karachi and the victory procession was fired upon leading to carnage in Liaquatabad. During 1970 elections, Karachi city was polarized between the Socialist PPP and the religious parties which described socialism as un-Islamic, and also there was domination of Barelvi and Deobandi Schools of thought supported by immigrants with followers in Urdu-speaking areas.

20. From the speech some relevant paragraphs are reproduced verbatim, which speak for themselves:-

"The 1985-elections which were held on non-party basis opened the doors for fresh political alignments. The non-party elections gave rise to ethnic, sectarian and other considerations. These were strengthened by ethnic riots which started from Bushra Zaidi's case of 1985 and reached the peak of the crescendo with the Aligarh Colony massacre of December 14-15, 1986. In the meantime the All Pakistan Mohajir Students Organization (APMSO) which was formed in 1978 had converted into a political force known as MQM on August 7, 1986 in a rally, accompanied by gun fire, held at Nishtar Park.

A major consequence of this ethnic polarization was to give rise to the MQM and the Punjabi Pakhtoon Itehad. It also sounded the death-knell for the JUP and JI which became extinct. The only other party apart from MQM with electoral support in Karachi remained the PPP which secured two NA seats and seven PA seats in 1988. The 1993 Provincial Assembly Elections were more or less a repeat of the 1988 Elections with the MQM and PPP being the single largest and second largest parties and JUP and JI and other virtually extinct. The MQM did not contest the 1993 elections for the NA, the seats being split between PPP and Muslim League.

In the Local Body elections held in 1987 the MQM swept the polls in Karachi and Hyderabad returning Dr. Farooq Sattar, the present leader of the Opposition in Sindh Assembly, and Senator Aftab Sheikh as Mayors of Karachi and Hyderabad respectively. The JUP and JI were wiped out. The only other party which remained in the field was the PPP which secured the Deputy Mayorship of districts West and South.

The MQM introduced violence into the politics of Karachi. For a whole decade between 1985 and 1995 Karachi was caught in the grip of violence. The violence continued unabated even though the MQM had the lion's share in the power for half the period: first in cooperation with the PPP during 1988 and 1989 and then in collaboration with Mian Nawaz Sharif in 1990, 1991 and 1992.

At the time when the Army Operation started in June, 1992 the MQM was at the peak of its power. Alongwith Ministers at the Federal level, including the Ministry of Production which enabled the MQM to over staff the Pakistan Steel at the cost of driving it to bankruptcy from which it was rescued by Lt.-Gen. Sabieh Qamaruzaman, the MQM held the key Ministries of Education and Local Government, the biggest employers, in the Province of Sindh and the city of Karachi. Both the Mayors of Karachi and Hyderabad, the two big cities of the Province, belonged to the MQM. Yet its grip on power did not appease the MQM's lust for bloodshed.

The PPP renegade Chief Minister Jam Sadiq had minority support from the rural areas and was propped up by Mr. Altaf Hussain who in return gained control of Karachi. Karachi was run like a state within a state. From 1990 to 1992 all DCs and SHOs were appointed in Karachi at the behest of MQM. The streets of Karachi were adorned with the banners which said "Death to those who disobey the Leader". According to insiders, as many as 1500 MQM dissidents were killed. Among those who did not follow the path of blind obedience to Altaf Hussain was the Chief of MQM Azeem Tariq, assassinated in cold blood by MQM henchmen. In addition the MQM murdered scores of PPP activists.

Like other militant organizations like Khalsa and Tamil Tigers, the MQM once in orbit, were outside the gravitational force of its sponsors principally General Hamid Gul, Head of the ISI and the then Chief Minister Sindh Syed Ghous Ali Shah, who used the MQM to settle scores with the JI Mayor Abdul Sattar Afghani.

The Army Operation in Karachi failed because there was a difference of perception between the then President, Chief of the Army Staff and the Prime Minister. On the very first day of Army Operation the then President called the Corps Commander on three occasions asking him to stop the operation which was thus doomed to failure.

?????????? Present Situation

The situation in Karachi when I was commissioned as Governor Sindh in mid 1995 is given in Annexures "A" & "B". The situation today is also shown in the slides. There is a sea change.

The law and order situation in whole of the Sindh Province particularly in Karachi is well under control and has shown a tremendous improvement since August, 1995. The downward trend in the killings of citizens and members of law-enforcing agencies including police personnel at the hands of terrorists has been maintained by effective measures. I take pride in saying that the number of such killings has been brought down from 276 during the month of June 1995 to only 4 during the month of June 1996. In June 1995, 37 policemen were killed in Karachi the figure for June 1996 is zero. This improvement in the overall law and order situation is primarily the result of better intelligence and relentless efforts on the part of police which worked day and night without being complacent for a single moment for the accomplishment of this gigantic task.

????????????? Activities of Militant Outfit of MOM(A)

After the General Elections of 1990 the MQM was made a coalition partner in the Government. This was followed by a brief' interlude of peace. Some quarters were misled into hoping that opportunity to share in Government, would bring a positive change in MQM's violent brand of politics. But these hopes were shortlived and in the days that followed the situation worsened and most parts of Karachi became hostage in the hands of MQM militant elements. Extortion, elimination of political rivals and exploitation by militant elements of the MQM became the order of the day.

In order to check the situation from going further adrift "Operation Clean Up" was launched by the Army in Karachi on June 19, 1992 or. the invitation of the then Prime Minister Mian Nawaz Sharif. the immediate reaction to the crack down was that the entire MQM leadership went underground. Altaf Hussain sought asylum in the UK. The militant activities temporarily dropped to a low key. However,. with the passage of time terrorist activities increased inter-factional clashes between MQM(A) and the splinter MQM Haqiqi and attacks oil law enforcement agencies gained momentum.

The MQM boycotted the National Assembly elections of 1993 but won most of the PA seats in Karachi and Hyderabad, the remaining seats being won by the PPP, Although offered a share in power, in the aftermath of General Elections of 1993, the MQM chose to stay in the opposition.

The Government of Mohtrama Benazir Bhutto initially extended the Operation Clears Up and the Army stay in Sindh. The MQM(A) responded by stepping up its subversive activities. In addition to its terrorist activities, the MQM(A) also launched a bitter propaganda campaign against the Pakistan Army, By drawing a parallel between the Indian occupied Kashmir and Karachi, MQM(A) charged the Army and Police of extra judicial killings and repression of Mohajirs. This was followed by a series of protests and strikes which resulted in loss of life and property and adversely affected the civic life in Karachi. In April 1994, MQM(A) launched a "Jail Bharo Tehreek" accompanied by renewed acts of terrorism. In September, 1994 the Government again reviewed the situation and decided to wind up Operation Clean Up.

Withdrawal of Army from Karachi was one of the main demands of MQM(A). The army withdrew in November, 1994 but there was no change in the MQM(A) stance. The MQM(A) accelerated its terrorist activities and subversive propaganda while MQM(A) militants continued to paralyse civic life in Karachi. The Sindh Government decided to initiate a process of dialogue. This step, however, had no effect on the MQM(A) strategy and MQM(A) sponsored terrorism continued unabated.

The Heroic Role of Karachi Police.

The Police succeeded in restoring peace but at the cost of police officers and men laying down their lives to protect the life, property and honour of the citizens. The Annexures "C", "D" and "E" which deal with killings in 1994, 1995 and 1996 speak for themselves. Glowing tributes were paid to the gallant acts of Police officers and 47 of them (including 14 posthumous) were conferred Quaid-e-Azam Police Medals, on 23rd March. 1996, the highest gallantry award for Police officers in Pakistan. The three

heroes of the field were Major Gen. (Recd.) Naseeru.llah Khan Babar, the Federal Minister for Interior, the Inspector-General of Police Sindh, Muhammad Saeed Khan and the DIG Karachi Dr. Shoaib Suddle but lasting credit is due to the Prime Minister of Pakistan Mohtrama Benazir Bhutto for keeping a firm hand at the helm.

Holding of International Cricket one dayers at National Stadium, Karachi was a turning point in the mood of the city. The British Minister of State for Foreign and Commonwealth Affairs Mr. Jeremy Hanley, who witnessed the cricket match with me on March 3rd. also paid rich tributes to Karachi Police and Sindh Government for making elaborate security arrangements for the occasion a tribute reiterated by tile U.K, Foreign Secretary, Mr. Malcom Riiltind at a luncheon speech it Governor House on 28th August, 1996.

The elimination of the most wanted and notorious terrorist of MQM(A). Nacem Sherri in an armed encounter with law enforcing agencies completed the pulverization of the militant and terrorist Wing of the MQM(A). The people of Karachi heaved a sigh of relief.

The consequential strike call given by the MQM(A) went unnoticed and people generally paid a deaf ear to it. This has demoralised the enemies of peace in Karachi and city has returned to normalcy.

In a nutshell, I would like to emphasize that the entire law and order atmosphere polluted by MQM(A) has been controlled. Yet there is no room for complacency. The symptoms of the.MQM(A) created virus against Pakistan are not visible but the germs of the disease remain and can tare up and revert to the 1992 situation if continuity is not maintained. To explain further, the MQM has access to funds, a number of fully indoctrinated militants who have the means to communicate through telephone, fax and telex, letters, and messengers many of them women, and international support from the enemies and rivals of Pakistan.

The international MQM Secretariat is at the centre of the axis between South Block in Delhi, MQM Headquarters in London and at 90 Azizabad, Karachi.

We have succeeded in containing the militant wing of the MQM with the help of a three pronged strategy making sure that the writ of the State runs through every nook and corner of Karachi, better intelligence to prevent and forestall acts of terrorism, quick and prompt response and reaction if any incident occurs anywhere in Karachi, and by a determined implementation of the socio-economic package contained in the Rs.121 billion Prime Minister's package for Karachi in order to remove the genuine grievances and meet the felt needs of Karachians."

21.??? At pages 92 and 93, there is Annexure 'A' which is, reproduced as under:

"Dark era (1994 June 1995) Perpetrated by MQM(A).

(1)??????? There was virtually no law and order in the city.

(2)??????? The effectiveness and morale of Police and law enforcing agencies was
??????????? very low and they were, rather, on the defensive.

(3)??????? The terrorists were in commanding position and they had established "No Go" areas where the Police/L.E.A. could neither enter nor carry out any operations.

(4)??????? Every District of Karachi particularly Central District had Torture Cells where the members of Police/L.E.A. and Political opponents were taken after abduction and subjected to severe and inhuman torture. many deaths were also reported in these Torture Cells.

(5)??????? The frequent strike calls given by MQM(A) were very successful and a
city full of life, was converted into haunted place. The people preferred to stay inside for fear of their lives.

(6)??????? The economic activity had come to "HALT" and the foreign capital was not only shy to come in but also started to fly out of country.

(7)??????? The Karachi Stock Exchange, hub of economic-activity, had almost ????? crashed and many investors suffered huge losses.

(8)??????? The socio-cultural life suffered a severe setback and the picnic spots gave a deserted look, as nobody was prepared to guarantee protection of life to the citizens.

(9)??????? The people were left with little faith in the Government agencies as bands of armed bandits and terrorists were roaming about freely and controlling different areas.

(10) Marriages/Valimas were can celled and most of the people abandoned their places of abode to save their lives.

(11) The city gave a very grim look especially in the evenings. Very few vehicles used to ply on the roads as travelling had become very unsafe.

(12) Bhatta collection by armed bands was order of the day and a roaring business. The business community and well-to-do people were forced to pay donations in return for their protection of life.

(13)????? Despatch of dead bodies to different areas of upcountry was a common sight. This was the plight of human beings in metropolitan city of Karachi.

22. At pages 94 and 95 there is Annexure 'B' which is reproduced as under:

????????????????????????????? Present Situation.

The law and order situation is remarkably improved.

The morale of Police and Law Enforcing Agencies is very high and they are capable of handling any situation with dedication, commitment and courage.

The terrorists are on the run and have lost the initiative.

The backbone of organizational capability of the militant outfit of MQM(A) has been broken and their activities are at the lowest, ebb.

A large number of Torture Cells have been unearthed and a constant vigil is being kept for the eradication of this menace.

The strike calls are very rare and the response to these calls from the general public is very poor; they generally pay a deaf ear to such calls Karachi Stock Exchange also remained open during the last strike call.

The city life in Karachi has returned to normalcy.

The socio-cultural activities are on the increase. The picnic spots are thronged by the general public on weekends and holidays which speaks of their confidence in the capability of Police and Provincial Government to protect their life, honour and property. Marriage halls are also full of life throughout the week.

The economic activity is on the increase and the foreign investors are coming to Pakistan in view of the visible improvement in law and order situation.

Construction activity is visible all around and the prices of real estate are touching new heights.

The general public is co-operating with Police and other law enforcing agencies in the drive against the terrorists and other anti-social elements.

Collection of Bhatta (forced donations) by terrorists and their agents has been controlled to a great extent.

People who had left Karachi in despair and due to uncertainty, have started coming back to take part in their normal life.

All Hotels especially Five Star Hotels are booked to almost 100% occupancy and Hotel managements are charging full rates instead of reduced rates.

Holding of three one-day International Cricket matches was the acid test of effectiveness of Karachi Police and they, by the grace of Almighty, came out with flying colours. Rich tributes were paid for excellent arrangements not only by national press but also by international electronic and print media.

People have heaved a sigh of relief and it is generally thought that an impossible task has been accomplished. The reversal of trend is also beyond their comprehension.

23 At page 96 there is Annexure 'C' which is reproduced as under:--

?????????????????????? KILLED-1994.

MONTHS MQM- MQM- SHIA??????? SUNNI??????????? POLICE RANGER ARMY???? OTHER?????????? TOTAL

JAN???? 0???????? 01??????? 0????????? 01??????? 0????????? 0????????? 0????????? 02??????? 04

MONTHS MOM-A MQM- SHIA????? s1'??????? INNI??? POLICE RANGER ARMY???? OTHER?????????? TOTAL

FEB???? 04?????? 01??????? 0????????? 02??????? 01??????? 0????????? 0????????? 03??????? 11

MAR?? 04?????? 03??????? 0????????? 01??????? 04??????? 01??????? 1 0?????? 04??????? 17

APR???? 06?????? 01??????? 02??????? 01??????? 02??????? 0????????? 0????????? 06??????? 18

MAY?? 15?????? 02??????? 01??????? 02??????? 01??????? 0????????? 0????????? 18??????? 39

JUN???? 11?????? 03??????? 06??????? 08??????? 06??????? 0????????? 0????????? 02??????? 36

JUL????? 05?????? 05??????? O8?????? 08??????? 07??????? 0????????? 0????????? 55??????? 88

AUG??? 13?????? 10??????? 03??????? 06??????? 05??????? 0????????? 01??????? 64??????? 102??

SEP???? I 0?????? 10??????? 07??????? 12??????? 118????? 0????????? 01??????? 36??????? 84

OCT??? 1 4????? 14??????? 08??????? 11??????? 15??????? 0????????? 01??????? 55??????? 118

NOV?? 1 5????? 22??????? 0????????? 01??????? 12??????? 01??????? 01??????? 77??????? 129

DEC??? 10?????? 09??????? 12??????? 13??????? 15??????? 05??????? O1?????? 100????? 171

TOTAL113????? 81??????? 47??????? 66??????? 76??????? 117????? 05??????? 422????? 817

24??????? AL page 97 there is Annexure 'D' which is reproeuccd as under:
????????????????????????? KILLED-1995.
MONTHS MQM- MQM- SHIA??????? SUNNI?????????? POLICE RANGER ARMY???? OTHER?????????? TOTAL,

JAN???? 07??????? 09??????? O7?????? O5?????? 08??????? 0????????? 11??????? 79??????? 115

FEB???? 13??????? 17??????? 36??????? 30??????? 08??????? 0????????? 0????????? 59??????? 163

MAR?? 09??????? 25??????? 11??????? 04??????? 10??????? 02??????? 0????????? 65??????? 126

APR???? 13??????? 13??????? 0????????? 0????????? 20??????? 0????????? 01??????? 44??????? 91

MAY?? 16??????? 07??????? 0????????? 0????????? 26??????? 05??????? 04??????? 76??????? 134

JUN???? 19??????? 16??????? 0????????? 01??????? 36??????? 0-???????? 02??????? 202????? 276

JUL????? 11??????? . 02????? 0????????? 0????????????? 10??? 03??????? 02??????? 205????? 233

AUG??? 03??????? 03??????? 0????????? 01??????? 16??????? 01??????? 0????????? 129????? 153

SEP???? 02??????? 0????????? 01??????? 0????????? 15??????? 0????????? 01??????? 106????? 125

OCT??? 02??????? 05??????? 0????????? 0????????? 16??????? 02??????? 01??????? 100????? 126

NOV?? 0????????? 03??????? 0????????? 0????????? 06??????? 0????????? 0????????? 112????? 121

DEC??? 01??????? 01??????? 02??????? 0????????? 04??????? 0????????? 0????????? 71??????? 79

TOTAL96??????? 101????? 57??????? 41??????? 175????? 13??????? 11??????? 1248??? 1742

25.?? At page 98 there is Annexure 'E' which is reproduced as under:-

????????????????????????????? KILLED-up to 30th June, 1996

MONTHS MQM-A MQM- SHIA SUNNI POLICE 'RANGER ARMY I OTHER TOTAL

JAN???? ?????????? 0?????????? 04??????? 0????????? 0????????? 10??????? 03??????? 02??????? 63??????? 82

FEB???? '????????? 0?????????? 0????????? 0????????? 0????????? 04??????? 0????????? 0????????? 25??????? 29

MAR?? ?????????? 0?????????? 0????????? 0????????? 0????????? 02??????? 0????????? 0????????? 08??????? 10

APR???? ?????????? 0?????????? 01??????? 0????????? 0????????? 0????????? 0????????? 0????????? 08??????? 09

MAY?? ??????????? 0????????? 04??????? 0????????? 0????????? 01??????? 0????????? 0????????? 01??????? 06

JUN???? ??????????? 0????????? 0????????? O1?????? 0????????? 0????????? 0????????? 0????????? 04??????? 05

TOTAL??????????? 0????????? 09??????? O1?????? 0????????? 17??????? 03??????? 02??????? 1 105?? 141

26. What is stated in the speech of Mr. Kamaluddin Azfar, parts of which have been reproduced in the above paragraphs, has been answered in the written statement filed on behalf of the respondents from which paragraphs 33, 34 and 35 are reproduced hereunder, which are self-explanatory:

"33. That the contents of submission (iii) are misconceived and are denied. The speech referred to and relied upon by the petitioner does not in any place refute or contradict what is stated in the Dissolution. Order. The speech merely catalogues and compiles the killings that went on in Karachi over the relevant period without in any manner asserting or even pretending that the killings carried

out by the law enforcement agencies were lawful or in accordance with law. (Indeed, Mr. Azfar specifically took note of the "elimination" of an MQM(A) "terrorist" in an "armed encounter ").'This is the same basic point which is so obvious to ordinary people, but one which the petitioner has so much difficulty understanding. In a system based on the rule of law, there is (and must always be) a qualitative difference between law breakers and law enforcers. It is simply not possible.to enforce the law by breaking it. There might be temporary relief and momentary respite: but the long term consequence of the abasement and abuse of law enforcement agencies, and of allowing and even encouraging them to use unlawful means to "control" the situation, is (to paraphrase Gibbons) to convert them into "beasts in uniform". And once that happens, one can only repeat the age old question: "who will guard the guardians?" Unfortunately however, the petitioner and her Government seemed to be utterly oblivious and indifferent to what the harvest would be of the crop that they were sowing.

34. That in this context, it may also be noted that Mr. Azfar's speech relied upon by the petitioner in any case belies her claim that the Federal Government had nothing to do with the situation in Karachi. It will be recalled that Mr. Azfar was appointed as the Governor of Sindh by the petitioner's Government. He performed his functions on the basis of his perception of himself as an appointee of the Federal Government and on the advice of the Chief Minister. It was for this reason that he lauded the operations carried out in Karachi and stated that "lasting credit [was] due to the [then] Prime Minister of Pakistan Mohtrama Benazir Bhutto for keeping a firm hand at the helm". How could that be so if, as the petitioner now claims, the Federal Government had nothing to do with what was happening in Karachi? In the context of the Governor's speech, can . there be any doubt as to which "helm" the Governor meant when he lauded the petitioner for keeping a firm hand on it? The statements of the Governor, which are accepted in totality by the petitioner, clearly establish that not only was the Federal Government involved in the operations launched and carried out in Karachi; it was in fact masterminding the entire show.

35. The petitioner next makes submissions in respect of the following part of the Dissolution Order (which is, contrary to what the petitioner claims, neither subjective nor insubstantial):

"They have been killed in police encounters and police custody. In the speech to Parliament on 29th October, 1995 the President had warned that the law-enforcing agencies must ensure that there was no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected. This advice was not heeded. The killings continued unabated. The Government's fundamental duty to maintain law and order has to be performed by proceeding in accordance with law." [pg. 9 of the petition]".

27. On the subject of extra judicial killings whatever is stated in the dissolution order, elaborated later in the speech of the President and then whatever version thereof is given. in the petition by the petitioner and reply thereof in the written statement, it appears clearly that in the law and order situation, which took place in Karachi, the Federal Government, Provincial Government and other Law Enforcing Agencies were involved and here we are not concerned with the merits and demerits of that situation as to how it took place and who were responsible for it or not but the position beyond dispute is that there were killings on both the sides and there is specific allegation that there were extra judicial killings and also there were custodial killings, which require examination and explanation. Extra-judicial killings and or custodial killings are to be dealt with strictly according to law and the procedure which is laid down under the law. It is to be seen whether such killings have been dealt with strictly according to law and are justified as permitted by the law.

28. Here at this stage it would be pertinent to mention that after filing of C.P. No.59 of 1996 on 13-I1-1996, the MQM filed application under Order I, Rule 10 C.P.C. read with Order XXXIII, Rule 6 of the Supreme Court Rules, 1980 praying that MQM be allowed to be joined as respondent in support of the ground of extra judicial killings mentioned in the order of the dissolution. It is mentioned in the said application that over the last three years the MQM has voiced its concern repeatedly including filing of Constitutional Petition No.46 of 1994 in the Supreme Court, which is still pending awaiting final arguments. In that Constitutional petition in Volumes 5 and 21 many details of such killings are narrated. It was the agitation by the MQM which was fully noted by the media and published both in Pakistan and abroad leading to severe condemnation of the brutal tactics utilised by the Government of the petitioner in Constitutional Petition No.59 of 1996 against the rank and file of the MQM. In such circumstances it was claimed that the MQM as intervener be allowed to be joined as respondent in C.P. No.59 of 1996 to enable the intervener to fully assist the Court in giving all the relevant details for doing "complete justice" as envisaged by Article 187(1) of the Constitution. It was further averred in the said application of the intervener that the opening part of the President's Proclamation contains the same language as is stated in paragraph 6 of Part III of Constitutional Petition No.46 of 1994 in which it has been stated that he Government of the petitioner in C.P. No.59 of 1996 at the relevant time had destroyed the sanctity of right of life guaranteed in Article 9 of the Constitution. In such circumstances since this matter is directly sub judice in these proceedings as well, it is in the interest of justice that the application of the intervener should be allowed. It is stated in the application of the intervener that negotiations were entered into by the MQM and the Administration for restoration of normalcy in
Karachi. Volume 17 of C.P. No.46 of 1994 contains complete details of talks and the correspondence exchanged during such negotiations. Actually during this time, which spreads between July, 1995 to December, 1995, the Government of the day unleashed the most terrible infliction of torture and suffering on the rank and file of the MQM leading to widespread furore over her Government's policies. Reports by acknowledged international human rights agencies such as Amnesty International, Asia Watch and others fully substantiate this averment. Appended with this Application are six such reports, namely, ASA 33/01/96: February, 1996, ASA 33/15/96 dated 5th November, 1996, ASA 33/04/96 dated 23th May, 1996, ASA 33/17/96 dated November, 1996, E/CN.4/1997/7/Add.2 dated 15th October, 1996 and Human Rights Report Pakistan, 1996.

29. Petitioner Mohtrama Benazir Bhutto in C.P. No.59 of 1996 opposed vehemently request of MQM to be joined as party- to these proceedings and in this context filed C.M.A. No.6 of 1997 contending that the sole purpose of the suit is whether or not the President was justified in dissolving the National Assembly on November 5, 1996 for which are to be considered facts within the knowledge of the President and not the MQM. It wag further submitted that in such circumstances the MQM was thus irrelevant with regard to determining the facts known to the President at the time of the dissolution of the National Assembly. In such circumstances question arose whether MQM should be allowed to be-joined as a party to the proceedings under consideration or not particularly in the light of the fact that MQM had already filed in the Supreme Court C.P. No.46 of 1994 under Article 184(3) of the Constitution in which prayer is that the respondents named therein, namely, Federal Government and the Provincial Government of

Sindh be prohibited from infringing fundamental rights of MQM to enable it to function as political party as envisaged in the Constitution and further political activities of MQM cannot be curtailed arbitrarily but save in accordance with law. It was further prayed that MQM was prevented from participating in the National Assembly elections, which had resulted in rendering that Assembly invalid.

30. In C.P. No.46 of 1994, Part V contains sub-heading "Persistent Genocide" in which stance is taken that the Federal Government and the Provincial Government of Sindh through their agents have consistently under a devised plan acted with malice aforethought to achieve the cleansing of Sindh by terrorising the Mohajir population to move away from Karachi to provide a numerical majority to the indigenous people of Sindh and to exterminate and kill the top several layers of leadership of MQM. It is further stated in the same petition that the killings have been perpetrated by the Law Enforcement Agencies working for or with approval of respondents Nos. l and 2 and their sponsored and protected group of Haqiqi. Further details have been given to show how kidnappings and killings had taken place of members and workers of MQM by Haqiqi group starting with murder of Mr. Salahuddin, the eminent journalist and editor of Takbeer. Such killings are mentioned in detail from pages 84 to 95 in Part V of the memorandum of C.P. No.46 of 1994. That petition is still pending in which adjournments have been taken by both the parties with consent for production of documents in rebuttal and preparation of arguments. It would be pertinent to mention that in that petition notice was issued to the Attorney General for Pakistan on the question of maintainability of the petition and later it was submitted by the Attorney-General that the question of maintainability could be taken in hand only after written statement was allowed to be filed by the respondents in that petition, which was allowed to be done. Several dates were taken for preparation of the written statement with consent of the petitioners therein and finally the written statement was filed alongwith annexures containing 41 volumes. In any case dates had been given in that case with consent of the parties.

31. If we agree with the contention of Mr. Aitzaz Ahsan that MQM is not a necessary party because what is to be considered in these proceedings is the material in front of the President of Pakistan when he passed order of dissolution and not what MQM has to say, even then it appears that the Federal Government in this case has defended the ground of extra judicial killings in the proclamation of dissolution with the same material which is being relied upon by MQM in support of prayer that they should be allowed to be joined as necessary party in these proceedings.

32. In C.M.A. No.806 of 1996 filed by MQM in C.P. No.59 of 1996 in paragraph 12 of the memorandum of the application it is claimed that the opening part of the President's Proclamation directly adopts the concept as well as almost the verbatim language of paragraph 6 of Part III, A of the Constitutional Petition No.46 of 1994 filed by MQM in which it has been averred that the Government of the Petitioner/Mohtrama Benazir Bhutto at the relevant time had destroyed the sanctity of right of life guaranteed in Article 9 of the Constitution. As such since the matter is directly sub judice in both the proceedings, it would be in the interest of justice that applicant/intervener's submissions are heard.

33. In such circumstances and for the reasons stated above we considered it to be proper not to pass any order granting or not the prayer of MQM to be joined as necessary party in these proceedings as contemplated under Order I, Rule 10, C.P.C. but allowed their counsel to address the Court and put forward his arguments in support of the prayer. Not only that but during the hearing we had passed such order dated 18th January, 1997 after hearing Dr. Farooq Hassan for the intervener and Mr. Aitzaz Ahsan for the petitioner. We had directed that final order on this application would be passed after hearing of this case at the fag-end of the proceedings.

34. We are of the view that even without allowing the MQM to be joined as intervener in the present proceedings there is sufficient material already available
as is reflected in the written statement filed by the President and other respondents named in C.P. No.59 of 1996. It may be mentioned that common stand is taken by the President, Federation of Pakistan and the Caretaker Prime Minister in the written statement in support of the grounds mentioned and taken in the proclamation of dissolution. Paragraph 22 of the written statement is reproduced verbatim as under, which speaks for itself and shows commonalty in the stance taken in the written statement and MQM in their application under Order I, Rule 10, C.P.C. for impleadment as necessary party to these proceedings:-

"That it is amazing that the petitioner can go to the extent of denying the very factum of extra judicial killings in Karachi and other parts of Pakistan. The petitioner seems to be under the mistaken belief that if something is denied long enough, boldly enough and loudly enough, the truth can be obscured and even evaded altogether. Such a blatant disavowal of the truth may have been all in a day's work for the late (and unlamented) Dr. Goebbels, but it is tragic to see a person who has twice held the office of the Prime Minister of Pakistan practising the art of the Big Lie perfected by the late- luminary of the Nazi regime. The numerous killings (or, more accurately, murders) that have been committed in police "encounters" and in police custody (and are euphemistically known as extra judicial killings) are facts that are well known and documented both within and without Pakistan . Several human rights organizations, both at home and abroad, have gathered and compiled irrefutable evidence and details of this evil. The petitioner herself, contrary to her bald denials in the petition, had detailed knowledge of exactly what was happening in Karachi and elsewhere.

Firstly, the 'entire Karachi "operation" was being masterminded and controlled by the Federal Government. The then Interior Minister was intimately involved with the "operation" both at the strategic and even "????? at the tactical level. The policy was largely framed at the Federal level and the role of provincial functionaries was reduced essentially to being willing executants (and executioners) of orders received from
Islamabad. Thus, for example, the Rangers were an integral part of the entire "operation"; this is a force directly under the control of the Federal Government. The Rangers were given special powers under the Rangers Ordinance, 1959 to give legal cover to their activities in Karachi. The electronic media was also utilised for this purpose. Many? alleged "terrorists" were paraded on television by the Federal
Government, Where they gave lengthy interviews to the press "confessing" their "crimes" in a manner reminiscent of communist era regimes.

Secondly, a voluminous record exists, and was available with the petitioner, which clearly indicated that scores of persons were being killed in police "encounters". and/or custody in Karachi by the .law enforcement agencies. Periodic reports were made available to the petitioner and she was fully cognizant of what was happening in and to that city. Reports were submitted to her on a continuing basis, often several times a week and on many occasions, almost daily. Indeed, the reports covered all aspects of law enforcement in Karachi, and were not limited only to "terrorist" operations. It is therefore completely disingenuous of her to suggest that the ground taken by the President is "contrary to the facts". The petitioner knew precisely what was going on in Karachi, down to the last "terrorist/criminal" killed by the police in an "encounter", the last person arrested, the last TT recovered and the last car snatched. Contrary to what the petitioner is now stating, the evidence is plain, irrefutable and irresistible not only that extra-judicial killings were being carried out on a massive (and systematic) scale in Karachi and elsewhere, but also that the petitioner was fully aware of what was going on. The record not merely speaks volumes; it is in volumes. "

35. In respect of extra-judicial killings as ground No.l in the order of' dissolution, petitioner Mohtrama Benazir Bhutto in C.P. No.59 of 1996 has taken the stand that these killings relate to law and order situation in the Province of Sindh with which the Federal Government is not concerned and has no link whatsoever. In this context it would be proper to reproduce as under petitioner's submission (i) from page 12 of the memorandum of the petition:-

"It may be reiterated, in the first instance, that the Federal Government has no authority to investigate into any such incident whatsoever. If it had purported to do so that indeed would have been a grievous breach of Constitutional set-up which places this responsibility in the hands of the Provinces. No law permits the Federal Government to assume to itself, in any such eventuality, the powers and authority of the Provincial Governments. The complaint would have been valid if the Federal Government had indeed done so. That would, in fact have been a clear usurpation of authority not permitted by the Constitution, and the President could rightly have complained. Not otherwise. "

36. In the context of what is stated above, it would be pertinent to refer to Articles 148 and 149 of the Constitution, which are to be read together, envisaging obligations of the Provinces and the Federation and directions to the Provinces in certain cases. Both these provisions are so comprehensively stated in the Constitution that the best and simplest way would be just to reproduce them as they are, which is being done as under:

" 148. --(1) The executive authority of every Province shall be so exercised as to secure compliance with Federal laws which apply in that Province.

(2)??????? ,Without prejudice to any other provision of this Chapter, in the exercise of the executive authority of the Federation in any Province regard shall be had to the interests of that Province.

(3)??????? It shall be the duty of the Federation to protect every Province against external aggression and internal disturbances and to ensure shat the Government of every Province is carried on in accordance with the provisions of the Constitution.

149.--(1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2)??????? The executive authority of the Federation shall extend to the giving of directions to a Province as to the carrying into execution therein of any Federal law which relates to a matter specified in the Concurrent Legislative List and authorises the giving of such directions.

(3)??????? The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in. the direction to be o1 national or strategic importance

(4)??????? *The executive authority of the Federation shall also extend to the giving of directions to a Province as to the manner to which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity or economic life of Pakistan or any part thereof."

37. It is thus clear that the above mentioned provisions in the Constitution regulate relationship between the Federation and a Province in a situation in which Federal law is applicable in that Province and a situation has arisen in which it is to be considered as to how the Federal law is to be made applicable so that it should bring about the desired result and be effective so that proper remedial measures are adopted to contain and control the situation in which the Federal Government has to adopt supervisory role and give directions to the Province in which is being applied the federal law.

38. The petitioner, as stated above, has denied involvement.of the Federal Government in law and order situation in Karachi relating to extra judicial killings, which is a ground mentioned in the order of the dissolution. In the same petition, the petitioner has relied upon the speech dated September 12, 1996 made at the National Defence College by Mr. Kamaluddin Azfar who was appointed Governor by her during her tenure. It is further stated by her that the same Governor was retained by the President in the caretaker set-up after dissolution of the National Assembly and dismissal of her Government. Extracts from the speech have been reproduced above in which the history of Karachi, political background, emergence of MQM as a party, and details of law and order situation in Karachi are mentioned, which need not be repeated. In Paragraph 24 of this judgment Annexure 'B' alongwith speech of the Governor is reproduced reflecting the present situation in Karachi after action by the Government claiming that the backbone of the organizational capability of militant outfit of MQM(A) has been broken and their activities are at the lowest ebb and further that city life in Karachi has returned to normalcy. The Governor also lauded the operation carried out in Karachi in his speech and stated that the lasting credit was due to the Prime Minister of Pakistan, Mohtrama Benazir Bhutto, for keeping a firm hand at the helm. For details reference can be made to paragraph 20 of this judgment wherein paragraphs from the speech are reproduced.

39. The charts which are annexures of the speech of the Governor and have been reproduced in this judgment in paragraphs 25 to 27) show that in the year 1994 in Karachi in all 817 persons were killed including 113 from MQM(A), 81 MQM(H), 47 Shia, 66 Sunni, 76 Police, 7 Rangers, 5 Army? and 422 others. In 1995 in all 1742 persons were killed including 96 from MQM(A), 101 MQM(H), 57 Shia, 41 Sunni, 175 Police, 13 Rangers, 11 Army and 1248 others. In 1996 up to 30th June total number of persons killed was 141 including 9 from MQM(H), 1 Shia, 17 Police, 3 Rangers, 2 Army and 105 others. The above mentioned figures have been given by the Governor in his speech and the figures given by him are not disputed and it can be presumed that these figures are supported by the record because they are given by the Governor with full responsibility after usual verification from the record.

40. It is stated that the army was withdrawn from Karahci in November, 1994 and replaced by the Rangers and this change took place during the tenure of the petitioner as Prime Minister. In fact the petitioner is on record claiming credit for such change. The respondents have produced a number of documents showing involvement of the Federal Government headed by the petitioner with law and order situation in Karachi, which resulted in extra judicial killings. The documents have been obtained from the Ministry of Interior and are available in Volume 1-A of the written statement. At page 160 of Volume 1-A is copy of the confidential letter dated 20th November, 1995 from Lieutenant Colonel Dabeer Rizvi for Director-General, Headquarters, Pakistan Rangers (Sindh) addressed to the Military Secretary to the Prime Minister and copies forwarded for information to Minister of Interior and Narcotics Control, Military Operations Directorate, GS Branch, GHQ, Rawalpindi, Military Intelligence Directorate, GS Branch, GHQ, Rawalpindi, and Headquarters 5 Corps. The subject of this letter is law and order situation in Sindh and enclosed with this covering letter are reports for the period from 1 to 15 February, 1995 on the subject mentioned above. The actual report with the heading "State of Law and Order in Sindh" from 1st February to 15th February, 1995 runs from pages 161 to 181. Two paragraphs from this report at pages 162 and 163 are reproduced as under by way of specimen reporting of incidents:-

"b. Intra-factional activity was also on the increase during the period under.review. There have been continuous killings between both the factions of the Mohajir Qaumi Movement. These killings appear to have been done to gain psychological ascendancy over the opponent in order to dominate each other's area of influence. The areas of Liaquatabad, New Karachi, Khawaja Ajmair Nagri, Nazimabad, Orangi Extension and Malir were the main trouble spots. Mohajir Qaumi Movement (Altaf Group) appeared to have an upper edge in these areas A few houses of the opponents were also set on fire, 13th of February saw maximum killings in this regard, when five workers of Mohajir Qaumi Movement (Haqiqi Group), five of Pakistan People's Party and three of Mohajir Qaumi Movement (Altaf Group) were killed.

c. Political motivated mafia gangs were also active. Zafroo group of Mohajir Qaumi Movement (Altaf Group) targetted personnel who were directly/indirectly involved with Law Enforcing Agencies in area of Orangi Town. Gudoo Behari group and Haji Isreal group also killed each others members. This primarily appeared to increase their dominance for Bhatta/Chanda collection and other criminal activities."

41. In the same volume 1-A of the written statement from pages 192 to 206

are confidential Monthly Security Intelligence Reports sent by Headquarters Pakistan Rangers (Sindh to the Military Intelligence Directorate and the Joint Secretary (Civil Armed Forces), Government of Pakistan , Ministry of Interior, Islamabad, on the situation in Sindh. There is Agency report on the activities of MQM(A) from Ministry of Interior records containing file noting of the petitioner as Prime Minister from pages 182 to 184 with the note of the Prime Minister in her own handwriting at page 184. At page 189 is report of Intelligence Bureau regarding activities of SHO of Pir Ilahi Bux Colony in connection with criminal /terrorist activities of MQM(A).

42. In volume 1-A of the written statement, the respondents have produced copy of notification dated 20th July, 1995 whereunder the Federal Government conferred upon Rangers powers and duties of police officers with regard to arrest and search of any person as provided under Chapter V of the Cr.P.C. or any other law for the time being in force. Such power is exercised by the Federal Government as contemplated under section 10 of the Pakistan Rangers Ordinance, 1959. At page 487 of the same volume is letter dated 20th July, 1995 issued by the Ministry of Interior and Narcotics Control, Government of Pakistan, to the Director-General, Pakistan Rangers Sindh, Karachi on the subject of entrusting of duties, functions and powers of police officers to the Pakistan Rangers Sindh for the assistance of the Provincial police for the maintenance of law and order in Sindh. By this letter the Director-General Pakistan Rangers Sindh is informed that in response to the request of Provincial Government of Sindh, the Federal Government is pleased to direct the Civil Armed Forces located within civil administrative boundaries of that Province to act in aid of the civil powers according to the law.

43. At page 489 is letter dated 24-5-1995 from Home Secretary, Government of Sindh, to the Secretary Interior, Division, Government of Pakistan on the subject of entrusting of duties and functions under section 131-A of Cr.P.C. It is mentioned in the said letter that part of the responsibility for maintenance of public peace and security is entrusted to the officers of the Federal Government (Pakistan Rangers) under Article 147 of the Constitution and section 131-A of the Criminal Procedure Code, 1898 for a period of 12 months. The Federal Government is requested to consent to the proposed arrangement and to issue necessary instructions in this regard. It is further mentioned in this letter that details of the functions of Pakistan Rangers will be worked out mutually by the officers of the concerned Federal and Provincial Governments and the mechanics and modalities of the performance of such functions shall be worked out with the consent of the Provincial Government of Sindh. At page 492 is letter from the Home Secretary, Government of Sindh, to the Secretary, Interior Division, Government of Pakistan for extension in entrustment of powers and duties to the Rangers for another 12 months. At pages 490 and 491 is copy of the notification dated 17-5-1995 where under specific roles have been assigned to Rangers (Sindh) and its component units. Copy of this notification is sent to the Principal Secretary to the Prime Minister. At pages 493 and 494 is letter dated 18th July, 1996 from Section Officer, Ministry of Interior and Narcotics Control, Government of Pakistan to the Director-General, Pakistan Rangers Sindh on the subject of entrusting of duties, functions and powers of police officers to the Pakistan Rangers, Sindh.

44. The respondents have also produced in volume 1-A of the written statement at pages 495 and 495-A copy of the notification dated 22nd February 1995 where under the Headquarters of Pakistan Rangers Sindh (South), Karachi has been declared as an attached department of the Federal Government under the Ministry of Interior and Narcotics Control (Interior Division). At page 497 of the same volume is extract from the decisions of the Special Cabinet Meeting held on 24th July, 1995 in the Prime Minister's Secretariat and the decision communicated thereby is that the Cabinet placed on record its appreciation of the excellent work done by the Rangers and Police in coping with the law and order situation in Karachi. At page 498 is letter from the Prime Minister's Secretariat on the subject of law and order situation in Karachi whereby a number of directions have been issued by the competent authority including the one reproduced as under:-

'Lists may be obtained by the Ministry of Interior of terrorists/criminals arrested in the Army crackdown and bailed out by the Sindh High Court. Since it has been desired that they should be re -arrested the Ministry of Interior in coordination with the Sindh Government should take necessary action in this regard. "

45. The documents speak for themselves and these documents have been produced by the respondents from the Ministry of Interior, Government of Pakistan. The documents mentioned in the preceding paragraphs clearly show that the Federal Government headed by the petitioner was involved in the law and order situation in Karachi and other parts of Sindh and the situation was being controlled by the Rangers under the control of the Federal Government as is allowed under the Constitution and relevant law, which provide that in a particular situation in which a Federal Law is being administered in the Province, the Federal Government can exercise supervisory control. We regret to say that in view of such documentary evidence how could the petitioner, who was Prime Minister of the country on two occasions, make such incorrect statement before the apex Court as is made at page 12 of the memorandum of C. P. No. 59 of 1996, which is reproduced once again herein below at the cost of repetition:

"It may be reiterated, in the first instance, that the Federal Government has no authority to investigate into any such incident whatsoever. If it had purported to do so that indeed would have been a grievous breach of Constitutional set-up which places this responsibility in the hands of the Provinces. No law permits the Federal Government to assume to itself, in any such eventuality, the powers and authority of the Provincial Governments. The complaint would have been valid if the Federal Government had indeed done so. That would, in fact have been a clear usurpation of authority not permitted by the Constitution,' and the President could rightly have complained. Not otherwise. "

46. It would be pertinent at this stage to mention that there is difference between law and equity as law is based upon set rules which may not be attracted when justice is done on the basis of equity. Equity is defined in "Black's Law Dictionary" as justice administered according to fairness as contrasted with the strictly formulated rules of common law. In Pakistan equity is merged in the law but the principles are recognised and relief can be granted or not on the basis of such principles. Jurisdiction of the Supreme Court under Article 184(3) is akin to and co-related with the jurisdiction of the High Court under Article 199 where under relief is granted or not in the form of writs. One very famous maxim of equity is that petitioner who seeks equity must come to the Court with clean hands. Conduct of the petitioner is to be taken into consideration and if he has suppressed any material fact from the Court or has come to .the Court with unclean hands, then relief under the Constitutional jurisdiction can be denied to him. In support of the proposition reliance can be placed on the cases of Mahzoor Hussain v. Zulfiqar Ali (1983 SCMR 137), Abdul Hafeez v. Board of Intermediate and Secondary Education (1983 SCMR
566), Muhammad Sharif v. Mst. Zubaida Begum (1983 SCMR 1197), Muhammad Ashraf Qadri v. Principal, King Edwards Medical College, Lahore (PLD 1982 SC 131) and Abdul Ghani v. Abdul Ghafoor (1968 SCMR 1378). Making such statement which is factually incorrect and so proved as borne out from the record cannot be approbated. We are not declining relief and shutting out the petitioner on that ground as we propose to examine all the contentions raised by the petitioner in great detail so that justice must be done according to law but in the circumstances we feel constrained to make observation as stated above.

47. At page 216 of Volume 1-A of the written statement is the chart showing up-to-date position of judicial inquiries regarding extra judicial killings and custodial deaths. The information in the said chart was handed over to JSP on 24-4-1996 in the meeting held in 'S' Block under State Minister for Law and Justice. The date of the chart is 22nd April, 1996. There are several columns in the said chart with Column No.l containing serial number, column No.2 showing names of the deceased/accused, column No.3 with date of death/killing, column No.4 showing whether death occurred in police or judicial custody or police encounter, Column No.5 showing whether judicial inquiry was ordered. Column No.6 provides for name of inquiry officer/tribunal Column No. 7 provides for information of present position of inquiry and lastly Column No.R provides for information whether any action taken against police officials. In this chart there are 26 serial numbers containing information of deceased/accused persons and in some serial numbers information relates to single deceased accused while in some other serial numbers information pertains to more than one deceased accused. In this chart column No.4 shows information as to how death had occurred and at the relevant time whether deceased accused was the police/judicial custody or died in police encounter. In the chart in 26 entries in all 41 deceased accused persons are mentioned from whom 13 died in police custody, 10 in police encounters, and from the remaining three. one died in police firing, one was killed by the terrorists and one died in jail custody.

48. In all the cases mentioned above judicial inquiries were ordered, which were conducted by Magistrates, SDMs or DMs and one case at Serial No.5, in which deaths of Nasir Hussain and Arif Hussain, elder brother and nephew of Altaf Hussain, are mentioned, inquiry was conducted by Mr. Justice Ghulam Haider Lakho of the Sindh High Court, which was completed and in the last Column No.R result shown is "exonerated". In Column No.4, which gives information whether at the relevant time deceased accused was in which custody, it is mentioned that the deceased accused persons were killed by terrorists. The heading of Column No.8 is whether any action was taken against police officials and against this entry finding is "exonerated" which shows that the police were "exonerated". From the remaining cases inquiries in 17 have been completed by the Magistrates and 8 were pending at the time when the information was supplied. In almost all the cases in which the proceedings of judicial inquiry have been completed, police people are exonerated except in 4 cases.

49. It appears from what is stated above that the petitioner relies upon the speech of the Governor of Sindh, which is very elaborate - supported by documents and charts and the respondents also have produced a number of documents from the Ministry of Interior to show that the Federal Government headed by the petitioner was involved in the control of the law and order situation in Karachi

and other parts of Sindh. The question arises as to what is extra judicial killing. The answer is that it means a killing which has no sanction or permission under the law or which cannot be covered or defended under any provision of law. Another phrase used is custodial killing which means killing of a person who is in custody of investigating agency. For that burden is upon the investigating agency to explain as to how that person, who was in their custody, met his death and whether that death was natural or unnatural and in what circumstances it had come about. The third phrase used is killing in encounter with police or Law Enforcing Agencies. It appears that lot of explaining is to be done as required under the law by that agency to show that the killing had come about during exercise of right of private defence by that agency which was in fact first attached by the deceased. It also appears from the documents brought on the record by the parties in the cases under consideration that plea is taken by the investigating agency in several cases that accused while in custody and sometimes handcuffed was leading the police or personnel of Law Enforcement Agency to point out the place for recovery of incriminating material and was fired upon by unknown persons who opposed that recovery on the ground that it might connect them with the crime and in that connection one such case cited is that of Faheem Commando who was killed while he was in custody and was handcuffed.

50. We would like to make one thing clear that our intention is not to make any comments one way or the other with regard to any incident from which a case arises, which is to be dealt with according to law in the manner prescribed under the law and in the forum nominated by the law. We always want that the law should be allowed to take its normal course and the forums where such cases are pending should be allowed to decide them and other forums provided under the law for hearing of appeal should be allowed to be approached as laid down and specifically provided in that law. Here we are concerned in a limited sense with the material available before the President of Pakistan to justify his action as contemplated under Article 58(2)(b) in dissolving the National Assembly and dismissing the Government of the petitioner on the ground of extra judicial killings. Is such ground available for the action taken by the President and whether the impugned action is justified on that ground or not.

51. Mr. Aitzaz Ahsan, learned counsel for the petitioner in C.P. No.59 of 1996, contended before this Court that law and order cannot be made basis of dissolution of the National Assembly and dismissal of the Government of the Petitioner as it is a provincial subject and is responsibility of the Provincial Government. The? contention could click and hold the water only when the law and order situation is confined to the Province and is being handled by the Provincial Government to the exclusion of the Federal Government. On the contrary, in the instant case, it appears from the record that the Federal Government of the petitioner was involved in the control of the law and order situation in Karachi and other parts of Sindh, which fact is supported by the documents which are drawn up or reduced to writing in the course of official business. In fact the Federal Government of the petitioner opedy claimed credit for, controlling the law and order situation in Karachi and other parts of Sindh. Mr. Kamaluddin Azfar, the then Governor of Sindh, is on record having said in his speech mentioned above that the Government of Mohtrama Benazir Bhutto initially extended Operation Clean Up and the army stay in Sindh. MQM(A) responded by stepping up its subversive activities. That was followed by series of protests and strikes which resulted in loss of life and property and adversely affected civic life in Karachi. In September, 1994 the Government again reviewed the situation and decided to wind up the Operation Clean Up. After that MQM(A) accelerated its terrorist activities and subversive propaganda while MQM(A) militants continued to paralyse civic life in Karachi. The Sindh Government decided to initiate process of dialogue. While paying tributes to the Karachi Police for heroic role, the Governor stated that on account of gallant acts. of police officers 41 of them (including 14 posthumous) were conferred Quaid-e-Azam Police Medals on 23rd March, 1996. The three heroes of the field were Major-General (Retd.) Naseerullah Babar, Federal Interior Minister, Mr. Muhammad Saeed Khan, Inspector-General of Sindh Police, and Dr. Shoatb Saddal, Deputy Inspector-General of Police Karachi, but the lasting credit was due to the Prime Minister of Pakistan, Mohtrama Benzair Bhutto, for keeping a firm hand at the helm.

52. It is to be decided now whether the material available before the President on the ground of extra-judicial killings in which the Federal Government of the petitioner was involved was adequate or not to justify that action. In this context Mr. Aitzaz Ahsan contended before us that the President of Pakistan, after issue of proclamation of dissolution, in his speech on Radio and T.V. did not expand the ground of extra judicial killings in support of the order of dissolution and restated the same as briefly stated in the order of ,dissolution. The learned counsel further stated that before the date of dissolution the President presided over a meeting and held negotiations with MQM and had been advising the M.Q.M. to renounce violence? and participate in the mainstream of politics and also share power. In his address` to the joint sitting of ,the Parliament before proclamation of the dissolution the President did not say anything with regard to law and order situation in Karachi and while in Saudi Arabia in May, 1996 the President expressed his satisfaction with situation in Karachi. According to Mr. Aitzaz Ahsan in such circumstances extra-judicial killings cannot be taken as a ground for dissolution of the National Assembly particularly when the President did not point out this fact to the prime Minister nor advised her in writing.

53. On the other hand the stand taken on behalf of the respondents is that under Articles 148 and 149 of the Constitution it is the Constitutional duty of the Federal Government to tackle law and order. situation in Karachi and other parts of Sindh which responsibility cannot be shifted to others on the ground that the President did not raise objection earlier in point of time. There was coalition of PDF at the Centre with the PPP as the main partner while in Sindh the Government was of PPP. There is no dispute about the fact that petitioner Mohtrama Benazir Bhutto is a leader of PPP, hence she took it upon herself to solve the problem of law and order situation in Karachi and other parts of Sindh on her own as the Prime Minister of the country and also as leader of the PPP. If the Federal Government had taken upon itself to control the situation hen why it did not succeed and end did not come bringing about solution of the problem of the law and order situation in Karachi. The basic principle envisaged in the parliamentary democracy in the Constitution is that the President is to act on the advice of the Prime Minister and it is not the other way round. So far the speech of the President after the order of the dissolution is concerned, stand is taken on behalf of the respondents that the speech merely catalogued and compiled the killings that went on in Karachi over the relevant period without in any manner asserting or even pretending that the killings carried out by the Law Enforcement Agencies were lawful or in accordance with law. It is further submitted on behalf of the President that under no provision of the Constitution the President was required to give warning in writing or advise her or put her on notice before taking any action under Article 58(2)(b) on the ground mentioned above.

54. The law and order situation in Karachi and other parts of Sindh should not have been allowed to deteriorate and get out of control. The custodial killings are to be explained satisfactorily as i<s, required under the law. The killings in encounters with police

are to be explained in proper manner and the Court has to give finding whether they were justified or not. There is absolutely no explanation available or produced on the record as to how the persons taken in custody and some of them in .handcuffs while leading the Police party/Law Enforcing Agencies for making recoveries, were allowed to be killed by some unknown persons who did not want recoveries to be made. If a person is taken? into custody then he is bound to be dealt with strictly according to law and is to be punished only when the case is proved against him. He cannot be allowed to be killed by any person while he is in custody. If this is done then it clearly shows that there is no writ of law but law of jungle. This shows inefficiency which tantamounts to total failure of the Constitutional machinery. If both the Provincial Government and the Federal Government jointly dealing with such situation fail then it can be said that the ground is available to the President to come to the conclusion that a situation has arisen in which the Government of the Federation cannot be run in accordance with the provisions of the Constitution and the Constitutional machinery has failed.

55. So far from 1994 to 30th June, 1996 in all 2700 persons have been killed in Karachi including 209 from MQM(A), 191 from MQM(H), 105 Shia, 107 Sunni, 268 Police, 23 Rangers, 18 Army and 1775 others. These killings do show that the persons have been killed and their numbers are given. These killings also include those of Police, Rangers and Army. Apart from MQM(A) and MQM(H), Sunnis and Shias have also been killed showing sectarian strife. These killings do reflect that law and order situation had slipped out of control and the killings were on increase. Not only that but in the newspapers, local as well national and international, there was general outcry against these senseless killings which had brought about disruption in the commercial activities with strikes and protests taking place very often resulting into flight of capital and shifting of people to other safer places in other Provinces. There was a feeling of insecurity among the citizens of Karachi in particular and in the residents of Sindh in general and people started remaining indoors from early evening to dawn without making any attempt to stir out of houses even for valid reasons. Lingering impression and feeling was that there was constant fear of unknown and lack of security and people thought that anything could happen to any body at any time and at any place.

56. Some international organizations taking interest in the happenings in Pakistan after conduct of investigation and verification of facts made by them independently, as claimed by them, involving an element of human rights violations, have published their reports which have been brought on the record and some of which was reproduced as under just to show how those organizations viewed what was happening in Karachi and other parts of Sindh.

There is copy of the Minutes of sitting of European Parliament on Thursday 15th February, 1996 from pages 27 to 30. Relevant portions at page 29 of the said minutes are reproduced as under:-

".. convinced that the troubles are causing damage to all communities in urban Sindh, including the Mohajirs, and are detrimental to Pakistan's economy and social progress,

Condemns the killing of innocent people, the use of torture and other human rights abuses, whether committed by members of the MQM factiqns or by Pakistani security forces, and especially deplores attacks on members of the families of MQM political leaders and Government officials;

Asks the Government of Pakistan to do all in its power to control those ;elements in the security forces that engage in human rights abuses and to plan the training of the security forces to respect human rights and democratic freedoms;"

At page 49 there is statement of Nicholas Burns, Spokesman of U.S. Department of State on the subject of Escalating Political Violence in Pakistan, which is reproduced as under:-

"Political violence in Pakistan's largest city and most important port, Karachi, has claimed approximately 1,800 lives since the beginning of this year. In recent months, the violence has taken an extremely disturbing turn, with a sharp, increase in reported extra-judicial killings and the targetting of family .members of Government officials and MQM political leaders. Several weeks ago, the brother of Sindh Chief Minister Abdullah Shah was killed in a terrorist attack while travelling through an MQM controlled area of Karachi. More recently, the tortured and bullet-riddled bodies of two relatives of MQM leader Altaf Hussain were discovered in Karachi on December 9, after the two individuals were alleged to have been taken into police custody. The security forces have denied having custody of the two individuals prior to their deaths. We understand that Prime Minister Bhutto has ordered an investigation into the incident.

We are deeply concerned by the escalating cycle of violence in Karachi and particularly by the sharp increase in reported extra-judicial killings,

extortion and custodial deaths by security forces. The United States deplore the senseless murder of family members of Government and political leaders. We continue to believe that the best way to end the current violence in Karachi is at the bargaining table and urge the GOP and MQM to resume talks."

At page 50 of Volume 1-A of the written statement is copy of letter dated October 12, 1995 from Mr. Donald A.Carnp, Acting Director, Office of Pakistan, Afghanistan and Bangladesh Affairs, last two paragraphs of which are reproduced as under:-

"Violence in Karachi has skyrocketed since the Army ended Operation Clean-up and returned to barracks on November 30, 1994. Over 1,500 have died in politically motivated violence during the last nine months alone, compared with 800 deaths in all of 1994. In an effort to defuse the violence, the Government of Pakistan and the MQM/A have engaged in several rounds of talks. The MQM/A is boycotting the
current round of discussions.

The U.S. Government deplores the violence and encourages both sides to find a political resolution to the fighting in Karachi. We urge both sides to show restraint."

At page 255 and 256 of Volume 1-A of the written statement is copy of 1995 Human Rights Report on Pakistan by U.S. Department of State, relevant portion whereof is reproduced as under:-

"The number of extra-judicial killings increased in 1995. Most such the Federation cannot be run in accordance with the provisions of the Constitution and the Constitutional machinery has failed.

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At page 255 and 256 of Volume 1-A of the written statement is copy of 1995 Human Rights Report on Pakistan by U.S. Department of State, relevant portion whereof is reproduced as under:-

"The number of extra-judicial killings increased in 1995. Most such killings occurred in Sindh Province in clashes between the Government and factions of MQM. Both main MQM factions, the MQM/A and the Haqiqi, resorted to extra judicial killings and torture of their opponents and targetted police and security officials. In trying to restore order in Karachi, the Government used excessive force, including torture and reported encounter killings, against MQM activists."

At page 390 of the same volume is available copy of the report of Amnesty International on Human Rights Crisis in Karachi and relevant portion at page 392 is reproduced as under:-

"Amnesty International continues to urge the Government of Pakistan to adopt measures to stop the large-scale human rights violations which are regularly reported from, Karachi, the capital of Sindh. The organization has received reports of hundreds of cases of unlawful detention, torture, deaths in custody, extra-judicial executions and "disappearances", mainly in Karachi, but also in other cities of the Province. According to official figures, some 1,770 people were killed in Karachi in 1995; these include members of different political patties, law enforcement personnel and political residents of Karachi including women and children."

57. In the same volume are contained newspaper cuttings from foreign countries, extracts from some of which are reproduced as under. At page 86 of the same volume is cutting from The Guardian of London dated March 22, 1995 carrying international news by Kathy Evens with the heading "Frankenstein's monsters' terrorise Karachi" relevant portion of which is reproduced as under:-

"They are young, ruthless, armed and for hire. Kathy Evens reports on the freelance killers who tout their services to rival ethnic political parties and religious groups in Pakistan's main city, and the shady link between them and the Government's intelligence agencies."

There is cutting from Independent on Sunday from London dated 26th March, 1996 with heading' "Terror/migrant melting-pot is recipe for murderous intrigue and Bhutto lets Karachi killings run out of control". A portion of the said article which is relevant is reproduced as under:

"The Haqiqi were given arms, training and special ID cards allowing them carte blanche for their murderous activities, not only against the MQM but also in extorting money from Karachi's businessmen. Although all of Karachi's armed gangs extort money from shopkeepers, the Haqiqi are regarded as the most rapacious. The Haqiqis even demand money to keep schools open. "

At page 90 of Volume 1-A of the written statement there is cutting from the Guardian. London, dated March 12, 1996 with caption "Police take their
turn in Karachi's war of-terror". Relevant portions thereof are reproduced as under:-

Those who have been killed or arrested were Category A people. Those who are still at large are mainly involved in small offences. They are not that deadly", Mr Suddle said. But he rejected accusations that Karachi's peace has been bought With blood.

"This proposition that every man arrested is put before a firing squad, is absolute nonsense. though there have been a couple of cases where we also feel excessive fire power was used."

However, Zohra Yusuf, Secretary-General of the Human Rights Commission of Pakistan, claimed the killing, some of which involved the torture of police prisoners, was systematic.

"This kind of extra-judicial killing is a kind of policy that was never seen before," she said. "In Zia's time, there was some semblance of judicial process, no matter how flawed. There is no end to it now and no one has been punished. The Government position is that these are terrorists and as such have lesser rights. "

At page 99 of Volume 1-A of the written statement there is cutting of Herald International Tribune published from Zurich on February 9, 1995 with heading "One of These Benazir Bhuttos Isn't Nice" and some pertinent paragraphs therefrom are reproduced as under:-

WASHINGTON.- Pakistan has two Prime Ministers. Both are named Benazir Bhutto. Interviewed by David Frost. Miss Bhutto is an elegant politician who speaks eloquently about opportunities for Muslim women. At home, she retains laws that use Islam to deny rights to women ....ignores domestic sectarian violence, speaks for Kaehmiri rights but denies minority rights at home, builds atomic bombs but rarely builds schools.

Modern Karachi, the main tax base and commercial linchpin, is a battleground. More than 1,000 people died last year in incidents involving political parties. At least 50 have died in the last week.

When violence engulfed Karachi University, Miss Bhutto and her security forces did nothing. In the 15 months since she has been Prime Minister, she has made 22 foreign trips but paid almost no attention to Karachi's problems.

In 1993 she was re-elected with a larger plurality than before having persuaded the nation that the military had prevented her from democratising the country while exempting her own behaviour and policies from any blame. Today a more powerful Benazir Bhutto is repeating her earlier errors. Foes accuse her of discriminating against minorities and of arrogantly abusing political opponents. Allegations of corruption in her family abound. .

The price tag for Miss Bhutto's policies may be high. American companies, especially those investing in the energy sector, are assuming a sizable risk by entering Pakistan's uncertain market.

Ignoring a major nuclear player weakens U.S non-proliferation policies. Prospects for Pakistani democracy suffer at the hands of predatory politicians. Both Bhuttos will visit Washington this spring. Ignoring Pakistan's corruption will not help its democracy or U.S. Pakistani relations."

At page 100 onwards of Volume 1-A of the written statement is copy of the issue of Newsline from Karachi with heading "Licence to Kill", relevant portion therefrom at page 103 is reproduced as under:-

"The hawks in the Government were given a free hand to deal with the Karachi problem after the Government-MQM talks reached an impasse in October, 1995. "Shoot the miscreants on sight" was the order issued by Interior Minister, General (Retired) Naseerullah Babar who saw it as the only way to restore peace in the troubled city. And he has ensured that his orders are followed.

The Bhutto Government's use of State terrorism to gain control over Karachi has not only further brutalised the ongoing bloody confrontation in the city but also set a highly dangerous trend. The increasing number of custodial and extra judicial killings in fake police encounters betrays the Government's intention of settling a largely political issue through brute force. Never before in Pakistan's history has such a naked use of State terrorism been witnessed. The carnage on Karachi's streets by law enforcers under the pretext of combating terrorism has made a mockery of law and justice.,Many of those killed by the security forces have been involved in heinous crimes, but no civilised State can allow their execution without proving them guilty in a Court of law.

Such actions will only reinforce the concept of private justice, providing terrorists a justification for their crimes."

At page 290 onwards of Volume 1-A of the written statement there is report of the Human Rights Commission of Pakistan on the subject of the State of Human Rights in 1994 and one short paragraph with the heading of "Extralegal killings" is reproduced as under:-

"The large number of extra-legal killings noted by HRCP was in Sindh, where 43 persons were killed in so-called encounters with the police and other law-enforcing agencies. Another 32 were alleged to have died of torture while in custody--19 in police stations, 11 in jails, one in hospital, and one in a Darul Aman. These killings were apart from the carnage in Karachi which claimed in riots and encounters over a thousand lives.

But other areas also reported many extra-legal killings. In the Punjab, 102 persons were gunned down in encounters' including 25 policemen, 12 in N.-W.F.P. and three in Balochistan. Eleven persons were believed to have died in police custody, or soon after being set free, in Punjab, and three in Balochistan."

At page 347 onwards of Volume 1-A of the written statement there is copy of Newsline of October, 1995 with heading "Encounter of another kind" and at page 348 there is portion in the Article which is reproduced hereunder:-

Interior Minister Naseerullah Babar's campaign against 'terrorism' has contributed a great deal towards the Mohajirs' disillusionment with the State. Babar's strategy has been first to isolate them and then to kill them, but it is a plan that has backfired. In doing so he has only fertilised an already rich breeding ground for terrorism. As is only too frighteningly apparent today, the ongoing operation has created new cadres of terrorists; for every one that is apprehended or killed, dozens more surface daily.

Naseerullah Babar's assertion that there were more than 2,500 terrorists in Karachi out of which 100 have been killed and 600 arrested, sums up his understanding of the Karachi problem. His myopic vision prevents him from seeing the millions of Mohajirs who find themselves outside the ambit of a democratic system and at the receiving end of endless search and arrest operations. The daily dose of venom spewed supposedly at the MQM terrorists by the establishment, is taken personally by the Mohajirs. And as a result of the harassment, the MQM's hold is being further strengthened. Operation notwithstanding, its militant wing is capable of striking anywhere in the city and shutting it down trough a mixture of fear and popular support. "

At page 362 of Volume 1-A of the written statement there is issue of Newsline of February 1996 with heading "The Government's policy is that if someone is a suspected terrorist, you go out and kill him". This in fact is interview of Zohra Yusuf, Secretary-General, HRCP, and the first question and answer in the interview are reproduced as under:-

"Q. Has the HRCP investigated all the recent cases of alleged extrajudicial killings? If so. what were the findings?

A: We have investigated a number of cases of extra judicial killings and will continue to do so because most cases are in Sindh and now increasingly in Karachi: But we do not investigate each and every case because of our limited manpower and also because the press in Karachi is aware of what is happening and reporting quite well on this issue. The recent investigations carried out by the HRCP included the cases of Fahim Commando, Farooq Dada and Aslam Sabzwari Our findings confirmed what the. MQM had said earlier that they were extra-judicial killings. I want to emphasize when we investigate such cases, our consideration is not whether these people are criminals or not. Investigation of criminal cases is beyond our capacity and is not our concern because any person, even a criminal, has the right to the judicial process. We cannot condone any extra-judicial killings."

59. The purpose of reproducing -the relevant portions from the newspaper cuttings as above is to show as to how comments were being made from time to time about law and order situation in Sindh and Karachi with main emphasis on the fact that it was not being controlled by the Government in the manner as it should have been and there was fall-out painting a very gloomy picture. It is not in dispute that there were killings in that part of the country and in 1994, 817 persons were killed, in 1995, 1742 persons were killed, and in 1996 up to 30th June, 141 persons were killed. We are not going into the details as to how these killings came about or what were the reasons or' the facts in the background and whether there was any political, ethnic or any other motivation but the broad question before us is that if for any reason there was law and order situation, then the Government of the day was duty bound to control it in an effective manner and nip the trouble in bud in order to provide an atmosphere for people to breathe fresh air of peace and tranquillity. Contention was raised by Mr. Ahtizaz Ahsan that the reportings from foreign and local newspapers, portions

of which are reproduced above, should not be relied upon as their authenticity cannot be vouchsafed and mostly one side version of the incidents is described therein. We are not impressed by this contention for the reason that presently we are in the era where journalism has also ,taken great strides in the field of investigative reporting and the general impression is that such reports are made after proper verification of facts and figures from reliable and dependable sources and relevant quarters. In any case before us no attempt was made to show that the authenticity of these reports was disputed or any statements were issued by the Government of the time denying the authenticity of the reports or making a suitable reply in rebuttal.

60. After filing of the written statement alongwith annexures including newspaper cuttings, some portions of which have been reproduced in the above paragraphs of this judgment, rejoinder was filed by the petitioner and on the ground of extra-judicial killings the same stand was reiterated that it was the responsibility of the Provincial Government and that both the President and the Governor of Sindh profusely praised the handling of the Karachi situation. It is further stated in the rejoinder that the President himself presided over meetings concerning law and order situation and encouraged the authorities to pursue the Government policy with a firm hand. It is also stated in the rejoinder that if the Federal Government is to be held responsible, then the President should himself accept the responsibility and resign. The stand taken by the petitioner in the rejoinder is contradictory in parts and is very unclear as containing both admission and denial. It is just like blowing hot and cold in the same breath which in legal parlance is called approbation and reprobation. In such circumstances it appears that the petitioner has not taken any categorical stand in very clear and unambiguous terms with regard to the killings and their responsibility. The material produced before us beyond doubt connects the Federal Government and the petitioner as Prime Minister with the handling of law and order situation in Sindh and Karachi. The argument is not tenable that if the Federal Government is held responsible, then the President, who presided over the meetings in connection with law and order situation, should also accept responsibility and resign because the Constitution contemplates Parliamentary form of Government in which the President is supposed to act on the advice of the Prime Minister, who is the head of the Government.

61. We are relying upon the newspapers cuttings mentioned above in a limited sense just to show that such events were taking place, which were being reported in the papers and foreign journals without denial. This question came up for detailed examination in the case of the Islamic Republic of Pakistan v. Abdul Wali Khan (PLD 1976 SC 57) with relevant portion at page 69 in which it is held as under:-

"It cannot be denied that so far as newspaper reports of contemporaneous events are concerned, they may be admissible, particularly where they happen to be events of local interest or of such a public nature as would be generally known throughout the community and testimony of an eye-witness is not readily available. The contemporary newspaper account may well 6e admitted in evidence in such circumstances as has often been done by Courts in the United States of America not because they may well be treated as a trustworthy contemporaneous account of events or happenings which took place a long time ago or in a foreign country which cannot easily be proved by direct ocular oral. testimony. Thus, if a person does not avail of the opportunity to contradict or question the truthfulness of the statement attributed to him and widely published in newspapers he cannot complain if that publication is used against him. Such an user would not be hit by the rule of hearsay."

62. We are relying upon the reporting in the newspaper cuttings mentioned above to the limited extent of saying that the events had happened in Karachi in which killings took place as part of law and order situation which could not be controlled with the result that the citizens started feeling uneasy and insecure and the situation became very alarming, notice of which was taken not only by local newspapers but also by foreign newspapers and other organizations, which felt concerned and treated such killings at par with human rights violations. There is no denial that killings have not taken place. Whether these killings can be justified or not is to be determined by the Court of competent jurisdiction. The M.Q.M. has already filed Constitutional Petition No.46 of 1994 which is pending in the Supreme Court in which violation is alleged of several fundamental rights and other Articles of the Constitution with main emphasis upon the killings of their party men and workers by the administration and the law enforcement agencies. Since that case is pending and the matter is sub judice, for the disposal of the present petitions, it would suffice to put only limited reliance on newspaper cuttings and other material, which show that the killings have taken place showing failure of the Government in controlling law and order situation in Karachi. The-killings also show that not only the citizens have been killed but also members of the law enforcement agencies including Police, Rangers and Army. We are not required here to fix the blame or the responsibility as to who started it and who is responsible to what extent because these are questions which can be answered and findings can be given by the forums with competent jurisdiction. For us it is more than sufficient that both the Federal and the Provincial Government of Sindh have failed in their joint efforts to control the law and order situation in Karachi and Sindh in which there were large scale killings in which so many persons lost their precious lives.

63. Mr. Aitzaz Ahsan, learned counsel for the petitioner, contended before us that the ground of extra-judicial killings is not available to the President for dissolution of the National Assembly as the law and order situation is exclusive responsibility of the Provincial Government and even if the Federal Government came to the aid of the Provincial Government, the responsibility in essence was that of the Provincial Government, hence the Rangers were used in aid of the Provincial Government and section 131-A of Cr.P.C. was invoked for that purpose.

64. No doubt broad-based proposition of law is that law and order subject is normally Provincial responsibility but here this proposition is to be considered whether it can be used as the ground by the President for exercise of his power under Article 58(2)(b) of the Constitution to dissolve the National Assembly on the ground that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. In the case of Federation of Pakistan v. Muhammad Saifullah Khan (PLD 1989 SC 166) it is held that law and order is indeed the responsibility of the Provincial Government which could be transferred to the National Assembly under the orders of the President under Article 234(1)(b) of the Constitution. This is so observed in that case by Shafiur Rehman, J. (as he then was). This argument was carried further in the case of Ahmad Tariq Rahim v. Federation of Pakistan (PLD 1992 SC 646) and contention was raised that if this ground of law and order situation is available, then before exercising the power of dissolution the President is to be satisfied that the Constitutional machinery has failed and that can happen only when alternative Constitutional remedies available under Articles 186(1), 233(1) or Article 184(1) of the Constitution have been availed. It is held by Shafiur Rehman, J, that all the alternative powers referred above are to be exercised by the President on the advice of the Prime Minister and he cannot do so on his own and in his discretion. It is,

therefore, to be seen that here the President is exercising power given to him under Article 58(2)(b) and this power is to be exercised by him in his discretion where in his opinion a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution, hence he has to be objective and must have material to form his opinion in order to take the action as is contemplated under that provision.

65. What is important in this context is availability of material in support of the grounds and law and order situation can be one of many grounds which can be collectively and jointly considered by the President to form opinion objectively that the situation is such that the Government of the Federation cannot be carried on according to the provisions of the Constitution. It should also be considered that this power is given to the President in the Constitution and not only that but it is to be used by him or this power is to be exercised by him in his discretion for which his objective assessment of the situation is required but he cannot be equated with a Court of Law but only it is expected from him that he would act as per rules of prudence because he is exercising a very important power which has been conferred upon him by the Constitution and as held in the case of Muhammad Saifullah Khan (supra) the discretion exercisable by him is not absolute but is deemed to be qualified one and is circumscribed by the object of the law that confers it.

66. Mr. Aitzaz Ahsan has drawn our attention to my judgment in the case of Ahmad Tariq Rahim (supra) with relevant portion at page 719 wherein I have stated that in order to solve the problem of law and order in the Province, it was not necessary to dissolve the National Assembly and other Provincial Assemblies and dismiss the Governments at the Centre and the Provinces. This problem should have been sorted out within the four corners of the Constitution and law firstly by the Provincial Government, failing which by the Federal Government, which has been allowed several options in the Constitution. I would like to mention at the very outset that my judgment in that case was dissenting judgment and I had not agreed with the majority opinion but even then I had stated in my minority view that while exercising power under Article 58(2)(b) of the Constitution, discretion of the President is not absolute but is qualified one and he has to act on the material in support of the grounds and then form opinion in objective manner. The majority view was that there was adequate material in support of several grounds to justify the dissolution of the National Assembly and dismissal of the Federal and Provincial Governments, while I
took the contrary view and discussed material in support of each ground and came to the conclusion that the material was not sufficient to justify exercise of discretion. Each case is to be decided on its own merits and demerits keeping in view the peculiar facts and circumstances and in the instant case I am of the view that there is adequate material in support of the grounds on the basis of which discretion is exercised by the President in dissolving the National Assembly, This material in support of several grounds when considered collectively justifies the action that has been taken by the President,

67. On behalf of the respondents our attention was drawn to letter from Mat. Feroza Begum, M,P.A., addressed to the President of Pakistan (page 191 of Volume 1-A) in which she has stated that her son Hafiz Osama Qadri, who had affiliation with M.Q.M., was arrested by the police and she apprehended that he would be tortured and killed and the police might show him having been killed in a fake police encounter, Later while her son was still in custody, she was taken as Minister in the Sindh Cabinet and was administered oath after which she did not complain about her apprehension with regard to her son, It was argued on behalf of the respondents that she was administered oath under threats and duress that if she did not do so harm would come to her son and for that reason she kept mum and did not complain publicly. After administration of oath she was not given any portfolio and she was not allowed to come out from her house where heavy police guard was posted for her protection. In actuality she could not be reached by any person and could not make any complaint in public because of the fear that if she did so her son would be done to death. It was argued that it was such state of affairs and the President was in the knowledge of everything which was taking place in Karachi and in such circumstances he was fully informed about the events that were taking place and had formed his opinion. As against that it was pointed by the learned counsel for the petitioner that the letter of Mat. Feroza Begum does not show that it was placed before the President and he had applied his mind and passed any order on it. In this context I would like to say that the Supreme Curt took suo motu notice on the application of Waseem Akhtar, M.P.A, and the comment on this incident made in an article published in daily DAWN of Karachi. Proceedings were taken in hand in which Mr, Waseem Akhtar, Mst. Feroza Begum and Hafiz Osama Qadri appeared in the Court and supported the version of Mst. Feroza Begum as stated in the application addressed to the President. She reiterated that she was administered oath under duress and after such statements were recorded in the Court, she was relieved from ministership. We would like to leave this matter as it is for the reason that it is still sub judice in the Court and is pending with final orders yet to be passed.

68. Mr. Aitzaz Ahsan submitted before the Court that truck load of documents produced by the respondents in support of the grounds for dissolution could be returned as unnecessary and not admissible in evidence for various technical reasons, such as, that most of them were collected after November 5, 1996 when the order of dissolution was passed and they were not available before the President at the time when the order of dissolution was passed. Further, original authors of the documents have not been produced, affidavits of authenticity have not been produced, and so on and so forth, The learned counsel put these documents in 17 different categories. In this context it will be pertinent to point out that all what is necessary is that there was material before the President in support of the grounds on the basis of which he has passed the order of the dissolution of the National Assembly, The power given to the President under Article 58(2)(b) is the power which is to be exercised by him in his discretion. No doubt it is held that the President has to form his opinion objectively which is different from subjective satisfaction and the discretion is not absolute but is qualified one, but the said provision does not say that the President has to act as a Court of law and has to form opinion on the same lines as the Courts do and give adjudication on issues of facts and laws. There is difference between the exercise of discretion by the President as provided in the Constitution and the Court of law where documents are to be produced and admitted in evidence after stringent judicial scrutiny. The President is the Head of the State and the Prime Minister is the Head of the Government and powers of both are specified in the Constitution and both together exercise powers of the Federation but the cardinal principle is that in Parliamentary democracy as is provided in the Constitution the President is to act on the advice of the Prime Minister. It is in the day-to-day working of the Federation that the President comes to know about what is happening in the country and is to keep himself fully informed. So far newspaper cuttings are concerned, we have already relied upon the ratio in the case of Islamic Republic of Pakistan v. Abdul Wali Khan (supra) as stated in paragraph 63 of this judgment and here we are dealing with the ground of extra-judicial killings only. At later stage we shall discuss in detail ratios in the cases of Haji Muhammad Saifullah Khan, Khawaja Ahmad Tariq Rahim and Mian Muhammad Nawaz Sharif,

69, The record shows that in the order of dissolution the first ground is extra-judicial killings and there was material available before the President on the basis of which he acted as he had knowledge about such killings in his capacity as the President and he had attended some meetings also and felt concerned about the gravity of the situation. If some documents on the same subject of extra-judicial killings were produced later after the date of dissolution, then such documents can be used as corroboratory material and there is nothing wrong with relying upon such documents which only confirm the fact which was already in the knowledge of the President, Like in preventive detention cases subsequently discovered facts can be added to support the facts already stated, which are not treated as additional grounds but corroboration in support of the grounds already relied upon. In support of the proposition reliance can be placed on the cases of The State of Bombay v. Atma Ram Shridhar Vaidya (AIR 1951 SC 137) and Tarapada and others v. The State of West Bengal (AIR 1951 SC 174).

70. We are satisfied that so far the first ground of order of dissolution is concerned on the subject of extra-judicial killings, there was sufficient material before the President which was considered and more than adequate material has been produced in the Court before us which shows that there were killings going on in Karachi and Sindh to such an extent that the people started feeling unsafe and insecure and both the Federal and Provincial Governments of Sindh failed to control the situation and in consequence the President was justified in using that ground as the ground for dissolution of the National Assembly. We are not making any comments to justify the killings one way or the other or give them any legal cover but only say this much that there was adequate material in support of the ground for exercise of discretion by the President under Article 58(2)(b) in conjunction with the material on other grounds to justify the; conclusion that the Government of the Federation could not be run according to the provisions of the Constitution and there was failure of Constitutional machinery. Before we part with this ground it would be pertinent to mention that Mr. Aitzaz Ahsan, learned counsel for the petitioner, has pointed out paragraph 51 of the written statement filed by the respondents in which remark is made about the petitioner which is not couched in proper and dignified language which is normally used in the Court pleadings. The remark is as under: "It is strange that the petitioner who likes to portray herself as the daughter of the East and the darling of the West ....". The objection is to the use of the words "darling of the West". It was submitted by the counsel of the respondents that the word "darling" has been used in the sense of popularity of the person, which is a normal reference and no other meaning was intended. We are of the view that the use of the word "darling" should have been avoided particularly when the reference is in respect of the petitioner who is not only a lady but had remained the Prime Minister of Pakistan twice. In the circumstances we direct that from the written statement "darling of the West" be deleted.

71. The second ground in the dissolution order is the narration of very tragic incident on 20th September, 1996 at Karachi in which Mir Murtaza Bhutto, brother of petitioner Mohtarma Benazir Bhutto, was killed alongwith seven of his companions including Mr. Ashiq Jatoi, who was brother-in-law of another former Prime Minister Mr. Ghulam Mustafa Jatoi. Eight persons were killed apparently in an encounter with Karachi Police. Within days of the tragedy, petitioner, who was at that time Prime Minister of Pakistan, appeared on television and alleged that the Presidency and other agencies of the State were involved in the conspiracy. Later she denied that the Presidency and the Armed Forces were involved in the conspiracy. In the meantime the widow of late Mir Murtaza Bhutto and friends and supporters of their party accused the husband of the petitioner, the Chief Minister of Sindh, Director of Intelligence Bureau, and other high. officials of involvement in the conspiracy. In such circumstances situation had arisen in which powerful members of the Federal and Provincial Governments were allegedly involved, hence it became doubtful whether honest investigation would be done to bring to book the culprits and conspirators. We are not going into details whether this can be made as a ground or not for exercise of discretion by the President of power of dissolution of the National Assembly as contemplated under Article 58(2)(b) of the Constitution for the reason that after the said tragic murders, it has become a criminal case which is to be investigated as is contemplated strictly according to law aftbr which adjudication is to be given by the Court of Law of competent jurisdiction with regard to guilt or innocence of the accused persons. Not only investigation was taken in hand as is contemplated in the Criminal Procedure Code -but later a high-powered Tribunal of Enquiry has been set up consisting of three members from which two are serving Judges of the Sindh High Court and the third member is a serving Judge of the Supreme Court who is Chairman of the Trtbunal. Since the matter is pending before the Tribunal and the criminal case arising from said murders is also pending in the Court of law, we refrain from making any comments on this point which may prejudice the result of the case or findings of the Tribunal. We have said so in very specific terms in the short order also that because the matters are sub judice on the judicial side, we shall not make any comments on this ground.

72. The third ground in the order of the dissolution is that the judgment of this Court in the case of appointment of Judges in the superior Courts was ridiculed by the petitioner as Prime Minister of Pakistan in the National Assembly in her speech, which was repeatedly telecast. There was deliberate and wilful hesitation in the implementation of the judgment. Directions contained therein were implemented after a delay of six months and ten days and that too only when the President had informed the Prime Minister that if advice was not submitted in accordance with the judgment, then the President would himself proceed to fulfil the Constitutional requirements. By not implementing the judgment petitioner as Prime Minister violated Articles 190 and 2A of the Constitution. Before we go into the details of this ground, it would be pertinent to recapitulate the salient features of the judgment of this Court mentioned above. In the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324) appointments of Judges in the High Courts and in the Supreme Court during the tenure of the Government of the petitioner were challenged on the ground that they had been made in contravention of the procedure and guidelines laid down in the Constitution and this Court was required to examine in detail the relevant Articles pertaining to the Judiciary specified in Part VII of the Constitution to render an authoritative decision on the question of interpretation of such Articles in the light of other co-related Articles. It was held that Articles 2, 2A and 227 in the Constitution have given Islamic character to the Constitution by fully securing the independence of the Judiciary and by providing that all existing laws should be brought in conformity with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah. It was further held that appointments of Judges and the manner in which they are made have close nexus with the independence of the Judiciary. The short order was announced on 20th March, 1996 and detailed reasons were released on 3-4-1996 and both are published as Al-Jehad Trust v, Federation of Pakistan (PLD 1996 SC 324).

73. The salient features of the judgment in the case of appointment of Judges mentioned above are that the word "consultation" is defined as effective, meaningful, purposive, consensus-oriented leaving no room for complaint of arbitrariness or unfair play. recommendations made by the Chief Justice of the High Court and the Chief Justice of Pakistan in respect of appointments of Judges in the High Courts are to be accepted by the President/Executive in the absence of very sound reasons to be recorded. Acting

Chief Justices are not consulates within the Constitutional scheme. Ad hoc Judges can be appointed in the Supreme Court only after the sanctioned strength is exhausted. Vacancies are to be filled ordinarily within 30 days and in extraordinary circumstances within 90 days. Senior most Judge in the High Court has legitimate expectancy to become Chief Justice and Additional Judges in the High Courts have legitimate expectancy to be made permanent Judges. Transfer of a Judge of the High Court without his consent and induction in the Federal Shariat Court is violative of Article 209. Ten years' active practice as Advocate of the High Court is mandatory for a member of Bar for appointment as a Judge in the High Court as against enrolment simpliciter. Judge of the Supreme Court may not be sent as Acting Chief Justice of the High Court. After announcement of the short order, ` steps were taken towards implementation and in that context on 25-3-1996 the Full Court Meeting of the Supreme Court was held in which decision was taken not to include ad hoc Judges in the Roster of the Supreme Court till their regularisation or otherwise. Six Judges of the Supreme Court were affected. On 28-3-1996 two permanent Judges of this Court, who were working as Acting Chief Justices in the High Courts of Lahore and Sindh, were recalled to work in the Supreme Court. Two ad hoc Judges of this Court who were permanent Judges of the High Courts, were sent back to their respective High Courts. On the same day the then Prime Minister of Pakistan Mohtarma Benazir Bhutto in her speech in the National Assembly criticised the judgment of the Supreme Court in the case of appointment of Judges and that speech was televised repeatedly and also published in print media.

74. At this stage it would be pertinent to mention that the ground in the dissolution order is that the judgment of the Supreme Court in the case of appointment of Judges was ridiculed by the petitioner and there was deliberate and wilful hesitation in the implementation of the judgment and the directions contained therein were not implemented immediately and so on. In order to ascertain these facts it will be expedient to put the events after announcement of the short order in proper sequence date-wise so that it can be ascertained as to who did not approve of the judgment and ridiculed it and did not want to implement it or implemented it in parts with delay for some extraneous motive. We begin with the speech of the petitioner as Prime Minister which was made by her in the National Assembly on 28-3-1996 as mentioned in the preceding paragraph, extracts of which are reproduced hereunder:-

....Today I would like to make a statement in connection with the judgment announced by the Supreme Court in the case of Al-Jehad Trust v. The Federation of Pakistan on the appointment of Judges to the superior judiciary.

Unfortunately the last few days have seen the politicization of the Supreme Court order. The aim is to give an impression that a Constitutional or political crisis has emerged. At the outset, in categorical terms, I dispel the impression that a crisis of any nature, political, Constitutional or of administrative nature exists.

It is for the executive to implement the will of the people expressed through legislation in Parliament. It is for the judiciary to interpret the law and it is for the judiciary to interpret the Constitution.

But it is unfortunate that for the last couple of days, a storm of political rhetoric has been unleashed to try and gain petty political advantage without considering the serious consequences that flow from the announcement of the short order.

The Government had clearly stated that it was studying the short order and that it would make its response after the detailed reasons were recorded and delivered by the Supreme Court.

This was the response of a responsible Government, a Government alive to its Constitutional responsibilities and obligations, conscious of the political and administrative fallouts. The earlier position taken by the P.D. F. Government remains unaltered.

We are aware of the opinions of the jurists expressed through newspapers and otherwise. They opine that the short order goes beyond the pale of clear provisions of the Constitution. Articles 177 and 193 of the Constitution provide for the appointment of Judges. The appointment power lies with the President.

A consultative process is mentioned in the said Articles. Nowhere is it mentioned that the opinion of any of the consultes is binding on the President.

Article 203-C of the Constitution talks about the composition of the Federal Shariat Court where an appointment for two years or less does not require consent. Prima facie the short order is in conflict with the express words of the Constitution.

One of the most serious consequences which flows from the short order is on account of the combined reading of conclusions VI and XIII.

This is tantamount to opening a pandora's box because Acting Chief Justices in the Supreme Court of Pakistan and the High Courts did not start being appointed in 1994 when Benazir Bhutto took over. They have been appointed under the 1973 Constitution ever since its enforcement.

Let me re-affirm that I am not here to give a critique of the short order of the Supreme Court. I am here to highlight some of the inter- twined strings that spin as a consequence of the short order.

To our view this is an order by the judiciary against the judiciary where Judges may face the unfortunate risk of being dragged into litigation.

Now a quandary arises as to what an executive is to do when an apex Court gives a judgment which many in the country believe may be violative of the Constitution.

We concede that the judiciary can interpret the Constitution. But, according to code of conduct, the judiciary must submit to the Constitution. The Constitution does not provide the judiciary the power to write and attach a mini-constitution or strike down Articles of the Constitution.

We in the Executive have sworn to preserve, protect and uphold the Constitution of the Islamic Republic of Pakistan.

Of course, Honourable Members, we must use the Constitutional mechanisms available and the Constitution does provide the mechanism. We will do what the Supreme Court decides, because that is the proper body to adjudicate such -matters.

We have, therefore, decided to invoke the advisory jurisdiction of the Supreme Court under Article 186 of the Constitution.

And finally with very deep regret I announce, because of all these men are also learned and experienced, Justice Sajjad Ali Shah appointed on 10-8-1978, consultes Acting Chief Justice Agha Ali Haider. Confirmation in the High Court on 10-8-1981 and there too we have Acting Chief Justice. "

75. Now the question arises whether the speech of the petitioner as the Prime Minister made on the floor of the National Assembly on the subject of the
judgment of the Supreme Court was proper or not so far its tenor and manner is concerned in which it was made. Secondly, whether it appears from the speech that the intention of the maker was to implement the judgment or had no intention of doing it and had expressed herself in that respect. Normally, even short order of the apex Court, when it is speaking order particularly when it contains specific directions, is to be acted upon without waiting for detailed reasons. In this case with the consent of the Prime Minister one acting and two ad hoc Judges of the Supreme Court were made permanent Judges on 28-3-1996 before release of detailed judgment. No doubt in the Parliament fair comment can be made on the judgment of the apex Court but that comment is to be made in good faith with bona fide intention and is to be made in the language which is temperate and manner which is befitting to the member of the Parliament. Article 63(1)(g) envisages that a person shall be disqualified from being elected or chosen as member of the Parliament if he is propagating any opinion which is prejudicial to the integrity or independence of the judiciary of Pakistan or which defames or brings into ridicule the judiciary or armed forces of Pakistan. Of course intention of the maker can be gathered from the tenor of the speech and also from the subsequent conduct.

76. It would be relevant here to produce extracts from some newspapers to show as to how this speech was viewed. The daily DAWN, Karachi, dated 29-3-1996 gave caption to the news item "Order hits 10 of Supreme Court's own Judges, claims Prime Minister". Other relevant extracts are reproduced as follows. "In a hard hitting speech in the National Assembly on Thursday, the Prime Minister made an almost clause to clause rebuttal of the Supreme Court's short order while also insisting that the Government was in the process of implementing the verdict. The Prime Minister came down particularly hard on the verdict's portions dealing with the curtailing of the executive's powers of nominating Judges to the superior judiciary. She said that the Court had ruled that an acting Chief Justice was not a "consultee" as envisaged by the Constitution and, therefore, the Constitutional requirement of consulting a Chief Justice was. not fulfilled. She said if this reasoning were followed, then 10 out of 16 Supreme Court Judges, including Chief Justice Syed Sajjad Ali Shah, would stand disqualified as all of them, too, had been appointed as Additional Judges of different High Courts with the "consultation" of the then respective Acting Chief Justices." The daily Muslim, Islamabad dated 29-3-1996 reported a news item with heading "Supreme Court cannot write a mini-Constitution: Prime Minister", "Opposition would not allow bulldozing of judiciary: Nawaz". It is mentioned therein "that the Government has begun implementing the Supreme Court judgment and had confirmed three ad hoc Judges of that Court this morning. Prime Minister Benazir Bhutto said that her Government would invoke the advisory jurisdiction of the apex Court under Article 186 of the Constitution on how to unravel some of the strands of the Constitution tangled by the verdict". The daily Nawa-i-Waqt, Urdu, of Rawalpindi dated 29-3-1996 gave heading as "Judiciary has no right to make mini-constitution". The daily Khabrain, Lahore dated 29-3-1996 published a news item with heading .

77.???????????? The daily Pakistan, Lahore dated 29-3-1996 published a news item quoting Voice of Germany and B.B.C. and gave heading "Government maintains its stand on Supreme Court decision and is not prepared to give in". It is further stated therein that while commenting on the speech remark is made that tone and manner of speech on an important national issue did not suit the Head of the Government as the same amounted to ridicule. It is further observed by the Voice of Germany that the analysts were of the view that it was apparent from the tenor and manner in which the Prime Minister made speech that the Government would not budge an inch from the stand it had taken in respect of the decision of the Supreme Court. The Frontier Post, Peshawar dated 29-3-1996 published a news item with heading "Prime Minister's remarks against the Supreme Court judgment regretted'. Senator Hafiz Hussain Ahmad, Central Vice-President of Jamiat-e-Ulema Islam stated that the judgment of the Supreme Court upholding the dignity and supremacy of the judiciary is historical document and added that remarks of the Prime Minister in this connection are regrettable. He stated that the President of the country should not sign blindly on all the papers sent to him from the Prime Minister. He should act judiciously. The daily Jisarat (Urdu) dated 29-3-1996 carried headline "Prime Minister's charge against the judiciary amounts to treason", says Nawaz Sharif. He further stated that with the cooperation of the nation the judiciary will be protected and Benazir was deceiving the nation as she was not prepared to abide by the judgment of the Supreme Court. The daily Frontier Post, Peshawar dated 29-3-1996 published a news item with heading "Bhutto has declared war on judiciary, says Nawaz". "He said Bhutto was not justified in saying that the Supreme Court Judges had given verdict in anger and haste. Nawaz questioned the claims of the Bhutto about her respect for the independence of judiciary". "The Government has acted otherwise", he claimed. Nawaz said "Bhutto had just dramatised the situation instead of resolving the crisis". The daily Khabrain (Urdu), Lahore dated 30-3-1996 published a news item with heading "Government is courting death: Mushahid Hussain". "The nation is shocked at the speech of Benazir full with poison against the judiciary". .

78. On 28-3-1996 one acting and two ad hoc Judges of the Supreme Court were made permanent. On 3-4-1996 detailed reasons in support of the short order were released which is called detailed judgment. On 8-5-1996 meeting of the Committee of the Chief Justices was held in Islamabad. This Committee is composed of the Chief Justice of Pakistan and the Chief Justice of the Federal Shariat Court and the four High Courts. This meeting of the Committee was held to, consider ways and means to implement the judgment. The Chief Justices of the High Courts informed about the progress towards implementation of the judgment and the figures were released showing that in Lahore High Court from 40 Judges, cases of 31 required regularization including the five who were not confirmed. In the Sindh High Court from 19 Judges, cases of 16 required regularization. In Peshawar High Court from 15 Judges, cases of 9 required regularization. It was decided that the Chief Justices of the High Courts would send their recommendations in respect of regularization within 30 days of their appointment as permanent Chief Justice as is mentioned in the

judgment. It was left open to the Chief Justices of the Federal Shariat Court and the High Courts to take proper action as they deemed fit and proper as to whether the affected Judges should be put on Rosters or not. The Chief Justice of the Sindh High Court recommended confirmation of one Additional Judge and likewise the Chief Justice of the Peshawar High Court also recommended confirmation of one Additional Judge. The Chief Justice of Pakistan agreed with the two Chief Justices and supported their recommendations but the Federal Government did not agree and instead of confirmation of the Judges, extended their terms of appointments as Additional Judges for six months vide two notifications issued on 4-6-1996. This was done in clear violation of judgment. The meeting of the Committee of the Chief Justices was called in the Lahore High Court on 6-6-1996 to survey the progress of the implementation of the judgment and regretted the delay which was being caused in the implementation of the judgment and in the finalisation of regularization of the Judges of the High Court. The Committee also deliberated the issue of extension of tenure of two Judges of the High Courts of Sindh and Peshawar by the Federal Government disregarding the joint recommendation of the Chief Justices and deferred further consideration for the next meeting (see page 175, Volume III-A of the written statement).

79. The next meeting of the Committee of the Chief Justices was held at Murree in the Lahore High Court Rest House on 13-6-1996. The minutes of the meeting are available at page 171 of Volume III-A which is annexed with the written statement and paragraph 3 of which is reproduced as under:-

"The Committee made survey of the progress made so far in the process of implementation of the judgment of the Supreme Court. It was unanimously resolved that as in the case of Supreme Court, which took decision to put off ad hoc Judges from the Roster who are surplus and in respect of whom a letter was written to the Federal Government to issue Notifications for revocation of their appointments, .on the same lines, those Judges in the Federal Shariat Court/High Courts in respect of whom it is recommended by us not to regularise their appointments should be laid off and no judicial work should be assigned to them until further steps are taken to bring about the finalisation in that direction. This laying off shall commence from first working day of the next week, i.e. 16th .Tune, 1996."

80.????????? In consequence of the decision of the Committee of the Chief Justices 'mentioned above, nine Judges from the Lahore High Court, five from the Sindh High Court, three from the Peshawar High Court and one from the Federal Shariat Court were laid off. On 19-6-1996 the daily Pakistan, Lahore published a news item that the laid off Judges had declared the decision of the Chief Justices Committee to be unconstitutional and sought time from the President for initiating legal battle. The laid off Judges were led by Justice Ahmad Saeed Awan. The daily Jasarat, Karachi dated 24-6-1996 published a news item with heading "the laid off Judges of the Lahore High Court rejected the decision of the Chief Justices Committee against their relieving of" quoting the Gulf News that "Justice Ahmad Saeed Awan, former Minister for Information, who is close confident of Prime Minister Benazir Bhutto, is meeting the affected Judges to prepare strategy. The Government has provided guards to Ahmad Saeed Awan as he feels danger from Advocates. According to internal sources of People's Party, some Judges of higher judiciary are performing role of opposition which cannot be tolerated by the Government"

81.???? The daily Jang, Rawalpindi dated 20-6-1996 published a news item that an attempt was made by the members of the Bar to prevent Mr. Justice Shafi Muhammadi, Judge of the Federal Shariat Court, from dealing with cases and Justice Shafi Muhammadi refused to stop the work and remarked that the Chief Justices Committee was encouraging "Harram" which means illegitimate earnings. Justice Muhammadi was stopped by the members of the Bar on the ground that he was a laid off Judge as per the judgment of the Supreme Court and the decision of the Committee of the Chief Justices but he refused on the ground that he was not subordinate of the Chief Justice of the High Court, or the Supreme Court but was allowed to work in the Federal Shariat Court by the Chief Justice of that Court. The daily Jang, Rawalpindi issued on 21-6-1996 carried a news item that Justice Shafi Muhammadi had been summoned to Islamabad to work in the Federal Shariat Court. It is stated therein that before going to Islamabad, Justice Shafi Muhammadi while talking to newspaper reporters stated that the Committee of the Chief Justices has no Constitutional sanction and, therefore, its decisions are not binding upon him. He further stated that the Chief Justice of the Federal Shariat Court had signed the minutes of the Committee of the Chief Justices but later he realised his mistake and allowed him (Justice Shafi Muhammadi) to continue working in the Court. He further stated that he has been asking Ulema whether it was not Harram that one should accept salary for the post but not perform duties. Criminal Petition No.26(S) of 1996 was filed in the Supreme Court before a Bench of two Judges for leave against the order of the Federal Shariat Court granting bail in appeal to the appellant before that Court who was convicted for offences under section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with section 397, P.P.C. and was sentenced to R.I. for seven years. During the proceedings it was brought to the notice of this Court that Mr. Justice Shafi Muhammadi in the order granting bail had criticised the judgment of the Supreme Court in the Judges case in an insolent manner which amounted to the contempt of the Court. Notice was issued to the Advocate-General and also to the senior members of the Bar for rendering assistance to the Court. This order was passed on 4-8-1996 and operation of paragraphs 2 to 13 of the impugned order passed by the Federal Shariat Court was suspended. On the next date, i.e. 8th August, 1996 the Bench of two Judges of this Court passed order which is reproduced as under:-

"Hearing of the main petition is adjourned to a date in office. Let notice be issued to Mr. Justice Shafi Muhammadi, working at present as Judge of the Federal Shariat Court, to appear in this Court in person on the next date of hearing to show cause why action should not be taken against him for contempt of the Court as contemplated under Article 204 of the Constitution read with sections 3 and 4 of the Contempt of Court Act, 1976 for making unwarranted adverse comments in an insolent manner in his order granting bail challenged in this petition which amounts to ridiculing and scandalizing this Court and its Judges.

This Court has already suspended operation of offending portions in the impugned order from paragraphs Nos.2 to 13. It is further directed that the offending portions shall not be published in any law journal, newspaper, magazine etc. Adjourned to a date during vacation subject to availability of Bench."

82. The daily Nation, Islamabad published on 28-8-1996 reported that the

President of Pakistan had relieved Federal Shariat Court Judge Shafi Muhammadi. The relevant paragraph from the said news is reproduced as under: --

"Shafi Muhammadi as Judge of the Federal Shariat Court wrote adverse comment against the judgment of the Supreme Court in Judges' appointment case. He ruled that it was not binding on the Federal Shariat Court and Prime Minister and President are also not under the Constitutional obligation to implement the judgment.

Taking cognizance of the adverse remarks, the Supreme Court held preliminary contempt proceedings against Shafi Muhammadi in which senior lawyers requested the Court to issue contemet of Court notice to him. Shafi Muhammadi was originally appointed Judge of the Sindh High Court by the present P.P.P. Government. Later, he was sent to the Federal Shariat Court by the President. Shafi Muhammadi was a staunch P.P.P. activist before he was elevated to the Bench. 'I had served as Secretary-General of Sindh P.P.P. for many years and I also served as O.S.D. to Prime Minister during the last tenure of Benazir Bhutto', Shafi Muhammadi told The Nation while confirming his resignation here on Tuesday. "

83.??????????? On the other hand those Judges of the High Courts, whose appointments were declared invalid in the light of the judgment of the Supreme Court, still continued coming to the Courts and enjoyed perks and fringe benefits as the Federal Government had not issued notifications relieving them and in that context policy of dilly dally continued. On this subject the daily Nawa-i-Waqt Rawalpindi in issue of 4-8-1996 carried a news item saying that the Chief Justice of Pakistan expressed regrets that he had recommended appointment of Mr. Justice Munawar Ahmad Mirza, Chief Justice of the Balochistan High Court, as Judge of the Supreme Court but no action was being taken by the Federal Government and in such circumstances there was no representation of the Province of Balochistan in the Supreme Court. It is also stated therein that the affected Judges of the Lahore High Court were defying decision of the Committee of the Chief Justices, who were advised by the Governor of Punjab to resign. The Federal Government had offered some such Judges ambassadorships abroad and also important jobs in the Government so that conflict between the judiciary and the Government should come to an end. The last paragraph of this news item is reproduced as under:-

"One affected Judge of the Lahore High Court stated that if Prime Minister Benazir Bhutto asked them to tender resignations, then they would do so at once. This Judge admitted to the reporter of the Nawa-iWaqt that all the affected Judges would resign if they were asked to do so by the Prime Minister. This Judge also stated that all the affected Judges have one common stand and they would send their explanations to the Governor in writing. One Judge stated that on the charge of corruption he should be given opportunity to explain and then he would be able to prove that allegation is false."

84.?????? The facts stated above, most of which are reproduced from the newspaper cuttings, are undisputed facts as they have not been denied. These facts as long as they are undisputed clearly show as to who was responsible for not implementing the judgment and at whose behest the affected Judges became defiant and refused to leave. As they say all roads lead to Rome, hence in this case also indisputably clear indications are that the petitioner felt aggrieved against the judgment of this Court to which she had taken very serious exception and did not want it to be implemented in totality. At her behest those Judges who were very close to her and belonged to her party, rallied round other affected Judges and openly delayed the process of finalisation in respect of relieving the affected Judges.

85. Against the judgment of the Supreme Court in the case of appointment of Judges, two civil review petitions were filed on 19-5-1996 by Federation of Pakistan through Secretary, Ministry of Law and Justice and the third civil review petition was filed by the Governor of Punjab on 21-5-1996. These were registered as Civil Review Petitions Nos.32, 33 and 34 of 1996. On 19-5-1996 a Reference was filed under Article 186 of the Constitution by the Federal Government which purported to have been filed by the President of Pakistan but was not signed by him. The memorandum of the Reference was sent back and it was refiled after signature of the President and was registered as Reference No.l of 1996. Daily Nawa-i-Waqt, Rawalpindi published news item on 24-5-1996 that the President had signed the Reference because it was legal requirement and also because the Supreme Court desired so. Perusal of the Reference and the three review petitions indicated that in the Reference six questions were asked which were identical with questions in the review petitions with difference in language only. The review petitions were fixed for hearing before a Full Bench of seven Judges at Lahore. It appeared that one day before announcement of the short order in the case of appointment of Judges, Additional Judges in the High Courts of Sindh and Lahore were made permanent by notifications. They were administered oath also before the announcement of the short order. On 3-7-1996 during hearing of the review petitions at Lahore order was passed by the Court directing the Federal Ministry of Law to produce on the next date of hearing papers relating to the confirmation of Additional Judges of Lahore and Sindh High Courts which was done one day before announcement of the short order on 20-3-1996. On 7-7-1996, which was the next date of hearing, record was not produced and Mr. Aitzaz Ahsan, learned Advocate Supreme Court for review petitioners, made a statement before the Court that he had instructions to say that if the Bench was not reconstituted he would withdraw the review petitions. No such application was filed in writing and oral request for reconstitution of the Bench was rejected by the Chief Justice in view of the case of Zulfiqar Ali Bhutto v. The State (PLD 1978 SC 125) and in the result the review petitions were dismissed as? withdrawn. The third Review Petition No.34 of 1994 which was filed by the Governor of Punjab was also dismissed as withdrawn for the same reason as the other two review petitions.

86.??????????? On 21-4-1996 Civil Petition No.23 of 1996 was filed by Al-Jehad Trust through Mr. Wahabul Khairi, Advocate under Article 184(3) of the Constitution with prayer inter alia that in the appointment of Judges, apart from the Chief Justices of the High Courts and the Supreme Court, authority on behalf of the Federal Government should be exercised only by the President without consultation of the Prime Minister and any other view would run counter to the independence of judiciary. He had made in all 10 prayers which related to the functioning of the judiciary and had prayed that the record relating to appointments of Judges should be shown on demand to citizens and lawyers as a matter of right to information and should not be treated as privileged. He also prayed that a Judge of the High Court should not be appointed as Law Secretary and the Chief Justice of the High Court should not be appointed as Governor. Civil Petition No.54 of 1996 was filed on 26-8-1996 by Mr. Zafar lqbal Choudhry, Advocate Supreme Court, under Article 184(3) of the Constitution seeking protection and enforcement of his fundamental rights under Articles 4, 14 and 25 praying for declaration from the Court that the Prime Minister has no power/authority under Article 48 of the Constitution to interfere in any manner in the matters of appointments of Judges of the superior Courts. Special Reference No. l of 1996 was already pending when the President of Pakistan filed Special Reference No.2 of 1996 on 25-9-1996 under Article 186 of the? Constitution. In this Special Reference No.2 question was framed for opinion of the Supreme Court to the effect whether or not the powers of the President to make appointment of Judges in the Supreme Court and the High Courts under Articles 177 and 193 of

the Constitution are subject to the provisions of Article 48(I) of the Constitution. In other words whether in the appointments of Judges in the superior Courts the President has to act in accordance with the advice of the Cabinet or Prime Minister, or not.

87.??????? References I and 2 of 1996 and Constitutional Petitions 23 and 54 of 1996 were placed for hearing on 9-10-1996. The Court was informed that the President of Pakistan had been pleased to appoint Mr. Shahid Hamid, Advocate Supreme Court, to represent him in all matters relating to Reference No. l of 1996. Mr. Shahid Hamid informed the Court that since in Reference No. l of. 1996 same questions have been raised which were raised in Review Petitions 3 to 34 of 1996 and since the said - review petitions have been dismissed r ; withdrawn, the President considers Special Reference No. l of 1996 to have? become infructuous, hence he has dissociated himself from that Reference. Qazi Muhammad Jameel, the then Attorney-General for Pakistan, present in the Court stated that the reference was filed on the advice of the Prime Minister and he as the Attorney-General representing the Federal Government had no instructions to withdraw the same, hence requested for time to obtain instructions. In Reference No.2 of 1996 Mr. Shahid Hamid appeared for the President and the learned Attorney-General stated that he had no concern with the Reference and requested for time to seek further instructions from the Federal Government. It was noticed that in Civil Petitions 23 and 54 of 1996 common point involved was interpretation of Article 48 to the effect whether advice of the Prime Minister was binding or not on the President in respect of appointments of Judges in the superior Judiciary, hence notices were issued to the learned Attorney-General for Pakistan as contemplated under Order 27-A, Rule 1, C.P.C. and also to the respondents in both the Constitutional petitions. The Court directed that further hearing of these matters would come up before a larger Bench and M/s. Sharifuddin Pirzada and S.M. Zafar, Senior Advocates Supreme Court, were requested to assist the Court as amicus curiae.

88.???? These matters came up for hearing before a Bench of five Judges at Islamabad on 20-10-1996 and in the meantime Qazi Muhammad Jameel had resigned and was replaced by Syed Iqbal Haider who was appointed as Attorney General for Pakistan. Meanwhile request was made that since it was an important matter, the Presidents of the Bar Associations should be heard, hence the Presidents of the Supreme Court and the four High Court Bar Associations, Advocates-General of the Provinces, and the Vice-Chairman of Pakistan Bar Council were requested to assist the Court. On 5th November, 1996 Government of Prime Minister Mohtarma Benazir Bhutto was dismissed and the National Assembly was dissolved by proclamation of the President issued under Article 58(2)(b) of the Constitution. In the post-proclamation developments Mr. Shehzad Jehangir was appointed as Attorney-General and appeared in these cases and Mohtarma Benazir Bhutto requested the Court to allow her to appear as respondent in her private capacity and be represented by Syed Iqbal Haider.

These requests were allowed and finally after detailed hearing it was held that since the Constitution contemplates Parliamentary form of Government, advice of the Cabinet or the Prime Minister under Article 48(1) is attracted to the appointments of Judges as contemplated under Articles 177 and 193, which is further qualified by and subject to ratio decidendi contained in the judgment of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324). In the result Reference No.2 of 1996 was answered and the petitions were disposed of in terms stated above. The judgment mentioned above is published as case entitled AI-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84).

89. All what is stated above clearly shows that the petitioner as Prime Minister was dragging her feet and her object was not to implement the judgment, which she did not like and in the process was attracted violation of Articles 2A and 190 of the Constitution. There was deliberate delay and more than six months expired and in consequence recommendation for appointment of Mr. Ausaf Ali Khan as Judge of the Lahore High Court could not materialise as he attained the age of 62. Similarly, recommendation for confirmation of Justice Rana Baghwandas from Sindh High Court and Qazi Hamiduddin from Peshawar High Court jointly made by the Chief Justices of the High Courts and the Chief Justice of Pakistan was not accepted as laid down in the judgment of the Judges' case, and their probationary period was extended for six months. Such acts cannot be deemed as delay but they indicate open defiance of the judgment of the Supreme Court which indicates violation of Articles 2A and 190 of the Constitution. So far ridiculing the judiciary is concerned, apart from what is stated above, the petitioner indulged in it deliberately and intentionally and is on the record having stated publicly and such news item is published in the newspapers that she would appoint Mr. Jehangir Badar, who was President of P.P.P. Punjab, as Chief Justice of Pakistan. Mr. Jehangir Badar, who was Senator at the relevant time, admitted that such proposal was made by the petitioner/Prime Minister which enhanced his respect but the proposal was not to be acted upon. This was reported in Daily Nawa-i-Waqt, Rawalpindi on 11-1-1996 and an editorial appeared in Nawa-i-Waqt on 12-1-1996 on this subject. .

90On 4-1-1996 the petitioner addressed Jacobabad and Nasirabad Bar Associations in Sindh and following extracts from her speech (pages 18 to 32 of Volume III-A) are reproduced as under:-

"We do not believe that the Judiciary has the right to alter or amend the Constitution, only the right to interpret it. That is why, we opposed the 'Doctrine of Necessity'. That judgment gave the power to the dictator to amend the Constitution which was totally illegal and unconstitutional and stole from the people of Pakistan the right to amend the Constitution through their elected representatives. Thus, judicial restraint is the hallmark of an independent Judiciary free from political consideration devoted to interpreting the law.

I would like to mention to you, honourable members of the Jacobabad and Nasirabad Bars that you should judge for yourselves. You know the Constitution gives us the power to appoint anybody from the Jacobabad Bar as the Chief Justice of the Supreme Court or Chief Justice of the High Court. But we did not exercise the Constitutional power so far and instead we chose the Chief Justices from the existing lot of Judges.

You know distinguished members of the Bars, that every single Judge of the Supreme Court was nominated. Who is today the Judge of the Supreme Court was nominated after 1977. So, every single member of the Supreme Court has been made a Judge either by General Zia-ul-Haq or by Ghulam Ishaq Khan or by Mr. Nawaz Sharif. So, is it not an irony that they should call the Judges that they have appointed 'Jiyalas'. These are people they had appointed. But I thought that let us try and strengthen the Constitution, and although the Constitution gives us this power I did not exercise it to take a Chief Justice from the Bar. You know Constitution also gives us the power to take Judges in the Supreme Court from the Bar. So far, we have not exercised that Constitutional right. I did not turn around and say that the Judiciary is full of 'Payaras', people appointed by Zia-ul-Haq, Ghulam Ishaq Khan and Nawaz

Sharif. So, I will not appoint from the Bar, I will appoint from the Bench because I don't want people who were tarnished by appointments by General Zia, a Martial Law dictator, or by a rigged Prime Minister. I did not do that, because I want to see institutions flourish, and only those who do not want to see institutions flourish, only those who do not want to see democracy flourish, who do not want to see the rule of law flourish, they distort the fact, but I am prepared to challenge them to take on fact. But each person in the Supreme Court of Pakistan has been made a Judge after 1977 either by General Zia-ul-Haq or by Mr. Nawaz Sharif or by Mr. Ghulam Ishaq Khan. So not one of them can be called a 'Jiyala'. If any thing, he can be called a 'Payara', but they are not into calling 'Jayalas' or 'Payaras', because we believe that if a man becomes a Judge he should be above any political consideration and he should work according to his conscience, and he should work according to the Constitution. So, we do not do that. Even in the High Courts the Judges that we have appointed now are junior most Judges, and they will not attain senior most positions until ten to fifteen years are passed by. So, the entire, Judiciary so far, whether it is the Supreme 'Court or the High Courts, is dominated largely by the people who were appointed in the long period between 1977 and 1993, and this is a period of almost 20 years.

When the Judiciary convicted Quaid-e-Awam to satisfy Gen. Zia in the charge of conspiring to murder a man who is still alive, they were the loser.

Then why do men make mistakes? Why do the Zias, the Ishaqs, the Anwarul Haqs make fatal errors? Because they are mortals. They get carried away by temptation. Temptation for power, for pomp, for fame, for fortune. They like to think of themselves as Messiahs when in fact they are pawns in the hands of political groups.

The real wisemen are those who stick to their Constitutional roles through thick and thin, through thunder and storm and thereby win respect in their own time and the time that comes after. "

91. On the ground of non-implementation of the judgment of the Supreme Court in the case of appointment of Judges enough material has been produced which has come on the record showing that Article 190 of the Constitution has been violated, which requires that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. The judgment of the Supreme Court was not implemented by the executive authority and as envisaged in our Constitution we have Parliamentary form of Government in which the head of executive authority is the Prime Minister and such executive authority of Federation is to be exercised by the President on the advice of the Prime Minister as is contemplated under Article 48 of the Constitution. Article 90 of the Constitution envisages that the executive authority of Federation shall be exercised by the President directly or through officers subordinate to him, in accordance with the Constitution. The question of interpretation of this Article came up for consideration in the case of Al-Jehad Trust and Reference No.2 of 1996 v. Federation of Pakistan (PLD 1997 SC 84) with relevant portion at page 133 contained in paragraph 65 in which it is held that Article 90 is to be read in conjunction with Article 48(1) of the Constitution on the same lines as is done in India in their Constitution in which the relevant Article is 53 read with Article 74 as the language in the relevant Articles in our Constitution has been borrowed and lifted from the Articles in the Indian Constitution mentioned above. The thrust of the argument is that since in both India and Pakistan Parliamentary form of Government is operative as contemplated in the Constitutions, hence executive authority of the Federation is to be exercised by the President on the advice of the Prime Minister.

92.?????????? It is regrettable that in the hierarchy of executive authority resistance was made and judgment was not implemented by the petitioner as Prime Minister and as head of the Government and in the process Article 2A of the Constitution has also been violated which provides specifically that independence of the Judiciary shall be fully secured. There was so much dillydally and hesitation in the implementation of the judgment that finally the President was constrained to take stand that if the Prime Minister did not comply with the judgment he would do so on his own and only then compliance was made in connection with regularisation or otherwise of the affected Judges after delay of six months and ten days. In this connection example of non-compliance can be cited as Mr. Ausaf Ali Khan could not be appointed as Judge of the Lahore High Court, who was not confirmed earlier, and likewise Justice Qazi Hamiduddin also suffered because of reaching the age of superannuation. Another case of deliberate non-compliance and defiance is that there was joint recommendation by the Chief Justices of the High Courts and the Chief Justice of Pakistan for confirmation of Justice Rana Bhagwandas and Justice Javed Nawaz Khan Gandapur of Peshawar High Court and contrary to the recommendation and in violation of the guidelines laid down in the judgment, their probationary period was extended for six months. The President was justified in taking action on this ground under Article 58(2)(b) as the petitioner had violated her Oath as Prime Minister of Pakistan in which it was stated that she would discharge her duties and perform her functions honestly, to the best of her ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law.

93. In Reference No.2 of 1996, reported as Al-Jehad Trust v. Federation of Pakistan and others (PLD 1997 SC 84), which was filed by the President of Pakistan seeking opinion of the Supreme Court on the interpretation of Article 48 of the Constitution on the point whether advice of the Prime Minister was binding on the President in respect of appointments in the superior Courts after the release of the judgment in the case of appointments of Judges, it was held that since our Constitution provides for Parliamentary form of Government, hence advice of the Prime Minister is binding on the President in respect of appointments in the superior Courts. During the hearing in the Court the argument was raised as to what would happen if the judgment of the Supreme Court in the appointment of fudges case was not implemented by the Prime Minister. Mr. S.M. Zafar, who was assisting the Court as amicus curiae, stated that in such a situation the President could be justified to invoke Article 58(2)(b) of the Constitution as non-implementation would be deemed to give rise to a situation in which it could be said that Government of the Federation could not be carried on in accordance with the provisions of the Constitution, and attention of the Court was invited to Article 204 of the Constitution which empowers the Supreme Court to punish any person who is scandalising the Court or otherwise does anything whcih tends to bring the Court into hatred or ridicule or contempt. It has been further observed in the opinion of the Reference that it is
expected that the President shall see to it that appointments of Judges in superior Judiciary are made strictly in accordance with the Constitutional scheme as contemplated under Articles 177 and 193 of the Constitution which are to be interpreted and read in conjunction with the judgment in the appointment of Judges' case. It is, therefore, clear that action of the President on the ground mentioned above is justifiable on the basis of material produced and also in view of the observations made in the opinion of the Supreme Court in Reference No.2 of 1996.

94. The next ground in the order of dissolution is ridiculing of Judiciary which is described as sustained assault on the judicial organ of the State under the garb of Bill moved in the Parliament for prevention of corrupt practices. This Bill was approved by the Cabinet and introduced in the National Assembly without informing the President as required under Article 46(c) of the Constitution. The Bill proposed, inter alia, that on a move by 15 per cent. of total membership of the National Assembly, which came to 32 members, a Judge of the Supreme Court or High Court could be sent on forced leave on the charge of misconduct till the final disposal of the motion. It was further provided that if on reference made by the proposed Special Committee and Special Prosecutor appointed by Special Committee formed the opinion that the Judge was prima facie guilty of criminal misconduct, the Special Committee would refer the opinion to the National Assembly which could by passing of vote of no confidence remove the Judge from his office. Strangely enough this Bill was moved when the controversy with regard to non-implementation of the judgment by the Government of the petitioner was at height and it was a matter of common knowledge that her Government did not have support of two-thirds majority to carry out amendment in the Constitution. It was argued on behalf o-f the petitioner that this was an exercise of academic nature and was not intended to harass the Judges. There is no cavil with the proposition that the Parliament is competent to amend the Constitution in the manner prescribed therein. The question arises for consideration with regard to the timing of the Bill and the intention with which it was moved. The parties in the National Assembly in opposition criticised the Bill as aimed at ridiculing and humiliating the Judiciary. The learned counsel appearing for the petitioner could not satisfy the Court that the Bill,was introduced in good faith and with bona fide intention particularly when it was crystal clear to all that it could not be passed unless two-thirds majority in the National Assembly was available. It was also known to all that the judgment of the Supreme Court was not being implemented and dilatory tactics were being employed by the Government and in the result the process of regularization or not of affected Judges was being delayed.

95. We are satisfied that the intention in moving the Bill was not bona fide for making the amendment in the Constitution but was to harass the Judges of the superior Courts to show that the Government could move such amendment in the Parliament. This could also be viewed in the light of the fact that there is already provision in the Constitution in Article 209 which provides for Supreme Judicial Council which can take action in respect of Judges of the superior Courts on the ground of misconduct. It would be pertinent here to reproduce verbatim the Statement of Objects and Reasons of the Bill as under:-

"The People's Government is committed to the concept of good governance, committed to check the menace of corrupt practices and committed to bringing true facts before the Nation. It is, therefore, necessary to provide fresh legislation to ensure that corruption is not made a pretext for disrupting democratic process and imposing dictatorship as was done through the Public and Representatives Offices (Disqualification) Act, 1949 (PRODA), the Elective Bodies (Disqualification) Order, 1959 (EBDO), and by issuing Martial Law Regulations setting up Disqualification Tribunals for oppressing the Parliamentarians. In order to ensure the supremacy of Parliament, and to expose, prosecute and punish across the board in an even, equitable and just manner. Upholding the Islamic principle, that no one is above the law and that there can be no discrimination between one set of people or another, one position or another or one institution between another, it has been decided to move the Constitution (Fifteenth Amendment) Bill, 1996.

2. The present Bill seeks to achieve the aforesaid objectives."

96. Mr. Raza Rabani, the then Minister of State for Law and Justice, stated on the floor of the Assembly in respect of the above said Bill that Judge is not sacred cow that he should not be subjected to accountability. Mir Zafarullah Khan Jamali, M.N.A., stated that the decision of the Supreme Court on 20th March, 1996 has been criticised by the Government and now movement of the Bill of Accountability against the Judges has surfaced the intention of the Government. Reference can be made to the news item published in daily Jang, dated 22nd October, 1996. On 25th March, 1996 a news item appeared in the daily Nation, Lahore with caption "P.P.P. for treason cases against Supreme Court Judges". It was stated therein that Parliamentary party of P.P.P. and its allied parties in the meeting termed the Supreme Court verdict in the appointment of Judges' case as against the Government and advised the Government to institute a case of treason against the Judges who passed the judgment. Chaired by the Prime Minister Benazir Bhutto, and attended by 109 M.Ps., the meeting erupted in applause when M.N.A. from Lahore Arshad Ghurki suggested instituting treason cases against the Judges. Another news item appeared in daily Nation, Islamabad on 26th March, 1996 with caption "Government had a plan to arrest Judges, Akram Sheikh". It is stated in this news item that the President of the Supreme Court Bar Association alleged that the Government had a plan to arrest the Judges night before the verdict in appointment of Judges' case. It is further stated that there was meeting in which the Prime Minister called her aids and asked them "why cannot we arrest the Judges'. The plan was called off when some sensible persons advised not to take I such step. These news items as such are not denied but general objection is taken that reliance cannot be placed on newspapers cuttings. We are of the considered view that the Bill was introduced in the Assembly with mala fide intention of scaring and harassing the Judges in order to take revenge from them on account of 20th March judgment in the case of appointment of Judges, which the Government of the petitioner did not like and did not want to implement.

97. The next ground in the order of dissolution is that the Judiciary had not been fully separated from the Executive in violation of, the provisions of Article 175(3) of the Constitution and the deadline for such separation was fixed by the Supreme Court of Pakistan within which complete separation had not taken place. Time was stipulated for such separation under Article 175(3) which expired after it became mandatory for the Government to separate judiciary from the executive which was not done and in that connection writ petition was filed in the High Court which was allowed and time limit was set for such separation Against this decision appeal was filed in the Supreme Court by the Government of Sindh which was dismissed and the case is reported as Government of Sindh v. Sharaf Faridi and others (PLD 1994 SC 105). During the hearing of the appeal a high-powered committee was set up to undertake separation. In the judgment of this Court guidelines are laid down for financial independence of the judiciary and cut off date was also given for separation of judiciary from the executive with bifuracation of Judicial Magistrates and Executive Magistrates. It was held that the Judicial Magistrates would be under the control of the High. Courts and Executive Magistrates would be under the control of the administration and the Government. Provincial Governments then filed review petitions in this Court requesting for extension of time and those review petitions were heard by this Court. Other details were settled and the controversy arose with regard to sentence, it was agreed that the Executive Magistrates should be allowed trial of cases under the minor acts and limited power of imposition of sentence may be given to them but there was no consensus among the Provincial Governments as to the

period of sentence to be allowed to be imposed by the Executive Magistrates. Attempt was made by some Provincial Governments to allow Executive Magistrates to impose sentence up to a period of three years and more in minor offences. Opportunity was afforded to the Provincial Governments to sort out this problem by developing consensus for a very short sentence to be imposed by the Executive Magistrates. The review petitions were dismissed and further time was not extended and it appears that the Federal Government passed Ordinance No.XL of 1996 with title "The Legal Reforms Ordinance, 1996" in which offences punishable with imprisonment with a term not exceeding three years have been made triable by the Executive Magistrates. This Ordinance was repromulgated on two occasions again. It is in this sense that the ground is raised in the order of the dissolution that the Judgment of the Supreme Court on the subject of separation of Judiciary from the Executive has not been complied with by the Federal Government in totality. The Federal Government was party to the proceedings in the Court and has failed to persuade the Provincial Governments to develop consensus among themselves with regard to sentence which should be allowed to be imposed by the Executive Magistrates in respect of cases triable under the minor acts. On the other hand the Federal Government has promulgated an Ordinance which is contrary to the spirit of the judgment of the Supreme Court.

98. The next ground in the dissolution order is telephone tapping and eavesdropping technics adopted in respect of Judges of the superior Courts, leaders of political parties and high ranking military and civil officials by the Government of the petitioner which was being done by the Intelligence Bureau and the reports and transcripts of telephone conversations were being sent directly to Prime Minister House for perusal of the Prime Minister. The petitioner has denied the allegation and claimed that she was herself victim of telephone tapping and she complained to the Defence Secretary, Communication Secretary and her own Military Secretary to find out the truth. She was so concerned with this illegal tapping that the Communication Ministry had placed an order for a 300-line tapping proof exchange for Constitutional functionaries of the State and the Armed Forces so that no such conversations could be tapped. It is further stated in the petition that on a few occasions she even brought this complaint to the notice of the President who did not bother much about these fears. This is all she had to say about telephone tapping so innocently as if as Head of Government she did not know who was doing the tapping and she had to complain to the Secretaries of her Government and her Military Secretary to find out the truth. She has not stated anything and has not denied specifically that tapping was not done by Intelligence Bureau which was functioning under her and was answerable to her. In the written statement stand is taken that telephone tapping of -the Judges is direct interference in the independent functioning of the Judiciary and is a grave violation of the principle of trichotomy of powers between the three pillars of the State, namely, Executive, Legislature and Judiciary, which are supposed to function in their own separate ambits but with cooperation and harmony in order to produce an efficient system of governance as is contemplated in the Constitution. The Federal Government as respondent No.2 in this petition has produced voluminous record to show telephone tapping and eaves-dropping by the Intelligence Bureau which works directly under the control of the Prime Minister. If at all phone tapping or eaves-dropping is to be allowed with legal justification, it can be done only when a grave risk to the security of the country is involved. It would be naive to think that the Supreme Court or the Judges of that Court posed such threat. The transcripts of recorded conversation on telephones of Judges used to be sent by the Intelligence Bureau operatives. in sealed covers to the Prime Minister House. Telephones of several Judges of the Supreme Court, Federal Shariat Court and the High Courts including their Chief Justices were being tapped. Telephones in the Chambers and the residences of the Judges who were hearing the case of? appointment of Judges were being tapped. The Chamber of the Chief Justice of Pakistan was bugged in addition to the tapping of the telephones in it.

99. Respondent No.2 has produced relevant material which is contained in Volume VI of the written statement. At page I of this volume is procedure which is adopted in the technical operations of telephone tapping. The recording obtained used to be transcribed under the supervision of Mr. Muhammad Akhlaq, Assistant Director, and transcriptions used to be selected and a summary was thus prepared by Mr. Muhammad Sadiq Malik, Deputy Director who was responsible for carrying these transcripts to the Prime Minister House and bringing them back after duly circulating the same to Major (Retd.) Muhammad Shabbir Ahmed, Ex-(JDG) and Mr. Masood Sharif Khan, ExDirector-General, Intelligence Bureau. There is statement of Mr. Shabbir Ahmed who has stated that he used to contact D.M.S. or A.D.C. to the Prime Minister on telephone who would make arrangements for entry through the gate of the Prime Minister House in official vehicle. There is statement of Mr. Muhammad Sadiq Malik, Deputy Director, in which it is stated all the files delivered by him used to be duly sealed and in double cover. The outer envelope used to be in the name of MS to the PM whereas the inner envelope used to be "for eyes only of the Prime Minister of Pakistan". All the Judges were given code name B.M. which means Blind Man. B.M.1 was the Chief Justice, B.M.2 was the Registrar, B.M.3 was Justice Saleem Akhtar and so on. Such code names were given to the political leaders and high Government Officers also. After the dismissal of the Government of the petitioner, the telephones of the Chief Justice and other Judges in the Supreme Court building and residences were retrieved on December 4, 1996. Muhammad Afzal Haq, Director IB, has signed a written statement in which it is stated that under the orders of the superiors he carried out technical operations of the code names including B.M. Article 14 of the Constitution provides for dignity of man, and states that subject to law, the privacy of home, shall be inviolable. This fundamental right as contained in Article 14 covers guarantees that dignity of man and the privacy of his home shall be inviolable and this right stands violated by tapping of telephones and bugging devices. Verse 12 of Surrat Al-Hujurat reads as under:-

"O ye believe! Avoid suspicion as much (as possible): for suspicion in some cases is a sin: and spy not on each other."

It, therefore, appears that bugging and telephone tapping violates against privacy of citizens and is prohibited by Islamic traditions as well.

100. The next ground in the order of dissolution is corruption, nepotism and violation of rules in the administration of the affairs of the Government and its various bodies, authorities and corporations, which was done in such a manner that orderly functioning of Government in accordance with the provisions of the Constitution and law became impossible and in some cases national security was challenged. In this context the petitioner has taken the stand, as is reflected in the petition, that allegations of corruption, nepotism and violation of rules, even though reprehensible, did not constitute a ground that was sufficient in 'itself to justify an order under Article 58(2)(b) of the Constitution. In any case the ground is too vague and too general in nature and could not be sustained. Such matters could easily have been taken to the Courts and remedy of dissolving the entire National Assembly was no solution and nor was it sanctioned by the Constitution. Stand is taken by the respondents in the written statement that reliance placed by the petitioner on the case of Nawaz Sharif (supra) is not helpful to her for the reason that in that case there were isolated

instances of corruption for which enough supportive material was not available and as against that in the instant case violation of rules and regulations in respect of corruption and nepotism had been carried out on such a widespread, pervasive and systematic basis that such charges can validly form basis for action under Article 58(2)(b). In other words in the present case there was colossal difference in magnitude in both scale and nature of the corruption, nepotism and corrupt practices in question and the whole system of governance had been subverted and channels of administration polluted by a sustained abuse of power. It is, therefore, submitted that in the instant case there is overwhelming evidence to establish that person holding highest posts in the Government are guilty of corrupt practices and gross abuse of power which is a valid ground for concluding that Government cannot be carried on in accordance with the provisions of the Constitution. In the rejoinder petitioner has once again denied the allegation and demanded that the respondents be made to prove the allegation strictly.

101. In the order of dissolution on the ground of corruption, nepotism and violation of rules and regulations, purchase of Surrey Mansion in London by the petitioner's spouse is not mentioned specifically but it is so mentioned in the written statement which has been filed by the respondents. The petitioner has filed affidavit in rejoinder in which this allegation is denied as absolutely false and untrue. Stand is further taken by the petitioner that it is quite amazing that the President should be prepared to invoke Article 58(2) (b) on the basis of mere hearsay and speculative reasoning based on some newspaper reports/documents that cannot yield any conclusive proof. It is further submitted that such newspaper stories provide no ground for assuming that the petitioner, or her husband, has bought any such property as is claimed in the written statement. Other documents obviously refer to the named consignee and not the petitioner. The petitioner has no connection with any of the properties or effects mentioned in the written statement with respect to his allegation. The petitioner is prepared to face any prosecution or trial with respect to this allegation. After all onus must remain on the respondents if they choose to press this allegation, to prove their case in a Court of competent jurisdiction? in which full and fair enquiry onthe facts can be undertaken. Mere surmises and inferences cannot suffice. It is, therefore, submitted that the petitioner reiterates vehemently her denial of. this allegation.

102. On 9-6-1996 Sunday Express of London published a news item under the banner headline "Bhutto's Surrey Retreat". It was further stated in the news item that the petitioner and her husband had acquired estate which is perfect hide away" worth ? 2.5 million standing on a 3.55 acre land and is known as Rockwood House. The property has its own private landing strip and indoor swimming pool with security system linked to Scotland Yard. If any alarm sounded at the estate, Scotland yard would send "armed response vehicles". In Pakistani currency the property is worth 175 million rupees. On 16-6-1996 the daily Dawn published from Karachi reported that the shipments had been flown into England by PIA from Bilawal House for the Surrey Mansion. The petitioner's husband applied for permission to build a stud farm on the estate for his polo ponies and the authorities had allowed construction of 63 stable on the estate. The petitioner and her husband threatened to sue the Sunday Express but did not do so. The respondents have supported this allegation by documents in written statement and it would be much better to refer the document as such. The respondents have filed four newspaper cuttings contained in Volume VII-E at pages 404, 405, 406 and 407. The first cutting is from Sunday Express dated 9-6-1996 and the name of the reporter is Oonagh Blackman. Heading of the news item is "Bhutto's Surrey Retreat" and there is photograph of the petitioner along side the news item and underneath it, it is mentioned "hide away for Benazir". Since the news item is very brief, it is reproduced as under:-

"Benazir Bhutto, Pakistan's Prime Minister, has found a perfect hide away. The 42-year old oxford-educated leader and her husband, Asif Zardari, have bought a $ 2.5m mansion in Surrey.

The property, which has a private landing strip and indoor swimming pool stands in 355 acres on the edge of the village of Brook. It will provide an ideal retreat for Mrs. Bhutto when she wants to escape her troubled political life in Pakistan.

The house has been turned into a Surrey version of Fort Knox. There are laser beam alarms and security men in the grounds. Police sources said that if security alarms are sounded Scotland Yard will be informed and an armed response vehicle despatched immediately.

A contractor said: ' A plane flew over the property twice and guards reached for their guns'."

103. The second news item again is in Sunday Express dated 15-6-1996 by the same reporter and the heading of the news item is "Bhutto in the firing line" and in this cutting there is photograph of the petitioner and also of Surrey Mansion. The third newspaper cutting is from daily Dawn dated 16-6-1996 with heading "Express set to publish Surrey House Photos" with relevant portion as under:-

"London, June 15: The Sunday Express, which last week revealed that a large house built with a landing strip and indoor swimming pool with 355 acres of surrounding park-land in Surrey, in South of England, has been purchased for the Bhuttos, has in the latest issue, just ready to go on the news stands, published photographs of the mansion with some other details which the paper says reinforce their story.

Prime Minister Benazir Bhutto strongly denied the report when it first appeared and was also carried by the Pakistan media. Her husband Mr. Asif Zardari said it was an effort to malign the family and that he was consulting his lawyers with the intention, of suing the Sunday Express.

The newspaper says that the property was purchased in October last year in the name of a company registered in the Isle of Man, as off shore British Crown dependency.

The Sunday Express claims that Mr. Asif Zardari is behind the purchase and they are not revealing all the details in their latest issue as they wish to keep some information with them in case Mr. Zardari decides to file a libel writ against them. "

The last cutting is of Sunday Express, dated 23rd June, 1996 with heading "Bhutto row rumbles on". The first two paragraphs of this news item are reproduced verbatim as under:-

"Asif Zardari, husband of Pakistan's Prime Minister, Benazir Bhutto, is at the centre of a planning dispute over his application to build an Arabian horse stud in the grounds of his mansion in Surrey, writes Oonagh Blackman.

?Keen polo player, Zardari, 43, has been refused permission for the stud but the local authorities have approved a second application to build 63 loose boxes on the estate. He is understood to be planning to keep his polo ponies in Britain."

On this issue of Surrey Mansion the respondents have filed supportive documents which are contained in Volume VII-E. The first document is a fax which is at page 409 in the said volume and this fax message is dated 22-4-1996 which has been issued from the Ministry of Foreign Affairs and is addressed to PTA, Karachi and the contents are reproduced as under:-

"I have been directed to inform you that the personal luggage/effects are to be sent from the Prime Minister House (Bilawal House), Karachi to the High Commission of Pakistan, London. The luggage is contained in eight big packages and its size would be about one big truck load.

The above consignment is to be sent by PTA flight by Wednesday the 24th of April, 1996.

You are requested to kindly depute PTA representative to report of Ministry of Foreign Affairs, Camp Office, Karachi, at 1000 hours by 23rd of April, who would be introduced to the Prime Minister House (Bilawal House) for seeing and taking over the possession of the goods. We have requested the Pakistan Navy for its transportation from the Prime Minister House to the airport. The Customs authorities are sounded for the same."

104. There is PTA Air Way Bill No.214-01635012, dated 25-4-1996 at page 410 of the same volume in which Bilawal House is mentioned as consignor and the consignee is Mr. Wajid Shamsul Hassan, High Commissioner of Pakistan. The consignment contained 36 items as per the list attached, which is at page 411. Perusal of the list shows that items of decoration, carpets, guns, swords, daggers, rugs, wooden furniture and paintings were sent. There is also copy of fax message sent by Ministry of Foreign Affairs, dated 24th April, 1996 to the High Commissioner in London in which it is stated that under the instructions of Prime Minister House, eight heavy cartons have been despatched for London, which will be carried by PTA Flight PK-707 on 28th April 1996, leaving Karachi at 1200 hours. Request was made to ensure its safe takeover at London for further necessary action. This message was sent by Nisarullah Baluch, Deputy Chief of Protocol and copies were sent to the Chief of Protocol, Ministry of Foreign Affairs, Islamabad and P.S. to Mr. Asif Ali Zardari, M.N.A.. At page 415 of this volume is letter from Wajid Shamsul Hassan to Cargo Manager, London, Heathrow, stating therein that Mr. Paul is authorised to collect on his behalf the personal effects received from Pakistan on PTA Flight No.PK-787 on Sunday, 28th April, 1996 under Airway Bill No.214-01635012. At page 416 of the same volume there is PTA Cargo Release Note dated 4-5-1996 showing shipment released to Mr. Paul Keating. at page 417 is PTA Airway Bill No.214-01629736 showing Mr. Paul as consignee. At pages 418 to 420 are extracts from Companies House London (corporate record regarding Grant Bridge Limited and Grant Bridge Contractors Limited) and at page 419 ar addresses of Mr. Paul Keating and Grant Bridge Limited. At pages 421 to 423 are invoices of Tpwnsends for the work done at Rockwood House sent to Grant Bridge.

At page 424 of the same volume is note from the telephone records of Ramina Properties Limited (Rockwood Estate) showing calls made from this number to Jawaid Pasha in Pakistan and U.K. It also shows the calls made from Telephone No.01428-685607 to Jawaid Pasha's home number, his brother-inlaw's number in Karachi as well as his office in Lahore, Pakistan. This note also shows the calls having been made from Rockwood to Jawaid Pasha's mobile number as well as Asif Zardari's mobile phone, details of which are enclosed in Annexures 12 to 17 which can be found at page numbers 425 to 430.

At page 432 is bill of international? calls showing such calls made from Rockwood Estate to several telephone numbers in Pakistan including one No.92300550243 which was in use of Asif Zardari but was issued in some other name. The telephone calls made from Rockwood estate to two numbers in Pakistan on the basis of bills produced clearly show connection of Jawaid Pasha and Asif Zardari with the property in question and sufficient documents have also been produced to show the connection of petitioner and her husband with the property in Surrey as consignments were sent from Bilawal House through Foreign Office and PIA and Mr. Wajid Shamsul Hassan, High Commissioner of Pakistan in London. There are names of the officers mentioned in the documents who had been working in the foreign office and PIA in London showing that they 'had dealt with the transportation of the consignment in question from Prime Minister House. This in fact is overwhelming documentary evidence which has been produced. In the light of such documents produced by the respondents alongwith the written statement, if the petitioner chooses to issue a general disclaimer in her rejoinder by simply saying that she denies the suggestion that she or her husband has got any such property in England and the allegation is absolutely false and untrue, she can say so but the record speaks for itself that the petitioner is unable to deny the allegation unless she is able to prove that these documents are false. It is very clear that the authenticity of the documents is not called in question and the contents thereof are also not denied because the names of so many persons are mentioned in these documents who could come forward and own or deny the parts played by them in dealing with those consignments. The petitioner also did not sue Sunday Express in London for publishing the false news item with her photograph and of the property in question.

106. In the written statement in paragraph 255 at page 151 it is alleged that the petitioner's father-in-law, Mr. Hakim Ali Zardari, and his wife had acquired property in France on 12-4-1990 for a total value of French Francs 6 millions and a huge sum was spent on repair work and reconstruction of the property. Another property by name "Manoir de la Reine Blanche" was purchased by the? but the date of the purchase is not mentioned. The date of the purchase of the first property mentioned is also 12-4-1990 which was in fact the first tenure of the petitioner as Prime Minister of this country and is irrelevant now when her Government has been dismissed by the President in her second tenure. We, therefore, exclude the documents from consideration produced by the respondents in support of the allegation of purchase of property in France by Mr. Hakim Ali Zardari and his wife.

107. In the written statement there is allegation that a sum of Rs.10 million was released by Bait-ul-Mal in favour of the then Interior Minister Maj.-Gen. (Retd.) Naseerullah Babar for disbursement among four thousand Bugti tribesmen who suffered on account of political persecution. Mr. Ahmad Sadik, Principal Secretary to the petitioner as Prime Minister presided over a meeting

which was held in the Prime Minister's Secretariat on 3-4-1994 and request was made for release of the amount mentioned above. The same was done. Similar request for such amount was made by way of further installment on 13-4-1996 which was allowed and the. cheque was issued in the name of the then Interior Minister. Later it was found that disbursement was not made to the right persons in a lawful manner. In one case 325 thumb-impressions were made by one person showing that an amount of Rs.16.25 lacs was received by him. In another case 265 thumb-impressions were of the same person showing receipt of the amount of Rs.13.25 lacs. In the third case 118 thumb-impressions of the same person accounted for receipt of the amount of 5.9 lacs. In the fourth case 114 thumb-impressions of one person were made for receipt of the amount of Rs.5.7 lacs. In another case 80 thumb-impressions of identical nature and of same person were used for receipt of the amount of 4 lacs. In such manner Rs.25 million drawn from Bait-ul-Mal were allegedly misappropriated. The respondents have produced documents in support of the allegation mentioned above and have produced Volume VII-G in that context. In the said volume at page No.2 is note showing that a meeting was held at Prime Minister Secretariat on 3-4-1994 which was presided over by the Principal Secretary to the Prime Minister at which decision was taken regarding Rs. l crore. At page 3 is Pakistan Bait-ul-Mal Cheque No.39 issued on 4-4-1994 in favour of Maj.-Gen. (Retd.) Naseerullah Babar, the then Interior Minister. At page 6 is note dated 5-4-1994 from Prime Minister's Secretariat to Pakistan Bait-ul-Mal confirming the decision regarding release of the amount of Rs.l crore. At page 8 is Pakistan Bait-ul-Mal Cheque No.43 issued on 24-4-1994 in the name of Maj.-Gen. (Retd.) Naseerullah Babar, Interior Minister. There are also reports of Mr. Shoukat Ali, Inspector FIA (Handwriting Finger Expert) analysing Bait-ul-Mal fund distribution lists which are at pages 10, 11, 12, 12-A, 150 to 153 and 263 to 267. There are sample sheets from Bait-ul-Mal fund distribution lists at pages 42, 43, 98, 102, 142 and 330. At pages 371 to 373 is FIA note dated 24-11-1996 regarding Ms. Naheed Khan. In the rejoinder reply to this allegation is that the cheques issued to Maj.-Gen. Naseerullah Babar were handed over to the Governor of Balochistan and if disbursement has been found to be shady and faulty, then the Governor of Balochistan should be blameworthy and not Maj.-Gen. (Retd.) Naseerullah Babar.

108. Another case of misappropriation cited is that Ms. Naheed Khan, Political Secretary to the petitioner, and one Rehmatullah, the consultant to the petitioner, while the petitioner was the Prime Minister, forwarded lists of persons and had cheques issued for them for total amount of Rs.34,90,000. In gross violation of rules sums totalling to Rs.6.1717 million and 27.05 million were sanctioned on the directions received from Ms. Naheed Khan and Mr. Rehmatullah respectively. In the rejoinder allegation is denied on the ground that the signatures of Ms. Naheed Khan were forged. In any case a case has been filed against her under sections 409, 420, 109 P.P.C. and section 5(2) of Prevention of Corruption Act, 1947 in which bail has been granted to her. These
incidents can De considered in the light of the fact that during the tenure of the petitioner as Prime Minister how rules of the procedure were being violated with impunity and how public money was being dealt with by persons who were very close to the petitioner. These incidents certainly show an element of lack of responsibility in the administration of the petitioner and could go a long way in satisfying the mind of the President that the Government of the Federation was not being run in accordance with the provisions of the Constitution.

109. On the ground of corruption, nepotism and violation of rules in the administration, in the written statement, large scale corruption is alleged in the finance sector of the Federal Government in which the petitioner as Prime Minister also retained for herself the portfolio of finance and did not appoint any person as Finance Minister. She appointed one Minister of State for Finance and a retired bureaucrat as advisor on finance. In that set-up petitioner herself assumed the responsibility and maintained complete control over the financial sector of the Federal Government. She took all the key decisions herself without involving anyone else. At the time when the petitioner took over as the Prime Minister of the country the economic situation was far from satisfactory and it was almost a gray area in which a lot had to be done. The petitioner and her Government promised to bring reforms in the economic sector for the betterment of the country and impression was given that for that reason the petitioner retained the portfolio of finance with herself. In the case of Habib Bank, United Bank, National Bank non-performing loans or bad debts stood at Rs.50.76 billion at the end of 1993. By 30-6-1996 this figure had increased to 66.647 billion which was an increase of 31 per cent. In the case of ADBP and IDBP the bad loans stood at Rs.5.712 billion and by 1996 this figure had risen to Rs.13.195 billion which was an increase of 131 per cent. The case of Development Finance Institutions (DFIs) was even worse. The bad debts skyrocketed from 6.12 billion to 16.396 billion which is an increase of 168 per cent. Colossal deterioration took place in the banks' profitability. During the tenure of the petitioner as Prime Minister and Finance Minister, after lifting of ban on recruitment, 5028 appointments were made in National Bank. From the said appointments, 325 were made by Pakistan Banking and Finance Service Commission and 180 were made by Bank's Recruitment Committee. The remaining 4523 were made on the basis of instructions received from the Prime Minister's Secretariat and Ministry of Finance. In U.B.L. over 2500 nonexistent employees were shown on the bank's pay role and under that garb crores of rupees were misappropriated. This is stated to be accomplishment of Mr. Aziz Memon who was not only the bank union leader but also P.P.P., M.N.A. In the last resort Mr. Memon had to be arrested. The State Bank of Pakistan noted sharp increase in expenditure of National Bank of Pakistan of which Mr. M.B. Abbasi was appointed as President who was very close to .the petitioner and her husband and on those lines a formal complaint was made to the Ministry of Finance. According to the complaint expenditure on residential telephones went up by 87 per cent. entertainment expenses increased by 57 per cent. and illegal donations went up by 67 per cent. Donations amounting to Rs.93.496 million were disbursed during the period from January to March, 1996 in violation of State Bank instructions and without obtaining approval from .the Board. A sum of Rs.553,032 million was spent on renovation and air-conditioning programme.

110. From June, 1993 to June, 1996 a sum of Rs.3.397 billion was written off. One of the beneficiaries was so-called Zardari Group comprising of Mr. Hakim Ali Zardari and Mr. Asif Ali Zardari and this Group managed to have a sum of Rs.10.07 million written off by Emirates Bank International, a foreign bank owned by a friendly Government. Mr. Zardari's front man. Mr. Fauzi Ali Kazmi, got a write off from H.B.L. of Rs.121.90 million on 2-8-1995. The State Bank of Pakistan as required under the law used to send inspection reports of commercial banks to Ministry of Finance. Instructions were issued to the State Bank not to send inspection reports but only summaries. Eye-brows were raised why the petitioner in both of her tenures as Prime Minister retained for herself the portfolio of Finance Minister and did not appoint a full-fledged Finance Minister with relevant expert knowledge in the field. It is stated that all industries without exception function on the basis of bank financing and there is not a single large company in the country which can survive if all its bankers unanimously decide to recall the loans granted to it. This was the methodology to retain complete control on the economic and finance sectors. In support of what is stated above, the respondents have produced documents in volume VII-L which is annexed with the written statement. At pages 3 and 4 is report in Wall Street dated 20-11-1996 with caption "Bhutto undone by pride, sick economy". At pages 113, 115, 117 and 120 are news reports regarding humiliation and assault

of the Senior vice-president of the U.B.L. At page 131 is news report dated 2-6-1994 showing attempts by Ministers to shield Mr. Aziz Memon. At pages 149 and 150 is a chart showing position of infected portfolio of banks and D.F.Is. with particular reference to nationalised commercial banks. At pages 152 to 154 is letter dated 11-5-1996 of Governor of State Bank of Pakistan to Mr. V.A. Jafarey, Advisor to the Prime Minister of Pakistan for Finance. This letter highlights irregularities in the affairs of National Bank of Pakistan.

111. In respect of financial irregularities mentioned in detail in the written statement and supported by documents which are contained in a separate file annexed with the written statement, the petitioner in the rejoinder has said nothing at all excepting three lines in respect of Mr. Aziz Memon which are reproduced as under:-

"It is well known that even though Aziz Memon was a Governmentparty M.N.A., he was arrested during the petitioner's tenure and the case is sub judice. No special treatment was meted out to him, therefore, the allegation has no force. "

Such a short reply in the rejoinder clearly shows that other allegations are not denied specifically and categorically. Nothing more is needed to be said in respect of this allegation levelled by the respondents and the documents which have been produced in respect thereof except that there is overwhelming evidence produced by the respondents on the ground of financial irregularities committed by the petitioner or by others within her knowledge and she did not do anything to remedy the situation to save the nation and its economic ruination and disaster.

112. It is alleged in the written statement that Mr. Usman Farooqi was appointed by the petitioner's Government as Chairman of Pakistan Steel Mills. Mr. Farooqi in December, 1995 ordered sale of 15,9000 tons of steel at the rate below the market price to certain favourites. The management of Steel Mills had set the price of relevant products at Rs.20,000 per ton and in violation thereof the sales were made at the rate of Rs.7,581 to Rs.9,282 per ton. The matter was raised before the National Assembly and Steel Dealers appeared before the Sanding Committee and offered to purchase the entire lot at double the price at which it .was being sold. The Standing Committee requested Steel Mills not to proceed with the matter but the Ministry of Industries gave signal to Pakistan Steel Mills to go ahead with the deals otherwise legal complications would arise. Mr. V.A. Jaffarey, Advisor to the Prime Minister for Finance, complained about the financial irregularities in the affairs of the Pakistan Steel Mills and mentioned specifically that there had been decline in the production, cash balances had declined from Rs.2,147 million to Rs.68 million, Pakistan Steel Mills had defaulted on payment to banks and Pakistan Steel Mills was demanding a subsidy of Rs.l billion in order to keep on going. Chairman Mr. Farooqi insisted upon carrying on with a false and frivolous publicity campaign to conceal the grim .fact. It was found that Mr. Farooqi was not qualified to the extent as he claimed and has forged his matric certificate.
113. In respect of the allegations the respondents have produced documents which are contained in Volumes VII-H and VII-E produced alongwith the written statement. At page 28 is letter of the Advisor, Finance, to Minister for Industries and Production dated 17-71996 highlighting the precarious position of Pakistan Steel Mills. At pages I to 14 of Volume VII-E are source reports of Pakistan Steel detailing irregularities, illegalities and malpractices in Steel Mills. At pages 17 to 29 in Volume VII-E are 4 letters from Steel Dealers to the Prime Minister and Minister for Production mentioning irregularities committed in the Pakistan Steel including concellation of 17 contract dealerships, selling products at discounts and cancellation of old orders. At pages 37 to 40 in Volume VII-E is letter dated 31-1-1996 from the National Assembly Secretariat to Secretary, Ministry of Production regarding various reports on the subject of irregularities in Pakistan Steel Mills. At pages 41 and 42 in Volume VII-E are letters from Pakistan Steel Dealers offering to purchase steel mills products and offered to deposit Rs.l crore as advance. At page 43 in the same volume is decision dated 1-2-1996 of the Standing Committee of the National Assembly to suspend delivery of steel products. At page 45 in the same volume is letter dated 6-2-1996 of the Ministry of Industries and Production to Pakistan Steel withdrawing the suspension order because of legal complications. At pages 52 to 69 in the same volume is report of enquiry dated 18-2-1993 regarding educational qualification of Mr. Usman Farooqi. At pages 66 to 67 in the same volume is letter dated 24-10-1988 of State Engineering Corporation (Pvt.) Ltd. to the Secretary, Ministry of Production regarding bogus Ph.D of Mr. Usman Farooqi. At pages 128 to 140 in Volume VII-E and at pages 6 to 9, 54 to 55, 65, 83, 87, 90 to 98 in Volume VII-H are letters of various dates in 1996 issued regarding irregularities being committed in Pakistan Steel Mills. At pages 388 to 390 in Volume VII-E is an article in magazine Newsline of August, 1996 with caption "The Big Steal: Contrary to Chairman Usman Farooqi's claim that all is well in Pakistan Steel Mills, Government reports tell a different story". Lastly, at page 1 in Volume VII-H is a news item in daily DAWN dated 8-2-1996 with caption "Cheap iron sheets for favourites".

114. On the subject of Pakistan Steel Mills, allegations detailed in the written statement as mentioned above, have been supported by documents which are contained in two volumes annexed with the written statement. In the rejoinder the petitioner has not dealt with these allegations specifically and has chosen to mention something about Mr. Usman Farooqi and Mr. Sajjad Hussain describing in five lines only which are reproduced as under:-

"Usman Farooqi was appointed as Chairman Steel Mills as being the most Senior upon the transfer of Mr. Sajjad Hussain. Inquiry was initiated against the latter even during tenure of the petitioner's Government. So, in neither case was there any favoritism. In any case if they are guilty of any defalcation, they must face the law. The National Assembly could not be dissolved on this ground."

115. In paragraph 278 of the written statement it is alleged that in respect of export of sugar from the country, Commerce Ministry allowed allocation up to 2000 metric tones per person. The quota allocations were used as means of political patronage and enabled the allottees to enrich themselves many times over. In some cases, the original allottees were allowed by the Commerce Minister, Mr. Ahmed Mukhtar, to transfer the allocated amount to other persons. In such circumstances the chosen few were allowed to enrich themselves at the public expense. Documents in respect of export of sugar are produced in Volume VII-I which is appended with the written statement. At pages 96 and 97 in this volume is brief on export of sugar. At pages 98 and 99 is summary for Cabinet dated 15-12-1994 regarding export of sugar. At pages 105 and 106 is decision of the Cabinet dated 19-12-1994 allowing Pakistan Sugar Mills Association to export 300,000 tones of sugar. At page 107 is summary for Cabinet dated 17-8-1995 regarding export of sugar showing that against permission of 300,000 tones the Government issued export authorisations for 400,806 tones. At page 108 is decision of the Cabinet dated 21-8-1995 banning export of sugar. At page 109 is note from Secretary Commerce dated 25-1-1995 to PSO to the Prime Minister stating that the Prime Minister's Secretariat may send "allocation" up to 2,000 metric tones. At pages 110

to 120 is list of persons granted permission to export sugar. At pages 125, 127, 139, 141, 143, 149, 169, 179, 183, 194, 196, 197, 201, 206, 208, 254, 256 are applications of persons who were granted permission to export, sugar/transfer permissions to others. On the subject of export of sugar the petitioner in rejoinder has stated that the Cabinet decision authorising export of sugar did not specify that all export must be done only by Sugar Mills, therefore, both industrial and commercial contractors could do so on equal basis. Sugar Mills could export only on the basis of crushing capacity, hence the remaining quota in that category was distributed by the Ministry of Commerce among the traders on the first come, first served basis. Allegation that political patronage enabled the allottees to enrich themselves is denied as baseless. It is further stated that transfer of quota to others was permitted in order to earn valuable foreign exchange. Further, in Volume VII-I at page 96 there is brief of export of sugar in which the decision of the Cabinet in Case No.579/27 of 1994 dated 9th December, 1994 is reproduced in which it is stated that sugar mills should be allowed to export up to 300,000 tons of sugar during the years 1994-95 in separate tranches. The Pakistan Sugar Mills Association, however, would have to give a public assurance that the price of sugar would not increase on account of the export. It is mentioned in the said brief that the decision did not envisage export of sugar by individual exporters other than the Sugar Mills. However, the Prime Minister Secretariat was allowed to send allocations up to 2000 metric tones per person.

116. As per written statement, on the orders of the petitioner, Textile Quota Policy was amended in order to provide for the discretionary allocations of textile quotas. Lists were received from the Prime Minister's Secretariat by the Commerce Ministry of individuals and firms recommended by various legislators and party supporters of the petitioner's Government. Quotas were allocated on this basis at the behest of the petitioner's supporters both within and without Parliament. In this way rules and regulations were violated for political expediency and patronage. In support of this allegation documents are produced in Volume VII-I. At page 2 is decision of the Prime Minister dated 16-4-1994 for allocation of textile quota to "backward areas". At pages 3 to 5 is the Chart of Premium in the market on the quota. At pages 6 to 10 is the list of quota recipients in Lahore, Islamabad, Rawalpindi and Karachi recommended by M.N.As., Ministers and political personages. As against this stand is taken in the rejoinder that quotas under discussion are increases in the annual quotas (Growth Quota) and not the actual quotas themselves. In the days of the Government of Mr. Nawaz Sharif 35 per cent. of Growth Quota used to be distributed through Textile Mills Association, Chairman of which Mr. Javed Ansari is political associate of Mr. Nawaz Sharif. Petitioner's Government took the decision that 75 per cent. of the Growth Quota would be auctioned in the open market while 25 per cent. of the Growth Quota would be allocated to the industries located in the backward areas. Applications were to be scrutinized by the Committee which was composed of many Government functionaries. Lists of parties submitted in the documents of the respondents are termed by the petitioner as false and any connection of those persons with the petitioner is denied. It is also denied that the persons in the lists had any connection with her Ministers or associates. '

117. It is the case of the respondents in the written statement that on the subject of import of gold in the country, the Government of the petitioner gave M/s. Ary Traders, based in Dubai, monopoly to import gold into Pakistan. The Ministry of Commerce attempted to grant licences to other persons for import of gold but all such attempts were blocked by the abovementioned Company which became very powerful. This allegation is supported by documents produced by the respondents in Volume VII-I. At pages 33 to 35 is note whereby import of gold monopoly was granted to M/s. Ary Traders. At pages 40 and 41 is Annexure to the summary prepared for the Cabinet in which criteria recommended for firms to be allowed to import gold are mentioned. At pages 43 and 44 is noting by the Ministry of Commerce on scheme to allow import of gold opposing creation of monopoly. At pages 47 to 51 is summary for the Cabinet decision, and decision of E.C.C. on import of gold. At page 61 is note from Ministry of Commerce that Cabinet decision requires import of gold by 10 Companies. At page 67 is decision by the Secretary allowing import of gold to M/s. Ary Traders. At page 71 is exemption granted to Ary Traders from payment of 10 per cent. regulatory duty on import of gold. At pages 80, 90 and 91 is note from Commerce Minister desiring that two other firms also be given permission to import gold. At pages 92 to 95 is the order withdrawing permission given to two firms to import gold. At pages 88 and 89 there is note of Mr. Salman Farooqi, Secretary, Ministry of Commerce, opposing grant of import monopoly to Ary Traders. In the rejoinder M/s. Ary Traders have been defended as a good and bona' fide party on the ground that the Caretaker Government entered into fresh transactions with that Company and arranged short term loan of US 120 million dollars through the good offices of that Company. The petitioner has also defended the policy of her Government in that respect by saying that other Companies were unable to fulfil the requirements of import of gold which could best be done only by Ary Traders. It is further stated that 3 per cent. ad valorem duty on the import of gold had failed to produce significant revenue, hence in such circumstances assessing a low but fixed duty on the import of gold had proved to be spectacularly successful, raising the amount of the country's revenue collected by over 1,000 per cent. For such reasons assessing of additional 10 per cent. duty would have destroyed the very purpose of the exercise and led to renewed smuggling of gold. The reasons assigned by the petitioner do not appear to be satisfactory and convincing.

118. On the subject of rice export from Pakistan the stand taken in the written statement is that in 1995 without any public auction, notice or bidding, Rice Export Corporation of Pakistan received two bids for the purchase of a total of 500,000 tones of rice. One bid was from M/s. Rustal Trading, which is company of Mr. Riaz Laljee. The other bid was from the Government of Togo and the authorised representative of that Government was one Mrs. Huma Burney, who is also Director of Rustal Trading. At the relevant time the Corporation had no stock of rice available, nevertheless it entered into a binding contract to sell 500,000 tones at a price. The petitioner as Prime Minister took the decision that Corporation should purchase at the market price and then export it. Objection was raised that by doing so loss would occur to the Corporation amounting to $ 41 million and the objection was brushed aside on the ground that the purchase would be for the benefit of growers. Subsequently, the international market price also fell lower than the price agreed upon to sell the rice to Mr. Riaz Laljee. The buyers lifted the part of the rice and backed out and in the final analysis the Government suffered a loss of Rs.7,62,63,445. Documents have been produced in support of the assertion and are contained in Volume VII-1. At pages 289 to 293 is brief note on the Corporation's sale contract for export of irri 6 rice to Government of Togo and M/s. Rustal Trading Limited. At page 314 is letter from Ministry of Commerce to the Corporation detailing the Cabinet decision in this regard. In the rejoinder stand is taken by the petitioner that the decision of the Cabinet to allow the Corporation to purchase rice at market price was for the benefit of Pakistani farmers and not for the aggrandizement of any individual and the Governments have to take such decisions in public interest. Plea is also taken that on this subject suits are pending in the Courts between foreign parties and the Government and the Corporation, hence the matter is sub judice in the Courts of law.

119. Some specific instances have been quoted attributing corruption and violation of rules in the written statement. The first such instance quoted is with regard to power policy adopted by the Government of the petitioner. In this connection it is stated that very huge projects costing billions of dollars were permitted which did not fit within the priorities of the Government and were also beyond our affordability. In view of the increase in the demand for electricity the Private Power Infrastructure Board (PPIB) of the Government of Pakistan asked WAPDA to purchase 1000 MW of power from KESC. PPIB which was set up by the Government of the petitioner for implementing the power policy was initially under the Ministry of Water and Power but after induction of Mr. Asif Zardari, husband of the petitioner, into the Cabinet as Minister of Investment, PPIB was transferred to his Ministry. WAPDA informed PPIB that it would be unable to purchase that much power as WAPDA would be surplus in power after purchasing from private power projects. Agreements between WAPDA and KESC on one side and private power projects on the other provide that once the projects have come on line, utilities would be liable to pay the projects for electricity equal up to 60 per cent. of their capacity even if no power at all was actually purchased. Such payments are called "Capacity Payments". Apprehension was felt that both WAPDA and KESC would end up paying millions of dollars annually for power that they would not need and could not utilise. The Government rushed into giving permissions generously for setting private power projects. Decision was taken in March, 1996 to limit the total capacity of private power projects to 3000 MW. This decision was not honoured and was revised and the limit imposed was enhanced to 4500 MW. Stand is taken in the written statement in paragraph 283 that this was done with intention to accommodate. certain projects in which the petitioner and her spouse had special interest. In support of the proposition case of Liberty Power has been cited in which initially permission was to set up 121 MW capacity plant. In April, 1996 this was doubled and enhanced to 424 MW. In this manner even agreements executed with parties were subsequently modified for the benefit of such parties to make increase in default interest rates, to reduce obligations of sponsors in one form or the other and to increase in WAPDA's financial responsibilities for compensation in case of delay in inter-connection facilities.

120. Mr. Ibrahim Elwan working in the World Bank had dealt with Liberty Power Project and Hubco Power Project in Pakistan. The Government of the petitioner gave full support to Mr. Elwan and the Liberty Power Project. The letter of support was issued long after the decision had been taken to cap all the projects. This project was allowed to use pipeline quality gas from the Qadirpur Gas Field which was against Government policy and interest of the country. The project was in fact given special concession in respect of the gas to the used by the power station. It was promised gas from the fields not yet discovered or developed. This was in complete violation of applicable rules and regulations. In paragraph 285 of the written statement facts are .mentioned as to how national grid (IV Circuit) was put to bid in such a haste that only six working days were given to bidders to put in their applications. This was done to oblige only one Company to succeed by excluding other Companies who could not participate and submit their applications because of paucity of time. Therefore, French Ambassador in Pakistan wrote a letter, dated 28th March, 1995 to the Executive Director PPIB by way of protest.

121. In support of what is stated above respondents have filed documents in Volume VII-M. On the subject of Indus Grid Project, 16 documents have been filed from which at pages 1 and 2 is Executive Summary in which it is mentioned that these documents show that bids for this transmission line project (about US $ 700 million) were invited in a haste. Only 8/9 days were given for submission of bids out of which four days were holidays. This time was not even enough to collect the documents by bidders from various countries as observed in one protest received from bidder. The then Minister for Water and Power had protested to the Prime Minister on this project. He had also stated that the decision of the E.C.C. allowing only 10 days for bidding was not correctly recorded. However, a Deputy Secretary of the Prime Minister's Secretariat stated that the Prime Minister had seen the note submitted by the Minister for Water and Power and had been pleased to remark that the minutes of the E.C.C. meeting were correctly recorded. Other irregularities after bidding are also mentioned in this summary. At pages 3 and 4 is the letter of the Minister for Water and Power to the Prime Minister written on 30-3-1995. At pages 5 to 9 is decision by E.C.C. meeting recorded on 7-5-1995. At page 10 is letter of Prime Minister's Secretariat in which request of the Minister for Water and Power for extension in date for submission of bids for transmission lines by private sector is refused on the ground that since six bids had already been received, no extension was to be allowed in the date for submission of bids. It is further observed in the said letter that L.O.I. should be finalised by PPIB before departure of the Prime Minister to U.S.A. At page 11 is letter of French Ambassador from which one paragraph is reproduced as under:-

"I, therefore, kindly request that you consider urgently an extension of the submission date. Should there be no extension, we could not consider this invitation of proposals as in conformity with international tendering rules and the position of the French Government, founding member of the World Bank (who may be approached for financing) and currently assuming the presidency of the European Union, could not be in a position to extend support whatever to this policy."

At pages 12 and 13 is' letter from Century Technology International dated 28-3-1995 addressed to the Prime Minister from which the last paragraph is reproduced:-

"We also avail of the opportunity and lodge our protest against such hasty call in of bids and in the meanwhile request your honour to order ?????????? extension by 6 months or at least 3 months. "

At pages 19 and 20 is letter from Asea Brown Bovery (Pvt.) Ltd. which is described as A.B.B. dated 29-3-1995 submitting proposal for transmission lines and grid station on born basis. At page 2.10 is letter of Hyundai to PPIB dated 25-3-1995 in which request is made for extension of last date of bidding. At pages 22 to 27 are two letters dated 1-9-1996 and 29-9-1996 of Minister for Water and Power to Mr. Asif Zardari on the subject of Indus Gas Project requesting review of the decision. At pages 28 to 31 is letter dated 4-4-1995 of PPIB to M/s. National Grid Company in U.K. which is a letter of support for establishment of 819 KM (500 KV) transmission line system (Package A). At pages 36 to, 38 is letter of PPIB to National Grid Company. At pages 39 to 55 is "Policy framework and package of incentives for private sector transmission line projects in Pakistan" prepared by Government of Pakistan. From pages 56 to 60 are newspaper cuttings. On this subject daily Dawn reported on 1-4-1995 in its Economic and Business Review that "advertisement for power lines smacks of kickbacks". The daily News reported ~ on 3-4-1995 with heading "PP&IB's haste in opening tenders for transmission lines". At page 59 is a news item in daily Dawn dated 1-4-1995 with heading "Khan seeks delay in tenders' opening".

122. On the subject of Liberty Power Project there are 37 documents contained in Volume VII-M. At page 64 is decision dated 1-8-1994 of E.C.C. which is reproduced asunder:-

"The Economic Coordination Committee of the Cabinet considered the Summary, dated 22nd June, 1994 submitted by the Ministry of Water and Power and noted that the proposals contained in para. 3 of the Summary had already been approved by the Prime Minister.

The Ministry of Water and Power in consultation with the Special Assistant to the Prime Minister for Economic Sector should formulate proposals to encourage setting up of hydel and coal projects.

No fresh application should be entertained after achieving the target of 5000 MW through Private Sector except those based on hydel power or coal. "

At page 65 is a chart of private sector power projects for which performance guarantees were received. At pages 66 to 72 are letters dated 17-7-1995, 28-1-1996 and 12-5-1996 of PPIB to M/s. Infrastructure Capital Group. At pages 73 to 94 is "Policy framework and package of incentives for private sector power generation projects in Pakistan". At pages 95 to 97 is the note dated 28-11-1995 of the vice-president of PPIB. At page 99 is summary for E.C.C. on the subject of Liberty Power Project alongwith Annexure. At pages 103 to 107 is summary for Cabinet on the subject of allocation of gas to Liberty Power Project. At pages 108 to 120 are letters from and to PPIB. At page 121 is decision of the cabinet which shows that proposal outlined in paragraph 5 of the summary dated 19-6-1996 was approved. At page 126 is decision of the Cabinet showing that summary dated 10th March, 1996 was considered by the Cabinet on the subject of gas allocation for Liberty Power Project and it was decided that the existing arrangements for the development of Habib Rahi Formation of Qadirpur Gas field should continue and the Premier Exploration Ltd., which was engaged in the development of the gas-field, should, in supersession of Cabinet decision in Case No.209-11 of 1995 dated 5-6-1995, now provide gas to the Liberty Power Project by the end of 1997. At page 128 is the letter of the Director (Gas), Ministry of Petroleum and Natural Resources, addressed to the Chairman, OGDC on the subject of allocation of gas to Liberty Power Project.

123. In the rejoinder filed by the petitioner at page 25 is subject of power policy, the first two paragraphs of which are as under:-

1. The P.D.F. Government Power Policy:

(i) Has been acclaimed the world over as model policy. During the World Bank Annual Meeting held in October 1994. In Madrid Spain? and in October, 1995 in Washington D.C. U.S.A. special sessions on infrastructure development and financing were held in which Pakistan Power Policy was tabled as a Model by all the experts.

(ii) The President of Pakistan himself participated in the formulation of the policy. The final draft of the policy before its submission to the Cabinet was presented to him at Aiwan-e-Saddar in March, 1994 by the members of the Task Force. The President was pleased to make some suggestions which were incorporated in the draft policy.

(iii) The Caretaker Adviser for Finance and Planning, Mr. Shahid Javed Burki, has personally praised this policy in several of his interviews in Latin America including the one which was published in the daily Nation of 13th August, 1996.

2. As far as signing of projects in excess of the demand for Electricity is concerned, it is to be pointed out that PPIB was given a mandate to induct 3000 MW from the private sector by the end of 8th Five-Year Plan i.e. 1998. This figure was based on the recommendation of Energy Wing of Planning Commission, WAPDA, Planning Department, and Atomic Energy Commission. - These three institutions do Demand/Supply analysis for the country. The Government approved the new energy Policy in March, 1994 based on the data/recommendations of these institutions. Incidentally, these figures of Demand/Supply coincided with the recommendations outlined in the 8th Five-Year Plan document which was formulated by Nawaz Sharif Government."

124. On the subject of Liberty Power Project, in the rejoinder, allegation is denied that it was given any special consideration outside the approved policy framework. All agreements were signed by WAPDA-OGDC keeping in view their own respective interests and within the policy framework. Liberty Power Project was issued L.O.I. after the decision (to cap all imported fuel base power project) was taken because Government had decided that as a policy it will allow processing of a power project based on indigenous fuel such as low B.T,U. Gas, Coal and Hydel. Allegation that pipeline quality gas was allocated to this project by the Government is denied. About Mr. Ibrahim Elwan it is stated in the rejoinder that he left the World Bank on his own free-will and allegation of corruption with regard to him is denied on the ground that the investigation team of the World Bank exonerated Mr. Elwan of all the allegations which were made in the local newspapers. With regard to the inviting of bids from the firms in private sector for award of contract of transmission, stand is taken that since there was no consensus among the experts on the reports on which the contract should be given to the private sector and since the Prime Minister/petitioner was leaving in the first week of April, 1995 for official visit to U.S.A., it was decided that award for the transmission should be finalized before her departure as it was apprehended that various US firms would lobby with the? Prime Minister during the visit and she did not want to be pressurized from any quarter. It was decided by the Cabinet that award be finalized on open bid basis before Prime Minister's departure and this allowed 10 days for the Companies to submit their bids. 14 Companies purchased tender documents on payment of Rs.50,000 non-refundable. The international consortium participated in the tender itself by providing substantial amount of bid guarantee which was an indication that they were serious bidders. This consortium consisted of leading power utilities of Canada, U.S.A., U.K. France, and Asia. The L.O.I. was issued to the lowest bidder which happened to be the world's largest independent transmission company and U.K. National Transmission and Grid Utility. The rates which were offered by the UK Company were substantially lower than the estimated rates which were recommended by the committee of experts of WAPDA-NESPAK. It is submitted that the French Ambassador did write a letter to the Government protesting for the short time given for submission of bids but such letters are received from all key Ambassadors whenever the companies from their countries fail to win the contract.

125. When the Government engages itself in such large projects involving heavy funding by way of investment with the intention of encouraging the private sector particularly foreign countries to come forward, then it becomes all the more necessary to be more

vigilant that everything is done strictly according to law, and rules and regulations and such transactions should be done in a manner after fulfilment of all the legal requirements so that the transactions appear to be absolutely transparent and valid and do not allow any room for criticism from any quarter. We are of the view that these projects were handled in a manner which was far from satisfactory and for that reason there was criticism and protest. Stand is taken by the respondents that PPIB was previously under the Ministry of Water and Power but after Mr. Asif Zardari was inducted in the Cabinet by the petitioner as Minister for Investment, the said Board was brought under his Ministry. In this context and particularly on the subject of Indus Gas Project there are three letters from Mr. Ghulam Mustafa Khar available in Volume VII-M which are very pertinent. The first letter, dated 30th March, 1995 is addressed by him to the Prime Minister on transmission policy with the request for extension of time for three weeks for receipt of bids. The second letter, dated 1st September, 1996 and the third letter, dated 29th September, 1996 are addressed by him to Mr. Asif Zardari. These letters are self-explanatory containing all the details as to how and why very short time was allowed for opening the bids, and as to how the meetings were held and where and in what manner and as to how the Minister had lodged protest for which he has given facts and figures and strong reasons. After reading these letters one comes to the conclusion that all was not well with Indus Grid Project and its usefulness and profitability becomes suspected clouding its transparency as well. It is in the light of these letters that the criticism in the newspapers is to be seen in conjunction with the letters of protest from French Ambassador and other Companies on the subject of short notice for opening of bids which was inadequate for Companies within and outside Pakistan to complete the formalities. These letters as stated above are in Volume VII-M which was produced in the Court alongwith the written statement after perusal of which rejoinder was drafted and submitted in the Court but in it there is no mention with regard to these letters from Mr. Khar. These letters as such are reproduced verbatim as under:-

"My Dear Prime Minister,

The Transmission Policy was approved by E.C.C. on 20th March, 1995 with the provision that there will be competitive bidding to attract the lowest bids for payments to be made by WAPDA. It was decided that the offers will be invited before the Prime Minister's visit to U.S.A. so that the investors from U.S.A. are also attracted to Pakistan in this area. I am now flooded with scores of calls from within Pakistan pointing out that the advertisement issued by the PPIB requires the bids to be submitted within eight to nine days. I cannot believe that genuine competitive international bidding can be possible in this short time period. Unfortunately a wrong impression prevails that successful bidders have already -been selected. This was also the impression of the Canadian delegation which recently visited Pakistan. I have also received a letter from the French Ambassador with a strong protest that the closing date for the receipt of bids is short and would not permit fair competition.

2. I have received a copy of the decisions recorded in the case of Transmission System Policy for Power Sector (enclosed for ready reference). The minutes have not been accurately recorded. Whereas the invitation to bids is to be issued before the Prime Minister's visit to U.S.A., there was no intention to finalize and award L.O.I./L.O.S. before Prime Minister's departure date. I enquired from Ministry of Petroleum and Secretary Finance and both of them confirmed that the ECC only wanted that the bidding process to be initiated before the Prime Minister's visit but never directed the completion of the process within 9 days.

3. It is my duty to protect the Government and your leadership from undue criticism. Your decision on competitive bidding for Transmission Policy is highly welcome and encouraging and feel that extending the last date for receipt of bids by 3 weeks would not adversely affect our Power Programme, and would lend the transparency and integrity of the process.

4. In the meantime, as promised by me to the French Ambassador, I am directing Ministry of Water and Power not to open the bids until such time as I receive your guidance in this regard.

With kindest personal regards,

Yours sincerely,
(Sd.)
(Malik Ghulam Mustafa Khar)

Mohtrama Benazir Bhutto. Prime Minister Islamic Republic of Pakistan, Islamabad.

Subject: REVIEW OF SOUTHERN CIRCUIT OF THE INDUS GRID PROJECT.

My dear Zardari Sahib,

I understand that a meeting was convened on the above subject on 29th August, 1996 under your Chairmanship which decided to overrule the submission of the Ministry of Water and Power and WAPDA regarding the implementation schedule of Southern Circuit and the proposal for its re-bidding. It may kindly be recalled that 1 had requested that the meeting may be postponed till I return from my field visit of the flood affected areas. I also understand that my request in this regard was also conveyed to you in the meeting as well. However, I was surprised that a decision has been taken despite my requests.

2. 1 am sure you are well aware of the background if the whole project and the fact that I had serious reservations about the way the entire project was bidded. I had serious concerns about the transparency in bidding/evaluation and award of contract to M/s. National Grid and I had also written a D.O. Letter to the Prime Minister at that time expressing my concerns. However, despite all this, the project processing continues to be proceeding in objectionable manner without due regard to the need, present load situation, cost to the exchequer and transparency. According to analysis based on present data, the Southern Circuit is not required before year 2003. As regards the financial aspects, the projected yearly payments for the Southern Circuit, alone up to year 2003 (on tariff profiles submitted by the sponsors) to be made to a National Grid would amount to US $ 294.2 million against an estimated

cost of about $ 160 million. Why should we make payments for a capacity which is not needed and further, why at such exorbitant rates?

3. I write this letter to express my strong reservations and protest on the above decision as it is not in the jurisdiction of the Ministry of Investment to take such decisions and overrule the
Ministry of Water and Power who are the concerned Ministry on the technical subject.

4. I, therefore, request that the whole matter may be reconsidered and my views may be brought to the knowledge of E.C.C.

With best regards

Your sincerely, (Sd.)

(Malik Ghulam Mustafa Khar)

Mr. Asif Ali Zardari, Minister for Investment, Government of Pakistan, Islamabad. "
"Subject: TRANSMISSION LINE PROJECT INDUS GRID

My dear Asif,

Thank you very much for your letter of 8th September, 1996 related to above subject. I particularly thank you for writing me a detailed letter because it clarified to me how seriously you were being misinformed and how twisted information was being presented to you to achieve the objectives of some vested interests. I start with some of the comments and inferences drawn in the last paragraph of your letter. It was extremely surprising and frustrating to note that you had been given the impression that after the competent forum (ECC/Cabinet) had approved the project, it was 'forced to confront issues which were (allegedly) raised only as an attempt to frustrate the sponsors rather than adjust to new realities'. Nothing can be so malicious and baseless. than such an information fed to you. The fact of the matter is that the policy for transmission was approved by E.C.C. on 20th March, 1995 following which bids process were done allowing about 8 days for bidding out of which 4 were holidays. Nowhere in the world, projects of the magnitude of over $ 700 million are bidded in such an absurd manner. It was a mockery of the whole process and tarnished our image. The World Bank, some foreign agencies, myself and some other conscientious persons raised objections to this entire exercise. However, despite our concerns and reservations, the letter of. support was awarded on 4th April, 1995 (it may be noted that the project was not approved by ECC or Cabinet who actually approved the policy). Subsequent to the issuance of the L.O.S., there was hardly any interaction of Ministry of Water and Power with M/s. NGC and PPIB on the subject. Even within the PPIB where the project was being handled, a very specific group was dedicated and in many cases the MD, PPIB was also not fully in picture about the affairs of the project. In fact the original letter of support was issued to the sponsors for two separate packages ('A' and 'B'). Subsequently at some point in time, it was merged in one L.O.S. The approval of the Government was not taken. The evaluation of the bids was done without involving the Ministry of Water and Power and by a select group of PPIB as I stated above. Further, without the knowledge of the Ministry of Water and Power, M/s. NGC were told to concentrate efforts on one component namely Muzaffargarh-Gatti line. According to M/s. NGC, as they stated in one of the meeting chaired by your goodself, this resulted in diverting their attention and a loss of 5/6 months. Subsequently, M/s. NGC attributed this distraction as one of the main reasons for not achieving the financial close on the designated date. It was only after the expiry of the validity period of the L.O.S. that towards the end of April or early May, 1996 that the Ministry of Water and Power was brought in the picture. You could, therefore, very well see the truth. After issuance of L.O.S., the Ministry of Water and Power, did not make any intervention nor was it involved in any effective manner. How could, therefore, this Ministry, according to last paragraph of your letter, "confront issues which were raised only as an attempt to frustrate the sponsors rather than adjust to new realities"? Further, how could it be inferred that the decision of the "ECC/Cabinet being clearly violated in the project" by us? I hope, from the above, you would know as to who was responsible for deviations from ECC/Cabinet decisions!

2. 1 also see another piece of gross misinformation in your letter wherein it has been stated that "the Deputy Chairman took strong exception to the fact that a project which has been approved by the CCE at his recommendation has been altered without his knowledge". First of all, it is too naive to observe that the recommendations to the Cabinet Committee of Energy or any other such forum were personal to anyone. Secondly, it is also equally dumb that the project "has been altered". The fact of the matter is that M/s. NGC had failed to achieve financial close as per the L.O.S.. Technically, we should have cancelled the L.O.S.. However, sine the extension/renewal of the letter was under consideration, therefore, it was in the fitness of the things that before giving the renewal of L.O.S. the whole matter should be reviewed alongwith deviations which were made without the knowledge/approval of the Government. During this process, it was also considered that the new redlities which had emerged since 1994 including the revised level of new private generation up to 3000 MW, should be kept in view and the L.O.S., if issued again, should reflect our requirements. Towards this end, the project scope was under review. In fact, I had told you in one meeting that upon my instructions, the Ministry of Water and Power had prepared revised summary for submission to the ECC which is the competent forum. However, since some technical differences of opinion developed, I had asked the Ministry to withhold the summary till the matters were mutually discussed and an agreed position is evolved keeping in view the national interest. The whole exercise of the meetings that you took and the deliberations which followed, were an effort towards this end. It was all along the intent that after this process, we should be able to take a summary to ECC with least possible number of issues for their approval. Many projects in the past have been originally approved for a definite scope but they had to undergo revisions. The revised versions have been submitted to competent fora for approval. Same was situation in this case. With this in background, I think it was not worthy of Deputy Chairman who knows the project processing very well to make such remarks. that the project had been altered without his knowledge. I reiterate, after the deliberations this summary was to be submitted to ECC for approval.

3. On the technical side, unfortunately, the tendency seems to draw comparison with a public sector project in total disregard to the situation on the ground and an objective reassessment of our needs. Apparently, the technical views of WAPDA and Ministry of Water and Power have not been given due weightage. The Ministry of Water and Power and WAPDA had all along been of the view that instead of mincing with the history, the best approach would be to use the latest available information about the approved

programme of private power generation of 3000 MW with their revised locations and carry out a forward looking load flow analysis. If the load flow and stability analysis justify additional circuits in the south, then the circuits south of Rahimyar Khan should be approved. If it does not, then we should not include it in the revised letter of support. In their view, the circuit was not needed before year 2003. The dichotomy pointed out in your letter, in the views of Ministry of Water and Power and WAPDA, also appears to be a misunderstanding of some of the technical comments by the non-technical participants in the meeting. The Ministry of Water and Power had also held the view, all along, that in case the circuit south of Rahimyar Khan was not urgent, we should not go ahead with it because the yearly payments required for the circuit up to year 2003 would add up to $ 294.2 million against the presently estimated costs by express of the order of US $ 160-170 million. This would be an unnecessary and unfair burden on the exchequer and, therefore, warrants very careful examination of the load flow studies before the issuance of the revised letter of support. Further, it was our view that if this position is accepted, we need not go ahead with the existing company for the southern circuit. Our view was that it should be rebidded.

4. Another aspect is that all along the case is being handled in very hasty manner. As I noted above, the initial bidding process was very embarrassing. The recent episode regarding approval was also processed in hot haste. You would recall that I had come to the Prime Minister's House to attend the meeting convened by you on 27th August, 1996 on the subject project. However, in view of your occupation in another meeting with the bankers and my planned departure for the flood areas in the evening, the meeting was postponed. The meeting was then re-scheduled on 29th August, 1996 while I was still in the field. It would have taken me 2/3 more days to return to Islamabad as the flood situation had improved. I do not understand why was the meeting for the transmission line considered more urgent than the flood situation! However, I had directed both the Ministry of Water and Power and WAPDA to attend this meeting and present their point of view for consideration since I did not want to come in the way of your deliberations as long as they lead to a consensus. I had asked them to bring out my request for postponing the decision to the meeting in which I am present only if consensus was not reached. That is why, I believe, that my request was brought out in the meeting towards the end. Subsequently, the summary of ECC was also submitted in a very hasty manner. It was not allowed the usual circulation period for comments and was not shown on the agenda circulated by the Cabinet Division till the last documents received by my office. I think, it was included in the agenda on the last day. It is also interesting to note that the summary was considered by ECC on 9th September, 1996 while the minutes of the meeting were formally circulated on 10th September, 1996 which did not afford any time to WAPDA to react on its recording. You can very well-understand why I am not in agreement with this decision.

5. I have been bringing out my comments/reservations entirely in the national interest as it does not augur well, both internationally and domestically, to conduct business in a manner which can be objectionable and oblivious of our own determination of the extent of the infrastructure needed at this juncture. One can always feel safe by over building the infrastructure but a developing country like ours can hardly afford this luxury in my opinion. I have been and I will continue to abide by the decisions of the competent fora and whenever needed, we will go back to them for necessary changes. I also assure you of my fullest cooperation with the understanding that difference of views on national issues are included in the definition of cooperation. We can always, together, review them objectively and rationally.
With best regards,

Yours sincerely,

(Sd.)

(Malik Ghulam Mustafa Khar)

Mr. Asif Ali Zardari, Minister for Investment, Government of Pakistan, Islamabad."

126. In the transaction of business in Oil and Gas Development Corporation, there were gross irregularities which have been highlighted in the written statement. A consultancy for studying dry holes, involving US $ 393,256 was awarded to M/s. Hydrocarbon Development Institute of Pakistan (HDIP) and M/s Improved Petroleum Recovery (IPR), which is a US Company, previously represented by Saif International, a Company owned by the Saifullah family, and at the relevant time of award Mr. Anwar Saifullah was himself Minister for Petroleum and Natural Resources. The proposal for the study was initiated by HDIP and IPR and was submitted to him and was approved by him on 13-6-1994. The Chairman, OGDC, wrote to the Secretary, Ministry of Petroleum and Natural Resources and copy of which was sent to PS to the Minister, stating that another firm was prepared to do the study at almost half of what was being paid to HDIP and IPR but no action was taken on that letter and direction was issued for awarding the contract to HDIP and IPR in violation of rules and procedure. Mr. Riffat Askari was Chairman of OGDC and on 15-11-1994 he signed a Memorandum of Understanding with Cooper & Lybrant to carry out a Reserves Evaluation Study of OGDC fields. Another MOU with Cooper was signed on 2-12-1994 during Mr. Askari's visit to the United Kindom. The estimated cost was US $ 350,000. In spite of reservations of OGDC officers and other departments concerned, Mr. Askari awarded the contract to Cooper for the Reserves Evaluation Study worth US $ 2,500,000. 80 per cent of the total cost was released to Cooper even though no work at all had been done. The case file was sent to the Finance Department which disappeared and payments were made on the copy of the contract available with the department. Mr. Askari sold 2298 metric tons of scrap and 7461 assorted store items without public auction and at throwaway prices to the people of his choice. Ultimately, the loss suffered by OGDC on this account was to the tune of Rs.67,906,161.

127. Documents produced in support of irregularities in OGDC are contained in Volume VII-F. At pages 1 and 2 is the note on the subject of contract to evaluate OGDC's recent exploration programme dry hole study and one thing notable is that it is mentioned therein that the proposal alongwith a brief note was submitted by the Director-General HDIP to the Minister for Petroleum and Natural Resources on 13-6-1994 and was approved on the same day by the Minister. It is also mentioned in paragraph 5 of the note that HDIP/IRP never maintained close liaison with the OGDC and when the study was completed, presentation was made to the Minister directly on 17-12-1995. OGDC was invited to participate on a very short notice which is against all norms of the industry. At page 15 is letter dated 11th October, 1994 by the Chairman, OGDC, to the Secretary, Ministry of Petroleum and Natural Resources complaining that the cost proposed by HDIP and IPR was too high compared to the market price and M/s. Intera Information Technologies (a world renowned company for this type of work) were ready to perform the study by selecting 30 dry

holes approximately 10 wells in each sub basins over the entire drilling history in the basin in about US $ 200,000 which was about half of the cost proposed by HDIP and IPR. At pages 20 and 21 in the same volume is a brief of Consultancy Department on reserves evaluation study of OGDC fields by Cooper & Lybrant and its subcontractor Ryder and Scott. It is mentioned in this note that the contract was signed by Mr. Ainuddin Siddique, the then Executive Director (Finance) without vetting/involvement of the concerned department (Reservoir Engineering). The 50 per cent. payment was made as an advance and in the next three months, 30 per cent. of the remaining total payment was made. In this way the 80 per cent. payment was released even though no work had been done. At page 31 is OGDC's note, dated 19th December, 1994 commenting adversely on Cooper and Lybrant's proposed work plan. At page 32 is note, dated 7th December, 1996 from Manager (Stores) of the OGDC addressed to the Chairman on the subject of irregular sale of OGDC material. It is stated in the note that Mr. Rifat Askari, Ex-Chairman, OGDC, sold about 229 metric tons of scrap and 7461 assorted stores items to several persons at throwaway prices in violation of approved procedure/open auction. The Chairman OGDC could dispose of the material only through public auction which he did not do. He was empowered to order sale of scrap only up to Rs.5,00,000 (half million) while he sold material of more than twenty-three million rupees. The Chairman OGDC sold material to the persons/firms of his own choice and benefited them by selling the Corporation's material at discretionary rates. In the result a loss to the tune of Rs.67,906,161 was suffered by OGDC.

128. In the rejoinder on the subject of OGDC the petitioner has defended the joint venture by HDIP and IPR which according to her was initiated in November, 1991 during the tenure of Mian Nawaz Sharif Government with final approval given by the Caretaker Government of Mr. Moeen Qureshi. The petitioner has denied any connection between Mr. Saifullah and IPR and further stated that OGDC sank 26 unproductive wells between July, 1991 and January, 1994 out of a total of 28 wells drilled causing a net loss to the exchequer of $ 104 million. It is further stated in the rejoinder that approval of the proposal by Mr. Saifullah on the same day is efficiency which is to be normally admired stating that there was, therefore, no doubt that the .contract was fully justified and that every bureaucratic requirement was fully met. It is claimed in the rejoinder that the letter of Chairman OGDC to the Secretary, Ministry of Petroleum and Natural Resources with copy to P.S. to the Minister was fabricated. The petitioner has wholeheartedly defended Mr. Anwar Saifullah and the joint venture between OGDC and HPIC and IPR and has stated nothing about ex-Chairman Mr. Rifat Askari. If OGDC was not lucky in digging of holes successfully and suffered loss on that account, it does not mean that the Corporation and the persons heading it would be justified to undertake projects and enter into transactions in utter disregard of rules and regulations. Violation of rules by others in the Ministries and Corporations should be discouraged by the Prime Minister as Head of the Government and not defended and encouraged.

129. Under the Cabinet decision C.D.A. was directed to give Government land worth Rupees 300 million to Dr. Javed Saifullah, the brother of Federal Minister Mr. Anwar Saifullah, in a joint venture for construction of a heart hospital on a plot of land measuring 12.5 `acres in Sector H-11 which was demarcated for hospitals. Those plots could be demarcated at reserve price for hospital in public sector. If hospital had to be run commercially on profit basis, then the plot could be sold at market rate through open auction. In Volume VII-K are documents produced by the respondents. At page 38 is summary for the Cabinet in which proposal was made for establishment of a private heart hospital in Islamabad by Dr. Javed Saifullah in collaboration with an American institute, namely, M/s. Meddling International. It was agreed in principle that the project be implemented as a joint venture with C.D.A. in which C.D.A. would provide land as its share of equity and in return employees of C.D.A. and Federal Government would get free treatment to a certain number of patients. In the rejoinder filed by the petitioner there is no response on this issue and mention is made about the allotment of plot by C.D.A. in the manner stated above by the decision of the Cabinet, which is defended.

130. Under the Capital Development Authority Ordinance, 1960 and Islamabad Land Disposal Regulations, 1993 same criteria of hospitals are made applicable to schools. If school is to be run in the private sector, the plot is to be disposed of at market price through open auction. The Chairman, C.D.A. prepared a proposal for allotment of such plots to "suitable" parties in relaxation of the regulations on the ground of "known performance" in the education field. It was proposed that if a school was to be operated by a Trust on non-profit basis, allotment should be at half the reserve price of Rs.2,000 sq. yard. The "competent authority" was pleased to approve amendment in the Regulations allowing for a further reduction in the rate for profit-oriented institutions (Rs.20,000 per sq. yard) and 50 per cent. of the reduced rate for non-profit institutions. Several meetings were held between Mrs. Shehnaz Wazir Ali, the Special Assistant, and the Chairman, C.D.A. and it was agreed that the rate to be charged from profit oriented organizations for the grant of a plot would be deduced to Rs.500 sq. yard and in the case of trusts and professional schools the rate was to be only Rs.250 per sq. yard. Ultimately nine institutions were selected for allotment of plots on concessionary rates and allotment letters were issued. From these institutions following four are worthmentioning.

Institution????????? ? Location (Size)?????????? Head/Incharge? ????????????????????????????? Remarks

Sindh People's? H-8/4 (3.5 acres)???????? Mrs. Benazir Bhutto????? ???????????? Prime Minister
Welfare Trust?? (Rs.250/sq. yd.)?????????? ??????????? (Chairperson)

Educational?????? F-11/4 (3.7 acres)??????? Mrs. Nasra (Owner)???? ???????????? Mother of Ms.
Trust Nasra????? (Rs.250/sq. yd.)????????????????????????? ??? Shehnaz Wazir
School????????????????????????????? ??? Ali

Wahid Public??? F-10/2 (3.0 acres)??????? Miss Gul-e-Yasmin?????? ???????????? Sister of Ms.
School? ???????????? (Rs.250/sq.yd.)?????????? ?????????????????????????? (Owner)?????????? ????????????????? Naheed Khan

Islamabad???????? F-11/4 (2.29 acres)????? Mrs. B.A. Qureshi ?????? ???????????????Wife of old PPP

Grammar School? (Rs.500/sq. yd.)??????? (Owner) ????????? ?????????????????????????????????supporter

While the first three allottees are well-known, the fourth allottee Mrs. B.A. Qureshi has been described as wife of Mr. B.A. Qureshi, who was land manager of Mr. Z.A. Bhutto, Mrs. B.A. Qureshi is stated to be a teacher and in the first P.P.P. Government was promoted to Grade 22 in violation of rules and made the Head of Recruitment Cell. As a result of allotments mentioned above, C.D.A. would receive Rs.39.9 million while the reserve price of the plots was Rs.219 million. In this manner, by violation of rules, colossal loss was caused to the public exchequer. In Volume VII-K at pages 53 to 55 is C.D.A. note to the Principal Secretary to the Prime Minister on the subject of allotment of land for schools in Islamabad suggesting modification of Clause 5 of the existing Land Disposal Regulations, 1993. At page 56 is decision dated 31-7-1995 whereby the competent Authority approved the amendments and variations in the rates. At page 59 is note containing rates for disposal of land for private schools, trusts and professional schools.

131. In the rejoinder stand is taken by the petitioner that schools and cardiac hospital were planned by C.D.A. in view of the pressing need for such facilities in Pakistan. The hospital would have saved precious foreign exchange which is normally used for treatment abroad. No privileges were extended in the above projects and on the contrary the respondents have withheld the relevant record, Now so far the records are concerned, in support of the allegation, respondents have produced 15 documents describing the role played by C.D.A. in connection with the projects mentioned above. These documents are contained it Volume VII-K and E which have been appended alongwith the writer statement. The petitioner in her rejoinder has stated that she relied upon some documents produced by her in rejoinder Volume II. The documents on the particular subject are at pages 41 to 50. At page 41 is newspaper cutting from daily Dawn dated 9-12-1996 the heading of which is "No corruption complaint against Bhutto, Nawaz: Afridi". This statement was issued by Caretaker Interior Minister Mr. Umer Afridi who stated that "Accountability cell set up at the interior ministry has so far not received any complaint of corruption against the deposed Prime Minister Benazir Bhutto and PML(N) President Mian Nawaz Sharif". This statement was issued on 9-12-1996 and the Government of the petitioner was dismissed and the Assemblies dissolved on 5th November, 1996. At page 42 is newspaper cutting from daily Dawn dated 19-12-1996 which shows that the statement was made by Justice (Retd.) Ghulam Mujadid Mirza, Chief Ehtesab Commissioner, to the effect that the Ehtesab Commission had not received any case against the deposed prime Minister Ms. Benazir or her spouse Asif Ali Zardari or any other mainstream political figure. At page 43 is a news item from daily Khabrain dated 22-12-1996 which contains the statement of Malik Meraj Khalid, Caretaker Prime Minister, with heading that "The Caretaker Government has not been able to find out any clue of the corruption". At page 44 is the English version of the same statement in the daily Nation, dated 22nd December, 1996 heading of which is "Meraj admits failure on accountability". At page 45 is again the statement of the Caretaker Prime Minister in the daily News dated 22-12-1996 with heading "Entire nation is corrupt, says Meraj". The second line of the heading is "Caretaker Prime Minister says many will be arrested in a couple of days". At page 46 is extract from daily Khabrain dated 2-1-1997 which shows that the Caretaker Prime Minister Malik Meraj Khalid stated that on the basis of corruption, Assembly could not be dissolved. Underneath that heading perusal of the remaining contents shows that Malik Meraj Khalid also stated that the economic condition of the country was ruined and the country had to give in to the demands of the donors and further that the caretaker set up would go home after elections which were scheduled for 3rd February, 1997. this address was made by the Caretaker Prime Minister on the occasion of the dinner arranged by Banaspatee Ghee Association. Reliance placed by the petitioner on the newspaper cuttings in rejoinder Volume II does not show that the petitioner has been absolved of the charge of violation of rules by her and by C.D.A. under her instructions. Immediately after the caretaker set-up had taken over, they had set up the Accountability Cell. The Prime Minister and the Interior Minister did make some statements to that effect in the beginning and until that time they were able to find out material on the subject of corruption, efforts were being made to dig out material on that subject and such efforts met with success later. The statements of the Caretaker Prime Minister are to be viewed in the light of the background that there was demand from the people for accountability first and then elections but the Prime Minister was of the view that the 90 days' time was not sufficient for completing the process of accountability, hence the elections should be held in time and the question of corruption of public representatives should be left to the people who would give finding at the time of voting. In any case in the written statement instances have been specified showing violations of rules and regulations in respect of certain projects and in support thereof a large number of documents have also been filed which show corruption, nepotism and undue favour in official dealing of such projects which speak for themselves and the petitioner does not say that the documents produced by the respondents are false and fabricated but instead reliance has been placed on newspaper cuttings of the statements in which the Caretaker Prime Minister or the Interior Minister S had stated that initially they did not find material connecting the petitioner with S the acts of corruption. In the final analysis after perusal of the documents produced by the respondents along with the written statement and the reply of the petitioner in the rejoinder and the documents filed by her in support of her stance, it can be said that the charge framed by the respondents is adequately substantiated.

132. It is the case of the respondents that the petitioner had allowed setting up of a Cooperative Society for the benefit of her M.N.As. and the supporters for the allotment of plots to the parliamentarians. This was done in relaxation of rules. 192 plots of 100 sq. yards were given to the parliamentarians' cooperative housing society in two sectors, F-10 and I-8. The plots were allotted to the parliamentarians at the rate of Rs.1,000 per sq. yard for sector I--8 and Rs.1,500 per sq. yard for sector F-10 in relaxation of C.D.A.'s reserve price of Rs.2,000 per sq. yard. This was also done in contravention of the ECC decision that no residential plot in Government scheme would exceed 600 sq. yards. The cooperative society did not even qualify as Government scheme. The Chairman of the cooperative society was the Minister of Housing and Works and although C.D.A. came under Cabinet Division but the summaries were prepared by the Ministry of Housing and Works. The piece of land measuring 16 acres at Shakarparian was earmarked for recreational and sports purposes as per the master plan. In violation of rules, brother-in-law of Mr. Asif Zardari, was given permission to build a five star hotel at that place in the name of M/s. Inter Hotel (Pakistan) Limited. The allottees were allowed to publish their own valuation which was fixed at Rs.310 million. It was decided that the project would be yet another joint venture to be undertaken by the C.D.A.. Out of Rs.310 million, Rs.150 million were to be treated as C.D.A.'s equity by the issuance of shares by the allottee company. No such shares were ever issued. Rs.150 million were payable by allottee company over a period of five years in semi-annual instalments alongwith mark-up. Subsequently, this period was extended to ten years and the mark-up was payable over a period of two years after initial ten years. Only Rs.10 million were deposited by the allottee company as earnest money with C.D.A.. In complete violation of rules M/s. Inter Hotel (Pakistan) Limited were given a piece of prime land for the construction of a five star hotel for a sum of Rs.10 million only and the land was 30 times more in worth.

133. Respondents have produced some documents in support of the allegations mentioned above, which are contained in Volume VII-K which is appended with the written statement. At pages 32 and 33 is summary for the cabinet prepared by the Ministry of

Housing and Works for development of a housing scheme for parliamentarians prepared by Makhdoom Amin Fahim, Minister for Housing and Works and the Chairman of the Parliamentarians Cooperative Housing Society. At page 34 is the cabinet decision dated 18-9-1996 approving the scheme. At page 35 is the decision dated 23-8-1997 which is to the effect that maximum size of plots for individual housing units be kept at 600 sq. yards. At page 42 is bid of Inter Hotels (Pakistan) Limited for development of a five star hotel in joint venture arrangement with C.D.A.. At pages 45 to 51 is the offer of allotment by C.D.A. on joint venture basis. At page 44 is the schedule with names, addresses and description of the subscribers who have formed the said Company and at Serial No.2 is Mir Munawar Ali son of late Mir Maqbool Ali and his occupation is shown as business and his address is shown as resident of the 6th Commercial Street, Phase IV, DHA, Karachi. He is shown to be the owner of 500 shares. Mr. Aitzaz Ahsan, learned counsel for the petitioner, vehemently objected that Mir Munawar Ali is not related to Mr. Asif Zardari because his father's name is different which is late Mir Maqbool Ali while the person related to Mr. Asif Zardari is Mir Munawar Ali Talpui son of Mir Allah Bux Talpur. That being so Mr. Khalid Anwar was unable to show that there was no mistake in the name and the person named in the schedule is related to Mr. Asif Zardari. If this is accepted as correct, even then it is apparent that persons named in the schedule have been favoured out of way after violation of rules. No mention is made in the rejoinder with regard to the allotment of land to the parliamentarians. Therefore, that charge stands established.

134. In Volume VII-E at pages 153 onwards there are documents which need to be mentioned. At page 153 is PTV's contract with the London based company signed by Ms. Rana Shaikh. At pages 154 to 156 is copy of the agreement dated 14-6-1996 and attention is drawn to Clauses 4 and 5 which are reproduced as under:-

"4. The Licensee will pay to the Licensor at the rate of US $ 80 per minute of PTV programme as royalty of the recorded and distributed programmes as per clause I except programmes related to News/current affairs.

5. The Licensor will pay to the Licensee at the rate of US $ 80 per minute of PTV programmes recorded and distributed as per clause to News and except programme related to News and current affairs as rental and marketing charges of the distribution in the U.K., Europe and U.S.A."

Although these documents are included in Volume VII-E but in the written statement which is filed by the respondents no allegations have been made on the subject of PTV contract and for that reason there is no mention of this PTV contract in the rejoinder. In the circumstances no useful purpose would be served to consider these documents, hence they are excluded' from consideration. In the same volume at page 159 there is a note on the subject of Karachi Port Trust in which mention is made of the allotment of land and at page 169 there is proposal to build Mauripur City Development at K.P.T. land, but these documents are not to be considered for the same reason that no mention is made about them in the written statement and for that reason the rejoinder is also silent. At pages 241 to 247 in the same volume are documents on the subject of F.M. Radio showing that three licences were given on the same day for Islamabad, Lahore and Karachi for setting up of F.M. Radio Stations. We do not feel inclined to consider these documents for the reason that there is no allegation in the written statement and for that reason there is no mention about this subject in the rejoinder.

135. In the order of dissolution there is allegation that innumerable appointments were made at the instance of members of the National Assembly in violation of the law declared by the Supreme Court that allocation of quotas to M.N.As. and M.P.As. for recruitment to various posts was offensive to the Constitution and the law and that all appointments were to be made on merits I honestly and objectively and in the public interest. The transfers and postings of the Government servants have similarly been made in equally large numbers at the behest of M.N.As. and other members of the ruling parties. The members have violated their oaths of office and the Government has not for three years taken any effective step to ensure that the legislators do not interfere in the orderly executive functioning of the Government. The petitioner in her petition . has denied the allegation as vague and general and further has taken the plea that I such unsubstantiated allegations cannot form the basis of any dissolution or punitive action. It is also asserted by the petitioner that in any case all appointments were duly advertised and the candidates interviewed and appointments made on merits. For transfers and postings of the Government servants the allegation is denied by the petitioner. As against that, in the written
?statement, the .respondents have stated that there are thousand of instances where appointments were made in complete disregard of the applicable rules and regulations. If even a sampling of the violation had been incorporated in the dissolution order, it would have run into several hundred pages. The whole system of appointments was in violation of rules and regulations. Vacancies were some times advertised and tests/interviews were held but in farcical manner. There were lists prepared in the Prime Minister's Secretariat and the Establishment Division, and the names were supplied by the Ministers, Advisors and public representatives, and in that manner the lists were finalized and okayed and only had to be acted upon by the concerned departments and corporations in finalizing the appointments. At pages 1 to 7 are the names of Ministers, M.N.As., Senators, Advisors. Those names start from pages 1 to 267 and against each name there is number of recommended appointees. There is another list of 140 M.P.As. -and the number of appointees recommended by them is also given. In this way the total number of appointees recommended by these public representatives is 20407.

136. In Volume VII-A of the written statement from pages 128 to 133 are documents on the subject of appointments in Sui Northern Gas Pipelines Limited, to be referred hereinafter as SNGPL, on the directions received from the Federal Government. At page 128 is the note prepared by SNGPL on the subject of career-term appointments in subordinate cadre of unionized staff from 1994 to 1996. It is stated in the said note that after lifting of the ban, the Federal Government introduced centralized system of periodical recruitment in SNGPL. In this connection a meeting was held by the Chief Executive of SNGPL and other concerned management staff in which Mr. Siraj Shams-ud-Din, Additional Secretary, Prime Minister's Secretariat, informed about the launching of a recruitment scheme by the Government in which advertisements would be made in the national/regional newspapers and applications would be invited for various positions. Vide letter dated 22-6-1994 recruitment procedure was circulated by the Ministry of Petroleum and Natural Resources in which advice was given that applications would be received by the Deputy Commissioners of the districts, the Ministries/Divisions/Autonomous Bodies/Subordinate Offices/Corporations and the posts would be filled up according to the recruitment rules after conduct of tests/interviews, as the case may be. Before finalisation of the results, the same would be sent to the Establishment Division for vetting/clearance. Accordingly, SNGPL made advertisements in various newspapers and applications received were sent to the Deputy Secretary, Ministry of Petroleum and Natural Resources (Mr. R.A.

Hashmi). As a result of the advertisements, 1,43,970 applications were received from various Deputy Commissioners all over the country, which were got computerised by SNGPL on the basis of divisions obtained, domicile of the candidates, etc. to meet the requirements of telex message dated 22-8-1994 of the Ministry of Petroleum and Natural Resources. On receiving telephonic instructions from the Establishment Division, all the candidates were invited for interview on 27th, 28th and 30th September, 1994 through advertisement published in the newspapers on 26-9-1994. In this way SNGPL incurred an expense of Rs.12,11,763 on account of computerization, advertisements and allied expenses.

137. Before the interviews could be finalized, two lists of 108 and 176 candidates were received from the Prime Minister's Secretariat through Establishment Division with instructions that names of the candidates be included in the list of successful candidates. The Managing Director, SNGPL, issued instructions accordingly. The Prime Minister's Secretariat also instructed that 20 candidates who were already serving in SNGPL as Casual Employees were to be appointed on career-terms. The said nominations were also included in the list of selected candidates. Out of 496 positions in Part I of Phase I only 108 candidates were on merit. Another 118 persons were appointed on merit in part-2 of Phase-I after having conducted trade tests of persons who had earlier appeared in the interview held on 30th September, 1994 against/technical/skilled categories. 388 candidates were nominated by the Prime Minister's Secretariat and further two lists containing nominations of 50 candidates were received from the Minister for Petroleum and Natural Resources vide Fax Messages dated 11-10-1994 -and 12-10-1994. In November, 1994, the Cabinet Secretariat also issued clearance of candidates selected vide their letter dated 13-11-1994 in response to the list of selected candidates which included 388 candidates nominated by the Prime Minister's Secretariat and the Minister of Petroleum and Natural Resources. In the second phase of recruitment, SNGPL received about 39,000 applications. All the candidates were called for interview but before the process could be finalized a list of 169 persons was received from the Prime Minister's Secretariat. 99 vacancies existed and 40 more were available as left over of Phase-I and 21 were included from Phase-III. Another five vacancies were allocated from the Managing Director's Pool and in this manner 165 vacancies were made available. In the manner stated above, the directions from the Prime Minister's Secretariat and the Minister for Petroleum and Natural Resources were complied with by providing employment to the recommendees and SNGPL exceeded its approved establishment of Career Term Subordinate employees by 1343 persons.

138. In Volume VII-A at page 150 is the Cabinet decision dated 13-5-1994 directing the Establishment Division to monitor recruitments in all Ministries/Divisions/Attached Departments/Subordinate Offices/Autonomous Bodies/Corporations. At pages 157 to 160 is the office memorandum dated 19-6-1994 from the Establishment Division regarding recruitment procedure. At page 218 is Establishment Division's approval dated 13-11-1994 of the list of appointees sent by SNGPL for clearance. At pages 219 to 224 are lists dated 11-10-1994 and 15-10-1994 received from the Minister of Petroleum and Natural Resources to be given employment in SNGPL. At pages 233 to 239 is list dated 23-4-1995 of 169 nominees received from the Prime Minister's Secretariat. At pages 254 to 268 is the list dated 27-10-1995 of 456 nominees received from the Minister by SNGPL for appointment as management trainees. At pages 269 to 285 are various letters/orders issued by the Minister ordering the appointment of management trainees. Likewise in Sui Southern Gas Company Limited also, appointments were made in illegal manner and there is a note at pages 289 to 291 on that subject. In Phase-1, 44 were appointed, in Phases 11 and III 195 persons were appointed, and appointments of 4257 persons were made on temporary basis.

139. In Oil and Gas Development Corporation also appointments were made in violation of rules on the basis of lists received from the Government. Against 53 vacancies,' after advertisement, applications were received from 966 candidates and in that connection three lists containing 387 names of the candidates were received through the Establishment Division. While 8 lists containing 579 names were received directly from the Prime Minister's Secretariat. In this manner appointment letters were issued to 869 candidates in three pbases on the recommendation of the Federal Government. In Pakistan Public Works Department also, for posts in BPS 1 to 15, 74 appointments were made in three phases on the verbal instructions from the Prime Minister's Secretariat. WAPDA advertised 1138 posts in BPS 1 to 15 in July, 1994. A list of 431 candidates was received from the Establishment Division which was handed over to the WAPDA authorities with verbal instructions for their appointment. 360 appointments were made by creating additional posts, while 24 were appointed against advertised posts. Besides, 59 candidates were appointed on the verbal instructions of the Ministry of Water and Power. In November 1994, appointments were made in Phase-II. A list of 632 candidates was received from the Establishment Division through Ministry of Water and Power against which 545 candidates were issued letters of appointment. Additional list of 274 candidates was received from the Ministry of Water and Power against which 162 candidates were issued appointment letters. In KESC 203 appointments were made on the recommendation of the Federal Government. The State Life Insurance Corporation of Pakistan also obliged and appointed 192 persons from the list provided by the Prime Minister's Secretariat. Pakistan Telecommunication Company also appointed 4424 persons from the lists supplied by the Prime Minister's Secretariat. In Agricultural Development Bank of Pakistan, 742 appointments were made on the basis of directions received from the Government in violation of rules. 30 appointments were made by Civil Aviation Authority on the recommendation of the Government. 2053 appointments were made in PIA on the directions received from the Government. 883 appointments were made in the Pakistan Post Office on the recommendation of the Federal Government. 212 persons were appointed for political reasons in the Intelligence Bureau on the recommendation of the Federal Government in violation of rules. 4523 appointments were made in National Bank of Pakistan on the instructions of the Prime Minister's Secretariat and Ministry of Fiilance. 211 persons were appointed in Utility Stores Corporation on the recommendation of the Government.

140. In connection with appointments, which are violative of rules and particularly made on the basis of recommendations by the public representatives, President of Pakistan wrote to the Prime Minister that such appointments having been made or being made on the recommendations of M.N.As. and M.P.As. are violative of Rules 19 and 29 of the Government Servants (Conduct) Rules, 1964 and enquired from the Prime Minister as to what steps had been taken to curb the trend of approaching the public representatives which amounts to interference in the appointments of Government servants. Copy was sent to the Chairman Senate and the Speaker National Assembly and the Governors of the four Provinces. Such documents are available at pages 1639 to 1659 in Volume VII-D of the written statement. It appears that the President also pointed out that such appointments in that manner were being made in violation of rule laid down in the case of Munawar Khan v. Niaz Muhammad and others (1993 SCMR 1287) in which it is held that allocation of quota of posts to M.P.As. or M.N.As. was offensive.to the Constitution and the law as they were under oath to discharge their duties in accordance with the Constitution and the law. On the subject of appointments in violation of rules, which are specified in detail inl the written statement and volumes of documents appended therewith, the petitioner in

rejoinder has commented very briefly by stating that firstly the material was not before the President when he passed the dissolution order, secondly the lists did not prove that the appointments were illegal, and thirdly that the official notes, orders and departmental rules have not been produced. Plea is taken that the departments do make such appointments, expand and fill up such vacancies. This is a bare denial in opposition to the documents which have been produced in support of the assertion in which facts and figures have been given and detailed notes have been prepared by the concerned departments, corporations and companies which are brought on the record alongwith other documents of supportive nature. These documents, which speak for themselves, clearly show that the lists were sent from the Prime Minister's Secretariat by the persons named who were at the relevant time working in the Prime Minister's Secretariat and there is no denial that those persons did not work in the Secretariat and did not forward the lists. These documents are sufficient to prove that the lists were prepared of the persons who were recommended by the public representatives and the same were processed in the Prime Minister's Secretariat and sent to various departments and corporations for appointments and such appointment letters were issued in violation of rules and regulations. Hence the appointments were not made on merits. In fact all these appointments are to be made in the manner which is prescribed in the rules and regulations, and any other procedure adopted, which is a departure from the normal procedure, would amount to violation of the normal rules. The general principle laid down is that the Constitution is the supreme document to which all other laws are subordinate and the Federal Government and all other citizens are to act in accordance with the Constitution and the law and particularly on the subject of appointments, the laws, rules and regulations made in that context are to be followed in letter and spirit by all jointly and separately including the Head of the Government and all other functionaries. The Government must first set an example of following the law and the rules and then should expect others to do the same. Appointments in various grades in Government departments, Corporations and Companies are to be made strictly in accordance with the rules and regulations violation of which cannot be and should not be made by the Federal Government or any department thereof. The voluminous record produced by the respondents show very clearly 'that the appointments were made illegally and in violation of rules and regulations on the recommendations of the public representatives and the Prime Minister's Secretariat which is not a proof of good governance and would certainly come under the ground of violation of rules.

141. One ground mentioned in the dissolution order is that the petitioner took up in the Cabinet a Minister against whom criminal cases were pending, which the Interior Minister had refused to withdraw. At an earlier stage the Interior Minister had announced his decision to resign if the said person was inducted into the Cabinet. The petitioner in her petition has stated that the charge was misconceived and the President was himself member of the Cabinet in which two of his colleagues were on trial on the false charges of murder. Apart from that, the petitioner has quoted two examples that Mr. Asif Zardari was appointed as Federal Minister by former President Ghulam Ishaque Khan when the cases were pending against him, and Mr. Mumtaz Ali Bhutto was appointed Caretaker Chief Minister against whom cases were pending and he was declared absconder in F.I.R. No.24 at Police Station Khanoat, District Dadu. It is also stated by the petitioner that this ground as such does not attract invocation of Article 58(2)(b) and entire National Assembly cannot be dissolved on account of involvement of one person. It is, therefore, stated by the petitioner that the Interior Minister did in fact resign but she persuaded him that person must be presumed innocent until he is declared guilty by the Court. In the written statement which has been filed by the respondents stand is taken that the three cases cited by the petitioner were in fact filed against two Ministers and a Chief Minister of Sindh by other Governments which were hostile, but in the instant case against Mr. Nawaz Khokhar cases were filed by the Government of the petitioner and later the same Government took him as Minister in the Cabinet in spite of opposition by the Interior Minister who had filed the cases and 'refused to withdraw them and also threatened that he would resign in case Mr. Nawaz Khokhar was taken up as Minister in the same Cabinet. In the three cases cited by the petitioner the persons, against whom cases were filed, were not inducted as Ministers or Chief Minister by the same Government which had filed the cases. Therefore, there is no parallel between the case of Mr. Khokhar and the examples cited by the petitioner. The respondents have filed documents which are contained in Volume VIII. At pages 1 and 2 is F. I. R. No. l of 1995 filed by the Inspector FIA/SBC, Rawalpindi in which it is alleged that Haji Nawaz Khokhar as Chief Executive of N. Khokhar Textile Industry Limited alongwith other Directors took loan from the United Bank Limited, Islamabad, for financing of their Textile Mills, to be set up at Rawat, District Rawalpindi. The Bank sanctioned large sums as credit facilities and at the relevant time Haji Nawaz Khokhar was Deputy Speaker of the National Assembly and belonged to the ruling party. The loan amount with interest was not repaid within the stipulated time and the machinery imported was not got released from Karachi Port Trust in connection with which K.P.T. claimed heavy amount of Rs.4 crore as demurrage. In such circumstances a criminal case was filed against Haji Muhammad Nawaz Khokhar for offences under sections 406, 409, 417, 418 and 420, P.P.C. and section 3 of P.P.O. 16 of 1969. Alongwith F.I.R., copy of the challan and the order on the bail applications also have been filed. There are newspaper cuttings in which it is stated that Haji Nawaz Khokhar would not join Junejo League or P.P.P. and would form his own forward block in the same party which was Pakistan Muslim League (N). At page 23 there is newspaper cutting from daily Nawa-e-Waqt, dated 22nd May, 1995 highlighting the statement of Gen. Naseerullah Babar, Interior Minister, who declared that if the cases against Haji Muhammad Nawaz Khokhar were withdrawn and he was inducted in the Cabinet as Minister, then the former would resign. At page 24 is the notification, dated 31st` July, 1996 showing that the Prime Minister appointed 15 Ministers including Haji Muhammad Nawaz Khokhar at Serial No.3.

142. As against this, after perusal of the written statement and the documents in Volume VIII annexed therewith, the petitioner in the rejoinder has not contested this issue seriously except reiterating that there is age old maxim that a man is innocent until proved guilty, and introduced a new contention that the President himself administered oath of office to Mr. Nawaz Khokhar. This new contention is repelled on the ground that the President administered oath on the advice of the Prime Minister as is contemplated in Article 92(1) of the Constitution which provides that the President shall appoint Federal Ministers and Ministers of State from amongst the members of Parliament on the advice of the Prime Minister. Attention is also drawn to the use of word "shall" which is mandatory in nature in the abovementioned provision. In any case it is clear as daylight that our Constitution contemplates parliamentary form of Government in which the Prime Minister is Head of Government and can nominate any person who is member of Parliament to become a Minister. The decision of appointment is taken by the Prime Minister and not by the President, and the President simply performed his duty by administrating oath as is contemplated under Article 92(2) of the Constitution. It is argued before us that under Article 91(4) of the Constitution it is envisaged that the Cabinet, together with the Ministers of Sate, shall be collectively responsible to the National Assembly, and this requirement is violated if a Minister is taken in the Cabinet against whom another Minister refuses to withdraw cases, and both cannot be allowed to remain in the Cabinet because this would be violative of collective responsibility of the Cabinet to the National Assembly. At this stage we are not concerned with the question whether a member of the Parliament, against whom a criminal case is pending, can be made a Minister in the Cabinet or

not and whether it is legally allowed or not in view of the contention that a person is to be presumed innocent until he is proved guilty by the Court, but the question before us for consideration is whether by doing so the case of good governance is advanced and promoted particularly in the light of Article 91(4) of the Constitution on the principle of collective responsibility of the Cabinet to the National Assembly. We are also not considering the question whether in such circumstances the cases should have been withdrawn and then such member should have been made Minister in the Cabinet because the withdrawal of the cases is to be made under the relevant provisions of the law and the whole legal procedure is to be complied with. It may be correct that this ground alone as such may not be sufficient to invoke Article 58(2)(b) to dismiss the Government and dissolve the National Assembly on the ground that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. The material produced on this ground could be considered by the President in conjunction with the material produced on other grounds to arrive at a general finding that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and for that reason we have stated in the short order announced on 29th January, 1997 that sufficient material has been produced in support of the ground in the dissolution order on the subject of corruption, nepotism and violation of rules.

143. The last ground in the dissolution order is that in the matter of the sale of Burmah Castrol shares in PPL, and BONE/PPL shares in Qadirpur Gas Field, the President required the Prime Minister to place the matter before the Cabinet for reconsideration, which was not done for over a period of about four months in violation of the provisions of Articles 46 and 47 of the Constitution. We would not like to make any comment on this ground for the reason that on the same subject matter, Civil Suit No. l of 1996 has been filed in this Court by the Government of Balochistan under Article 184(1) read with Article 187 of the Constitution, which is pending. It may be mentioned that Article 184(1) contemplates that the Supreme Court shall, to the exclusion of every other Court, have original jurisdiction in any dispute between any two or more Governments. In the suit declaration is sought from the Court that firstly the decision to issue a N.O.C. for the sale of Burma Castrol's Shares in P.P.L. and to permit the sale of P.P.L.'s seven per cent. shares in the Qadirpur Gas Field is contrary to law and is of no legal effect. Secondly, that only the Council of Common Interest can take decisions as to the sale of Burmah Castrol's shares in P. P. L. and as to the disposal of P. P. L.'s seven per cent. shares in the Qadirpur Gas Field. Thirdly, that if the Government of Pakistan is not willing to buy Burmah Castrol's shaies in P.P.L., then the Government of Balochistan should be given the right of first refusal. Fourthly, that if the Council of Common Interests decides to dispose of the shares, then it can only be on the basis of open, fair and free bidding, or a public auction. In the circumstances, we are satisfied that on the same subject-matter the suit is pending in this Court, hence no useful purpose would be served by dilating on this ground in the petition.

144. It would not be out of place to mention with regard to the bulk of voluminous record produced in this case in the Court. The petition of the petitioner consists of two volumes. The first volume consists of 87 pages from which memorandum of petition runs into 42 pages. This volume also contains application for stay and production of some documents. The second volume of the petition has 110 pages containing the speech of the President and the speech of the Governor of Sindh and some newspapers cuttings. As against that the written statement filed by the respondents runs into 201 pages and also contains affidavits of Brigadier Ahmad Jehanzeb, Director-General Law, President's Secretariat, and Mian Tayab Hasan, Secretary, Cabinet Division, who have confirmed the contents of the written statement. The respondents have filed 8 volumes alongwith the written statement, containing documents in support of the grounds mentioned in the order of dissolution. These volumes have been referred above in the judgment and have been described as volumes appended with the written statement. Volume I-A (566 pages) contains documents and newspapers cuttings relating to extra judicial killings in Karachi. Volume I-B (83 pages) relates to killings in police encounters in Karachi. Volume I-C (49 pages) covers killings in the Province of Punjab. On the second ground, which is murder of Mir Murtaza Bhutto and his companions in Karachi, the respondents have produced Volume-II (74 pages) and Volume II-B (64 pages). On the third ground of failure to implement the judgment of the Supreme Court in the Judges' case, the respondents have produced Volume III-A (267) pages). On the fourth ground of introduction of a Bill in the National Assembly to harass the Judiciary, the respondents have produced Volume IV (21 pages). On the fifth ground of separation of judiciary from the executive, the respondents have not produced any separate volume containing documents. On the sixth ground of phone tapping and eaves dropping, the respondents have produced Volume VI (38 pages). On the seventh ground of corruption, nepotism and rules violation, the respondents have produced a separate set of 14 volumes described as Volumes VII-A to VII-N. Volume A contains pages 1 to 530. Volume B contains pages 531 to 1149. Volume C contains pages 1150 to 1608. Volume D contains pages 1609 to 1793. Volume E contains pages 1 to 488. Volume F contains pages 1 to 48. Volume G contains pages 1 to 373. Volume H contains pages 1 to 205. Volume I contains pages 1 to 326. Volume J contains pages 1 to 50. Volume K contains pages 1 to 68. Volume L contains pages 1 to 170. Volume M contains pages 1 to 183. Volume N contains pages 1 to 283. The eighth ground in the order of dissolution relates to Mr. Nawaz Khokhar and the principle of collective responsibility regarding which the respondents have produced Volume VIII with pages 1 to 24. The ninth ground in the order of dissolution relates to Burma Castrol Shares in P.P.L. regarding which the respondents have produced Volume IX containing pages 1 to 83. Against the written statement, the petitioner has filed rejoinder comprising three volumes. Volume I contains pages 1 to 37, Volume II contains pages 1 to 62 and Volume III contains pages 1 to 103. Additionally, the petitioner has also filed index of objections (27 pages) to the admissibility of the documents filed by the President. In this manner the grand total of pages and documents filed in the volumes produced by both the parties comes to 4780. With great patience and meticulous care, the counsel representing both the parties took us through the documents in this voluminous record and in this context remark made by Mr. Aitzaz Ahsan at one point of time sounded very appropriate when he said that the respondents have produced a truck-load of documents, most of which was objected to by him on the ground of inadmissibility. We have already dealt with the objection of inadmissibility of the documents in the preceding paragraphs of this judgment, hence there is no need to reiterate that finding at this stage again.

145. Mr. Aitzaz Ahsan, learned counsel for the petitioner, raised three main contentions. Firstly, that the President while dismissing the Government of the petitioner and dissolving the National Assembly, was actuated with malice in law and in fact. Secondly, that what is the scope and expanse of Article 58(2)(b) of the Constitution as expounded in the cases of (1) Federation of Pakistan v. Muhammad Saifullah Khan (PLD 1989 SC 166), (2) Kh. Ahmad Tariq Rahim v. Federation of Pakistan (PLD 1992 SC 646) and (3) Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473). Thirdly, the evaluation of evidence keeping in view the objections raised to the admissibility of the documents. The third and the last contention has already been dealt with and answered in paragraphs 61 and 62 of this judgment. So far allegation of malice is concerned, it is submitted on behalf of the petitioner that respondent Sardar Farooq Ahmad Khan Leghari was nominated by her as P.D.F. candidate and was elected as President of Pakistan,

but later there was a turning point when the opposition parties levelled allegations of corruption against the President as he was alleged to have made a fictitious land deal, while he was Federal Finance Minister in the past, with Mr. Younus Habib of Mehran Bank, and the President thought that the petitioner and her husband were instrumental in that campaign of vilification. Secondly, the President began to show utter disregard for the petitioner and started sending messages to the Parliament and filed Reference in the Supreme Court without consulting her. Thirdly, that while the petitioner was recovering from the shock and grief of the tragedy in which her brother Mir Murtaza Bhutto was brutally murdered in Karachi, the President filed a Reference in the Supreme Court on a Saturday which was a closed holiday. Fourthly, that the President also sent letters to the Governors of Sindh and Punjab complaining about law and order situation. Fifthly, that the President wrote to the petitioner informing her that he was not accepting any more resignations by the Judges affected by the judgment of the Supreme Court and required her to denotify them. So far the allegation of malice is concerned, the same is denied by the President in the written statement in which it is stated that a Judicial Commission was set up to enquire into the affairs of Mehran Bank Limited and the Commission was composed of five Judges and was presided over by Mr.Justice Abdul Qadeer Choudhry, Judge of the Supreme Court, and the other four members were Mr. Justice Zia Mehmood Mirza, Judge of the Supreme Court, Mr. Justice (Retd.) Z. A. Channa, former Judge of the High Court of Sindh, Mr. Justice Nazir Ahmad Bhatti, Judge, Federal Shariat Court, and Mr. Justice Qazi Muhammad Farooq, Judge of the Peshawar High Court. 1n the report of the Commission, it is stated in clear terms that it is the confirmed opinion of the Commission, based on the evidence before it, that the allegations against the President are unfounded. So far other allegations mentioned by the petitioner against the President on the question of malice are concerned, they are answered in the written statement and have been specifically dealt with in paragraphs 10 to 15 of this judgment, perusal of which shows that the allegation of malice is denied and stand is taken that the .President after taking oath of his office as such severed his connections with Pakistan People's Party and resigned from the membership and after that performed his Constitutional role as President of the country and did not bear any ill-will or malice against the petitioner or any other person. The President did not become bitter, hostile or adversarial to the petitioner at any time and there was no "timing" in his actions of filing the Reference'in the Supreme Court on a Saturday on which the office of the Supreme Court remained opened or his messages to the Houses of the Parliament or his letters to the Governors of Sindh and Punjab or his letter to the petitioner on the subject of resignations of the affected Judges of the superior Courts. We are satisfied with the explanation given by the President in the written statement and are of the considered view that the allegations with regard to malice both in law and in fact alleged against the President are unfounded.

146. The most important point for consideration in this case is the interpretation and the scope of Article 58(2)(b) of the Constitution. The relevant provision is reproduced as under:-

"58(2).--Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in 'his discretion where, in his opinion,

(a) .....

(b) a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary."

In this provision two words used are very pivotal in nature which purport to define the scope of this provision and the powers of the President in that respect. It is apparent that action can be taken under this provision by the President in his discretion for which he has to form "opinion" which is at lesser pedestal than "satisfaction". One can form opinion without touch of finality as
opinion lacks the element of absolutism and can always be differentiated from satisfaction which has a touch of finality containing the element of absolutism. In other words it can be said that opinion has lesser responsibility than satisfaction from the point of view of burden of proof. For satisfaction proof is required but for opinion some thing lesser than proof is required. For example, after seeing the clouds one may form the opinion that it may rain, but this may not come true as it was just an opinion without a touch of finality. On the other hand after seeing a wet road from a window one can say that it has rained today. Satisfaction has touch of finality for which proof has been considered. On this line of reasoning it can be said that for opinion, evidence may not be conclusive, definitive and overwhelming. The President has to form opinion on the basis of material which may include knowledge of official transactions with which he has some nexus and the Court must not substitute its own opinion with the opinion of the President, nor can the Court sit in appeal on the opinion of the President. In such circumstances opinion of the Court differs from the opinion of the President because in forming the opinion the Court has to examine the evidence and some times has to record the evidence including examination-in-chief, cross-examination and re-examination as happens in the proceedings before the Court of law for which proper procedure is prescribed. The word "satisfaction" has been examined in detail by this Court in the case of Saeed Hussain v. Pyar Ali (PLD 1976 SC 6) with relevant portion at page 30 as under:-

' .... 'Satisfaction' is by no means a term of art and appears to have been used in its ordinary dictionary sense. 'Satisfaction' is the existence of a sate of mental persuasion much higher than a mere opinion and when used in the context of judicial proceedings has to be arrived at in compliance with the prescribed statutory provision and other legal requirements. Far from being a subjectively or capriciously arrived at conclusion, it presumes observance of certain well-settled judicial principles and is a firm state of mind admitting of no doubt or indecision or oscillation. To be 'satisfied' with a state of things is to be honestly convinced in one's own mind. According to Black's Law Dictionary apart from the 'legal satisfaction', which is a term of art and connotes discharge of a claim, debt or legal demand, to satisfy in the ordinary sense is to convince. Satisfactory evidence has been explained as sufficient evidence meaning an amount of proof which ordinarily satisfied an unprejudiced mind beyond a reasonable doubt. In Corpus Juris Secundum 'satisfy' has been held to be synonymous with, 'convince beyond a reasonable doubt' and 'satisfaction' has been explained as a state of mind, which connotes a sense of certainty, and conviction or release from suspense, doubt or uncertainty. According to Oxford English Dictionary 'to satisfy' means to furnish with sufficient proof or information or to assure or set free from doubt or uncertainty to convince. "

It is the light of the legal position stated above that one has to consider as to how the President is supposed to form his opinion for taking action contemplated under Article 58(2)(b) which stands at lesser pedestal than satisfaction. Whereas the opinion of the President is not legal opinion formed by the Court, hence the President cannot be equated with the Court of law so far the degree of proof is concerned in forming his opinion. It is in this context that the material available before the President for forming such

opinion is to be considered whether it was sufficient or not to help him to form such opinion. Relying upon the judgment in the case of Islamic Republic of Pakistan v. Abdul Wali Khan (PLD 1976 SC 57), we have rejected the objection raised on behalf of the petitioner that newspapers cuttings could not be relied upon by the President or he had to satisfy himself on each ground to such an extent that if there was no solid proof as is required in the Court of law, he could not form the opinion.

147. The scope of Article 58(2)(b) can be understood more clearly only after one traces the historical background of this provision. Before partition the Indo-Pak Sub-continent was governed under the Government of India Act, 1935, section 19 whereof empowered the Governor-General to dissolve the Federal Assembly in his discretion. After gaining independence, both the countries,

India and Pakistan, adopted the Government of India Act, 1935 for continuation of legal order till they enacted their own Constitutions. After independence, in Pakistan, Governor-General, Mr. Ghulam Muhammad, dissolved the Constituent Assembly vide Proclamation dated 24th October, 1954 on the ground that the Constitutional machinery had broken down and the Constituent Assembly had lost the confidence of the people and could no longer function. Moulvi Tamizuddin Khan, who was President of the' Constituent Assembly, feeling aggrieved, filed a Constitutional petition in the Chief Court of Sindh, which was allowed, and the Federation of Pakistan filed appeal in the Federal Court, which was also allowed and the judgment is reported as Federation of Pakistan v. Moulvi Tamizuddin Khan (PLD 1955 FC 240). What is pertinent to point out is that in the Government of India Act, 193.5 it was discretion of the Governor-General to dissolve the Federal Assembly which discretion he could exercise from time to time and no other requirement was mentioned in the said provision, may be for the reason that India was being governed by Great Britain as a colony where the Governor-General was always an Englishman who represented the sovereign King or Queen and therefore was given complete discretioa to dissolve the Federal Assmebly whenever he felt it necessary to do so. Pakistan succeeded in its first attempt to promulgate the Constitution of 1956 which contemplated parliamentary form of Government and Article 50(1) of that Constitution provided that the President may summon, prorogue or dissolve the National Assembly and shall, when summoning the Assembly, fix the time and place of the meeting. It is obvious that the words "in his discretion" were not used and instead the word "may" was used to enable the President to summon, prorogue or dissolve the National Assembly. In 1958 President Iskandar Mirza used this power, dissolved the National Assembly and dismissed the Government of Prime Minister Feroze Khan Noon after abrogating the Constitution of 1956. He appointed General Ayub Khan as Chief Martial Law Administrator who later replaced Mr. Iskandar Mirza as President and Chief Martial Law Administrator. President Ayub Khan then gave the country his own Constitution of 1962 which was made by him and which allowed presidential form of Government. In 1969, President Ayub Khan invited General Yahya Khan, Commander-in-Chief of Pakistan Army to take over the administration and perform his Constitutional role in consequence whereof the latter declared martial law and abrogated the Constitution. President Aga Muhammad Yahya Khan conceded the demand of Awami League and abolished the principle of parity between East Pakistan and West Pakistan and held general elections on the basis, of adult franchise and one man one vote. He abolished One Unit in West Pakistan and in the result four provinces of Punjab, Sitdh, N.-W.F.P. and Balochistan re-emerged. In the result of the elections, Awami League in East Pakistan won with thumping majority of 160 out of 300 seats in the National Assembly. In West Pakistan, Pakistan People's Party secured 81 seats and the remaining seats were secured by other political parties. General Aga Muhammad Yahya Khan held parleys with Shaikh Mujib-ur-Rehman of Awami League in the East Pakistan and Mr. Zulfiqar Ali Bhutto of Pakistan People's Party in the West Pakistan, which did not succeed and there was law and order situation in which military action was taken, and finally war broke out between India and Pakistan as India supported the militants of Awami League morally and materially in East Pakistan. In the aftermath of the war, we lost East Pakistan which declared unilaterally its independence as Bangladesh.

148. Mr. Zulfiqar Ali Bhutto held talks with other political parties which had representation in the National Assembly and with their consensus the Constitution of 1973 was promulgated contemplating parliamentary form of Government answerable to the National Assembly. It was provided in the Constitution that in the Governmental set-up, all actions would be taken in the name of the President but the Chief Executive shall be the Prime Minister. The President shall act on the advice of the Prime Minister in all the matters which advice shall be binding on him in all respects. Obviously, in this Constitution, provision was not allowed empowering the President to dissolve the National Assembly and dismiss the Government of the Prime Minister in his discretion. On the contrary Clause (3) of Article 48 required that, for validity, orders of the President would be countersigned by the Prime Minister. Article 58 in the Constitution provided that the President shall dissolve the National Assembly if so advised by the Prime Minister and the National Assembly shall, unless sooner dissolved, stand dissolved at the expiration of 48 hours after the Prime Minister has so advised. It was further provided that for a period of 15 years or three general elections, whichever was longer, vote of no confidence had to be deemed to have failed unless passed by two-third majority of the total membership of the National Assembly. In such circumstances, originally, the Constitution of 1973 contemplated parliamentary form of Government with a very powerful Prime Minister as Head of the Government, and the President as Head of State held ceremonial office with no powers. Later, in 1977, premature elections were held in the country in which P.P.P. of Mr. Zulfiqar Ali Bhutto won, but the results were not accepted by the opposition parties on the ground of rigging and they refused to participate in the elections for Provincial Assemblies. The people came out in the streets, protests and strikes were held, and damage was caused to the public and private property. Finally, on 5th July, 1977, General Ziaul Haq, Chief of Army Staff, imposed martial law and dismissed the Government of Mr. Zulfiqar Ali Bhutto and also dissolved the National Assembly and the Provincial Assemblies. Begum Nusrat Bhutto, the wife of Mr. Zulfiqar Ali Bhutto, filed a Constitutional petition in the Supreme Court in which the validity of martial law was challenged. The decision of the Court is reported as the case of Begum Nusrat Bhutto v. Chief of Army Staff and others (PLD 1977 SC 657). This Court validated the take over of the administration of the country by the Chief of Army Staff on the basis of State necessity which was treated as Constitutional deviation till holding of elections. The elections were held on non-party basis on 25-2-1985 and the Constitution was revived on 10-3-1985. 'General Ziaul Haq took oath as President on 23-3-1985 and the Eighth Amendment was inserted in the Constitution on 11-11-1985 which also included Article 58(2)(b)
empowering the President to dissolve the National Assembly in his discretion. It?? appears that this was so done for the reason that President Ziaul Haq wanted to strike balance between the powers of the President and the Prime Minister in the Parliamentary form of Government in, the absence of any provision in the Constitution to remedy the situation in which the Constitutional machinery has failed and in spite of that extra powerful Prime Minister could continue on the basis of support of his majority party and could be removed only when vote of no confidence was passed against him, chances of which were very slim.

149. Article 58(2)(b) was inserted in the Constitution on 11-11-1985 which envisages that the President may also dissolve the National Assembly in his discretion where in his opinion a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. As a result of the I elections which were held in 1985 on non-party basis, Mr. Muhammad Khan Junejo was nominated by the President as Prime Minister who later obtained vote of confidence in the National Assembly. Thsre arose differences between the President and the Prime Minister and finally on 29-5-1985 President Ziaul Haq exercised his power under Article 58(2)(b) and dismissed the Government of Mr. Muhammad Khan Junejo and dissolved the National Assembly. Haji Muhammad Saifullah, who was member of the National Assembly, and some other members of the Provincial Assembly filed writ petitions in the Lahore High Court challenging the validity of the proclamation and such petitions were allowed holding that the order of dissolution was unsustainable in law, but relief in the shape of restoration of Assemblies and the Cabinets was not granted. Hence both the parties came to the Supreme Court and this Court did not interfere with the judgment of the High Court on the ground, inter alia, that the national interest must take precedence over rights of individuals and passed the following short order:-

"We, however, emphasise that the general elections scheduled for the 16th and the 19th November 1988, shall be held on the said dates and an opportunity be thus afforded to the people of Pakistan to choose their own representatives in a free, fair and impartial election.

Accordingly, these appeals stand disposed of in the above terms."

150. The decision of the Supreme Court in the case of Federation of Pakistan v. Muhammad Saifullah Khan and others is reported in PLD 1989 SC 166. It was for the first time that Article 58(2)(b) required detailed examination by the Court with regard to its interpretation and gauging of its real scope and particularly of discretion exercisable by the President. Argument was raised by the Attorney-General for Pakistan before this Court that Article 58(2)(b) was to be read in conjunction with Article 48(2) which provided that discretion exercised by the President as empowered by the Constitution shall not be called in question on any ground whatsoever. This Court expressed the opinion that it was not possible to hold that action of the President under Article 58(2)(b) was not open to question by the Court and was beyond their jurisdiction. It was held that the Court could question the action of the President in dissolving the National Assembly to find out whether it was based on facts or not. "Discretion" and formation of "opinion" had to be based on facts and reasons which are objective realities. The discretion can be exercised by the President when machinery of the Government has broken down completely and its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution. It was held by this Court that discretion conferred by Article 58(2)(b) on the President cannot, therefore, be regarded as absolute one but is to be deemed as qualified one in the sense that ~ it is circumscribed by the object of law that confers it. After laying down the scope, this Court heal that the order of dissolution passed by President Ziaul Haq was not sustainable for following reasons. Firstly, that there was no material in support of the grounds. Secondly, that the Caretaker Prime Minister was not appointed. Thirdly, that ,the oath of Ministers was altered. Having held so, relief in the writ jurisdiction was refused on the ground that it was discretionary and could not be granted in national interest which had preference over the interests of the individuals. It was so held for the reasons. Firstly, that the dissolution of the National Assembly by the President as contemplated under Article 58(2)(b) of the Constitution in essence is appeal from legal to political sovereign as. the right of dissolution is right of appeal to the people. Secondly, that Mr. Muhammad Khan Junejo, the deposed Prime Minister, did not turn to_ the Court but had decided to seek the mandate of the people. Thirdly, that the whole Governmental machinery was in motion and in full gear making preparations for holding of elections. Fourthly, that the National Assembly, which was dissolved, was initially elected on non-party basis in which Pakistan People's Party and other mainstream political parties did not participate on account of ban and in the fresh elections to be held all the political parties could participate. It was in such circumstances and for such reasons that the order of dissolution was declared as illegal and unsustainable in law and even then relief under the Constitutional jurisdiction was not allowed in the best national interest to enable the people, who are political sovereign, to exercise their right of vote and elect their public representatives for the Assemblies.

151. The salient features highlighted in the judgment of Muhammad Saifullah Khan's case are that the discretion of the President is not absolute but is to be deemed as qualified one and is circumscribed by the object of law that confers it. Secondly, that the Court can go into the question whether the discretion is exercised justifiably or not and whether there is material in support of the grounds. In other words discretion is put in strait jacket and is made open to judicial review. Thirdly, emphasis is on the fact that exercise of discretion to dissolve the National Assembly is closely co-related with appeal to the electorate which is to be done within 90 days as provided under Article 48(5) of the Constitution. It may be mentioned here in passing that in the case of Haji Muhammad Saifullah, President Ziaul Haq read the proclamation of dissolution which contained only three grounds to the effect firstly, that law and order in the country had broken down resulting in tragic loss of innumerable valuable lives as well as loss of property. Secondly, the honour and security of the citizens of Pakistan had been rendered totally unsafe, Thirdly, that situation had arisen in which the Government of the Federation could not be carried on in accordance with the provisions of the Constitution. In fact, no material was produced in support of these grounds and no instances were quoted. In such circumstances the Court came to the conclusion that the order of dissolution could not be upheld but the National Assembly and the Government were not restored and in the national interest preference was given to holding of elections in which all the political parties could participate and for which the Governmental machinery was in full gear.

152. Second time the power under Article 58(2)(b) was exercised by President Ghulam Ishaq Khan who by Proclamation dated 6th August, 1990 dissolved the National Assembly and dismissed the Government of Prime Minister Benazir Bhutto who did not challenge the order of dissolution in the Court herself but it was made by one of the Ministers namely, Khawaja Ahmad Tariq Rahim who filed writ petition in the Lahore High Court which was dismissed and the petition for leave to appeal was filed in the Supreme Court which was dismissed. The decision of the Supreme Court is reported as Kh. Ahmad Tariq Rahim v. Federation of Pakistan (PLD 1992 SC 646). In this case, in the order of dissolution passed by the President, five main grounds were specified and material was also produced in support thereof. The grounds were: Firstly, that there was scandalous horse-trading for political gain in the National Assembly; secondly, that the Federal Government bypassed the Council of Common Interests and National Finance Commission; thirdly, that there was corruption and nepotism in the Federal Government and its authorities and corporations including banks; fourthly, that the Federal Government had failed to protect the Province of Sindh from internal disturbances; and fifthly, that the Government of the Federation violated the Constitution by ridiculing the superior Judiciary and by misusing the

statutory corporations and banks for political ends and personal gaints. The case was heard by the Full Bench of 12 Judges of this Court and by majority (10 to 2) the order of dissolution was upheld after consideration of the material produced In support of the grounds mentioned in the order. The leading judgment was authored by Shaft-ur-Rehman, J. (as he then was) and the relevant paragraph drawing conclusions is reproduced verbatim as under;-

"The preamble to our Constitution prescribes that 'the State shall exercise its powers and authority through the chosen representatives of the people'. Defection of elected members has many vices. In the first place, if the member has been elected on the basis of a manifesto, or on account of his affiliation with a political party, or on account of his particular stand on a question of public importance, his defection amounts to a clear breach of confidence reposed in him by the electorate. If his conscience dictates to him so, or he considers it expedient the only course open to him is to resign to shed off his representative character which he no longer represents and to fight a reelection. This will make him honourable politics clean, and emergence of principled leadership possible. The second, and more important, the political sovereign is rendered helpless by such betrayal of its own representatives. In the normal course, the elector has to wait for years, till new elections take place, to repudiate such a person. In the meantime, the defector flourishes and continues to enjoy all the worldly gains. The third is that it destroys the normative moorings of the Constitution of an Islamic State. The normative moorings of the Constitution prescribe that 'sovereignty over the entire universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust' and the State is enjoined to 'exercise its powers and authority through the chosen representatives of the people'. An elected representative who defects his professed cause, his electorate, his party, his mandate, destroys his own representative character. He cannot on the mandated Constitutional prescription participate in the exercise of State power and authority. Even by purely secular standards carrying on of the Government in the face of such defections, and on the basis of such defections, is considered to be nothing but 'mockery of the democratic Constitutional process'. The other enumerated evils contained in first ground precede, accompany or follow the defection. That there had been taking defections has not been seriously disputed, nor the fact that the defectors were quite often rewarded with posts and prizes. As regards the second ground, we find sufficient correspondence on record to indicate that persistent requests were made by the Provinces for making functional the Constitutional institutions like Council of Commons Interests, National Finance Commission with a view to sort out disputes over claims and policy matters concerning the 'Federation and the Federating Units as such. In spite of the intercession of the President, no heed was paid, Constitutional obligations were not discharged thereby jeopardizing the very existence and sustenance of the Federation.

It is true that some of the grounds like (c), e(ii) and e(iii) may not have been independently sufficient to warrant such an action. They can, however, be invoked, referred to and made use of alongwith grounds more relevant like (a) and (b) which by themselves are sufficient to justify the action taken."

153. For the third time this Court got again an opportunity of examining the scope of Article 58(2)(b) of the Constitution when President Ghulam Ishaq Khan vide Proclamation, dated 18th April, 1993 dismissed the Government of Prime Minister Mian Muhammad Nawaz Sharif and dissolved the National Assembly. A Constitutional petition was filed directly in this Court under Article 184(3) of the Constitution which was heard by Full Bench of 11 Judges. By majority (10. to 1), it was held that the order of dissolution was not sustainable and was struck down and in consequence the Government of Mr. Nawaz Sharif and the National Assembly were restored. So far as the question with regard to the scope of Article 58(2)(b) is concerned, it was held by this Court that discretion of the President is not absolute but is deemed to be qualified one and is circumscribed by the object of law that has conferred it. Further, opinion can be formed objectively on the basis of material which must have nexus with the grounds of the order of dissolution. In the case of Mian Muhammad Nawaz Sharif (supra) one very glaringly distinguishable feature is that during the hearing, the Attorney-General for Pakistan conceded very candidly that the main reason which induced the President to dissolve the National Assembly was the speech delivered on April 17, 1993 by the Prime Minister on Radio and Television. In the said speech the Prime Minister accused the Presidency of hatching conspiracies with disgruntled public representatives to destabilize the Federal Government. According to the Attorney-General, the speech of the Prime Minister amounted to subversion of the Constitution and was nothing short of call for agitation against the head of State. In the circumstances, there was stalemate and dead-lock between the two highest Constitutional Functionaries of the State, rendering impossible the carrying on of the Federation in accordance with the provisions of the Constitution, hence the President had no alternative but to dissolve the National Assembly. Mr. Justice Dr. Nasim Hasan Shah, Chief Justice (as he then was), in his leading judgment has observed at page 562 of the report that the plea taken on behalf of the President was not tenable and was based upon incorrect appreciation of the role assigned to the President in the Constitution and of the powers vested in him after the Eighth Amendment was inserted in the Constitution. Highlighting the provisions in the Constitution after introduction of the Eighth Amendment increasing the powers of the President for making appointments in his discretion of the Chief Election Commissioner, the Chairman, Federal Public Service Commisi5ion and the Chairman Joint Chiefs. of Staff Committee, the learned Chief Justice arrived at final conclusion which is contained in paragraphs at page 567 of the report which are reproduced as under:-

"Our Constitution, in fact, is designed to create a parliamentary democracy. The President in this set-up is bound to act, in the exercise of his functions, in accordance with the advice of the Cabinet or the Prime Minister (Article 48(1)) and the Cabinet in its turn is collectively responsible to the National Assembly (Article 91(4) though the Prime Minister holds office at the pleasure of he President. However, the President cannot remove him from his office as long as he commands
the confidence of the majority of the members of the National Assembly (Article 91(5)). In view of these provisions, the system of Government envisaged by the Constitution of 1973 is of the parliamentary type wherein the Prime Minister as Head of the Cabinet is responsible to the Parliament, which consists of the representatives of the nation.

It is manifest, therefore, that in the scheme of our Constitution the Prime Minister in administering the affairs of the Government is neither answerable to the President nor in any way subordinate to him. In formulation of the policies of his Government and in the running of its affairs, the Prime Minister is answerable only to the National Assembly and not to the President. Indeed, it is the President who is bound by the advice of the Prime Minister or the Cabinet in all matters concerning formulation of policies and administration of the affairs of the Government and not the other way about, as appears to have been mistakenly understood. Undoubtedly, the President may require the Cabinet or the Prime Minister, as the case may be, to reconsider any advice tendered to him but the President is bound to act on the advice tendered, even if it be the same, after consideration. Undoubtedly, both are expected to work in harmony and in close collaboration for the efficient running of the affairs of the State but as their roles in the

Constitution are defined, which do not overlap, both can exercise their respective functions unhindered and without bringing the machinery of the Government to a standstill. Despite personal likes or dislikes, the two can co-exist Constitutionally. Their personal likes or dislikes are irrelevant so far as the discharge of their Constitutional obligations are concerned. Despite personal rancor, ill-will and incompatibility of temperament, no dead-lock, no stalemate, no breakdown can arise if both act in accordance with the terms of the Oath taken by them, while accepting their high office. They have sworn:-

"not to allow their personal interest to influence their official conduct or their official decisions."

And taken Oath:-

"to do right in all circumstances, to all manner of people, according to law, without fear or favour, affection or ill-will."

It is, therefore, manifest that in the case of Mian Muhammad Nawaz Sharif (supra) the Attorney-General for Pakistan himself conceded that the only base for order of dissolution was the speech of the Prime Minister, hence other grounds mentioned in the said order of dissolution became insignificant particularly when the Court has given clear cut majority opinion (10 to 1) with regard to the roles to be played by the President and the Prime Minister in the Constitutional scheme which contemplates parliamentary form of Government with cardinal principle contained in Article 48 that the advice of the Prime Minister is binding on the President. It was for this reason that we had said specifically in our short order announced by us earlier in this case that the petitioner is not entitled to the benefit of restoration of her Government as per ratio in the case of Mian Muhammad Nawaz Sharif (supra) for the reason that in that case the Attorney-General pressed into service only one ground, i.e. speech of the Prime Minister, while in the case of the petitioner several grounds have been specified in the order of dissolution in support of which voluminous record containing material and documents has been produced. It is the Material in support of the grounds which is to be considered in each case and which may vary from case to case at the time of evaluation by the Court.

154. At this stage it would be pertinent for me to point out that 1 have been consistent in my interpretation of Article 58(2)(b) and its limits and scope. I have always said so in many judgments that Article 58(2)(b) though added by the Eighth Amendment is integral part of the Constitution and could be removed or repealed by the Parliament according to the procedure prescribed in the Constitution. Apart from that, in each case of dissolution of the Assembly by the President and dismissal of the Government of the Prime Minister, I have stated that .the discretion is not absolute but is qualified and the President has to be objective in assessment of the situation and everything depends upon the material which is produced in support of the ground. In the case of Khawaja Ahmad Tariq Rahim (supra) I considered the material in detail in support of each ground and came to the conclusion that the material in support of each ground was insufficient and the President acted with mala fide intention. In the case of Mian Muhammad Nawaz Sharif (supra) I discussed the material in support of each ground and concluded that it was sufficient and further I was of the view that the speech of the Prime Minister on electronics media was an admission in itself that the Federal Government could not be run in accordance with the provisions of the Constitution on account of deep-seated ill-will and distrust between the President and the Prime Minister but on both these occasions contrary view of the majority prevailed which is binding as is correctly laid down.

155. The question whether advice of the Prime Minister is binding on the President in respect of appointments of Judges of the superior Courts came up for detailed consideration in the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84). In fact there was Reference from the President seeking opinion of this Court under Article 186 of the Constitution under the Advisory Jurisdiction for answer to the same question which had become necessary after the announcement of judgment of this Court in Constitutional Petition No.29 and Civil Appeal No.805 of 1995 announced on 20th March, 1996, which judgment is reported as Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324). In that case, by majority decision (4 to 1), it was held that the word "consultation" used in Articles 177 and 193 of the Constitution means consultation which is effective, meaningful, purposive, consensus-oriented, leaving no room for complaint of arbitrainess or unfair play. The opinion of the Chief Justice of Pakistan and the Chief Justice of the High Court as to the fitness and suitability of a candidate for judgeship is entitled to be accepted in the absence of very sound reasons to be recorded by the President/Executive. After the announcement of the judgment in the case of Appointment of Judges, there were some difficulties, hence the President felt constrained to make a Reference to this Court seeking opinion whether in such appointments the advice of the Prime Minister is binding on him or not. Both Constitutional Petitions 23 and 54 and Reference No.2 of 1996 are governed by judgment, dated 4th December, 1996 which is published as Al-Jehad Trust v. Federation of Pakistan and Reference No.2 of 1996 (PLD 1997 SC 84). The Constitutional petitions and the Reference were heard by a Bench of five Judges of this Court and unanimous finding is that the advice of the Prime Minister to the President as contemplated under Article 48 of the Constitution is binding on the President in respect of appointment of Judges in the superior Courts as provided under Articles 177, 193 and 197 subject to the judgment in the case of Appointment of Judges in which definition of the word "consultation" is given by the Court. The decision of this Court reported in PLD 1997 SC 84 is also consistent with the line of reasoning adopted in Mian Muhammad Nawaz Sharif case (supra) in which it was held that the Constitution of 1973 contemplated parliamentary form of Government in which the Prime Minister is the Head of the Government and advice of the Prime Minister as contemplated under Article 48 is binding on the President.

156. Mr. Aitzaz Ahsan, learned counsel for the petitioner, contended before us that power under Article 58(2)(b) can be exercised by the President only when situation has arisen of same magnitude and gravity as in 1977 when there was complete break-down of Constitutional machinery and martial law had to be imposed. It was further submitted by him that this was so for the reason that Article 58(2)(b) was added to the Constitution by the Eighth Amendment in 1985 to strike balance between the powers of the President and the Prime Minister so that the President should be able to dismiss the Government of the Prime Minister and dissolve the National Assembly in a situation in which the Constitutional machinery has failed warranting or justifying imposition of martial law. According to the learned counsel Article 58(2)(b), being substitute of martial law, should be invoked in very extreme situation in which imposition of martial law is justified as the situation was in 1977 when there was complete break-down of Constitutional machinery and people had come out on streets in protests and agitation and there were strikes and public and private property was damaged and so many persons were killed. Mr. Aitzaz Ahsan, in support of the proposition, has drawn our, attention to the case of Begum Nusrat Bhutto v. Chief of Army Staff (PLD 1977 SC 657) with relevant portion at page 701 of the report. At this page we find observations of the Court made on the basis of the material brought to the notice of the. Court by M/s A. K. Brohi and

Sharifuddin Pirzada appearing for the respondents. The material produced was in the shape of official reports, decisions and newspapers cuttings of which judicial notice was taken. The material confirmed the events which are described at pages 701 and 702 of the report and reproduced as under:-

"(1)????? That from the evening of the 7th of March 1977 there were widespread allegations of massive official interference with the sanctity of the ballot in favour of candidates of the Pakistan People's Party;

(2)??????? That these allegations, amounting almost to widespread belief among the people, generated a national wave of resentment and gave birth to a protest agitation which soon spread from Karachi to Khyber and assumed very serious proportions;

(3)??????? That the disturbances resulting from this movement became beyond the control of the civil armed forces;

(4)??????? That the disturbances resulted in heavy loss of life and property throughout the country;

(5)??????? That even the calling out of the troops under Article 245 of the Constitution by the Federal Government and the consequent imposition of local Martial Law in several important cities of Pakistan, and the calling out of troops by, the local authorities under the provisions of the Code of Criminal Procedure in smaller cities and towns did not have the desired effect, and the agitation continued unabated;

(6)??????? That the allegations of rigging and official interference with elections in favour of candidates of the ruling party were found to be established by judicial decisions in at least four cases, which displayed a general pattern of official interference;
(7)??????? That public statements made by the then Chief Election Commissioner confirmed the widespread allegations made by the Opposition regarding official interference with the elections, and endorsed the demand for fresh elections;

(8)??????? That in the circumstances, Mr. Z. A. Bhutto felt compelled to offer himself to a referendum under the Seventh Amendment to the Constitution, but the offer did not have any impact at all on the course of the agitation, and the demand for his resignation and for fresh elections continued unabated with the result that the Referendum plan had to be dropped;

(9)??????? That in spite of Mr. Bhutto's dialogue with the leader of the Pakistan National Alliance and the temporary suspension of the Movement against the Government, officials charged with maintaining law and older continued to de apprehensive that in the event of the failure of the talks there would be a terrible explosion beyond the control of the civilian authorities;

(10) That although the talks between Mr. Bhutto and the Pakistan National Alliance leadership had commenced on the 3rd of June, 1977, on the basis of his offer for holding fresh elections to the National and Provincial Assemblies, yet they had dragged on for various reasons, and as late as the 4th of July, 1977, the Pakistan National Alliance leadership, was insisting that nine or ten points remained to be resolved and Mr. Bhutto was also saying that his side would similarly put forward another ten points if the General Council of P.N.A. would not ratify the accord as already reached on the morning of the 3rd of July, 1977;

(11) That during the crucial days of the dead-lock between Mr. Z. A. Bhutto and the Pakistan National Alliance leadership the Punjab Government sanctioned the distribution of fire-arms licences on a vast scale, to its party members, and provocative statements were deliberately made by the Prime Minister's Special Assistant, Mr. G. M. Khar, who had patched up his differences with the Prime Minister and secured this appointment as late as the 16th of June, 1977; and

(12) That as a result of the agitation all normal economic, social and educational activities in the country stood seriously disrupted, with incalculable damage to the nation and the country."

157. We are of the view that in the case of Begum Nusrat Bhutto (supra) question of attraction of Article 58(2)(b) was not involved because at that time there was no such provision in the Constitution of 1973 while on the other hand situation had arisen in the manner described in the reported case in which the Constitutional machinery find failed, hence martial law was imposed, validity of which was challenged before the Supreme Court. It was held by the Supreme Court that on the basis of doctrine of State necessity, it was justified and treated as Constitutional deviation because this time with the imposition of martial law the Constitution was held in abeyance and not abrogated as it was in the first two cases when martial law was imposed. The promise was made by the Chief Martial Law Administrator to hold general elections as soon as possible. After the judgment of this Court in the reported case mentioned above, the Constitution was revived and the elections were held and thereafter by Eighth Amendment, Article 58(2)(b) was added. No doubt the situation in 1977 was very dangerous and the Constitutional machinery had failed and there was no other way out nor any remedy was available in the Constitution, hence martial law was imposed.

158. Article 58(2)(b) provides a remedial measure which h takes care of situation in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. The remedy is that the President can dismiss the Government of the Prime Minister and dissolve the National Assembly and hold elections within 90 days. In such circumstances; against the dissolution of the National Assembly, appeal is heard by the people who can cast their votes and bring back the same Government and the same National Assembly or not and elect other members, who can bring about or set up new Government. All this is done within 90 days. Now the question arises as to who is going to decide whether such situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. This is to be decided by the President whose Constitutional role and supervisory powers have been increased and improved by the Eighth Amendment. As President, he is consulted in Governmental affairs and the Prime Minister is supposed to apprise him of all the legislative measures which are proposed to be taken by the Government. It is the duty of the Prime Minister under Article 46 to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation. In Article 58(2)(b) the words stalemate, dead-lock or complete breakdown of Constitutional machinery are not mentioned and what is mentioned in very clear language is the fact that the situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. Shafi-ur-Rehman, J. (as he then was) in the case of Federation of Pakistan v.

Haji Muhammad Saifulleh Khan has construed the import of Article 58(2)(b) at pages 212 and 213 of the report and the relevant paragraph is reproduced as under:-

"The expression 'cannot be carried on' sandwiched as it is between 'Federal Government' and 'in accordance with the provisions of the Constitution', acquires a very potent, a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of the progress, the shade of the quality or the degree of the performance or the quantum of the achievement. It concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution. The historical perspective in which such a provision found a place in our Constitution reinforces this interpretation."

In the case of Khawaja Ahmad Tariq Rahim v. Federation of Pakistan, the same learned Judge while interpreting Article 58(2)(b) has stated at page 664 of the report as under:-

"In Haji Muhammad Saifullah Khan's case (PLD 1989 SC 166) our Constitutional provision has received full attention and its meaning and scope authoritatively explained and determined. It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution creating the impression that the country is governed not so much by the Constitution but by the methods extra-Constitutional."

The same learned Judge held in the case of Mian Muhammad Nawaz Sharif v. Federation of Pakistan (PLD 1993 SC 473) with relevant portion at page 579 from which pertinent portion is reproduced as under:-

"Article 58(2)(b) of the Constitution empowers the executive head to destroy the Legislature and to remove the chosen representatives. It is an exceptional power provided for an exceptional situation and must receive as it has in Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others (PLD 1989 SC 166) the narrowest interpretation."

159. In the case of Nawaz Sharif (supra), Chief Justice Dr. Nasim Hasan Shah (as he then was) in his judgment has held that for interpretation of Article 58(2)(b) of the Constitution, the view taken in Saifullah's case is to be adopted which is to the effect that the President can dismiss the Government and dissolve the National Assembly in his discretion only when there is complete breakdown of Constitutional machinery. This judgment is singed by two Judges, namely, Abdul Qadeer Choudhry, J. (as he then was) and Fazal Ilahi Khan, J. Saad Saood Jan, J. (as he then was) has written his own note but has agreed with the majority view that the dissolution order was not sustainable as the preconditions were not satisfied. Ajmal Mian, J., in his separate note has agreed on the question of scope of Article 58(2)(b) with Shaflur Rehman, J. (as he then was) and held that the law is already laid down on the subject in the judgments in the case of Saifullah and Tariq Rahim and also in the case of Federation of Pakistan v. Aftab Ahmad Khan Sherpao (PLD 1992 SC 723). Muhammad Afzal Lone, Muhammad Rafiq Tarir, Saleem Akhtar, JJ. (as they then were) have given finding in favour of complete breakdown of Constitutional machinery for invocation of Article 58(2)(b) as has been held in Saifullah's case. Saiduzzaman Siddiqui, J. has held in his separate note that no hard and fast rule can be made as each case is to be decided on its own facts and after keeping in view the findings in both the cases of Muhammad Saifullah and Tariq Rahim and has reached the conclusion which is reproduced as under:-

"From the above discussion it would appear that the expression, 'the Government of Federation cannot be carried on in accordance with the provisions of the Constitution' in Article 58(2)(b) (supra) contemplates a situation where the affairs of the Government are not capable of being run in accordance with the provisions of the Constitution either on account of persistent, deliberate and continued violation of various provisions of the Constitution by the Government in power, or on account of some defect in the structure of the Government, its functioning in accordance with the provisions of the Constitution is rendered impossible. The use of expression 'cannot be carried on' necessarily imports an element of impossibility and disability and refers to a irretrievable and irreversible situation. An unintentional and bona fide omission to follow a particular provision of the Constitution, not resulting in the breakdown of Government machinery or creating a situation of a stalemate or deadlock in the working of the Government, will not be covered in the situations contemplated under Article 58(2)(b) of the Constitution".

160. Constitution is the supreme law of the land to which all laws are subordinate. Constitution is an instrument by which Government can be controlled. The provisions in the Constitution are to be construed in such a way which promotes harmony between different provisions and should not render any particular provision to be redundant as the intention is that the Constitution should be workable to ensure survival of the system which is enunciated therein for the governance of the country. It is held in opinion of the Supreme Court in Special Reference No. l of 1957 (PLD 1957 SC 219) that effect should be given to every part and every word of the Constitution. Hence, as a general rule, the Courts should avoid a construction which renders any provision meaningless or inoperative and must lean in favour of a construction which will render every word operative rather than one which may make some words idle and nugatory. In support of the proposition, reference can also be made to the cases of State v. Zia-ur-Rehamn (PLD 1973 SC 49) and Federation of Pakistan v. Saeed Ahmad Khan (PLD 1974 SC 151). In the case of Nawaz Sharif also, on the subject of interpretation of the Constitution, it is held that, while interpretation of the Constitution, it is held that, while interpreting fundamental rights, the approach of the Court should be dynamic, progressive and liberal keeping in view ideals of the people, socio-economic and politico-cultural values which in Pakistan are enshrined in the Objectives Resolution so as to extend the benefit of the same to the maximum possible. In the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324), it is held that approach of the Court while interpreting a Constitutional provision has to be dynamic, progressive and oriented with the desire to meet the situation, which has arisen, effectively. Court's efforts should be to construe the provision broadly, so that it may be able to meet the requirement of ever changing society. General words cannot be construed in isolation but the same are to be construed in the context in which they are employed. In the case of Khalid Malik v. Federation of Pakistan (PLD 1991 Karachi 1) on the subject of interpretation of the Constitution a very pertinent observation is made at page 68 which is reproduced as under:-

"The Constitution is a living organism and has to be interpreted to keep alive the traditions of the past blended in the happening of the present and keeping an eye on the future. Constitution is the symbol of statehood keeping united people of different races,

diverse cultural, social, economic and historical traditions. It provides a method of legitimacy to the Government. It is the power behind the organs and institutions created by it. Constitution must be interpreted keeping in view the entire canvass of national fabric be it political, social, economic or religious."

161. Article 58(2)(b) was inserted in the Constitution on 11-11-1985 by the Constitution (Eighth Amendment) Act, 1985. The . background of this amendment was that President Ziaul Haq wanted to strike balance between the powers of the President and the Prime Minister, hence some extra-powers were given to he President to be used by him in his own discretion including the abovementioned provision. President Ziaul Haq himself invoked Article 58(2)(b) and exercised power thereunder and dismissed the Government of Prime Minister Muhammad Khan Junejo who was nominated by him. At the time when this discretion was exercised by the President, the situation was not like 1977 in which the people had come out on the streets and there were riots, protests and strikes in which 241 civilians were killed and 1195 were injured and on a very large scale there was destruction of property including shops, hotels, banks, cinemas and railway bridges. On the other hand Prime Minister Muhammad Khan Junejo had just returned to Islamabad from the foreign tour of China, South Korea and Philippines, which was very successful, when the reporters of the newspapers were informed that the President was addressing a press conference and they rushed there where the President read out the proclamation under Article 58(2)(b) dismissing the Government of Mr. Muhammad Khan Junejo and dissolving the National Assembly. Likewise on 6-8-1990 the Government of Mohtrama Benazir Bhutto was dismissed and the Assembly was dissolved by President Ghulam Ishaq Khan and at that time also the situation was not like in 1977 and the people had not come out on the streets. In the same way, President Ishaq Khan dismissed the Government of Prime Minister Nawaz Sharif on 18-4-1993 but the people had not come out in the streets and the situation was not like the one in 1977. In any case what is to be seen is the language used in Article 58(2)(b) which provides that the President may dissolve the National Assembly in his discretion where in his opinion a situation has arisen in which the Government of the Federation cannot be carried on in accordance with he provisions of the Constitution and an appeal to the electorate is necessary. It is manifest that in the language used in this provision, there is no mention of total breakdown of Constitutional machinery or a deadlock or stalemate, but these words have been used in the judgements in Saifullah and Tariq Rahim's cases. In Saifullah's case a very strict view has been taken that this provision can be invoked only when- there is complete breakdown of Constitutional machinery, while in Tariq Rahim's case somewhat milder view is taken that this provision can be invoked when there is actual or imminent breakdown of Constitutional machinery or there is a failure to observe numerous provisions of the Constitution creating an impression that the country is governed not so much by the Constitution but by methods extra-Constitutional.

162. Both these interpretations in the two cases mentioned above are reconcilable as per the meaning of the words, dead-lock, stalemate and breakdown in the dictionaries. The meaning of these three words in two English dictionaries is as under:-

BBC English Dictionary?? Chambers' Twentieth Century
by HaMer Collins?????????????????????????????????? ?????????????????????????? Dictionary by A.M. Macdonald
?? OBE BA (Oxon)

Breakdown?? Breakdown

When a machine or a?? A stoppage through accident

vehicle breaks down, it?? collapse: disintegration.
stops working. When a
system, plan or dissolution
breaks down, it fails
because of a problem or
disagreement.

Deadlock?? Deadlock

A state of affairs in an?? The case when matters have become
argument or dispute in?? so complicated that all is at a
which neither side is?? complete standstill
willing to give in, and so
no agreement can be
reached. The meeting
between management and
unions ended in dead-lock.

Stalemate?? Stalemate

A situation in which neither?? An unsatisfactory draw resulting
in an argument or contest?? when a player not actually in check
can win or in which no?? has no possible legal move (chess):
progress is possible. Five?? an inglorious deadlock.
hours of talks between the
two Governments have
failed to break the stalemate
over Northern Ireland.

It therefore, appears that stalemate and dead-lock mean more or less same thing, while breakdown can be on account of stalemate or dead-lock, and stalemate and dead-lock can include or can occur on account of breakdown as .well. Hence meaning of these words are interchangeable. Therefore, the views taken in both the cases of Saifullah and Tariq Rahim can be read in conjunction with each other while interpreting Article 58(2)(b) and in that connection the Court has to see whether there is enough material in support of the grounds for dissolution and the President was right in his opinion and has exercised his discretion justifiably and in that exercise the President is not to be equated with Court of law but it can be expected from him that he would act within the rules of prudence and fairplay. The correct interpretation will be that which is made keeping in view the findings in both the cases of Haji Saifullah and Tariq Rahim on this point. Even otherwise this is a remedial provision in the Constitution which prevents the country from plunging into the disaster as was witnessed in 1977 and if the President is of the opinion that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution, then this provision can be invoked because this is a much better provision to prevent martial law. After the dismissal of the Government remedy of elections is available, and such elections can be held within 90 days in which the people have to return their verdict on the question of dissolution of the Assembly and dismissal of the Government. The order of dissolution is also subject to judicial review of the Court.

163. Now if the language used in Article 58(2)(b) is to be constrned liberally not in favour of the President but against him who is supposed to exercise his discretion as allowed by the Constitution, even then in every situation in which it is not possible for the Government of the Federation to be carried on in accordance with the provisions of the Constitution, there will be a stalemate, dead-lock and breakdown of the Constitutional mechanism which may be not on the same lines and not on the same scale and not with same gravity and not of the same magnitude as in 1977 which warranted imposition of martial law. For example the Supreme Court has rendered a judgment giving interpretation of Articles of the Constitution relating to appointment of Judges in the superior Courts and it is held that the President has to act on the advice of the Prime Minister in respect of appointments of Judges in the superior Courts subject to the judgment of the Supreme Court and if the Prime Minister refuses to comply with the judgment, then the situation can be called a dead-lock because the Prime Minister by not complying with the judgment also violates Article 190 of the Constitution which envisages that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. The Prime Minister also violates his/her oath of office which is to the effect that "I will discharge my duties and perform my functions, honestly, to the best of my ability, faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan and the law? That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan". If the Prime Minister ridicules the judiciary, then there is violation of Article 63(1)(g) which does not allow propagating any opinion affecting the integrity or independence of the judiciary of Pakistan which amounts to bringing into ridicule the judiciary or the Armed Forces of Pakistan. If such thing is done by any member of the Parliament, then
such member could be ,disqualified from being elected as member of the Parliament as is contemplated under Article 63(1) of the Constitution. Other examples are telephone tapping, extra-judicial killings and so on, which can give rise to the impression that the country is governed not so much by the Constitution but the methods extra-constitutional. In every case what is to be seen is the material in support of the grounds mentioned in the order of dissolution. In the instant case under consideration before us. more than sufficient material has been produced which has been considered by us in great detail. In this context an important and pivotal point is that the Prime Minister as Head of the Government has to see that the Government of the Federation is carried on in accordance with the provisions of the Constitution and if this is not done, then it would amount to failure of Constitutional machinery creating deadlock and stalemate.

164. There is sufficient material available in the record produced by the respondents in support of the following grounds mentioned in the order of dissolution:-

(1)??????? Extra-judicial killings.

(2)??????? Non-implementation of the judgment of the Supreme Court in the case of Appointment of Judges.

(3)??????? Harassment of Judges by introduction of the Bill in the National Assembly proposing to send a Judge on forced leave if 15 per cent of the total members of the National Assembly moved a complaint of misconduct against the Judge.

(4)??????? Non-separation of Judiciary from the Executive as required under Article 175(3) of the Constitution within the time stipulated which was also set by the Supreme Court in the judgment.

(5)??????? Violation of Article 14 by tapping the telephones of the Judges, leaders of political parties and high-ranking military and civil officials.

(6)??????? Corruption in the Government Departments and Corporations, and making of appointments in violation of rules and regulations.

We have declined to consider the material in respect of the grounds on the subject of murder of Mir Murtaza Bhutto and sale of Burma Castrol Shares in P.P.L. and Bone/PPL Shares in Qadirpur Gas Field for the reason that the cases are pending in the Courts of law and, therefore, such matters are sub judice. We have excluded from consideration the material in support of the allegation against Mr. Hakim Ali Zardari for having purchased property in a foreign country which has no nexus with the Government of the petitioner as the transactions took place earlier than that period. We have also held that so far allegation against Mr. Nawaz Khokhar and his inclusion in the Cabinet in spite of resistance and opposition by the Interior Minister is concerned, the material is not sufficient and this ground in itself is not adequate for dissolution of National Assembly but it can be considered alongwith the material produced on the other grounds as it does not promote and advance good governance.

165. Lastly, we take up the question of maintainability of this petition which has been directly filed in this Court under Article 184(3) of the Constitution. The objection with regard to the maintainability was taken up for hearing, but it was decided that the same can be heard alongwith the merits as was so held in the case Mian Muhammad Nawaz Sharif (supra). This petition is filed by

the petitioner who was Prime Minister and her Government was dismissed and the National Assembly was dissolved vide Proclamation, dated 5th November, 1996 under Article 58(2(b)'of the Constitution validity of which has been challenged. The petitioner has claimed infringement of her fundamental right provided under Article 17 of the Constitution, which pertains to fundamental right of freedom of association. Clause (2) of Article 17 provides that every citizen, not being in service of Pakistan, shall have the right to form or to be a member of a political party subject to any reasonable restrictions imposed by law. Objection was raised that the fundamental right under Article 17(2) is limited to the right of a citizen to -form or be a member of a political party and nothing more than that. This objection was raised in the case of Mian Muhammad Nawaz Sharif (supra) and was rejected on the ground that there is corresponding need to re-evaluate the essence and soul of fundamental rights as originally provided in the Constitution, which are to be construed in consonance with the changed conditions of the society and must be viewed and interpreted with a vision to future. On this principle of interpretation the import of rights in U.S.A. Constitution on the subjects of Right of Assembly and Right of Association has been expanded and enlarged by the U.S. Supreme Court on the basis of doctrine of penumbra which also can be called judicial activism. This principle was acted upon in the case of Ms. Benazir Bhutto v. Federation of Pakistan PLD 1988 _'"_' 416 and the scope of Article 17(2) was extended from right to form or be a member of a political party to also to operate as a political party. In other words it was held that functioning is implicit in formation of the party. In the second case of Ms. Benazir Bhutto v. Federation of Pakistan (PLD 1989 SC 66) the fundamental right in Article 17(2) of the Constitution was extended from the right to form or be a member of a political party to the right to participate in and contest election. In the case of Mian Muhammad Nawaz Sharif (supra) this fundamental right as contemplated under Article 17(2) of the Constitution has been extended from the right to form or be a member of a political party to the right of that political party to contest elections under its banner and after successfully contesting the elections the right to form the Government and to complete its normal tenure and if it is removed before the completion of such tenure, then it would constitute infringement of this fundamental right. In the case of Mian Muhammad Nawaz Sharif (supra), it is held that the petition in the Supreme Court was maintainable. Additionally, we are of the view that for infringement of fundamental right as contained in Article 17(2) of the Constitution in the extended form, writ petition in the High Court can also be filed and in spite of availability of remedy in the forum of the High Court, a petition directly filed in the Supreme Court under Article 184(3) is also maintainable for the reason that dissolution of National Assembly under Article 58(2)(b) and dismissal of the Government is to be followed immediately with general elections to be held within 90 days as contemplated under Article 48(5) of the Constitution and in-between the two events the time left is only 90 days in which the question of validity of order of dissolution is to be decided by the competent forum for which direct petition in the Supreme Court is more ideal. Convenient and efficacious. In the case of Kh. Ahmad Tariq Rahim v. Federation of Pakistan and others (PLD 1992 SC 646) the order of the dissolution was challenged in the High Court and the petition was dismissed and against the said decision of the High Court petition for leave to appeal was filed in the Supreme Court which came to be heard after expiry of 90 days within which the elections were held and in consequence whereof another Government was formed and the petition was disposed of by this Court later in point of time after elections and formation of another Government. Such a situation could have been avoided if the petition had been filed directly in the Supreme Court.

166. For the facts and reasons stated above, we dismiss the petition for the reason that sufficient material has been produced by the respondents in support of the grounds in the order of the dissolution. Material is sufficient in support of the grounds specifically mentioned above and collectively sufficient for all the grounds except where expressly excluded to justify the action of the President under Article 58(2)(b).

167. In the end. before we part with this judgment, we express our profound appreciation of very able and valuable assistance rendered by Mr. Aitzaz Ahsan, learned counsel for the petitioner, Mr Khalid Anwar, learned counsel for the respondents, Mr Shehzad Jehangir, learned Attorney-General for Pakistan, and all other learned Advocates who appeared in this case. We also have a word of praise for the members of the staff who rendered very valuable assistance to the Court painstakingly by working overtime outside the normal working hours.

(Sd.)

Sajjad Ali. Shah, C.J.

(Sd.)

Fazal Ilahi Khan, J

I have already recorded my reasons separately

(Sd.)
Irshad Hasan Khan, J

(Sd.)
Raja Afrasiab Khan, J

MUNAWAR AHMED MIRZA, J.---I agree with the conclusions and observe that material on record in conjunction with each ground enumerated above, accumulatively constituted adequate justification for the President to dissolve National Assembly; by virtue of power contained in Article 58(2)(b) of the Constitution.

(Sd.)

Munawar Ahmed Mirza, J.

SALEEM AKHTAR, J.--Past midnight on 5th November, 1996 at about 1-00 a.m. the President of Pakistan passed order under Article 58(2)(b) of the Constitution of the Islamic Republic of Pakistan, 1973, dissolving the National Assembly and consequently the Prime Minister and the Cabinet ceased to hold office. Thereafter, the orders for dissolution of the Provincial Assemblies were

also passed by the Governors of the Provinces on different dates. The order of dissolution under Article 58(2(b) of the Constitution, which is fourth in succession from the year 1988, reads as follows:-

"DISSOLUTION ORDER

"Whereas during the last three years thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. They have been killed in Police encounters and Police custody. In the speech to Parliament on 29th October, 1995 the President warned that the law enforcing agencies must ensure that there is no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected. This advice was not heeded. The killings continued unabated. The Government's fundamental duty to maintain law and order has to be performed by proceeding in accordance with law. The coalition of political parties which comprise the Government of the Federation are also in power in Sindh, Punjab and N.-W.F.P. but no meaningful steps have been taken either by the Government of the Federation or at the instance of the Government of the Federation, by the Provincial Governments to put an end to the crime of extra judicial killings which is an evil abhorrent to our Islamic faith and all canons of civilized Government. Instead of ensuring proper investigation of these extra judicial killings and punishment for those guilty of such crimes, the Government has taken pride that, in this manner, the law and order situation has been controlled. These killings coupled with the fact of widespread interference by the members of the Government, including members of the ruling parties in the National Assembly, in the appointment, transfer and posting of officers .and staff of the lawenforcing agencies, both at the Federal and Provincial levels, have destroyed the faith of the public in the integrity and impartiality of the
law-enforcing agencies and in their ability to protect the lives, liberties and properties of the average citizen.

And whereas on 20th September, 1996 Mir Murtaza Bhutto, the brother of the Prime Minister, was killed at Karachi alongwith seven of his companions including the brother-in-law of a former Prime Minister, ostensibly in an encounter with the Karachi Police. The Prime Minister and her Government claim that Mir Murtaza Bhutto has been murdered as a part of a conspiracy. Within days of Mir Murtaza Bhutto's death the Prime Minister appeared on television insinuating that the Presidency and other agencies of State were involved in this conspiracy. These malicious insinuations, which were repeated on different occasions, were made without any factual basis whatsoever. Although the Prime Minister subsequently denied that the Presidency or the Armed Forces were involved, the institution of the Presidency, which represents the unity of the Republic, was undermined and damage caused to the reputation of the agencies entrusted with the sacred duty of defending Pakistan. In the events that have followed, the widow of Mir Murtaza Bhutto and the friends and supporters of the deceased have accused Ministers of the Government, including the spouse of the Prime Minister, the Chief Minister Sindh, the Director of the Intelligence Bureau and other high officials of involvement in the conspiracy which, the Prime Minister herself alleges led to Mir Murtaza Bhutto's murder. A situation has, thus, arisen in which justice, which is a fundamental requirement of our Islamic Society, cannot be ensured because powerful members of the Federal and Provincial Governments who are themselves accused of the crime, influence and control the lawenforcing agencies entrusted with the duty of investigating the offences and bringing to book the conspirators.

And whereas on 20th March, 1996 the Supreme Court of Pakistan delivered its judgment in the case popularly known as the Appointment of Judges case. The Prime Minister ridiculed this judgment in a speech before the National Assembly which was shown more than once on nation-wide television. The implementation of the judgment was resisted and deliberately delayed in violation of the Constitutional mandate that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. The directions of the Supreme Court with regard to regularization and removal of Judges of the High Courts were finally implemented on 30th September, 1996 with a deliberate delay of six months and ten days and only after the President informed the Prime Minister that if advice was not submitted in accordance with the judgment by end (of) September, 1996 then the President would himself proceed further in this matter to fulfil the Constitutional requirement. The Government has, in this manner, not only violated Article 190 of the Constitution but also sought to undermine the independence of the judiciary guaranteed by Article 2A of the Constitution read with the Objectives Resolution.

And whereas the sustained assault on the judicial organ of State has continued under the garb of a Bill moved in Parliament for prevention of corrupt practices. This Bill was approved by the Cabinet and introduced in the National Assembly without informing the President as required under Article 46(a) of the Constitution. The Bill proposes inter alia that on a motion moved by fifteen per cent. of the total membership of the National Assembly, that is any thirty-two members, a Judge of the Supreme Court or High Court can be sent on forced leave. Thereafter, if on reference made by the proposed special committee, the Special Prosecutor appointed by such Committee, forms the opinion that the Judge is prima facie guilty of criminal misconduct, the special committee is to refer this opinion to the National Assembly which can, by passing a vote of no confidence, remove the Judge from office. The decision of the Cabinet is evidently an attempt to destroy the independence of the judiciary guaranteed by Article 2A of the Constitution and the Objectives Resolution. Further, as the Government does not have a two-third majority in Parliament and as the Opposition Parties have openly and vehemently opposed the Bill approved by the Cabinet, the Government's persistence with the Bill is designed not only to embarrass and humiliate the superior judiciary but also to frustrate and set at naught all efforts made, including the initiative taken by the President, to combat corruption and to commence the accountability process.

And whereas the judiciary has still not been fully separated from the executive in violation of the provisions of Article 175(3) of the Constitution and the dead-line for such separation fixed by the Supreme Court of Pakistan.

And whereas the Prime Minister and her Government have deliberately violated, on a massive scale, the fundamental right of privacy guaranteed by Article 14 of the Constitution. This has been done through illegal phone-tapping and eaves-dropping techniques. The phones which have been tapped and the conversations that have been monitored in this unconstitutional manner includes the phones and conversations of Judges of the superior Courts, leaders of political parties and high-ranking military and civil officers.

And whereas corruption, nepotism and violation of rules in the administration of the affairs of the Government and its various bodies, authorities and corporations has become so extensive and widespread that the orderly functioning of Government in

accordance of? the provisions of the Constitution and the law has become impossible and in some cases, national security has been endangered. Public faith in the integrity and honesty of the Government has disappeared. members of the Government and the ruling parties are either directly or indirectly involved in such corruption, nepotism and rule violations. Innumerable appointments have been made at the instance of members of the National Assembly in violation of the law declared by the Supreme Court that allocation of quotas to M.N.As. and M.P.As. for recruitment to various posts was offence to the Constitution and the law and that all appointments were to be made on merit, honestly and objectively and in the public interest. The transfers and postings of Government servants have similarly been made, in equally large numbers, at the behest of members of the National Assembly and other members of the ruling parties. The members have violated their oaths of office and the Government has not for three years taken any effective steps to ensure that the legislators do not interfere in the orderly executive functioning of Government.

And whereas the Constitutional requirement that the Cabinet together with the Ministers of State shall be collectively responsible to the National Assembly has been violated by the induction of a Minister against whom criminal cases are pending which the Interior Minister has refused to withdraw. In fact, at an earlier stage, the Interior Minister had announced his intention to resign if the former was inducted into the Cabinet. A Cabinet in which one Minister is responsible for the prosecution of a Cabinet colleague cannot be collectively responsible in any manner whatsoever.

And whereas in the matter of the sale of Burmah Castrol Shares in PPL and BONE/PPL shares in Qadirpur Gas Field involving national assets valued in several billions of rupees, the President required the Prime Minister to place the matter before the Cabinet for consideration /reconsideration of the decisions taken in this matter by the E.C.C. This has still not been done, despite lapse of over four months, in violation of the provisions of Articles 46 and 48 of the Constitution.

And whereas for the foregoing reasons, taken individually and collectively, I am satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

Now therefore, in exercise of my powers under Article 58(2)(b) of the Constitution I Farooq Ahmad Khan Leghari, President of the Islamic Republic of Pakistan do hereby dissolve the National Assembly with mmediate effect and the Prime Minister and her Cabinet shall cease to hold office forthwith.

Further, in exercise of my powers under Article 48(5) of the Constitution I hereby appoint 3rd February, 1997 as the date on which general elections shall be held to the National Assembly. "

The petitioner being the Prime Minister at the time of dissolution of the National ' Assembly, filed this petition under Article 184(3) of the Constitution challenging the legality and validity of this order. The main ground of attack was that Article 58(2)(b) in view of various judgments of this Court, has a narrow scope and none of the charges have any nexus with it. The law and order situation and the allegations of extra judicial killings are provincial subjects and as they related only to the Province of Sindh, in the light of the Governor's speech there was no breakdown requiring any intervention. So far Charge No.2 is concerned, it was submitted that the matter is sub judice in the trial Court and it has no nexus with Article 58(2)(b). As regards charge No.3, it was stated that the judgment dated 20-3-1996 passed by the Supreme Court in the Judges case has been implemented and there was no dead-lock on 5-11-1996 or on preceding days. The Constitution Amendment Bill was a proposal under consideration which could be modified and had to pass several legislative stages and the President had the option , to oppose it as required by Article 75 of the Constitution. It was contended that separation of judiciary has been made as required by law and in this regard reliance was placed on the observations made in the Judges case. As regards phone-tapping it was stated that there is no evidence of the petitioner's involvement, who was also subject to the same tapping. It was further submitted that in view of the judgment in Kh. Ahmed Tariq Rahim's case it is a perennial problem on which National Assembly cannot be dissolved. As regards charge No.7 regarding corruption and nepotism, support was sought to be drawn from the judgments of this Court in Haji Muhammad Saifullah Khan, Kh. Ahmed Tariq Rahim and Mian Muhammad Nawaz Sharif and it was contended that these charges have no nexus with Article 58(2)(b) and cannot be a ground for dissolution of the National Assembly. It was further submitted that there is no evidence or proof of all these allegations and that only 12 cases have been pin-pointed in respect of which correct position cannot be ascertained on the record withheld by the President, which will show the falsity of the charges and that till then not a single prosecution case had been filed on the charges of corruption. As regards the collective responsibility of the Cabinet and the Members of the National Assembly is concerned, it was contended that it is misconceived and a person must be presumed innocent till he is found guilty and that it has no nexus with dissolution of the National Assembly. Referring to the cases of PPL and BONE it was stated that the cases are sub judice and that they are not germane to and have no nexus to Article 58(2)~b) of the Constitution.

2. A detailed reply was filed by the respondents in which volumes of? documents relating to each charge were filed. Mr. Aitzaz Ahsan, learned counsel for the petitioner, raised preliminary objection that the documents cannot be relied upon as they include documents which were not before the President at the time opinion was formed as required by Article 58(2)(b). They were collected after the order of dissolution had been passed. The documents are unsigned having no evidentiary value, most of them are press reports and press clippings, which cannot be treated authentic documents or proof of facts stated therein and that in most of the documents the name of the author or signatory is not available. These were the objections relating to exclusion of documents which according to the learned counsel if accepted, majority of the evidentiary value in support of the dissolution order will fall to the ground and there will be no material on which the President could form the opinion.

3. It is contended that under Article 58(2)(b) the President can dissolve the National Assembly only when the Government of the Federation cannot be carried on in accordance with the Constitution and an appeal to the electorate is necessary. According . to the learned counsel for the petitioner the words "cannot" are crucial for interpretation of this provision. If the Constitution is not followed, then the remedies mentioned in it should be resorted. He further contended that unless there is a complete breakdown of the Government machinery as it happened in pre-martial law period in 1977, the National Assembly cannot be dissolved. According to the learned counsel, Article 58(2)(b) would be attracted only if there is a total breakdown of the Constitutional machinery and no remedy is provided in the Constitution. The situation prevailing immediately on imposition of martial law was described in Begum Nusrat Bhutto PLD 1977 SC 643 at 701 as follows:-

"(1)' That from the evening of the 7th of March, 1977 there were widespread allegations of massive official interference with the sanctity of the ballot in favour of candidates of the Pakistan People's Party;

(2)??????? That these allegations, amounting almost to widespread belief among the people, generated a national wave of resentment and gave birth to a protest agitation which soon spread from .Karachi io Khyber and assumed very serious proportions;

(3)??????? That the disturbances resulting from mis movement became beyond the control of the civil armed forces;

(4)??????? That the disturbances resulted in heavy loss of life and property throughout the country;

(5)??????? That even the calling out of the troops under Article 245 of the Constitution by the Federal Government and the consequent imposition of local Martial Law in several important cities of Pakistan, and the calling out of troops by the local authorities under, the provisions of the Code of Criminal Procedure in smaller cities and towns did not have the desired effect, and the agitation continued unabated;
(6)??????? That the allegations of rigging and official interference with elections in favour of candidates of the ruling party were found to be established by judicial decisions in at least four cases, which displayed a general pattern of official interference;
(7)??????? That public statements made by the then Chief Election Commissioner confirmed the widespread allegations made by the Opposition regarding official interference with the elections, and endorsed the demand for fresh elections;

(8)??????? That, in the circumstances Mr. Z.A. Bhutto felt compelled to offer himself to a referendum under the Seventh Amendment to the Constitution, but the offer did not have any impact at all on the course of the agitation, and the demand for his resignation and for fresh elections continued unabated with the result that the Referendum Plan had to be dropped;

(9)??????? That in spite of Mr. Bhutto's dialogue with the leaders of the Pakistan National Alliance and the temporary suspension of the Movement against the Government, officials charged with maintaining law and order continued to be apprehensive that in the event of the failure of the talks there would be a terrible explosion beyond the control of the civilian authorities;

(10) That although the talks between Mr. Bhutto and the Pakistan National Alliance leadership had commenced on the 3rd of June, 1977, on the basis of his offer for holding fresh elections to the National and Provincial Assemblies, yet they had dragged on for various reasons, and as late as the 4th of July, 1977, the Pakistan National Alliance leadership was insisting that nine or ten points remained to be resolved and Mr. Bhutto was also saying that his side would similarly put forward another ten points if the General Council of P.N.A. would not ratify the accord as already reached on the morning of the 3rd of July, 1977.

(11) That during the crucial days of the dead-lock between Mr. Z.A. Bhutto and the Pakistan National Alliance leadership the Punjab Government sanctioned the distribution of fire-arms licences on a vast scale, to its party members, and provocative statements were deliberately made by the Prime Minister's Special Assistant, Mr. G.M. Khar, who had patched up his differences with the Prime Minister and secured this appointment as late as the 16th of June, 1977; and

(12) That as a result of the agitation all normal economic, social and educational activities in the country stood seriously disrupted, with incalculable damage to the nation and the country."

These situations were of extreme nature which justified imposition of martial law, a step not contemplated by the Constitution, an extra-constitutional course taken by the army, not in the normal legal course which without validation or condonation would have remained unconstitutional. According, to Mr. Khalid Anwar, Article 58(2)(b) does not contemplate only one situation as contended by Mr. Aitzaz Ahsen, but there may be numerous reasons due to which Government of the Federation cannot be carried on in accordance with the Constitution. This term has been interpreted in various judgments of this Court and the High Courts which requires examination. In Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 166, the National- Assembly was dissolved on five grounds. Nasim Hasan Shah, J. (as he then was) observed:-

"The first four grounds stated in the order for dissolution, were, as already noticed, extraneous having no nexus with' the preconditions prescribed by Article 58(2)(b) of the Constitution empowering the President to dissolve the National Assembly in his discretion. As for the fifth and last ground, namely, that 'a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution' nothing was shown either before the High Court or before us that the machinery of the Government of the Federation had come to a standstill or such a breakdown had occurred therein which was preventing the orderly functioning of the Constitution. Indeed, it appears that the first mentioned four grounds are the basis for the assertion made in the last-mentioned ground that the Government could not be carried on in, accordance with the provisions of the Constitution. But as observed already all the first mentioned four grounds were extraneous to and had no nexus with the preconditions prescribed by Article 58(2)(b). Hence, 'in the eyes of law, no basis existed on which the President could form the opinion 'that a situation had arisen in which the Government of Pakistan cannot be carried on in accordance with the provisions of the Constitution and as an appeal to the electorate is necessary'. But unless the President be of the said 'opinion', he cannot pass an order of dissolution even in exercise of his discretion because under sub-clause (b) of clause (2) of Article 58 his 'opinion' in this behalf is a condition precedent to the exercise of the discretion. Thus, if it can be shown that no grounds existed on the basis of which an honest opinion could be formed, the exercise of the power would be unconstitutional and open to correction through judicial review (see Ghulam Jilani v. Government of West Pakistan PLD 1967 SC 373 at page 393)."

As regards the situation which had arisen calling for an intervention under Article 58(2)(b), it was observed:-

"Thus, the intention of the law-makers, as evidenced from their speeches and the terms in which the law was enacted, shows that any order of dissolution by the President can be passed and an appeal to the electorate made only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution."

Shafiur Rahman, J. at page 212 of the report observed as follows:-

"The expression 'cannot be carried on' sandwiched as it is between 'Federal Government' and 'in accordance with the provisions of the Constitution', acquires a very potent, a very positive, and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of the progress, the shade of the quality or the degree of the performance or the quantum of the achievement. It concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a dead-lock in ensuring the observance of the provisions of the Constitution. The historical perspective in which such a provision found a place in our Constitution reinforces this interpretation. "

Mr. Khalid Anwar has contended that the words 'stalemate' and 'deadlock' have not been used in Article 58(2)(b), but. these concepts have come by judicial interpretation. The words 'dead-lock' and 'stalemate' have been used with reference to the observance of the provisions of the Constitution. A deadlock can be caused due to non-observance or breach of the Constitution in such a manner that the Government seems to be carried on in violation of the provisions of the Constitution, However, every breach or stray violation may not attract Article 58(2)(b), but whether the breach and its effect have nexus with the said Article, depends upon the nature of breach and the circumstances in which it has been caused.

4. The principle and interpretation made by Shafiur Rahman, J. was further explained by him in Kh. Ahmed Tariq Rahim PLD 1992 SC 626 at page 664 as follows:-

"In Haji Muhammad Saifullah Khan's case PLD 1989 SC 166 our Constitutional provision has received full attention and its meaning and scope authoritatively explained and determined. It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional."

It can thus be seen that apart from the fact that Article 58(2)(b) can be used where there is a complete dead-lock and stalemate in observance of the provisions of the Constitution it can be invoked in circumstances where there exists constant, repeated and continued failure to observe the provisions of the Constitution to the extent that it creates an impression on a prudent man of ordinary intelligence that the Government of the Federation is not carried on in accordance with the provisions of the Constitution, but by extra-Constitutional methods and devices. The opinion of Shafiur Rahman, J. represented the majority opinion. However, Rustam S. Sidhwa, J. agreeing with Shafiur Rahman, J. observed as follows:-

"To hold that because particular provision of the Constitution was not complied with, the National Assembly could be dissolved under Article 58(2)(b) of the Constitution, would amount to an abuse of power. Unless such a violation independently was so grave that a Court could come to no other conclusion but that it alone directly led to the breakdown of the functional working of the Government, it would not constitute a valid ground.

The main question that arises is when it can be said that a situation has arisen in which the Government of the Federation or a Province cannot be carried on in accordance with the provisions of the Constitution. In Muhammad Sharif v. Federation of Pakistan PLD 1988 Lah. 725 at 777, I had the opportunity to examine this matter in respect of the dissolution of the National Assembly, where I stated inter alias-

The expression 'Government of the Federation' is not limited to any one particular function, such
as the executive, the legislative, or the judicial, but includes the whole functioning of the Federal Government in all its ramifictions. It cannot be forgotten that sub-clauses (a) and (b) of clause (2) are juxtaposed together and, therefore, sub-clause (b) has to be read in harmony with the intention behind sub-clause (a), in short whether a political issue has arisen demanding the ascertainment of the will of the people as regards the continuance of the National Assembly. thus, where the National Assembly is be set with internal dissensions and problems and the party allegedly in power does not have a clear majority, or. having tenuous support from its members, is not able to carry on the functions of the Government with confidence, and is avoiding to take important decisions, which require to be taken, for fear that it may be outvoted, in case a debate is held in respect thereof, a situation can be stated to have arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. A few further instances can also be given, such as, where the Government has been defeated in the Assembly and the Prime Minister does not want to step down, or political groupings are such that even attempts by the President to form a coalition Government and get a working majority have not been successful and no alternative Government can be formed.

In that case I was dealing with the case of a majority party having undisputed majority seats and voting strength, which was firmly in the saddle, running its affairs smoothly and carrying on the functions of the Government with confidence. The situations visualised above relating to failure of Constitutional machinery were, therefore, given in the context of that case. However, when the said case travelled to the Supreme Court., this Court, by majority view in the Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 166, held that unless it could be shown that the machinery of the Government had broken down completely, its. authority eroded and the Government could not be carried on in accordance with the provisions of the Constitution, dissolution could not be ordered. At another place it held that unless the machinery of the Government of the Federation had come to a standstill or such a breakdown had occurred therein which prevented the orderly functioning of the Constitution, dissolution could not be ordered. With respect, I would submit that the test laid down is too strict and rigid. It forgets that the provision is also preventive. One does not have to wait till the whole machinery of the Government collapses or comes to a standstill or so serious a breakdown occurs which prevents the orderly functioning of the Government, before ordering a dissolution. What is required is that the breakdown is imminent, as partial, dislocation has begun, or the breakdown has actually taken place and as a last resort interference is required to ultimately restore representative Government. Each case should, therefore, be left to be dealt with on its own merit. There could be many situations which could lead to or where there is an actual failure of Constitutional machinery, such as where the party in power having tenuous support from its members, is not able to carry on the functions of the Government

effectively, or a deliberate dead-lock created by a party or a group of parties or dead-lock arising from an indecisive electoral verdict has constantly impaired or made the smooth running of the Government practically impossible, or where no party in the Legislature is in a position to form a Government, or the party in power is guilty of or attempting internal subversion, or where a Government is being continuously conducted in utter disregard of the Constitution, or there is a mass uprising or civil disturbance or complete breakdown of law and order due to public opinion being against the party in power at the Federal or Provincial level. Apart from assuming such situations can arise, it would not be proper to lay down any parameters or tests to determine under what circumstances this Court would accept a given case as one falling in the category of breakdown of Constitutional machinery, other than deal with each case on its own merits as and when it comes up on the basis of material placed before the Court to show what facts were before the President or. the Governor when he formed the opinion and whether the same had a proper nexus with the requirements of the Constitutional provision.

Whilst stating with some diffidence the types of situations where the power can be exercised, it must be stated that this power is meant to be used by the President impartially and objectively and only as a last resort to restore some balance and order in the Government, within the compass of established Parliamentary practice, and not in a way as may give the impression that it is to displace a political party in power or to rob the Federation or the Provinces of their autonomy to rule within the respective spheres allowed to them by the Constitution. The exercise of various powers under the Constitution does not guarantee that they will be exercised correctly, or that the elected representatives at the Federal or the Provincial level will perform their functions free from all human or legal errors and defects. All Government actions are not free from catastrophic errors of judgment or dismal failures of action. The functional ability of a ruling party to govern does not merely fail if some provision of the Constitution is violated or not performed or ill performed. With political strategy and choices, in a house divided between many political parties, being mauled or mutilated by conflicting interests, it may not be possible to take even simple decisions."... ... ...

The total material presented to the Court showing the difficulty of the party in power having tenuous supports from its members, in not being able to carry on the functions of the Government with confidence and responsibility, the deliberate deadlock created by a party or group of parties or deadlock arising from an indecisive electoral verdict or some other situation constantly impairing or making. the smooth running of the Government practically impossible, or no party in the Legislature being in a position to form the Government, internal subversion attributable to the party in power, the continuous running of the Government in utter disregard of the Constitution, the total rejected by the people of the party in power exemplified by continuous mass processions, strikes and unrest on a national or provincial scale, are basically situations which have a nexus with the failure of the Constitutional machinery. Other stray, or a number of, violations of the Constitution unless by themselves so grave that a Court could come to no other conclusion but that they alone directly led to the breakdown of the functional working of the Government, would not constitute valid grounds. However, where one of the basic situations constituting breakdown of Constitutional machinery, as stated above, is present, violations of the Constitution, where they have contributed to or been the cause of the breakdown, could be treated as valid supportive factors to the decision. Non-compliance of general law, failure to hold or call meetings under the provisions of the general law, misuse of the authority or resources of the Federation or of the Provinces or of statutory or autonomous bodies, unauthorised or irregular interference
in Service matters and disruption in their regular and orderly working, some failure to maintain law and order; or the resultant effects arising from such situations, such as the climate of uncertainty if any created thereby, the sense of insecurity created at different levels of administration, the rejection by the people of some actions of the party in power, creation of some threats to law and order, the weakening of the judicial process, would not normally provide grounds for action under Articles 58(2)(b) or 112(2)(b) of the Constitution, though they may, with other factors, provide to the Court the total picture showing some of the other matters that attended the breakdown, or to show the resultant effects arising therefrom. This Court cannot sit in appeal over a dissolution order or substitute its findings for the opinion of the President, but a dividing line would have to be kept in mind between certain basic situations which can be treated as leading to the breakdown of the Constitutional machinery and as having nexus with the provisions of the two Articles of the Constitution that provide for dissolution, strong Constitutional violations which the Courts may hold as directly leading to the breakdown of the functional working of the Government and other peripheral Constitutional violations which contribute to or may be the cause of the breakdown and can be used a supportive factors where basic situations exist. , This is apart from the question of quantum or sufficiency of the material, over which this Court has no concern. "

It can thus be seen that in Muhammad Saifullah Khan's case, scope, principles and parameters for exercise of power under Article 58(2)(b) were laid down. But in Kh. Ahmed Tariq Rahim's case within the same parameters various instances which . may - lead to stalemate and deadlock in observance of the provisions of the Constitution were enumerated, though not exhaustive were instructive.

5. In the same context reference was made to Aftab Ahmed Khan Sherpao's case PLD 1992 SC 723. While considering the observations of Shafiur Rehman, J. in the. case of 'Khawaja Ahmed Tariq Rahim, Ajmal Mian, J. at page 789 elucidated as follows:-

"It is evident from the abovequoted extracts that the formation of opinion should be founded on some material, and that the? ground(s) should have nexus with the grounds mentioned in Articles 58 and 112 of the Constitution. The question, whether grounds exist for dissolving Assembly, is to be examined objectively and not subjectively by the repository of the power in question. It is also apparent that if it can be shown that no ground existed on the basis of which an honest opinion could be formed, the exercise of the power would be unconstitutional and open to correction through judicial review."
Further at page 790, while referring to State of Rajasthan and others v. Union of India AIR 1977 SC 1361, it was further observed:-

"Bhagwati, J. in his opinion, has observed that in the absence of any provision in the Constitution that defeat of the ruling party in a State in the Lok Sabha election cannot by itself, without anything more, support the inference that the Government of the State cannot be carried on in
accordance with the provisions of the Constitution. However, at the same time, he held that the above. Proclamation was justified for the following reasons:--

'It is axiomatic that no Government can function efficiently and effectively in accordance with the Constitution in a democratic set-up unless it enjoys the goodwill and support of the people. Where there is a wall of estrangement which divides the Government

from the people, and there is resentment and antipathy in the hearts of the people against the Government, it is not at all unlikely that it may lead to instability and even the administration may be paralysed. The consent of the people is the basis of democratic form of Government and when that is withdrawn so entirely and unequivocally as to leave no room for doubt about the intensity of public feeling against the ruling party, the moral authority of the Government would be seriously undermined and a situation may arise where the people may cease to give respect and obedience to Governmental authority and even conflict and confrontation may develop between the Government and the people leading to collapse of administration. These are all consequences which cannot be said to be unlikely to arise from such an unusual state of affairs and they may make it impossible for the Government of the State to be carried on in accordance with the provisions of the Constitution. Whether the situation is fraught with such consequences or not is entirely a matter of political judgment for the executive branch of the Government. But it cannot be said that such consequences can never ensue and that the ground that on account of total and massive defeat of the ruling party in the Lok Sabha Elections, the Legislative Assembly of the State has ceased to reflect the will of the people and there is complete alienation between the Legislative Assembly and the people is wholly extraneous or irrelevant to the purpose of Article 356, Clause (1). We hold that on the facts and circumstances of the present case this ground is clearly a relevant ground having reasonable nexus with the matter in regard to which the President is required to be satisfied before taking action under Article 356, Clause (1).'

'In my opinion, the above approach of Bhagwati, 1. does not run counter to the reasoning of this Court in the case of Federation of Pakistan v. Haji Muhammad Saifullah Khan (supra). The words that 'a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of Constitution' are of wide import. If a Government, in order to remain in power, has to purchase the loyalties of the M.P.As. by allotting plots or granting other benefits in cash or kind at the cost of the public exchequer and/or is to induct them as Ministers and Advisers for the above purpose, in my humble view, it cannot be said that the Government is being carried on in accordance with the provisions of the Constitution'. "

According to Mr.Khalid Anwar the view expressed in Muhammad Saifullah Khan's case was modified in Kh. Ahmed Tariq Rahim and Sherpao cases. As I have observed earlier the last two cases provide instances, factors, situations and circumstances which fall within the terms 'stalemate, total breakdown of the Constitutional machinery, and non-observance of the provisions of the Constitution'. Stalemate or breakdown is the result of incidents, occurrences, causes, happenings, conduct and several other factors which may lead to it. Such. causes and instances may be many and several but the limitation is that it may result in stalemate, breakdown and serious violations of the provisions of the Constitution adversely affecting the functioning of the Government according to the Constitution.

6. The celebrated judgment in Mian Muhammad Nawaz Sharif v. Federation of Pakistan and others PLD 1993 SC 473 has thrown light on preceding judgments. Nasim Hasan Shah, C.J. referring to the observation of Shafiur Rehman in Haji Muhammad Saifullah Khan observed that 'no Assembly can be dissolved unless cogent, proper and sufficient cause exists for taking such a grave action. Article 58(2)(b) no doubt empowers the President to take this action, but only where it is shown that 'a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution'. This observation though follows Muhammad Saifullah Khan's case does not deviate from Aftab Sherpao's case. It was on this principle that the ground for dissolution was put to test and it was held that the President having lost his neutrality, the speech of the Prime Minister did not create a breakdown of the Constitutional machinery nor in such circumstances it could be concluded that the Government could not be carried on in accordance with the provisions of the Constitution. Saad Saood Jan, J. referring to Article 58(2)(b) observed as follows:-

"This clause has already been examined by this Court in great depth in two earlier cases reported as Federation of Pakistan v. Muhammad Saifullah Khan 1988 SCMR 1996 and Khawaja Ahmad Tariq Rahim v. Feddration of Pakistan PLD 1992 SC 646.

In Muhammad Saifullah Khan's case, it was held after a threadbare analysis of the clause that an order of dissolution could be made by the President only when the machinery of the Government had broken down completely, its authority eroded and the Government could not be carried on in accordance with the provisions of the Constitution; it was further observed that the discretion given by the clause to the President was not absolute but was a qualified one in the sense that it was circumscribed by the objects of the law that conferred it and that before exercising it he had to form an opinion objectively with regard to the existence of the circumstances necessitating its exercise; it was also held that it was open to the Courts to examine the order of dissolution in order to see if it fell within the four corners of the clause. In Khawaja Ahmad Tariq Rahim's case, the Court stated:

"It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution, There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional.'

'In view of such extensive exposition of the nature and extent of the power vesting in the President under the clause in question there is very little that I can add apart from merely reiterating that the most important precondition laid down for its exercise is that circumstances must exist which clearly indicate that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. The word 'cannot' as occurring in the clause brings is not only an element of impossibility but also that of permanence in its construction and, thus, the President can exercise his power thereunder only if there is material before him showing that the affairs of the State have come to such a stage that it is no longer possible for the Government to function except by violating the Constitution'. "

Ajmal Mian, 1. while interpreting Article 58(2)(b) of the Constitution relied on the observations of Nasim Hasan Shah, J. (as he then was), Shafiur Rehman, J. and his observation in Aftab Ahmed Khan Sherpao quoted above. Sajjad Ali Shah, J. (as he then was) also followed Haji Muhammad Saifullah Khan and Khawaja Ahmed Tariq Rahim by observing that:-

"I would like to make comparison between the case of Khawaja Ahmed Tariq Rahim and the present case in order to show that material produced in the present case is more quantity as well as quality-wise than material produced in Khawaja Ahmed Tariq

Rahim's case and same yardstick for evaluation of material and interpretation of Article 58(2)(b) should be followed and no departure should be made from following the guidelines laid down in the cases of Haji Saifullah Khan and Khawaja Tariq Rahim by this Court."
The learned counsel for both the parties have referred to Khalid Malik v Federation of Pakistan PLD 1991 Kar. 1 where after referring to Saifullah': case, I had observed:-

"The first consideration, therefore will be whether situation has arisen in which Government cannot be carried on in accordance with the provisions of the Constitution and law. Where a Government cannot be run in accordance with the provisions of the Constitution then it indicates the failure of the Constitutional machinery. Such situation arises when the writ of the Government is not enforceable, a climate of uncertainty and diffidence has been created on different levels of administration, there is general floutation and disrespect to the organs and departments of the State; the institutions, organs and authorities constituted under the Constitution and the law, flout of law, external aggression bringing the entire machinery of the Government at a standstill; internal disturbances, insurgency, revolt, rebellion or civil war and economic crises which may paralyse the life and administration. Another situation may cover it when the Legislature no longer reflects the wishes or views of the electorate and they are at variance. There is large scale civil disobedience movement in which Government servants and employees of corporations, companies, banks and authorities connected with the day to day administration of the State refuse to cooperate and subject refuses to pay taxes. The majority ruling power refutes, violates or refuses to run the Government according to Constitution and law. The writ of Government is no longer respected and is not enforceable. These are some situations during which machinery of the Government cannot be run in accordance with the Constitution. No exhaustive list can be provided but it entirely depends on the circumstances, facts and events which may happen. "

It was pointed out by Mr. Khalid Anwar that no appeal was filed against this judgment and it has attained finality. From the aforestated observation and discussion, it crystallises that the President does not possess unfettered or unlimited power under Article 58(2)(b). It is restricted and circumscribed by preconditions set out in the judgments referred above. First he has to form opinion objectively on the material before him having nexus with the preconditions laid down by Article 58(2)(b) sufficient to satisfy any prudent man of normal intelligence that the Government cannot be carried on in accordance with the provisions of the Constitution and appeal to electorate is necessary. Thereafter, the President may exercise discretion to dissolve the Assembly. The situation which arises and leads to formation of opinion that the Government cannot be carried on in accordance with the Constitution may not be restricted to anyone solitary instance of war-like conditions as contended by Mr. Aitzaz Ahsan. There may be various and many situations some of which have been identified in the afore-referred judgments as it is not possible do give an exhaustive list. Human nature, conduct, tactics, strategy, mechanism and political manoeuvring always change, fluctuate and create unpredictable situations to which Article 58(2)(b) may be applied. We affirm the principles laid down in Nawaz.Sharif's case and declare that no deviation has been made from it. Those principles have been applied to a set of facts, which have formed basis for forming an opinion that in such situation Government cannot be carried on in accordance with the Constitution.

7. The first ground has already been mentioned in the order of dissolution. The petitioner has denied that over the last three years thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. According to the petitioner it is not cogent or relevant and relates to the Provinces as law and order is not within the Federal domain. It was further pleaded that observation about Karachi is directly in conflict with the unambiguous assertions of the Governor of Sindh Province Mr. Kamaluddin Azfar contained in his speech made on 12-9-1996 in the National Defence College, Karachi. In the address to Parliament dated 29-10-1995 the President had warned Law Enforcement Agencies asking them to ensure that there was no harassment of innocent citizens in the fight against
terrorism and that fundamental rights of people will be protected. It was stated that this speech has been referred, but the statements of November 2, 1994, December 17, 1994, March 29, 1995, May 30, 1995 and May 13, 1996 have not been referred. The speech was authored by him in disregard of the proposed draft provided by the Government. The President wrote no letter complaining about alleged extra-judicial killings to the petitioner or the Interior Ministry. He was satisfied with the manner the Government of Sindh was handling it what he called "mini-insurgency in Karachi". Most of the persons killed, according to the petitioner, "were hardened criminals absconding from charges of kidnapping for ransom, dacoities, multiple murders, bomb blasts and torture in captivity." Judicial inquiries were also held. It was stated that if the Provincial Governments fail in their duty, the National Assembly should not be visited with penalty. The Federal Government has no authority to investigate into any such incident whatsoever and if it had purported to do so, that indeed could have been a grievous breach of Constitutional set-up, which responsibility is in the hands of the Provinces. It was further pleaded that no law permits the Federal Government to assume to itself in any such eventuality the powers and authority of the Provincial Governments, and that "the complaint would have been valid if the Federal Government had indeed done so". The Government of Sindh had set up over hundred judicial commissions of inquiry into the extra-judicial killings and many reports have been finalized. 2000 police constables had been sacked and 146 police officers had been proceeded against. It was further pleaded that the Federal Government had also entered into negotiations with M.Q.M. so as to bring peace to the city of Karachi, which was appreciated by the President. It was denied that these killings coupled with the fact of widespread interference by the members of the Government including members of the ruling parties in the National Assembly in the appointments, transfers and postings of officers and staff of law enforcement agencies both at Federal and Provincial levels, had destroyed the faith of the public in the integrity and impartiality of the law enforcement agencies and in their ability to protect the lives, liberties and properties of the average citizens. It was termed as a wide and general statement implicating the members of the National Assembly without giving any specific detail of such allegations. The respondents filed written statement and pleaded that no one can seriously dispute that the situation in Karachi was seriously disturbed. The extra judicial killings did take place and that as a result of the illegal and unconstitutional measures adopted by the Federal and the Provincial Governments the disturbance in Karachi had been reduced to a considerable extent. It was commented that "do ends, even if desirable, justify or permit the adoption of any and all means, howsoever, illegal." It was further stated that "peace, in a manner of speaking, returned to Karachi, but it is the peace of the graveyard." The city's mortuaries were filled with the victims of the previous Government's crime against humanity. Citizens were deprived of life and liberty without any pretence of law simply so that some bureaucrat may be able to file a report to the Prime Minister's satisfaction that "untoward incidents" no longer take place. As regards petitioner's claim that law and order being the Provincial subject and not within the Federal purview, could not validly form basis for the dissolution order, it was pleaded that Article 148(3) of the Constitution expressly provides that it is the duty of the Federation to inter alia protect every Province against internal disturbances and to ensure that the Government of the Province is carried on in

accordance with the provisions of the Constitution. In the circumstances and prevailing conditions at Karachi, the Federal Government had a clear Constitutional obligation to discharge under Article 148(3). It was emphatically pleaded that not only was the Federal Government completely in the know what was happening in Karachi, it was inextricably controlling and masterminding the entire operation, first triggering off the violence by its policies and then by resort to systematic brutality and repression. It was pleaded that the structure of the Constitution is Federal and it would be futile to pretend that the political reality of the same party being in power at the Federal and Provincial levels is irrelevant and has no Constitutional implications. It was stated that the speech of Mr. Azfar referred to and relied upon by the petitioner does not in any place refute or contradict what is stated in the dissolution order. In fact Mr. Azfar has specifically taken note of the elimination "of an M.Q.M. terrorist" in an "armed encounter". It was pleaded that Mr. Azfar's speech relied upon by the petitioner in any event belies her claim that the Federal Government had nothing to do with the situation in Karachi. He was appointed Governor by the petitioner and performed his functions on the basis of his perception of himself as an appointee of the Federal Government and on the advice of the Chief Minister. It was for this reason that he lauded the operations carried out in Karachi and stated that lasting credit was due to the Prime Minister of Pakistan Mohtarama Benazir Bhutto for keeping firm hand at the helm. It was stated that in 1994 as well as in 1995 the President had expressed his dissatisfaction over the handling of the Karachi situation. Referring to the news items mentioned by the petitioner it was pleaded that the report was a perforated analysis carried out by journalists and provocative titles were given for which the respondent obviously cannot be held answerable. ?? -

8. Having referred to the pleadings, we now consider the arguments of the learned counsel for the parties, which are more or less reproduced in the pleadings. The main contention of the learned counsel for the petitioner was that there was no material available for satisfaction of the President particularly on the point of extra judicial killings in which the Federation of Pakistan was not involved and could not be held responsible as the same was a Provincial Subject.

9. It may be pointed out that M.Q.M. had filed an application to be joined as a party, notice of which was issued to the petitioner, who filed a short reply denying all the allegations and also raised objection that M.Q.M. cannot be joined as a party as none of its Fundamental Rights have been affected nor anyone of its members had been elected to the National Assembly.

10. We have heard Dr. Farooq Hasan, learned counsel for M.Q.M.. He contended that the M.Q.M. had filed Constitution Petition No.46 of 1994 against custodial killings and extra judicial killings of which documents in several volumes were filed. Volumes 17 and 22 give details of custodial and extra judicial killings. The respondents have also filed same or similar documents giving facts uptodate. It was contended that the first ground entirely relates to extra-judicial killings of the members of M.Q.M. in Karachi and, therefore, it is a necessary party because any judgment passed on this aspect of the case will directly affect the petition which had been filed in the year 1994. Volumes of documents filed before us give the dates, names and addresses of the persons, who were murdered, tortured and kidnapped. Many were killed by the Rangers, Police and paramilitary force. the learned counsel referred to the statement of the President, Prime Minister and the Interior Minister. The detailed negotiations between the petitioner's Government and the M.Q.M. on 11-7-1995 after which letters were exchanged to show that the petitioner and the Federal Government were fully acquainted and had knowledge of all the happenings. They were full participants and actors in extra judicial killings and tortures committed by the law enforcement agencies. These facts have not been specifically denied except a general and vague denial in reply to this application. During the course of hearing Mr. Khalid Anwar also referred to most of the documents and incidents recounted by Dr. Farooq Hasan. We, therefore, after hearing the view point of M.Q.M., without making it a party, proceeded with the matter.

11. In support of the first ground in the Order of Dissolution the respondents have filed volumes of documents consisting of material available in public domain regarding extra judicial killing and official documents consisting of letters, inquiry reports, notifications, regular reports, Cabinet/Committee decisions and notes. Mr.Khalid Anwar has referred to the summary of the report of Amnesty International based in U.K. on Pakistan entitled Human Rights Crisis in Karachi issued in February, 1996, which reads as follows:-

"Amnesty International continues to urge the Government of Pakistan to adopt measures to stop the large-scale human rights violations which are regularly reported from Karachi, the capital of Sindh. The organization has received reports of hundreds of cases of unlawful detention, torture, deaths in custody, extra-judicial executions and 'disappearances', mainly in Karachi, but also in other cities of the Province. According to official figures, some 1,770 people were killed in Karachi in 1995; these include members of different political parties, law enforcement personnel and apolitical residents of Karachi, including women and children.

While law enforcement personnel appear to be responsible for some of these human rights violations, there is strong evidence that armed opposition groups have also perpetrated torture, hostage-taking and killings in Karachi. Amnesty International continues to appeal to armed opposition groups to refrain from abusing the fundamental rights of people in Karachi to life and the security of the person, to end hostage taking, torture and arbitrary killings. The organization again calls on these groups to observe minimum standards of humanitarian law which forbid such abuses.

The high rate of political killings over the last months is strong evidence of the failure of the Government's strategy to protect political activists, journalists and ordinary residents of Karachi from human rights abuses. Indeed, in some cases, those in authority appear to have condoned abuse,: by some armed opposition groups. Amnesty International believes that the Government must act consistently and lawfully to end human rights abuses by armed opposition groups and send a clear signal that all those responsible for such abuses will be brought to justice.

The human rights abuses perpetrated by armed opposition groups may never be used by law enforcement personnel as an excuse to ignore national and international human rights safeguards and to commit human rights violations themselves, to torture, kill or to 'disappear' people described by the Government as 'terrorists'. Amnesty International calls on the Government of Pakistan to set up independent and impartial inquiries into every single report of unlawful detention, torture, death in custody, extra-judicial execution and 'disappearance' and. to ensure that every member of the law enforcement agencies found to be responsible for such human rights violations is brought to justice. Only if the self-perpetuating cycle of violence, in which human rights abuses continue to be

perpetrated without punishment and in which impunity facilitates further violations, is broken, can people in Karachi again live in safety and dignity and enjoy their fundamental rights.

The present paper first describes the political context in which human rights abuses are committed in Karachi; it then documents reported cases of arbitrary arrest, torture, deaths in custody, extra-judicial executions, 'disappearances' allegedly committed by law enforcement personnel and the human rights abuses allegedly perpetrated by armed opposition groups. It also focuses on the lack of protection given to people reporting human rights abuses in Karachi and the immunity enjoyed by perpetrators of human rights abuses. The concluding section sets out Amnesty International's concerns and its recommendations to the Government and to armed opposition groups. The appendix contains an analysis of the Government's responses to a statement issued by Amnesty International on the human rights situation in Karachi in August, 1995."

Another report dated 17-8-1995 reads as follows:-

"Every day a dozen deliberate and arbitrary killings are reported from Karachi--in July the city's death toll was a staggering 279, according to Amnesty International.

Against this backdrop of escalating violence, Amnesty International today held the Government of Pakistan responsible for serious human rights violations committed in the context of concerted campaign for law and order in the city.

'The Government is simply not doing enough to protect innocent citizens from targeted killings by armed opposition groups,' Amnesty International said. 'Armed opposition groups should respect minimum humanitarian standards, but if they don't the Government should not use their violence as an excuse to commit torture or killings.'

In recent days, several people have reportedly been extra-judicially executed. Farooq Putney and three other workers of the Mohajir Qaumi Movement (M.Q.M.) were shot dead on 2nd August by police in what was described as an 'encounter'. Family members, however, claimed that the men were earlier arrested from their homes.

Every day both party activists and citizens not involved in politics die as a result of targetted killings by armed groups few of whom are ever held to account. Dead bodies, blindfolded with their hands bound, showing marks of torture or mutilation are often dumped in the streets of Karachi indicating the torture that caused their deaths.

During police sweeps, hundreds of people were reportedly arrested in the last few weeks; some were blindfolded and beaten then released within a short period but an unknown number of people continue to be held.

Reports of arrests of family members of wanted persons belonging to various political parties continue to be received. The victims are mainly family members of M.Q.M. activists, but families of members of other parties are reportedly affected as well.

Several people have reportedly 'disappeared' in custody. These include Rais Fatima, a 26 years old M.Q.M. activist, who on 4th June in Karachi boarded a train for Lahore never to arrive there. Qamar Mansoor Siddiqui, a M.Q.M. parliamentarian who had accompanied her, also disappeared but on 7th July the Lahore High Court, hearing a habeas corpus petition, was told that Qamar had been arrested on 20th June by the Federal Investigation Agency on charges of sedition. Despite High Court orders, lawyers have not been given access to the prisoner in Adiala Jail in Rawalpindi, contact with Qamar could have thrown light on Rais Fatima's whereabouts.

Other 'disappeared' persons include detained M.Q.M: workers who are often transferred to unknown prison locations. Three such prisoners, including an M.Q.M. Senator, Zahid Akhtar, who had been secretly transferred from Peshawar Jail to Rawalpindi's Adiala Jail were later shown on T.V. confessing various acts of terrorism.

Amnesty International fears that these detainus--kept during such periods of unacknowledged detention and before such 'public confessions'--may be subjected to torture and ill-treatment and calls for an end to such practices.

People who have spoken up against the alleged collusion of the Government with a faction of the M.Q.M. the M.Q.M. Haqiqi, have not been protected against threats and harassment. Farooq Sumar had in May accused the Government of an 'alliance with crime' by condoning the criminal activities of the Haqiqi group of the M.Q.M.. On the basis of his complaint, the Home Ministry ordered the' arrest of the Haqiqi leader, Afaq Ahmed Khan, which was rescinded upon the personal intervention by the Sindh Chief Minister.

The non-Governmental Human Right Commission of Pakistan confirmed that Sumar and members of his family 'face a serious threat to their lives and security', nevertheless no protective steps were taken by either the Federal or Provincial Government. Continued impunity enjoyed by armed political groups has emboldened them to further harass and threaten those who seek to stop them.

Amnesty International urges the armed opposition groups to refrain from hostage-taking, torture, and deliberate and arbitrary killings. The organization also calls on the Government to set up independent and impartial inquiries into every single case of torture, death in custody and extra-judicial execution reported.

Amnesty International believes that all persons who are not charged with a recognizable criminal offence, such as relatives of wanted persons, should be immediately and unconditionally released. The Government should also ensure that political prisoners held on criminal charges are treated in accordance with international standards for fair trial, granting them prompt and regular access to family, lawyers and appropriate medical attention. No one should be held in unacknowledged detention and subjected to torture. "

In Human Rights Watch World Report, 1996 relating to Pakistan, it was stated that 'throughout 1995, all parties to the conflict continually committed serious human rights violations---. This created an environment of rampant lawlessness, disorder, and official corruption in Karachi, a city of twelve millions where militants and abusive security forces enjoyed virtual freedom from accountability for illegal actions". It further reports:-

"The Government demonstrated a lack of resolve to deal with Karachi's chronic security crisis and to enforce the rule of law uniformly. Rather, State intelligence agencies reportedly continued sponsorship of the Haqiqi faction, which was responsible for the most egregious acts of violence, intimidation, and extortion in the city. Human rights groups accused Government forces particularly the Paramilitary Rangers and the police, of endemic civil rights violations against suspected members and supporters of the M.Q.M., including indiscriminate house-to-house searches in targetted areas, random firing in riot-torn neighbourhoods, arbitrary arrests and detentions, torture, custodial deaths, and extra- judicial executions. M.Q.M. members also engaged in killings of opponents, torture, kidnapping, robbery, and extortion.

On September 14, Farhan Effendi, a field correspondent for the Karachi-based Urdu daily, Parcham, was arrested by the Paramilitary Rangers, reportedly severely beaten, and kept in detention blind-folded with his hands tied behind his back. Parcham is considered sympathetic to the views of the M.Q.M., and, although Effendi was charged with the illegal possession of a fire-arm and involvement in terrorist activities, his arrest was widely viewed as an attempt to intimidate the press. Bux Ali Jamali, a reporter for the newspaper Kawish, suffered a fate similar to Effendi's after he wrote stories critical of Government development initiatives in Nawabshah, the hometown of Bhutto's husband, Asif Zardari.? 'Politically motivated abuse of the State's judicial and law enforcement mechanisms was a common feature of Pakistan's political landscape during 1995. The Bhutto Government resorted to preventive detentions and spurious lawsuits to promote its own political agenda and to sideline political opponents."

Reference was also made to Index published by Writers and Scholars International which reported that in the year 1995:-

"The recent escalation of violence - more than 1000 dead this year, over 400 in the last six weeks - is overwhelmingly the result of the Governments latest offensive to crush the M.Q.M. as an organised political force. (Index 3/1995). Well-armed Mohajir dissidents the Haqiqi, operate in collusion with the police and the paramilitary Rangers. Ten-20 people, mostly innocent civilians, are killed every day. Districts of Karachi like Orangi, Landhi and Korangi are under siege, their inhabitants arrested, tortured and butchered at random."

Organization Mondiale Countre La Torture (OMCT) "World Organization Against Torture" based at Geneva sent a request dated 13-11-1995 to the President of Pakistan, the Prime Minister and the Law Minister expressing its grave concern over a number of extra judicial executions, torture and harassment of Mohajir Qaumi Movement (M.Q.M.) members by law enforcement agencies and para-military forces in Karachi. It states that:-

"On 17th October, 1995, the Preedy Police Mobile arrested Mr. Nadeem, 27 years of age, and Mr.Muhammad Tahir, during the night. Mr. Tahir was tortured to death and Mr.Nadeem is still held in custody.

On 25th October, 1995, at 1 p.m. Mr.Muhammad Sajid, 22, and Mr. Muhammad Yamin, 21, both active workers of M.Q.M. Unit 125, Orangi Town, were arrested by police and para-military forces, tortured, then taken to Orangi Town Police Station and shot. On 26th October, 1995, at 4 p.m. the plain clothed Paramilitary Rangers arrested Mr. Azhar Mohani, Incharge M.Q.M. Unit 178, Sector North Nazimabad and tortured him for two days before he died due to the savage treatment.

Antenna International also fears for the life of Mr. Muhammad Rafique, 32, a sympathiser of M.Q.M. Unit 142, who was arrested two months ago from his house by the Paramilitary Rangers and Police and has not been heard of since.

According to the information we have received, none of the above people were in any way breaking any law before or at the moment of their arrest."
?
In another report dated 8-11-1995 it also gives the names of persons, time, place and date when they suffered death in custody, extra-judicial execution, arrest and torture.

Human Rights Commission of Pakistan gives its initial finding on the killing in an "Encounter" of Fahim Commando and three others on October 10, 1995 which reads as follows:-

`"The Human Rights Commission of Pakistan conducted an initial inquiry into the killing in the early hours of October 10, 1995, of? M.Q.M. activists (described by the authorities as terrorists) Faheem Commando, Zeeshan Haider Abidi, Yousuf Rehman and an unidentified man who was later identified as Faheem's brother, Mufeez Farooqi, and has the following observations to make, says a statement? issued by Zohra Yusuf, Secretary-General, and Saleem Asmi, Vice Chairperson of the Commission .

.. ..That the first three were arrested by C.I.A. Jamshed Quarters on August 6 and were sent to jail after interrogation;

... ...That they were brought out of the jail and taken to the Airport Police Station around 3 p.m. on October 9;

... ...That they, as well as Mufeez, were taken in a van by an Airport Police Party headed by S.H.O. Anwar Ahmed Rao to a house in Nazimabad in the small hours of October 10, where, the authorities claim, the police party came under heavy gunfire from the said house, resulting in the instant death of all four of the detenus;

...The Faheem's brother, Mufeez, who went unidentified on the day, .of the killing, was later identified first as one Altaf Qureshi and then as Khurshid Anwar, was arrested earlier this month in Rawalpindi where he had been living with his mother;

... ...That the initially unidentified body was recognised by relatives? as that of Mufeez four days later. Faheem and Mufees's mother claims that the body was recognised only when relatives were attracted by photographs of the slain men in newspapers. The mother and a relative who brought the bodies to the Edhi Centre could not recognise Mufeez because, as she and relatives maintain, his face had been disfigured through torture and gunshots, and also, because they could not imagine that he would be brought down from Rawalpindi to die.

The H.R.C.P. interviewed a number of people in the area where the killing occurred. Its findings are:

... That all four detenus were handcuffed and fettered and chained together; .. That the house the police claim the van was fired upon had been unoccupied for the past three years and the family which lived there is now in the U.S;

... That eye-witnesses claim the street had been blocked by scores of heavily armed men in Shalwar-Kameez and wearing cross-ammunition belts, and not even the municipal sanitarymen were allowed in;

... That all the victims had multiple bullet wounds, including some in the head and eyes;

... That no member of the escorting police party was hit, not even slightly;

.. That Faheem, Zeeshan and Yousuf were all in judicial lock-up and no official version offered a credible explanation how they were taken out of jail or on whose authority;

... That how could the unknown assailants, as the authorities claim, open such heavy fire in the small hours of the morning, from a house that had remained locked and deserted for three years, and when the street had already been blocked at both entrances by heavily armed police (or Rangers) men?

In the light of the above, the H.R.C.P. is constrained to conclude that the official version of an ambush or a shootout could not be given any credence and that the killings of October 10 were part of what appears to be the law enforcement agencies' on-going practice of eliminating those they consider are hardened criminals or terrorists."

Minutes of Sitting of Thursday, 15th February, 1996 of European Parliament taking note of reports of Amnesty International and Human Rights Commission of Pakistan resolved on situation in Sindh that:-

The European Parliament.

A. deeply concerned by the widespread public disturbances in the urban centres of Pakistan's Sindh Province, especially in the cities of Karachi and Hyderabad, where human rights abuses and violence have been committed on all sides, notably by the Altaf and Haqiqi factions of the Mohajir Qaumi Movement (M.Q.M.) and the security forces, as well as by criminal gangs, which have led to thousands of deaths in recent years, including members of the security forces, and have left the Province in a state of chronic insecurity.

B. having regard to the Amnesty International Report of 17th August, 1995, the Report of the Human Rights Commission of Pakistan of 19th October, 1995 and to the Annual Report of 1995 of Human Rights Watch, as regards the situation in the urban centres of Sindh Province.

C. profoundly disturbed at the imprisonment or restriction under house arrest of M.Q.M. representatives in the Sindh Provincial Assembly and the Pakistan Senate.

D. convinced that the troubles are causing damage to all communities in urban Sindh, including the Mohajirs, and are detrimental to Pakistan's economy and social progress.

1. Condemns the killing of innocent people, the use of, torture and other human rights abuses, whether committed by members of the M.Q.M. factions or by Pakistani security forces, and especially deplores attacks on members of the families of M.Q.M. political leaders and Government officials;

2. Ask the Government of Pakistan to do all in its power to control those elements in the security forces that engage in human rights abuses and to plan the training of the security forces to respect human rights and democratic freedoms;

3. Appeal to the leaders of both factions of the M.Q.M. to seek to play a full and positive role in the prevention of further violence;

4. Believes that the settlement of the Mohajir issue can only come about through fully peaceful and democratic methods and calls on the authorities to release or lift restrictions on the M.Q.M. elected representatives and to. seek to arrange meetings to resolve the problem of Mohajir rights in a peaceful manner;

5. Considers that a decrease in violence is a necessary condition for the effectiveness of free and fair elections in the Province, which should allow the urban population representation at all levels commensurate with its size;

6. Asks the Commission and the Council, together with the member States to offer support to the Pakistan Government through measures to promote mutual understanding between the local population in the Sindh urban areas;

7. Instructs its President to forward this resolution to the Commission, the Council, and the Government and Parliament of Pakistan and the Provincial Assembly of Sindh.

Reference was made to the statement by Nicholas Burns, issued by Office Spokesman of U.S. State Department dated -12-1995 which reads as follows:-

"Political violence in Pakistan largest city and most important port, Karachi, has claimed approximately 1800 lives since the beginning of this year. In recent months, the violence has taken an extremely disturbing turn, with a sharp increase in reported extra-judicial killings and the targetting of family members of Government officials and M.Q.M. political leaders. Several weeks ago, the brother of Sindh Chief Minister Abdullah Shah was killed in a terrorist attack while traveling through an M.Q.M. controlled area of Karachi. More recently, the tortured and bullet riddled bodies of two close relatives of M.Q.M. leaders Altaf Hussain were discovered in Karachi on December 9, after the two individuals were alleged-to have been taken into police custody. The security forces have denied having custody of the two individuals prior to their deaths. We understand that Prime Minister Bhutto has ordered an investigation into the incident.

We are deeply concerned by the escalating cycle of violence in Karachi and particularly by the sharp increase in reported extra judicial killings, extortion and custodial deaths by security forces. The United States deplores the senseless murder of family members of Government and political leaders. We continue to believe that the best way to end the current violence in Karachi is at the bargaining table and urge the GOP and M. Q. M. to resume talks."

Mr. Khalid Anwar has also referred to the Handout No.3036 dated 19-10-1994 issued by the Government of Sindh, which is reproduced hereunder:-

THIRD ROUND OF NEGOTIATIONS BETWEEN GOVERNMENT AND M.Q.M.

Karachi, October 19: The third round of talks between M.Q.M. (A) and Government was held here today and both the sides were agreed on ten points.

According to official source, a four-member M.Q.M. team included Mr. Shoaib Bukhari, Kazi Khalid, Tariq Javed and Ajmal Dehlvi, while the Government side was represented by Sindh Senior Minister, Syed Parvaiz Ali Shah.

The ten important points which were agreed upon included, scrutiny of cases filed against M.Q.M. leaders and workers, return of goods confiscated during P.P.P. tenure, restoration of political activities of M.Q.M. within legal premises, provisions of guards on demand of Haqparast's elected members and Senators, restoration of telephone connections, provision of all the legal facilities to interned leaders and workers, provision of special grants from Federal and Provincial Governments for the reconstruction of Karachi city.

It was also agreed that the F.I.Rs. not registered against leaders and workers of M.Q.M. and facing fear for their arrest, kidnapping, raids and victimizations due to which they cannot return to their houses, would be allowed to return their homes and no harassment of any sort will be carried out against them.

It was also decided that Government will take swift measures to withdraw all the false cases registered against M.Q.M. leaders and workers, and minor cases will be withdrawn immediately.

During the meeting, it was also agreed upon that for the restoration o1 peace, patrolling by the police and law enforcing agencies will be intensified, Stringent measures will be taken to curb the activities of the anti-social elements.

Date for the next round will be decided after mutual consultation. "

It was pointed out that on 1-11-1993, Government of Sindh issued proclamation under section 54 of the Code of Criminal Procedure fixing head money on the accused named therein. This notification was challenged by Mst. Raisa Farooq in the High Court of Sindh, which by its judgment dated 5-10-1993 allowed it with the following observation:-

"We have been greatly disturbed by the use of the words 'elimination', 'liquidation' arid 'head money' in the summary dated 2810-1992 moved by the Home Department of the Chief Minister. There is no provision in Pakistan law which authorises the Government to fix 'head money' for arrest or production of an accused or even a proclaimed offender, dead or alive. This would, in our view, amount to give a licence to kill or to use the words? in the Summary licence to 'eliminate' or 'liquidate' any accused or proclaimed offender. Such decisions are not only patently illegal but can create extreme serious situations. Such proposals and decisions must be condemned and it should be ensured that the same are never repeated."

However, in spite of this judgment the Government of Sindh issued a proclamation on 2-1-1995 notifying names of 16 persons as proclaimed offenders and fixing 'head money' ranging between 2 lac to 15 lac.

The respondents referred to a large number of newspapers reports and magazines particularly Newslines of March, 1995 to show that extra-judicial killings and custodial killings were so large in number and rampant that they attracted the local and foreign journalists, newspapers, associations and human rights bodies who raised similar voice of protest. The press clippings and copies of magazines give photographs of killing and torture and also mention full details of the victims. It makes a horrible reading. The Herald of March 1996 published a special report on the alarming rise in extra judicial killings entitled "The Politics of Murder" by Ghulam Hasnain and Hasan Zaidi, which stated that "The sharp rise in 'encounter' over the last three months in which dozens of M.Q.M. activists have been killed, seems to reflect one chilling fact: the Police and Rangers in Karachi have been given a free hand to arrest, judge and execute anyone suspected of involvement in terrorism".

12. The admissibility of press clippings and newspaper reports was considered in Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1976 SC 57 where the following observation was made:-

"So far as newspaper reports are concerned, the learned Attorney General has sought to rely upon them on the ground that they being contemporaneous reports of events and/or speeches which if not controverted or denied more or less at the same time must be treated as correct. He has, in this connection, referred us to Volume 29 of the American Jurisprudence (2nd Edn.), page 989, where the learned commentators have stated that where "proof is made that one usually reads a newspaper and that it has probably been brought to his attention, the newspaper may be offered in evidence for the purpose of showing that such person had notice of its contents, especially when better proof cannot be produced. Also, when it is shown that a person is author of, or otherwise responsible for, statements or articles in newspapers, they may of course be used against him.

The authority cited in support of this view is Dunlop v. United States 165 US 486 41 Led 799) where official acts of a Governor required to be made public were published in a newspaper. The publication was admitted in proof of the existence of facts stated in the Governor's proclamation.

The same learned commentator, however, concedes that 'newspapers or newspaper articles are not ordinarily admissible as evidence of the facts stated therein'. Nevertheless, it cannot be denied that so far as newspaper reports of contemporaneous events are concerned, they may be admissible, particularly where they happen to be events of local interest or of such a public nature as would be generally known throughout the community and testimony of an eye-witness is not readily available. The contemporary newspaper account may well be admitted in evidence in such circumstances as has often been done by Courts in the United States of America not because they are 'business records' or 'ancient documents' but because they may well be treated as a trustworthy contemporaneous account of events or happenings which took place a long time ago or in a foreign country which cannot easily be proved by direct ocular oral testimony.

The Courts in this country have also accepted newspaper reports in certain circumstances. Thus, in the case of Sher Muhammad v. The Crown PLD 1949 Lah. 511 Munir, J. (as he then was) accepted articles published in a daily newspaper the contents of which were not denied by the Crown. The learned Judge took the view that 'where there is no affidavit by the Crown the facts stated in the newspaper report must be accepted as correct'. Thus, if a person does not avail of the opportunity to contradict or question the truthfulness of the statement attributed to him and widely published in newspapers he cannot complain if that publication is used against him. Such an user would not be hit by the rule of hearsay."

Hamoodur Rahman, C.J. while taking note of the observation of the learned Attorney-General that as far as incidents which took place in a foreign country or speeches which were made thereby any of the leaders of the National Awami Party are concerned, the exclusionary rule on the ground of hearsay should be relaxed as is done in the Courts of U.S.A. because witnesses required to prove such facts would ordinarily be unaccessible and certainly beyond the reach of the Court's subpoena. It was observed:-

"We do not dispute the force of these contentions of the learned Attorney-General. we were ourselves conscious of these difficulties and it is for this reason that we have, as already indicated, decided to relax this rule in the cases of reports of incidents or events which took place in foreign countries or of reports of speeches or statements made there if they have not been contradicted. Similarly, articles published in foreign newspapers will also on similar grounds of necessity be admissible in these proceedings."

The above rule laid down by Hamoodur Rahman, C.J. has consistently been followed in our Courts. In the present day media revolution, accessibility and investigative nature of reporting, unless the report is immediately contradicted or is palpably false and is contradicted by some similar contemporaneous reports G the Courts and Tribunals and persons, who are not required to form an opinion on the basis of strictly proved evidence as required by law of evidence, can rely upon such reports. Applying the above principle on the present case, we find that many of the reports originate from foreign countries which though available were not contradicted. The press reports appearing with regard to extra judicial killings/custodial killings and torture have remained uncontradicted except in few cases. The reports of the agencies regularly sent to superior authorities which have been filed and have not been denied do support and corroborate the news items published in the newspapers. Many newspapers carried names, photographs and address of the persons killed in custody, but it was not?? contradicted nor any valid . explanation given by the Government. The respondent has filed a list of persons with their names and addresses, who are alleged to have been killed during the relevant period by the agencies or by rival groups, There is nothing on record that any one of those persons has wrongly been listed or that he is available or that those persons did not exist at all and are fake entries, The list of such persons was provided to the Government during the proceedings filed by M.Q.M. earlier in which the petitioner was also a party. Although it has been denied. but no systematic and organized material has been produced on record to nullify it. The magazines, newspapers and articles published are indicators of happenings on a particular date. The opinion or the expression of knowledge of author, who has known and observed and written articles are all such materials which may help in forming the opinion.

13. Extra-judicial killings or custodial deaths cannot be justified as valid, legal or proper. Explanation had been given that these persons whose numbers are few and not so huge as claimed by the respondent or M.Q.M. were hardened criminals and were killed during encounters. Even hardened criminals have a right to be prosecuted and charges be proved against them according to law. Who is to decide that a particular person under arrest is a terrorist or a hardened criminal. This is not the authority of the executive or any agency to decide it beforehand and start operation to kill him. It is the domain of the Court to decide the offence committed by a particular person and according to the law we are governed. a person alleged to have committed any crime shall be treated as innocent till the Court announces its verdict holding him guilty. This principle has been provided to safeguard the interest of the accused and also to protect the citizens from the highhandedness of the investigatings/police authorities. When the agencies charged with the duty to protect the life and property of the citizens indulge in extra-judicial killings, then starts State terrorism in which the police authorities, the Rangqrs or any other agency is permitted by an executive order to execute, eliminate or kill a, particular person. The crime becomes more heinous where persons are arrested under any charge, false or true, and then they are killed while in custody of the police/Rangers. This law of jungle cannot be' allowed to be perpetuated nor any civilized Government can be allowed to continue with it without any check. Such acts violate Article 9 of the Constitution which confers, protects and preserves life, liberty and property of the citizens. The Law of Nations does not allow to kill even an enemy soldier except in battle. So it is only in war that the persons who are fighting facing each other can be killed, but it does not permit the killing wholesale or en mass or even an individual if he is not in the battlefield. Even the P.O.Ws. are not allowed to be killed. The cases of Faheem Commando. Parvaiz and five deaths in Sukkur alleged to be during encounter with the Rangers/Police are selective cases from amongst the large

number of instances and material filed to substantiate the claim. In Faheem Commando's case the allegation made by the victim's family is that he had been taken into custody and was killed while in custody. A judicial inquiry was instituted through a Magistrate, but the concerned S.H.O, did not appear and report was submitted in an inconclusive form, The fact that a large number of persons were arrested and a large number of police officials were sacked, clearly demonstrates that there have been fake encounters and also killings in custody of the police. Such acts by the State machinery violate Fundamental Rights under which a person is entitled to be treated according to law and equally before law, The human dignity is inviolable and that the right to life cannot be taken away except as provided by law. There is no law to justify such an act perpetrated by the State machinery.

14. Besides the press reports, clippings, magazines and articles published therein, Mr. Khalid Anwar has referred to official documents, which according to him clearly prove involvement of State agency in acts of extra judicial killings and torture. He further pointed out that from these documents it will be quite clear that the Federal Government, the Prime Minister, the Interior Minister and the high Army Officers were fully aware of the situation and the day-to-day happenings at Karachi. He has referred to confidential reports from the Lt'.-Col. for Director-General, Headquarters Pakistan Rangers, Sindh, addressed to the Military Secretary to the Prime Minister and endorsed for information to the Interior Ministry, Military Operation Directorate, G.H.Q., Rawalpindi, Military Intelligence Directorate, G.H.O., Rawalpindi. The report was sent on the law and order situation in Sindh by-weekly. The first report on record is dated 20-2-1995 sent by Lt.-Col. for Director-General. It gives list of persons who were killed as a sequence of terrorist activities, the killing of M.Q.M. Altaf Group and.M.Q.M. Haqiqi Group which according to the report were due to rivalry between the two factions. There is a reference of one police encounter on 1-2-1995 in which one Jan Muhammad belonging to M.Q.M. was arrested and pistol was recovered. Such reports were regularly sent to these authorities, who used to pass necessary orders. Reference has been made to a secret report on the activities of M.Q.M.(A). It speaks of reliable contact being made with a senior leader of M.Q.M.(A) to discuss the various issues concerning situation in Karachi. The task covered the "alleged, extra judicial killings and discrimination against M.Q.M.". It reads that M.Q.M.(A) leadership has expressed concern about alleged extra-judicial killings of party activists and demanded cessation of such actions before resumption of parleys with the Government. M.Q.M, insisted that in future the repetition of such incidents should be investigated by a Judge of the High Court. M.Q.M. leadership is critical regarding the press statements of Prof. N.D. Khan in which the Government offered to shift arrested M.Q.M. activists from Islamabad to Karachi and release them on bail detaining MPAs, Senators of the party provided M. Q. M. resumed negotiation with the Government. From this report it can be inferred safely that the Government authorities were negotiating promises and settlement talks with M.Q.M.(A), but they were insisting stoppage of extra judicial killings. This note was sent to the Secretary, Ministry of Interior. It further goes on to state that M.Q.M. leaders are critical about the role of the Interior Minister, the Rangers and same police officials who are allegedly alienating Mohajirs and creating hatred in their minds. This note seems to have been placed before the then Prime Minister, who put a note on it and referred it to the Interior Ministry. On the memorandum/information report, which was referred to the Secretary, Ministry of Interior, it is stated, "let us wait for instructions from Prime Minister if not received by 25/6, direct arrest of two by Rangers and F.I.A. for interrogation by G.I.T". The persons referred are Mushtaq Tanoli, S.H.O. who is stated to be in connivance with Javed T.T. and other terrorists/criminals of M.Q.M.(A) area, who is also alleged to have released some terrorists. Reference has been made to a letter of Mst. Feroza Begum addressed to the President of Pakistan, wherein she stated that her son Hafiz Osama Qadri was arrested by police some days earlier as reported in the newspaper from Clifton area, but it was so declared after few days. She expressed her apprehension that he would be treated severely and that may cause his death or even the police may kill him and then declare it a police encounter which fake practice is prevailing nowadays. She complained that as he is Mohajir, no justice will be provided to him, rather the clerks could be awarded with cash and other perks and privileges. This letter, which was addressed to the President was marked for necessary action. Similar letter was received by the Hon'ble Chief Justice of Pakistan, who had ordered for registration of case under Article 184(3) of the Constitution in which proceedings have already been taken. Altaf Hussian, the founder and leader of M.Q.M. also sent a letter dated 6-4-1996 to the President in which he made complaint about "cold-blooded murders of the innocent and helpless Mohajir youths under the facade of police encounters or curbing terrorism". He mentioned the shocking incident of Muhammad Shakir, who was 18 years old and was arrested on 19-2-1996 around 4-00 a.m. The raiding party was led by S.H.O. Zeeshan Kazmi of New Karachi Police Station, who also arrested Shakir's brothers, namely, Abdul Wasim and Abdul Nadim and one cousin Muhammad Iqbal during the same raid. Shakir's mother Mst. Rabia Begum filed Habeas Corpus Petition No.299 of 1996 in the High Court of Sindh for the unlawful arrest of her sons. In spite of the Court order passed on 26-2-1996 to produce the detenus, they were not produced. Zeeshan Kazi demanded Rs.2,00,000 for release of the detenus otherwise they would be killed in fake encounter. Mst. Rabia Begum was unable to pay the money and Zeeshan Kazmi, who had arrested the detenus from the area of Jauharabad Police Station shifted them to New Karachi Police Station. The S.H.O. picked up Shakir from lock-up of New Karachi Police Station, took him to Sharafabad area and extra judicially executed him after inflicting him brutal torture in custody for about one and a half month. It was stated that his cousin Muhammad Iqbal was still in custody of the S.H.O., New Karachi Police Station. He demanded action by the President against Benazir Bhutto, the then Prime Minister, Nasirullah Khan Babar, Interior Minister and S.H.O. Zeeshan Kazmi for committing murder of innocent helpless Mohajirs. A detailed list of extra-judicial executions of six M.Q.M. workers was also provided which included the names of Muhammad Shakir, aged 18 years. Shahid Iqbal aged 23 years, Kaleem aged 18 years, Muhammad Aslam, aged 20 years, Hafeez Ahmed aged 27 years and Syed Anwar Ali aged 25 years. All of them were arrested or kidnapped by the police, Rangers/Agencies and were killed after torture. Full particulars of these persons and places of arrest have also been mentioned. A list dated 22-4-1996 consisting of the names of the deceased, 26 in number, giving the date of killing, has also been provided, who are alleged to have been killed in police custody or police encounter or in judicial custody for which judicial inquiry had been ordered. This list was handed over to J.S.P. in a meeting held in Secretariat 'S' Block under the State Minister for Law and Justice. In about 10 cases police had been exonerated. In one case on the recommendation of the Inquiry Officer, explanation was called for from Inspector Muhammad Anwar, which was found to be sati?factory. In most of the cases inquiry depended on the evidence of the police officials. Only in one case of Muhammad Tahir recommendation was made to register cases against the police officials. In case of Tariq Taimur, no poisonous substance was found in the Chemical Examiner's Report. death had occurred due to vomiting secondary to injuries. The note at the foot of the list reads as follows:-

"NOTE

There are also three high profile cases:-

(i)???????? Farooq Patni alias Farooq Dada and his three accomplices killed in police encounter on 2-8-1995;

(ii)??????? Fahim Farooqi @ Fahim Commando and his 2 accomplices, viz. Syed Zeeshan Hyder Abidi @ Shahani, and Yusif Rehman @ Rizwan were killed in police encounter on 10-10-1995;

For them no judicial inquiry was ordered. "

Similar list was also provided by the Government of Sindh regarding the position in Hyderabad in which names of three persons were given. In two cases inquiry was pending while in the third one it had been completed and case had been registered against the police officials and charge-sheeted before the trial Court. The case is pending. There are regular reports giving summary of major terrorist/criminal events in Karachi Division and interior of Sindh, which were sent to the Interior Minister directly and also to the G.S. (Int.) Branch, G.H.Q.. From these reports, two facts are clearly established: that there have been killings allegedly during police encounters, which were challenged publicly alleging to be false and were nothing but extra judicial killing - modus operandi being to arrest the victims, keep them in different police stations without registering case against them and then publish report that those persons have been killed in encounter with the police; and secondly that such operation was supervised and monitored by the Interior Minister and Mohtrama Benazir Bhutto, the then Prime Minister to whom regular reports were sent. The
incidents in respect of these persons were found in the newspaper clippings, press reports and monthly or weekly or by weekly magazines, which were regularly or specially covering such events.

15. There is enough relevant material on record which by any standard of admissibility. and proof can be taken into consideration which proves that extra judicial killing was indiscriminately carried on, in some of the cases inquiry was held and police was held responsible and their story of encounter had turned out to be false and fake. In the petition it has been pleaded that the complaints regarding extra judicial killings would have been valid if the Federal Government would have indeed done so. It also states that 2000 policemen were sacked for extra-judicial killings. From these two admissions in the pleading it turns out that if the Federal Government is involved in such extra judicial killing, then it cannot shirk its responsibility even though the subject may be the responsibility of a Province. Secondly, the fact that action was taken against 2000 policemen clearly shows that there was excess of a high magnitude, which compelled the authorities to take an extraordinary action. This also speaks of the general nature of police excesses carried on at the behest of Government officials. It is, therefore, to be seen whether the Federal Government was involved in this action or not. Earlier it has been observed that the Prime Minister and Ministry of Interior were monitoring and receiving information regularly and passing orders about the operation, killing and torture in Sindh. The learned counsel for the respondents has referred to following documents to show that the Federal Government was directly involved in it:-

(a)??????? Notification issued by the Government of Pakistan, Ministry of Interior and Narcotics Control dated 22-2-1995 according to which the Headquarters Pakistan, Rangers, Sindh (South), Karachi constituted under the Pakistan Rangers Ordinance, 1959 has been declared as an attached department of the Federal Government under the Interior Ministry.

(b)??????? Notification dated 17-5-1995 issued by the Government of Sindh and copy endorsed to the Secretary,, Ministry of Interior, which assigns specific role to the Pakistan Rangers (Sindh) and its component units. Relevant portions are reproduced here:--

'(v) Specifically for Karachi, Pakistan Rangers (Sindh) will remain available as a back-up reserve to be deployed in sizeable numbers in case of large scale disorder and rioting. The Rangers will function in support of the Police and prepare to take over certain areas where the situation warrants presence of a well trained strike force.

(vi) In Karachi, some of the pickets on rooftops and on ground will be taken over by this Force. Even certain areas can be allocated in the Pakistan Rangers for this purpose.

(vii) The Force will have its own independent intelligence network and un-specific operations. However, in order to cover the procedural and legal formalities, they will invariably be accompanied by a Police officer of the Local Police Station or a Magistrate..

(c)??????? Letter dated 24-6-1996 from the Home Secretary, Government of Sindh, addressed to the Secretary, Interior Division, Government of Pakistan, which states that the "Law and order situation in Sindh has improved, but the Government of Sindh has decided to continue to entrust part of the responsibilities for the maintenance of public peace and security to the officers of the Federal Government (Pakistan Rangers) under Article 177 of the Constitution and section 131-A of the? Cr.P.C., 1898 for an additional period of 12 months". It further states as follows:-7.

"Details of the functions of Pakistan Rangers will be worked out mutually by the officers of the Federal and the Provincial Government and the mechanics and modalities of the performance of such functions shall be worked out with the consent of the Provincial Government of Sindh. "

(d)??????? Notification issued by the Government of Pakistan, Ministry of Interior dated 20-7-1995, copy endorsed to the Home Secretary, Government of Sindh, which reads as follows:-

'S.R.O. 451. In .exercise of the powers conferred by section 10 of the Pakistan Rangers Ordinance, 1959 (West Pakistan Ordinance No.XIV of 1959 and in supersession of Notification No.SRO 545(1)92, dated 21st May, 1992, the Federal Government is pleased to confer and impose the powers and duties of Police Officers with regard to arrest and search of any person(s) provided for in Chapter V of Code of criminal Procedure, 1898 (Act V of 1898), or any, other law for the time being in force on every member of Pakistan Rangers Sindh whenever called for duty or to reinforce the Police and Civil Administration for the maintenance of law and order throughout the Province of Sindh.

(Sd.)
MAHER SHER MUHAMMAD,

?????????? SECTION OFFICER"

(e)??????? Cabinet decision dated 27-7-1995, which reads as follows:--

"(viii) The Cabinet placed on record its appreciation of the excellent work done by the Rangers and Police in coping with the law and order situation in Karachi.

A copy was forwarded to the Joint Secretary, Interior Division .

(f) A directive issued by the Prime Minister's Secretariat informing about the direction issued by the competent Authority i.e. The Prime Minister, relevant portion of which is reproduced below:-

(ii) Lists may be obtained by the Ministry of Interior of terrorists/criminals arrested in the Army crackdown and bailed out by the Sindh High Court. Since it has been desired that they should be rearrested the Ministry of Interior in coordination with the Sindh Government should take necessary action in this regard.

??????????

(viii) Ministry of Interior should direct D.G. Pakistan Rangers (Sindh) to constitute special arrest teams.

2. In view of the above immediate necessary action may be taken and a report in this regard be sent to this Secretariat by 28th February, 1995, for information of the Prime Minister. "

It is dated 24-2-1995 and copy was endorsed to the Secretary Interior.

These official documents prove that the situation at Karachi and operation through the Rangers and the police of Sindh which resulted in extrajudicial killings and torture was monitored, operated and examined by the Federal Government. Therefore, all actions done, taken or suffered would be at the responsibility of the Federal Government as well. The Provincial Government was equally a party to all such actions in implementing the directions.

16. This leads us to the question whether in the wake of such illegal and unconstitutional acts, the Government could be said to be carried on in accordance with the provisions of the Constitution. The Constitution guarantees Fundamental Rights, which are inviolable. Under Article 9 every person in Pakistan is guaranteed a "right to life" and he cannot be deprived of life and liberty except in accordance with law. Thus, it is a sacred right, which cannot be violated, discriminated or abused by any authority. The concept of life as used in the Constitution was considered by me in Shehla Zia v. WAPDA (PLD 1994 SC 693) where I had observed as follows:-

"The word 'life' is very significant as it covers all facets of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally."

It was further observed:-

"The Constitutional Law in America provides an extensive and wide meaning to the word 'life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. "

In Employees of the Pakistan Law Commission v. Ministry of Works 1994 SCMR 1548 it was observed:-

"It is thus clear that Article 9 of the Constitution which guarantees life and liberty according to law is not to be construed in a restricted and pedantic manner. Life has a larger concept which includes the right of enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights."

The object of guaranteeing Fundamental Rights and providing for their enforcement under Article 184(3) is intended to promote social, economic and cultural conditions, which promote life, liberty and dignity. The right to life, therefore, not only guarantees genuine freedom, but freedom from wants, illiteracy, ignorance, poverty and above all freedom from arbitrary restraint from authority. The right to life includes the right of personal security and safety, the right to have clean and lawful administration, the right to have honest and incorruptible actions by the authorities. - All Government authorities, civil, military or paramilitary are bound by the Constitution to enforce, respect and protect such rights and do not have the authority, power or right to destroy it, trample it or make a mockery of such right. All persons who are found responsible for such actions and violations must suffer prosecution and should be brought to book according to law. The right to life includes the right to live with respect, honour and dignity. Even a person, who violates any law, has the right to be treated and dealt with according to law. If a person is denied the right to life, then all rights which emanate from being a living human being also vanish. In a State where extra judicial killings are made at the orders of the Government at the helm of affairs, it cannot be treated as Constitutional, legal or civilized. The evidence and instances are so enormous that the President was justified in forming the opinion after being satisfied that the Government cannot be carried on and is not being carried on according to the provisions of the Constitution. Such extra-judicial killings, seizure and search not only violate the right to life, but impinge on the dignity of man and privacy of home as conferred by Article 14 of the

Constitution. Such actions also violate Article 25 as the victims being citizens of Pakistan cannot be discriminated and have to be treated according to law and given equal protection of law.

16. The learned counsel for the petitioner has contended that there was no evidence or material before the President for satisfying himself about the extra judicial killings, custodial deaths, arrest and torture. According to the learned counsel the documents relied upon are inadmissible in evidence and cannot be made basis for forming opinion under Article 58(2)(b). The petitioner in her rejoinder has given 17 categories of documents and one category was added during arguments contending that in view of Haji Muhammad Saifullah PLD 1989 SC 166 and Mian Muhammad Nawaz Sharif PLD 1993 SC 473 they should be disregarded and discarded. In this regard it should be noted that while considering this aspect of the case one has to distinguish between material and evidence produced in Court. Article 58(2)(b) requires the President first to form his opinion that the Government cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. This Article does not provide whether the basis for forming such opinion should be evidence as required in a Court of Law or material having nexus with the reasons mentioned in the Dissolution Order, sufficient to form an opinion. In almost all the preceding judgments interpreting Article 58(2)(b) the consensus seems to be that there should be sufficient material available to the President before forming the opinion. In none of the cases this Court has required, proved evidence according to the Qanun-e-Shahadat or repealed Evidence Act to be the basis for forming opinion by the President. It, therefore, does not require the standard of proof of evidence as required during a trial in the Court of Law. It is significant that all the judgments of this Court and the High Courts have ruled that there should be material having nexus with Article 58(2)(b) sufficient to satisfy the President before forming the opinion. This does not mean that the material relied upon be vague, irrelevant, false, forged, concocted or which did not exist at the time of forming opinion. The material should be trustworthy prima facie authentic relating to the incidents, events and happenings relied or referred on the basis of which a person of ordinary prudence, intellect and knowledge is able to form the same opinion. As most of the material produced includes newspaper clippings, magazines and published articles, it is to be considered how far they can be taken into consideration for forming opinion. The learned counsel for the petitioner has referred to Mian Muhammad Nawaz Sharif PLD 1993 SC 473 at 657 where Saad Saood Jan, J. observed:-

"Ground (d) contains allegations of maladministration, corruption and nepotism in the petitioner's Government and ground (e) accuses the petitioner's Government of unleashing a reign of terror against its opponents and mediamen. In support of these allegations the learned Attorney-General relied entirely upon Press clippings. No doubt, these allegations if true would raise a serious question for consideration whether a Government which has stooped so low can be said to be functioning in accordance with the Constitution and if there would not be a sufficient justification for the President to invoke his powers under Article 58(2)(b), ibid, to end the misery of the people. But then Press clippings can hardly form a basis for holding that the accusations made therein stand proved. It was not the case of the respondent that the allegations contained in the Press clippings were subject to (of) any inquiry of any sort or consequent upon an inquiry the petitioner's Government was found guilty. An order of dissolution of the National Assembly on the basis of unsubstantiated allegations can hardly be sustained."

Ajmal Mian, J. while dealing with the charge of harassment against the opponents of the Government, political and personal rivals, relatives and mediamen in support of which copies of personal complaints and certain news items were produced, observed:-- .
"The above allegations/complaints have not been investigated into by any competent agency/forum in order to determine the truthfulness of the allegations contained therein. If we were to accept such allegations and accusations without ascertainment of truthfulness thereof for the purpose of dissolving the National Assembly and dismissing the . Cabinet no Assembly or Government will be able to stay in power for more than few months as the making of such allegations for mala fide reasons are not uncommon. These documents were not even referred to by Mr. Aziz A. Munshi. I am, therefore, of the view that the above ground besides being not founded on any material worth consideration has also no nexus with the reason mentioned in sub-clause (b) of clause (2) of Article 58 of the Constitution."

Further while considering the charge of not taking the Cabinet in confidence before issuing Ordinances and in matters of policy although particulars of such Ordinances and policy'matters were not enumerated it was observed, "but from the newspapers clippings it appears that one or two Ministers who had resigned, had raised grievance to the effect that there was a kitchen cabinet for attending the important matters and they were not consulted". This shows that press clippings were considered. In this judgment, Shaflur Rehman, J. referring to the extensive material filed by the petitioner of the period antecedent to the impugned action has mentioned all those documents which were placed on record. They include correspondence, judgments, extracts from World Bank reports, comparative statement of References and Sale Prices, List of Cement Plants with buyers' names, analysis and evaluation of deficit financing, comments on President's Speech, press clipping from March, 1993 to May, 1993 on economic progress and investment and on the basis of it foreign investment,. press clippings showing the active role of the Presidency in obtaining resignations from the Ministers and M.P.As. thereby politically destabilizing the Government, press release, press clippings of the Advice and guidance afforded by the President to the Prime Minister for running the Government, harassment of journalists, sedition case against "The News", complaints and press clippings relating thereto, press clippings reproducing the
complaint of the widow of late Gen. Asif Nawaz, press clippings showing how frequently between October, 1992 and March, 1993 the National Assembly could not function for want of quorum, press clippings regarding newspapers comments and comments of opposition leaders with regard to 12th Amendment and the victimization of the opposition, list of 12 cases of the President's observation on irregularities/lapses on the part of the Federal Government, press clippings with regard to 8th Amendment, privatization and other complaints, press clippings mostly of persons opposed to the Prime Minister, charge-sheet prepared by the Opposition against the Government, complaints of harassment of journalists, press clippings about the performance of Government during 1991-93 etc. From this short list of documents it is obvious that press clippings, magazines, comments published in newspapers were considered, accepted, examined and taken note of and not excluded from consideration. Muhammad Afzal Lone, J. referring to the large number of clippings observed as follows:-

"From these Press clippings an inference was justifiably sought to be drawn by the learned counsel that the respondent did not act impartially and rather extended an active cooperation to the opposition and other dissatisfied elements, which was highly objectionable and against the spirit of the Constitution. It was specifically urged that the Pakistan Muslim League Parliamentary Party, which has majority in the House, passed a Resolution to do away with certain parts of the Constitutional Eighth Amendment.

The moment this decision was taken, the President thought of the device of collecting resignations to muster political power and even indulged in horse-trading to act as a counterblast. "

Sajjad Ali Shah, J. (as he then was) while considering the charge of maladministration, corruption and nepotism considered all the documents filed in Court including the press clippings, news items, articles and reports and held that there were sufficient materials in support of this ground of dissolution. No exception was taken to exclude press clippings and magazines produced by the parties. Saiduzzaman Siddiqui, J. expressed his opinion as follows:-

"Both sides have filed large number of press cuttings and relied on them to show the prevailing political climate in the country during pre-dissolution period. It is true that press reports are not to be accepted as proof of facts stated therein but where such reports were not contradicted by the concerned authority or person at the relevant time and are subsequently relied by either side in a case, these may be taken into consideration for forming an opinion generally as to the prevailing state of affairs at the relevant time. The press reports for the period immediately preceding the dissolution of National Assembly do show, that elements hostile to petitioner's Government were being entertained regularly at the President's House and after their meeting at the Presidency these elements gave the impression that the petitioner's Government was going to be dissolved very soon."

From the aforestated analysis it is clear that Ajmal Mian, J. before whom press clippings in respect of a particular charge were not even referred, refused to rely upon them but did not observe that as a_ rule press clippings, magazines and published news items should in all cases be excluded from consideration. In fact while dealing with the other charge, he relied on press clippings. The consensus is that such documents could be considered without requiring strict proof as required by the Law of Evidence applicable to trial of cases. The authentic and' uncontradicted news items published in the newspapers or magazines of contemporaneous events can form basis for drawing inferences and have been accepted as material for forming opinion.

17. The next ground relates to assassination of Mir Murtaza Bhutto in 20-9-1996. It has been stated that the petitioner appeared on television insinuating that the President and other State agencies were involved in the conspiracy leading to the assassination. This was repeated several times and Army was also maligned. However, as the matter is sub judice and the Criminal Court has taken cognizance of the matter and Inquiry Commission headed by a Judge of the Supreme Court having two member Judges of the High Court is proceeding with it, it will not be appropriate to deal with it or to make any observations on it.

18. The third ground is that the Prime Minister ridiculed the judgment of 20th March, 1996 passed by the Supreme Court in a speech before the National Assembly, which was shown more than once on nationwide television. The implementation of the judgment was resisted and deliberately delayed in violation of the Constitutional mandate and the directions of the Supreme Court with regard to the regularization and removal of High Court Judges were finally implemented on 30-9-1996 with a deliberate delay of six months and 10 days and only after the President informed the Prime Minister that if advice was not submitted in accordance with the judgment by the end of September, then the President himself would proceed further in the matter to fulfil his Constitutional obligation. The petitioner in her petition has denied the allegation of having ridiculed the judgment. It was pleaded that whatever she said was in the nature of comment on the judgment and the learned authors of the judgment were themselves broadminded enough not to take action upon any statement made by the petitioner and how could the President do so. It was also pleaded that without prejudice a speech made by a Prime Minister in a forum that has elected her, the President cannot form basis of dissolution of the entire Assembly. It is pleaded that even otherwise the speeches in Parliament are matters of internal complaint in the House and no complaint or grievance can be made with respect to them. A chart has been given showing in what manner the Federal Government implemented the judgment, the last date of implementation being 30-9-1996. It was also pleaded that the Government had filed review petition, but the fact remains that it was subsequently withdrawn. It was also pleaded that besides the learned Chief Justices, the Governors of the respective Provinces were also Constitutional consultees. They had to give their opinion also and although they were advised on or about 10-7-1996 to expedite their consideration, they were in a quandary. A dispute had been raised by some of the affected Judges concerning the observations of the learned Chief Justices of the High Courts with respect to allegations/insinuations of corruption and/or the findings of the number of years that some had practised in the High Courts. The Governors felt themselves obliged to give definite opinions as these were serious matters affecting the reputation and character of those concerned. It was pleaded that these pre-occupations may have led to some delay, but it cannot be said to have been unjustified. Reference has also been made to the correspondence between the Hon'ble Chief Justice and the President, who sought and obtained the views of the Prime Minister and then transmitted these to the Chief Justice. It was also pleaded that there were other issues not specifically dealt with in the judgment and required resolution. These included the mode of resignation/termination of the affected' Judges after scrutiny, the retrospective appointment of two Judges, the appointments of the Provincial Chief Justices, particularly of Mr. Justice Nasir Aslam Zahid to the Supreme Court or the High Court.

19. The respondents in their written statement have denied the averments made in the pleadings that the decision in the Judges' case had been implemented and could not form basis for the Dissolution Order. It was pleaded that instead of speedily obeying the orders of the Court and implementing the judgment, the petitioner's Government used every trick in the book to delay, hinder, obstruct and impede the implementation of the judgment. The decision left no room for doubt as to who had to be appointed Chief Justice, yet several weeks passed before appointments were made. Thereafter, the Chief Justice of Pakistan and the Chief Justices made recommendations as to who among the Additional Judges in the High Courts were to be confirmed. However, for weeks and months on ends, no action was taken by the petitioner's Government on one pretext or the other. These included the filing of review petition and reference on frivolous grounds. Finally the Chief Justices were compelled to take action and it was decided that all those persons not recommended for confirmation would not be assigned any work. Still the petitioner's Government remained unmoved. The result of the Government's failure was that several persons continued to draw salaries from the public exchequer and enjoyed all the personal emoluments of superior Courts Judges without doing any work at all. Finally the President was impelled to take action and informed the petitioner that in case her Government did not take action, he would be forced to act on his own. This brought about result overnight and necessary notifications were issued.

20. The learned counsel for the petitioner contended that as the implementation had been completed by 30-9-1996, there was no ground for dissolution on this basis. He further contended that similar charge 'was levelled against the petitioner when her Government was dismissed in the year 1990, but the High Court overlooked the charges and did not propose to take any action for

ridiculing the judiciary. He referred to Khalid Malik's case PLD 1991 Kar. 1 in which while taking note of this fact, it was observed that the Judges had shown grace and did not take any action, but it does not mean that if once it is overlooked, it should always be overlooked. To ridicule the judiciary in any manner exhibits the greatest disrespect to an Institution which is a pillar in the State management and is a Constitutional organ with powers conferred on it particularly to preserve, protect and defend the Constitution. It also interprets the Constitution and the law and can declare a law void and actions taken by the executive and in certain cases by the Legislature to be without jurisdiction and of no legal effect. From the facts stated in the petition and the written statement filed by the parties, it is clear that judgment dated 20-3-1996 had in clear terms spelt out the manner in which the Judges were to be appointed in the superior Courts. There was no ambiguity and to say so that certain points required consideration is nothing but a subterfuge to camouflage the real controversy. The petitioner's conduct in the National Assembly by making speech, which was repeatedly telecast on the national media, was derogatory and she ridiculed the entire judiciary. Sometimes when any speech is televised the words may not be offensive, but the tenor, the tone and gesture of the speaker makes it more objectionable. It did not behove of any person muchless the Prime Minister of the country to ridicule the institution of judiciary, which is the custodian of law and saviour of the people's rights. All the institutions of the State, be it Legislature, Executive or the Judiciary, deserve full respect and cannot be ridiculed publicly or privately. The question that the judgment had been implemented though late creates serious objection why the judgment was not implemented within the time fixed by the Court. There was a dead-lock in the judiciary. Every organ of the State is bound to assist and obey the order of the Courts. If it wants any clarification about any ambiguity or is aggrieved by it, the law provides a course for it, which should be adopted. A judgment cannot be publicly ridiculed nor can anybody under the garb of fair comment criticise a judgment to degrade the judiciary and Judges in the eyes of public. Any person ridiculing the judgment, or judiciary making disparaging remarks about the Judges and their conduct in Court could be hauled up for contempt of Court. However, the elected representatives of the Houses have more burden to share because under the Constitution Article 63 clearly provides that any person if he propagates any opinion or acts in any manner prejudicial to the integrity or independence of the judiciary of Pakistan, shall be disqualified from being elected, chosen as and from being a member of the Majlis-e-Shoora (Parliament). Any person who has ridiculed the judiciary would be disqualified even from seeking election to any of the Houses or being a member of a House. In the petition reference has been made about the appointment of Mr. Justice Nasir Aslam Zahid to the Supreme Court or the High Court to show that there were some lacunae in the judgment which had caused delay. This was clearly a misconception and deliberate attempt to delay the implementation. Mr. Justice Nasir Aslam Zahid had wrongly and unconstitutionally been made a Judge of the Federal Shariat Court at a time when he was Chief Justice of the High Court of Sindh. After the judgment he was to be reinstated as Chief Justice of Sindh, but notification was issued for his appointment in the Supreme Court and not as Chief Justice of the High Court of Sindh. It was timely intervention by the Hon'ble Chief Justice and the President, without creating any precedent for future and to save the situation which was deliberately created by the petitioner that they agreed Mr. Justice Nasir Aslant Zahid to be appointed as Judge of the Supreme Court. This clearly shows in what manner and how persistently attempts were made to refuse, retard and delay the implementation of the judgment dated 20-3-1996.

21. The learned counsel for the respondents pointed out that a bill for amendment of the Constitution was introduced without informing the President regarding accountability in which provisions were made in respect of the Judges of the superior Courts. According to section 15 of the Bill which provided for impeachment of the Judges of the Superior Courts, if 15 per cent. of the total membership of the National Assembly make a reference against a Judge for his removal, he would immediately proceed on leave and shall remain on leave till the disposal of the motion. By this manner 32 members could control the destiny of a Judge. Although the petitioner did not have sufficient strength in the House for carrying the bill, yet such a provision at that particular time when the relations with the judiciary were not cordial, was made with the obvious intention to harass the judiciary, to create fright amongst the Judges and to demoralise them in discharge of their official functions. The learned counsel for the petitioner contended that it was merely a bill which was moved and the same could have been amended or may not have been passed, but the fact remains that the introduction of the Bill at such a crucial time merely exhibits the motive for introducing such a Bill. It could not seriously have been intended to be passed because there was no possibility for such an event. It was not even brought to the notice of the President as required by Article 46. The Bill was also approved by the Cabinet and copy was not sent to the President. It was not circulated amongst the members as the Bill was to be placed before the National Assembly the same day. What was the hurry for introducing this Bill at such a juncture. It speaks volumes of mala fide intention which one can draw. We can take judicial notice of the fact that during proceedings of Judges' case and even thereafter, Judges and their families were harassed. It is a matter of record which the newspapers have carried in bold letters. I do not want to burden the record by giving those instances, but this reference is sufficient in this regard. In our view there was sufficient material on record with regard to judiciary that the President I in order to save the violation of the Constitution and to save the damage which was being caused to the judiciary as an institution discovered the National Assembly and dismissed the Government. In this regard it may also be stated that the judgment passed earlier with regard to separation of judiciary from the executive has also not been implemented in letter and spirit Ordinances were issued in which the Executive Magistrates have been given powers to try cases in which sentences do not exceed three years. It has been made clear time and again in several judgments of this Court that after the separation of judiciary from the executive, the executive authority or the Executive Magistrates cannot try, adjudicate or pass any sentence against any person. Such act would be coram non judice. The executive authorities can pass such sentence or order only if they are properly authorised under law by the High Court concerned.

22, We now take up the sixth ground of the Dissolution Order which reads as follows:-

"And whereas the Prime Minister and her Government have deliberately violated, on a massive scale the fundamental right of privacy guaranteed by Article 14 of the Constitution. This has been done through illegal phone-tapping and eaves-dropping techniques. The phones which have been tapped and the conversations that have been monitored in this unconstitutional manner includes the phones and conversation of Judges of the superior Courts, leaders of political parties and high-ranking military and civil officers."

The petitioner denied the charge stating that she "never authorised any phonetapping". The petitioner pleaded that she herself and all her Ministers and Secretaries, were victims of phone-tapping and complaint was made to the Secretary, Communication and Defence Secretary requiring investigation. The Ministry of Communications had placed order for a 300 lines tapping proof exchange for Constitutional functionaries of the State and the Armed Forces. On few occasions she had complained to the President as well. In the written statement filed by the respondents, it has been pleaded that illegal activities like phone-tapping and eaves-dropping were being carried on systematically and on a large scale. It was done by the Intelligence Bureau (IB) which works

directly under the Prime Minister. It was denied that the phone-tapping and eavesdropping was not authorised by the petitioner. It has been pleaded that if at all, phones ought only to be tapped if questions of national security are involved but it seems that the petitioner regarded the Supreme Court as a grave risk to. the security of Pakistan. Several times a week, and sometimes daily, transcriptions of those recorded conversations in which the petitioner had a special interest for any reason, were delivered by the IB operatives to the Prime Minister in a sealed envelope. It has further been pleaded that "the sheer magnitude of the phone tapping involved is staggering. For example, in the case of Judges, not only were the telephone numbers at the Judges rest houses in Islamabad and Murree under surveillance, but several important personalities were also subjected to eaves-dropping. Bugs were planted in the Chamber of the Hon'ble Chief Justice and in the Judges rest house. Apart from the judiciary the office and residence of Mr. Wasim Sajjad, Chairman Senate was also bugged. Other persons under surveillance were Mr. Hamid Nasir Chatha whose room in the Punjab House was bugged. Besides this telephones of Justice Mir Hazar Khan Khoso, Maulana Fazalur Rahman, Malik Meraj Khalid, Syed Yousuf Raza Gillani, Syed Zaffar Ali Shah, Ghulam Mustafa .Jatoi, Mir Zafarullah Khan Jamali, Gohar Ayub, Porf. Khurshid Ahmed and many other M.N.As. and Senators and officers were also tapped. The code names were given, viz..for Judges Blind Man (BM), Mr. Wasim Sajjad, Wiseman, Maulana Fazalur Rahman, Wolf, Mian Nawaz Sharif, Guest, Raja Nadir Parvez, Panther. ,

23. From the pleading it is clear that the charge of phone-tapping and eaves-dropping has not been categorically denied, but it has been pleaded that the petitioner is also a victim of the same in respect of which she had complained even to the President. It means that though phone-tapping and eavesdropping were objectionable, immoral and unconstitutional and illegal acts of the concerned authorities of which the President was made aware, continued unhindered. There is no dispute that the entire exercise was carried out by the IB working directly under the Prime Minister. It was as far back as the year 1950 when Rules of Business (1950) were framed under Government of India Act, 1935. Item 14 of Schedule II of the Rules related to the functions of IB and joint cypher Bureau. In the Rules of Business of 1973 framed under the Constitution of 1973, IB has been shown at Item No. 14 of the Schedule II of the Rules. Thus, the IB has been working as a Department of. the Government, but it was conferred the status of a Division of the Federal Government by the President as stated in the letter of the Cabinet Secretary dated 26-9-1972. During process in the Human Rights Case No.33 of 1996, our learned brother Saiduzzaman Siddiqui, J. has observed that Maj. (Rtd.) Abdur Rauf Raja, Director Establishment produced a "top secret letter of the Cabinet Secretary dated 16-8-1974 laying down the procedure for phone tapping in exceptional cases.

24. Factually voluminous record exists which shows that such illegal activities were being carried on systematically on a large scale. The transcript of those recorded conservations having special interest of the petitioner were delivered by the officials of IB to her in sealed envelope. During the fag-end of the hearing the learned counsel for the petitioner filed a document purported to be an unattested affidavit of Masud Sharif dated 25-1-1997 who as Director General, IB headed it from 16-6-1994 to 5-11-1996. It has been stated that he was "responsible to? the Government of Pakistan for numerous aspects related to national security" which "warranted close observation of various spheres of national life". He further stated that in the day-to-day discharge of duties he had to "resort to technical operations (including monitoring) in civilian sphere of our national life", which were "always ordered by me personally" and were "devoid of any mala fide".

This is a self-serving statement in which evasive and vague averments have been made. Whatever may be the stand taken by the petitioner or the ex -Director-General, Intelligence Bureau, no authority has been shown which prompted the IB and its officials to tap or carry out eaves-dropping of the telephones, be it of Judges, high-ranking officials, legislators or even -a man from the general public. As none of the officials had the authority to carry out such an act, the entire exercise was in violation of the law and the Constitutional rights guaranteed to the citizens of Pakistan. It violates the privacy of person, be it in home or office and injures the dignity of man as no respectable man would like his telephone or his private talks to be heard muchless in a stealthy and calendestine manner by using electronic devices.

25. Before proceeding to the legal and Constitutional aspects, it is necessary to first ascertain whether the petitioner was at all aware of the tapping and eavesdropping carried on by the IB. The respondents have filed statement of Muhammad Afzal Haq, Director IB, which gives an account how the tapping of telephones was carried out and the transcriptions were given to him and one Muhammad Ashraf Bhatti. he was supposed to convey the verbal instruction of Mr. Muhammad Shabbir Ahmed, JDG-A/T for monitoring and operations to Mr. Sadiq Malik, Deputy Director and Mr. Ghulam Nabi, Inspector of Technical Wing. Mr: Muhammad Sadiq Malik, Deputy Director (TV-III) has stated about the procedure. According to him, important points in the transcript used to be selected and summary was prepared by Mr. Muhammad Sadiq Malik, who was responsible to carry these transcripts to the Prime Minister and bring those back after duly circulating the same to Major (Rtd.) Muhammad Shabbir Ahmed, Ex-JDG(T) and Mr. Masood Sharif Khan, Ex. DGIB. He has been detailed by Mr. Shabbir Ahmed, JDG(T) to prepare summary of telephone tapping/monitoring and for delivery to the Prime Minister's House. He admitsto have prepared and delivered them to the Prime Minister's House in the presence of D.M.S. When the said file was seen by the Prime Minister, Sub. Azim used to call him on telephone to collect it and he used to go and collect it. He used to deliver sealed envelopes given to him by Mr. Muhammad Ashraf Bhatti, PS to JDG(T) to the Prime Minister's House and no receipt was taken at the time when the file was handed over or received back. This statement was made by Muhammad Sadiq Malik on 9-12-1996 while Ghulam Nabi made statement on 10-12-1996 and Muhammad Afzal Haq's statement is dated 18-11-1996. Mr. Aitzaz Ahsan, the learned counsel contended that these documents were not before the President when he passed .the Order of Dissolution as all of them are dated after 5-11-1996. These documents are statements, which were obtained later in respect of incidents and happenings which occurred before the Dissolution Order was passed. As stated above, from the pleadings it seems clear that the acts of telephone-tapping and eavesdropping were within the knowledge of the petitioner and the President. The IB working directly under the Prime Minister cannot be expected to work in a manner which is not authorised by the Prime Minister or any other responsible officer authorised by the Prime Minister. The statements obtained from the officers of IB at a later date would not discredit the authenticity of the facts stated therein. If the happening of certain incidents or occurrence of a certain act is established and is in the knowledge of the President before the date of dissolution, then in respect of those incidents and occurrences or about their happenings, documents and material can be obtained at a later stage. This will not render the Order or Dissolution as illegal. These documents were not before the President at the time of passing of Dissolution Order, but the fact remains that the incidents and occurrences referred therein did exist before 5-11-1996 and were within the knowledge of the President as well as the petitioner. From these statements a link is established between the petitioner and the illegal and unconstitutional act of tapping phone and eaves-dropping. In this background, the Constitutional and legal aspects which

require consideration are of serious nature as they involve violation of the Fundamental Rights guaranteed by the Constitution. The tapping or eaves-dropping of citizens to whatever class, group or status they may belong, is not only an offence under the Telegraph Act, but it also offends against Articles 9 and 14 of the Constitution. Article 14 is directly involved which reads as follows:-

"14.--(1.) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence."

Article 14 guarantees to protect dignity of man and the privacy of home which shall be inviolable subject to law. This provision providing for the dignity of I man as a Fundamental Right, is unparalleled in the Constitution and hardly ' Constitutions of few countries provide for it. Dignity of man is not only provided by our Constitution, but according to our history and belief, under Islam great value has been attached to the dignity of man and the privacy of home. If a person intrudes into the privacy of any man, pries on the private life, it injures the dignity of man, it violates the privacy of home, it disturbs the peace and tranquillity of the family and above all it puts such person to serious danger of being blackmailed. Such acts are not permissible under law and if any occasion arises for such operation, then it can be only in cases of defence and national security. This question came up for consideration in Kh. Ahmed Tariq Rahim, v. Federation of Pakistan PLD 1991 Lah. 78 in which M. Mahboob Ahmed, J. (as he then was) observed as follows:-

"Article 14 of the Constitution guarantees that the dignity of a man and, subject to law, the privacy of home, shall be inviolable. This Fundamental Right was flagrantly violated and disregarded by tapping the telephones of highly respectable persons including dignitaries like Chairman of the Senate and Speaker of National Assembly. Even the members of the Government party including the petitioner, who was the Minister for Parliamentary Affairs, were not spared. This act was not only in derogation of the fundamental right but was also violative of what had been ordained by Allah Almighty in Sura A1 Hujurat, Verse 12:

Translation

"O ye believe! Avoid suspicion as much (as possible): for suspicion in some cases is a sin: And spy not on each other."

The right to privacy of citizens is not only guaranteed by the Constitution but has its foundations in Qura'nic Injunctions and Islamic traditions. "

26. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. Here the Constitution guarantees against any attack on life or liberty of a person subject to law. The word 'life'? has been interpreted in Shehla Zia's case PLD 1994 SC 693 that it is not restricted to animal life or vegetative life. It carries with it the right to live in a clean atmosphere, a right to live where all Fundamental Rights are guaranteed, a right to have rule of law, a right to have clean and incorruptible administration to govern the country and the right to have protection from encroachment on privacy and liberty. With this definition of the word 'life' one would not deter to state that telephone-tapping and eaves-dropping mar the protection afforded and guaranteed to the right to life. It infringes the secrecy and privacy of a man which may ultimately be a source of danger and insecurity. In this way the liberty guaranteed to a person is also invaded, restricted and circumvented. Therefore, if this exercise is to be considered from any angle, be it Constitutional, legal or moral, no justification can be afforded for such reprehensible act by the official or the persons at the helm of governance of the country. History is replete with incidents when on breach of such rights Governments have been toppled. Not too far is the incident of Watergate when the President of America for conducting and interfering with the telephones and communications system of the Opposition had to resign and he was thrown out of office.

27. The list of persons whose telephones were tapped and were under surveillance consists of Judges of the superior Courts including the Chief Justice of Pakistan, Chief Justice of the Federal Shariat Court, Chief Justice of the High Court of Balochistan, Chief Justice and Judges of the High Courts of Lahore and Sindh, rest houses and Chambers of the Judges were all subjected to such illegal act which will make a respectable nation to hang its head in shame. Not only the members of the superior judiciary, but legislators, journalists, members of the opposition and even the Government party members, Government officials and many others who mattered or not in governance of the country were put under surveillance.

28. The tapping and eaves-dropping of the telephones of the Judges of the superior or the subordinate Courts interferes in the discharge of duties and decision of cases, which a Judge is bound to do under law and the Constitution. A bug was planted in the Chambers of the Hon'ble Chief Justice of Pakistan wherever he was, bugs were also planted in the Judges' rest houses, their privacy in home, Chambers or in the rest houses was all under surveillance by illegal intrusion. It is a matter of common knowledge that the Judges while hearing the cases in a Bench usually discuss the merits and demerits in chambers and in privacy. They also dictate their judgments in their Chambers where no intrusion or interference is allowed. By tapping and bugging the Chambers and homes of the Judges, interference is made in the proper discharge of duties which is wholly destructive of the independence of judiciary and its ability to function as a coordinate branch and pillar of the State.

29. Mr. Khalid Anwar, learned counsel for the respondents has referred to American Jurisprudence, 2nd Edition, Vol. 74 in which it has been stated that it is unlawful to intercept, reveal the existence of and disclose or divulge the contents of, wire or oral communications, unless the interceptor has previously obtained an order of a Court permitting a wiretap or other interception of the communication, or one party has consented to the interception. This rule is a result of interpretation of Fourth Amendment to the, Constitution of the Untied States, which secures the right of a person in his house against "unreasonable search and seizure". The words "unreasonable search and seizure" have been interpreted to cover interception of the telephone. Relevant passage is reproduced as under:-

"Under acts of Congress and State legislation, it is unlawful to intercept, reveal the existence of, and disclose or divulge the contents of, wire or oral communications, unless the interceptor has previously obtained an order of a Court permitting a wiretap or other interception of the communication, or one party has consented to the interception. A violation of such statutes is a criminal offence, the communication may not be received in evidence, and a civil action for damages may lie. By way of exception, a Federal Statute

provides that it shall not be unlawful for an officer, employee, or agent of the F.C.C., in the normal course of his employment and ii? the discharge of monitoring responsibilities exercised by the Commissions in the enforcement of Chapter 5 of title 47 of the United States Code, to intercept a wire communication or oral communication transmitted by radio, or to disclose or use the information thereby obtained. There are also limited exceptions on monitoring of calls by employees of communications common carriers.

The principal basis for striking down State statutes allowing, or for restricting the permissible scope of, wiretaps and electronic eavesdropping on conversations, is the Fourth Amendment to the Constitution of the United States, which provides: 'The right of the people to. be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oaths or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.' A wiretap of a conversation over a telephone or an electronic listening device which enables others to overhear oral statements which the speaker intends to be private, constitutes a search and seizure' of a 'thing' under the Amendment."

It can be observed that the Courts in the Untied States have extended the meaning of "unreasonable search and seizure" to cover telephone-tapping and eaves-dropping, but we have not to go too far to seek such interpretation as our Constitution in clear terms guarantees that the dignity of man and subject to law, the privacy of home, shall be inviolable and further that no person shall be deprived of life or liberty save in accordance with law. One may on strict interpretation of the words "the privacy of home" say that such guarantee is restricted to privacy of home and not office or any other premises outside home. This would be a restricted, illogical and completely out of context interpretation. The Constitution is to be interpreted in a liberal and beneficial manner which may engulf and incorporate the spirit behind , the Constitution and also the Fundamental Rights guaranteed by the Constitution. The dignity of man and privacy of home is inviolable, it does not mean that except in home, his privacy is vulnerable and can be interfered or violated. Home in literal sence will mean a place of abode--a place where a person enjoys personal freedom and feels secure, The emphasis is not on the boundaries of home but the person who enjoys the right wherever he may be. The term 'home' connotes meaning of privacy, security and non-interference by outsiders which a person enjoys. According to Ballentine's Law Dictionary, "in ancient law French, the word (home) also signified a man". It also defines as "sometimes including not only at place of abode, but also support and maintenance". We are of the opinion that wider meaning should be given to the word 'home'. The term 'privacy of home' also symbolises the security and privacy of a nature which a person enjoys in his home. The term "privacy of home" cannot be restricted to the privacy in respect of home, the privacy within the four walls of the home. It refers to the privacy, which is sacred and secure like the privacy a person enjoys in his home. Such privacy of home a person is entitled to enjoy wherever he lives or works, inside the premises or in open land. Even the privacy of a person cannot be intruded in public places.

30. The inviolability of privacy is directly linked with the dignity of man. If a man is to preserve his dignity, if he is to live with honour and reputation, his privacy whether in home or outside the home has to be saved from invasion and protected from illegal intrusion. The right conferred under Article 14 is not to any premises, home or office, but to the person, the man/woman wherever he/she may be.

31. Mr. Khalid Anwar has referred to a judgment of the U. S. Supreme Court in Charles Katz v. United States 389 US 347 = 19 L Ed. 2d. 576 = 88 S Ct 507. According to the summary of facts, the petitioner in this case was convicted in the U.S. District Court for the Southern District of California of transmitting wagering information by telephone. During the trial, on defendant's objection the Government was permitted to lead evidence of his end of telephone conversations, overheard by F.B.I. agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which he placed his calls. The Government stressed "the fact that the telephone booth from which the petitioner made his calls was constructed partly of glass, so that he was as visible after he entered it as he would have been if he had remained outside. But what he sought to exclude when he entered the booth was not the intruding eye - it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen. No less than individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. To read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication".

"The Government contends, however, that the activities of its agents in this case should not be tested by Fourth Amendment requirements, for the surveillance technique they employed involved no physical penetration of the telephone booth from which the petitioner placed his calls. It is true that the absence of such penetration was at one time thought to foreclose further Fourth Amendment inquiry, Olmstead v. United States 277 US 438, 457, 464, 466, 72 L ed 944, 947, 950, 951, 48 S Ct 564, 66 ALR 376; Goldman v. United States, 316 US 129, 134-136, 86 L ed 1322, 1327,1328, 62 S Ct. 993, for that Amendment was thought to limit only searches and seizures of tangible property. But 'the premise that property interests control the right of the Government to search and seize has been discredited'. Warden v. Hayden, 387 US 294, 304, 18 L ed 2d 782, 790, 87 S Ct. 1642. Thus, although a closely divided Court supposed in Olmstead that surveillance without any trespass and without the seizure of any material object fell outside the ambit of the Constitution, we have since departed from the narrow view on which that decision rested. Indeed, we have expressly held that the Fourth Amendment governs not only the seizure of tangible items, but extends as well to the recording of oral statements, overheard without any 'technical trespass under ... ...local property law.' ... ... '...Once it is recognized that the Fourth Amendment protects people - and not simply 'areas' - against unreasonable searches and seizures, it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure'. It was concluded that 'the underpinnings of Olmstead and Goldman have been so eroded by our subsequent decisions that the 'trespass' doctrine there enunciated can no longer be regarded as controlling. The Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus, constituted a 'search and seizure' within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance. "

32. In a recent judgment of Supreme Court of India in People's Union for Civil Liberties (PUCL) v. The Union of India and another (1996 (9) SCALE 318) a petition was filed under Article 32 of the Constitution of India, which is equivalent to Article 184(3) of our

Constitution by a voluntary organisation, in the wake of the report on "Tapping of politicians phones" by the Central Bureau of Investigation (CBI), which was published in the "Mainstream", Volume XXIX, dated March 26, 1991, authenticity of which was not challenged. Section 5(2) of the Indian Telegraph Act, 1885 provided that on the occurrence of any public emergency, or in the interest of public safety, the Central Government or a State Government or any Officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order. The proviso excluded the applicability in respect of press messages intended to be published in India of correspondents accredited to the Central Government or a State Government. From the provisions of this Act it is clear that such power was to be exercised on the occurrence of a public emergency or in the interest of items mentioned above which include sovereignty and integrity of India and security of the State as well. Section 7 provided for making of rules by the Central Government. The learned Judge observed that the word 'life' and the expression "personal liberty" in Article 21 of the Constitution include the right to privacy as part of the right to life. Referring to the judgment of Field, J. in Munn v. Illinois (1877) 94 U.S. 113, 142, and Wolf v. Colorado (1949) 338 US 25 where giving an extended meaning to the word 'life' as aforestated it was further observed that "our Constitution does not in terms confer any like Constitutional guarantee. Nevertheless, these extracts would show that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man - an ultimate essential of ordered liberty, if not of the very concept of civilisation." It was further observed:-

"An English Common Law maxim asserts that 'every man's house is his castle' and in Semayne's case (1604) 5 Coke 91, where this was applied, it was stated that 'the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose'. We are not unmindful of the fact that Semayne's case was concerned with the law relating to executions in England, but the passage extracted has a validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a concept of 'personal liberty' which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value.

In our view clause (b) of Regulation 236 is plainly violative of Article 21 and as there is no 'law' on which the same could be justified it must be struck down as unconstitutional. "

It was finally concluded that right to privacy is a part of the right to life and personal liberty enshrined in Article 21 of the Indian Constitution. Once the facts in a given case constitute privacy, Article 21 is attrapted. The said right cannot be curtailed except according to the procedure established by law. It was also observed that the right to privacy by itself has not been identified under the Constitution. "But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone-conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of ones home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law".

33. Another aspect of the case in terms of the Constitutional provision cannot be ignored that once any person's telephone is subjected to eavesdropping, tapping, intrusion or interference of any kind, it interferes with the f right of free speech and expression. Normally a person talking on telephone always presumes that his voice is heard only by the person at the other end of the telephone. The telephonic system itself presumes that except the speaker and the listener no one else can hear the talks from one end to the other. This ensures privacy and freedom of speech and a person in the presence of others may not be able to talk so freely or to express himself without any restriction or hesitation. Therefore, the. tapping and eaves-dropping of telephone also infringes Article 19 which guarantees that every citizen shall have the right to freedom of speech and expression subject to any reasonable restriction imposed by law in the interest of glory of Islam or the ,integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign State, public order, decency or morality or in relation to contempt of Court, commission or incitement of an offence. Restricting to the case of judiciary only, it seems strange how and on what principle the IB could tap, tape or eavesdrop the telephones of the Judges as there is no allegation of their being suspects, anti-State or, anti-social. More amazing is the fact that reports of such tapped conversation were regularly transmitted to the petitioner, which were examined or read by her, but no action was taken against those agencies which clearly prove her direction for and participation in such act which encouraged the IB Authorities to continue such illegal act. In our country, hardly there is any effective law, to check this menace and illegal act of the IB. Section 25 of the Telegraph Act prohibits illegal tapping and eavesdropping, but the punishment is only of three years. No procedure has been laid down for regulating the tapping, taping or eavesdropping of private or official telephones. Mere S.R.Os., official directions, rules or orders of the President, Prime Minister, Ministers, or other members of the executive cannot permit or validate violation of the Constitutional provisions. So long proper law is not legislated in this field which tray protect the violation of Constitutional rights, we direct that in future whenever any telephone is required to be tapped, taped, intruded or eaves-dropping exercise is to be carried on, it should be done with the prior permission of the Supreme Court or by a Commission constituted by the Supreme Court which shall examine each case on its merits. The permission if granted by the Supreme Court, or the Commission as the case may be, shall not exceed a period of six weeks and shall be reviewed immediately on expiry of six weeks. Reverting to the case we find that tapping of telephones and eaves-dropping of any person is reprehensible, immoral, illegal and unconstitutional act which the authorities finding that there is no clear provision to stop it, have indulged in such illegal activities. Our Constitution in clear terms gives guarantee against such violation. Therefore, we declare such acts as unconstitutional and appropriate mode for its regulation should be legislated. Till such time it is duly regulated by any legislative act, we are justified to issue such direction to protect violation of Fundamental Rights. This ground alone was sufficient to dissolve the National Assembly.

34. The sixth ground relates to corruption, nepotism and violation of rules in the administration of affairs of the Government and its various bodies, authorities and corporations, which were so extensive and widespread that the orderly functioning of the Government in accordance with the provisions of the Constitution and the law had become impossible. Public faith in the integrity

and honesty of the Government had disappeared. The members of the Government and the ruling parties were either directly or indirectly involved in such corruption, nepotism and violation of rules. The petitioner in her petition has pleaded that the allegations are vague, misconceived and are denied. In the written statement it has been pleaded that the charge is neither vague nor general nor undefined. The systematic manner in which .the entire Governmental process was undermined and subverted and the nominees of the supporters and advisers of the petitioner were accommodated provides sufficient proof. It was further pleaded that the matters referred to in the seventh ground of the Dissolution Order could not be dealt with through the judicial system because the Courts can only deal with one particular case or situation at a time, but where the violations of law are systematic, widespread and pervasive, where the Government is being run contrary to Constitutional and other applicable provisions, then even the judicial system is rendered helpless. Therefore, only realistic and plausible solution is the one resorted to by the President in terms of Article 58(2)(b). In the written statement, specific instances of corruption have also been given, some of which are mentioned, hereunder.

35. According to the respondents on 9-6-1996 the Sunday Express, a leading weekly newspaper, published a news report concerning the petitioner and her spouse under the banner headlines "Bhutto's Surrey Retreat". It was reported that the couple had acquired what was described as a "perfect hideaway": a L 2.5 million Mansion, known as Rockwood House, standing on a 355-acre estate. It was reported that the property had its own private landing strip, indoor swimming pool and that the security system on the estate was linked directly to Scotland Yard, the United Kingdom's Premier Police Division. If any alarm sounded at the estate, an "armed response vehicle" would, according to the newspaper, be. despatched at once to the estate.

36. On 16-6-1996, a leading English Daily Dawn reported further details regarding the Surrey property. According to the Dawn, shipments had been flown into England by PIA, inter alia, from Bilawal House and were destined for the Surrey Mansion. These included items such as antique guns and decoration pieces. The Sunday Express also reported that the petitioner's spouse had applied for permission to build a stud farm on the estate for his polo ponies, which was rejected, by the local authorities have given permission to construct 63 stables on the estate. It was pleaded that overwhelming evidence was available and that even the Federal Interior Minister Gen. Nasirullah Khan Babar was unable to deny that the Prime Minister was the true owner of the Surrey property, which was reported in the Business Recorder of 26-8-1996. The petitioner and her spouse threatened to sue the Sunday Express, and although the newspaper, in effect, invited them to do so, no such action was ever commenced. Further evidence in support of this charge mentioned in the written statement is that on 22-4-1996 the Deputy Chief of Protocol in the Ministry of Foreign Affairs faxed a message from the Ministry's Karachi Office to the Managing Director, PIA informing him that "personal luggage/effects" were to be sent from the "Prime Minster House (Bilawal House") to Pakistan's High Commission in London. The effects were in 8 big packages and the Managing Director of PIA was asked to depute someone to take charge of the effects for shipment. A copy of the fax was sent to the Naval Headquarters requesting Navy to arrange for the transportation of the effects from Bilawal House to the airport. On 24-4-1996 the Deputy Chief of Protocol faxed a message to Pakistan's High Commissioner in Great Britain informing him that, "under instructions of Prime Minister House" 8 heavy cartons were being despatched by a PIA flight to London, leaving Pakistan on 28-4-1996. The High Commissioner was requested to ensure safe takeover at London for further necessary action. Mr. Wajid Shamsul Hasan, the High Commissioner was the consignee while consignor was shown as Bilawal House. The cargo of 8 cartons containing 45 separate items was sent under Airway Bill No. 214-0163512. On. arrival of the cargo on 28-4-1996 a declaration for the release of the cargo was entered the same day with British Customs Authorities by the Pakistan's High Commission. According to the declaration the cargo, described as 8 pieces of household effects, weighing 3450 kgs. was for the personal use of the High Commissioner. On 2-5-1996 Mr.Wajid Shamsul Hasan addressed a letter to the Cargo Manager, PIA, London authorising one Mr. Paul to collect on behalf of the High Commissioner the personal effects which had arrived at London under Airway Bill No.214-0163512. It was released on Mr. Paul on or about 2-5-1996 giving Mr. Paul's Surname P. Keating. By another Airway Bill No.214-01629736 further 13 cartons weighing 5410 kgs. were shipped to London from Lahore via PIA by one Saroosh Yaqoob Mehdi. The consignee of the cargo was also Mr. Paul whose address on the airway bill was shown as "15-Grove, Luton, Bedfordshire, London U.K.". This Cargo was again described as personal effects.

37. The interior design work at Rockwood House was at least in part assigned to a company called Townsends. These contractors from time to time sent various invoices for the work done to a company doing such work, called Grantbridge, whose address was shown on the invoices. According to the report of Companies House, London, there are two companies, one is Grantbridge Ltd. and the other is Grantbridge Constructors Ltd. The registered address of the Grantbridge is the same as shown on the invoice issued by PIA in respect of Rockwood House. Both these companies have a common directorship and one of the directors is Mr. Paul whose address is shown in the corporate record as "15, Grove Road, Luton, Bedfordshire". The same address appears on Airway Bill No.214-01629736 of which Mr. Paul was the consignee and was despatched from Lahore. It was also pleaded that both the shipments were received by the same person and all the cartons were declared to have contained personal effects, which show .a direct link between the petitioner and her spouse with the entire transaction. It has further been pleaded that telephonic record clearly shows calls being made from Rockwood House to telephone numbers being used by, among others, Mr. Asif Ali Zardari and Mr. Javaid Pasha, one of his closest aides and cronies, which establishes interest/link between the petitioner and her spouse and Rockwood House. These facts create the impression that in purchase and owning or acquiring Rockwood House the petitioner and her husband are involved and therefore it has been pleaded by the respondents that the question arises: how such valuable and costly property can be purchased by the petitioner and her husband who cannot explain the income for such expenditure? It has further been pleaded that likewise the petitioner's father-in-law has also purchased property in France for a total value of French Franc 6 million. The disclosed wealth of the petitioner, her husband and father-in-law, according to the respondents, does not justify and does not even remotely allow for purchase of such property abroad. The pleading concludes that the possible answer is that like Rockwood Estate, the properties of Hakim Ali Zardari were also purchased on the basis of sources acquired illegally and through gross misuse of power.

38. Another instance is that by means of Pakistan Bait-ul-Mal Act, 1991, a fund known as the Bait-ul-Mal has been created for the purpose inter alia to provide financial assistance to the destitute and needy widows, orphans, invalid, infirm and other needy persons. On or about 24-3-1994, the Interior Minister, Maj.-Gen. (Retd.) Nasirullah Babar, one of the most powerful Cabinet Ministers and one very close to the petitioner and her spouse, wrote a secret letter to the Chairman (Ameen) of the Bait-ul-Mal demanding the release of Rs.10 million ostensibly for the relief of 4000 Bugti tribesmen allegedly displaced by reason of political persecution. A similar letter was also received by the Chairman (Ameen) from the Deputy Secretary, Social Welfare and Special Education Division, Government of Pakistan directing the Bait-ul-Mal to comply with the orders of the petitioner to provide

assistance to the tribesmen in terms as aforesaid. Thereafter, a short notice meeting was called in the Prime Minister's Secretariat on 3-4-1994. The meeting was presided over by Mr.Ahmed Sadiq, who was serving the petitioner as her Principal Secretary. The meeting urged the Chairman (Ameen) to provide the promised relief of Rs.10 million and to make a plea before the Board of Management of the Bait-ul-Mal to relax its procedure and provide a further amount of Rs.10 million. On 4-4-1996 cheque No.39, drawn on the State Bank of Pakistan, was issued by the Bait-ul-Mal for a sum of Rs.10 million. The cheque was issued in the personal name of the Interior Minister, i.e. Naseerullah Babar. It was despatched the same day to the Interior Minister and receipt thereof was duly acknowledged on 6-4-1996. It was encashed the same day. On the same day, a "Secret/Most Immediate" letter was also received by the Bait-ul-Mal from the Prime Minister's Secretariat confirming that the Bait-ul-Mal had agreed to the immediate release of Rs.10 million and that Rs.10 million would be released after the approval of the Board

39. On 13-4-1996, the Chairman (Ameen) of the Bait-ul-Mal wrote to the Secretary, Special Education and Social Welfare Division, Government of Pakistan, informing him that the case of further instalment i.e. The next Rs.10 million would come up before the next Board of Management meeting scheduled to be held on 16th or 17th of April. The meeting of the Board duly rubber stamped the decision already taken, and because of the urgent nature of the case and with the blessing of the Chairman (Ameen), a second cheque.No.43 dated 24-4-1996 drawn on the State Bank of Pakistan for Rs.10 million was also issued in the personal name of the Interior Minister. Thereafter, the Bait-ul-Mal received evidence purporting to show that the ids released had been disbursed to Bugti tribesmen. The statement produced consisted of lists of thousands of names of alleged recipients alongwith the following information: the father's/husband's name; in some cases, the Identity Card number of the recipient, the amount received and, most significantly, the thumb-impression of the recipient. Most of the alleged recipients were shown as not having any identity cards. However, far more significantly, an examination by technical experts has revealed that in most of the cases, the thumb-impressions are all of one person. For example, in one case 325 thumb-impressions are all of one person, which means that Rs.16.25 lac were received by one person. In another, 265 thumb-impressions are of the same person meaning that the person concerned received Rs.13.25 lac. In a third, 118 thumb-impressions are the same and the person who affixed his thumb-impression re ceived Rs.5.9 lac. In a forthcase, 114 thumb-impressions are identical indicating that the person received Rs.5.7 lac. In yet another case, 80 thumb-impressions are all identical and this person, thus, received Rs.4.0 lac. In other words, it is obvious that the lists of alleged recipients are bogus and have been created and concocted for the express purpose of stealing Bait-ul-Mal funds.

40. It has been pleaded that Rs.20 million disbursed personally to the Interior Minister has been misappropriated. The manner in which disbursement was obtained from the Bait-ul-Mal indicates the real story behind the scene. In order to support the charge it was further stated that Ms. Naheed Khan, Political Secretary of the petitioner and one Rehmatullah, Consultant to the petitioner while she was Prime Minister, are also involved in gross violation of rules and got sanctioned Rs.6.171 million and Rs.27.05 million from the Bait-ul-Mal. It is alleged that Ms. Khan forwarded a list of 55 names to the Bait-ul-Mal without the proper procedure being followed in these cases, collected cheques totalling Rs.34,90,000 on 1-9-1995 on behalf of these persons.

41. It has been pleaded that the petitioner kept the portfolio of Finance Ministry with the intention to secure benefits which, if Finance Minister is there and the influence which such Minister can exercise in such a position, may not be possible. The role of the State Minister for Finance was restricted largely to making budget speech in the Parliament without effective say in the affairs of the Ministry. Mr. V.A. Jaffery served as adviser to the Ministry of Finance and had been in operational charge of all routine policy matters. Reference has been made to the conditions which prevailed in the banks. In the case of Habib Bank Ltd., United Bank Ltd. and National Bank of Pakistan, bad debts, nonperforming loans (bad debts) stood at Rs.50.76 billion at the end of 1993. By 30-6-1996 this figure increased to Rs.66.647 billion. In the case of ADBP and IDBP, the bad debts of Rs.5.712 billion, by 1996 sky-rocketed to Rs.13.195 billion. The Development Finance Institutions' bad debts swelled from Rs.6.12 billion to Rs.16.396 billion. Liquidity position was also deteriorating to an alarming extent figures of which have been quoted and ultimately U.B.L. had to be taken over by the State Bank to save it from bankruptcy. It is further pointed out that recruitments in the banks followed the same sorry trend as in the public sector in general. In N.B.P. 5028 appointments were made. Out of these, a paltry 325 were made by the Pakistan Banking & Finance Service Commission. Another 180 were made by the bank's recruitment committee. The rest (4523) were appointed on the basis of instructions received from the Prime Minister's Secretariat and the Ministry of Finance. In the case of U.B.L., illegal recruitments, were taken even one step further: over 2,500 "ghost" i.e. nonexistent employees were shown on the bank's pay rolls and crores of rupees were taken away in their names under the aegis of Mr. Aziz Memon, who was not only Bank's union leader, but also a P.P.P., M.N.A. The State Bank complained about the National Bank of Pakistan to the Ministry of Finance pointing out the sharp increase in the expenditure incurred by the bank headed by Mr. M.B. Abbasi, known to be close to the petitioner and her spouse. The expenditure on telephones went up by 87 % , and entertainment expenses increased by 57 % . Donations amounting to Rs.93.496 million were disbursed during the period from January to March, 1996 and most were violative of State Bank instructions. Rs.553.032 million were spent on a renovation and airconditioning programme. Similarly loans were written off in a massive manner. From June, 1993 to June, 1996, Rs.3.397 billion were written off. The State Bank, as required by law, used to regularly send inspection reports regarding commercial banks to the Ministry of Finance which pointed out to the illegalities and to the worst condition prevailing in the banks. The Ministry of Finance directed the State bank on 28-1-1996 not to send detailed inspection reports, but only summaries. The State Bank was also asked to take back copies of the reports already submitted. Thus, the Ministry of Finance did not want to have unbearable record.

42. The affairs of Pakistan Steel Mills have also been stated where gross mismanagement was carried on under the chairmanship of Mr. Usman Farooqi. It has been stated that Mr. Farooqi in or about December, 1995 ordered the sale of 15,900 tons of steel at rates well below the market price to certain select favourites, who were offered the products at prices ranging between Rs.7,581 to Rs.9,282 per ton although the Steel Mills management had set the prices of the relevant- products at Rs.20,000 per ton. As the matter was raised before the National Assembly, the steel dealers appeared before the relevant standing committee and offered to purchase the entire lot for double the price at which it was sold. On 30-1-1996 the standing committee requested the Steel Mills not to proceed with the matter. However, on 6-2-1996 the Ministry of Industries issued a letter allowing Pakistan Steel to go ahead on the ground that if the deals were not allowed to go through, legal complications would arise. Thus, the public exchequer was deprived of crores of rupees. Even Mr. V.A. Jaffery, petitioner's adviser for finance complained on 17-7-1996 about the severe financial deterioration in the Steel Mill's condition. He pointed out the decline in production and cash balance had declined from Rs.2147 million to a paltry Rs.68 trillion, the mills had defaulted on payments to banks, but no action was taken against Mr. Usman Farooqi.

Another instance of corruption is given about the export of sugar which was allowed from Pakistan which created a public noise. On 25-1-1995 the Prime Minister's Secretariat was informed by the Commerce Ministry that the former may send allocations up to 2000 metric tons per person to the Ministry. Thereafter, a number of persons and firms, who were not Sugar Mill owners, were allowed quotas to export sugar. These quota allocations were used as means of political patronage and enabled the allottees to enrich themselves. In some cases original allottees of quotas were allowed by the relevant Minister to transfer the allocated amount to other persons contrary to the Cabinet decision. Likewise, reference has been made to Textile quota Policy, which was amended in order to provide for the discretionary allocations of textile quotas. Lists were received from the Prime Minister's Secretariat of individuals and firms recommended by various leaders and party supporters. Quotas were allocated on this basis to and/or at the behest of the petitioner's supporters both within and outside the Parliament in complete violation of rules and regulations. In the written statement reference has also been made to decision of the Government to allow M/s. Ary Traders giving them the monopoly to import gold. Similar instances in rice export have also been mentioned in which the bidders were managed in such a way that in effect there was only one bidder Although RECP had no rice, it entered into a binding contract to sell 500,000 tons at a price well below the then prevailing international market price. The petitioner personally as Prime Minister took the decision that RECP should purchase the rice at the market price. Although it was pointed out that this would entail a staggering loss of US $ 41 million for RECP, the petitioner casually brushed aside this objection on the pretext that it would be for the benefit of growers. In the transaction RECP suffered a loss of Rs.7,62,63,445. In the written statement the power policy of the petitioner's Government has also been made subject to criticism, which according to the respondents, was only to benefit certain foreigners and it has been pointed out that agreements signed by both WAPDA and KESC with the private power projects provide that once the projects have come on line, the utilities would be liable to pay the projects for electricity equal to up to 60 % of their capacity even if no power at all were actually purchased. It was concluded that such policies not merely ensured that there would be excess capacity in the country, both WAPDA and KESC would end up paying millions of dollars annually for power that they would not need and could not utilize. Reference has also been made to the case of Liberty Power Project. Amongst the instances quoted, OGDC also finds place, which was subjected to gross abuse of power and corrupt practices. A consultancy for studying dry holes involving US $ 393,256 was awarded to M/s. Hydrocarbon Development Institution of Pakistan (HDIP) and M/s. Improved Petroleum Recovery (IPR). IPR is a US company, which was previously represented by Saif International, a company owned by the Saifullah family, and Mr. Anwar Saifullah was the Minister for Petroleum and Natural Resources, the Ministry which controls OGDC. The proposal for the study was initiated by HDIP and IPR and was submitted to the Minister for Petroleum and Natural Resources on 13-6-1994. He approved it the same day. On 11-10-1994 the Chairman OGDC wrote a letter stating that another firm had also submitted a proposal which would cost almost half of what HDIP and IPR were charging. This letter was not replied by the Secretary. On 27-11-1994 OGDC received a directive to complete the process of awarding the consultancy to HDIP and IPR. The contract was awarded in complete violation of existing procedures and norms. Similar instances of irregularities have been mentioned in respect of Mr. Riffat Askari, Chairmam OGDC on 15-11-1994 with Cooper and Lybrand ("Cooper") in USA. Another M.O.U. was signed on 2-12-1994 during Mr. Askari's visit to the United Kingdom and both the M.O.Us. were for the same work. Mr. Askari awarded a contract to the Cooper for the Reserves Evaluation Study worth US$ 2,500,000 and 50% of the total amount was paid by OGDC as advance and in neat three months another 30% was also paid out. Thus, 80% of the total cost was released to Cooper even though no work at all had been done. The files sent to the Finance Department were missing and payments were made on only a copy of the contract available with the Department. It also points out that Mr. Riffat Askari sold 2298 metric tons of scrap and 7461 assorted store items without public auction and at throwaway prices to the people of his choice causing loss to the OGDC estimated at Rs.67,906,161. Instances of corruption and malpractices in C.D.A. have also been mentioned in detail in which plots were allotted at a reduced price to Dr. Javed Saifullah, brother of the Federal Minister Anwar Saifullah in relaxation of the rules. Similar transactions were also made notably one is respect of Sindh People's Welfare Trust of which the petitioner was the Chairperson, Educational Trust Nasra School of which mother of Ms. Shehnaz Wazir Ali was a beneficiary, Wahid Public School of which the sister of Ms. Naheed Khan was the owner and Islamabad Grammar School owned by Mrs. B.A. Qureshi wife of old P.P.P. supporter. It has been stated that as a result of allotments aforestated, C.D.A. would receive in total an amount equal to approximately Rs.39.9 million. However, the reserve price of these plots is Rs.219 million and the market price is Rs.329 million. Likewise attempt was made to set up a cooperative housing society that would allot plots to parliamentarians on the concessional rates in which majority of the parliamentarians had applied. A 16 acre piece of land at Shakarprian was allotted to M/s. Inter Hotels (Pakistan) Ltd., a company in which, among others, Mr. Asif Zardari's brother-in-law had an interest, although it had been earmarked for recreational and sports purposes in the Islamabad's Master Plan and it was decided that the project would be a joint venture undertaken by the C.D.A. as in the earlier transactions regarding hospitals and schools with 50% quota of C.D.A. The land was given to-them almost free.

43. The question whether corruption can be made a ground for dissolving the National Assembly has assumed great importance particularly at a time when it has plagued every walk of life in the governance of the country and administration. The question was considered in Khalid Malik v. Federation of Pakistan PLD 1991 Kar. 1 where I had observed as follows:-

"The word 'corruption' has nowhere been defined but it has diverse meanings and far-reaching effects on society, Government and people. It is always used in a sense which is completely opposite to honesty, orderly and actions performed according to law. It covers a wide field and can apply to any colour of influence, to any officel any institution, any forum or public. A person working corruptly acts inconsistent with the official duty, the rights of others and the law governing it with intention to obtain an improbable advantage for self or some else. There are various forms of corruption. One where a person discharges his duty according to law but on certain consideration. His act may be proper and legal but its performance is influenced by extraneous consideration be it monetary, affection or love. The culture of corruption and bribe, of late, has embedded in our society to this extent that even routine works which should be done without any approach or consideration are commonly known to be done only on consideration. This bribe culture has plagued the society to this extent that it has become a way of life. In Anatulay VIII (1988) 2 SCC 602 where Abdul Rahman Anatulay Chief Minister of Maharashtra was prosecuted for corruption Sabyasachi Mukharji, J. laments as follows:-

'Values in public life and perspective of values in public life, have undergone serious changes and erosion during the last few decades. What was unheard before is commonplace today. A new value orientation is being undergone in our life and culture. We are at the threshold of the cross-roads of values. It is for the sovereign people of this country to settle these conflicts yet the Courts have a vital role to play in these matters.'

The degeneration in all walks of life emanates from corruption of power and corruption of liberty. Corruption breads corruption. 'Corruption of liberty' leads to 'liberty of corruption' ... ...

Corruption and bribery adversely affect the social, moral and political life of the nation. In society rampant with corruption peoples lose faith in the integrity of public administration. In India in 1964 Committee on the Prevention of Corruption known as Sanathanam Committee observed as follows:-

'It was represented to us corruption has increased to such an extent that people have started losing faith in the integrity of public administration. We had heard from all sides that corruption, in recent years, spread ~', even to those levels of administration from which it was conspicuously absent in the past. We wish we could confidently and without reservation assert that at the political level Ministers, legislators, party officials were free from the malady. The general impressions are unfair and exaggerated. But the very fact that such impressions are there causes damage to social fabric.'

The Committee also observed that there is popular belief of corruption among all classes and strata which 'testifies not merely to the fact of corruption but its spread.' Such belief has a social impact causing 'damage to social fabric'.

The anti-corruption and penal laws have remained ineffective due to their inherent defect in adequately meeting the fast multitudinous growth of corruption and bribery. Corruption in high places has remained unearthed leading to a popular belief that immunity is attached to them. To combat corruption the whole process and procedure will have to be made effective and institutionalised.

1 he spread of corruption and bribe culture is so wide that even rumours and concocted stories assume the proportion of general belief. Corruption cripples the Government and Administration. It paralyses the course of justice and throws honest persons of integrity in oblivion as redundant and misfit.. No Government with record of corruption, nepotism and favouritism can claim to be run according to Constitution and Law. Where corruption is of enormous nature affecting major spheres of life and it is a motivating force in taking major decisions and public dealings by the Government and Administration, it will surely have nexus with the order of Dissolution. "

This ground also came up for consideration in Kh. Ahmed Tariq Rahim's case PLD 1992 SC 646. At page 666, Shafiur Rehman, J. observed that "It is true that some of the grounds like (c) (corruption), (e)(ii) and (e)(iii) may not have been independently sufficient to warrant such an action. They can, however, be invoked, referred to and made use of along with grounds more relevant like (a) and (b) which are by themselves sufficient to justify the action taken". In Mian Muhammad Nawaz Sharif's case, Ajmal Mian, J. observed that "if the corruption, nepotism and favouritism? are of such a large scale that they have resulted in the breakdown of the Constitutional machinery completely, it may have nexus with the above provision". I had reiterated my views quoted above, but further observed that the observations in Ahmed Tariq Rahim are binding. Now is the time to reconsider this aspect of the case thoroughly as in my view in Mian Muhammad Nawaz Sharif's case or that of Kh. Ahmed Tariq Rahim this aspect had cursorily been dealt with. In Kh. Ahmed Tariq Rahim only one sentence quoted above was mentioned with regard to corruption. There was no full-fledged discussion on the question whether corruption could be made a ground for dissolution of the National Assembly. There seems to be no settled view and there appears to be divergence of opinion as according to Ajmal Mian, J. if the corruption is so enormous that the Government cannot be carried on in accordance with the Constitution, it can be made a ground for dissolution of the Assembly. Whether on the ground of corruption an Assembly can be dissolved depends upon the nature of corruption and its enormity. Time has come to make assessment of the situation and also to consider whether corruption can be made a ground for dissolution of the Assembly. Corruption which pervades in the administration, social and moral life which is rampant in political levels of Ministers, legislator, officials and it has gone so deep into the roots that a general impression has been created that no administrative, Government or even Governments corporation work normally done in the discharge of duty can be performed without resorting to corruption. Once corruption pervades in the body-politic and official circles, then the entire Government and Administration is completely crippled and paralysed. Honesty and integrity is sidetracked. There becomes a general impression that all official acts are motivated by corruption, favouritism and nepotism. This follows that any Government or Administration about which such impression has been created and have become common which may not be true in totality, it destroys the authenticity, legality and validity of the actions. Such actions purported to be done under the provisions of law or the Constitution, but motivated by private impulses, benefits and corruption cannot be termed as performed under the Constitution. When this becomes order of the day, it becomes difficult to say that the Government is run in accordance with the provisions of the Constitution. From the enormous record produced in this case to show corruption, nepotism, bribery and favouritism, one can safely assume that corruption at such massive scale had destroyed the social, moral, legal and political fabric of the nation. Where corruption is of such a nature, it can be made a ground for dissolution because the Government cannot be allowed to be run on the whims and caprices, corruption and bribery, favouritism and nepotism. I will distinguish Kh. Ahmed Tariq Rahim's case as there on the ground of corruption the material produced was not of such enormous nature nor this aspect was considered factually and legally by Shafiur Rehman, J. in detail. Recounting the instances of corruption one may point out to Surrey Estate title documents of which are not available on record and is stated to be in the name of a company allegedly a dummy company in the nature of a benami title holder. However, circumstantial evidence discussed above connects the link between
Surrey Estate and the petitioner, her husband and Bilawal House. Although the petitioner has denied any connection with Surrey Estate, the shipment through PIA of alleged household effects, telephone calls, permission obtained for constructing stable and security arrangements lead to the inference that the petitioner and her husband have interest in the said property. In cases of corruption sometimes it is difficult to obtain definite evidence, but it is not uncommon that in cases where disciplinary action as opposed to penal and criminal action is taken in the absence of direct evidence, from indirect material which directly and clearly points out to corruption, inference can be drawn. There may not be direct evidence against a Government official to prove specifically alleged corruption, but if he lives beyond his means, it may be a relevant fact against him. Besides this, massive appointments made on the recommendation of M.N.As., M.P.As., Ministers or Prime Minister's Secretariat in violation of the rules in the Government offices and public corporate sector is a corruption of serious nature as it excludes the meritorious persons, destroys the structure of service and shakes the confidence of people. It also breeds inefficiency and encourages indiscipline. What makes it more serious that such appointees and the nominees of the party in power give an obedient command performance in violation of Rules and Regulations. The instance of Bait-ul-Mal referred above makes a horrifying reading. The Amin, who is a

trustee in violation of the rules had dished out two cheques of Rs.10 million each in the name of Maj.-Gen. (Retd.) Nasirullah Babar which on material 1, available has not been distributed amongst the needy and poor as required by law. A political milage has been sought at the cost of Bait-ul-Mal. In reminds me of an incident of Umar-bin Abdul Aziz. While he was working at night in a candle light, a person visited him. Umar extinguished the candle and said that while he was talking privately and not officially, he would not use the candle of Bail-ul-Mal. They talked together in darkness. Similar incident is attributed to Emperor Aurangzeb as well. This is the sense and standard of responsibility and honesty of the rulers and sanctity of Bail-ul-Mal. Even Ms. Naheed Khan was also recipient of money from Bait-ul-Mal in disregard of the rules and regulations. The financial scams, irresponsible and reckless policies motivated by personal or individual benefits, rise in written off loans, advances by banks and financial institutions, transactions made by Pakistan Steel Mills and similar other transactions and permissions referred above give a general impressibe to all and sundry that every order passed, agreement and transaction made suffered from corruption. When corruption pervades in the social, political and financial transactions to such an extent that even proper and honest orders and transactions are suspected to the point of belief being a result of corruption, one is compelled to infer all is not well and corruption has gained deep in the roots. No doubt this is an age of "corruption eruption", but during the last two years one-third of Indian Cabinet and the Secretary-General, NATO were charged of corruption and have fallen while Italy's postwar prominent Prime Ministers, two former Presidents of South Korea were indicted for corruption and the later were even sentenced. There have been parliamentary investigations into financial abuses at high level in Japan, Turkey, Colombia and Mexico. Pakistan is not far behind. It has fallen in line. Although the President in his address warned against corruption, it continued unabated. In my opinion, there was sufficient material and the corruption was so, enormous and widespread that an order of dissolution could be passed individually on this basis or collectively together with other substantive grounds discussed above.

44. Mr. Aitzez Ahsan, learned counsel for the petitioner contended that as under Article 58(2)(b) two ingredients are required to be satisfied and the President in the impugned order has not given, any reason for the second condition, namely, appeal to the electorate is necessary, the order of dissolution is illegal. The learned counsel-has referred to Mian Muhammad Nawaz Sharif's case and relied on the observation of Saiduzzaman Siddiqui, J. that Article 58(2)(b) contemplates two conditions, namely, (1) a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and (2) an appeal to the electorate is necessary. It was also observed that "what are those facts and circumstances which justify an inference that these two objective conditions mentioned in Article 58(2)(b) (supra) have been satisfied, must be answered with reference to the facts and circumstances of each case, and no hard and fast rule in this regard can be laid down by the Courts". It was further observed as follows:-

"Similarly, the use of expression in Article 58(2)(b) (supra) that 'an appeal to electorate is necessary', implies that the Assembly has lost its representative character. This may happen where either majority of its members have resigned or where floor-crossing and 'horse-trading' by the members of the Assembly has become the order of the day, or there are other very strong circumstances suggesting that the electorate no more reposed confidence in the policies of the Government. The examples, referred by me above are, however, by no means exhaustive and there may be other facts and circumstances which may justify inference that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary."

From the above observations it is clear that there should be some material having nexus with Article 58(2)(b) to the satisfaction of the President on the basis of which opinion can be formed that an appeal to the electorate is necessary. However, there can be several situations and examples on the basis of which an opinion can be formed as required. The impugned order after giving the facts ; and the materials further recites that "And whereas for the foregoing reasons, taken individually and collectively, I am satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary". Therefore, the grounds stated in the order have individually and collectively been taken to form opinion that an appeal to the electorate is necessary. The grounds have already been analysed in detail. The only question to be seen is whether on their basis President could form an opinion that an appeal to the electorate is necessary. The extra judicial killing, ridiculing judiciary, corruption, bribery, withdrawal of money from Bait-ul-Mal and the banks and similar instances which have been given, show that the people had lost faith in the services, the administration and in the impartiality and legality of the Assembly as well. The members of the Assembly are not required to remain mute spectators of violations of the Constitution and infraction of Fundamental Rights at a massive-scale. They have their duty to discharge as required by the Constitution. In these circumstances, the President was justified in forming an opinion that an appeal to the electorate was necessary.

45. It is not necessary that for each of the grounds of Article 58(2)(b) separate grounds and materials may be stated under each category. If the material is common and both the ingredients can be satisfied, the requirement would be fulfilled.

46. For the foregoing reasons, by a short order which is an Annexure to this judgment and forms part of it, the petition was dismissed.

(Sd.)

SALEEM AKHTAR, J

(Sd.)

?????????? FAZAL ILAHI KHAN, J

IRSHAD HASAN KHAN, J.---I have had the privilege of going through the illuminous judgment proposed to be delivered by my learned brother Saleem Akhtar, J. I respectfully agree with the conclusions arrived at by my learned brother that the petition merits dismissal on the basis of the material produced before the Court on behalf of the President which has nexus with the grounds mentioned in the impugned order of dissolution as well as grounds specified in Article 58(2)(b). However, in view of the importance of the controversy raised herein and the fact that I am unable to share the observations of my learned brother that the

averments made in various newspapers/press reports could be considered as proof of extra judicial killing as well as other grounds in the dissolution order, I am recording my opinion separately in support of the short order, dated 29th January, 1997 dismissing the petition against the dissolution of National Assembly.

The material, including newspaper clippings etc., relied upon by the President in dissolving the Assembly is, of course, relevant and can be taken into consideration as admissible material on the basis of which a person of ordinary prudence would conclude that the matters and events narrated therein did occur but not a strict proof of the matters stated therein as if adjudicated in a IA regular trial.

2. Mohtarma Benazir Bhutto, the petitioner herein, is the ousted Prime Minister of the Islamic Republic of Pakistan. She has presented before this Court a petition under Article 184(3) of the Constitution seeking the enforcement of Fundamental Right 17 which guarantees to her, like every other citizen of Pakistan, not being in the service of Pakistan, a right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan. Her grievance is that the President by invoking his powers under Article 58(2)(b) of the Constitution and dismissing her from the office of Prime Minister and her Cabinet and by dissolving the National Assembly of which she was the majority party leader, has violated this guaranteed Fundamental Right. His action is mala fide, hostile, motivated by vindictiveness to harm the petitioner in her office, career, person, reputation and dignity and thus violative of Articles 9, 14 and 17 of the Constitution.

3. The relief claimed by her is in the following terms:--

"(i)??????? Declare that the so-called dissolution of the National Assembly of Pakistan by the President on 5-11-1996 is wholly without lawful authority, unconstitutional, arbitrary, mala fide, void, inoperative and of no legal effect, and that the said National Assembly still exists in the eyes of Constitution and law;

(ii)??????? That the Cabinet headed by the petitioner as the Prime Minister is constitutionally still in existence and she continues to be the Prime Minister of Pakistan;

(iii)?????? All the steps taken, appointments made, laws framed including the issuance of any order or Ordinance by the President after 5-11-1996 are without lawful authority;

(iv)?????? That persons purporting to hold the Offices as the Prime Minister, Ministers, etc. have not been constitutionally appointed as such and they have no authority in law to act as the Prime Minister and Ministers;

(v)??????? Without prejudice to above and in the alternative the respondents Nos. l and 2 be directed to fulfil their obligations with regard to the appointments of the petitioner as the Prime.Minister and that all actions should be taken in accordance with advice of the Prime Minister and her Cabinet to be constituted in accordance with the provisions of the Constitution;

Any other relief which this honourable Court deems fit and proper may also be granted."
4. It would be advantageous to .reproduce the impugned order passed by Mr. Farooq Ahmad Khan Leghari, the President of Pakistan, respondent No.l herein, on the midnight of 5th November, 1996 at 1-00 a.m. whereby the National Assembly of Pakistan was dissolved and the- Prime Minister and her Cabinet were dismissed. The dissolution order reads as follows:-

"The President Dissolution Order"

WHEREAS during the last three years thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. They have been killed in Police encounters and police custody. In the speech to Parliament on 29th October, 1995 the President warned that the law enforcing agencies must ensure that there is no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected. This advice was not heeded. The killings continued unabated. The Government's fundamental duty to maintain law and order has to be performed by proceeding in accordance with law. The coalition of political parties which comprise the Government of the Federation are also in power in Sindh, Punjab and N.-W.F.P. but no meaningful steps have been taken either by the Government of the Federation or, at the instance of the Government of the Federation, by the Provincial Governments to put an end to the crime of extra judicial killings which is an evil abhorrent to our Islamic Faith and all canons of civilized Government. Instead of ensuring proper investigation of these extra judicial killings, and punishment for those guilty of such crimes, the Government has taken pride that, in this manner, the law and order situation has been controlled. These killings coupled with the fact of widespread interference by the members of the Government, including members of the ruling parties in the National Assembly, in the appointment, transfer and posting of officers and staff of the lawenforcing agencies, both at the Federal and Provincial levels, has destroyed the faith of the public in the integrity and impartiality of the law-enforcing agencies and in their ability to protect the lives, liberties and properties of the average citizen.

And whereas on 20th September, 1996 Mir Murtaza Bhutto, the brother of the Prime Minister, was killed at Karachi alongwith seven of his companions including the brother-in-law of a former Prime Minister, ostensibly in an encounter with the Karachi Police. The Prime Minister and her Government claim that Mir Murtaza Bhutto has been murdered as a part of a conspiracy. Within days of Mir Murtaza Bhutto's death tip Prime Minister appeared on television insinuating that the Presidency and other agencies of State were involved in this conspiracy. These malicious insinuations, which were repeated on different occasions, were made without any factual basis whatsoever. Although the Prime Minister subsequently denied that the Presidency or the Armed Forces were involved the institution of the Presidency, which represents the unity of the Republic, was undermined and damage caused to the reputation of the agencies entrusted with the sacred duty of defending Pakistan. In the events that have followed, the widow of Mir Murtaza Bhutto and the friends and supporters of the deceased have accused Ministers of the Government, including the spouse of the Prime Minister, the Chief Minister Sindh, the Director of the Intelligence Bureau and other high officials of involvement in the conspiracy which, the Prime Minister herself alleges led to Mir Murtaza Bhutto's murder. A situation has thus arisen in which justice, which is a fundamental requirement of our Islamic Society, cannot be ensured because powerful members of the Federal and

Provincial Government who are themselves accused of the crime, influence and control the law-enforcing agencies with the duty of investigating the offences and bringing to book the conspirators.

And whereas on 20th March, 1996 the Supreme Court of Pakistan delivered its judgment in the case popularly known as the appointment of Judges case. The Prime Minister ridiculed this judgment in a speech before the National Assembly which was shown more than once on nation-wide television. The implementation of the judgment was resisted and deliberately delayed in violation of the Constitutional Mandate that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court with regard to regularization and removal of Judges of the High Courts were finally implemented on 30th September, 1996 with a deliberate delay of six months and ten days and only after the President informed the Prime Minister that if advice was not submitted in accordance with the judgment by end September 1996 then the President would himself proceed further in this matter to fulfil the Constitutional requirement. The Government has, in this manner, not only violated Article 190 of the Constitution but also sought to undermine the independence of the judiciary guaranteed .by Article 2A of the Constitution read with the Objectives Resolution.

And whereas the sustained assault on the judicial organ of State has continued under the garb of a Bill moved in Parliament for prevention of corrupt practices. This Bill was approved by the Cabinet and introduced in the National Assembly without informing the President as required under Article 46(c) of the Constitution. The Bill proposes inter alia that on a motion moved by fifteen per cent. of the total membership of the National Assembly, that is any thirty-two members, a Judge of the Supreme Court or High Court can be sent on forced leave. Thereafter, if on reference made by the proposed special committee, the Special Prosecutor appointed by such Committee, forms the opinion that the Judge is prima facie guilty of criminal misconduct, the special committee is to refer this opinion to the National Assembly which can, by passing a vote of no confidence, remove the judge from office. The decision of the Cabinet is evidently an attempt to destroy the independence of the judiciary guaranteed by Article 2A of the Constitution and the Objectives Resolution. Further, as the Government does not have a two-third majority in Parliament and as the Opposition Parties have openly and vehemently opposed the Bill approved by the Cabinet, the Government's persistence with the Bill is designed not only to embarrass and humiliate the superior judiciary but also to frustrate and set at naught all efforts made, including the initiative taken by the President, to combat corruption and to commence the accountability process.

And whereas the judiciary has still not been fully separated from the executive in violation of the provisions of Article 175(3) of the Constitution and the dead-line for such separation fixed by the Supreme Court of Pakistan.

And whereas the Prime Minister and her Government have deliberately violated, on a massive scale the fundamental right of privacy guaranteed by Article 14 of the Constitution. This has been done through illegal phone-tapping and eaves-dropping techniques. The phones which have been tapped and the conversations that have been monitored in this unconstitutional manner includes the phones and conversations of Judges of the superior Courts, leaders of political parties and high ranking military and civil officers.

And whereas corruption, nepotism and violation of rules in the administration of the affairs of the Government and its various bodies, authorities and corporations has become so extensive and widespread that the orderly functioning of Government in accordance of the provisions of the Constitution and the law has become impossible and in some cases, national security has been endangered. Public faith in the integrity and honesty of the Government has disappeared. Members of the Government and the ruling parties are either directly or indirectly involved in such corruption, nepotism and rule violations. Innumerable appointments have been made at the instance of members of the National Assembly in violation of the law declared by the Supreme Court that allocation of quotas to M.N.As. and M.P.As. for recruitment to various posts was offensive to the Constitution and the law and that all appointments were to be made on merit, honestly and objectively and in the public interest. The transfers and postings of Government servants have similarly been made, in equally large numbers, at the behest of members of the National Assembly and other members of the ruling parties. The members have violated their oaths of office and the Government has not for three years taken any effective steps to ensure that the legislators do not interfere in the orderly executive functioning of Government.

And whereas the Constitutional requirement that the Cabinet together with the Ministers of State shall be collectively responsible to the National Assembly has been violated by the induction of a Minister against whom criminal cases are pending which the Interior Minister has refused to withdraw. In fact, at an earlier stage, the Interior Minister had announced his intention to resign if the former was inducted into the Cabinet. A Cabinet in which one Minister is responsible for the prosecution of a Cabinet colleague cannot be collectively responsible in any manner whatsoever.

And whereas in the matter of the sale of Burmah Castrol shares in PPL and BONE/PPL shares in Qadirpur Gas Field involving national assets valued in several billions of rupees, the President required the Prime Minister to place the matter before the Cabinet for? consideration /reconsideration of the decisions taken in this matter by the ECC. This has still not been done, despite lapse of over four months, in violation of the provisions of Articles 46 and 48 of the Constitution.

And whereas for the foregoing reasons, taken individually and collectively, I am satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

Now, therefore, in exercise of my powers under Article 58(2)(b) of the Constitution I Farooq Ahmad Khan Leghari, President of the Islamic Republic of Pakistan do hereby dissolve the National Assembly with immediate effect and the Prime Minister and her Cabinet shall cease to hold office forthwith.

Further, in exercise of my powers under Article 48(5) of the Constitution I hereby appoint 3rd February, 1997 as the date on which general elections shall be held to the National Assembly.

(Sd.)

(Farooq Ahmad Khan Leghari), President."

5. The grievance of the petitioner in nutshell is that despite the fact that the Government was running smoothly in accordance with the Constitution, there was no dead-lock or stalemate, the President passed an order purporting to be under Article 58(2)(b) of the Constitution of the Islamic Republic of Pakistan, 1973, dissolving the National Assembly and dismissing her and the Cabinet on 5-11-1996.

6. It was contended by Mr. Aitzaz Ahsan, learned counsel for the petitioner that the impugned order reflects malice both in law and in fact of the President and that in any case, it' is outside the scope and extent of Article 58(2)(b) as interpreted in the cases of Haji Muhammad Saifullah Khan (PLD 1989 SC 166), Khawaja Ahmad Tariq Rahim (PLD 1992 SC 646) and Mian Muhammad Nawaz Sharif (PLD 1993 SC 473). He submitted that the President while passing the impugned order has proceeded on the erroneous assumption that the Prime Minister was subordinate to him. In support of his contention reliance was placed on observations made by Shafiur Rehman, J. in Mian Nawaz Sharif's case, that the Prime Minister is only responsible to the National Assembly and the element of subordination so far as the office of the Prime Minister viz-a-viz that of the President is concerned, does not exist. He further submitted that the grounds in the dissolution order have no nexus with Article 58(2)(b) of the Constitution, inasmuch as, these provisions could be invoked when there is a state of war in the country, life has completely paralysed and the conditions are such as were prevalent in 1977 which had brought the country to the brink of disaster necessitating Martial Law but none of the conditions prevalent in 1977 are present today. In support of his contention reliance was placed to the various passages in the following cases. In the case of Haji Muhammad Saifullah Khan (PLD 1989 SC 166) Shafiur Rehman, J. had observed:-

"The expression 'cannot be carried on' sandwiched as it is between 'Federal Government' and ' in accordance with the provisions of the Constitution', acquires a very potent, a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of the progress, the shade of the quality or the degree of the performance or the quantum of the achievement. It concerns itself with the breakdown of the Constitutional machanism, a stalemate, a deadlock and ensuring the observance of the provisions of the Constitution. The historical perspective in which such a provision found a place in the Constitution reinforces this interpretation."

Reference was also made to the speech of the then Law Minister contemporaneously explaining the purpose and object resulting in the provisions of Article 58(2)(b), he said:-

"We have placed a check on the President that where the condition as I have submitted many a time in the Hon'ble House, these conditions as realized in 1977. In that case, when the machinery of the Federation is totally blocked and it becomes absolutely impossible for the Federal
Government to function in that case, the President will dissolve the Assembly. "

In Khawaja Ahmad Tariq Rahim' case (PLD 1992 SC 646) A.S. Salam, J. in his minority view observed:-

?"The provision may come into play only when the Constitutional ?????????? machinery has completely broken down. Where had it broken down or come to standstill? All Constitutional authorities were there and functioning, presidency, National Legislature, Governors, Provincial? Assemblies, Courts etc. If there were defaults or defects, violation of? flaw, these were matters to be attended to by the President and his Cabinet. They had to work in unison. The President cannot throw the bucket and dissolve the National Assembly and call the nation in twenty? months time to go back to polls. Elections cost money and turmoil. Poor country can hardly afford the luxury with no prospectus of any improvements. Exercise of authority or power demands careful, cool assessment with foresight."

While dilating on the exercise of Article 58(2)(b) Rustam S. Sidhwa, J. at page 690 observed:-

?"All Government actions are not free from catastrophic errors of judgment or dismal failures of action. The functional ability of a ruling? party to govern does not merely fail if some provision of the Constitution is violated or not performed or ill-performed. With political strategy and choices, in a house divided between many political parties, being mauled or mutilated by conflicting interests, it may not be possible to take even simple decisions."
?
7. Mr. Aitzaz Ahsan strongly relied upon various observations in the below mentioned judgments of this Court relating to the exercise of the powers of the President under Article 58(2)(b) of the Constitution. In Federation of Pakistan v. Haji Muhammad Saifullah Khan (PLD 1989 SC 166 at page 188) Nasim Hasan Shah, 1. observed:--

"The intention of the law-makers, as evidenced from their speeches and the terms in which the law was enacted, shows that any order of dissolution by the President can be passed and an appeal to the? electorate made only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution."

It was further observed at page 189 in the above judgment:

"The discretion conferred by Article 58(2)(b) of the Constitution on the? president cannot, therefore, be regarded to be an absolute one, but is to? be deemed to be a qualified one, in the sense that it is circumscribed by the object of the law that confers it."

In Khawaja Ahmad Tariq Rahim's case (PLD 1992 Supreme Court 646 at page 664) Shafiur Rahman, J. observed:-

?"It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes If place extensive, continued and pervasive failure to observe not one but? numerous provisions of the

Constitution, creating the impression that? the country is governed not so much by the Constitution but by methods extra-constitutional. "

In the case of Mian Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 Supreme Court 473) reliance was placed on the, following observations at page 567, by Nasim Hasan Shah, C.J. (as he then was):-

"Our Constitution, in fact, is designed to create a parliamentary democracy. The President in this set-up is bound to act, in the exercise of his functions, in accordance with the advice of the Cabinet or the Prime Minister (Article 48(1) and the Cabinet in its turn is collectively responsible to the National Assembly (Article 91(4)) though the Prime Minister holds office at the pleasure of the President. However, the President cannot remove him from his office as long as he commands the confidence of the majority of the members of the National Assembly (Article 91(5)). In view of these provisions, the system of Government envisaged by the Constitution of 1973 is of the parliamentary type wherein the Prime Minister as Head of the Cabinet is responsible to the Parliament, which consists of the representatives of the nation."

It was further observed:-

"Despite personal likes or dislikes, the two can co-exist Constitutionally. Their personal likes or dislikes are irrelevant so far as the discharge of their Constitutional obligations are concerned. Despite personal rancour, ill-will and incompatibility of temperament, no deadlock, no stalemate, no breakdown can arise if both act in accordance with the terms of the Oath taken by them, while accepting their high office."

At page 647, Saad Saood Jan, J. observed:-

"The word 'cannot' as occurring in the clause brings in not only an element of impossibility but also that of permanence in its construction and thus the President can exercise his power thereunder only if there is material before him showing that the affairs of the State have come to such a stage that it is no longer possible for the Government to function except by violating the Constitution."

At page 792 Muhammad Rafiq Tarar, J. observed:--

"The net result arrived at after the entire discussion, in the above two cases is, that the Court accepted the proposition that the President can dissolve the National Assembly for the acts of commission and omission of the Prime Minister or the Cabinet, and that it has to test each and every ground of the President for dissolving the National Assembly, on the following touchstones, and see that they satisfy the prescribed requirements, in order to condone the action taken:

(,a)?????? Was there an actual or imminent breakdown of the Constitutional machinery, as? distinguished from a failure to observe a particular provision of the Constitution'!

(b)??????? Has there taken place any extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-constitutional?

(c)??????? Is there an imminent danger of breakdown of the Constitutional machinery so as to take an immediate action for nipping it in the bud?

(d)??????? Is it imperative to mend the ill-effects of a breakdown that has occurred ....?"

It was further observed at page 798:-

?"The fault has thus to be. found, not in the working of the Prime? Minister or the Cabinet but in the working of the National Assembly. Again, it is not every fault but only that fault which has rendered the working of the Government of the Federation impossible and has also made an appeal to the electorate necessary."

At page 799 it was observed:-

"It will be seen that the dead-locks emerge from the working of the legislative bodies and jam the wheel of the Government. So, no action in the nature of dissolution of the National Assembly or dismissal of the Cabinet by the President will be justified where the Prime Minister enjoys the confidence of the House and no deadlock has appeared because of the working of the National Assembly. The result is that if the National Assembly is working smoothly and there exists no deadlock for the Government to carry on its functions, the President neither has the power to dismiss the Prime Minister and his Cabinet nor can he dissolve the National Assembly."
"The President is empowered to dissolve the National Assembly if he forms an opinion that the Government cannot be run in accordance with the Constitution. This power is not absolute or unfettered. The President has first to form an opinion, an objective opinion on the basis of the material before him to come to the conclusion that the Government cannot be carried on in accordance with the Constitution. The formation of opinion being objective in nature can be judicially examined and reviewed by the Courts."

It was further observed at page 815:-

"In interpreting Article 58(2)(b) the Constitutional background is to be taken into consideration. The Constitution envisages Parliamentary form of Government. Therefore, if any provision has been inserted in the Constitution afterwards infringing, or impinging on the democratic and Parliamentary system, it is to be construed in a manner that spirit and form of Parliamentary system is not distorted. The sum and substance of the authorities is that the conditions as laid down in Article 58(2)(b) should be

strictly construed. Article 58(2)(b) conferring a power to dissolve the National Assembly in certain circumstances cannot be given a liberal or wide meaning. It has to be given a restricted meaning in the facts and circumstances of the case."

At page 861 Saiduzzaman Siddiqui, J. observed:-

"From the above discussion it would appear that the expression, 'the Government of Federation cannot be carried on in accordance with the provisions of the Constitution' in Article 58(2)(b) (supra) contemplates a situation where the affairs of the Government are not capable of being run in accordance with the provisions of the Constitution either on account of persistent, deliberate and continued violation of various provisions of the Constitution by the Government in power, or on account of some defect in the structure of the Government, its functioning in accordance with the provisions of the Constitution is rendered impossible. The use of expression 'cannot be carried on' necessarily imports an element of impossibility and disability and refers to an irretrievable and irreversible situation. An unintentional and bona fide omission to follow a particular provision of the Constitution, not? resulting in the breakdown of Government machinery or creating a situation of a stalemate or dead-lock in the working of the Government, will not be covered in the situations contemplated under

'?????????? Article 58(2)(b) of the Constitution."

8. Relying on the aforesaid observations in the judgments referred above, Mr. Aitzaz Ahsan argued that Mohtarma Benazir Bhutto was still the leader of the House commanding confidence of a majority of the members when the Assembly was dissolved on 5th November, 1996. The Government was running smoothly in accordance with the Constitution and there was no dead-lock or stalemate. The situation before November 5, 1996 was not so grave as was the case in 1977, when the life was totally paralysed in the wake of P.N.A. Movement and the Civil Government had to hand over the control of the major cities to the Army. In the case in hand, prior to the dissolution of the Assembly, the Constitutional institutions and the State machinery were working in accordance with the Constitution and there was no fault in the functioning of the Legislature. He argued that the dissolution of the Assembly can take place not on failure to observe one of the provisions of the Constitution but in case of total breakdown of Constitutional machinery in view of the latest judgment of this Court in the case of Mian Muhammad Nawaz Sharif (supra). It was further submitted that the case of the petitioner is in pari materia with the case of Mian Muhammad Nawaz Sharif (supra), therefore, following the rule of consistency, the petitioner is also entitled to the same relief as was given in the aforementioned case. Mr. Aitzaz Ahsan, in the alternative, argued that even if the State machinery was not functioning in accordance with the Constitution, the President should have taken some remedial steps to rectify the alleged defects and errors before taking the extreme action of dissolving the Assembly and that in any case the grounds stated in the dissolution order have no nexus with the provisions of Article 58(2)(b) of the Constitution. He further argued that the President had withheld the material and provided only those documents to the Court which were to his advantage and even those voluminous documents are irrelevant and inadmissible, therefore, should be excluded from consideration and if that is done there is nothing left on record to support the dissolution order. He denied all the allegations levelled in the dissolution order.

9. Mr. Khalid Anwar refuted the arguments of Mr. Aitzaz Ahsan on interpretation of Article 58(2)(b) of the Constitution that it could only be attracted if there was a stalemate or dead-lock or complete breakdown of Constitutional machinery. He argued that if the situation as in 1977 crops up Article 58(2)(b) is attracted. If there can be other situations, then the Court will decide what those situations are. He argued that the majority view in Haji Muhammad Saifullah Khan's case was that unless it could be shown that the machinery of the Government had broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution, dissolution could not be ordered. It was also held that unless the machinery of the Government of the Federation had come to a standstill or such a breakdown had occurred therein which prevented the orderly functioning of the Constitution, dissolution could not be ordered. However, this view was modified in the case of Khawaja Ahmad Tariq Rahim (supra). Rustam S. Sidhwa, J. observed at page 690:-

would submit that the test laid down is too strict and rigid. It forgets? that the provision is also preventive. One does not have to wait till the whole machinery of the Government collapses or comes to a standstill or so serious a breakdown occurs which prevents the orderly functioning of the Government, before ordering a dissolution. What is required is that the breakdown is imminent, as partial dislocation has begun, or the breakdown has actually taken place and as a last resort interference is required to ultimately restore representative Government. Each case should, therefore, be left to be dealt with on its own merit. "

Rustam S. Sidhwa, J. under para. 15 of the said report also quoted with approval the interpretation of a similar provision of the Indian Constitution (Article 356) in the case of State of Rajasthan (AIR 1977 SC 1361 at para. 40), wherein it was held that this provision is both preventive and curative and that the same position is in our Constitution. It was observed:-

"Preventive, so as to prevent failure of Constitutional machinery taking place by nipping in the bud a breakdown that is imminent. Curative, so?? as to mend the ill effects of a breakdown that has occurred."

Shafiur Rahman, J. at page 664 observed:-

"It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place
extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional. " ,

10. ????? A bare perusal of Article 58(2)(b) of the Constitution would show that for exercising power the requirement is not 'satisfaction' of the President that situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary but that of formation of 'opinion' to the same effect. The framers of the Constitution deliberately chose a lesser word of 'opinion' instead f 'satisfaction. For example, under sub-clause (b) of clause (1) of Article 199 of the Constitution, on the application of any person the High Court may issue an appropriate

writ, if it is 'satisfied' that no other adequate remedy is provided by law. Similarly, under Articles 232 and 233 of the Constitution relating to proclamation of emergency on account of war, internal disturbances etc. and power to suspend fundamental rights etc. during emergency period, there is a concept of Presidential satisfaction and not that of formation of opinion. Where the resident is so satisfied he can assume power of Provincial Government, Whereas under Article 58(2)(b), the requirement is not 'satisfaction' but formation of 'opinion' by the President. There is, thus, clear distinction as to the connotation of these two words. For formation of 'opinion' lesser burden of proof is required than that of 'satisfaction'. It is not to be based on overwhelming and conclusive evidence but on some material on the basis of which a reasonable man can form an opinion that the Government of the Federation cannot be run in accordance with the Constitution. The standard of proof in the form of material to support the charges cannot be the same as required for the proof of a criminal charge. On the other hand, 'satisfaction' is the existence of a state of mental persuasion much higher than a mere 'opinion' and when used in the context of judicial proceedings has to be arrived at in compliance with the prescribed statutory provisions. Support can also be had from the case of Durgadas v. Rex (AIR (36) 1949 Allahabad 148), wherein it was held:-

"Satisfaction only means that the detaining authority was in fact satisfied, or, in other words, honestly satisfied and not a dishonest satisfaction, which will be no satisfaction at all. The satisfaction has to be on the consideration of the materials available to the detaining authority which may not be legal evidence."

In the case of S.S. Yusuf v. Rex (AIR (37) 1950 Allahabad 69), it was observed:-

"If the authority to be satisfied is convinced that the actions of the detenu, though they relate to private property in the past, give an indication that he will so conduct himself in the future as to cause prejudice to public safety or public order, it is not for the Court to sit in judgment over this. The satisfaction may depend upon materials available to the detaining authority which may not be legal evidence at all. Thus, it might well be that the Government has in its archives materials for showing what the repercussions of actions such as those complained of will be upon the economic stability of the State and might form its opinion upon material, upon which Courts of law are not expected to act."

Reference may also be made to Mqhit Lal Pandit v. The State (AIR (38) 1951 Patna 439(2), wherein it was held:-

"For passing an order for detention it is really the satisfaction of the Magistrate which is necessary. If the police have sufficient material to . satisfy him he can act under the Act, even though there is no detailed evidence of the type on which a Court of law can convict an accused. Hence, the fact that the police were unable to furnish a detailed report till a date very near the one on which the order was passed cannot lead to the inference that the order was passed mala fide in the absence of materials."

The President can, therefore, exercise his power under Article 58(2)(b) of the constitution if there is some material before him showing that the affairs of the Government of the Federation cannot be run in accordance with the Constitution. The words 'stalemate' or 'deadlock' do not appear in the provisions of Article 58(2)(b)., These concepts are to be read in the said Article in view of the process of judicial pronouncements referred above. Shafiur Rehman, J. in the case of Haji Saifullah Khan (supra), while examining the scope of power reserved for the President in Article 58(2)(b) of the Constitution, observed as follows:-

"Additionally the existence of jurisdictional facts capable of judicial ascertainment and adjudication was made a precondition for the exercise of this power. Not to test the exercise of this power by reference to these constitutionally prescribed jurisdictional facts, namely:-

a situation has arisen in which the Government of the Federation cannot be carried or. in accordance with the provisions of the Constitution; and
(2)??????? an appeal to the electorate is necessary; would in fact amount to a failure to discharge a duty ordained by the Constitution itself."

11. Clearly, for formation of an opinion, the President can take note of what the world says about State terrorism or other affairs of the Government. Of, course, for forming opinion on the basis of such information he has to apply his independent mind. Contemporaneous acts can also be looked into by the President. He can also take judicial notice of press reports. Refer Islamic Republic of Pakistan v. Abdul Wali Khan (PLD 1976 SC 57). The admissibility of such a material was also considered in Mian Muhammad Nawaz Sharif v. Federation of Pakistan (PLD 1993 SC 473), wherein Saiduzzaman Siddiqui, J. observed:-

"Both sides have filed large number of press cuttings and relied on them to show the prevailing political climate in the country during predissolution period. It is true that press reports are not to be accepted as proof of facts stated therein but where such reports were not contradicted by the concerned authority or person at the relevant time and are subsequently relied by either side in a case, these ;nay be taken into consideration for forming an opinion generally as to the prevailing state of affairs at the relevant time. The press reports for the period immediately preceding the dissolution of National Assembly do show, that elements hostile to petitioner's Government were being entertained regularly at the President's House and after their meeting at the Presidency these elements gave the impression that the petitioner's Government was going to be dissolved very soon."

Muhammad Afzal Lone, J. as well as Sajjad Ali Shah, J. (as he then was) while examining the grounds of the dissolution order in Mian Muhammad Nawaz Sharif's case (supra) also took into consideration the press clippings, news reports and other relevant material.

12. It would, therefore, be seen that the rule laid down by Hamoodur Rehman, C.J. in Abdul Wali Khan's case (supra), has consistently been followed in our Courts and the press reports etc. have all along been relied upon, not as a, strict proof of the matters stated therein as required by the law of evidence during a trial in a Court of law, but as a part of the material on the basis of which a person of ordinary prudence would conclude that the matters and the events narrated therein did occur.

13. This Court has, however, no concern with the quantity or sufficiency of the material nor can it sit in appeal on dissolution order passed by the President provided that the grounds stated therein have nexus with Article 58(2)(b) of the Constitution. The Court is merely required to examine as to whether or not the President has exercised his power in accordance with the provisions of Article 58(2)(b) and that the action taken by him is bona fide and in doing so the Court is not required to hold an enquiry into the charges levelled in the dissolution order, as if it was a criminal Court. Refer Federation of Pakistan v. Aftab Ahmad Khan (PLD 1992 Supreme Court 723), wherein Ajmal Mian, J. observed at 787:-

"I am mindful of the fact that a Court cannot sit as a Court of appeal while examining an order of the nature in issue, nor it can substitute its opinion nor it can go into the question of sufficiency of material provided that the material relied upon has nexus with the grounds mentioned in the impugned order, which in turn should have nexus with the grounds mentioned in Article 112(2)(b) of the Constitution manifesting application of mind by the repository of power."

It was further observed at page 789:

"It is evident from the above quoted extracts that the formation of opinion should be founded on some material, and that the ground(s) should have nexus with the grounds mentioned in Articles 58 and 112 of the Constitution. The question, whether grounds exist for dissolving Assembly, is to be examined objectively and not subjectively by the repository of the power in question. It is also apparent that if it can be shown that no ground existed on the basis of which an honest opinion could be formed, the exercise of the power would be unconstitutional and open to correction through judicial review."

Also refer to T.N. Educational Deptt. Ministerial and General Subordinate Services Assn. v. State of T.N. (AIR 1980 SC 379), wherein the Court refused to interfere in the administrative functioning of the State in the absence of arbitrariness or mala fides. It was observed:-

"All life including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right."

"The Court cannot substitute its wisdom for Government's save to see that unreasonable perversity, mala fide manipulation, indefehsible arbitrariness and like infirmities do not defile the equation for integration."

In the case of Tata Cellular v. Union of India ((1994) 6 SCC 651), it was observed:-

"Judicial review is concerned with reviewing not the merits of the decision but the decision-making process itself. It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision but in judicial review the Court is basically concerned with the decision taking process because even otherwise the Court is hardly equipped to review the merits of the decision. The Court rightly remarked that it is not the function of the Court to act as a superboard or with the zeal of a pedantic school master substituting its judgment for that of the administrator.

The duty of the Court in exercising the power of judicial review is, thus, to confine itself to the questions:-

(1)??????? Whether a decision-making authority exceeded its powers?

(2)??????? Whether the authority has committed an error of law?

(3)??????? Whether the authority has committed a breach of the principles of natural justice?

(4)??????? Whether the authority has reached a decision which no reasonable person would have reached?

(5)??????? Whether the authority has abused its powers?

Thus the judicial review of administrative actions can be exercised on the following grounds:-

'(1)?????? Illegality. --This means that the decision-maker must correctly understand the law that regulates his decision-making power and must give effect to it.

(2)??????? Irrationality.--This means that the decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person could have arrived at such a decision.

Procedural impropriety.--This means that the procedure for taking administrative decision and action must be fair, reasonable and just.
??????????? Proportionality.--This means is any administrative decision and action the end and means relationship must be rational.

(5)??????? Unreasonableness.--This means that either the facts do not warrant the conclusion reached by the authority or the decision is partial and unequal in its operation.

Thus, the modern trend in the area of judicial review is towards, judicial restraint. "

Reference may be made to Administrative Law by Sir William Wade & Christopher Forsyth, Seventh Edition, 1994, page 400, wherein it has been observed:-

"This is not therefore the standard of 'the man on the Clapham omnibus'. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use

and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called ' Wednesbury unreasonableness', after the now famous case in which Lord Greene MR. expounded it as follows:-

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, LJ in Short v. Poole Corporation gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into? consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another. "

14. In his judgment in Aftab Ahmad Khan Sherpao's case (supra), Shafiur Rehman, J. observed at page 747:-

"It was not disputed by any of the parties before the High Court that the Governor had, apart from passing a formal order, made the announcement of the same in Press Conference which had found wide publicity in the press next morning. It was a contemporaneous act. There being no dispute with regard to it, the Court could refer to it for looking to the grounds disclosed then and sustained afterwards. " (Underlining is mine).

In the case of Chairman, East Pakistan Railway Board, Chittagong and District Traffic Superintendent v. Abdul Majid Sardar, Ticket Collector (PLD 1966 Supreme Court 725), this Court observed:-

" ????????? acts performed and orders made by public authorities deserve due regard by Courts and every possible explanation for their validity should be explored and the whole field of powers in pursuance to which the public authorities act or perform their function examined and only then if it is so found that the act done, order made or proceeding undertaken is without lawful authority should the Courts declare them to be of no legal effect."

The same view was reiterated in Lahore Improvement Trust, Lahore through its Chairman v. The Custodian, Evacuee Property, West Pakistan, Lahore (PLD 1971 SC 811) in the following words:-

"Another principle attracted in the case is that before an order passed by a public authority is struck down it is the duty of the Court to explore every possible explanation for its validity and examine the entire field of powers conferred on the authority in pursuance to which the impugned order has been passed. See the Chairman, East Pakistan Railway Board, Chittagong and another v. Abdul Majid Sardar, Ticket Collector PLD 1966 SC 725. It was remarked in this judgment:-

Acts performed and orders made by public authorities deserve due regard by Courts and every possible explanation for their validity should be explored and the whole field of powers in pursuance to which the public authorities act or perform their functions examined and only then if it is found that the act done, order made or proceeding undertaken is without lawful authority should the Courts declare them to be of no legal effect.

To satisfy the requirement of this rule it is the duty of the Court to examine the entire record pertaining to the action taken, order passed and proceedings undertaken which are challenged as without lawful authority under Article 98 of the Constitution. Otherwise grave miscarriage of justice may take place in the exercise of this beneficial jurisdiction.'"

The rule laid down in the case of Kh. Ahmad Tariq Rahim (supra) still holds the field and has been extensively quoted with approval in the case of Mian Muhammad Nawaz Sharif v. Federation of Pakistan (PLD 1993 SC 473), as is apparent from the following passages. Ajmal Mian, J. referring to the observations of Shafiur Rehman, J. in the case of Kh. Ahmad Tariq Rahim (supra) observed at pages 677 and 678, in the following terms:-

"22. The above sub-clause (b) of clause (2) of Article 58 of the Constitution is pertinent to the point in issues. In my opinion, once the President forms the opinion objectively on the question that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution on the basis of the material having nexus with the above reason, he enters into the domain of discretion and it is for him to decide, as to whether the proper action would be the dissolution of the Assembly or some other action warranted by some other provisions of the Constitution or law. This question had come up for consideration before this Court in the case of Kh. Ahmad Tariq Rahim (supra), wherein Shafiur Rahman, J. speaking on behalf of the majority concluded as follows:-

There are three general arguments advanced by the learned counsel for petitioner which need attention at this stage before taking up the specifics. The first was that there were available to the President other alternative Constitutional remedies before resorting to this or such a rastic step. In advancing this argument a misconception with regard to the Constitutional powers enjoyed by the President in his discretion and by the Prime Minister has been exhibited. All the alternative powers referred to are exercise able by the President only on the advice of the Pritpe Minister and not in his discretion. It is not for the President to seek advice of the Prime Minister and to obtain one. Nor is it open to the Courts to examine what advice, if any, was given and how it was received. None of the powers, be it under Article 186(1), or Article 233 1) or Article 184(1) of the Constitution or even section 131-A of the Criminal Procedure Code is exercisable by the President in his discretion. So, there are no alterative remedies available
to the President but these alternative remedies are available to the Prime? Minister.

Even otherwise the object of dissolving the Assembly in its essence is an appeal from the legal to the political sovereign as highlighted by Dicey in his celebrated book 'Introduction to the Study of the Law of the Constitution'."

It was also observed at page 679 in the following terms:-

"Both the parties were in agreement that the law as enunciated as to the scope of sub-clause (b) of clause (2) of Article 58 of the Constitution by this Court in its judgment in the case of Haji Muhammad Saifullah Khan (supra), Kh. Ahmad Tariq Rahim (supra) and the case Federation of Pakistan v. Aftab Ahmad Khan Sherpao (supra) is the correct law, which will govern the present case as well. "

At page 680, Ajmal Mian, J. referred to the following construction placed by him on the expression "cannot be carried on" in the case of Aftab Ahmad Khan Sherpao (supra):-

"The words 'that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of the Constitution' are of wide import. If a Government, in order to remain in power, has to purchase the loyalties of the M.P.As. by allotting plots or granting other benefits in cash or kind at the cost of the public exchequer and/or is to induct them as Ministers and Advisors for the above purpose, in my humble view, it cannot be said that the Government is being carried on in accordance with the provisions of the Constitution."

It was observed at page 687:-

"In Kh. Ahmad Tariq Rahim's case (supra), it was held that the Assembly had lost its representative character because of defections, which ground was not factually contested. (see PLD 1962 SC 666). There is no allegation of defections or horse-trading in the impugned order. "

At page 703 Ajmal Mian, J. also referred to the observations of Rustam S. Sidhwa, J. in the case of Kh. Ahmad Tariq Rahim (supra) dilating upon the status of the President and the Prime Minister under the Constitution. Ajmal Mian, J. also took note of the observations in the case of Kh.-Ahmad Tariq Rahim (supra) at pages 713 and 714 in the following terms:-

"In the case of Kh. Ahmad Tariq Rahim (supra), in the majority view on ground (2) which was somewhat identical to above ground 'c' the following finding was recorded:-

As regards the second ground, we find sufficient correspondence on record to indicate that persistent requests were made by the Provinces for making functional the Constitutional institutions like Council of Common Interests, National Finance Commission with a view to sort
out disputes over claims and policy matters concerning the Federation and the Federating Units as such. In spite of the intercession of the President, no heed was paid, Constitutional obligations were not discharged thereby jeopardizing the very existence and sustenance of the Federation. "

At page 714 it was further observed:

"44. In Kh. Ahmad Tariq Rahim's case (supra), in spite of the insistence of the two Provinces and filing of legal proceedings by them and intercession of the President, neither CCI nor NFC were operating. "

It was further observed at page 717:-

"In view of the above factual background, it cannot be said that the above lapse on the part of the Federal Government was of the nature, which had jeopardized the very existence and subsistence of the Federation as was held in Kh. Ahmad Tariq Rahim's case warranting to press into service Article 58(2)(b) of the Constitution. "

Sajjad Ali Shah, J. (as he then was), in his minority judgment, also reiterated the guidelines laid down in the cases of Haji Muhammad Saifullah Khan and Khawaja Ahmad Tariq Rahim (supra). It was observed at page 785:-

"So far Article 58(2)(b) of the Constitution is concerned, it is already interpreted and construed very ably in the cases of Haji Saifullah Khan and Khawaja Ahmed Tariq Rahim as mentioned above. Power under Article 58(2)(b) can be exercised by the President when there is actually an imminent breakdown of the Constitutional machinery and there is failure of not one but many provisions of the Constitution giving impression that country is being run by methods extra-Constitutional.".

Muhammad Rafiq Tarar, J. also referred to the majority view reported in Kh. Ahmad Tariq Rahim's case (supra) at page 791. Notice was also taken of the view expressed by Rustam S. Sidhwa, J. at page 687/D of the case of Kh. Ahmad Tariq Rahim (supra):-

"The word 'cannot' (in Articles 58(2)(b) and 112(2)(b) presupposes a Constitutional inability in the nature of a breakdown or dislocation... The words 'and an appeal to the electorate is necessary' highlight the breakdown to be of such a magnitude that an appeal to the electorate is perhaps the only remedy to the situation... The wording of the two provisions are sufficient to admit of a flexible approach either way and, without being dogmatic in interpreting these provisions, the facts of the case, in the background of overall situation and political climate then prevailing and the reasons leading to the breakdown, would, all taken together, determine what the correct approach should be.?

Muhammad Rafiq Tarar, J. referred to the case of Kh. Ahmad Tariq Rahim (supra) at page 799. It was observed in paragraph 40 of the report in Mian Muhammad Nawaz Sharif case (supra) as follows:-

"It will be seen that unlike the order of dissolution of the former National Assembly in 1990 (Khawaja Tariq Rahim's case) the grounds whereof, on judicial scrutiny, were held to have a direct nexus with the conditions prescribed by Article 58(2)(b) of the Constitution and the material forming basis of the President's opinion found sufficient, the. facts and circumstances of this case as

given in the judgments of the learned Chief Justice and my brother Shafiur Rehman, J. and which persuaded the President to form his opinion to dissolve the National Assembly and dismiss the Cabinet go to show, without any doubt that they had no nexus or connection with the Constitutional power and so the President was punishing the National Assembly for not withdrawing their support to an 'insolent' and 'rude' Prime Minister and the cabinet. "

15. Saleem Akhtar, J. also referred to Ahmad Tariq Rahim's case (supra) at pages 810, 812, 814, 834, 835, 838 and 842.

16. In his judgment, Saiduzzaman Siddiqui, J. also referred to the case of Kh. Ahmad Tariq Rahim (supra) at pages 858, 860 and 861. It was observed at pages 871 and 872 of the report as follows:-

"No doubt there appears to be a similarity in the pharaseology used in the grounds of Dissolution Orders in the case of Khawaja Ahmad Tariq Rahim and in the present case (Mian Muhammad Nawaz Sharif's case) but mere similarity in the words or phraseology can neither be determinative factor nor a test for identity of the substance of the grounds in the two cases."

It was further observed:-

"The situation obtaining at the time of dissolution of National Assembly in Kh. Ahmed Tariq Rahim's case (supra), therefore, is in no way comparable with the situation in the present case."

17. In the case of Mian Muhammad Nawaz Sharif (supra) the entire case hinged on the speech of Mian Muhammad Nawaz Sharif as observed by Nasim Hassan Shah, C.J. at page 562 of the report in the following terms:-

"Coming to the present case, doubtless the main reason which induced the President to dissolve the National Assembly was the speech delivered on 17th April, 1993 by the Prime Minister. Indeed that this was so practically conceded by the learned Attorney-General before us. But, according to him, the speech of the Prime Minister amounted to a subversion of the Constitution that it was nothing short of a call for agitation against the Head of the State; that in any case no rapport was possible between the President and the Prime Minister after such a speech and the relations between the two highest executive authorities in the State became so gravely strained that it was not possible for them to work in harmoney thereafter. This stalemate, this deadlock between the two highest Constitutional functionaries in the State rendered the carrying on of the Federation in accordance with the provisions of the Constitution impossible. Hence, the President had no alternative but to dissolve the National Assembly, dismiss the Prime Minister and his Cabinet and call for fresh general elections. This he was entitled to do under the powers conferred on him under Article 58(2)(b) and that he had exercised these powers legally and properly."

The finding recorded by this Court against the aforesaid ground on dissolution o". Nasim Hasan Shah, C.J. held at page 569 of the report:-

"The action taken did not fall within the ambit of this provision. This unlawful action moreover was also violative of Fundamental Right 17.As~this Court is duty bound to enforce Fundamental Rights and will not hesitate to enforce them whenever it is established that they have been violated, the necessity for taking action under Article 184(3) of the Constitution arose in this case."

judgment, Shafiur Rehman, J. also referred to Kh: Ahmad Tariq Rahim's upra) at page 615 of the report as follows:-

"In Khawaja Ahmad Tariq Rahim v. Federation of Pakistan through Secretary; Ministry of Law and Parliamentary Affairs and another (PLD 1992 SC 646), the Constitutional foundations for deprecating such an offensive conduct were indicated in the following words:-

The preamble to- our Constitution prescribes that 'the State shall exercise its powers and authority through the chosen representatives of the people'. Defection of elected members has many vices. In the first place, if the member has been elected on the basis of a manifesto, or on account of his affiliation with a political party or on account of his particular stand on a question of public importance, his defection amounts to a clear breach of confidence reposed in him by the electorate. If his conscience dictates to him so, or he considers it expedient the only course open to him is to resign, to shed off his representative character which he no longar represents and to fight a reelection. This will make him honourable, politics clean, and emergence of principled leadership possible. The second and more important, the political sovereign is rendered helpless by such betrayal of its own representative. In the normal course, the elector has to wait for years, till new elections take place, to repudiate such a person. In the
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meantime, the aerector flourishes and Continues to enjoy all the worldly gains. The third is that it destroys the normative moorings of the Constitution prescribe that 'sovereignty over the entire universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust' and the State is enjoined to 'exercise its powers and authority through the chosen representatives of the people'. An elected representative who defects his professed cause, his electorate, his party, his mandate, destroys his own representative character. He cannot on the mandated Constitutional prescription participate in the exercise of State power and authority. Even by purely secular standards carrying on of the Government in the face of such defections, and on the basis of such defections is considered to be nothing but 'mockery of the democratic Constitutional process."

18. It is difficult to enumerate exhaustively the circumstances which may t indicate the failure of the Constitutional machinery within the ambit of Article 58(2)(b). It depends upon the facts and circumstances of each case. The principles laid down in Mian Muhammad Nawaz Sharif's case (supra) still hold the field. These principles do not envisage dissolution of the National Assembly on ground of complete breakdown of the Constitutional machinery alone.

In Khalid Malik v. Federation of Pakistan (PLD 1991 Karachi 1), some situations have been cited during which machinery of the Government cannot be run in accordance with the Constitution. These situations are as follows:-

"(1)????? When the writ of the Government is not enforceable, a climate of uncertainty and diffidence has been created on different levels of administration;

(2)??????? There is general floutation and disrespect to the organs and departments of the State;

(3)??????? The institutions, organs and authorities constituted under the Constitution and the law, flout the law;

(4)??????? External aggression bringing the entire machinery of the Government at a standstill;
(5???????? Internal disturbances, insurgency, revolt, rebellion or civil war and economic crises which may paralyse the life and administration;

(6)??????? When the Legislature no longer reflects the wishes or views of the electorate and they are at variance;

There is large scale civil disobedience movement in which Government servants and employees of corporations, companies, banks and authorities connected with the day to day administration of the State refuse to cooperate and subject refuses to pay taxes; and

(8)??????? The majority ruling power refute , violates or refuses to run the Government according to Constitution and law."

19. I am unable to subscribe to the view of Mr. Aitzaz Ahsan that Article 58(2)(b) can be invoked only when there is a state of war in the country, life has completely paralysed and the conditions are such as were prevalent in 1977 which had brought the country to the brink of disaster necessitating martial law. Clearly, the President in his discretion may dissolve the National Assembly where he forms an opinion on the basis of material before him having direct nexus with the conditions laid down in Article 58(2)(b), that a

situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. In Khawaja Ahmad Tariq Rahim's case (supra), it was held by majority that once the evil is identified, remedial and corrective measures within the Constitutional framework must follow. There is also no force in the submission of Mr. Aitzaz Ahsan that the President should have resorted to alternate Constitutional remedies before taking a drastic step of dissolving the National Assembly. This Court has earlier observed in the case of Khawaja Ahmad Tariq Rahim (supra) that no alternate remedy was available to the President but the alternate constitutional remedies are only available to the Prime Minister on whose advice the President has to act.

20. Let me now deal with the grounds of dissolution in seriatim to examine whether the material produced in support of these grounds has direct nexus with the dissolution order and Article 58(2)(b) of the Constitution.

(1)??????? Extra-judicial killings in Karachi and other parts of Pakistan. Mr. Aitzaz Ahsan, learned counsel for the petitioner argued that the charge of extra-judicial/custodial killings is misconceived and contrary to the facts. It has no nexus with the dissolution of the National Assembly in terms of Article 58(2)(b) of the Constitution, inasmuch as, law and order is not a subject in the Federal domain. It relates to the Provinces. Challenging the observations in the dismissal order about extra-judicial killings in Karachi, reliance was placed upon the speech of Mr. Kamal-ud-Din Azfar, Governor of Sindh, delivered at the National Defence College on 12th September, 1996 on "Karachi" in which the law and order situation in the province of Karachi was described as follows:-

"The situation in Karachi when I was commissioned as Governor Sindh in mid 1995 is given in Annexures 'A' and 'B'. The situation today is also shown in the slides. There is a sea change."
The law and order situation in whole of the Sindh Province particularly? in Karachi is well under control and has shown a tremendous improvement since August, 1995. The downward trend in the killings of citizens and members of law enforcing agencies including police personnel at the hands of terrorists has been maintained by effective? measures. I take pride in saying that the number of such killings has? been brought down from 276 during the month of June, 1995 to only 4 during the month of June, 1996. In June, 1995, 37 policemen were killed in Karachi the figure for June 1996 is zero. This improvement in the overall law and order situation is primarily the result of better? intelligence and relentless efforts on the part of police which worked
?day and night without being complacent for. a single moment for the accomplishment of this gigantic task. "

Reference was also made to an Article written by Mr. Kamal-ud-Din Azfar, published in the newspaper in Karachi under the title "Karachi: Problems and Prospects" in which the Governor had claimed that he situation in Karachi had returned to normal and the people who had left Karachi were returning and had referred to three one-day cricket international matches held in Karachi terming them as a proof of peace in Karachi. The Governor had also claimed that killings had decreased by 90 per cent., for which the credit should go to Mohtarma Benazir Bhutto. The Governor also appealed to the people to elect Mohtarma Benazir Bhutto for another term to weed out this disease.

Mr. Aitzaz also referred to the address of the President of Pakistan dated 14th November, 1994 and that of 29th October, 1995 to the joint session of the Parliament (MajIis-i-Shoora), to contend that the President did not express any dissatisfaction over the law and order problem in Karachi. On the contrary, he praised the policy of the Government in this regard.

Reference was also made to an interview of the President to a Gulf newspaper, in which he had said that terrorism existed for more than a decade but now the situation had improved. This interview was stated to be given in Medina and after performing Haj but four months, thereafter, the Federal Government was accused of custodial killings.

As to the allegations, "instead of ensuring proper investigation of these extra judicial killings, and punishment for those guilty of such crimes, the Government has taken pride that, in this manner the law and order situation has been controlled", Mr. Aitzaz argued that the Federal Government had no authority to investigate into any such incident, in that, such a matter is an exclusive responsibility of the Province. He asserted that no law permits the Federal Government to assume to itself, in such eventuality, powers and authority of the Provincial Government. However, the Government of Sindh set up over a hundred Judicial Commissions to enquire into the alleged extra judicial killings and reports of many have been finalised, on the basis whereof or other information, 2,000 police constables were sacked and 100 police officers were proceeded against.

21. Mr. Aitzaz Ahsan further contended that the Federal Government has also entered into negotiations with Mohajir Qaumi Movement (hereinafter referred to as MQM) for brining peace in Karachi. This gesture was highly appreciated by the President in his address to the Parliament on 29th October, 1995. He also objected to the production of over 5000 pages of documents by the respondents in support of the dissolution order on the ground that many of the documents were made and/or collected after the date of the dissolution order.

22. Mr. Khalid Anwar presented voluminous documents before the Court alongwith the written statement in support of charges of extra-judicial killings, comprising reports from Pakistan Rangers Headquarters, Karachi to Prime Minister and to Interior Minister/Ministry of Interior, giving details and particulars of law and order situation in Sindh; report on "Activities of MQM(A)" from the records of the Ministry of Interior, containing file-nothing of the petitioner as Prime Minister; report of the Intelligence Bureau to Interior Minister regarding activities of Mir Murtaza Bhutto's supporters (copies to the Prime Minister); telephone tapping of a 'Dawn' journalist to Minister of Interior; Intelligence Bureau' Bureau's report as to activities of S.H.O., P.I.B. Colony, Karachi; notifications issued by the Federal Government conferring powers of police officers on Rangers operating in Sindh; letters issued by the Sindh Government entrusting duties/functions under section 131-A of the Cr.P.C. on Pakistan Rangers; notification issued by Sindh Government assigning specific role and duties to Pakistan Rangers; letter dated 18-7-1996 issued by the Government of Pakistan, entrusting functions/duties and powers of police officers to Pakistan Rangers; notification dated 22-2-1996 whereby Headquarters, Pakistan Rangers, Karachi was notified as attached Department of Ministry of Interior; a Cabinet decision recording appreciation of work done by Rangers and police regarding law and order situation in Karachi on 24-7-1995; a decision dated 24-2-1995 taken by 'competent authority' as to law and order situation in Sindh and communicated by Prime Minister's Secretariat; decisions of the Defence Committee of the Federal Cabinet; a portion relating to law and order situation from the material sent by the Federal Government to the President for preparation of the address to the Parliament in 1995; list giving

details/status of judicial inquiries relating to extra judicial killings and custodial deaths; report regarding disciplinary action taken against police officers in Sindh for extra-judicial killings and custodial deaths dated 3-12-1996; six judicial inquiries relating to police encounters/custodial killings in which police was held responsible but no action was taken and judicial inquiry dated 28-2-1996 regarding death of Faheem Commando and others.
?
.?????????? Material available in the public domain relating to extra judicial killings in Karachi, was also produced before the Court which consisted of Case PAK 13-11-1995, World Organisation against Torture; initial findings dated 19-10-1995 with regard to police encounter of Faheem Commando and three others; Minutes of meeting dated 15-11-1996 of the European Parliament; a handout dated 19-10-1994 as to third round of negotiations between M.Q.M. and the Government; statement by a spokesman dated 11-12-1995 of U.S. State Department; a letter dated 12-10-1995 of Acting Director, Office of Pakistan, Afghanistan and Bangladesh affairs, U.S. Department of State; a report published by the Human Rights Commission of Pakistan in the daily "The News" titled "Pakistan rights body condemns custodial deaths" dated 29-2-1996; a report dated 22-3-1995, titled "Frankenstein's monsters' terrorise Karachi" published in "The Guardian" a newspaper of England; a report dated 26-3-1995 titled "Bhutto lets Karachi killings run out of control" published in another newspaper of England namely "Independent on Sunday"; a report dated 12-3-1996 titled "Police take their turn in Karachi's war of terror" published in newspaper "The Guardian"; another report of this newspaper titled "Finger of blame for Pakistan violence shifts to Government" published on 2-3-1996; International Herald Tribune published a report dated 9-2-1995 with the title "One of these Benazir Bhuttos Isn't Nice"; a report published by a Pakistani magazine "Newsline" in February, 1996 titled "Licence to Kill? The unprecedented rise in extra-judicial killings has further brutalised Karachi's ongoing conflict"; a letter dated 24-11-1995 from U.K. Foreign and Commonwealth Office to Mr. Piara S. Khabra, Member of British Parliament; Judgment of Sindh High Court dated 5-10-1993 in Civil Petition No.2926 of 1992 (Mst. Raisa Farooq v. Government of Sindh and others) declaring notification of "head money" as unlawful; notification issued by Sindh Government declaring "head money" for 16 criminals totalling Rs.167 lacs; 1995 Human Rights Report on Pakistan; a report regarding "State of Human Rights in 1994" by Human Rights Commission of Pakistan; a report by "Newsline" a Pakistani magazine published monthly, titled "Encounter of another kind"; Note by the Editor of the "Newsline" referring to HRCP's Report on Human Rights in Pakistan in 1995; an interview of Zohra Yusuf, SecretaryGeneral, HRCP, giving estimate of extra judicial killings in 1996 (up to February) published by the "Newsline"; "The case of Faheem Bhoora" published by Herald in March, 1996; Amnesty International's report titled "Pakistan: Human Rights Crisis in Karachi"; Human Rights Commission of Pakistan's newsletter: "HRCP questions police version in Faheem killing"; a report titled "Death File" published by the "Newsline"; a report published by "Dawn" titled "Leghari stresses need for dialogue".

Material in respect of extra judicial killings and custodial deaths in Punjab was also produced before the Court which comprised a statement regarding persons killed in police encounters in Punjab in 1994-96; illustrative cases of police encounters; newspaper reports dated 18-10-1995 and 7-9-1996 in which Chief Minister, Punjab (PDF Government) justified police action; newspaper report dated 18-8-1996 in which Senior Minister, Punjab of P.D.F. Government justified police action; a statement as to persons killed in custodial deaths in the Punjab and judicial inquiries in respect thereof and illustrative cases of custodial deaths.

24. Dr. Farooq Hasan has also moved an application on behalf of M.Q.M. for being impleaded as party in the petition as a respondent. He has also placed numerous documents before the Court, some of which are common which have been produced by Mr. Khalid Anwar, to contend. that during the period spreading between July. 1995 to December, 1995 the administration of Mohtarma Benazir Bhutto unleashed the most terrible infliction of torture and suffering on the rank and file of the M.Q.M. leading to widespread furore over her Government's policies. Dr. Farooq Hassan argued that Parliament of Westminster as well as the European Parliament introduced Resolutions emphatically criticising the Administration of Mohtarma Benazir Bhutto and voiced serious concerns about the loss of human life at the hands of the Government functionaries at Karachi. Newspaper reports were also relied upon to contend that the actions of extra judicial killings were not objected to by the petitioner. He particularly highlighted the sad aspect of extra-judicial killings of detainees relating to the murders of several workers or members of the M.Q.M. who were done to death after a Court had formally asked the law enforcing agencies of the petitioner to hand them over to jail authorities. The material relied upon by M.Q.M. is; a report published by Amnesty International under the title "Human rights crisis in Karachi" in February, 1996; another report captioned "Pakistan Government fails to live up to Human Rights rhetoric" published by Amnesty International; an appeal to the Caretaker Government to restore Human Rights Watch's in Pakistan by Amnesty International; Human Rights World Report, 1996; United Nation Commission on Human Rights' Report prepared by Special Rapporteur, Mr. Niqel S. Rodley, after his visit to Pakistan in 1996; Notices of Motions, dated 18th July, 1996 of House of Commons; Notices of Motions. dated 13th July, 1995 of House of Commons; Notices of Motion, dated 10-5-1994 of House of Commons; Minutes of the Sitting dated 15th February, 1996 of European Parliament; a report dated 30-5-1995 titled as "Tortured M.Q.M. men brought to Court blindfolded" published by daily "Dawn"; a report published by "Financial Times" captioned "Throwing the rascals out" dated 6-11-1996; a remand report under section 167, Cr.P.C. dated 26-9-1995; and application for medical treatment in the Court of Special Judge, Karachi dated 26-9-1995; a news report captioned "Spooks who become Benazir's Achilles' hell" dated 14-11-1996; a report published by "The Guardian" a newspaper of England titled "Bhutto's conspiracy warning borne out" dated 5-11-1996; a report published by "The Daily Telegraph" dated 6-11-1996 titled "bungling Benazir"; a news published by "Dawn" dated 9-11-1996 captioned "Benazir's column and M.Q.M.": a report published by "The Times" dated 6-11-1996 under the caption "The Sword Falls"; and a report published under the title "A Primer on the perils of Foreign Aid" by "The Wall Street Journal" dated 2-10-1996.
25. Dr. Farooq Hasan also referred to a number of statements made by the then Interior Minister Mr. Naseerullah Babar and instructions given by the petitioner to him regarding operation being carried on against M.Q.M. activists, published in several. newspapers/journals etc.

The learned counsel referred to a news reported in a weekly ' Nai Duniya' dated 20-26th February, 1996 in which a statement given by the Interior Minister was to the following effect:

Another news captioned as "Terrorists killed in real encounters" published in "Dawn" dated 28-1-1996; "The News" dated 23-1-1996 published a news showing Cabinet's satisfaction over Karachi situation; the same newspaper in its December 30, 1995 publication reported a news titled "Karachi operation extended for six months"; Jang", Karachi reported a news with the following heading: . on 30th December, 1995; a report published in daily "Public" Karachi dated 16-12-1995 regarding arrest of boys and girls from Karachi and their shifting to Sanghar Jail on the allegations of terrorism; a news reporting a statement of the Interior Minister

as to operation in Karachi, published in daily "Jurrat" dated 14-12-1995; "The Star" dated 10-12-1995 published a report titled as "Chief Minister goes into emergency meeting on law and order"; a report published in daily "Awam", Karachi dated 10-12-1995 regarding arrests of underground M.Q.M. activists from Lahore and Rawalpindi; a statement made by the Interior Minister alleging Beharis' involvement in terrorism publihed in daily Nawa-iWaqt, Karachi dated 8-12-1995; a report showing 'six months' extension in Karachi Operation' by the petitioner, published in daily "Public", Karachi dated 6-12-1995; a report published in daily "Aagaz", Karachi dated 2-12-1995 captioned as:

"Public Evening", Karachi dated 21-11-1995 published a report captioned:

"The News" dated 18-11-1995 published a news titled as "Beanzir on 'secret mission' to Sindh"; a news published under the heading:

in daily "Nawa-i-Waqt" dated 17-11-1995; a news under the title "Babar hints at extension of Karachi operation" published in "The News" dated 15-11-1995; a report captioned "Government seeking to break vote bank of M.Q.M.." published in "The News" dated 10-11-1995; a report which was capitioned as:

published in "Evening Special" dated 6-11-1995; a news published in "The News" dated 5-11-1995 under the title "Police Commandos rushed to Karachi" by its correspondent from Hyderabad; a report titled "Prime Minister defends Babar's action in Karachi" Published in "The News" dated 3-11-1995; "Dawn's" report captioned "Babar briefs Leghari on Karachi carnage" publisbed on 3-11-1995; a report published in daily "Awam", Karachi dated 3-l1-1995 showing Britain's demand of facts about M.Q.M.; a report published in daily. "fang", Karachi on 2-11-1995 under the title:

a statement made by Mr. Naseerullah Babar, the then Interior Minister published in daily "Jang", Karachi on 1-11-1995 under the caption:

a news published on 31st October, 1995 in the daily "News" titled "Mohani killed in encounter" says Babar"; another statement urging people to come out of their houses, made by the interior Minister, published in daily "Qaumi Akhbar",

Karachi dated 19-10-1995; a reported titled: ,

??????????? "Qaumi Akhbar", Karachi dated 11-10-1995; another published in the daily statement made by the Interior Minister Mr. Naseerullah Babar published on 7th October, 1995 in the daily Nawa-i-Waqt that M.Q.M. is not in a position to give call for strikes; yet another statement was relied upon which was made by the Interior Minister and published in the daily Nawa-i-Waqt dated 2-10-1995 stating:

on 26-9-1995 ,the Interior Minister's another statement was published in the daily Jang, Karachi in which he said: Operation in Karachi will continue for further three months; a report titled:

published in daily Jang, Karachi on 24-9-1995; a briefing to the Prime Minister in which the then Interior Minister said:

published in daily Public, Karachi dated 12-9-1995; in the same newspaper,

on 5-9-1995, published an instruction to the Interior Minister from the petitioner in which the petitioner said:
another statement made by the then Interior Minister published by Dawn on 4-9-1995 under the caption: "Trouble makers to be shot at sight: Babar"; "Shoot on sight" orders in Karachi" was the title of a news published in "The News" dated 4-9-1995 which was a statement made by the Interior Minister Mr.Naseerullah Babar; a report titled

published in the daily Nawa-i-Waqt on 2-9-1995; a news report published in the daily Nawa-i-Waqt dated 2-9-1995 captioned in the following words:
the daily "Jang", Karachi dated 2-9-1995 also reported the matter under the heading:

a news report published in the daily "Pakistan", Lahore 1-9-1995 containing the following words in its caption? was also relied upon; another news report under the title published in daily Hurriyat, Karachi dated 1-9-1995; a report published in daily Jang, Karachi on 26-8-1995 containing the following words:

was a statement made by the petitioner; a news report of daily Nawa-i-Waqt dated 24-8-1995 published under the caption:

another statement of the Interior Minister published in the daily "fang", Karachi, dated 23rd August, 1995 in which he stated:
a report of daily "Public", Karachi dated 19-8-1995 titled:

a comment given by the Chief M.Q.M. negotiator, Ajmal Dehlvi on the Interior Minister's Press Conference, published in "The News" dated 13-8-1995 captioned 'Babar trying to create psychological harassment'; a daily "Evening Special", Karachi dated 9-8-1995 published a report under the title:

a report published in "The Nation" dated 6-8-1995 captioned "Babar says he will also send more 'gifts' to terrorists"; under the same heading a news published by "Daily News" dated 6-8-1995; another statement of the Interior Minister containing the following words in its caption:

published in daily "Nawa-i-Waqt", Karachi dated 6-8-1995; the same newspaper's another report dated 5-8-1995 having the following title:

a report published in "Dawn" dated 3-8-1995 titled "Reward for police party" in which the petitioner was reported to have announced a cash reward of Rs.1.00,000 for the police patty which took part in an encounter in which Farooq Dada and his three accomplices were killed. The then Chief Minister had also announced a reward for that police party of the same amount; a statement of the Interior Minister Mr. Naseerullah Babar published in daily "Jang", Karachi dated 2-8-1995 stating that there was no need for further operation in Karachi; another statement of Mr. Naseerullah Babar published in "The News"

dated 2-8-1995 under the title: "Saner elements in M.Q.M. will initiate real politics: Babar"; an instruction from the President to the then Interior Minister published in the daily "fang", Karachi dated 1-8-1995 under the caption:

a report published on 26th July, 1995 in "The Frontier Post" captioned "Cabinet decides to continue Karachi operation"; a statement of Mr. Naseerullah Babar published in daily Nawa-i-Waqt Karachi of July, 1995 captioned:

another statement published in daily "Jang", Karachi dated 24-7-1995 of Mr. Naseerullah Babar under the title:
a report published in daily Jang, Karachi dated 22-7-1995 containing a statement of the then Interior Minister on its heading in the following words:
a statement given by the, petitioner, published in daily "Khabrain", Lahore dated
20-7-1995 under the title:
a news report published in daily "fang", Karachi dated 19-7-1995 containing a statement of the then Interior Minister as its heading in the following words:

another statement of Mr. Naseerullah Babar, the then Interior Minister published in daily "Khabrain", Lahore dated 19-7-1995 under the caption:

the same newspaper in its 13th July, 1995 publication reported a news under the title:
a report titled "Babar on Sabzwari's death" published in "Daily News" dated 9-7-1995; a report captioned "major objectives achieved: Babar" published by "Dawn" on 8th July, 1995; a news item published in daily 'Jurrat', Karachi dated 2-7-1995 under the title:

"Gulf News" publication dated 8th June, 1995 reporting about operation in Karachi under the caption "Babar hints at launching grand operation against terrorists"; a report titled "Babar hints at 'grand operation in Karachi after Muharram" published by "The News", dated 8th June, 1995; another news item published in "The News" dated 6-6-1995 captioned "Kharal rules out dialogue with M.Q.M.; "The News" in its publication dated 3-6-1995 reported another news under the heading: "PPP ready for 'all out war' with M.Q.M.: Mukhtar"; and "Dawn's" Bureau Report published on 2nd June, 1995 under the caption: "Prime Minister warns M.Q.M. against 'subversion"'.

26. I have considered the material in support of the order of dissolution on the first ground of extra judicial killings in the light of the respective contentions of the parties and the case-law discussed above. The President has formed the opinion objectively on the basis of the material having nexus with the first ground mentioned in the impugned order which, in turn, has nexus with the grounds laid down in Article 58(2)(b) of the Constitution, manifesting conscious and bona fide application of his mind. This has been repeatedly held by this Court, as discussed in the preceding paragraphs, - that a Court cannot sit as a Court of appeal while examining the order of dissolution of the Assembly under the Constitution nor it can substitute or go into the question of sufficiency or otherwise of the material relied upon by the President, provided the material forming the basis of his opinion has nexus with the grounds of the dissolution order as well as Article 58(2)(b). Newspaper clippings etc. can be relied upon as material in support of the grounds of dissolution. The President can also produce corroborative or confirmative material in support of the grounds which has been made available after the order of dissolution.

27. As to the contention of Mr. Aitzaz Ahsan that the extrajudicial/custodial killings have no nexus with the dissolution of the National Assembly, inasmuch as, law and order is not a subject in the Federal Domain, suffice it to say that Article 148(3) of the Constitution provides, "It shall be the duty of the Federation to protect every Province against external aggression and internal disturbances and to ensure that the Government of every Province is carried on in accordance with the Constitution". Clearly, in view of the disturbed situation in Karachi, leading to flames of violence, terror and counter terror, extortion and counter-extortion, the Federal Government ought to have discharged its Constitutional duty in the Province of Sindh in respect of law and order/internal disturbances. I am also unable to agree with Mr. Aitzaz Ahsan that the Federal Government had no authority to investigate into any incident of extra-judicial killings. The powers of the Federal Government are clearly spelt out in clauses (1) and (4) of Article 149 of the Constitution which reads thus:-

"(1)'

The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(4)??????? The executive authority of the Federation shall also extend to the giving of directions to a Province as to the manner in which the executive authority thereof is to be exercised for t.,e purpose of preventing any grave menace to the peace or tranquillity or economic life of Pakistan or any part thereof."

Reading of Articles 149 and 143 together would clearly show that the Federal Government was fully empowered under the Constitution to take necessary action to discharge its Constitutional obligations. As regards the contention of Mr. Aitzaz Ahsan that

as a result of judicial enquiries into the alleged extrajudicial killings, the Government of Sindh had sacked 2,000 police constables and 100 police officers were being proceeded against, Mr. Khalid Anwar placed documents on record to contend that he dismissal of police constables over 2,000 and proceedings against police officers (146) are, in fact, a mere concoction, inasmuch as, the previous P.P.P. Government had taken action in only four cases involving a total of seven police personnel. Any other cases of dismissal were normal departmental proceedings unrelated to extra judicial killings. It is further pointed out that none of the four cases involved any police "encounters". these were all cases of custodial killings and even these four cases did not involve any so-called "terrorists" or "unidentified snipers". However, the allegations against the Federal Government are that it was itself instrumental in bringing about that very state of affairs which, it was Constitutionally under obligation and empowered to control.

28. I have gone through the addresses of the President of Pakistan dated 14th November, 1994 and that of 29th October, 1995 to the joint session of the Parliament relied upon by Mr. Aitzaz Ahsan to refute the grounds stated in the dissolution order in respect of extra-judicial killings. The President's address to the Parliament in 1994 did not relate to the issue of extra judicial killings. The mere fact that the President in his address commended something done by the Government does not mean that he commended everything done by the Government. The addresses of the President merely compile the killings that went on in Karachi over the relevant period without asserting that the killings carried out by the law enforcement agencies were lawful or in accordance with law. As to the speech of Mr. Kamal-ud-Din Asfar, as Governor of Sindh, suffice it to say that he was appointed by the petitioner's Government, he performed his functions on the basis of his perception of himself as an appointee of the Federal Government and on the advice of the Chief Minister. The President, however, on the basis of the material available before him formed the opinion in respect of ground No.l ibid which has clear nexus with Article 58(2)(b), therefore, no exception can be taken to it merely on the basis of speech of Mr. Kamal-ud-Din Asfar, Governor of Sindh, delivered at the National Defence College on 12th September, 1996 or on the article written by him as referred to and relied upon by Mr. Aitzaz Ahsan to contradict what is stated in the dissolution order. As stated above, in these proceedings, this Court is not sitting as a Court of appeal nor it can substitute or go into the question of sufficiency or otherwise of the material relied upon by the President having clear nexus with the impugned order.

29. As regards the second ground on the subject-matter of Mir Murtaza Bhutto's murder, brother of the petitioner, I would refrain from expressing any opinion on the issue as the matter is sub judice before the Tribunal of Inquiry.

30. As to the third ground relating to failure to implement the decision in the Judges' case and ridiculing of judiciary, Mr. Aitzaz Ahsan submitted that whatever the petitioner said was a fair comment on the judgment and the learned authors of the judgment were themselves broad-minded enough not to take any umbrage upon any statement made by the petitioner. How could the President do so? He further submitted that whatever the petitioner said on the floor of the National Assembly was a matter for the record, and it was for the President to show how it amounted to ridiculing. Without prejudice to the foregoing submission, Mr. Aitzaz Ahsan argued that a speech by a Prime Minister in a forum that has elected her and the President, and that is representative and sovereign, cannot form the basis of the dissolution of the entire Assembly otherwise no House would survive. It was submitted that speeches in the Parliament are a matter of the internal proceedings of the House and no grievance can be made in regard thereto. These are Constitutionally protected.

As to the implementation of the judgment, Mr. Aitzaz Ahsan argued that concrete steps were taken by the petitioner to implement the judgtxtent. In brief, his submission was that the inferences drawn by the President were wholly untenable and unjustified and that there was no violation of Article 2A or 190 of the Constitution.

31. Mr. Khalid Anwar vehemently argued that the petitioner's failure to speedily and effectively implement the decision was not only flagrant breach of Government's obligation under Article 190 of the Constitution but also a deliberate blow aimed at undermining the independence of the judiciary.

Article 190 of the Constitution expressly provides that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. Mr. Aitzaz Ahsan has also not disputed that it is indubitably the obligation of all executive authorities including the Federal Government to obey and execute both in letter and spirit, all orders, directions and decrees of the Supreme Court. The Judges' case involved matters of fundamental Constitutional importance, namely, the manner in which Judges to the superior judiciary were to be appointed. The judiciary being one of the main pillars of the State, the manner in which, and the persons by whom, vacancies in the High Courts and the Supreme Court are to be filled, is a question of vital importance for the governance of the country. This Court issued detailed instructions as to how appointments were to be made in the High Court and Chief Justices appointed. There was no room for any doubt or ambiguity. A specific timetable was laid down within which the judgment was to be implemented. Yet, several weeks passed before the required appointments were made. The Government filed Review Petition and Reference but the same were abruptly withdrawn during the course of their hearing. It was only with the greatest reluctance that the judgment was finally implemented and that too was done incompletely. This behaviour of the Federal Government was not limited to an isolated act of non-implementation of the Supreme Court judgment in Judges' case but series of decisions, statements and actions were taken targetting the judiciary. The civilization of a country is measured by the respect the Government has for the judiciary. The respect and dignity accorded to and enjoyed by the Apex Court is one of the key intangibles on which the fate of a nation rests. It is for this reason that it is absolutely vital that those who hold high public office must, at all times, act in a manner that encourages and causes others to respect the rule of law and the superior judiciary, rather than in a manner that encourages the reverse. If the superior Courts are unable to or are prevented from, performing their Constitutional duties and functions, the result will be the unravelling of the very fabric of the nation. As provided under Article 184(1) of the Constitution disputes between two or more governments can only be resolved by Supreme Court. It is. therefore. absolutely vital that the orders of the Supreme Court be obeyed and enforced speedily by the executive and legislative branches.

Regarding the petitioner's claim that she did not ridicule the judiciary, Mr. Khalid Anwar has referred to various statements made by her appearing in the newspapers reports as well as to her speech in the National Assembly on 28-3-1996 to contend that her utterances were contumacious and cannot be described as a fair comment.

32. I have examined the speech delivered by the petitioner in the National Assembly. It is wholly immaterial whether or not this Court has taken any official notice on the petitioner's comment qua the impugned order of the President. The question involved

herein is whether executive branch can be allowed to disregard the orders of this Court and express displeasure in respect thereof in public fora including the National Assembly. the answer is in the negative.

33. The protection referred to by the petitioner is only available to an individual member from criminal or civil sanctions. The judgment rendered by this Court cannot be ridiculed in the garb of fair comment. After scrutinizing the material on record in support of third ground, I am of the view that the petitioner's belated implementation in the case of appointment of Judges was violative of Articles 190 and 2A of the Constitution and the material relied upon by the President has nexus with ground No.3.

34. Regarding fourth ground, relating to assault on the judicial organ of State in the garb of a Bill moved in Parliament for prevention of corruption practices, Mr. Aitzaz Ahsan contended that mere moving of a motion or a Bill in Parliament cannot form the basis of any punitive action. He further submitted that even if the allegations were true and the entire responsibility for it could be placed on the petitioner, it could still not be a sufficient ground for the dissolution of the National Assembly, in that, in the light of judgment of this Court in the case of Haji Saifullah Khan (supra), the mere failure to comply with any particular provision of the Constitution does not justify the dissolution of the entire Assembly. As to the lapse on the part of the petitioner in not informing the President regarding moving of a Bill, as required under Article 46(c) of the Constitution, Mr. Aitzaz Ahsan submitted that the Acting Cabinet Secretary was admonished in the following Cabinet meeting as it was the duty of the Cabinet Secretariat to bring the Bill to the notice of the President. It was further contended that if at all there has been a lapse on the part of the petitioner on one occasion that does not justify the dissolution of the National Assembly. He further, argued that the Government was not prompted to move the Bill on account of any two-thirds majority or the lack of it. The Bill was moved taking into account the National demands from all sections of the population in the hope that a consensus would develop on this issue. It was also urged that the Bill was only a proposal and it had to go through several stages of consideration and reconsideration in the two Houses and their Committees before it could become an Act and that too after consent, therefore, the impugned dissolution of National Assembly on this plea amounts to a breach of the privilege and domain of Parliament and is, thus, in violation of the Constitution. He submitted that the fourth ground of dissolution was not bona fide and the impugned order suffers from mala fide intent.

35. Mr. Khalid Anwar refuted the petitioner's claim arguing that what was of importance was not the fact that the Bill was not law or even that the petitioner's Government did not command the necessary majority in Parliament, what was of critical importance was what the petitioner's move showed about her attitude and intentions concerning the judiciary, one of the three pillars of the State. Mr. Khalid Anwar argued that the Federal Government despite its clear Constitutional obligation not only defied the Supreme Court's verdict in the Judges' case but on the top of that came the Bill wherein the defunct Prime Minister had expressed her desire, as manifested in the Bill that she should be the one to, in effect, decide who would sit as a Judge of the High Court or the Supreme Court and she would be the one to decide as to when and how a Judge would be removed from the High Court or the Supreme Court. He submitted that the Bill was not so much a move to amend the Constitution, it was effectively a declaration of war against the judiciary. It sought to confer the power on 33 M.N.As. to suspend a Judge of the High Court or the Supreme Court. Mr. Khalid Anwar submitted that when the executive openly defies the Supreme Court and makes crystal clear its intention to bring the judiciary "to heel', then the Constitution has clearly. been thrown out of balance. Giving an illustration, Mr. Khalid Anwar submitted that if a car is going downhill, and the driver, instead of applying the brake, presses the accelerator, one does not have to wait to see the crash to tell what will inevitably happen. In the circumstances of the case, he argued, the President and the nation did not have to wait for the petitioner's blow to fall on the judiciary to know that it was inevitably being contemplated. It was argued that even the Minister of State for Law joined in the attack, inasmuch as, on 22nd October, 1996, the daily Jang reported the Minister as blustering that the Judges were not "sacred cows" that they could not be touched. Mr. Khalid Anwar further submitted that in recent months, there had been mounting criticism directed against the petitioner and her husband as to corruption in the affairs of Government, therefore, partly, in order to divert attention away from herself and partly, in order to try and browbeat the Judges, the petitioner deliberately chose to raise the bogey of corruption in the judiciary. He vehemently pleaded that it is a well-settled Constitutional doctrine that there should be no attacks on the judiciary by the other branches of the State and certainly not for partisan political motives. It is for this reason that, inter alia, Article 68 prohibits any discussion in Parliament with respect to the conduct of a Judge of a superior Court with respect to the discharge of his duties. Mr. Khalid Anwar argued that the law being applied by the petitioner was that of the jungle, with the executive lion being pitted against the judicial lamb. In these circumstances, it was inevitable that the conclusion drawn was that the Government was not being, and could not be, carried on in accordance with the Constitution.

36. There appears to be great force in the submissions of Mr. Khalid Anwar. I am unable to agree with Mr. Aitzaz Ahsan that a Bill being moved with the purpose of undermining the independence of the judiciary could be regarded as Parliament's privilege. There is also no force in the submission that the mechanism proposed in the Bill prevails in other Parliamentary systems including India. In no system of democracy, a tiny minority of Legislators have the right to send a Judge packing nor does the power to remove Judges vest in only one House, where there are two legislative Chambers. In India, a Judge of the Supreme Court can only be removed from office by the procedure laid down in Article 124(4) of the Indian Constitution which provides as under:-

,.????????? "A Judge of the Supreme Court shall not be removed from his office? except by an order of the President passed after an address by each ????? House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved? misbehaviour or incapacity."

The same procedure is applicable for the removal of Judges of the High Courts. The majorities as are required to remove a Judge are the same as required by the Indian Constitution for its amendment. The procedure to remove a Judge is even more stringent since the required majorities must be obtained in the same session of the Indian Parliament; there is no such requirement in respect of a Bill to amend the Constitution. Thus, if the Bill presented by the petitioner were to be even conceptually similar to the Indian provisions, it sought at least to have provided the same procedure for removal of a Judge from office as is laid down in Article 236 to amend the Constitution. It is not understandable why the President was kept in the dark about a major Constitutional Bill in face of Article 46 of the Constitution which envisages Constitutional duty upon the Prime Minister to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposal for the legislation. The reference to the "admonishing' of the Cabinet Secretary is not relevant, in that, the obligation cast by Article 46 of the Constitution is on the Prime Minister and not on the Federal Government. In any case, any lapse on the part of the Acting Cabinet Secretary or failure to

comply, the provisions of Article 46(c) of the Constitution would lie on the petitioner in view of the wellsettled principles of Ministerial responsibility.

37. The procedure whereby a Bill becomes an Act of Majlis-e-Shoora (Parliament) is not relevant for present purposes. The question involved is whether a small minority in the National Assembly can dictate who would sit as a Judge of the Supreme Court and the High Courts. 'The Bill aimed to make Judges of superior Courts hostages to the whim and pleasure of the Government of the day, forcing them at all times to look over their shoulders to watch out for the inevitable blow. In any case, the claim of the petitioner that the Government? was open to discussion in all aspects of the Bill clearly indicates that the Government was not serious in having presented it in the first place. As discussed above it was not a case of amendment simpliciter. Viewed in the overall perspective, the Bill was designed to embarrass and humiliate the superior judiciary. These are the reasons in support of this ground as stated in the short order that "Constitution Fifteenth Amendment Bill was introduced in N the Parliament for initiating the process of accountability against the Judges by sending the Judges of the superior Courts on forced leave if fifteen per cent. of the members moved a motion against them. This Bill ran counter to Article 209 of the Constitution which is already in existence for taking action against Judges before the body of Supreme Judicial Council".

38. Regarding fifth ground that the judiciary has still not been fully separated from the executive in violation of the provisions of Article 175(3) of the Constitution and the dead-line for such separation fixed by the Supreme Court of Pakistan, Mr. Aitzaz Ahsan argued that the ground was misconceived and could not be a basis for the dissolution of the Assembly. He vehemently submitted that a High-Powered Committee was formed consisting of all the Chief Secretaries, the Advocates-General, and the Principal Secretary to the Prime Minister. Some of the meetings of this Committee were also attended by the Chief Ministers, Provincial and Federal Law Ministers. Bypassing the Federal Law Ministry, the President himself desired that Mr. Shahid Hamid (Caretaker Defence and Establishment Minister) be associated with this Committee. His proposals were in fact tilted in favour of the executive. In one of the final meetings of this Committee, the President himself presided and took decisions. The petitioner was not a part of that meeting. Mr. Aitzaz Ahsan further submitted that the Law Reforms Ordinance, 1996 was promulgated before the cut-off date prescribed by the Supreme Court itself. Subsequently all Provinces issued notifications required under the Ordinance of its promulgation. The Ordinance was laid in the National Assembly and passed in a record period of eight days. Mr. Aitzaz Ahsan submitted that initially the 1973 Constitution provided for separation between executive and the judiciary in three years. This period was extended to 5, and finally 14 years but no Government bothered to apply this provision. Only the petitioner's Government had the privilege of implementing the judgment delivered by this Court in Government of Sindh v. Sharaf Faridi (1990 SCMR 91). Without prejudice to the above submissions, Mr. Aitzaz Ahsan argued that the subject-matter of the charge wag on the Concurrent List and was the responsibility of the Provinces. No action could be taken against the Federal Government, less so the National Assembly, on this charge, which was wholly extraneous to the objects and purposes of Article 58(2)(b).

39. Mr. Khalid Anwar contesting the claim of the petitioner argued that her Government had failed in its obligation in this regard. He submitted that the composition of the 'High-Powered Committee' referred to by the petitioner itself indicated that the Federal Government was fully involved in the matter. He further argued that the 'putative' 'tilt' in 'favour' of the executive gratuitously attributed to Mr. Shahid Hamid was wholly irrelevant and immaterial and had been inserted in order to indirectly cast aspersions on the President. It was next argued that the Chief Justices' Committee expressed its dissatisfaction with the pace of the separation of the judiciary from the executive and the inordinate delay in the appointment of Judicial Magistrates to fill in the existing vacancies. Mr. Khalid Anwar argued that a matter on the Concurrent List was as much the responsibility of the Federation as of the Provinces. Separation of the judiciary and the executive that eoncerns all of Pakistan, a Constitutionally mandated requirement, was a matter, peculiarly, well-suited for the attention of the Federation and its Government. Without prejudice to the above Mr. Khalid Anwar submitted that the same coalition (the PDF) was in power both in the Centre and in the three of the four Provinces and, therefore, there was no impediment at all in the way of speedy compliance of the orders of the Supreme Court.

40. The arguments of Mr. Khalid Anwar appear to be quite valid and sound. I also find that there was no impediment at all in the way of speedy compliance of the orders of this Court made in Sharaf Faridi's case (supra). It is not disputed that the Chief Justices' Committee expressed its dissatisfaction with .the pace of the separation of the judiciary from the executive. Compliance with the orders of the Supreme Court, after repeated defiance, is no compliance in letter and spirit. In any event, the Chief Justices' Committee's dissatisfaction with the pace of the implementation created serious problems, in that, the same person at one and the same time was exercising both executive and judicial functions, for example, the Deputy Commissioner acts in a judicial capacity as District Magistrate while simultaneously exercising executive and administrative powers. Clearly, complete separation of judiciary from the executive is being delayed and by law Executive Magistrates are given powers to sentence to imprisonment for three years, which is against the spirit of the judgment in Sharaf Faridi's case as stated in the short order. Thus, visualized the material available on record in support of the fifth ground has clear nexus with the grounds of dissolution.

41. Sixth ground of dissolution relates to illegal and unconstitutional phone tapping and eaves-dropping. Mr. Aitzaz Ahsan specifically denied the charge. He submitted that the petitioner never authorised any phone-tapping. In fact, some times she herself felt that she was a victim of phone-tapping. She was under the impression that all her Ministers and Secretaries were tapped. She complained to the Defence Secretary, Communications Secretary and her Military Secretary, and was keen to find out the truth. At least, on one occasion, her Military Secretary had written to the Secretary Communications that the Prime Minister's phones were being tapped and required him to investigate. Mr. Aitzaz Ahsan further submitted that the petitioner was so concerned with this illegal phone-tapping that the Communications Ministry had placed an order for 300-line tapping proof exchange for Constitutional functionaries of the State and the Armed Forces so that no such conversation could be tapped.

42. Mr. Khalid Anwar has placed on record numerous documents in support of sixth ground. He produced before the Court a document showing procedure followed by Intelligence Bureau operatives regarding illegal phone tapping and eaves-dropping which is as follows:-

-?????????? BT used to be assembled in the Operations Cell under the supervision of Mr. Ghulam Nabi, Inspector.

-?????????? The assembled B.Ts. used to be handed over to field staff who used to install the same under the supervision of Mr. Afzal Haq, Deputy Director-General, Rawalpindi at the respective target places.

-?????????? The device used to be operated with the help of special, equipment installed at the Listening posts.
-?????????? The recording obtained through these technical devices used to be transcribed as a special arrangement under the supervision of Mr. Muhammad Akhlaq, Assistant Director.

-?????????? The important points from the transcript used to be selected and a summary was thus prepared by Mr. Muhammad Sadiq Malik, Deputy Director.

-?????????? Mr. Muhammad Sadiq Malik, Deputy Director was also responsible to carry this transcrips to Prime Minister House and bringing those back after duly circulating the same to Major (Retd.) Muhammad Shabbir Ahmed, Ex-JDG (T) and Mr. Masood Sharif Khan, Ex-DGIB. "

A statement of Muhammad Sadiq Malik, Deputy Director, IB, dated 9-12-1996, as also produced before the Court which reads as follows:-

?????????? "I am serving in Technical wing of IB HQ since about 4 years. Later, I ? was detailed by Mr. Shabbir Ahmed, JDG(T) to prepare summary of Telephone-tapping/monitoring and for delivery to Prime Minister's House. All these Summaries were prepared under my supervision and delivered by me to the Prime Minister House in presence of D.M.S. When the said file was seen by the Prime Minister, Sub. Azim used to call me on telephone to collect it and I used to go and collect it.

?????????? The file was delivered on regular basis, before going I used to contact D.M.S. or A.D.C. over telephone that I want to come over and they used to inform at the gate (P.M. House) and I used to go in official vehicle.

Earlier no number was given to the file, but once one file was delayed i.e. not returned from Prime Minister, thereafter, it was decided to give a number on the file cover. After sometime it was observed that pages were being removed from the file. This was reported to the then
JDG(T), who instructed that in future the pages should be numbered. So this practice was continued.

On return I used to check the file and found that many pages were missing. It was reported to JDG(T), who said. that these pages were handed over to Director-General IB by Prime Minister so there is nothing to worry.

?I used to also deliver sealed envelopes given to me by Mr. Ashraf Bhatti (PS to JDG(T)) to the Prime Minister House. It may be mentioned here that no receipt was taken at the time when the file in? question was handed over or received back. The summary file was returned by Prime Minister, whereas the files given to me by Ahsraf Bhatti, mostly didn't come back from Prime Minister.
?????????? ?To keep our record, a register was maintained for this purpose.

When the Director-General IB was present in Islamabad, a duplicate copy of the summary was sent to him, which he after checking used to return it with his remarks.

At times I was given an envelope with number to be delivered and hand-written receipt was given to me to get the signatures. I used to hand over this to Sub. Azim and obtained his signatures on the receipt, which on return I handed over the receipt to Ashraf Bhatti.
Note:

All the files delivered by me as mentioned above where duly sealed in ?? double cover. The outer envelope was in the name of M.S. to the Prime Minister whereas the inner was in the name of "For Eyes Only, The Prime Minister of Pakistan". When it was received back was sealed by? tape in single envelope i.e. for "Eyes Only". At times Sub. Azim used to `"U to write Director-General IB on it. After opening it the cover was? destroyed. The files with 2 signs or remarks were handed over to JDG(T) for action at his end.

It may be pointed out that summary No.269/144, +la+140-A to 140-D, delivered on 4-11-1996 around 2015 hours has not been returned. '
?? (S.d.)
?? (Muhammad Sadiq Malik)
?? Deputy Director (To III)
?? 9-12-1996."

The next was a List of names and telephone numbers of the persons whose telephones were tapped/bugged and conversations taped illegally including Judges of the superior Courts, leaders of political parties and high-ranking military and civil officers, which is as under:-

"LINES ON BOARD WITH B.Ts" OPERATION CELL

S.No.?? Phone No.?????? Name of Target ??????? Started on?????????????????????????????????????? Closed on

1.???????? 213767???? Mr. Sajjad Ali Shah ?????? 22-11-1995????????? ????????????????????? 4-11-1996
?????????????????????????? ????? Chief Justice.

2.???????? 212183??? Rest House, F-5?????? ??????? 22-11-1995???????? ?????????????????????? 4-12-1995
?????????????????????????? ??? Minister's Colony

3.???????? 820613?????????? -do-????? ?????????????????????? 22-1-1996????????? ????????? ???????????11-2-1996

4.???????? 220403??????????? -do-???? ????????????????? 16-1-1996??????????? ????????????????????? 11-3-1996

5.???????? 212280??????????? Judges (Rest House?? 23-3-1996????????? ????????????????????? 20-5-1996
?? F-5)

6.???????? 215100????????????????????????? -do-???? ?????? -?? do??????????????????? ????????????????????????????? -do

7.???????? 212705??????????? C.J., N.-W.F.P.?????????? -do-???????????????? ????????????????????????????? -do-

8.???????? 218897????????????????????????? -do-???? -???????????? do-????????????????? ????????????????????????????? -do-

9.???????? 821677??????????? ?? Senator Nasreen??????? 12-4-1996??? ?-
????????????????????? ????????????????? Jalil

10.?????? 224533??????????? Mr. Wasim Sajjad??????? 10-4-1996?????? ???????????????????? 11-6-1996

11.?????? 215631??????????? Mr. Hamid Nasir????????? 20-9-1995????? ???????????????????? 22-5-1996
????????????????????? ????????????? Chattha

12.?????? 280693??????????? Justice Khoso?? ??????????? 21-3-1996?????? ????????? ?????????20-5-1996"

Besides, following persons' telephones were also taped on different dates by the Intelligence Bureau's personnel during the petitioner's Government:-

Operation Cell

Code Name????????????????????????????? ?????????? Target
BM means
Blind Man

BM-???? ????????????????????? ????????????????Syed Sajjad Ali Shah, CJ Pak (Office)
BM-1B ?????????? ?????????????????????????????-do- (Residence)

BM-1C??????????? ?????????????????????????? -do-

BM-1D??????????? ?????????????????????????? -do-

BM-lA ????????????????????????????????????? Judges Rest House, E-7, Islamabad

BM-5?? ????????????????????????????????????? -do

BM-2?? ????????????????????????????????????? Mr. Ashiq Hussain, Registrar, SC

BM-3 ? ????????????????????????????????????Justice Salim Akhtar

BM-4 ? ????????????????????????????????????Justice Mukhtar Jenjo

BM-10 ????????????????????????????????????? -do-

BM-11 ??????????? ??????????????????????????-do- (Residence)

BM-8 ? ????????????????????????????????????Justice Fazal Ilahi

BM-9?? ????????????????????????????????????? Justice Raja Afrasiab Khan

BM-13 ??????????? ????????????????????????????Justice Ajmal Mian

BM-17 ??????????? ????????????????????????????Justice Saiduzzaman Siddiqui

BM-21 ??????????? ????????????????????????????Justice Fazal Karim (office) &
?? R-5 Rest House (Residence)

BM-24 ??????????? ????????????????????????????Justice Muhammad Munir

BM-25 ??????????? ????????????????????????????Justice Sh. Riaz Ahmad

BM-29 ??????????? ????????????????????????????Justice Hazar Khan Khoso

Smooth Operator ??????? ??????????????Mushahid Hussain, PML(N)

Octopus?????????? ??????????????????????????? Ch. Akhtar Ali, MNA MPL(J)

Wolf???? ???????????????????????????????????? Maulana Fazlur Rehman, President JUI(F)

Wiseman????????? ???????????????????????? Mr. Wasim Sajjad, Chairman Senate

Sea Weed??????? ????????????????????????? Senator Nasreen Jalil (M.Q.M.)

Hot Bed ????????? ??????????????????????????Ms. Saba (M.Q.M.)

Movie-I??????????? ??????????????????????????? Khawaja Ejaz Sarwar, Information
?????????????????????? ????????????????????????? Advisor to the President (Office)

OG-28-B ??????? ????????????????????????????-do- (Residence)

Movie-2?????????? ???????????????????????? ?Mr. Shamsher Ali Khan, Secretary to the
?? President (Residence)

Movie-3?????????????????????????????????? -do- (Office)

J.T.1??????????????????????????????????????? Mr. Ghulam Mustafa Jatoi

J.T.2??? -do-
??

SECRET

CODE NAME:?? TARGET

Guest??? Mian Nawaz Sharif, President PML(N)

Evening Star??? Mr. Afzal Khan, EX-CM, N.-W.F.P.

Panther??? Raja Nadir Pervez, PML(N)

LIST OF NAMES FROM ISLAMABAD AND FOUR PROVINCES WHOSE TELEPHONES WERE TAPED.

JUDICIARY:

?1.?? ???????? Mr. Justice Sajjad Ali Shah, Chief Justice of Pakistan.

2.??? Mr. Justice Fazal Ilahi.

3.??? Mr. Justice Raja Afrasiab.

4.???????????????????? Mr. Justice Nazir Ahmed Bhatti, Chief Justice, Federal Shariat Court

LAHORE:

1. ?? Mr. Justice Sheikh Riaz Ahmed.

2.??? Mr. Justice Khalil-ur-Rehman Ramday.

3.??? Mr. Justice Rashid Aziz.

4.??? Mr. Abdul Sattar Najam, Advocate-General Punjab.
5.??? Chief Justice (Retd.) Justice Dr. Nasim Hasan Shah

6.??? Mr. Justice (Retd.) Manzoor Hussain Sial.

QUETTA

l .??? Mr. Justice Munawar Ahmed Mirza, Chief Justice Balochistan
KARACHI:

1.?? Chief Justice Sindh High Court, Karachi

2.?? Residence of Chief Justice of Pakistan at Karachi

3.?? Residence of Mr. Justice Nasir Aslam Zahid,
??????????? at Karachi.

4.?? Residence of Mr. Justice Amanullah Abbasi,
??????????? at Karachi.

5.?? Residence of Mr. Justice Ghous Muhammad
Judge Sindh High Court, Karachi.

PRESIDENCY:

1.?? Mr. Ejaz Sarwar, Information Advisor
??????????? to the President.
2.?? Mr. Shamsher Ali Khan, Secretary to the President.

NATIONAL .ASSEMBLY:

1. ?? Syed Yousuf Raza Gilani, Speaker.

2. ?? Syed Zafar Ali Shah, Deputy Speaker

SENATE:

1. ?? Mr. Waseem Sajjad.

CHIEF MINISTER HOUSE. LAHORE:

1.?? Following telephones numbers were taped,

?? 6305033????????? 14-9-1995

?? 6367440???????????????????? -do-

?? 6373766????????? 18-9-1995

?? 6316656????????? 28-9-1995

CHIEF MINISTER HOUSE, QUETTA:

1. ?????????????????????????????? Imran Gichki, Press Secretary to C.M.

2. ?????????????????????????????? Mr. Saeed Ahmed Hashmi, Advisor to C.M

IMPORTANT POLITICIANS:

I .?????????????????????????????? Mian Nawaz Sharif, President PML(N)

2.? ?????????????????????????????? Maulana Fazal-ur-Rehman, President JUI(F).

3.?????????????????????????????? Mr. Ghulam Mustafa Jatoi, President NPP.

4.?????????????????????????????? Raja Zafar-ul-Haq, Senator.

5.?????????????????????????????? Ch. Shujaat Hussain, Senator.

6.?????????????????????????????? Mir Balkh Sher Mazari, Ex-Caretaker Prime Minister.

7.?????????????????????????????? Kh. Ahmed Tariq Rahim, Presently Governor Pb.

8.?????????????????????????????? Mir Zafarullah lamali, Caretaker C.M. Balochistan.

9.?????????????????????????????? Begum Abida Hussain, Presently Minister.

10.?????????????????????????????? Professor Khursheed Ahmad, Senator.

11.?????????????????????????????? Mr. Gohar Ayub, MNA

12.???????????????????????????????? Mr. Sartaj Aziz, Senator.

13.???????????????????????????????? Ch. Akhtar Ali, MNA, PML (J).
14.???????????????????????????????? Mir Afzal Khan, Ex-CM, N.-W.F.P

15.???????????????????????????????? Mrs, Nasreen Jalil, Senatetor M.Q.M.

16.???????????????????????????????? Fiza Junejo, PML (J).

17.???????????????????????????????? Kh. Asif, MNA.

18.???????????????????????????????? Mr Aslam Khattak

19.???????????????????????????????? Senator Hadi

20.???????????????????????????????? Mr lshtiaq Azhar, Senator, M.Q.M

21.???????????????????????????????? Col.(Retd.) Ghulam Sarwar Cheema.

22.???????????????????????????????? Mr Abu Bakr Sheikhani.

23.???????????????????????????????? Sahibzada Yaqoob Ali khan

24.???????????????????????????????? Presently Foreign Minister
24.???????????????????????????????? Gul Andaz Abbadi, (JI).

25.???????????????????????????????? Main Aslam. (JI).

26.???????????????????????????????? Co. A.K. Ehsanullah (JI)

27.???????????????????????????????? Sheikh Aftab, Senator (M.Q.M.).
28.???????????????????????????????? Commander Khalil-ur-Rehman, Senator.
29.???????????????????????????????? Mulana Ghafoor Haidri (MNA)

30.???????????????????????????????? Dr. Basharat Jazbi.

31.???????????????????????????????? Mr Mushahid Hussain, PML(N).

32.???????????????????????????????? Mr M. Ramzan (JI) (Residence Islamabad).

33.???????????????????????????????? Raja M. Akhlaq (JI) Kuri Sher, Islamabad.

34.???????????????????????????????? Farrukh Jamil (JI) (Residence Islamabad)

35.???????????????????????????????? Sheikh Rasheed Ahmed (MNA).

36.???????????????????????????????? Mr. Ejaz-ul-Haq (MNA).

37.???????????????????????????????? Maulana Jalil, Amir JI, Rawalpindi City

38.???????????????????????????????? Dr. Liaquat Ali (JI).

39.???????????????????????????????? General (R) Hameed Gul.

40.???????????????????????????????? General (R) Aslam Baig.

41.???????????????????????????????? Allama Sajid Naqvi (TJP).

42.???????????????????????????????? Mrs. Nelofar Bakhtiar.

43.???????????????????????????????? Nazim-i-Kashmir,

44.???????????????????????????????? Mr. Saleem Cheema.

45.???????????????????????????????? Main Manzoor Ahmed Watoo.

46.???????????????????????????????? Mr. Tariq Chaudhary, Senator.

47.???????????????????????????????? Mr. Asghar Khan.

48.???????????????????????????????? Mr. Zahid Mazari.

49.???????????????????????????????? Mr. Liaquat Baloch
50.???????????????????????????????? Raja Riaz.

51.???????????????????????????????? Haji Ghulam Ahmad Bilaur (ANP)

52.???????????????????????????????? Haji Muhammad Adeel (ANP).

53.???????????????????????????????? Mr. Jafar Khan Mandokhel, Provincial Finance Minister.

54.???????????????????????????????? Mr. Khuda-e-Noor (JWP)

55.???????????????????????????????? Sardar Yaqoob Nasir, Senator PML(N).

56.???????????????????????????????? Mr. Amanulla Kunnaui QWP)
??????????

57.???????????????????????????????? Mr. Shamim Afridi, Finance Secretary QWP)

58.???????????????????????????????? Mr. Iqbal Sheikh (M.Q.M.)

59.???????????????????????????????? Nawab Bugti House.

60.???????????????????????????????? Mr. Ajmal Dehlvi, Newspaper "AMAN", Karachi

61.???????????????????????????????? Mr. Khaliq-uz-Zaman, Senater

62.???????????????????????????????? Professor Ghafoor Ahmed.

63.???????????????????????????????? Mr. Ansar Burney,

64.???????????????????????????????? Syed Laiq Ali.

65.???????????????????????????????? Mubarak Yammani.

66.???????????????????????????????? Mr. Muhammad Dawood

67.???????????????????????????????? Mr. Chanesar Khan

68.???????????????????????????????? Mr. Muhammad Nasik Wala.

69.???????????????????????????????? Hajra Begum.

70.???????????????????????????????? Mr. Muhammad Jumma.

71.???????????????????????????????? Mr. Asim Hafeez,

72.???????????????????????????????? Mr. Khuda Bukhsh Bizenjo

73.???????????????????????????????? Mr. Amjid Hussain.

74.???????????????????????????????? Mr. Mahmood A. Haroon, Ex-Governor.

75.???????????????????????????????? Maulana Shah Ahmed Noorani JUP (Residence).

76.???????????????????????????????? Mr. Saifullah

GOVERNMENT FUNCTIONARIES:

1.???????? Mr Azhar Sohail, DG, APP.

2????????? Deputy Secretary Finance Division (Islamabad's Residence)

3????????? Mr Masud Ahmed Sheikh, SG, Ushr & Zakat, 32 Civil Centre Melody
?????????? Islamabad.

4????????? Ministry of WSG & Envir. PB, Islamabad.

Major-General (Retd) Safdar Ali Khan, P.M. Research & Analysi Standing Committee.

6.???????? Mr Hamza Badin, SSP (Quetta)

7.???????? Mr Muhammad Riaz, SSP.

8????????? Mr Nayyar Agha, Home Secretary.

9.???????? Mr Ahmed Maqsood Hamedi, Additional Chief Secretary's Residence
??????????? (Karachi)

10??????? Commissioner of Income-tax, Companies Zone, 4.R. No. 324, Main
??????????? Income-tax Building, Karachi.

11.?????? Mr Wajid Durrani, SSP'S Residence at South Karachi

12.?????? Mr Baber Khatak, DIG, DIG Special Branch Offfice, Karachi.

13??????? Mr. Umar Morio, D.I.-G., Office of D.I.-G. Traffic, Karachi

14??????? Mr Ibrahim Khalil, DSP's Residence.

15??????? Mr A.D Khawaja, SSP (Residence)

OTHERS:

1.???????? Sindh House

2????????? Punjab House

3????????? Jamaat-e-Islami Office

4????????? Punjab House, Rawalpindi

5.???????? Nawab Bugti House,

6????????? Sindh Secretariat, Sindh Assembly Building, Karachi etc."

A statement made by Mr. Ghulam Nabi, an Inspector of Intelligence Bureau, dated 10-12-1996, regarding retrieval of bugging devices is as follows:

"SECRET"

Sub:- RETRIEVAL OF BTs/MODIFIED TELEPHONE:

The undersigned was entrusted to undertake the following retrievals:

(a)??????? Chief Justice Supreme Court of Pakistan, office (the retrieval was made on 04 December, 1996 in the presence of the Registrar Supreme Court of Pakistan Mr. Farooqi).

(b)??????? Seven BTS from the rest room of the Judges (the retrieval was made on 8th December, 1996 in the presence of the Registrar Supreme Court of Pakistan Mr. Farooqi).

(c)??????? Chairman Senate, Residence (the retrieval was made on 9th December 1996 in the presence of the Chairman Senate and his personal staff).

(d)??????? This way a total of nine BTs/ modified telephones have been retrieved so far.

(2)??????? Submitted for your kind information please

????????????????? (Sd.)
??????????? (Ghulam Nabi),
Inspector (Operation)
????????????????????????? 10-12-1996. "

Director (Tech)."

Statements made by Mr. Muhammad Afzal Haq, Director IB dated 18-11-1996 and 10-12-1996 were also produced before the Court which are as follows:

"TOP SECRET"

"I was posted as Deputy Director, Intelligence Bureau, Jhelum in January, 1993 and was called during May, 1995, alongwith some other officers to IB headquarters, Islamabad. I was asked to carry out interrogations of M.Q.M. suspects as part of a J.I.T.

comprising o1 I.B., I.S.I. and F.I.A. I.B. arranged necessary technical coverage for the interrogation as well as to cover their meetings with visitors. The technical coverage was also extended to the political detenus like Sheikh Rashid and Mr. Shahbaz Sharif etc. In the meantime, I was posted to CI-Field, Islamabad, but remained attached with technical wing and was entrusted with the job of technical operations by the them JDG (T). In February, 1996, 1 was posted as Director District Rawalpindi, and later appointed as Acting Deputy Director-General, Rawalpindi in June, 1996. Even in this capacity under order of the then JDG(T), I remained associated with technical operations at IB Headquarters till 5-11-1996. The operation "Night mare" was terminated in the morning of 5-11-1996.

During the period of my association with technical operations, all actions were undertaken on the explicit orders from the then JDG(T).l acted in good faith and carried out all the instructions of the superior officers to the best of my capacity without any mala fide intentions or ulterior motives. During all these technical operations laid down procedures were followed as per practice in vogue. Most of the Jobs were undertaken on verbal orders/ instructions as is the practice in our department. The monitoring reports were prepared and processed and communicated by the officers and staff of Technical Wing for the information of concerned superior officers.

The technical operations conducted by technical wing under direction of the then JDG(T), some of which I can now recall are listed below:

?????????? a????????? B.M

?????????? b????????? Movie

?????????? c????????? Night mare

?????????? d????????? Financial Times

?????????? e????????? Wiseman

????????????????????????? OG 28-B

?????????? g????????? M.R

?????????? h.???????? W. H.??

?????????? j.????????? Nighting Gale

?????????? k.???????? Hot Bed

?????????? i.????????? Seeweed.

At times I used to convey the instructions of the then JDG(T) regarding monitoring and operations to Mr. Sadiq Malik, DD(CIS) and Mr Ghulam Nabi, Inspector Operations. I also conveyed the directions of the then JDG(T) to Mr. Muhammad Younis (Director North) to prepare copies of the operation BM, Movie, Night Mare and OB-28 B. Mr.Muhammad Younis was also assigned the job by the then JDG(T) to transcribe certain reports. as per procedure in vogue, the reports of these operations were prepared by the transcribers i.e. Mr. lkhlaa and Mr. Mahmud. These transcriptions given either to me or to Mr. Ashraf Bhatti (PS to the then JDG(T)) for the consumption of senior officers. These reports alongwith other monitoring reports prepared by Mr. Sadiq Malik, DD(CIS) were sent to Prime Minister.

An advertisement was got published through a contract in daily Jang, dated 1-11-1996, against JI with regard to its Dharna Programme on the orders of the then JDG(T). Copy of the advertisement is attached herewith.

As is evident, all actions were done as part of duty in accordance with official procedures, departmental practices and norms of service. All along I acted in good faith with a view to safeguard the interest of service and the organisation.

(Sd.)

(Muhammad Afzal Haq)
?????????? Director
During year 1995, 1 was posted as Deputy Director Jhelum, when I was called to IB Headquarters, Islamabad, where I reported to JDG(A/T) for duty, with reference to some assistance rendered to technical wing. In the meantime, I was formally transferred to Islamabad and later to Rawalpinid Divisional Office. During all the period, my services were requisitioned by JDG-A(T) (Mr. Muhammad Shabbir Ahmed) if and when required.
As far as I can recall from my memory the following operations were being conducted by technical wing at that time in connection to which my assistance was sought, like providing of access etc.: -

S. No.????????????? Operation?? Target

1.???????? BM?? Chief Justice of Pakistan

2????????? BM?? Rest House of Supreme Court of
?? Pakistan (did not yield results)

3????????? Wiseman?? Mr. Wasim Sajjad (did not yield
?? required results).
4????????? Night mare?? Mr. Shahid Hamid (Short term
?? operation in hotel terminated on
?? 5-11-1996).

5????????? Financial Times?? Mr. Sartaj Aziz (Only monitoring)

6????????? Falcon? Sh. Rashid Ahmad.

7????????? Movie?? Mr. Shamsher Ali and Mr. Ejaz
?? Sarwar of President House (Only
?? monitoring).

During normal course of my duty, at times, I was supposed to convey the verbal instructions of Mr. Muhammad Shabbir Ahmad (JDG-A/T) for monitoring and operations of Mr. Sadiq Malik, Deputy Director and Mr. Ghulam Nabi, Inspector of Technical Wing.

The line product of operation Movie and Night mare was prepared by Mr. Ikhlaq and Mr. Mahmud (Transcriber) where as all other monitoring reports were prepared by Mr. Sadiq Malik for the consumption of authorities.

An other operation, which I can recall is the publication of posters/advertisements in paper against Dharna Programme of JI. (1996)
.
Certified that the above activity/operations were carried out under the directions of Mr. Muhammad Shabbir Ahmad JDG (A/T) and were completed under his supervision and command as part of my normal duty.

(Sd.)

(Muhammad Afzal Haq),

Director 10-12-1996."

43. It would advantageous to first refer to some case-law on the issue of phone-tapping/eaves-dropping, etc. In Manzoor Ahmad v. The State (1990 MLD 1488), it was held:-

"5. After hearing the learned counsel for the parties and perusing he record, I find that there is substance in the submission of the learned counsel for the petitioner that in view of Article 14 of the Constitution eaves-dropping, tapping stealthily, photographing something inside the house are invasions on privacy and as such is not permissible under the Constitution as well as in Islam..."

In United States v. United States District Court for the Eastern District of Michigan (407 US 297, 32 L Ed 2d 752, 92 S Ct 2125) under Headnote No.6 it was observed:-

"The broad and unsuspected Governmental incursions into conversational privacy which electronic surveillance entails necessitate the application of Fourth Amendment safeguafds."

Reference may be made to A. v. France (1993) 17 EHRR 462) in which at the instigation of a third party, a telephone conversation between that third party and the applicant was recorded by a police officer. During that coversation plans were discussed for the commission of a crime for which the applicant was later charged but eventually acquitted, there being no case to answer. The applicant challenged the illegality of the tape-recording in the National Courts up to the Court of Cassation though unsuccessfully but did not bring a separate civil action for damages. She complained of a violation of her right to respect for private life and correspondence within the meaning of Article 8 of the Convention. It was unanimously held: "that there had been a violation of Article 8". Article 8 of the Convention provides as follows:-

" 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society to the interests of National security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

It was held in the said report at paragraph 35:-

"Moreover, the fact that the discussion allegedly concerned the preparations for a crime has no bearing on the finding that the recording complained of constituted interference in the applicant's private life. Telephone conversations, just like correspondence by letter, are in principle confidential in every State governed by the rule of law, and this confidentiality which surrounds them in principle places them in the area of private life. A telephone conversation does not cease to be private merely because its content concerned or may concern matters of public interest. If the field protected by Article 8 were limited to those aspects of private life in which the public authorities have no interest that provision would be largely divested of its substance. Furthermore, the decision to tap telephone lines or record telephone conversations is necessarily taken before the content of the conversation is known with certainty. Lastly, the fact that the recording complained of was made for the purpose of collecting evidence of a plan to commit a criminal offence is a consideration relevant to the question whether the interference is justified, but does not disprove the very existence of that interference."

In the case of Huvig v. France (1990) 12 EHRR 528), it was observed as under:-

"In the course of the judicial investigation the Investigating Judge authorised a senior police officer to have the applicants' business and private telephone lines tapped. The applicants complained of a violation of Article 8 of the Convention.

Held unanimously, 'that there had been a breach of Article 8' . "

In the case of Malone v. United Kingdom (1984) 7 EHRR 14, the applicant, an antiques dealer, was prosecuted for offences relating to dishonest handling of stolen goods. During the trial it emerged that the applicant's telephone had been tapped by the police acting on the authority of a warrant issued by the Home Secretary .... In its report, the Commission found violations of Articles 8 and 13 (see (1983) 5 EHRR 385). It was held, unanimously, by the Court, that there had been a breach of Article 8. In Klass and others v. Federal Republic of Germany (1978) 2 EHRR 214), although telephone conversations were not expressly mentioned in paragraph 1 of Article 8, the Court considered, as did the Commission, that such conversations were covered by the notions of 'private life' and 'correspondence' referred to by that provision. The case of Charles Katz v. United States (1967) 389 US 347), was also referred. The summary of the case is that:-

"Defendant was convicted in the United States District Court for the Southern District of California of transmitting wagering information by telephone. At trial the Government was permitted, over the defendant's objection, to introduce evidence of his end of telephone conversations, overheard by F.B.I. agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which he placed his calls. The Court of Appeals for the Ninth Circuit affirmed. (389 F2nd 130).

On certiorari, the Supreme Court of the United States reversed. In an opinion by Stewart, J., expressing the views of seven members of the Court, it was held that antecedent judicial authorization, not given in the instant case, was a Constitutional precondition of the kind of electronic surveillance involved.

Douglas, J., with the concurrence of Brennan, J., joined the Court's opinion, rejecting, however, the view expressed by White, J., in his concurring opinion that no antecedent judicial authorization is necessary for electronic surveillance if the President of the United States or the Attorney-General has authorized electronic surveillance as required by National Security.

Harlan, J. also concurred, joining in and elaborating on the opinion of the Court.

White, J. also joined the opinion of the Court Black, J. dissented on the ground that eaves-dropping carried on by electronic means does not constitute a 'search' or 'seizure' within the meaning of the Fourth Amendment.

Marshall, J. did not participate."

It was further observed in the aforesaid report:-

"The attaching by F.B.I. agents, of an electronic listening and recording device to the outside of a public telephone booth from which a suspect placed his call, constitutes a violation of the Fourth Amendment's prohibition of unreasonable searches and seizures, in the absence of an antecedent order judicially sanctioning such surveillance upon the officers' presentation of their estimate of probable cause and requiring them to observe precise limits and to notify the authorizing Magistrate in detail of all that has been seized."

Reference was also made to United States v. Richard M. Nixon (974) 418 US 683). The summary of the case is as follows:-

"A grand jury of the. United States District Court for the District of Columbia indicted named individuals, charging them with various offences, including conspiracy to defraud the United States and to obstruct justice; the graind jury also named the President of the United States as an unindicted co-conspirator. At the instance of the duly appointed special prosecutor, the District Court issued a third-party subpoena duces tecum, directing the President to produce, for use at the pending criminal trial, certain tape recordings and documents relating to his conversations with aides and advisors. The President moved to quash this subpoena on the ground that the subpoenaed materials were within his executive privilege against disclosure of confidential communications. The District Court denied the motion 337 F Supp 1326) and the President appealed to the United States Court of Appeals for the District of Columbia Circuit.

On certiorari and cross-certiorari before judgment of the Court of Appeals, the United States Supreme Court dismissed, as improvidently granted, the writ of certiorari granted the President upon his crosspetition for the purpose of reviewing the authority of the grand jury to name him as an unindicted coconspirator. As to the merits, the Supreme Court affirmed the order of the District Court."

It may also be advantageous to, reproduce the following observations in the aforesaid report:

"The production, under a subpoena duces tecum issued in a criminal case by a United States District Court directing the President of the .United States, to produce, prior to trial, certain tape recordings relating to his conversations with aides and advisors, is not subject to an
objection to the admissibility of the recordings as hearsay, where most of the tapes apparently contain conversations to which one or more of the defendants named in the indictment are a party and their declarations may be admissible under the hearsay rule. "

It was further observed:-

"In the performance of assigned Constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others; however, it is emphatically the province and duty of the judicial department to say what the law is."

44. Mr. Khalid Anwar, learned counsel for the respondents also referred to the Historic Documents . of 1974 Impeachment Articles (US Constitution) wherein A Committee of the House of Representatives, acting in a capacity only once before paralleled in American history, voted July 27-30 to recommend the impeachment of President Richard M. Nixon on the grounds of obstruction of justice, abuse of power and contempt of Congress". That committee had launched an impeachment probe in response to charges that the Watergate Scandal traced a path to the President's Oval Office. A majority of the committee approved that, "Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of Constitutional Government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office".

Reference was also made to the passage from American Jurisprudence, Second Edition, Volume 74, 1974 on the subject of 'Interception And Divulgence Of Communications: Wiretapping'. Under paragraph 209 thereof it was observed:-

"Under acts of Congress and State legislation, it is unlawful to intercept, reveal the existence of, and disclose or divulge the contents of, wire, or oral communications, unless the interceptor has previously obtained an order of a Court permitting a wiretap or other interception of the communications, or one party has consented to the interception. A violation of such statutes is a criminal offense, the communication may not be received in evidence, and a civil action for damages may lie."

In Constitutional and Administrative Law by Wade and Bradley it was observed:

"It is only in exceptional cases that blame should be attached to the individual civil servant and it follows from the principle that the Minister alone has responsibility for the actions of his department that the individual civil servant who has contributed to the collective ???????? decision of the department should remain anonymous .?? The responsibility of Ministers to Parliament consists of a duty to account for what they and their departments are doing."

In Constitutional Practice by Rodney Brazier, it was observed:-

"If a Minister lies to Parliament, or so conducts himself as to raise an arguable case that National security could have been thereby compromised, or conducts his financial affairs other than with scrupulous care, or---through doing none of those things---through his behaviour makes it impossible for him to carry out his departmental duties because of the attentions of the press, then (regardless of how loyal the Prime Minister may be) he will have to go.

A Minister is responsible for the general conduct of his department: more precisely, he may have to pay the price for political misjudgment within it. What amounts to misjudgment may be a matter of opinion, and guidance can be difficult to formulate. A marginal case is provided by the preliminaries to the Falklands conflict. The Foreign Secretary, Lord Carringtion, and two of his ministerial colleagues, Mr Atkins and Mr. Luce, felt compelled to resign in 1982 after the Argentinian invasion of the Falkland Islands because they considered that the Foreign and Commonwealth Office had not adequately judged Argentina's intentions. The Prime Minister did not want to accept their resignations, but the three Ministers persisted and left the Administration. "

45. A bare perusal of the record produced before this Court shows that illegal phone-tapping and eaves-dropping techniques have been adopted by the Government of the petitioner on a massive scale in violation of the fundamental right of privacy granted by Article 14 of the Constitution. Mr Khalid Anwar was right in contending that for our Constitutional set-up to function properly, it is vital that no organ should unlawfully encroach Upon any other. Each organ of the State can function best and discharge its Constitutional obligations meaningfully, only if it is ensured that any one or more of the other organs are not attempting to interfere or pry into its affairs. If the executive interferes in the judiciary in any manner, including the illegal tapping of Judges' phones and the bugging of their Chambers and the recording of their conversations, then the autonomy and independence of the judiciary has been effectively impaired, either potentially or actually. If the privacy of the Judges and their communications is not ensured, then it is not possible for them to discharge their duties in the manner envisaged and mandated by the Constitution. Each pillar or the State must have the assurance that its correspondence and communications will not be illegally intercepted or interfered with. This is especially so in the case of the judiciary. The executive is the biggest litigant before the Courts. Thousands of petitions are pending before the Courts where ordinary citizens and other persons are seeking redress against the Government and protection of the judiciary against its highhandedness. In the circumstances, the potentially devastating consequences of any interception of judicial communications can be imagined. Clearly, the material available before the President shows that there was a systematic intrusion into and violations of the rights of the judiciary as an institution. The illegal activities of phone-tapping and eaves-dropping was done by the Intelligence Bureau (IB) which works directly under the control of the Prime Minister. The illegal phone-tapping was not only done in the case of judiciary but the phones of high Government functionaries, political leaders including those in opposition were also tapped and their conversation were recorded in violation of Article 9 of the Constitution which provides that no I person shall be deprived of life or liberty save in accordance with law aria Article 14 which reads as under:-

"14.--(1) The dignity of man and, subject to law, the privacy, of home,: shall be inviolable. .

(2) No person shall be subjected to torture for the purpose of extracting evidence."

Article 19 of the Constitution was also violated by resorting to tapping of telephones eaves-dropping, which provides that every citizen shall have the right to freedom of speech and expression subject to any reasonable restriction imposed by law in the interest of glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign State, public order. decency or morality or in relation to contempt of Court, commission or incitement of an offence. Section 25 of the Telegraph Act also prohibits illegal phone tapping and eaves-dropping.

46. Seventh ground relates to corruption, nepotism and violation of rules in the administration of the affairs of the Government end its various bodies, authorities and corporations etc.

Mr Aitzez Ahsan submitted that this ground is in utter disregard of the judgment rendered in the case of Mian Muhammad Nawaz Sharif (supra) wherein it was ruled that allegations of corruption, nepotism and violation of rules, even though reprehensible, did not constitute a ground that was sufficient in itself to justify an order under Article 58(2)(b) and in any case the allegation is vague and general. It cannot be sustained. It was argued that National Security has been endangered by destablisation caused by the dissolution of the National Assembly. It was further submitted that mere unsubstantiated allegations cannot form the basis of any dissolution or punitive action. If that be the case, the President ought to have resigned, in that, which applies to the National Assembly or the Government must also apply to the President. Mr. Aitzaz Ahsan denied that the transfers and postings of Government servants have been made at the behest of the members of the National Assembly and other members of the ruling parties. He submitted that all the appointments were duly advertised and the candidates were interviewed and appointments made on merit and that, in any case, if there was any odd case of violation of rules that was not in pursuance of the Government policy or orders. He further submitted that the Establishment Division had itself reported to a recent Cabinet meeting that all the appointments were in 4der and in accordance with the rules. In any case, there were adequate remedies against any alleged violation of the rules in any particular case. Those matters could easily have been taken to the Courts. The Lahore High Court has intervened in one such matter with respect to Provincial appointments. It could have been done in respect of Federal appointees as well if there had been any large scale grievance or petitions in this behalf but the remedy of dissolving the entire National Assembly was no solution nor was it sanctioned by the Constitution. Mr. Aitzaz Ahsan also argued that the President also interfered in the matter of appointments in particular with respect to Dera Ghazi Khan, by insisting upon the appointments of unqualified persons of that Division. The precise submission was that this ground as well was not germane to the exercise of power under Article 58(2)(b).

47. Mr. Khalid Anwar argued that the petitioner has failed to appreciate the nature of allegations levelled in the seventh ground of dissolution, inasmuch as, where corruption, nepotism, and the violation of the applicable rules and regulations has been carried out on a widespread, pervasive and systematic basis, then such charges can form the basis under Article 58(2)(b). Mr. Khalid Anwar submitted that in the present case, there was a difference in magnitude, in both the scale and nature of corruption, nepotism and violation of rules with the result that the whole system of Government has been subverted and the channels of administration polluted by a sustained abuse of power whereas in the case of Mian Muhammad Nawaz Sharif (supra) there were discrete instances of corruption and rules' violation. It was contended that in all the cases where this Court had occasion to consider whether corruption or abuse of power per se could warrant action under Article 58(2)(b) the position was that the charges were not supported by credible evidence but were mainly based on newspaper stories and reports and similar allegations. Even there, this Court held that corruption charges could play an ancillary role. In the instant case, Mr. Khalid Anwar respectfully submitted that enough credible material exists to establish, at least prima facie, that there was gross abuse of power by the persons holding the highest posts in the Government. Quoting specific instances of corruption and abuse of powers Mr. Khalid Anwar drew the attention of the Court to paragraphs 243 to 293 of the written statement filed by the respondent which is reproduced hereunder:-

"243. That on 9-6-1996, the Sunday Express, a leading weekly newspaper (and the sister publication of the Daily Express, one of the largest circulation papers in the United Kingdom), published an astounding news report concerning the petitioner and her spouse. Under the banner headlines 'Bhutto's Surrey Retreat', the newspaper reported that the couple had acquired what was described as a "perfect hideaway': a ? 2.5 million mansion (known as Rockwood House) standing on a 355 acre estate. The newspaper reported that the property had its own private landing strip and indoor swimming pool, and that the security system on the estate was linked directly to Scotland Yard, the United Kingdom's premier police division. If any alarm sounded at the estate, an "armed response vehicle" would, according to the newspaper, be despatched at once to the estate. (It may be noted that at today's exchange rates, Rockwood House would have cost approximately Rs.175 million).

244. That on 16-6-1996, one of Pakistan's leading English dailies, Dawn, repoted further details regarding the Surrey property. According to the paper, shipments had been flown into England by PIA, inter alia, from Bilawal House and were destined for the Surrey Mansion. These included items such as antique guns and decoration pieces. In yet more reporting on the subject, the Sunday Express reported that the petitioner's spouse had applied for permission to build a stud farm on the estate for his polo ponies. While this application was rejected, it was reported that permission had nevertheless been granted by the local authorities to construct 63 stables on the estate. Subsequent to the press reports, further evidence also became available which conclusively established that the Surrey property is owned by the petitioner and her spouse. This evidence was so overwhelming that even the Federal Interior Minister felt unable to deny that the Prime Minister was the true owner of the Surrey property. He has been reported in the Business Recorder of 26-8-1996 as having said as follows:-

'1 am not certain' was Naseerullah Babar's reply to the question if he was sure that Surrey Mansion has not been purchased by Prime Minister Benazir Bhutto and her spouse Asif Ali Zardari. 'The beneficiary has not been named; and also purchasing property abroad is not unlawful', he added."

245. That the petitioner and her spouse have loudly proclaimed their innocence in the matter and have been vehement in their denials of owning or having anything to do with the Surrey property. They have threatened to sue the Sunday Express, and although the newspaper, in effect, invited them to do so, no such action was ever commenced. The threats of legal action were only for local consumption (and the local press); the petitioner obviously felt (and rightly so) that litigation would only lead to more revelations and further scandal. The question relevant for present purposes, however, is what does the documentary evidence show? Does it support the petitioners's disclaimer of not owning the property known as Rockwood House and having nothing to do with it? Or, does it show something else again? It is to the examination of the paper trial that the respondents now turn.

246. That on 22-4-1996, the Deputy Chief of Protocol in the Ministry of Foreign Affairs faxed a message from the Ministry's Karachi Office to the Managing Director, PIA, informing him that 'personal luggage/effects' were to be sent from the 'Prime Minister House (Bilawal House)' to Pakistan's High Commission in London. The effects were in 8 big packages that would add up to a truck load. The Managing Director was asked to depute someone from PIA to take charge of the effects for shipment. The fax

was also copied to Naval Headquarters with the request that The Navy arrange for the transporation of the effects from Bilawal House to the airport.

247. That on 24-4-1996, the Deputy Chief of Protocol faxed a message to Pakistan's High Commissioner in Great Britain informing him that, 'under instructions of Prime Minister House' 8 heavy cartons were being despatched by a PIA flight to London, leaving Pakistan on 28-4-1996. The High Commissioner was requested to ensure 'safe takeover at London for further necessary action'. It may be noted that the High Commissioner was the selfsame Mr. Wajid Shamsul Hasan, who would (as was seen in the paras. (supra) later also prove useful to the petitioner in the matter of the British detectives investigating Mir Murtaza's murder. A copy of this fax was endorsed to the Private Secretary to Mr. Asif Ali Zardari.

248. That the cargo of 8 cartons (containing 45 separate items) was sent under Airway Bill No.214-01635012. The consignor was shown as 'Bilawal House' and the consignee was the aforesaid Mn Wajid Shamsul Hasan. When the cartons arrived at London, a declaration for the release of the cargo was entered the same day (i.e. 28-4-1996) with British Customs Authorities by Pakistan's High Commission. According to the declaration, the cargo (described as '8 pieces household effects, weight 3450 kgs.') was for the personal use of the High Commissioner, Mr. Wajid Shamsul Hasan. (Mr. Wajid Shamsul Hasan, it may be pointed out, is a former journalist who was directly appointed by the petitioner to the post of High Commissioner).

249. That on 2-5-1996, Mr. Wajid Shamsul Hasan addressed a letter to the Cargo Manager, PIA, London authorising a certain Mr. Paul to collect on behalf of the High Commissioner the personal effects that had arrived at London under Airway Bill No.214-163512. According to the release note in respect of the cargo, it was released to the aforesaid Mr. Paul on or about 2-5-1996. The release note also gave Mr. Paul's surname, i.e. p.

250. That by means of Airway Bill No.214-01629736, a further 13 cartons weighing 5410 kgs. were shipped to London from Lahore via PIA by one Saroosh Yaqoob Mehdi. The consignee of the cargo was also Mr. Paul whose address was shown on the Airway Rill as ' 15Grove, Luton, Bedfordshire, London, U.K.'. This cargo was again described as personal effects.

251. That the interior design work at Rockwood House had, at least in part, been assigned to a company called Townsends. These contractors from time to time sent various invoices for the work done to a company doing such work, called Grantbridge, whose address was shown on the invoices as 'Unit 10, Belvue Business Centre, Belvue Road, Northholt, Middlessex UB5 5QQ'. It appears that all these invoices were promptly settled.

252. That a search at Companies House, London (which is the English equivalent of the Registrar, Joint Stock Companies) has revealed two companies by the name of Grantbridge. One is Grantbridge Ltd. and the other is Grantbridge Contractors Ltd. The registered address of Grantbridge Ltd. is the same as shown on the invoices issued by Townsends in respect of Rockwood House. Both these companies have a common directorship. One of the directors is a Mr. Paul Keating, whose address is shown in the corporate records as at "15, Grove Road, Luton, Bedfordshire". This is the same address as appears on Airway Bill No.214-01629736, the consignee of which was 'Mr. Paul'.

253. That this chain of evidence and events directly and irrefutably links the petitioner to Rockwood House. The evidence may be summarized as follows. Two consignments are sent to London from Pakistan. One is sent directly from Bilawal House and is consigned to Mr. Wajid Shamsul Hasan, the petitioner's political appointee as Pakistan's High Commissioner in Great Britain. The consignment is cleared by one Mr. Paul who is directly authorised by the High Commissioner in this regard. The release note identifies Mr. Paul as being Mr. Paul Keating. The second consignment is sent from Lahore and is consigned to one Mr. Paul. That this gentleman is the same Mr. Paul Keating authorised. by the High Commissioner is established by the fact that the consignee's address given on the airway bill of the second consignment is the same as appearing in the corporate records maintained at Companies House in respect of Mr. Paul Keating. Mr. Keating is shown as being a director of, and shareholder in, a company called Grantbridge Ltd. This company receives invoices from Townsends, which has been hired to do work at Rockwood House. The invoices are marked to 'Grantbridge' and the address given on the invoices is the registered address of Grantbridge Ltd. In other words:-

"(a)?????? The petitioner sent several heavy cartons of so-called 'personal effects' weighing thousands of kgs. from Pakistan to London. This was a false description since it contained item such as decoration pieces and antique guns.

(b)??????? The shipments were all received by the same person, Mr. Paul Keating. In one case, he was directly the consignee; in the other, he was the authorised nominee of the consignee, who is Pakistan's High Commissioner. This same Mr. Keating is the director in that very company which is involved in some supervisory capacity in the refurbishing and/or renovation and/or decoration of Rockwood House.

It may further be noted that the telephonic records also clearly show calls being made from Rockwood House to telephone numbers being used by, among others, Mr. Asif Ali Zardari and Mr. Javaid Pasha, one of his closest aides and cronies. This also clearly establishes the interest/link between the petitioner and her spouse and Rockwood House.

254. It is submitted that on these facts, it is clear that the petitioner and her spouse have indeed, notwithstanding the vehemence of their false denials, acquired Rockwood House and are, or were at the relevant time, busy in having it refurnished and also decorated with, inter alia, effects being sent from Pakistan. Several questions arise: how could the petitioner afford to purchase Rockwood House? Where did the resources for this acquisition come from? How could persons who pay a pittance of income-tax and wealth tax afford to spend ? 2.5 million pounds on just the purchase of the property (leaving aside entirely the money being spent on its interior decoration). Its annual maintenance cost alone would by far exceed the petitioner's known or declared sources of income. The only possible answer is that this money has been acquired illegally and through corrupt practices. In other words, the person who held the office of the Prime Minister of Pakistan, and

her husband, who was soon to become a Cabinet Minister, acquired resources through corrupt and illegal means which were then splurged on, among other things, the purchase of a palatial mansion in England. It is submitted that when the head of the Government herself is openly guilty of such actions, then it is inconceivable that the Govrnment of the Federation is being, or can be, carried on in accordance with the provisions of the Constitution. The Prime Minister also set an example to be followed by other members of her Government. The respondents now turn to other instances of abuse of power by or at the very least, with the knowledge, if not active connivance, of the petitioner and her spouse.

255. That like the petitioner and her spouse, her in-laws had also been busy acquiring properties worth millions of dollars abroad. The petitioner's father-in-law, Mr. Hakim Ali Zardari (who was not merely an M.N.A., but the Chairman of the Public Accounts Committee in the National Assembly) and his wife acquired a property in France as far back as on 12-4-1990 for a total value of French Franc 6 millions. A sum of Ff 1 million were spent on urgent repair work on, and reconstruction of, the property. The property, known as the "Manoir de la Reine Blanche" (and located at Chemin departmental 921, Mesnil Lieubray (76780) is a Renaissance style mansion, with grounds, a swimming pool and garage, and occupying an area of 1.99 hectares. The couple are also the owners of another property in France at Mormanville, Hameau. Again, the question arises: from whence came the wealth to acquire such properties? The antecedents of Mr. Hakim Ali Zardari are well-known. His disclosed wealth, or that of his wife, does not even remotely allow for the purchase of such property even in Pakistan, let alone abroad. The only possible answer is that like Rockwood Estate, these properties were also purchased on the basis of resources acquired illegally and through a gross abuse of power.

256. That by means of the Pakistan Bait-ul-Mal Act, 1991 (Act I of 1992); 'the Act'), a fund, known as the Bait-ul-Mal has been created for the purpose, inter alia, 'to provide financial assistance to destitute and needy widows, orphans, invalid, infirm and other needy persons'.

257. That on or about 24-5-1994, the Interior Minister, Maj.-Gen. (Retd.) Naseerullah Babar, one of the most powerful Cabinet Ministers and one very close to the petitioner and her spouse, wrote a secret letter to the Chairman (Ameen) of the Bait-ul-Mal demanding the release of Rs.10 million ostensibly for the relief of 4000 Bugti tribesmen allegedly displaced by reason of political persecution. A similar letter was also received by the Chairman (Ameen) from the Deputy Secretary, Social Welfare and Special Education Division, Government of Pakistan "directing" the Bait-ul-Mal to comply with the orders of the petitioner or provide assistance to the tribesmen in terms asaforesaid.

258. That thereafter, a 'short notice' meeting was called in the Prime Minister's Secretariat on 3-4-1994. The meeting was presided over by the ubiquitous Mr. Ahmed Sadiq, who was serving the petitioner as her Principal Secretary. The meeting 'urged' the Chairman (Ameen) to provide the promised 'relief' of Rs.10 million and to make a 'plea' before the Board of Management of the Bait-ul-Mal to 'relax' its procedure and provide a further amount of Rs.10 million.

259. That the very-next day (i.e. 4-4-1996), a Cheque No.39. drawn on the State Bank of Pakistan, was issued by the Bait-ul-Mal for a sum of Rs.10 million. The cheque was issued in the personal name of the Interior Minister, i.e., Naseerullah Babar. The Cheque was despatched the same day to the Interior Minister and receipt thereof was duly acknowledged on 6-4-1996. It was encashed the same day. On the same day, a 'Secret/Most Immediate' letter was also received by the Bait-ul-Mal from the Prime Minister's Secretariat, 'confirming' that the Bait-ul-Mal had agreed to the immediate release of Rs.10 million and that Rs.10 million would be released after the approval of the Board of Management.

260. That on 13-4-1996, the Chairman (Ameen) of the Bait-ul-Mal wrote to the Secretary, Special Education and Social Welfare Division, Government of Pakistan, informing him that the case of 'further instalment' (i.e., the next Rs.10 million) would cc>ine up before the next Board of Management meeting scheudled to be held on 16th or 17th of April. The meeting of the Board- duly rubber stamped the decision already taken, and because of the 'urgent nature of the case' and with the 'blessing' of the Chairman (Ameen), a second cheque (being No.43 dated 24-4-1994, drawn on the State Bank of Pakistan) for Rs.10 million was also issued. This cheque was also personally in the name of the Interior Minister.

261. That thereafter, the Bait-ul-Mal received 'evidence' purporting to show that the funds released had been disbursed to Bugti tribesmen. The statement produced consisted of lists of thousands of names of alleged recipients, alongwith the following information the father's/husband's name; in some cases, the Identity Card number of the recipient, the amount received and, most significantly, the thumbimpression of the recipient.

262. That most of the alleged recipients were shown as not having any Identity cards. However, far more significantly, an examination by technical experts has revealed that in most of the cases, the thumb-impressions are all of one person. For example, in one case, 325 thumb-impressions are all of one person. (This means that Rs.16.25 lacs were received by one person). In another, 265 thumb-impressions are of the same person (meaning that the person concerned received Rs.13.25 lacs). In a third, 118 thumb-impressions are the same (and the person who affixed his thumb-impression received Rs.5.9 lacs). In a fourth case, 114 thumb-impressions are identical (indicating that the person received Rs.5.7 lacs). In yet another case, 80 thumb-impressions are all identical (and this person thus received Rs.4.0 lacs). In other words, it is obvious that the lists of alleged recipients are bogus and have been created and concocted for the express purpose of stealing Bait-ul-Mal funds.

263. That there can thus be no conceivable doubt that the Rs.20 million disbursed personally to the name of the Interior Minister has been misappropriated. The manner in which the disbursement was obtained from the Bait-ul-Mal was indication enough. However, the documentary evidence relating to the purported recipients leaves no doubt at all on the point. Through gross abuse and misuse of power, the petitioner's Government was responsible for the illegal appropriation of Rs.20 million from a fund meant exclusively for the aid of needy and destitute persons. In other words, persons holding the highest public offices in the land deliberately set about not merely denuding the public exchequer, but those very funds which were meant for the most impoverished and indigent sectors of society ... ... not merely the Awam (referred to in almost every public speech of the petitioner) but the poorest of the Awam.

264. That the Bait-ul-Mal was also subjected to the tender mercies of the redoubtable Ms. Naheed Khan, the Political Secretary to the petitioner and one Mr. Rehmat Ullah, a 'consultant' to the petitioner while she was Prime Minister. Ms. Khan forwarded a list of 55 names to the Bait-ul-Mal and, without the proper procedures being followed in these cases, collected cheques totalling Rs.32,90,000 on 1-9-1995 on 'behalf' of these persons. In gross violation of the rules, sums totalling Rs.6.171 million and Rs.27.05 million were sanctioned on the 'directions' received from. Ms. Khan and Mr. Rehmat Ullah respectively.

265. That as was only to be expected, the financial sector was a particular target for corruption and the abuse of power by the petitioner and her Government. Before describing some of the more glaring instances of how official power was misused and abused, certain facts must be kept in minA. Firstly, the petitioner herself chose to be the Finance Minister of Pakistan. As is evident, the post of the Finance Minister is, after that of the Prime Minister, perhaps the most important and sensitive post in the Government. Thus, to a considerable extent, all meaningful power in the Government was concentrated, not merely factually, but also legally and administratively, in the person of the petitioner. One reason why the petitioner chose to retain this key post was the enormous powers of patronage and influence that are directly available to the Minister of Finance. As Finance Minister, the petitioner could take all 'key' decisions herself without having to involve anyone else. Constitutionally speaking, the petitioner's decision to be Finance Minister had one very important consequence. A key feature of a system of parliamentary democracy is the concept, of Ministerial responsibility. What this means is that a Minister is, Constitutionally and legally, responsible before the National Assembly for all that is done by his Ministry and its officials. Even if the Minister may not, in a specific case, be factually responsible for any wrongdoing (or even aware, at the relevant time, of that which is being done), he must assume legal (i.e., Constitutional) responsibility for what has been done. Thus, the petitioner, quite apart from her responsibilities as Prime Minister, was also directly responsible (in the sense indicated above) for all decisions taken and all actions done by and in the Ministry of Finance. (In fact, as has already been seen, and will further become clear, the petitioner was in most cases, also directly and factually involved in or responsible for, at the least fully cognizant of the illegalities being committed and the manner in which power was being abused.

266. That secondly, while there was a Minister of State for Finance, his role was restricted largely, if not exclusively, to making the Budget Speech in Parliament. He appears to have had no effective say in the affairs of the Ministry. Thirdly, like her first term in office, Mr. V.A. Jaffery served the petitioner as her Adviser to the Ministry of Finance. while Mr. Jaffery appears to have been in operational charge of all routine policy matters, it seems that he essentially rubber stamped all key decisions taken by the petitioner as Finance Minister. In any case, the ultimate responsibility was hers.

267. That the banking system is the single most important part of the financial sector. especially in a developing economy (where capital is scarce, and resource mobilization an acute problem), it is vital to have a healthy vibrant banking industry. Upon assuming office, the petitioner and her Government had made loud noises and virtuous promises as to how the financial and banking sectors would be cleansed and sanitised. The previous Government had been fiercely criticised and its- policies castigated as having pampered the chosen few. The petitioner and her Government chanted the mantra of transparency and promised a completely new deal. As always, the reality was the devastating opposite.

268. That as is self evident, of all Government Ministries, it is the Ministry of Finance which has the most direct dealings with, and impact on the banking sector. Important policies are formulated by the Ministry of Finance and its decisions have a major impact on all banks. (These are not only those decisions which affect banks directly, but also those which have a more general impact on the economy; the banking sector, after all, can hardly be healthier than the economy of which it is a part). How have the Banks in Pakistan fared under the petitioner's tenure as both Prime Minister and Finance Minister? On all grounds, and by all methods of reckoning, the situation deteriorated not merely from bad to worse, but to the completely desperate. In the case of Habib Bank Ltd. ("iBL'), United Bank Ltd. ('UBL') and National Bank of Pakistan ('NBP'), the non-performing loans (bad debts) stood at Rs.50.76 billion at end 1993. By 30-6-1996, this figure had increased to Rs.66.647 billion, an increase of 31 % . In the case of the ADBP and IDBP, the bad debts stood at Rs.5.712 billion; by 1996, this figure had skyrocketed to Rs.13.195 billion, an increase of 131 % . The case of the Development Finance Institutions ('D.F.Is.') was even worse: bad debts had ballooned from Rs.6.12 billion to Rs.16.396 billion, an increase of 168 % .

269. That all banks are required under the Banking Companies Ordinance, 1962 to mandatorily maintain a liquidity ratio of 30% (this provision is statutory). This figure is one of the most sensitive indicators of a bank's health. In the case of U.B.L., when the Bank was taken over by the State Bank of Pakistan from the management sanctioned and approved by the petitioner, on 18-4-1996, the liquidity ratio had plummeted to 20.26 % . In the case of H. B. L. , from 30-11-1995 up to 30-6-1996 (the latest date for which the relevant figures are available), the liquidity ratio remained below the required 30% . (Only N.B.P. was able to maintain the required ratio, but this was only because N.B.P. both performs treasury functions for the Government of Pakistan and acts as the agent of the State Bank of Pakistan. It, thus, has access to funds not available to other banks). The net worth of the banks was also wiped out during the period of the petitioner's Government. In the case of H.B.L., the equity at end 1995 stood at a negative figure of Rs.18.468 billion. In the case of U.B.L., the relevant negative figure was Rs.5.849 billion.

270. That the deterioration in the banks' profitability tells the same sad tale. A bank's profitability is normally measured by the ratio of the pretax profits to the bank's deposits. In the case of H.B.L., the ratio slipped from 0.48% in 1993 to 0.29% in 1995, a decline of about 50%. In the case of N.B.P., the ratio dipped over the same period from 2.42 % to 1.48 % , a decrease of about 50 % . The case of U . B. L. was worst of all. In 1993, the bank had a profitability ratio of 0.28%. In 1995, the bank declared a loss of about Rs.570 million. For the first time in the history of Pakistan, a nationalised bank had actually declared a loss on its balance-sheet.

271. That recruitments in the banks followed the. same sorry trend as has been noted in a previous section regarding the public sector in general. In N.B.P., after the lifting of the ban on recruitment, 5028 appointments were made. Out of these, a paltry 325 were made by the Pakistan Banking and Finance Service Commission. Another 180 were made by the Bank's Recruitment Committee. The rest, a staggering figure of 4523, were appointed on the basis of instructions received from the Prime Minister's Secretariat and the Ministry of Finance. In the case of U.B.L., illegal 'recruitments' were taken even one step further: over 2500 'ghost' (i.e., non-existent) employees were shown on the bank's payrolls. Crores of rupees were thus skimmed off by means of this scam. All of this was done under the aegis of Mr. Aziz Memon, who was not only the bank's union leader, but also a P.P.P. M.N.A.

Subsequently, U.B.L. had to be taken over by the State Bank of Pakistan when it was on the verge of collapse and its attempted privatization, in violation of all applicable principles and procedures, had fallen through, and at the latter's insistence Mr. Memon was finally arrested. (It may also be noted that one of Mr. Memon's mapy 'achievements' was to strip naked a senior officer of the Bank and publicly humiliate him before the staff).

272. That on 11-5-1996, because of the horrendous deterioration in NBP's position (which, as noted, occupies a special position among banks), the State Bank of Pakistan was constrained to forward a formal complaint to the Ministry of Finance. among other things, the State Bank noted the sharp increase in the expenditures being incurred by the Bank. (It may be noted that at the relevant time, N.B.P.'s. President was Mr. M.B. Abbasi, who was well-known to be close to the ruling couple). According to the complaint, expenditures on residential telephones went up by 87 % , entertainment expenses increased by 57 % and illegal 'donations' were up by 67%. It was noted that 'donations' amounting to Rs.93.496 million were disbursed during the period from January to March, 1996 and most were violative of State Bank instructions. Further, without obtaining approval from its Board, N.B.P. spent a staggering Rs.553.032 million on a renovation and airconditioning programme. A number of other instances of wasteful expenditure were also highlighted. Needless to say, no action was taken either against Mr. Abbasi or to rectify the situation.

273. That there was also a massive write off of loans during the period of the petitioner's Government. This is particularly bizzarre since the petitioner has been trumpeting loudly about how this evil should be rectified. From June, 1993 to June, 1996, a sum of Rs.3.397 billion was written off. This was of course in complete contrast to the public statements emanating ad nauseam from the petitioner and her Government. It is interesting to note that one of the many beneficiaries was the so-called 'Zardari Group' comprising of Mr. Hakim Ali Zardari and Mr. Asif Ali Zardari. This group (for reasons not difficult to discern) managed, 23-1-1995, to have the sum of Rs.10.07 million written off by Emirates Bank International, a foreign bank owned by a friendly Government. One wonders exactly how this feat of financial legerdemain was achieved. Mr. Zardari's front man, Mr. Fauzi Ali Kazmi, had no difficulty in getting Habib Bank to write off Rs.121.90 million on 2-8-1995.

274. That the State Bank of Pakistan, as required by law, used to regularly send inspection reports regarding commercial banks to the Ministry of Finance. The news coming out of these reports was of course uniformly bad, and getting worse. In an attempt to evade responsibility, and in violation of law, the Ministry of Finance directed the State Bank on 28-1-1996 not to send detailed inspeetion reports, but only summaries. The State Bank was also asked to take back copies of the reports already submitted. In other words. the Ministry of Finance wanted neither to see 'evil' nor to hear it. Unfortunately, no steps were taken to prevent 'evil' from being done in the first place. The State Bank pointed out that it was its statutory duty to forward the inspection reports to the Government.

275. That all of the foregoing was the direct result of the policies adopted by the petitioner's Government, and more specifically, by the Ministry of Finance. Thus, the petitioner is liable and responsible for the virtually complete collapse of the financial sector in Pakistan both by virtue of her being Prime Minister and Finance Minister as well. The all important question arises as to why the petitioner was determined to retain the Finance portfolio in both her tenures of office. The answer is simple. It is the Finance Ministry which appoints the heads of the banks and financial institutions. It is the Finance Ministry which enjoys vast powers of financial patronage. It is the Finance Ministry which can convert paupers into millionaires overnight. It is the Finance Ministry which can also carry out the reverse process by the simple expedient of ordering the banks and financial institutions to recall loans overnight. All industries, without exception, function on the basis of bank financing. There is not a single large company in the country which can survive if all its bankers unanimously decide to recall the loans granted to it. This is precisely what was done by way of political victimization of the petitioner's political rivals. It was in this, the power to enrich and the power to impoverish, that the charm of the Finance Ministry lay for the petitioner. There is nothing in her past career to indicate that she had the financial expertise to run this enormously difficult and complex ministry; and indeed, it was for precisely this reason that the services of a pliable retired bureaucrat like Mr. Jaffery were utilised. But the key decisions were the petitioner's and those of her spouse who, here as elsewhere, acted as her alter ego. Hers was the formal responsibility and his was the effective power.

276. That the manner in which the affairs of Pakistan Steel Mills, located at Karachi, were grossly mismanaged under the Chairmanship of Mr. Usman Farooqi (who was appointed by the petitioner's Government) are well-known to all. The allegations of corruption against Mr. Farooqi are also no secret. For present purposes, however, one instance directly involving the Ministry, may be referred to. among his many corrupt practices and decisions, Mr. Farooqi in or about December, 1995, ordered the sale of 15,900 tons of steel at rates well below the market price to certain select 'favourites' (the total amount that would have been received by Pakistan Steel was approximately Rs.10 crores). Although only a short while earlier, the Steel Mill management had set the prices of the relevant products at Rs.20,000 per tonne, the 'favourites' were offered the same products at prices ranging between Rs.7,581 to Rs.9,282 per tonne. The deals were so scandalous that the matter was raised before the National Assembly.. Steel dealers appeared before the relevant standing committee and offered to purchase the entire lot for double the price at which it was being sold. On 30-1-1996, the standing committee requested the Steel Mills not to proceed with the matter. However, on 6-2-1996, the Ministry of Industries issued a letter allowing Pakistan Steel to go ahead with the deals on the entirely specious ground that if the deals were not allowed to go through, 'legal complications' would arise. In other words, the public exchequer was effectively robbed of crones of rupees. (The beneficiaries of the transaction (and it is not hard to guess exactly who they might have been) of course, became richer overnight by several crores of rupees).

277. That the situation in Pakistan Steel came to such a pass that even Mr. Jaffery, the complaisant Adviser for Finance was constrained to write to the Minister for Production on 17-7-1996 complaining about the severe financial deterioration in the Steel Mills' condition. The Adviser noted that although: (a) there had been a decline in production; (b) cash balances had declined from Rs.2,147 million to a paltry Rs.68 million; (c) Pakistan Steel had defaulted on payments to banks; (d) the Mills were demanding a subsidy of over Rs.l billion in order to keep going; the Chairman, Mr. Farooqi insisted upon carrying on with a false and frivolous publicity compaign to conceal the grim facts. Despite this devastating indictment by her own Adviser, the petitioner nevertheless failed to take any action against Mr. Usman Farooqi. (It may incidentally also be noted that although Mr. Farooqi pretends to hold a doctoral degree from the United States, his degree has been obtained from a 'fly-by-night' institute and, even more remarkably, after only a 15 days visit to the States. It was also conclusively established that Mr. Farooqi had forged his metric certificate). The

petitioner was, and must be, held to be fully responsible for the state of affairs in Pakistan Steel and the Government's complete failure to take any steps to rectify the situation.

278. That during the tenure of the petitioner's Government, it was decided that from time to time the export of sugar would be allowed from Pakistan. A great deal of public noise was made to the effect that the entire procedure for the grant of allocations for export would be 'transparent'. As always, this was intended only to hide the fact that underneath the veneer, it was business as usual. The decision as initially taken, did not envisage any export of sugar by anyone than the sugar mills. However, on 25-1-1995, the Prime Minister's Secretariat was informed by the Commerce Ministry that the former may send allocations up to 2000 Metric tonnes per person to the Ministry. Thereafter, a number of persons and firms (who were not sugar mills) were allowed quotas to export sugar. The intent was obvious. The quota allocations were used as means of political patronage and enabled the allottees to enrich themselves many times over. In some cases, the original allottees were 'allowed' by the Commerce Minister, Mr. Ahmed Mukhtar, to 'transfer' the allocated amount to other persons. In other words, in a manner wholly contrary to even the putative Cabinet decision, the chosen few were allowed to enrich themselves at the public expense.

279. That on the orders of the petitioner, the Textile Quota Policy was also 'amended' in order to provide for the discretionary allocations of textile quotas. Lists were received from the Prime Minister's Secretariat by the Commerce Ministry of individuals and firms 'recommended' by various Legislators and party supporters of the petitioner's Government. Sometimes, individual 'recommendations' would also be made. Quotas were allocated on this basis to and/or at the behest of the petitioner's supporters both within and without Parliament. Again, applicable rules and regulations and norms of Government, were sacrificed at the altar of political expediency and patronage and power was grossly abused to satisfy the desire for pelf and privilege. Unfortunately for the people of Pakistan, the desire was insatiable.

280. That there was hardly an important decision taken by the petitioner and her Government in relation to the business/financial sector that did not smack of arbitrariness and abuse of power, and smell strongly of corruption. For example, the petitioner's Government decided to liberalize the import of gold in the country. However, a Dubai-based company, with carefully obscured antecedents, M/s. ARY Traders, was given the monopoly to import gold into Pakistan. The financial implications of this decision need not be spelt out. Anyone who had the exclusive licence to legally bring in gold into Pakistan was guaranteed an ever-flowing income stream of millions. Although the decision to issue licences was ostensibly advertised, the entire process was carefully stage managed in order to ensure that, at the end, a monopoly licence for the import of gold was given to M/s. ARY Traders. This firm was so powerful that when, at a subsequent stage, the Finance Ministry levied a 10 % regulatory duty on the import of gold, it had no difficulty in getting the decision reversed. Although on a couple of occasions, the Ministry of Commerce attempted to grant licences for the import of gold to other persons as well, all such attempts were blocked in one way or another. Who were the real beneficiaries of the decision to grant this monopoly? It was certainly not the man on the street. In the petitioner's world, only those close to the fount of power could be 'blessed' in this manner.

281. That equally scandalous was the manner in which rice exports from Pakistan were dealt with. The right to export about half of all rice exports from Pakistan during a year were given, in effect, to one man and at a price well below that prevailing in the international markets. In or about September, 1995, without any public auction, notice or bidding, RECP received two 'bids' for the purchase of a total of 500,000 tonnes of rice from RECP (this is approximately half of Pakistan's rice exports). One bid was from M/s. Rustal Trading, a company of one Mr. Riaz Laljee, who has now gone underground. The other bid was ostensibly from the Government of Togo. However, the authorised representative of the said Government was one Ms. Huma Burney, who is also a director of Rustal Trading. Thus, in effect, there was only one bidder in the field. Although RECP had no rice available (since RECP begins procuring rice only in November), it nevertheless entered into a binding contract to sell 500,000 tonnes at a price well below the then prevailing international market price. The question now arose of procuring the rice to meet this commitment. RECP procures rice at the official support price, which is well below the market price. Nevertheless, the petitioner personally as Prime Minister took the unprecedented decision that RECP should purchase the rice at the market price. Although it was pointed out that. this would entail a staggering loss of US $ 41 million for RECP, the petitioner casually brushed aside this 'objection'. The pretext given was that it would be for the benefit of growers. The obvious answer to this frivolous reason is that nothing prevented the growers from selling their rice in the open market -- why should RECP buy rice at a high price and then sell it at a low price and there incur a loss of US $ 41 million. Ironically, RECP was only able to procure muchless price than the stipulated quantity. Subsequently, the international market price collapsed, and fell even below the price at which RECP had agreed to sell the rice to Mr. Riaz Laljee. The buyers only lifted a part of the rice and backed out, and RECP was left holding substantial stocks of rice that had been purchased at the far higher, earlier rates. The estimated loss to the exchequer was Rs.7,62,445.

282. That the petitioner's Government took exceptional pride in its power policy. If there was one policy above all which was pointed out with pride by the Government, it was the policy in relation to private power plants. Yet, what was the reality? Projects whose total cost would be several billions of dollars were permitted without any concern over, and far in excess of, Pakistan's priorities or needs or ability to pay. (That the real reason why demand for electricity had plummeted sharply in Pakistan was due to the virtual closure of the textile and other important industrial sectors during the petitioner's tenure is another story). KESC was forced to accede to so many power plants that in the beginning of 1995, the Power Projects Implementation Board ('PPIB') of the Government of Pakistan asked WAPDA to purchase 1000 MW of power from KESC, which was expected to be in excess by this amount by the year 2000, (It maybe noted that PPIB had been set up specifically by the petitioner's Government for implementing the power policy. Initially, PPIB was under the Ministry of Water and Power. However, after Mr. Asif Zardari had been inducted into the Cabinet as Minister of Investment, PPIB was transferred to the Ministry of Investments). WAPDA informed PPIB that it would be unable to purchase this much power, as WAPDA itself would be surplus in power because of the private Power Projects coming up and from which WAPDA would be forced to purchase power. It may be noted that the agreements signed by both WAPDA and KESC with the private power projects provide that once the projects have come on line, the utilities would be liable to pay the projects of electricity equal to up to 60% of their capacity even if no power at all were actually purchased (such payments are known as 'capacity payments'). Thus, the Government's policies not merely ensured that there would be excess capacity in the country; both WAPDA and KESC would end up paying millions of dollars annually for power that they would not need and could not utilize. This could easily mean the financial ruin of these organizations.

283. That matters came to such a pass that even the PPIB was forced to acknowledge 'reality to some extent. Hitherto, the Government had rushed headlong into giving permissions for setting private power projects. A decision was taken in March, 1996 to limit the total capacity of private power projects to 3000 MW. However, like all decisions taken by the petitioner's Government, this was honoured more in the breach than in the observance. Within a month, in April, 1996, the decision was 'revised', and the limit imposed was enhanced to 4500 MW. This was done apparently to accommodate certain projects in which the petitioner and her spouse had a 'special' interest. In the case of one project, Liberty Power, the initial permission given had been to set up a 212 MW capacity plant. In April, 1996, this was suddenly doubled and enhanced to 424 MW. Quite separately from the above, decisions were also taken in respect of several to allow the agreements to be modified in terms that wire even more beneficial for the projects (and their sponsors). Such amendments included (but were not limited to) substantial increase in default interest rates; reduction in the sponsors' obligations in one form or another; and increase in WAPDA's financial responsibilities for compensation for the project in case of delay in inter-connection facilities.

284. That the case of Liberty Power Project, already referred to above, deserves particular mention. One of the key persons involved in this project is Mr. Ibrahim Elwan, who has the dubious honour of being the first person in the history of the World Bank who was asked to leave that institution after a full-fledged corruption investigation. Before his exit from the World Bank, Mr. Elwan was the officer responsible for the Hubco Power Project in Pakistan (which was being funded in large part by the World Bank). The petitioner's Government gave full support to Mr. Elwan and the Liberty Power Project. In particular: (a) the Letter of Support was issued for the project long after a decision had been taken to 'cap' all projects and not allow any further power projects; (b) they were allowed to use pipeline quality gas from the Qadirpur Gas Field, which is against Government policy and the interests of the country. The project was in fact given special concessions in respect of the gas to be used by the power station. Not only were specific gas fields, or parts thereof, 'allocated' for the project, the Government of Pakistan guaranteed it full supply of gas by, inter alia, promising it gas even from fields not yet discovered and/or fully developed. This was in complete violation of all the applicable rules and regulations.

285. That the contract for the national grid (IV Circutt), a multi-million dollar proposition was put to bid, but only 6 working days were given to bidders to put in their applications. Given the complexity of the entire matter, the voluminous technical details involved, and the copious documentation required to be filed, it should not have been possible for anyone to put in a proper-bid. However, one company was able to do so. Thus, it was obvious that the entire matter had been stage managed to allow just that company to make an effective bid. The reasons (and 'rewards') for orchestrating the entire matter are not difficult to discern. The French Government, for one, fiercely resented this flagrant display of corruption. The French Ambassador wrote a strong letter of protest to the Government of Pakistan. Thus, it can be seen that one aspect of this open corruption was to place a strain on the country's relations with a friendly foreign country.

286. That OGDC, the premier gas and petroleum development and exploration body in the country, was also subjected to the gross abuse of power and corrupt practices that was the characteristic (one may even say, the trade-mark of the petitioner's Government. A consultancy for studying dry holes, involving US $ 393,256, was awarded to M/s. Hydrocarbon Development Institution of Pakistan ('HDIP') and M/s. Improved Petroleum Recovery ('IRP'). IPR, a US company, was previously represented by Saif International, a company owned by the Saifullah family, a scion (Mr. Anwar Saifullah) was the Minister for
Petroleum and Natural Resources, the Ministry that controls OGDC. IPR is now managed by a former employee of Saif International. The proposal for the study was initiated by HDIP and I.P.R. and was submitted to the Minister for Petroleum and Natural Resources on 13-6-1994. He approved it the same. day. On 11-10-1994, the Chairman OGDC wrote a letter to the then Secretary of the Ministry, stating that another firm had also submitted a proposal which would cost almost half of what HDIP and IPR were charging. This letter was not replied to by the Secretary. On 27-11-1994, OGDC received a 'directive' to complete the process of awarding the consultancy to HDIP and IPR. On 17-12-1994, in gross violation of the existing procedures and norms, the contract was awarded as 'directed'.

287. That during a visit to the U.S.A., Mr. Riffat Askari, the then Chairman OGVC, on 15-11-1994 signed a Memorandum of Understanding ('MOU') with Cooper & Lybrand ('Cooper') to carry out a Reserves Evaluation Study of OGDC fields. The estimated costs were not stated but it was specifically provided that OGDC was to pay for the costs of Cooper's employees visits to Pakistan. Another MOU with Cooper was signed on 2-12-1994 during Mr. Askari's visit to the United Kingdom. The estimated cost was US $ 350,000. Both the MOUs were for the same work. In spite the reservations of the OGDC officers concerned, and bypassing the departments concerned Mr. Askari awarded a contract to Cooper for the Reserves Evaluation Study worth US $ 2,500,000. Fully 50% of the total amount was paid by OGDC as an advance, and in the next three months, another 30% was also paid out. Thus, 80% of the total cost was released to Cooper, even though no work at all had been done. The case file sent to the Finance Department (which was to authorise the payments) went missing, and the payments were made on only a copy of the contract available with the Department.

288. That during 1994-95, the then Chairman, Mr. Riffat Askari, sold 2298 metric tons of scrap and 7461 assorted store items without public auction and at throwaway prices to people of his choice. The estimated loss to OGDC of this blatant violation of the applicable procedures is Rs.67,906,161. '

289. That another area of 'interest' for the petitioner and her Government was the Capital Development Authority (C.D.A.). Several examples exist of how there was a gross abuse of power in the affairs of the C.D.A. Before turning to certain specific instances, the following points need be noted. CDA is a body corporate created by and under the Capital Development Authority Ordinance, 1960 (Ord. XXIII of 1960; hereinafter 'the Ordinance'). The powers and duties of the C.D.A. are comprehensively set forth in the Ordinance itself. Under section 51 of the Ordinance, read with section 49 thereof, C.D.A. has formulated the Islamabad Land Disposal Regulations, 1993 ('the Regulations'). these regulations stipulate the manner in which land in Islamabad is to be disposed of. Finally, although C.D.A. is administratively under the Cabinet Division, the Government does not have any power, whether under the Ordinance or otherwise, to 'relax' any regulations made by the C.D.A. or applicable to the disposal of land within its purview.

290. That in or around March, 1996, Dr. Javed Saifullah, the brother of Federal Minister Mr. Anwar Saifullah, approached the C.D.A. with a proposal to set up a heart hospital on a plot of land measuring 12.5 acres in sector H- I 1 demarcated for hospitals. The C.D.A. requires that plots demarcated for hospitals be disposed of at the reserve price if the hospital is to be in the public sector, but at commercial, market rates through open auction if the hospital is to be run on a profit basis. (The hospital proposed by Dr. Saifullah was to a commercial operation, i.e., run for profit). At a meeting held in the Prime Minister's Secretariat on 3-6-1996, it was agreed that the project would be set up as a joint venture between the C.D.A. and the private sponsors. This was doubly impermissible, for C.D.A. is not authorised to enter into any such business ventures and nor could it embark upon joint ventures. The 'equity' to be put in by the C.D.A. would be the land, the market value of which was about Rs.300 millions. In other words, the sponsors would, in effect, get the land for free with the C.D.A. being left to rely only on the remote possibility that Dr. Javed Saifullah would show a profit in his books of account. The Cabinet Division recorded its reservations about the 'decision' taken in the Prime Minister's Secretariat and proposed among other safeguards, that the sponsors should be asked to pay for the land in terms as agreed concerning another hospital project. However, when the matter went to the Cabinet on 16-9-1996, it was ordered that the C.D.A. should allocate the land for the hospital 'as its share of equity in the proposed joint venture'. Thus, in a gross abuse of power, and violation of applicable regulations, and in a patently obvious example of nepotism, the Cabinet decided to give Government land worth Rs.3,000 million effectively free to the brother of a Cabinet Minister.

291. That plots demarcated for use as schools are to be disposed of by the C.D.A. in the same manner as hospitals, namely, that if the school is to be run in the private sector, the relevant plot is to be disposed of at the market price through open auction. On 13-6-1995, the then Chairman of the C.D.A. prepared a 'proposal' whereby such plots would be allotted to 'suitable' parties in 'relaxation' of the Regulations. The 'proposal' further stated that out of all the applications received by the C.D.A., 9 applicants should be given preference for their 'known performance' in the educational field. It was also proposed that if the school were to be operated by a trust operating on a non-profit organization, the allotment should be at half the reserve price of Rs.2000 per sq. yard. (It may be noted that the reserve price is usually well below the market price of the plot). This 'proposal' was marked to the Principal Secretary to the Prime Minister. On this, the Principal Secretary wrote back that the 'proposal' to be put up should be 'in line with the decisions' taken at the meeting held on 7-6-1995 (i.e., even prior to the proposal itself). Accordingly, a revised 'proposal', was sent to the Principal Secretary by the Chairman on C.D.A.. The revision was apparently 'in line' with decisions already taken. On 31-7-1995, the decision of the 'competent authority' was communicated to the C.D.A. The 'competent authority' was pleased to, inter alia, approve the amendment of the Regulations to allow for the sale/lease of plots by allotment, and to allow for a further reduction in the rate proposed (Rs.2,000 per sq. yard) in the case of 'profit oriented' institutions in consultation with the Principal Secretary of, and the Special Assistant to, the Prime Minister, and the Chairman of the C.D.A.. 'Non-profit' institutions were allowed a further concession of obtaining plots at 50% of the reduced rate. As a result of meetings held between Ms. Shehnaz Wazir Ali, the Special Assistant and the Chairman, C.D.A., it was agreed that the rate to be charged from 'profit-oriented' organizations for the grant of a plot would be reduced to Rs.500 per sq. yard, and in the case of trusts and 'professional' schools, the rate was to be only Rs.250 per sq. yard. In other words, plots worth millions were to be allotted at literally throw away prices that were to be one-fourth the reserve price, and in some cases, only one-eighth the reserve price. Ultimately, 9 institutions were selected for the allotment of plots on these concessionary terms and allotment letter issued. The following institutions require special mention:

Institution .??????? Location (Size) Head Incharge Remarks

Sindh Peoples'? H-8/4 (3.5??????? Mrs. Benazir???? Prime
Welfare??????????? acres (Rs.???????? Bhutto? Minister
Trust??? 250/sq.yd.)?????? Chairperson

Educational?????? F-11/4 (3.7????? Mrs. Nasra?????? Mother of

Trust Nasra????? acres) Rs.250?? (Owner??????????? Mrs. Shehnaz
School' sq.yd.)????????????? Wazir Ali

Wahid Public??? F-10/2 (3.0????? Miss Gul-e-????????????????? Sister of

School? acres (Rs.250?? Yasmin (Owner)?????????? Ms.
??????????? sq.yd.)????????????? Naheed
????????????????????????????????????? Khan

That while the first three allottees require no explanation, it may be stated with reference to the fourth that Mr. B.A. Qureshi used to be Mr. Z.A. Bhutto's land manager. Mrs. B.A. Qureshi is a teacher, who in the first P.P.P. Government was promoted to Grade-22 in violation of the rules. and made the head of the Recruitment Bureau. As a result of the allotments aforesaid, C.D.A. will receive, in total an amount equal to approximately Rs.39.9 million. Just the reserve price of these plots is Rs.219 million and the market price is Rs.329 million. Thus, the illegal acts of the petitioner's Government and the decision to make allotments to the petitioner herself and her cronies have directly resulted in a loss of several crore rupees.

292. That one scheme concocted by the petitioner's Government to benefit her M.N.As. and supporters in Parliament was the setting up of a cooperative society that would allot plots to 'Parliamentarians'. In purported 'relaxation' of applicable rules and regulations (which did not allow for any such allotment), it was decided that 192 plots of 1000 sq. yards each would be made available to the Parliamentarian Cooperative Housing Society in two different sectors, F-10 and I-8. While the reserve price of plots was Rs.2,500 sq. yds. the Parliamentarians would be allotted these plots at the concessionary rates of Rs.1,000 per sq. yard for sector I-8 and Rs.1,500 per sq. yard for sector F-10. Thus, even if compared only with the reserve price, the public exchequer stood to lose Rs.249 million as a result of these concessionary allotments to the Parliamentarians. It may also be noted that an ECC decision of as far back as 1977 had laid down that no residential plot in a Government scheme could exceed 600 sq. yards. Although in fact, the cooperative society did not even qualify as a Government scheme, it was treated as such and this decision was also 'relaxed' for the benefit of the Parliamentarian. The Chairman of the cooperative society wasp the Minister of Housing and Works. Although, as

noted, the C.D.A. comes under the Cabinet Division, in violation of the rules, the summary for this particular decision was prepared not by the Cabinet Division, but by the Ministry of Housing and Works.

293. That a 16 acre piece of land at Shakarparian had as per Islamabad's Master Plan, been earmarked for recreational and sports purposes. In violation of the rules, M/s. Inter Hotels (Pakistan) Ltd., a company in which among others, Mr. Asif Zardari's brother-in-law had an interest was given permission to build a five star hotel at the site. The allottees were allowed to put their own valuation to the land, which the C.D.A., 9 applicants should be given preference for their 'known performance' in the educational field. It was also proposed that if the school were to be operated by a trust operating on a non-profit organization, the allotment should be at half the reserve price of Rs.2000 per sq. yard. (It may be noted that the reserve price is usually well below the market price of the plot). This 'proposal' was marked to the Principal Secretary to the Prime Minister. On this, the Principal Secretary wrote back that the 'proposal' to be put up should be 'in line with the decisions' taken at the meeting held on 7-6-1995 (i.e., even prior to the proposal itself). Accordingly, a revised 'proposal', was sent to the Principal Secretary by the Chairman on C.D.A.. The revision was apparently 'in line' with decisions already taken. On 31-7-1995, the decision of the 'competent authority' was communicated to the C.D.A. The 'competent authority' was pleased to, inter alia, approve the amendment of the Regulations to allow for the sale/lease of plots by allotment, and to allow for a further reduction in the rate proposed (Rs.2,000 per sq. yard) in the case of 'profit oriented' institutions in consultation with the Principal Secretary of, and the Special Assistant to, the Prime Minister, and the Chairman of the C.D.A.. 'Non-profit' institutions were allowed a further concession of obtaining plots at 50% of the reduced rate. As a result of meetings held between Ms. Shehnaz Wazir Ali, the Special Assistant and the Chairman, C.D.A., it was agreed that the rate to be charged from 'profit-oriented' organizations for the grant of a plot would be reduced to Rs.500 per sq. yard, and in the case of trusts and 'professional' schools, the rate was to be only Rs.250 per sq. yard. In other words, plots worth millions were to be allotted at literally throw away prices that were to be one-fourth the reserve price, and in some cases, only one-eighth the reserve price. Ultimately, 9 institutions were selected for the allotment of plots on these concessionary terms and allotment letter issued. The following institutions require special mention:

Institution .??????? Location (Size) Head Incharge Remarks

Sindh Peoples'? H-8/4 (3.5??????? Mrs. Benazir???? Prime
Welfare??????????? acres (Rs.???????? Bhutto? Minister
Trust??? 250/sq.yd.)?????? Chairperson

Educational?????? F-11/4 (3.7????? Mrs. Nasra?????? Mother of

Trust Nasra????? acres) Rs.250?? (Owner??????????? Mrs. Shehnaz
School' sq.yd.)????????????? Wazir Ali

Wahid Public??? F-10/2 (3.0????? Miss Gul-e-????????????????? Sister of

School? acres (Rs.250?? Yasmin (Owner)?????????? Ms.
??????????? sq.yd.)????????????? Naheed
????????????????????????????????????? Khan

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prime land for the construction of a 5 star hotel for a sum of Rs.10 million only, when even by the allottee company's own valuation, the land was worth 30 times as much.

48. Mr. Khalid Anwar also repudiated the claim of the petitioner that the charges of the rules having been violated in the matter of appointments, postings and transfers were vague and unsubstantiated. Mr. Khalid Anwar submitted that the entire exercise of appointments in violation of rules and regulations had been refined into a system known informally as the Centralized Posting System. In most instances, the system worked in the following manner: in the various organisations, bodies and authorities under the control of the Federal Government, vacancies in the various posts/cadres would be sometimes ostensibly advertised and tests/interviews held. However, each organisation or body would receive a list of persons from the Prime Minister's Secretariat and/or the Establishment Division, or from some close Adviser of the Prime Minister. The persons on these lists had to be mandatorily inducted in service regardless of their performance in the rests/interviews. The number of such inductees, varied from case to case, but in many cases ranged up to more than two-third of the total posts or vacancies that had been advertised. All the persons so "selected" would be inducted into service. Thus, although the charade and form of advertisement and tests, etc. was maintained, the reality was far different. All organizations, bodies and authorities knew that they were simply going through empty motions in their recruitment process: the real and effective decision was being taken elsewhere and would be "notified" in due course. All manner of posts, from the highest to the lowest and most menial were subjected to the system that had been evolved by the petitioner and her Government. No job was too lowly to escape their attention. Mr. Khalid Anwar further submitted that most of the "selections" of names made for inclusion in the lists sent out in the manner described above, were made on the recommendations of the petitioner, and her supporters and advisers, both within and outside the Government and Parliament. In fact, detailed lists were maintained with reference to each M.N.A., Senator and M.P.A. whose "nominees" were 'accommodated" in this manner. All of this was part of a centralised and computerized system maintained at the Prime Minister's Secretariat.

49. Mr. Aitzaz Ahsan submitted in rebuttal that the allegations contained in the written statement are false and none has been substantiated and the relevant record has been selectively presented in order to mislead the Court. Material evidence relevant to the defence of these charges has been withheld in many cases. He asserted that the Caretaker Prime Minister and his colleagues in the Federal Government have issued repeated statements that they have found no evidence of corruption, and therefore, they cannot be allowed to plead the contrary in this Court. He submitted that the President mentioned one specific and alleged charge of corruption in the Dissolution Order, being the Eighth Ground concerning PPL-BONE, no other specific allegation or charge was made in this behalf, therefore, much of the written statement in this respect is an afterthought, an attempt to improve his position. He further submitted that the documents pertaining to these allegations were collected after the Dissolution Order, and therefore, cannot be taken into consideration by this Court and, in any case, the instances of alleged corruption are extraneous to the Dissolution Order in the light of principles laid down in the cases of Haji Saifullah Khan and Mian Muhammad Nawaz Sharif (supra). He submitted that the President appears to have acted on mere hearsay and adversarial newspaper statements which are not sufficient basis to come to any such conclusion or to invoke Article 58(2)(b).

50. After considering the detailed submissions of the learned counsel for the parties, I hold that the newspaper cuttings can be relied upon as material in support of the dissolution of the National Assembly. However, as stated above, I this Court has no concern with the quantity or sufficiency of the material nor can Q it sit in appeal on dissolution order passed by the President, provided the material relied upon has nexus with the grounds mentioned in the impugned order which in turn has nexus with Article 58(2)(b) manifesting application of mind by the President as in the instant case.

51. It is true that charges of corruption, nepotism and violation of rules per se cannot form the basis for action in terms of Article 58(2)(b), although these charges can serve an ancillary role and function as stated in the cases referred to by Mr. Aitzaz Ahsan. Mr. Khalid Anwar was, however, right in contending that where corruption, nepotism and the violation of the applicable rules and regulations have been carried out on a widespread, pervasive and systematic R basis, then such charges can validly form the basis for action under Article 58(2)(b). The cases relied upon by Mr. Aitzaz Ahsan in this behalf are distinguishable.

52. The Eighth ground of the dissolution order is in the following terms:-

"And whereas the Constitutional requirement that the Cabinet together with the Ministers of State shall be collectively responsible to the National Assembly has been violated by the induction of a Minister against whom criminal cases are pending which the Interior Minister has refused to withdraw. In fact, at an early stage, the Interior Minister had announced his intention to resign if the former was inducted into the Cabinet. A Cabinet in which, one Minister is responsible for the prosecution of a Cabinet colleague cannot be collectively responsible in any manner whatsoever. " .

53. Mr. Aitzaz Ahsan argued that the charge is misconceived, inasmuch as, the President has himself been a member of a Cabinet wherein two of his own colleagues were under trial on the false charge of murder. In April, 1993, the President as Caretaker Finance Minister requested the then President Ghulam Ishaque Khan to appoint Mr. Asif Ali Zardari as Federal Minister even though there were cases pending against Mr. Asif Ali Zardari in those days. He also referred to the appointment of Mr. Mumtaz Ali Bhutto as Caretaker Chief Minister, Sindh, notwithstanding the fact that Mr. Mumtaz Bhutto was himself an accused in a criminal case and absconder in F.I.R. No.24 at Police Station Khanoth, District Dadu, undertrial in the Court of the Judge Special Court, II, S.T.A., Hyderabad. He further argued that if there were differences among the members of the Cabinet the National Assembly could not be dissolved. It was asserted that the President himself administered oath of office to Mr. Nawaz Khokhar. He did not exercise his power to seek the reconsideration, by the petitioner of her decision to include Mr. Nawaz Khokhar in her Cabinet but administered oath to him. It was further argued that a person is innocent until proved guilty. That is the salutary principle of law and justice, therefore, this ground was not relatable to the objects of Article 58(2)(b).

54. Mr. Khalid Anwar refuted the petitioner's assertion as misleading and without substance. He submitted that the examples quoted by the petitioner were distinguishable, inasmuch as, in the cases referred to by the petitioner, the cases were registered against the person concerned not by the Government of which he was, or became a member, but by some other Government. As regards Mr.

Nawaz Khokhar, it was urged, that the case against him was registered by the petitioner's own Government. Furthermore, not only was this case not withdrawn when Mr. Nawaz Khokhar became a Minister, the Interior Minister promised that the case would be diligently prosecuted. Commenting on the salutary principle that a person is presumed innocent till proven guilty, he submitted that this principle was applicable to proceedings before a Court of law in a criminal trial and not in these proceedings.

It is fundamental to the system of Parliamentary democracy that the Cabinet is collectively responsible to the National Assembly. This principle is also enshrined in Article 91(4) of the Constitution which provides:-

"The Cabinet, together with the Ministers of State, shall be collectively responsible to the National Assembly. "
Clearly, under the doctrine of collective responsibility, the Ministers are collectively and as a body, known as the Cabinet, are responsible to the National Assembly. The individual Ministers do not have the choice of agreeing only with some Government decisions and not others. If a Minister disagrees with a policy or decision taken by the Cabinet even then he must in public as well as before the National Assembly give it his full and unstinting support. If he finds it impossible to accept or abide by the decision, or to support it, he must then resign from office. A Minister's choice to remain in the Cabinet is tantamount to his accepting responsibility for all Cabinet decisions and Government policies.

In support of the above doctrine Mr. Khalid Anwar referred to the following passage entitled "Ministerial responsibility for departmental maladministration" from Wade and Bradley: Constitutional and Administrative Law, Eleventh Edition, pages 120-121:--

"Since parliamentary criticism of a department must be directed to a Minister, then the Minister may be said to be responsible to Parliament for the acts and omissions of the civil servants in his department. Two questions arise: (a) is the Minister bound to take responsibility for every piece of maladministration within his department?; and (b) if serious maladministration is found to have occurred, is the Minister under a duty to resign? In 1954, the Crichel Down affair gave rise to much discussion of these two issues.

'Farm land in Dorset known as Crichel Down had been acquired under compulsory powers from several owners by the Air Ministry in 1937. After the war, the land was transferred to the Ministry of Agriculture, for whom it was administered by a commission set up under the Agriculture Act, 1947. while the future of the land was being considered. Lieutenant-Commander Marten, whose wife's family had previously owned much of the land, asked that it be sold back to the family. Misleading replies and false assurances were given when this and similar requests were refused, and a. seriously inaccurate report was prepared by a junior civil servant which led the Ministry to adhere to a scheme which it had prepared for letting all the land to a single tenant. Inadequate financial information was supplied to the headquarters of the Ministry: When conservative M.Ps. took up Marten's case with the Minister of Agriculture Sir Andrew Clark QC was appointed to hold an inquiry. His report established that there had been muddle, inefficiency, bias and bad faith on the part of some officials named in the report. A subsequent inquiry to consider disciplinary action against the civil servants reported that some of the deficiencies were due as much to weak Organisation within the Ministry as to the faults of individuals.

During a Commons debate on these reports, the Minister of Agriculture, Sir Thomas Dugdale, resigned. Speaking in the debate, the Home Secretary, Sir David Maxwell Fyfe, reaffirmed that a civil servant is wholly and directly responsible to his Minister and can be dismissed at any time by the Minister a 'power nonetheless real because it is seldom used'. He went on to give a number of categories where differing considerations apply.

(1)??? A Minister must protect a civil servant who has carried out his explicit order.

(2)? Equally a Minister must defend a civil servant who acts properly in accordance with the??????????? ????policy laid down by the Minister.

(3) Where an official makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved, the Minister acknowledged the mistake and he accepts the responsibility although he is not personally involved. He states that he will take corrective action in the department.

(4) Where action has been taken by a civil servant of which the Minister ;disapproves and has no previous knowledge, and the conduct of the ;official is reprehensible there is no obligation on a minister to endorse ,what he believes to be wrong or to defend what are clearly shown to be errors of his officers. He remains, however, Constitutionally responsible to Parliament for the fact that something has gone wrong, but this does not affect his power to control and discipline his staff." He also referred to "Constitutional Practice" by Rodney Brazier, wherein it was observed at pages 136-137:- "Attention may now be turned to individual responsibility. Broadly, each Minister is individually accountable for (a) his private conduct, (b) his general conduct of his department, and (c) acts done (or things left undone) by civil servants in his department. Responsibility for (a) and (b) is somewhat clearer than for (c).
It remains the case that a higher standard of private conduct is required of Ministers than of others in public life, a major reason for this today being that the popular press and the investigative journalism of its more serious rivals will make a wayward Minister's continuance in office impossible. The Profumo Affair in 1963 shows that a Minister who deliberately lies to the House of Commons cannot remain in the Government. Mr. John Profumo was Secretary to State for War, and his extra-marital affair with Miss Christine Keeler, who was also sharing her sexual favours with a Soviet naval attache in reality, a Soviet intelligence officer), additionally raised for some people possible security questions---certainly for the Opposition, which did not wish to found its attack openly on the morality of his sexual behaviour. Mr. Profumo denied in the Commons that there had been any impropriety between him and Miss Keeler, he could not stand the strain caused by that lie, and later resigned. Lord Lambton's resignation as a Minister and M.P. ten -years later, when it was revealed that he had used the services of a prostitute---of which encounters photographs and tape recordings existed---could again be linked to a possible national security risk: after all, he was Parliamentary Under-Secretary of State for Defence for the R.A.F. at the time. The resignation the following day of Earl Jellicoe, the Lord Privy Seal and Leader of the House of Lords, who owned up to having done the same thing, had no obvious security aspect, but he clearly thought that he had fallen below the standard of personal conduct required of a Minister. Ten years later still Mr. Cecil Parkinson resigned as Secretary of State for Trade and Industry. Into the public domain had come the fact that his former Secretary was expecting his

child, together with her assertion that twice he had promised to obtain a divorce and to marry her, and had failed to try to do so. At first the Prime Minister strongly maintained that this was an entirely private matter which had no bearing on Mr. Parkinson's ministerial life, but the press. cared nothing about his ministerial life and so hounded him about the affair that he could no longer function effectively as a Minister, and resigned. He was summoned back to the Cabinet in 1987. In a way the press has made it unnecessary to judge the morality of a Minister in Mr. Parkinson's position.

In summary, if a Minister lies to Parliament, or so conducts himself as to raise an arguable case that national security could have been thereby compromised, or conducts his financial affairs other than with scrupulous care, or---though doing none of those things---through his behaviour makes it impossible for him to carry out his departmental duties because of the attentions of the press, then (regardless of how loyal the Prime Minister may be) he will have to go.

A Minister is responsible for the general conduct of his department: more precisely, he may have to pay the price for political misjudgment within it. What amounts to misjudgment may be a matter of opinion, and guidance can be difficult to formulate. A marginal case is provided by the preliminaries to the Falklands conflict. The Foreign Secretary, Lord Carrington, and two of his ministerial colleagues, Mr. Atkins and Mr. Luce, felt compelled to resign in 1982 after the Argentineans invasion of the Falkland Islands because they considered that the Foreign and Commonwealth Office had not adequately judged Argentina's intentions. The Prime Minister did not want to accept their resignations, but the three Ministers persisted and left the administration. "

Be that as it may, in my humble view, this charge alone cannot form the basis for action in terms of Article 58(2)(b). However, in view of the charge and its nature, if read in conjunction with the other grounds, it is relevant for action under the aforesaid Article.

56. Ninth ground of dissolution order relates to the violation of the provisions of Articles 46 and 48 of the Constitution in the matter of sale of Burmah Castrol shares in PPL, and BONE/PPL shares in Qadirpur Gas Field. I would refrain from recording any finding on this ground for the reason that the matter is sub judice before this Court in some other proceedings.

57. These are the reasons in support of our short order, dated 29th January, 1997 recording the following findings:

"Firstly, we do not accept the contention of Mr. Aitzaz Ahsan that the President can invoke Article 58(2)(b) to dissolve the National Assembly only in such a grave situation in which Martial Law can be imposed as in 1977, and there is complete breakdown of Constitutional machinery. We are of the view that under the said provision, the President in his discretion may dissolve the National Assembly where he forms opinion on the basis of material before him having nexus with the dissolution order and Article 58(2)(b), that situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and appeal to the electorate is necessary. In support of the proposition reference can be made to the case of Khawaja Ahmad Tariq Rahim v. Federation of Pakistan and another PLD 1992 SC 646 in which it is held by majority that once the evil is identified, remedial and corrective measures within the Constitutional framework must follow. Public functionaries, holding public power in trust, under oath to discharge the same impartially and to the best of their ability must react as they cannot remain silent spectators. There may be occasion for the exercise of such power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional. The theory of total breakdown of Constitutional machinery as the only ground for dissolution of National Assembly has been rejected in the case of Mian Muhammad Nawaz Sharif v. Presiden? of Pakistan PLD 1993 SC 473.

Secondly, it is not correct to say as submitted by Mr. Aitzaz Ahsan, counsel for the petitioner that her case is on all fours with the case of Mian Muhammad Nawaz Sharif (supra), hence she is also entitled to the same relief of restoration as was given in that case. In the case of Mian Nawaz Sharif it was conceded by the Attorney-General for Pakistan that the dissolution order was mainly based upon the speech made by the deposed Prime Minister on 17-4-1993 on electronic media which was an act of subversion and further that session of National Assembly was called hurriedly and the President thought that it was done to initiate proceedings of impeachment against him. In such circumstances, it was held that the dissolution order was not sustainable.

Thirdly, it is not correct to say that the material produced in support of the grounds of the dissolution in its totality must be present before the President at the time of forming opinion and must be scrutinized by him in detail. It would be sufficient if there is material having nexus with the order of dissolution and Article 58(2)(b) before the President after perusal of which he forms his opinion and passes order of dissolution and further there is nothing wrong with production of corroborative or confirmatory material in support of the grounds which has been made available after the date of the order of dissolution.

Fourthly, newspaper cuttings can be relied upon as material in support of the grounds.

Fifthly, in the instant case the order of dissolution on the first ground of extra judicial killings sufficient material has been produced, which has been properly and justifiably considered.

Sixthly, we do not feel inclined to give any finding on the second ground in the dissolution order on the subject of murder of Mir Murtaza Bhutto, brother of the petitioner, and his seven other companions for the reason that the matter is sub judice before the Tribunal of Enquiry set up which is being presided over by a Judge of this Court and also F.I.Rs. have been filed which are being investigated in accordance with the law.

Seventhly. enough material is produced in support of the third ground with regard to the belated implementation of the judgment in the case of appointment of Judges, which is short of total compliance. By this nonimplementation Articles 190 and 2A of the Constitution are violated. There is also adequate material produced by the respondents to show that the petitioner in her speech before the National Assembly had ridiculed the judgment of the Supreme Court in the Judges' case which was telecast also repeatedly and in order to harass the Judges of this Court, Constitution (Fifteenth Amendment) Bill was introduced in the Parliament for initiating the process of accountability against the Judges by sending the Judges of the superior Courts on forced leave if fifteen per cent of the members moved a motion against them. This Bill ran counter to Article 209 of the Constitution which

is already in existence for taking action against Judges before the body of Supreme Judicial Council. Complete separation of judiciary from the executive is being delayed and by law Executive Magistrates are given powers to sentence to imprisonment for three years, which is against the spirit of the judgment.

Eighthly, there is sufficient material available on the record in support of the fifth ground showing that under the orders of the petitioner telephones of the Judges of the Supreme Court, leaders of the political parties and high-ranking military and civil officials were being taped and transcripts sent to the petitioner for reading.

Lastly, there is also enough material produced in support of the fifth ground in the dissolution order which covers the subject of corruption, nepotism and violation of rules."

In view of the above reasons I uphold the order of dissolution of the National Assembly and the Cabinet passed by the President and dismiss the petitions.

58. Before parting with the judgment I must express my deep appreciation for the valuable assistance rendered by Mr. Aitzaz Ahsan, Mr. Khalid Anwar and Dr. Farooq Hassan in resolving the controversy raised herein.

(Sd.)

Irshad Hasan Khan, J

ZIA MAHMOOD MIRZA, J.---By an order dated 5th November, 1996 passed in exercise of his powers under Article 58(2)(b) of the Constitution, President of Pakistan dissolved the National Assembly with immediate effect and directed that "the Prime Minister and her Cabinet shall cease to hold office forthwith". By the same order, the President in exercise of his powers under Article 48(5) of the Constitution appointed 3rd February, 1997 as the date for holding General Elections to the National Assembly. For facility of reference, the Dissolution Order passed by the President is reproduced hereunder in extenso:-

"THE PRESIDENT

DISSOLUTION ORDER

Whereas during the last three years thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. They have been killed in Police encounters and Police custody. In the speech to Parliament on 29th October, 1995 the President warned that the law enforcing agencies must ensure that there is no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected. This advice was not heeded. The killings continued ?..-h-1 The Government's fundamental duty to maintain law and order has to be performed by proceeding in accordance with law. The coalition of political parties which comprise the Government of the Federation are also in power in Sindh, Punjab and N.-W.F.P. but no meaningful steps have been taken either by the Government of the Federation or, at the instance of the Government of the Federation, by the Provincial Governments to put an end to the crime of extra judicial killings which is an evil abhorrent to our Islamic faith and all canons of civilized Government. Instead of ensuring proper investigation of these extra judicial killings, and punishment for those guilty of such crimes, the Government has taken pride that, in this manner, the law and order situation has been controlled. These killings coupled with the fact of widespread interference by the members of the Government, including members of the ruling parties in the National Assembly, in the appointment, transfer and posting of officers and staff of the law-enforcing agencies, both at the Federal and Provincial levels, has destroyed the faith of the public in the integrity and impartiality of the law-enforcing agencies and in their ability to protect the lives, liberties and properties of the average citizen.

And whereas on 20th September, 1996 Mir Murtaza Bhutto, the brother of the Prime Minister, was killed at Karachi along with seven of his companions including the brother-in-law of a former Prime Minister, ostensibly in an encounter with the Karachi Police. The Prime Minister and her Government claim that Mir Murtaza Bhutto has been murdered as a part of a conspiracy. Within days of Mir Murtaza Bhutto's death the Prime Minister appeared on television insinuating that the Presidency and other agencies of State were involved in this conspiracy. These malicious insinuations, which were repeated on different occasions, were made without any factual basis whatsoever. Although the Prime Minister subsequently denied that the Presidency or the Armed Forces were involved, the institution of the Presidency, which represents the unity of the Republic, was undermined and damage caused to the reputation of the agencies entrusted with the sacred duty of defending Pakistan. In the events that have followed, the widow of Mir Munaza Bhutto and the friends and supporters of the deceased have accused Ministers of the Government, including the spouse of the Prime Minister, the Chief Minister Sindh, the Director of the Intelligence Bureau and other high officials of involvement in the conspiracy which, the Prime Minister herself alleges led to Mir Murtaza Bhutto's murder. A situation has thus arisen in which justice, which is a fundamental requirement of our Islamic Society, cannot be ensured because powerful members of the Federal and Provincial Government who are themselves accused of the crime, influence and control the law-enforcing agencies entrusted with the duty of investigating the offences and bringing to book the conspirators.

And whereas on 20th March, 1996 the Supreme Court of Pakistan delivered its judgment in the case popularly known as the Appointment of Judges case. The Prime Minister ridiculed this judgment in a speech before the National Assembly which was shown more than once on nation-wide television. The implementation of the judgment was resisted and deliberately delayed in violation of the Constitutional Mandate that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. The directions of the Supreme Court with regard to regularization and removal of Judges of the High Courts were finally implemented on 30th September, 1996 with a deliberate delay of six months and ten days and only after the President informed the Prime Minister that if advice was not submitted in accordance with the Judgment by end September, 1996 then the President would himself proceed further in this matter to fulfil the Constitutional requirement. The Government has, in this manner, not only violated Article 190 of the Constitution but also sought to undermine the independence of the judiciary guaranteed by Article 2-A of the Constitution read with the Objectives Resolution.

And whereas the sustained assault on the judicial organ of State has continued under the garb of a Bill moved in Parliament for prevention of corrupt practices. This Bill was approved by the Cabinet and introduced in the National Assembly without informing the President as required under Article 46(c) of the Constitution. The Bill proposes inter alia that on a motion moved by fifteen per cent. of the total members, a Judge of the Supreme Court or High Court can be sent on forced leave. Thereafter, if on reference made by the proposed special committee, the Special Prosecutor appointed by such Committee, forms the opinion that the Judge is prima facie guilty of criminal misconduct, the special committee is to refer this opinion to the National Assembly which can, by passing a vote of no confidence remove the Judge from office. The decision of the Cabinet is evidently an attempt to destroy the independence of the judiciary guaranteed by Article 2A of the Constitution and the Objectives Resolution. Further, as the Government does not have a two-third majority in Parliament and as the Opposition Parties have openly and vehemently opposed the Bill approved by the Cabinet, the Government's persistence with the Bill is designed not only to embarrass and humiliate the superior judiciary but also to frustrate and set at naught all efforts made, including the initiative taken by the President, to combat corruption and to commence the accountability process.

And whereas the judiciary has still not been fully separated from the executive in violation of the provisions of Article 175(3) of the Constitution and the dead-line for such separation fixed by the Supreme Court of Pakistan.

And whereas the Prime Minister and her Government have deliberately violated, on a massive scale the fundamental right of privacy guaranteed by Article 14 of the Constitution. This has been done through illegal phone-taping and eaves-dropping techniques. The phones which have been taped and the conversations that have been monitored in this unconstitutional manner includes the phones and conversations of Judges of the superior Courts, leaders of political parties and highranking military and civil officers.

And whereas corruption, nepotism and violation of rules in the administration of the affairs of the Government and its various bodies, authorities and corporations has become so extensive and widespread that the orderly functioning of Government in accordance of the provisions of the Constitution and the law has become impossible and in some cases, national security has been endangered. Public faith in the integrity and honesty of the Government has disappeared. Members of the Government and the ruling parties are either directly or indirectly involved in such corruption, nepotism and rule violations. Innumerable appointments have been made at the instance of members of the National Assembly in violation of the law declared by the Supreme Court that allocation of quotas to MNAs and PMAs for recruitment to various posts was offensive to the Constitution and the law and that all appointments were to be made on merit, honestly and objectively and in the public interest. The transfers and postings of Government servants have similarly been made, in equally large numbers, at the behest of members of the National Assembly and other members of the ruling parties. The members have violated their oaths of office and the Government has not for three years taken any effective steps to ensure that the legislators do not interfere in the orderly executive functioning of Government.

And whereas the Constitutional requirement that the Cabinet together with the Ministers of State shall be collectively responsible to the National Assembly has been violated by the induction of a Minister against whom criminal cases are pending which the Interior Minister has refused to withdraw. In fact, at an earlier stage, the Interior Minister had announced his intention to resign if the former was inducted into the Cabinet. A Cabinet in which one Minister is responsible for the prosecution of a Cabinet colleague cannot be collectively responsible in any manner whatsoever.

And whereas in the matter of the sale of Burmah Castrol shares in PPL and BONE/PPL shares in Qadirpur Gas Field involving national assets valued in several billions of rupees, the President required the Prime Minister to place the matter before the Cabinet for consideration/reconsideration of the decisions taken in this matter by the ECC. This has still not been done, despite lapse of over four months, in violation of the provisions of Articles 46 and 48 of the Constitution.

And whereas for the foregoing reasons, taken individually and collectively, I am satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

Now therefore in exercise of my powers under Article 58(2)(b) of the Constitution I Farooq Ahmad Khan Leghari, President of the Islamic Republic of Pakistan do hereby dissolve the National Assembly with immediate effect and the Prime Minister and her Cabinet shall cease to hold office forthwith.

Further, in exercise of my powers under Article 48(5) of the Constitution I hereby appoint 3rd February, 1997 as the date on which general elections shall be held to the National Assembly.

(Sd.)

(Farooq Ahmad Khan Leghari),

President

No. 178/ 1 /President dated 5th November, 1996. "

2. Mohtrama Benazir Bhutto, former Prime Minister of Pakistan challenged the legality/validity of the aforementioned Dissolution Order through a Constitutional Petition (C.P. No.59 of 1996) filed directly in this Court under Article 184(3) of the Constitution. Similarly, Syed Yousaf Raza Gillani, Speaker of the National Assembly also invoked original jurisdiction of this Court under Article 184(3) of the Constitution through Constitutional Petition No.58 of 1996 to call in question the order of the President dissolving the National Assembly. Both the petitions were heard' together and dismissed by majority of 6 to 1 on 29th January, 1997 through a short order passed after the hearing was concluded, for which reasons were to be recorded later. I disagreed with the majority view and recorded my dissent in a separate short order saying that "in my humble view for which I shall record reasons later on, the order

dated 5th November, 1996 impugned in these petitions cannot be sustained, with the result that the National Assembly, the Prime Minister and the Cabinet stand restored." The short order passed by majority of 6 to 1, however, recorded the following findings/reasons for upholding the order of dissolution passed by the President and dismissing the petitions:-

"Firstly, we do not accept the contention of Mr. Aitzaz Ahsan that the President can invoke Article 58(2)(b) to dissolve the National Assembly only in such a grave situation in which Martial Law can be imposed as in 1977 and there is complete breakdown of Constitutional machinery. We are of the view that under the said provision, the President in his discretion may dissolve the National Assembly where he forms opinion on the basis of material before him having nexus with the dissolution order and Article 58(2)(b), that situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and appeal to the electorate is necessary. In support of the proposition reference can be made to the case of Khawaja Ahmad Tariq Rahim v.. Federation of Pakistan and another (PLD 1992 SC 646) in which it is held by majority that once the evil is identified, remedial and corrective measures within the Constitutional framework must follow. Public functionaries, holding public power in trust, under oath to discharge the same impartially and to the best of their ability must react as they cannot remain silent spectators. There may be occasion for the exercise of such power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional. The theory of total breakdown of Constitutional machinery as the only ground for dissolution of National Assembly has been rejected in the case of Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473).

Secondly, it is not correct to say as submitted by Mr. Aitzaz Ahsan, counsel for the petitioner, that her case is on all fours with the case of Muhammad Nawaz Sharif (supra), hence she is also entitled to the same relief of restoration as was given in that case. In the case of Nawaz Sharif it was conceded by the Attorney-General for Pakistan that the dissolution order was mainly based upon the speech made by the deposed Prime Minister on 17-4-1993 on electronic media which was an act of subversion and further that session of National Assembly was called hurriedly and the President thought that it was done to initiate proceedings of impeachment against him. In such circumstances it was held that the dissolution order was not sustainable.

Thirdly, it is not correct to say that the material produced in support of the grounds of the dissolution in its totality must be present before the President at the time of forming opinion and must be scrutinized by him in detail. It would be sufficient if there is material having nexus with the order of dissolution and Article 58(2)(b) before the President after perusal of which he forms his opinion and passes order of dissolution and further there is nothing wrong with production of corroborative or confirmatory material in support of the grounds which has been made available after the date of the order of dissolution.

Fourthly, newspaper cuttings can be relied upon as material in support of the grounds.

Fifthly, in the instant case in the order of dissolution on the first ground of extra-judicial killings sufficient material has been produced, which has been properly and justifiably considered.

Sixthly, we do not feel inclined to give any finding on the second ground in the dissolution order on the subject of murder of Mir Murtaza Bhutto, brother of the petitioner, and his seven other companions for the reason that the matter is sub judice before the Tribunal of Enquiry set up which is being presided over by a Judge of this Court and also F.I.Rs. have been filed which are being investigated in accordance with the law.

Seventhly, enough material is produced in support of the third ground with regard to the belated implementation of the judgment in the case of appointment of Judges, which is short of total compliance. By this non-implementation Articles 190 and 2A of the Constitution are violated. There is also adequate material produced by the respondents to show that the petitioner in her speech before the National Assembly had ridiculed the judgment of the Supreme Court in the Judges' case which was telecast also repeatedly and in order to harass the Judges of this Court, Constitution Fifteenth Amendment Bill was introduced in the Parliament for initiating the process of accountability against the Judges by sending the Judges of the Superior Courts on forced leave if fifteen per cent. of the members moved a motion against them. This Bill ran counter to Article 209 of the Constitution which is already in existence for taking action against Judges before the body of Supreme Judicial Council. Complete separation of judiciary from the executive is being delayed and by law Executive Magistrates are given powers to sentence to imprisonment for three years, which is against the spirit of the judgment.

Eighthly, there is sufficient material available on the record in support of the fifth ground showing that under the orders of the petitioner telephones of the Judges of the Supreme Court, leaders of the political parties and high ranking military and civil officials were being taped and transcripts sent to the petitioner for reading.

Lastly, there is also enough material produced in support of the fifth ground in the dissolution order which covers the subject of corruption, nepotism and violation of rules.

For the facts and reasons stated above, we uphold the order of dissolution passed by the President and dismiss the petitions."

3. Mr. Justice Saleem Akhtar has since written the reasoned judgment in support of the short order aforementioned and copy of the judgment has been supplied to me which I have perused very minutely. Having already disagreed with the majority view expressed in the short order, I now proceed to record the reasons for my taking a different view from that of the majority.

4. The impugned order of the President dated 5th November, 1996, dissolving the National Assembly and making other consequential directions (hereinafter called the dissolution order) was passed in purported exercise of his powers under Article 58(2)(b) of the Constitution of Islamic Republic of Pakistan. Article 58 in its relevant aspect reads as under:-

"58.--(1) The President shall dissolve the National Assembly if so advised by the Prime Minister; and the National Assembly shall, unless sooner dissolved, stand dissolved at the expiration of forty-eight hours after the Prime Minister has so advised.

(2)??????? Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion,-

(a)??????? a vote of no-confidence having been passed against the Prime Minister, no other member of the National Assembly is likely to command the confidence of the majority of the members of the National Assembly in accordance with the provisions of the Constitution, as ascertained in a session of the National Assembly summoned for the purpose; or

(b)??????? a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary."

Under clause (1) of Article 58, President is bound to dissolve the National Assembly if so advised by the Prime Minister and in case he fails to do so, the Assembly shall stand dissolved automatically at the expiration of fortyeight hours after the Prime Minister has so advised. Under clause (2), however, the President has been empowered to dissolve the National Assembly in his discretion, in two situations, firstly when in his opinion, a vote of no confidence having been passed against the Prime Minister, no other member of the National Assembly is likely to command the confidence of the majority of the members and secondly when in his opinion, a situation has arisen in -which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate has become necessary.

5. In order to examine the validity of the dissolution order, it appears necessary to ascertain the true import and scope of Article 58(2)(b) and to determine the nature and extent of the power conferred on the President thereunder. The provision in question has already been considered/interpreted in a number of cases decided by this Court and some of the High Courts. First case in the Series is Khawaja Muhammad Sharif v. Federation of Pakistan (PLD 1988 Lahore 725) wherein was challenged the order dated 29th May, 1988 passed by the then President of Pakistan (General Muhammad Zia-ul-Haq) dissolving the National Assembly elected in the year 1985 and dismissing the Cabinet headed by the then Prime Minister Muhammad Khan Junejo. The order impugned was struck down by a Bench of five learned Judges of Lahore High Court including the learned Chief Justice holding, inter alia, that four out of five grounds given by the President for dissolving the Assembly were vague, general or nonexistent and had no nexus with the situation specified in Article 58(2)(b) and the fifth ground namely that "a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary" was not supported by any material. It was, of course, held by the High Court that the Presidential order passed under Article 58(2)(b) was open to judicial review. Reliance in this behalf was placed on non obstante clause in Clause (2) of Article 58 which it was observed excluded the immunity from justiciability provided in Clause (2) of Article 48 to the Presidential Orders passed in his discretion. Validity of the order passed by the President under Article 58(2)(b) though in his discretion was accordingly held to be justiciable. Chief Justice of the High Court (Mr. Justice A.S. Salam) held that the 'discretion' and the formation of 'opinion' have to be based on facts and reasons which are objective realities, "the President cannot exercise his powers under the Constitution on wish or whim. He has to have facts, circumstances which can lead a person of his status to form an intelligent opinion requiring exercise of discretion of such a grave nature that the representatives of the people who are primarily entrusted with the duty of running the affairs of the State are removed with a stroke of the pen. His action must appear to be called for and justifiable under the Constitution if challenged in a Court of Law." Mr. Justice Rustam S. Sidhwa, a learned Member of the Bench dealt with the historical background of the Eighth Amendment and pointed out the reason for conferring the power on the President to dissolve the National Assembly in his discretion stating that "A reference to the Debates held in the National Assembly relating to the Constitution (Eighth Amendment) Bill shows that the power granted under sub-clause (b) of clause (2) of Article 58 was to specifically meet the type of necessity that had arisen in 1977 when the President had no power to dissolve the National Assembly, even though the mood of the whole country was against it - - - - - - - " (Underlining is mine). The learned Judge also addressed himself to the question as to when can it be said that 'the situation contemplated by Article 58(2)(b)- has arisen i.e. that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and held "The expression Government of the Federation" is not limited to any one particular function, such as the executive, the legislative, or the judicial, but includes the whole functioning of the Federal Government in all its ramifications. - - - - - - - - - - - - - - - - -. Thus, where the National Assembly is beset with internal dissentions and problems and the party allegedly in power does not have a clear majority, or having tenuous support from its members, is not able to carry on the functions of the Government with confidence, and is avoiding to take important decisions, which require to be taken, for fear that it may be outvoted, in case a debate is held in respect thereof, a situation can be stated to have arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. A few further instances can also be given, such as, where the Government has been defeated in the Assembly and the Prime Minister does not want to step down, or political groupings are such that even attempts by the President to form a coalition Government and get a working majority have not been successful and no alternative Government can be formed". The learned Judge proceeded to observe 'what is intended by the language of sub-clause (b) of clause (2) is the failure of the functional working of the National Assembly, through Ministers belonging to the majority party, because they are not able to run the Government with confidence and courage." According to the learned Judge, what is covered by sub-clause (b) "is the functional working of the party in power, for where it has strength, it effectively controls legislative and executive functions, and where it is weak, it cannot effectively do so. The primary condition, therefore, is whether the circumstances are such that the functional working of the National Assembly is impaired; for if the party in power commands the widest support in the National Assembly, it has the right to run the Government, and where it has no such support, or has lost it, it must leave".

6. The matter then came up before this Court in an appeal filed by the Federation against the aforementioned judgment of the Lahore High Court and in the case of "Federation of Pakistan v. Muhammad Saifullah Khan" (PLD 1989 SC 166), Nasim Hasan Shah, J. (as he then was) in his leading opinion expressed for the Court referred to the history of the legislation and the debates and the speeches made by the Prime Minister and the Law Minister in the National Assembly in connection with the Constitution (Eighth Amendment) Act, 1985 leading to the adoption of Articles 48 and 58 in their present form and observed: "Thus the intention of the slaw-makers, as evidenced from their speeches and the terms in which the law was enacted, shows that any order of dissolution by the President can be passed and an appeal to the electorate made only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution".

The learned Judge further proceeded to observe that the discretion conferred on the President by Article 58(2)(b) of the Constitution could not be regarded as absolute "but is to be deemed to be qualified one, in the sense that it is circumscribed by the object of the law that confers it". It was also held by the learned Judge that reading the provisions of Articles 48(2) and 58(2) shows that the President has to first form his opinion objectively and then it is open to him to exercise his discretion one way or the other i.e. either to dissolve the Assembly or to decline to dissolve it. It was observed that before exercising his discretion, the President has to form an opinion objectively that a situation of the kind envisaged in Article 58(2)(b) has arisen necessitating the grave step of dissolving the National Assembly. The learned Judge further proceeded to hold that the immunity envisaged by Article 48(2) if at all available to the action taken under Article 58(2) "can possibly be in relation to the exercise of his 'discretion' but not in relation to his 'opinion'." It was observed that the opinion of the President must be founded on some material. With respect to the grounds for dissolution of the Assembly, it was held that the first four grounds stated in the order for dissolution were extraneous having no nexus with the preconditions prescribed by Article 58(2)(b) of the Constitution and as for the fifth ground namely "a situation has arisen in which the Government of the Federation cannot be carried on in . accordance with the provisions of the Constitution", nothing was shown that the machinery of the Government of the Federation had come to a standstill or such a breakdown had occurred therein which was preventing the orderly functioning of the Constitution. (Underlining is mine).

Shafiur Rahman, J. who recorded a separate note in the abovereferred case of Haji Saifullah interpreted the expression in subclause (b) of Article 58(2) viz 'The Government of the Federation cannot be carried on in accordance with the provisions of the Constitution' as follows:-

"The expression 'cannot be carried on' sandwiched as it is between 'Federal Government' and 'in accordance with the provisions of the Constitution', acquires a very potent, a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of the progress, the shade of the quality or the degree of the performance or the quantum of the achievement. It concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution. The historical perspective in which such a provision found a place in our Constitution reinforces this interpretation. "

It appears that the learned Judge also took note of the following statement of the Law Minister made at the relevant time seeking to explain the "purpose and object" of the amended provision of Article 58(2)(b):-

"We have placed a check on the President that where the condition as I have submitted many a time in the Hon'ble House, these conditions as realized in 1977. In that case, when the machinery of the Federation is totally blocked and it becomes absolutely impossible for the Federal Government to function in that case, the President will dissolve the Assembly."

Having interpreted the provision as aforesaid, the learned Judge proceeded to hold that the reasons given in the impugned order of the President were extraneous to the conditions laid down in sub-clause (b) for dissolving the National Assembly and consequently, the impugned order of the President dissolving the National Assembly was unsustainable.

7. The law laid down by this Court in the aforenoted case of Haji Saifullah (PLD 1989 SC 166) was followed in the cases of Ahmed Tariq Rahim v. Federation of Pakistan (PLD 1991 Lahore 78) and Khalid Malik v. Federation of Pakistan (PLD 1991 Karachi 1) though in both these cases, the order of dissolution of National Assembly dated 6th August, 1990 passed by Mr. Ghulam Ishaq Khan, the then President of Pakistan, under Article 58(2)(b) of the Constitution was upheld on merits. It may be stated incidentally that the Assembly which was dissolved by the then President on 6th August, 1990 was elected in October, 1988 and the present petitioner Mohtrama Benazir Bhutto was the leader of the House in that Assembly and consequently the Prime Minister of Pakistan. In the Lahore case (PLD 1991 Lahore 78), relying on Haji Muhammad Saifullah's case, it was held that the opinion formed by the President that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution, can be subjected to scrutiny through judicial review and in case the President chooses to state the grounds for the action taken, the Court can examine the same to find out whether or not there is any nexus between the grounds and the preconditions envisaged by Article 58(2)(b) of the Constitution empowering the President to dissolve the National Assembly in his discretion. It was also held that the President can validly dissolve the National Assembly in case of failure of Constitutional machinery which may result from internal subversion or dissension; the deadlock arising from indecisive electoral verdict and political polarization which makes it impossible for the Government to be carried on in accordance with the provisions of the Constitution or where the Government is being conducted in disregard of the Constitution and the law. 1t was found by the learned Judges of High Court that the President was justified in forming the opinion that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate was necessary. This opinion, it was observed, could validly and reasonably be formed from, amongst others, the following acts of commission and omission of the Federal Government:-

(i)???????? No substantial legislative work had been and could be carried on by the Government in the National Assembly inter alia for the reason that the Government had virtually no representation in the Senate. During its twenty months' tenure, out of fifty Ordinances/Bills presented before the National Assembly only fifteen could be passed by the Parliament while the remaining thirty-five were not processed and allowed to lapse.

(ii)??????? The Federal Government miserably failed to perform its obligation under Article 148(3) of the Constitution to protect the Province of Sindh against internal disturbances which continued unabated and assumed serious proportions beyond the control of the Provincial Government. Despite repeated advice of the President, clear view expressed by the Governor of Sindh and opinion of the then Attorney General, resort to the provisions of Article 245 of the Constitution was not made resulting in colossal loss of life and property thereby endangering the integrity and solidarity of Pakistan.

(iii)?????? The Constitution envisages Pakistan as an Islamic Federal Republic, wherein the Federal Government and the Federating Units have welldefined powers and sphere of operation. A mechanism is in built in the Constitution to resolve disputes between the Federation and its units and between the units inter se. Inaction on the part of the Federation in resolving such disputes may endanger the Federal structure of the State itself. In this regard one of the important institutions is the Council of Common Interests

constituted under Article 153 of the Constitution. It formulates and regulates policies in relation to matters in Part II of the Federal Legislative List and entry 34 (Electricity) in the Concurrent List (refer Article 154), supervises and controls the related institutions and is also required to determine the rates at which net profits are to be calculated in terms of Article 161. The documents on record reveal that the Federal Government despite repeated demands by three out of four Federating units and unanimous resolution of the Senate, failed to call a meeting of the Council of Common Interests resulting in polarisation and confrontation between the Federation and two Federating units which eventually obliged them to file a suit against the Federation in the Supreme Court of Pakistan.

(iv)?????? The formation of the National Finance Commission, another important institution, required to be set up under Article 160 of the Constitution for distribution of revenues between the Federation and the Provinces was unnecessarily delayed with the result that not a single meeting could be convened thereby depriving the Federating units to have redress of their grievances.

(v)??????? The provincial autonomy guaranteed by the Constitution was eroded by launching People's Works Programme in a manner contrary to Article 97 of the Constitution without any legislative backing.

(vi)?????? Article 14 of the Constitution guarantees that the dignity of man and subject to law, the privacy of home shall be inviolable. This fundamental right was flagrantly violated and disregarded by tapping the telephones of highly respected persons, including dignitaries like the Chairman of the Senate and Speaker of National Assembly. Even the members of the Government party were not spared, petitioner being one of those whose telephones were taped.

(vii) Important Constitutional organs of the State like the Senate and superior Judiciary were publicly ridiculed and brought into disrespect. Even the legal existence and validity of the Senate was disputed by the Federal Government.

(viii) Misuse by the Federal Government of Secret Service Funds running into crores of rupees and unauthorised use of aircrafts belonging to P.A.F. and P.I.A. for transportation of M.N.As. at the time of NoConfidence Motion.

(ix)?????? Wholesale and indiscriminate appointments in the Civil Services of Pakistan and the Services under the Statutory Corporations in violation of law.

It was further held by the learned Judges of the High Court that the grounds which prevailed with the President for passing the order of dissolution of the National Assembly had direct nexus with the pre-conditions prescribed by Article 58(2)(b) of the Constitution and that there was material available with the President on the basis of which he could form an opinion that the Government of the Federation could not be carried on in accordance with the provisions of the Constitution and an appeal to the electorate was necessary.

In the case of Khalid Malik decided by Karachi High Court, it was held that while the discretion vested in the President under Article 58(2)(b) tray not be open to judicial review, the process of opinion-forming is judicially reviewable. It was observed that the President has to first form an opinion objectively with regard to the pre-conditions mentioned in Article 58(2)(b) and thereafter he may exercise his discretion one way or the other. It was held by Karachi High Court, of course, following the view expressed in Saifullah's case that the President could only dissolve the National Assembly "when he is of the opinion that either Constitutional mechanism has broken down or a stalemate or deadlock has occurred which rendered the observance of the provisions of the Constitution impossible or impracticable" though it was observed that it was difficult to define with precision the circumstances in which it could be said that the Constitutional mechanism has broken down or a stalemate has developed or a deadlock has taken place. On facts/merits, it was found that the grounds of horse-trading and corrupt practices of the House were fully supported by the material on the record and bore reasonable nexus to the conditions prescribed by Article 58(2)(b). It was also found that non-convening of the meetings of Council of Common Interests and National Finance Commission and the launching of People's Works Programme in the absence of appropriate legislation were in contravention of Constitutional provisions. It was also observed that despite all warnings, Federal Government failed to discharge its Constitutional obligation of safeguarding the life, liberty, honour and property of the inhabitants of Province of Sindh and declined to take action under Article 245 of the Constitution. The ground regarding the situation in the said Province, it was observed, not only bore the nexus with the preconditions mentioned in Article 58(Z)(b) but there was also ample material before the President in support of this ground. Saleem Akhtar, J (as he then was) as a learned Member of the Bench which heard and decided Khalid Malik's case observed in his separate note that the President's power to dissolve the National Assembly under Article 58(2)(b) was not unfettered but was circumscribed by the preconditions imposed by the Constitution and that this power is to be exercised sparingly and in extreme circumstances when the Constitutional machinery is paralysed. It was observed that "The main embargo imposed on exercise of this power is that the President has to first form his opinion on the basis of the material before him that the Government machinery cannot be run in accordance with the Constitution. Heavy responsibility has been placed on the President to first form an opinion about the breakdown of the machinery and in this regard he has to consider the facts and material before him". It was further observed that the Court has the power to examine the formation of opinion by the President and to satisfy itself that the opinion was formed on such materials which had the nexus with the dissolution order and on the basis of which such an opinion could honestly and reasonably be formed. The learned Judge pointed out certain situations indicative of the failure/breakdown of Constitutional machinery.

8. It appears that the judgment of Karachi High Court in Khalid Malik's case remained unchallenged but the case of Ahmed Tariq Rahim was brought before this Court in a petition for leave to appeal which bore no fruit and was dismissed refusing leave to appeal. Two of the learned Judges constituting the Bench (Mr. Justice A.S. Salam and Mr. Justice Sajjad Ali Shah (as they then were), however, held that the order of dissolution of National Assembly passed by the President was not sustainable in law and under the Constitution though they also eventually declined the relief of restoration of the Assembly for the reasons stated in their separate dissenting notes. Mr. Justice Shafiur Rehman speaking for the majority and Rustam S. Sidhwa, J in his separate note concurring with S. Rehman, J upheld the judgment of the Lahore High Court. Mr. Justice Shafiur Rahman who authored the leading judgment representing the majority view in the case of Ahmed Tariq Rahim v. Federation of Pakistan (PLD 1992 SC 646) re-examined the scope and the extent of the power conferred on the President under Article 58(2)(b) of the Constitution and held as follows:-

"In Haji Muhammad Saifullah Khan's case (PLD 1989 SC 166) our Constitutional provision has received full attention and its meaning and scope authoritatively explained and determined. It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional."

On merits, the learned Judge (Shafiur Rahman J.) upheld the first two grounds of dissolution namely, (i) the utility and efficacy of the National Assembly as a representative institution was defeated by internal dissensions and frictions; persistent and scandalous 'horse-trading'; corrupt practices and inducement; failure to discharge substantive legislative business and the National Assembly having lost the confidence of the people and (ii) failure of the Federal Government to convene the meetings of the Constitutional Institutions like Council of Common Interests and National Finance Commission despite the persistent demands of the Provinces and the intercession of the President with the result that the disputes regarding the claims of the Federating units could not be sorted out thereby jeopardizing the very existence and sustenance of the Federation and held that both these grounds were sufficient to justify the dissolution order. Other grounds were not specifically dealt with. It was, however, observed that some of the grounds like corruption and nepotism in the Federal Government, its functionaries and Authorities and Agencies and other corporations, misuse of authority resources and agencies of the Government of the Federation including statutory corporations etc. for political purposes and personal gain and undermining of the Civil Services of Pakistan by disregarding the provisions of the Articles 240 and 242 "may not have been independently sufficient to warrant such an action" though they can be invoked, referred to and made use of alongwith the grounds more relevant like the aforementioned two grounds.

Mr. Justice Rustam S. Sidhwa in his separate note recorded in the case of Ahmed Tariq Rahim (PLD 1992 SC 646) referred to the legislative history of the provisions relating to the failure of Constitutional machinery as contained in Articles 58(2) and 112(2) of our Constitution traceable to the Government of India Act, 1935, sections 45 and 93 whereof also provided for failure of Constitutional machinery and observed that "these provisions, as would appear from the debate that took place in the House of Lords, were enacted to prevent internal subversion, because one section of the Congress Party had declared its intention to enter the Legislatures only in order to wreck them from within, since they fell far short of the Party's demand for full self-Government. In the debate on the Bill, the Marquess of Lothian desired to add the following words to para. (1) of section 45-- "or the subversion of the institutions set up by this Act", so as to arm the Governor-General with powers to intervene in the event of any attempt being made to subvert the principles of responsible Government and substitute for them some form of party dictatorship. However, the proposed amendment was withdrawn on the assurance of Marquess of Zetland that the Governor-General would be able to deal with such a matter under section 45. Sections 45 and 93 appeared in separate Chapters in the 1935 Act headed "Provisions in case of failure of Constitutional Machinery". The said two sections were omitted after Pakistan came into being in 1947. Later Constitutional documents of 1956, 1962, 1972 and 1973 did not incorporate provisions to deal with failure of Constitutional machinery as provided in the 1935 Act. It was not till the revival of the Constitution of 1973 Order, 1985 (P.O. 14 of 1985) and the Constitution (8th Amendment) Act, XVIII of 1985, were passed that such provisions found their way in the 1973 Constitution. The present Articles 58(2)(b) and 112(2)(b), which in some measure reproduce the language of sections 45 and 93 of the old Government of India Act, 1935, enable both the Federation and the Provinces to deal with cases of failure of Constitutional machinery and to thereby ensure that their respective Governments are carried on in accordance with the provisions of the Constitution. "

The provisions of Articles 58(2)(b) and 112(2)(b), it was further observed, "refer to situations which have arisen in which the Government cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. The word "cannot" presupposes a Constitutional inability in the nature of a breakdown or dislocation. - The words "and an appeal to the electorate is necessary". highlight the breakdown to be of such a magnitude that an appeal to the electorate is perhaps the only remedy to the situation. Taking the case at the strictest level, one would imagine that these provisions become applicable when a breakdown has actually occurred or is on the very brink of happening and that the level of requirement is beyond the test of imminence and that the transgression is of such a magnitude that nothing short of an appeal to the electorate is necessary." Proceeding further, however, the learned Judge observed that if too stringent tests are applied, the situation of 1977 may repeat itself with the President holding out for a total collapse and the Martial Law stepping in for failure on his part to control imminent breakdown. He then relying upon a case from Indian jurisdiction, the State of Rajasthan's case (AIR 1977 SC 1361) wherein an identical provision, Article 356 of the Indian Constitution was held to be both preventive and curative observed: "The same position obtains for these two provisions in our Constitution. Preventive, so as to prevent failure of Constitutional machinery taking place by nipping in the bud a breakdown that is imminent. Curative, so as to mend the ill-effects of a breakdown that has occurred". It was, however, emphasized by the learned Judge that in the peculiar background of political developments in this country which for half of its life had remained under Martial Law and the other half under a Presidential system and a variety of Parliamentary systems with questionable dismissals of Governments for political gain and power, these two provisions, i.e. Articles 58(2)(b) and 112(2)(b), would have to be construed in their circumscribed sense to cover only the cases of failure or breakdown of Constitutional machinery, or else it would lead to Constitutional dictatorship. With reference to the law declared by this Court in the case of Haji Muhammad Saifullah (PLD 1989 SC 166) viz. that the dissolution of the Assembly could not be ordered unless it could be shown that the machinery of the Government had broken down completely, its authority eroded and the Government could not be carried on in accordance with the provisions of the Constitution and/or the machinery of the Government of the Federation had come to a standstill or such a breakdown had occurred therein which prevented the orderly functioning of the Constitution, the learned Judge observed that "the test laid down is too strict and rigid. It forgets that the provision is also preventive. One does not have to wait till the whole machinery of the Government collapses or comes to a standstill or so serious a breakdown occurs which prevents the orderly functioning of the Government, before ordering a dissolution. What is required is that the breakdown is imminent, as partial dislocation has begun, or the breakdown has actually taken place and as a last resort interference is required to ultimately restore representative Government. Each case should therefore be left to be dealt with on its own merit. There could be many situations which could lead to or where there is an actual failure of Constitutional machinery, such as where the party in power having tenuous support from its members, is not able to carry on the functions of the Government effectively, or a deliberate deadlock created by a party or a group of parties or deadlock arising from an indecisive electoral verdict has constantly impaired or made the smooth running of the Government practically impossible, or where no party in the Legislature is in a position to form a

Government or the party in power is guilty of or attempting internal subversion, or where a Government is being continuously conducted in utter disregard of the Constitution, or there is a mass uprising or civil disturbance or complete breakdown of law and order due to public opinion being against the party in power at the Federal or Provincial level". In para. 19 of his judgment at page 691 of the report) Mr. Justice Sidhwa reiterated the aforementioned situations and observed that these are the basic situations which have a nexus with the failure of the Constitutional machinery. "Other stray, or a number of violations of the Constitution unless by themselves so grave that a Court could come to no other conclusion but that they alone directly led to the breakdown of the functional working of the Government, would not constitute valid grounds.- ---------- - - - -- -- - - - - Non-compliance of general law, failure to hold or call meetings under the provisions of the general law, misuse of the authority or resources of the Federation or of the Provinces or of statutory or autonomous bodies, unauthorised or irregular interference in service matters and disruption in their regular and orderly working, some failure to maintain law and order; or the resultant effects arising from such situations, such as the climate of uncertainty if any created thereby, the sense of insecurity created at different levels of administration, the rejection by' the people of some actions of the party in power, creation of some threats to law and order, the weakening of the judicial process, would not normally provide grounds for action under Articles 58(2)(b) or 112(2)(b) of the Constitution, - - - - - - - - -- - - - - - - -. " The learned Judge pointed out that a dividing line would have to be kept in mind between certain basic situations which can be treated as leading to the breakdown of the Constitutional machinery and as having nexus with the provisions of the two Articles of the Constitution that provide for dissolution, strong Constitutional violations which the Courts may hold as directly leading to the breakdown of the functional working of the Government and other peripheral Constitutional violations.

Turning to the grounds given by the President for dissolution of the National Assembly, the learned Judge (Sidhwa, J.) found only two of the grounds as having nexus with Article 58(2)(b) in the light of the criteria laid down by him. The first ground related to the inability/failure of the National Assembly to carry out any substantive legislative business and it having lost the confidence of the people owing the persistent and scandalous 'horse-trading' and the second ground referred to the failure of the Government to allow the Council of Common Interests to discharge its functions and exercise its powers and to call a meeting of the National Finance Commission which created extreme bitterness and political deadlock between the Federation and the Provinces. Both these grounds it was observed were the basic situations leading to the breakdown of the Constitutional machinery and as such had direct nexus with Article 58(2)(b). With respect to the first ground, it was noted that the Pakistan People's Party though had emerged as the largest single party in 1988 Elections, it did not have an overall majority in the National Assembly. It formed coalition Government and thus secured majority in the National Assembly but had little support in the Senate where it had only two members which fact coupled with the open political confrontation between the coalition Government and the opposition had made it practically impossible for the coalition Government to carry on legislative business.

As regards the other grounds pressed into service by the President for ordering the dissolution of National Assembly such as demeaning the Senate and the Judiciary, allotment of the plots to MNAs to secure their loyalties, use of Air Force planes for political purposes, the allegations of corruption, favouritism and nepotism, taping of telephones in violation of fundamental rights, misuse of public funds, disbursal of public funds and loans by way of favours and the employment of persons in services in violation of statutory. rules and regulations, the view taken by the learned Judge was that these grounds did not justify the dissolution of the Assemblies. Similarly, interference in the matters of appointment, posting and transfers of civil servants and the launching of People's Works Programme by the Federal Government in violation of the provisions of the Constitution too were held to be the matters which did not give the President a valid basis to dissolve the National Assembly as the aggrieved parties could take recourse to the remedies provided in law and the Constitution.

Mt. Justte Sajjad Ali Shah (presently the Chief Justice of this Court) in his dissenting opinion recorded in the aforementioned case of Ahmad Tariq Rahim accepted the legal prosition regarding the scope of the President's power and Assembly as enunciated in the case of Haji Muhammad Saifullah (PLD 1988 SC 166) and particularly referred to the exposition/interpretation of Article 58(2)(b) by Nasim Hasan Shah, J. and Shafiur Rahman, J. holding that the order of dissolution of Assembly can be passed by the President only when the machinery of the Government has broken down completely and its authority eroded and that the provision in question "concerns itself with the breakdown of Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution".. He then proceeded to examine the grounds for dissolution of the National Assembly and the materials in support thereof in the light of the said legal position and the history of Constitution making in our country to which he made brief reference in paras. 7 to 10 of his judgment and held with reference to the first ground of the dissolution of the Assembly viz the utility and efficacy of National Assembly as a representative institution was defeated by internal dissensions and frictions, persistent and scandalous horse-trading and by failure to discharge substantive, legislative functions, "if that Government survived for 22 months, it could have survived for the remainder of the term unless shown that dissolution was justifiable and is for reasons which are covered by the requirements laid down in Haji Saifullah Khan's case and the Constitutional machinery had failed and the Government was unable to run". Proceeding further, it was held that the grounds mentioned in the dissolution order were neither individually nor collectively sufficient to justify the dissolution of the Assembly as they "do not, fulfil and satisfy criteria laid down in the case of Haji Saifullah Khan supra." It was also observed that within the framework of the Constitution, several other remedial measures were available. which could have been taken by the President by invoking Articles 54 and 56, 186 and 232 to 237 instead of resorting to the dissolution of National Assembly.

??????????? 9.???????? In the case of Muhammad Nawaz Sharif v. Federation of Pakistan and others (PLD 1993 SC 473), validity of the Presidential order dated the 18th of April, 1993 dissolving the National Assembly was examined by this Court with reference to the provisions, of Article 58(2)(b) as construed/interpreted in the case of Haji Muhammad Saifullah and in the context of Parliamentary system of Government envisaged in our Constitution and it was held that the impugned order of the President was not within the ambit of the powers conferred on him under Article 58(2)(b) of the Constitution. Nasim Hassan Shah, C.J. who presided over the Bench hearing the petition of the deposed Prime Minister filed directly in this Court examined the validity of the dissolution order with reference only to one ground of dissolution namely the speech of Mr. Muhammad Nawaz Sharif, the then Prime Minister made on 17th April, 1993, which according to the dissolution order amounted to the subversion of the Constitution and which it was observed was the main reason which induced the President to dissolve the Assembly. It was contended by the then learned Attorney-General appearing for the respondent that after the speech in question delivered by the then Prime Minister, the relations between the two highest executive authorities namely the President and the Prime Minister became so gravely strained that

it was not possible for them to work in harmony thereafter and the stalemate and the deadlock created between the two rendered the carrying on of the Federation in accordance with the provisions of the Constitution impossible. The President had, therefore, acted legally and properly in dissolving the National Assembly in exercise of the powers conferred on him under Article 58(2)(b) of the Constitution. Repelling this contention, the learned Chief Justice held that in view of the role assigned to the President in the Constitution, he is expected to conduct himself with utmost impartiality and neutrality and since the then President had ceased to be neutral, the speech of the Prime Minister could not be made a valid bias for the impugned action. It was further observed that the President and the Prime Minister being the highest Constitutional functionaries of the State 'are expected to work in harmony and in close collaboration for the efficient running of the affairs of the State" and that their roles being defined in the Constitution, which do not overlap, "both can exercise their respective functions unhindered and without bringing the machinery of the Government to a standstill. Despite personal likes or dislikes, the two can co-exist Constitutionally. Their personal likes or dislikes are irrelevant so far as the discharge of their Constitutional obligations are concerned. Despite personal rancour, ill-will and incompatibility of temperament, no deadlock, no stalemate, no breakdown can arise if both act in accordance with the terms of Oath taken by them, while accepting their high office".

Shafiur Rehman, J. who, it appears, wrote the main/leading judgment in the case noted that Article 58(2)(b) in so far as it empowers the President to destroy the Legislature and remove the chosen representatives, confers an exceptional power provided for an exceptional situation and, therefore, it must receive the narrowest interpretation as was placed on it in the case of Haji Muhammad Saifullah (PLD 1989 SC 166). He then examined various grounds mentioned in the impugned dissolution order and found that "none of the grounds made the basis of the impugned action has been established that they bear no nexus to the order passed and grounds totally extraneous and irrelevant and in clear departure of the Constitutional provisions have been invoked for taking action". As regards the charge of subversion of the Constitution based on the Prime Minister's speech of 17th of April, 1993, it was observed that "such an indictment and verdict given in a Constitutional document is a political career killer. Such a finding could only be recorded after a judicial pronouncement and not in an executive and political instrument made out under Article 58(2)(b) of the Constitution". The allegations of corruption, maladministration etc., it was held, "are independently neither decisive nor within the domain of the President for action under Article 58(2)(b) of the Constitution. These are , wholly extraneous and cannot sustain the impugned order".

Saad Saood Jan, J. in his separate note reiterated the exposition of the nature an extent of the power vesting in the President under Article 58(2)(b) of the Constitution rendered in the earlier cases of Haji Saifullah and Ahmad Tariq Rahim and observed that the most important precondition laid down in Article 58(2)(b) for exercise of power thereunder is that the circumstances must exist which clearly indicate that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. The learned Judge further observed that the word ' cannot' occurring in the clause brings in not only an element of impossibility but also that of permanence in its construction and thus "the President can exercise his powers thereunder only if there is material before him showing that the affairs of the State have come to such a stage that it is no longer possible for the Government to function except by violating the Constitution". As regards the grounds given by the President in support of the dissolution order, it was held that "none of these either by itself or in conjunction with others fulfils the precondition for the exercise of the power under Article 58(2)(b)" and as such the impugned order was not sustainable.

Like-wise, the other learned Judges constituting the Bench who recorded their separate notes/detailed reasons in support of the short order of the Court allowing the petition in the case of Muhammad Nawaz Sharif (Ajmal Mian, J., Muhammad Afzal Lone, J., Muhammad Rafique Tarar, J., Saleem Akhtar, J., and Saiduzzaman Siddiqui, J.) also held that the grounds/reasons forming the basis of the dissolution order had no nexus with the conditions prescribed in sub-clause (b) of Article 58(2) of the Constitution or/and were not substantiated by any cogent evidence.

Mr. Justice Muhammad Rafique Tarar examined the matter in somewhat different perspective and from a different angle in the context of the status and respective powers/functions of the President, the Cabinet and the Prime Minister provided in the Constitution and observed that the President being a part of the Government of the Federation cannot blame the Prime Minister and the Cabinet alone for any unwise, illegal or even unconstitutional acts. "If the President thinks that the Cabinet and aiding and advising him illegally, unconstitutionally or against public interest, despite his caution and warning, the only way open to him, under the Constitution, is to inform the National Assembly under Article 56 to which the Prime Minister/Cabinet is responsible or dissociate himself by resigning his office under Article 44(3) of the Constitution informing the nation about his doing so. However, he cannot blame the Prime Minister or the Cabinet in case the National Assembly raises no objection or endorses the objected to action or policy decision". It was further observed by the learned Judge that the President has ho power to remove the Prime Minister or dismiss the Cabinet so long as the Prime Minister commands the confidence of the majority of the members of the National Assembly and that what he is not permitted to do directly, he cannot do indirectly by dissolving the National Assembly under the cloak of the powers conferred by Article 58(2)(b). It was also noted with reference to the provisions of Articles 91(5) and 58(2)(x) of the Constitution that even if the Prime Minister fails to obtain a vote of confidence from the National Assembly or a vote of no-confidence is passed against him, President shall not dissolve the National Assembly without first ascertaining that no other member of the Assembly enjoys the confidence of the majority of the members. In this view of the matter, the learned Judge held that the dissolution of the National Assembly must be strictly covered by Article 58(2)(b) that is to say, before the President dissolves the National Assembly, he must be satisfied that the Government of the Federation is "in a state of check-mate or a deadlock", the state of "helplessness" of the Cabinet unchecked or brought about by the National Assembly or some outside force against which even the National Assembly cannot afford protection or cure. The learned Judge pointed out that in case of dissolution of Assembly, "for the misdeeds of the Cabinet", the punishment is awarded not only to those few members who are in the Cabinet but also to other majority members whether in the opposition or with the treasury or independents as also to the people in general for no fault of theirs which is not permissible. The learned Judge observed in para. 34 of his opinion "The fault has thus to be found, not in the working of the Prime Minister or the Cabinet but in the working of the National Assembly. Again it is not every fault but only that fault which has rendered the working of the Government of the Federation impossible and has also made an appeal to the electorate necessary". For instance when the Cabinet is outvoted on any vital question or a major issue. The learned Judge summed up his conclusions in para. 38 reproduced hereunder:--

"It will be seen that the deadlocks emerge from the working of the legislative bodies and jam the wheel of the Government. So, no action in the nature of dissolution of the National Assembly or dismissal of the Cabinet by the President will be justified where the Prime Minister enjoys the Confidence of the House and no deadlock has appeared because of the working of the National Assembly. The result is that if the National Assembly is working smoothly and there exists no deadlock for the Government to carry on its functions, the President neither has the power to dismiss the Prime Minister and his, Cabinet nor can he dissolve the National Assembly."

Mr. Justice Muhammad Raflque Tarar and Mr. Justice Saiduzzaman Siddiqui also addressed themselves to the second jurisdictional requirement stipulated in Article 58(2)(b) namely, the necessity of an appeal to the electorate. Mr. Justice Tarar took the view that the circumstances relied on by the President should not only show that the situation has arisen in which 'the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution' but that nothing else in the Constitution can provide a remedy and, therefore, "an appeal to the electorate is necessary" which, it was observed, means that the extreme measure of dissolution must not be resorted to if another alternative is available. While dealing with this aspect of the matter, Mr. Justice Saiduzzaman Siddiqui held that the two conditons mentioned in Article 58(2)(b) viz. "a situation has arisen in which the Government of Federation ;cannot be carried on in accordance with the provisions of the Constitution" and "an appeal to the electorate is necessary" are distinct and separate conditions and existence of both is a sine qua non for exercise of power by the President to dissolve the National Assembly. It was further held by the learned Judge that the second ,condition i.e. "an appeal to electorate is necessary", implies that the Assembly has lost its representative character which may happen when either the majority of the members have resigned or floor-crossing and horse-trading have become the order of the day.

10. The propositions/principles emerging from the foregoing survey of the case-law may broadly be summed up as follows:-

(1)??????? President is empowered under clause (2) of Article 58 to dissolve the
?????????? National Assembly in his discretion.

(2)??????? The discretion conferred on the President by Article 58(2) is not absolute but is fettered/circumscribed by pre-conditions/prerequisites prescribed in sub-clause (b) viz. that ' a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution' and 'an appeal to the electorate is necessary'.

(3)??????? That before ordering the dissolution of National Assembly in exercise of his discretion, the President is obliged to form an opinion, honestly and objectively, as to the existence of preconditions mentioned in sub clause (b) of Article 58(2).
(4)??????? That the formation of opinion must be founded on some material placed before and duly considered by the President at the time when he formed the opinion.

(5)??????? That the grounds/circumstances forming the basis of the opinion must have direct and reasonable nexus with the preconditions prescribed in Article 58(2)(b).

(6)??????? If not the exercise of discretion, at least the formation of" opinion by the President necessitating the exercise of power is open to' judicial review.

(7)??????? That the provision empowering the President to dissolve the National Assembly in his discretion being drastic in nature. is to be construed strictly and this-power must be exercised sparingly and only in an extreme situation when no other option is available within the framework of the Constitution.

(8)??????? That the situation envisaged in sub-clause (b) of Article 58(2) viz. that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution contemplates a situation where the machinery of the Government is completely broken down and its, authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution (as held in the case of Haji Muhammad Saifullah (PLD 1989 SC 166), breakdown of Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution (as interpreted/explained by Shafiur Rahman, J. in his separate note recorded in the case of Haji Muhammad Saifullah); or as observed in Ahmed Tariq Rahim's case (PLD 1992 SC 646) where there is an actual or imminent breakdown of the Constitutional machinery, where there takes place extensive, continued and pervasive failure to observe numerous provisions of the Constitution creating an impression that the country is governed by extra-Constitutional methods.

11. Relying heavily on Haji Saifullah's case (PLD 1989 SC 166) for the interpretation of the expression 'situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution' in Article 58(2)(b), Mr. Aitzaz Ahsan, learned counsel for Mohtrama Benazir Bhutto, the petitioner in C.P. 59 of 1996 argued that the power to dissolve the National Assembly available under Article 58(2)(b) can only be exercised when the machinery of the Government has completely broken down, its authority eroded and there is breakdown of the Constitutional machinery resulting in a state of deadlock and stalemate. According to the learned counsel, the provision in question was designed to be invoked and exercised in a situation of grave national crisis leading to the total breakdown of Constitutional machinery like the one which arose in the aftermath of the general elections held in March, 1977 and ultimately culminated in the imposition of Martial Law. That situation, it -was submitted, has been highlighted in Begum Nusrat Bhutto's case (PLD 1977 SC 657) at pages 701-703 as follows:-

(1)? That from the evening of 7th of March, 1977 there were widespread allegations of?? massive official interference with the sanctity of the ballot in favour of candidates of the Pakistan People's Party;

(2)??????? That these allegations, amounting almost to widespread belief among the people, generated a national wave of resentment and gave birth to a protest agitation which soon spread from Karachi to Khyber and assumed very serious proportions;

(3)??????? That the disturbances resulting from this movement became beyond the control of the???????????? civil armed forces;

(4)??????? That the disturbances resulted in heavy loss of life and property throughout the country;

(5)??????? That even the calling out of the troops under Article 245 of the Constitution by the Federal Government and the consequent imposition of local Martial Law in several important cities of Pakistan, and the calling out of troops by the local authorities under the provisions of the Code of Criminal Procedure in smaller cities and towns did not have the desired effect, and the agitation continued unabated;

(6)??????? That the allegations of rigging and official interference with elections in favour of candidates of the ruling party were found to be established by judicial decisions in at least four cases, which displayed a general pattern of official interference;

(7)??????? That public statements made by the then Chief Election Commissioner confirmed the widespread allegations made by the Opposition regarding official interference with the elections, and endorsed the demand for fresh elections;

(8)??????? That, in the circumstances, Mr. Z.A. Bhutto felt compelled to offer himself to a referendum under the Seventh Amendment to the Constitution, but the offer did not have any impact at all on the course of the agitation, and the demand for his resignation and for fresh elections continued unabated with the result that the Referendum Plan had to be dropped;

(9)??????? That in spite of Mr. Bhutto's dialogue with the leaders of the Pakistan National Alliance and the temporary suspension of the Movement against the Government, officials charged with maintaining law and order continued to be apprehensive that in the event of the failure of the talks there would be a terrible explosion beyond the control of the civilian authorities;

(10) That although the talks between Mr. Bhutto and the Pakistan National Alliance leadership had commenced on the 3rd of June 1977, on the basis of his offer for holding fresh elections to the National and Provincial Assemblies, yet they had dragged on for various reasons, and as late as the 4th of July, 1977, the Pakistan National Alliance leadership was insisting that nine or ten points remained to be resolved and Mr. Bhutto was also saying that his side would similarly put forward another ten points if the General Council of P.N.A. would not ratify the accord as already reached on the morning of the 3rd of July, 1977.

(11) That during the crucial days of the deadlock between Mr. Z.A. Bhutto and the Pakistan National Alliance leadership the Punjab Government sanctioned the distribution of fire-arms licences on a vast scale, to its party 'members, and provocative statements were deliberately made by the Prime Minister's Special Assistant, Mr. G.M. Khar, who had patched up his differences with the Prime Minister and secured this appointment as late as the 16th of June, 1977; and

(12)????? That as a result of the agitation all normal economic, social and educational activities in the country stood seriously disrupted, with incalculable damage to the nation and the country."

In the light of these facts, it becomes clear, therefore, that from the 7th of March 1977 onward, Mr. Z.A.s Bhutto's Constitutional and moral authority to rule the country as Prime Minister stood seriously eroded. His Government was finding it more and more difficult to maintain law and order, to run the orderly ordinary administration of the country, to keep open educational institutions and to ensure normal economic activity. These conclusions find support from the declaration of loyalty to Mr. Z.A. Bhutto's Government made by the Chairman. of the Joint Chiefs of Staff and the Chiefs of Staff of the Pakistan Army, Pakistan Navy and Pakistan Air Force on the 28th of April 1977. There has been some controversy between the parties as to whether Mr. Bhutto had requested the Service Chiefs for such a declaration, or it was voluntarily made by them on their own initiative, but the fact remains that the situation had deteriorated to such an extent that either Mr. Bhutto or the Service Chiefs themselves felt that a declaration of loyalty to Mr. Bhutto's Government was needed at that critical juncture so as to boost up his authority and to help in the restoration of law and order and a return to normal conditions. It is again a fact that even this declaration did not have any visible impact on the momentum of the agitation launched by the Opposition which continued unabated.

The Constitutional `Authority of not only the Prime Minister but also of the other Federal Ministers, as well as of the Provincial Governments was being repudiated on a large scale throughout the country. The representative character of the National and the Provincial Assemblies was also not being accepted by the people at large. There was thus a serious political crises in the country leading to a breakdown of the Constitutional machinery in so far as the Executive and the Legislative organs of the State were concerned. A situation had, therefore, arisen for which the Constitution provided no solution.

Learned counsel also referred to pages 727 and 728 of the report where it was observed: "The Court could not fail to take judicial notice of the crisis which developed by way of protest against the alleged rigging of the General Elections when the entire nation rose against the Government of Mr. Bhutto.

There was complete breakdown of law and order, several precious lives were lost and the administration of the major cities had to be handed over by him to the Armed Forces which too were unable to cope with the situation and restore normalcy.---------- ------- ---------- -------- - - - -- -- - - - - - - the country was on the verge of a conflagration. The Constitution did not contemplate such a situation nor did it offer a resolution of the crisis.

Precise argument of the learned counsel was that it was to meet a situation of the kind that had arisen in 1977 that clause 2(b) was added to Article 58 empowering the President to dissolve the Assembly if in his opinion, a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and it was in that context that this provision was interpreted in the case of Haji Saifullah Khan to mean that an order of dissolution by the President can be passed only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution. It was also pointed out by Mr. Aitzaz Ahsan that when determining the scope and the meaning of Article 58(2)(b) and the extent of the power conferred on the President thereunder, this Court had referred to the debate held in the National Assembly and the speeches made by the then Prime Minister and the Law Minister before the Constitution (Eighth Amendment) Bill was passed and Article 58(2)(b) in its present form was adopted. The

Law Minister, in his speech (reproduced in para. 6 ante) explaining the purpose and object of the amended provision of Article 58(2)(b) pointedly referred to the conditions prevailing in the year 1977 and stated "In that case, when the machinery of the Federation is totally blocked and it becomes absolutely impossible for the Federal Government to function in that case, the President will dissolve the Assembly.

Argument of the learned counsel for the petitioner, of course, was that there was no breakdown of the machinery of the petitioner's Government or of the Constitutional machinery nor was there any deadlock or stalemate in the functioning of the Government. Petitioner as the leader of the House (National Assembly) enjoyed the confidence of the majority of the M.N.As. All the Constitutional Authorities were functioning normally and in accordance with the provisions of the Constitution and even if there was any violation of some of the Constitutional provisions (in the perception of the President) but not rendering the functioning of the Federal Government impossible, that would not justify the drastic action of dissolving the National Assembly.

12. Mr. Khalid Anwar, learned counsel for the respondents repudiating the argument of the petitioner that Article 58(2)(b) is attracted only when there is complete breakdown of the machinery of the Government or breakdown of Constitutional machinery resulting in a deadlock or a stalemate contended that the words 'stalemate' and 'deadlock' do not appear in sub-clause (b) of Article 58(2). These words only came up through judicial process/interpretation. Learned counsel submitted that Shafiur Rehman, J. who had used these words while interpreting Article 58(2)(b) in the case of Haji Saifullah Khan later clarified/modified his earlier view holding in the case of Ahmed Tariq Rahim (PLD 1992 SC 646) that the power under Article 58(2)(b) could be exercised even when the breakdown of Constitutional machinery was imminent. Learned counsel referred to the following observations of Shafiur Rahman, J. at pages 664-665 of the, Report:-

"In Haji Muhammad Saifullah Khan's case (PLD 1989 SC 166) our Constitutional provision has received full attention and its meaning and scope authoritatively explained and determined. It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra-Constitutional."

Learned counsel also referred to the opinion separately recorded by Rustam S. Sidhwa, J. in the case of Ahmed Tariq Rahtm (supra) and pointed out that he (Sidhwa, J.) had observed therein that the test laid down in the case of Haji Muhammad Saifullah viz that unless it could be shown that the machinery of the Government had broken down completely, its authority eroded and the Government could nor ire carried on in accordance with the provisions of the Constitution, dissolution of the Assembly could not be ordered, was too strict and rigid as one does not have to wait till the whole machinery of the Government collapses or comes to a standstill or so serious a breakdown occurs which prevents the orderly functioning of the Government, before ordering a dissolution. It was submitted that Sidhwa, J. had also taken the view that the action under Article 58(2)(b) could be taken when the breakdown of the Constitutional machinery was imminent. Reliance was also placed by the learned counsel for the respondents on the observations made in case of Aftab Ahmed Khan Sherpao (PLD 1992 SC 723), in support of his contention that the dictum in Haji Saifullah's case is not to be rigidly followed. It was pointed out that Ajmal Mian, J. had observed in case of Aftab Sherpao that the words "a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of the Constitution" were of wide import and would be attracted to a case where a Government in order to remain in power has to purchase the loyalties of the MPAs by allotting plots or granting other benefits in cash or kind at the cost of the public exchequer and/or is to induct them as Ministers and Advisors, as such a Government could not be said to be carried on in accordance with the provisions of the Constitution.

Precise contention of the learned counsel was that the view taken, by this Court in the case of Haji Muhammad Saifullah that an order of dissolution of the Assembly can be passed by the President only when the machinery of the Government is broken down completely and its authority eroded has been modified in the cases of Ahmed Tariq Rahim (PLD 1992 SC 646) and Aftab Ahmed Khan Sherpao (PLD 1992 SC 723) and consequently, the dissolution of the Assembly could legitimately be ordered by the President when in his opinion the breakdown of the Constitutional machinery was imminent. Learned counsel further contended that in the case of Muhammad Nawaz Sharif (PLD 1993 SC 473), the judgment in Ahmed Tariq Rahim's case has been unanimously reiterated and upheld and the original theory propounded in the case of Haji Muhammad Saifullah rejected.

13. The scope of Article 58(2)(b) no doubt appears to have been somewhat expanded in the case of Ahmed Tariq Rahim (supra) so as to bring within the mischief of the said provision not only the actual but also imminent breakdown of the Constitutional machinery and it was also observed therein by Shaflur Rehman, J. (who wrote the leading judgment for the majority in the said case) that there may be occasion for the exercise of power under Article 58(2)(b) when there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution creating an impression that the' country is governed not so much by the Constitution but by methods extra Constitutional. It may be of interest to note, however, that before expressing this view, Shafiur Rehman, J. had referred to section 45 of Government of India Act, 1935 which also contained the expression ' a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of this Act' and noted that this provision. was commented upon by the authors of "the Constitutional Law of India & England" (J.N. Varma and M.M. Gharekhan) as hereunder:-

"Breakdown of the Constitution:

569. When this Act was on the anvil, Parliament expressed the opinion that the safe running of the Government of India must be sufficiently ensured. A situation might arise in which the working of the Constitution as laid down by the Act was either impracticable or impossible. It is with a view to meet such a situation that section 45 has been enacted. The wording of this provision, it must be remarked, is both unique and unusual. There is no precedent for it either in England or the Federal Dominions or the United States of America; and the use of the term 'Constitutional machinery' is altogether novel to Constitutional Law. "

Shafiur Rahman, J. had also referred to the following remarks in Seervai-Basu's Commentary on the Constitution of India, Sixth Edition, Volume 'O' at page 17 with regard to the scope and meaning of the. aforenoted expression in section 45:-

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"See also the earlier Report of the Simon Commission, Vol.II (para.65), where the two expressions 'breakdown of the Constitutional system' and 'the Government of a Province cannot be carried out in accordance with the provisions of the Statute' were used as referring to the same situation, and as instances of such situation were mentioned - 'complete inability to form or maintain in office any Ministry enjoying support from the Legislature's widespread refusal to work the normal constitution of the Province, or general adoption of a policy which aimed at bringing Government to a standstill'."

The learned Judge also took note of the following interpretation of Article 356 of the Indian Constitution carrying an identical expression:-

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(ii)??????? Even if one seeks to exclude the marginal note of Art. 356 and confine the interpretation to the words (failure to carry on the Government of the State) ' in accordance with the provisions of the Constitution' it would not refer to the failure to comply with particular provisions of the Constitution, but the failure to maintain the 'form of the Constitution', which, in relation to the Provincial part of the Constitution, meant the form of 'responsible Government', as Krishnaswami Ayyar explained.

(iii)?????? The foregoing narrow interpretation would also follow from the premises explained by the Framers of the Constitution themselves that Article 356 (draft Article 278) was a corollary or adjunct to the duty of the Union under Article 355) (draft Article 277 A) and that Article 355 had been drafted on the model *of Article IV(4) of the Constitution of the U.S.A., which enjoined the United States to guarantee to every State in the Union "a republican form of Government". Broadly speaking, that expression has been understood to mean "a form that, as distinguished from aristocracy, monarchy, or direct democracy, rests on the consent of the people and operates through representative institutions". If that be so neither the provisions in Article IV(4) of the American Constitution nor Article 355 of the Indian Constitution (can be used to subvert the normal system of Government in ,,a State on the plea of violation) of particular provisions of the Constitution, short of breakdown of the Constitutional machinery or form of representative and responsible Government." (Underlining 4 mine).

The aforereferred comments/observations seem to support the view that the provision like the one contained in Article 58(2)(b) is to be given a narrow interpretation and the extreme power conferred thereunder is to be exercised not because there has been violation of or failure to comply with any particular provisions of the Constitution but only when the Constitutional machinery has broken down to an extent that it has become impossible for the representative and responsible Government to function in accordance with the provisions of the Constitution. Instances of such situation were quoted in good number in the cases referred to hereinabove which need not be repeated. It may pertinently be noted at this stage that when the Government of India Act, 1935 was being debated in the House of Lords, it was made clear on behalf of the Government that the phrase "Government cannot be carried on" in accordance with the provisions of the Act used in sections 45 and 93 of the Act (providing for failure/breakdown of Constitutional machinery) comes into play only when the Constitutional machinery of the Government totally breaks down and not when the Constitutional Authorities carrying on the Government are functioning though not as good as one would wish. Viewed in the context of the aforenoted? comments observations, occasion for exercise of power under Article 58(2)(b) arises only when Constitutional machinery of the Government totally breaks down making it impossible for the representative Government to function ire accordance with the provisions of the Constitution.

The observations of Sidhwa, J. relied upon by the learned counsel for the respondents also need to be appreciated/understood in the overall context particularly his view that in the peculiar background of political developments in this country, provisions of Articles 58(2)(b) and 112(2)(b) "would have to be construed in their circumscribed sense to cover only the cases of fialure or breakdown of Constitutional machinery or else it would lead to Constitutional dictatorship". The learned Judge had no doubt talked of imminent breakdown with partial dislocation having begun but then he had also observed while interpreting the words "cannot" and "an appeal to the electorate is necessary" that taking the matter at the strictest level, "one would imagine that these provisions become applicable when a breakdown has actually occurred or is on the very brink of happening and that the level of requirement is beyond the test of imminence and that the transgression is of such a magnitude that nothing short of an appeal to the electorate is necessary". If one may say so with respect, the case has to be taken at the strictest level as it has all along been held that the provisions of Article 58(2)(b) in so far as they impinge upon Parliamentary, system of Government envisaged by the Constitution, have to be construed strictly and used very sparingly only in extreme situations.

As regards the view expressed by Ajmal Mian, J. in the case of Aftab Ahmed Khan Sherpao, suffice it to observe that keeping in view the drastic nature of the power conferred on the President which is quite inconsistent with Parliamentary form of Government, Constitutional requirement for exercise of that power as contained in sub-clause (b) of Article 58(2) has to be construed/interpreted strictly and within a narrow compass and is not to be assigned any extended meanings. It may pertinently be observed that Sajjad Ali Shah, 1. (as he then was) in his dissenting note recorded in the case of Ahmad Tariq Rahim accepted the legal position regarding the scope of Article 58(2)(b) as enunciated in the case of Haji Muhammad Saifullah and adjudged the validity of the dissolution order in the light thereof and held that the grounds forming the basis of the dissolution order impugned in Ahmed Tariq Rahim's case were neither individually nor collectively sufficient to justify the dissolution of the Assembly as they "do not fulfil and satisfy

the criteria laid down in the case of Haji Saifullah Khan supra". In his view, the dissolution would be justifiable if the Constitutional machinery had failed and the Government was unable to run.

14. It is also not quite correct to say as contended by Mr. Khalid Anwar that the original theory propounded in the case of Haji Muhammad Saifullah was rejected in the case of Muhammad Nawaz Sharif (PLD 1993 SC 473). On the contrary, I find that the rule laid down and the parameters specified by this Court in Haji Muhammad Saifullah's case for exercise of power under Article 58(2)(b) have been reaffirmed in the case of Muhammad Nawaz Sharif and on merits it was held that the grounds mentioned in the dissolution order had no direct nexus with the conditions prescribed in sub-clause (b) of Article 58(2). Nasim Hasan Shah, C.J. who had presided over the Bench hearing the petition of the ousted Prime Minister examined the validity of the dissolution order with reference to only one ground of dissolution namely the speech of Mr. Muhammad Nawaz Sharif, the then Prime Minister delivered on 17th April, 1993 which it was contended had created the 'stalemate' and the 'deadlock' rendering it impossible to carry on the Government of the Federation in accordance with the provisions of the Constitution. Repelling this contention, the learned Chief Justice after examining the respective roles of the President and the Prime Minister under the Constitution held that "both can exercise their respective functions unhindered and without bringing the machinery of the Government to a standstill. Despite personal likes or dislikes, the two can co-exist Constitutionally. Their personal likes or dislikes are irrelevant so far as the discharge of their Constitutional obligations are concerned. Despite personal rancour, ill-will and incompatibility of temperament, no deadlock, no stalemate, no breakdown can arise if both act in accordance with the terms of the Oath taken by them, while accepting their high office". It is significant to note that the learned CJ tested the validity of the main ground of the dissolution with pointed reference to the criteria laid down in Haji Muhammad Saifullah's case. Again Shafiur Rahman, J. who wrote the main judgment in the case of Muhammad Nawaz Sharif noted that power conferred on the President under Article 58(2)(b) was an exceptional power provided for an exceptional situation and as such the provision in question must receive the narrowest interpretation as was placed on it in the case of Haji Muhammad Saifullah. Saad Saood Jan, J. also in his separate note recorded in the case of Muhammad Nawaz Sharif reiterated the enunciation as to the nature and extent of the power vested in the President under Article 58(2)(b) made in the cases of Haji Saifullah and Ahmed Tariq Rahim. It was observed by the learned Judge that "In Muhammad Saifullah Khan's case, it was held after a threadbare analysis of the clause that an order of dissolution could be made by the President only when the machinery of the Government had broken down completely, its authority eroded and the Government could not be carried on in accordance with the provisions of the Constitution; it was further observed that the discretion given by the clause to the President was not absolute but was a qualified one in the sense that it was circumscribed by the objects of the law that conferred it and that before exercising it he had to form an opinion objectively with regard to the existence of the circumstances necessitating its exercise; it was also held that it was open to the Courts to examine the order of dissolution in order to see if it fell within the four corners of the clause". Ajmal Mian, J. too referred to the case of Haji Muhammad Saifullah and pointed out that it was held therein that Article 58(2)(b) "can be pressed into service when the machinery of Government is broken down completely and its authority is eroded - - - - - - - ". Muhammad Afzal Lone, J. in fait relied upon the case of Haji Muhammad Saifullah and observed that Article 58(2)(b) was intended to be used "in grave situation within the parameters specified by this Court in Federation of Pakistan v. Haji Muhammad Saifullah Khan (PLD 1989 SC 166)." Sajjad Ali Shah, J. (as he then was) in his dissenting judgment upheld the dissolution order holding, inter alia, that without apportioning the blame as to who (the President or the Prime Minister) was responsible for creating the situation, the fact was that a situation was created "bringing about deadlock and stalemate in the working relationship of two pillars of the Government of Federation" justifying the action of dissolving the National Assembly. The validity of the ground of dissolution was evidently tested with reference to the criteria laid down in Haji Muhammad Saifullah's case. In fact, all the learned Judges of. eleven-Members Bench of this Court have referred to the case of Haji Muhammad Saifullah and none of them rejected the rule laid down therein viz. that the dissolution of the Assembly can be ordered by the President only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution.

15. On closer examination of the cases in which the provision of Article 58(2)(b) has been interpreted I find, if I may say so with respect, that the meaning and scope of this provision and the nature and extent of the power conferred thereunder, as enunciated in Haji Muhammad Saifullah's case, was more in consonance with the language of the provision and the object and purpose of the amendment viewed in historical perspective. The interpretation placed on the provision in question in the case of Haji Muhammad Saifullah was also quite in keeping with the scheme of the Constitution providing for Parliamentary system of Government ensuring supremacy of the Parliament and it was also truly reflective of the intention of the law-makers as amply demonstrated in their speeches made on the floor of the National Assembly. '

Reference at this stage may pertinently be made to the background in which the power to dissolve the National Assembly in his discretion was conferred on the President and for that purpose, clause 2(a) & (b) was added to Article 58 of the Constitution through the Constitution (Eighth Amendment) Act, 1985. It may be stated that the Constitution as originally framed in 1973 was clearly Federal and Parliamentary in character. It envisaged Parliamentary form of Government where under the executive authority of the Federation was to be exercised by the Federal Government consisting of the Prime Minister and the Federal Ministers though in the name of the President who was only a Constitutional figurehead. Federal Government was to act through the Prime Minister who was the Chief Executive of the Federation. The President was no doubt the Head of the State representing the unity of the Republic but in the performance of his functions, he was to act on and in accordance with the advice of the Prime Minister which was binding on him. Under the Constitution of 1973, President had no powers to dissolve the Assembly on his own and it was provided in Article 58 that he shall dissolve the National Assembly if so advised by the Prime Minister. This dispensation remained operative only for a period of about four years i.e. until the 5th of July, 1977 when the country was placed under Martial Law and the Constitution was put in abeyance. Martial Law imposed in July, 1977 was lifted in December, 1985 and 'before that, Constitution of 1973 was revived-by the Revival of Constitution Order, 1985 (P.O. 14 of 1985) which made extensive amendments in the Constitution. Article 58 was amended adding clause (2) thereto whereby power was conferred on the President to dissolve the National Assembly in his discretion. Article 48 was substituted by R.C.O. (P.O. 14 of 1985) as hereunder:-

"48. President to act on advice, etc.

(1) In the exercise of his functions, the President shall act in accordance

with the advice of the Cabinet, the Prime Minister, or appropriate Minister:

Provided that the President may require the Cabinet to reconsider or consider such advice, as the case may be, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration or consideration.

(2)??????? Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so.

(3)??????? If any question arises. whether any matter is or is not a matter in respect of which the President is by the Constitution empowered to act in his discretion, the decision of the President in his discretion shall be final, and validity of any thing done by the President shall not be called in question on the ground that he ought not to have acted in his discretion.

(4)??????? The question whether any, and if so what, advice was tendered to the President by the Cabinet, the Prime Minister, a Minister or Minister of State shall not be inquired into in, or by, any Court, Tribunal or other authority.

???? (5)?? Where the President dissolves the National Assembly, he shall, in his discretion, - -

(a)? appoint a date, not later than one hundred days from the date of the dissolution, for the holding of a general election to the Assembly; and

(b)??????? appoint a Care-taker Cabinet.

(6)??????? If, at any time, 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".

(7)??????? An act of Majlis-e-Shoora (Parliament) may lay down the procedure for the holding of a referendum and the compiling and consolidation of the result of a referendum."

Clause (2) added to Article 58 by R.C.O. was as follows:

"The President may also dissolve the National Assembly in his discretion where, in his opinion, an appeal to the electorate is necessary."

As is manifest from the aforenoted provisions, highly arbitrary powers were conferred on the President in all matters in respect of which he was empowered by the Constitution to act in his discretion which included the power to dissolve the National Assembly in his discretion which power he could exercise arbitrarily as his decision on the question whether any matter was or was not in his discretion was made final and any action taken by him was? immune from challenge.

The arbitrary and unbridled powers conferred on the President under R.C.O. (P.O. 14 of 1985) particularly in the matter of dissolution of National Assembly were, however, sought to be fettered by the Parliament through the Constitution (Eighth Amendment) Act, 1985 which omitted clause (3) of Article 48 though incorporating the immunity provision in clause (2) of Article 48 and also substituted clause (2) of Article 58 laying down therein the conditions requisite for the exercise of power conferred thereunder. Clause (2) of Article 48 as added by Constitution (Eighth Amendment) Act and Article 58(2) as substituted by the said Eighth Amendment are reproduced hereunder:-

"48(2). Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever.

58(2). (2) Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion,-

(a) a vote of no confidence having been passed against the Prime Minister, no other member of the National Assembly is likely to command the confidence of the majority of the members of the National Assembly in accordance with the provisions of the Constitution, as ascertained in a session of the National Assembly summoned for the purpose; or

(b)??????? a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary."

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Non obstante clause "Notwithstanding anything contained in clause (2) of Article 48" appended at the opening of clause (2) of Article 58 clearly had the effect of excluding the immunity from challenge provided for the Presidential Orders passed in his discretion thus leaving the orders of dissolution of Assembly passed under Article 58(2) open to judicial review. Not only that, the sub-clauses (a) and (b) of clause (2) of Article 58 also placed limits on the President's power to dissolve the Assembly by prescribing the preconditions for exercising the power of dissolution of the Assembly. It appears that the then Prime Minister and the Law Minister speaking on the proposed amendment in clause (2) of Article 58 of the Constitution particularly brought out the purpose and object of the amended provision which was to provide a check against the arbitrary powers of the President. The Law Minister had also talked of the conditions obtaining in 1977 and observed that it was only in such conditions "when the machinery of the Federation is totally blocked and it becomes absolutely impossible for the Federal Government to function in that case, the President will dissolve the Assembly". These speeches were copiously referred to and reproduced in the judgment of this Court in the case of Haji Muhammad Saifullah Khan (PLD 1989 SC 166) and it appears that it was on the basis of those speeches evidencing

the intention of the law-makers that it was held by this Court in the said case that an order of dissolution of Assembly can be passed by the President only when the machinery of the Government has broken down completely and its authority eroded and at page 190 of the report, Nasim Hassan Shah, J. construed the expression 'a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution' to mean that the machinery of the Government of the Federation had come to a standstill or such a breakdown had accurred therein which was preventing the orderly functioning of the Constitution. The interpretation so placed also finds ample support from the language in which clause (b) of Article 58(2) is couched particularly the words 'cannot' occurring therein which have been defined in Stroud's Judicial Dictionary (Fourth Edition), Vol I to include "a legal inability as well as physical impossibility" These words connote a situation of an impasse, a deadlock, a stalemate Construing this provision and the 'words 'cannot' used therein, Saad Saood Jan, J. held in the case of Muhammad Nawaz Sharif that the President can exercise his powers under Article 58(2)(b) 'only if there is material before him showing that the affairs of the State have come to such a stage that it is no longer' possible for the Government to function except by violating the Constitution". Needless to point out that Sajjad Ali Shah, J. (the present Chief Justice) in his dissenting opinion recorded in the case of Ahmed Tariq Rahim followed/adopted', the dictum laid down in Haji Muhammad Saifullah's case and expressed the view that the dissolution of the Assembly would be justifiable if "the Constitutional machinery had failed and the Government was unable to run". (Emphasis supplied)

16. In the aforesaid view of the matter, I am inclined to agree with the learned counsel for the petitioner that the power to order dissolution of the National Assembly available under Article 58(2)(b) of the Constitution can only be exercised when the machinery of the Government has broken down completely and its authority eroded and/or there is a breakdown of Constitutional machinery to an extent that it has resulted in a state of deadlock or stalemate. Learned counsel was also right in contending that the provision invoked by the President for dissolving the National Assembly was intended to meet a situation of the kind which had arisen in the aftermath of the general elections held in March, 1977 which situation ultimately culminated in Martial law imposed by General Zia-ul-Haq. As seen above, this was the perception of the movers of the Constitution (Eighth Amendment) Bill of 1985 which is manifest from the speech made by the then Law Minister on the floor of the National Assembly to explain the purpose and object of the provision contained in Article 58(2)(b). As noted above, the Law Minister had specifically referred to the conditions prevailing in 1977 saying that it was only in such conditions when the machinery of the Federation is totally blocked and it becomes absolutely impossible for the Federal Government to function that "the President will dissolve the Assembly". Quite evidently, following this perception, it was held by this Court in the case of Haji Muhammad Saifullah "Thus the intention of the law-makers, as evidenced from their speeches and the terms in which the law was enacted, shows that any order of dissolution by the President can be passed and an appeal to the electorate made only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution" and Shaifur Rehman, J. while interpreting the expression "cannot be carried on" in Article 58(2)(b) had observed that: "It concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution" and further added "the historical perspective in which such a provision found a place in the Constitution reinforces this interpretation". 'Historical Perspective' is quite obviously the situation of 1977. Incidentally, when recounting the situation of serious crisis which developed as a result of the widespread allegations of massive rigging in the elections held in March, 1977, this Court in Begum Nusrat Bhutto's case (PLD 1977 SC 657), had used the phrases 'breakdown of the Constitutional machinery', 'complete breakdown of law and order', 'deadlock', 'Constitutional and moral authority to rule the country as Prime Minister stood seriously eroded' and ' A situation had arisen for which the Constitution provided no solution'. Quite significantly, such-like expressions also find mention in the case of Haji Muhammad Saifullah. It may also pertinently be observed that Rustam S. Sidhwa, J. had held in the case of Khawaja Muhammad Sharif PLD 1988 Lahore 725 that "the power granted under sub-clause (b) of clause (2) of Article 58 was to specifically meet the type of necessity that had arisen in 1977 when the President had no power to dissolve the National Assembly, even though the mood of the whole country was against it". It would also be worthwhile to notice that in the case of Khalid Malik v. Federation of Pakistan (PLD 1991 Karachi 1), Saleem Akhtar, J. (as he then was) visualized the following situations when considering as to when can it be said that a situation has arisen in which the Government cannot be carried on in accordance with the provisions of the Constitution as contemplated in Article 58(2)(b):-

"Such situation arises when the writ of the Government is not enforceable, a climate of uncertainty and diffidence has been created on different levels of administration, there is general flotation and disrespect to the organs and Departments of the State; the institutions, organs and authorities constituted under the Constitution and the law, flout of law, external aggression bringing the entire machinery of the Government at a standstill; internal disturbances, insurgency, revolt, rebellion or civil war economic crises which may paralyse the life and administration. Another situation may cover it when the Legislature no longer reflects the wishes or views of the electorate and they are at variance. There is large scale civil disobedience movement in which Government servants and employees of corporations, companies, banks and authorities connected with the day to day administration of the State refuse to cooperate and subject refuses to pay taxes. The majority ruling power refutes, violates or refuses to run the Government according to Constitution and law. The writ of Government is no longer respected and is not enforceable."

The aforementioned situations appear to be quite akin to if- not more serious than the conditions prevailing in the year 1977.

17. A cursory glance at the grounds mentioned in and forming the basis of the impugned dissolution order would show that there had not occurred any breakdown of the Government machinery or of Constitutional mechanism making it impossible for the Government to run in accordance with the provisions of the Constitution leaving no option for the President but to order the dissolution of the National Assembly. Case of the respondents taken at its best on the basis of the allegations made and the grounds set forth in the dissolution order boils down to only this that in certain specified areas, the Government of the Federation was being run in disregard or in violation of law or some provisions of the Constitution but that does not bring the case within the purview of Article 58 (2) (b) which is attracted only when a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. It is to be noted that the words used in Article 58 (2) (b) are "cannot be carried on" and not 'is not carried on'. Needless to point out that the word 'cannot' import an element of impossibility. The provision in question would, therefore, come into play only when the Constitutional machinery had broken down completely and it had become impossible to run the Government in accordance with the provisions of the Constitution. The grounds stated in the dissolution order taken individually or conjointly do not indicate that such an extreme situation had arisen and as such there was no occasion/justification for the President to dissolve the National Assembly in exercise

of the powers under Article 58 (2)(b). Needless to observe that resort cannot justifiably be had to the drastic step of dissolving the National Assembly merely because of some alleged/perceived violations of some Constitutional provisions which 'have not resulted in the breakdown of Government/Constitutional machinery or any deadlock or stalemate rendering the functioning of the Government in accordance with the Constitution impossible and which could be remedied by taking? recourse to certain remedial/corrective measures available within the framework of the Constitution such as addressing the joint session of the two Houses of the Parliament or addressing the National Assembly or sending messages to it pointing out the lapses/shortcomings/failures of the Government. It does not appear that before taking the extreme action of dissolving the National Assembly, the President had utilized any of the available options to ensure the redress/rectification of the alleged wrongs/misdeeds of the Government.

18. Learned counsel for the petitioner next referred to the case of Muhammad Nawaz Sharif (PLD 1993 SC 473) to point out that it has been observed therein that in the Parliamentary system of Government envisaged by our Constitution, Prime Minister and the Cabinet are responsible not to the President but to the National Assembly which consists of the elected/chosen representatives of the people and the President cannot remove the Prime Minister so long as he/she commands the confidence of the majority of the Members of the National Assembly howsoever illegal or unconstitutional his/her actions might appear to him nor can he dissolve the National Assembly under Article 58(2)(b) on the ground that the Government of the Federation, in his opinion, is acting in an illegal or unconstitutional manner and cannot, for that reason, be carried on in accordance with the provisions of the Constitution. It was further pointed out that Muhammad Rafiq Tarar, J. in his separate note recorded in the case of Muhammad Nawaz Sharif held that the President being a part of the Government of the Federation cannot blame the Prime Minister and the Cabinet for any "unwise, illegal or even unconstitutional acts ---". If the President thinks that the Cabinet was aiding and advising him illegally, unconstitutionally or against public interest, despite his caution and warning, the only way open to him under the Constitution is to inform the National Assembly under Article 56 or dissociate himself by resigning his officer under Article 44(3) if National Assembly raises no objection or endorses the action or policy decision of the Cabinet. According to the learned Judge, if the chosen representatives of the people who are the repository of the sovereign power and know best what is good for the people "approve the policies and the actions of the Government, the President has no power of his own of interference, in any way". It was submitted that in the view of the learned Judge, for exercising powers under Article 58 (2) (b) so as to dissolve the National Assembly, fault has to be found in the working of the Assembly which has rendered the working of the Government of the Federation impossible and has also made an appeal to the electorate necessary. For instance, where the Government has been outvoted on any vital question or is defeated in the House on a major issue meaning thereby that it has lost the confidence of the Assembly. Reliance in this behalf was placed by the learned counsel on the following observations of the learned Judge in para. 38 of his note:-

"It will be seen that the deadlocks emerge from the working of the legislative bodies and jam the wheel of the Government. So, no action in the nature of dissolution of the National Assembly or dismissal of the Cabinet by the President will be justified where the Prime Minister enjoys the confidence of the House and no deadlock has appeared because of the working of the National Assembly. The result is that if the National Assembly is working smoothly and there exits no deadlock for the Government to carry on its functions, the President neither has the power to dismiss the Prime Minister, and his Cabinet nor can he dissolve the National Assembly."

The point sought to be raised by the learned counsel with reference to the judgment in the case of Muhammad Nawaz Sharif needs no further elaboration as it is amply borne out from the aforenoted observations which in turn are based on various Constitutional provisions. It may pertinently be observed that the petitioner undoubtedly enjoyed the confidence of the National Assembly and there had not occurred any deadlock in the functioning of her Government emanating from the working of the National Assembly. That being so, there was no valid reason for the President to dissolve the National Assembly acid remove the petitioner and 'her Cabinet.

Further argument of the learned counsel for the petitioner was that the National Assembly could not be dissolved for any faults/defaults of the Government without putting the Members of the National Assembly on notice and giving them prior warning that if they did not take any corrective measures, he might have to take the action under Article 58 (2) (b) of the Constitution. Learned counsel submitted that no such notice/warning was given by the President before taking the impugned action. The submission appears to be quite well-based as it is supported by the principles of natural justice. In an almost identical case, S.R. Bommai v. Union of India (AIR 1994 SC 1918), it was held by Indian Supreme Court that the use of the power under Article 356 will be improper if the President gives no prior warning or opportunity to the State Government to correct itself. In the case of Muhammad Nawaz Sharif also, Saad Saood Jan, J. had taken exception to the exercise of extraordinary power of dissolution of Assembly without first sending any message to the National Assembly pointing out the shortcomings detailed in the dissolution order.

It was further contended by the learned counsel for the petitioner that for exercising the powers under Article 58 (2) (b), the two jurisdictional facts namely that 'the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution' and that 'an appeal to the electorate is necessary' must co-exist. It was argued by the learned counsel that if any one of the two pre-conditions is wanting the dissolution order will not be sustainable. It was submitted that the circumstances relied upon by the President must not only show that the Government of the Federation cannot be run in accordance with the provisions of the Constitution but also that an appeal to the electorate is necessary. According to learned counsel, the circumstances justifying an inference that the Government of the Federation cannot be carried
on in accordance with the provisions of the Constitution do not necessarily lead to the conclusion that the other condition prescribed for exercise of power under Article 58(2)(b) namely that the appeal to the electorate is necessary is also complied with. It was submitted that an appeal to the electorate may be necessary when the circumstances exist to show that the National Assembly has lost its mandate/representative character or as provided in sub-clause (a) of Article 58(2), a vote of no-confidence has been passed against the Prime Minister and no other Member of the National Assembly is in a position to command the confidence of majority of the National Assembly which fact has been ascertained by summoning the National Assembly. It was pointed out by the learned counsel that no such reasons have been given in the impugned dissolution order to justify the inference that an appeal to the electorate was necessary. I find that this precise contention was raised by Mr. Khalid Anwar appearing for the petitioner in the case of Muhammad Nawaz Sharif and was accepted by Mr. Saiduzzaman ?iddiqui, J. holding that the two conditions mentioned in

Article 58 (2) (b) are distinct and separate conditions and existence of both "is a sine qua non for exercise of power by the President to dissolve the National Assembly". With respect to the circumstances justifying an inference that an appeal to the electorate was necessary, the learned Judge observed that the use of expression 'an appeal to the electorate is necessary' in Article 58(2)(b) "implies that the Assembly has lost its representative character. This may happen where either majority of its members have resigned or where floor-crossing and 'horse-trading' by the members of the Assembly has become the order of the day, or there are other very strong circumstances suggesting that the electorate no more reposed confidence in the policies of the Government". Appeal to the electorate may also be necessary where the party in power does not have clear majority in the Assembly with the result that its working both in the legislative and executive/administrative fields is seriously impaired; or in the case of coalition Government, the co?llition parties have withdrawn their support making it impossible for the Government to function in accordance with the provisions of the Constitution or, as noted above, the ruling party is defeated/outvoted in the House on some vital issue or a situation contemplated in sub-clause (a) of clause (2) of Article 58 of the Constitution has arisen. It may be stated that as per the dissolution order, none of these situations adversely reflecting on the efficacy or representative character of the National Assembly and/or resulting in deadlock/stalemate in the functioning of the Government existed in the present case with the result that there was no valid basis/justification for the opinion statedly formed by the President that an appeal to the electorate was necessary. That being so, the second pre-condition for the exercise of power under Article 58(2)(b) was non-existent in law and as such the impugned dissolution order suffered from a serious jurisdictional defect.

Learned counsel for the petitioner finally submitted that the judgment of this Court in the case of Muhammad Nawaz Sharif has narrowed down the scope of Article 58 (2) (b) so much that it was no more available to the President to dissolve the National Assembly under the said provision. Learned counsel pointed out that the majority judgment in the case of Muhammad Nawaz Sharif was so viewed by the present Chief Justice (Sajjad Ali Shah, J. as he then was) in his dissenting opinion rendered in that case. The contention of the learned counsel so far as it relates to the perception of the present Chief Justice about the majority view in the case of Muhammad Nawaz Sharif is borne out from his following observations:-

"By rejecting the material in support of grounds of dissolution in the instant case, interpretation of Article 58 (2) (b) is rendered by this Court narrowing down its scope to almost zero point which amounts to declaring that no President would be able to ever dissolve the National Assembly and dismiss the Government of the Prime Minister in spite of the fact that he has substantial material in his possession because the Court is not satisfied with intrinsic value of the material. In other words Article 58 (2) (b) is rendered almost redundant which can be done by the Legislature only."

19. On the view of the matter on Constitutional plane that I have taken hereinabove, the impugned dissolution order cannot be sustained and is liable to be struck down without any further scrutiny of the grounds/reasons of dissolution on merits. I would, however, like to briefly deal with each ground of dissolution on merits and see, wherever necessary, whether the grounds mentioned in the dissolution order were duly supported by any cogent and relevant material and whether the President was at all justified to press these grounds into service for taking the impugned action of dissolving the National Assembly.

20. The dissolution order as stated above is based on several grounds. The first ground relates to what has been described in the dissolution order as 'the crime of extra judicial killings'. The allegation is that during the last three years, thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. They have been killed "in Police encounters and Police custody". The dissolution order states that the President in his speech to the Parliament on 29th October, 1995 warned that the law-enforcing agencies must ensure that there is no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected. This advice was not heeded to and the killings continued unabated. Neither the Federal Government nor the Provincial Governments took any meaningful steps to put an end to the extra-judicial killings. It is further stated in the impugned order that instead of ensuring proper investigation of these extra judicial killings and punishment for those guilty of such crimes, the Government has taken pride that, in this manner, the law and order situation has been controlled.

Petitioner in her Constitutional petition repudiated these allegations and contended that the matter in any case related to the law and order which is a Provincial subject falling outside the Federal domain and, therefore, it could not form a valid ground for dissolution of the National Assembly. Grievance was made by the petitioner that the President never wrote any letter to her or to Interior Ministry complaining about the alleged extra-judicial killings. In fact, he was at all times satisfied with the manner, the Government of Sindh was handling the situation which he described as a mini-insurgency in Karachi. As regards the President's Address to the Parliament on 29th October, 1995 and the remarks made therein which have been referred to in the dissolution order, it was stated by the petitioner that "the speech, including the paragraph referred to appreciates, profusely, the efforts of the Government to restore law and order to fight crime and terrorism". Reference was also made in the petition to the speeches and the statements made by the President on this subject particularly on 2nd November, 1994, 17th December, 1994, 29th March, 1995, 30th May, 1995 and his statement in Madina after Hajj which was reported on 13th May, 1996. Reference in this connection was made by the petitioner to a story captioned "Leghari's volte face on extra judicial killings" reported in the Daily News dated 9th November, 1996. According to the petitioner, the President in his Addresses to the Joint Houses of Parliament made on 14-11-1994 and 29-10-1995 "had much to say in praise of the Government of the petitioner even though his speeches were entirely authored by him - - - - - - - - - - - - - - - . " It was pointed out by the petitioner that the President's observation about Karachi was in direct conflict with the unambiguous assertions of Mr. Kamal-uddin Azfar, the Governor of Sindh Province (whom the President has been pleased to retain as Governor even after the dismissal of her Government) contained in his speech made in the National Defence College on September 12, 1996. and his views on the subject reported in the daily News of November 9, 1996. With respect to the allegation that no proper investigation of the extra judicial killings was conducted nor were the persons guilty of the crime of extra judicial killings punished, the petitioner relying on the principle of Federalism and Provincial autonomy enshrined in the Constitution submitted that "the Federal Government has no authority to investigate into any such incident whatsoever. If it had purported to do so that indeed would have been grievous breach of the Constitutional set-up which places this responsibility in the hands of the Provinces. No law permits the Federal Government to assume to itself, in any such eventuality, the powers and authority of the Provincial Governments". It was further stated by the petitioner that from the information gathered by her, the Government of Sindh had set up over a hundred judicial commissions to inquire into the alleged extra judicial killings, the report of many such commissions have been finalised and on these reports, or other information, more than 2000 police constables were sacked and 146 police officers

proceeded against. According to the petitioner, as a result of the measures taken by the Sindh Government, there was a sharp fall in the killings. It was also pointed out Py the petitioner that with a view to bringing about peace in the city of Karachi, the Federal Government also entered into negotiations with the MQM, "a gesture appreciated by the President in his address to Parliament of 29-10-1995."

22. The respondents in their quite lengthy written statement vehemently asserted that the petitioner was in the know of the fact that scores of persons were being killed in police encounters and/or in police custody in Karachi by the law enforcing agencies. Periodic reports were made available to the petitioner and she was fully congizant of what was happening in that city. The entire Karachi 'operation', it was stated, "was being masterminded and controlled by the Federal Government". The Rangers, a force under the direct control of the Federal Government were given special powers under the Rangers Ordinance, 1959 to give legal cover to their activities in Karachi. The respondents admitted in para. 23 of their written statement that the disturbances in Karachi were reduced by a considerable extent but contended that this was due to illegal and unconstitutional measures adopted by the Federal and Provincial Governments. In reply to the petitioner's contention that law and order is a Provincial subject and outside the Federal domain, it was submitted that under Article 148(3) of the Constitution, it was the duty of the Federation to protect every Province against internal disturbances and "to ensure that the Government of the Province is carried on in accordance with the provisions of the Constitution" which duty, it was contended, the petitioner and her Government failed to discharge. It was stated that since the same coalition (P.D.F.) formed the Government in the Federation as also in the Provinces of Punjab, Sindh and N.-W.F.P., it was far easier for the Federal Government to discharge its Constitutional obligations towards the Provinces not with standing the Federal structure of the Constitution.

With respect to the speech of Mr. Kamal-uddin Azfar referred to in the petition, it was stated that it did not in any place refute or contradict what is stated in the dissolution order. It rather showed that the Federal Government was not only "involved in the Operations launched and carried out in Karachi, it was in fact masterminding the entire show". As regards the story captioned 'Leghari's volte face on extra-judicial killings' which had appeared in The News dated November 9, 1996 and was relied upon by the petitioner, it was stated that it was only "analysis" of a journalist "bent upon proving a point on which his mind was already made up". Similarly, the news reports referred to in the said story, it was contended, did not warrant the inference that the President had "condoned or advocated extra-judicial killings". According to the respondents, all that the President had said was that "the situation in Karachi needed to be dealt with firmly". It was stated that "In fact, even earlier, in 1994 as well as in 1995, the President had expressed his dissatisfaction with the handling of the Karachi situation". It was further stated that notwithstanding Constitutional constraints on his powers, "The President could, and did privately warn and caution the petitioner from time to time". It was admitted that "The President's speech to Parliament in 1994 did not address this issue (extra judicial killings) at all". It was, however, asserted that "This was taken up by the President in his speech to Parliament in 1995". It was added that the President certainly did not praise the violation of fundamental rights by and at the behest of the Federal and Provincial Governments; "in fact, he forthrightly spoke against it". ,

??????????? The assertion of the petitioner that over a hundred judicial commissions were set up by the Government of Sindh to investigate the allegations of extra- judicial killings was denied by the respondents stating that only one judicial commission was set up to enquire into the matter of extra judicial killings, the rest were only Magisterial inquiries under the Code of Criminal Procedure and in almost all such inquiries, no police official was held responsible for extra- judicial killings and in very few cases where some responsibility was attached to the police officers, no action was taken against them. It was also denied that 2000 police constables were dismissed and 146 police officers were proceeded against and it was stated that legal action was taken only in 4 cases involving a total of 7 police personnel. Other cases of dismissal were normal departmental proceedings unrelated to extra-judicial killings and even 4 cases in which the legal action was taken were all cases of custodial deaths and did not involve any police encounters. The fact of the Federal Government holding negotiations with MQM, it was stated, had no connection with the extra judicial killings. The respondents, it may be stated, appended with the written statement quite a large number of documents contained in many volumes. The documents relating to the charge of extra-judicial killings comprise, inter alia, the reports of Human Rights Organizations (national and international), Newspaper Reports/Press Clippings/Magazines???? (Foreign?????????? and Domestic) containing the editorials/stories/comments regarding the situation in Karachi, official letters/notifications, reports of official agencies and the records/findings of judicial enquiries regarding the custodial deaths and killings in police encounters. These documents are mostly included in Volumes IA, IB, IC and VII N filed with the written statement. Volumes IB and IC exclusively pertain to the cases of deaths in police encounters/police custody in the Province of Punjab from 1994 to 1996.

23. Mr Khalid Anwar, learned counsel for the respondents during the course of his submissions presented a number of charts highlighting therein the material supplied by the respondents in support of different grounds of dissolution. Three of the charts (Part-I, Part-II & Part-III) relate to the first ground of dissolution namely extra judicial killings in Karachi and other parts of Pakistan. Part-I refers to the material available in the public domain regarding extra-judicial killings in Karachi viz. the reports/comments of Human Rights Organizations like Amnesty International, European Parliament, World Organization against Torture and Human Rights Commission of Pakistan (HRCP); U.S. Department of State 1995 Human Rights Report on Pakistan, Statement of Nicholas Burns, a spokesman of U.S. Department of State dated

December 11, 1995 expressing concern over the escalating cycle of violence in Karachi and particularly the sharp increase in "reported extra judicial killings"; a letter dated October 12,1995 from U. S. Department of State to some private individuals (in reply to their letter to President Clinton) saying that "violence in Karachi has skyrocketed since the Army ended operation clean up and returned to barracks on November 30, 1994. Over 1500 have died in politically motivated violence during the last nine months alone compared with 800 deaths in all of 1994"; a letter from U.K.. Foreign and Commonwealth Office dated 24th November, 1995 addressed to Piara S Khabra MP, House of Commons, London (in reply to his letter about Mohajirs and violence in Karachi) expressing concern "about the continuing violence in Karachi, which has resulted in over 1500 deaths this year. Allegations of extra judicial killings within the ast few months are also very worrying". Reference in this Chart is also made to the reports/comments and stories published in the Guardian (a newspaper published in England) dated 22-3-1995, 12-3-1996 and 2-3-1996; Independent on Sunday (newspaper published in England) dated 26-3-1995; International Herald Tribune of 9-2-1995; Newsline (a monthly Pakistani magazine) of February, 1996, October, 1995 and March, 1996; the Herald (a Pakistani magazine) of March, 1996; the News International dated February 29,1996 and the Daily Dawn dated 3-10-1995. Chart Part-I also refers to a Sindh Government

handout dated 19th October, 1994 regarding Third Round of negotiations between M.Q.M. and the Government judgment of Sindh High Court dated 5-10-1993 in CP - 2926/92 declaring Notification of "head money"as un law full and Government of Sindh Notification dated 2-1-1995 declaring? "head money" for sixteen criminals.

Chart Part-II refers to 'Material showing Federal Government's involvement in Sindh law and order situation and other material'. The material referred to in Part-II Chart is as follows:

"(1)????? Reports from Pakistan Rangers Headquarters, Karachi to Prime Minister (and to Interior Minister/Ministry of Interior) giving details and particulars of law and order situation in Sindh.

(2) Agency report on "Activities of MQM (A)" from Ministry of Interior? records, containing file noting of petitioner as Prime Minister.

(3)??????? Intelligence Bureau report to Interior Minister re: activities of Mir Murtaza Bhutto's supporters (copied to Prime Minister).

(4)??????? Telephone taping of Dawn journalist, to Minister of Interior.

(5)??????? Intelligence Bureau report re: activities of SHO, PIB Colony, Karachi: Secretary Interior awaits instructions from Prime Minister in respect of arrest of SHO.

(6)??????? Federal Government notifications conferring powers of police officers on Rangers operating in Sindh.
(7)??????? Government of Sindh letters re: entrusting of duty/functions under
?????????? section 131-A, Cr. P. C. on Pakistan Rangers.

(8)??????? Government of Sindh notification assigning specific role and duties to
?????????? Pakistan Rangers (copied to Prime Minister).

(9)??????? Government of Pakistan letter re: entrusting of functions/duties and
?????????? powers of police officers on Pakistan Rangers.

(10) Headquarters, Pakistan Rangers; Karachi notified as attached department of Ministry of Interior.

(11) Cabinet decision recording appreciation of work done by Rangers and police in re: law and order situation in Karachi.

(12) Decision taken-by "competent authority" in re: law and order situation in Sindh and communicated by Prime Minister's Secretariat (by Principal Secretary to the PM).

(13) Decisions of the Defence Committee of the Federal Cabinet.

(14) Material sent by Federal Government to President for preparing 1995 address to Parliament: portion relating to law and order.

(15)????? List giving details/status of judicial inquiries in re: extra judicial
?????????? killings and custodial deaths.

(16) Report regarding disciplinary action taken against police officers in Sindh in re: extra judicial killings and custodial deaths (4 cases only and not 2000).

(17) 6 judicial inquiries in Karachi in re: police encounters/custodial killings in which police held responsible (but no action taken).

(18) Judicial Inquiry in re: death of Faheem Commando and others. "

Note:

It may be observed that the material referred to against Serial Nos.3 and 4 above is wholly irrelevant to the ground of extra judicial killings and the documents mentioned at Serial Nos. 15 to 18, prima facie, have no bearing whatever on the alleged involvement of the Federal Government in Sindh law and order situation.

Chart Part-III specifies the material in respect of extra judicial killings and custodial deaths in Punjab. The material referred to in this chart is reproduced hereunder:-

"(1)????? Statement in re: persons killed in police encounters in the Punjab 1994
?????????? 96 (total: 446) and judicial inquiries in respect thereof.

(2)??????? Illustrative cases of police encounters

(3)??????? Chief Minister, Punjab (PDF Government) justifies police action
?????????? newspaper reports.

(4)??????? Senior Minister, Punjab (PDF Government) justifies police action
?????????? newspaper report.

(5)??????? Statement in re: persons killed in custodial deaths in the Punjab and
?????????? judicial inquiries in respect thereof. .

(6)??????? Illustrative cases of custodial deaths.

(7)??????? Illustrative cases of custodial deaths."

24. Petitioner in her rejoinder took various objections to the documents presented with the Written Statement (in support of the grounds of dissolution) contending that the claim of the respondents that these documents formed the basis of the President's opinion was demonstrably false "because many of the documents were made and/or collected after the date of the Dissolution Order". It was also claimed that the documents in question were almost entirely irrelevant. A request was accordingly made by the petitioner in her rejoinder to disregard and discard all such documents: .

(i)???????? Which have been prepared or collected after November 5, 1996 (the
?????????? date of the dissolution of National Assembly);

(ii)??????? Which establish, by their own contents, that they could not have been in the possession, or before the eyes, of the President on or before November 5, 1996.

(iii) To which the President could not have been, or ought not to have been, privy;

(iv)?????? With regard to which the respondents have failed to adduce proof that
?????????? the President ever saw them;

(v)??????? Which allegedly pertain to the allegation in the impugned order but emanate from the President prior, yet contemporaneous to November 5, 1995.

(vi)?????? Which are undated or whose time of preparation or collection is
?????????? unspecified;

(vii) Which are not signed;

(viii) Which are manifestly incomplete;

(ix)?????? Which purport to relate to different dates but have manifestly been
?????????? prepared on the same date and are in the same handwriting;
'x????????? Source of information of which is either secondary/hearsay; or, has not
?????????? been disclosed;

(xi)?????? Which are not supported by a cogent and specific affidavit from the
?????????? officer concerned;

(xii) Which on their face and manifestly are inconsistent or patently incorrect or fabricated;

(xiii)The like of which even the President himself objects in the Written Statement;

(xiv) Which relate to questions and issues that are sub judice

(xv?????? Which emanate from foreign analysts/agencies/authors (unless the President is deemed to have abdicated his presumptive and purported discretion to outside and foreign agencies);

(xvi) Which are unconnected in sequence and

(xvii) Which are inconclusive, speculative and unreliable in origin.

25. Mr. Aitzaz Ahsan, learned counsel for the petitioner during the course of his arguments referred to various documents adduced by the respondents to support the charge of extra-judicial killings and involvement of the Federal Government and submitted that all these documents suffered from one defect or the other noted in para. 24 ante and as such they were inadmissible in evidence or at least did not deserve to be given any credence. Elaborating his contention, the learned counsel pointed out that the report of a Special Correspondent of a Foreign agency viz 'INDEX ON CENSORSHIP' (at pages 19-20 of Volume IA) does not show who investigated the facts mentioned therein. About US State Department 1995 Human Rights Report on Pakistan, it was submitted that it gives the conclusions but there are no statements of their basis nor any specification of sources nor the names disclosed. Again, the report of another Foreign Agency namely World Organization Against Torture (at pages 21-24) which at page 24 bears the date Geneva, 8th November, 1995 refers to the incidents of 11th, 15th, 16th, 17th, 20th and 21st of November. According to the learned counsel, pages 22 and 23 of Volume IA appear to relate to some other document. As regards the initial findings of Human Rights Commission of Pakistan dated 19th October, 1995 relating to the killing of Faheem Commando, the report of the said Commission for the year 1994 and the report of Amnesty International; of February, 1996, it was submitted by the learned counsel that the President took no action on the basis of these reports at the relevant time. Similar objection was taken to the minutes of European Parliament dated 15th February, 1996 which were based on the reports of Amnesty International and other Human Rights Organizations. The argument of the learned counsel was that these reports/documents were collected after the dissolution of the National Assembly to justify the Presidential action. It was further pointed out that the handout of the Government of Sindh, Information Department dated October 19, 1994 (at pages 47-48 of Volume IA) was neither signed nor authenticated. As regards the

documents of the Provincial Government, it was submitted by the learned counsel that these documents could not have been with the President nor could he have been in possession of the reports on the law and order situation in Sindh (at pages 160 - 181, 192 - 206 and 224 - 254 of Volume IA) submitted by Headquarters Pakistan Rangers (Sindh) to the Military Secretary to the Prime Minister and not endorsed to the President. With reference to the objection that some of the documents produced by the respondents were prepared/collected after 5th of November, 1996 and, therefore, the affidavits accompanying the written statement stating "The Dissolution order is based on the contents/material thereof" were patently false, learned counsel pointed to a letter of DIG, Karachi dated 3-12-1996 addressed to the Home Secretary, Government of Sindh (at page 437 of Volume IA) and all the documents contained in the Volumes IB and IC relating to custodial deaths and killings in police encounters in Punjab. It was pointed out that the data given in Volume IB was evidently collected from the Commissioners in Punjab after the dissolution of Assembly. It is so manifest from the statement of Mr. S.M. Shuja, Deputy Secretary (Judicial), Government of the Punjab, Home Department (available at page 1 of Volume IB). It was also pointed out that the documents in Volume IC from pages 2 to 49 were all prepared by one officer (Mr. Ghulam Mustafa, Section Officer, Government of the Punjab, Home Department). It was particularly pointed out that the document at page 49 of Volume IC relates to an incident which occurred on 12-11-1996. This shows that the entire Volume was prepared after the proclamation of 5th of November, 1996. Precise argument of the learned counsel thus was that the material contained in Volumes IB and IC could not possibly have been before the President on 5th of November, 1996.

Learned counsel for the petitioner also vehemently questioned the admissibility of press clippings/newspaper reports on the ground that the allegations made therein were based on hearsay. Such material, according to the learned counsel, should not be permitted to be used for sustaining a charge which formed the basis of a drastic action of dissolving the National Assembly. It was pointed out by the learned counsel that in the case of Muhammad Nawaz Sharif (supra), it was held by Saad Saood Jan, J., that the press clippings can hardly form a basis for holding that the accusations made therein stand proved particularly when the allegations contained in the press clippings were not subjected to any inquiry resulting in an adverse finding. Learned counsel further pointed out that the President himself in his Written Statement objected to what he described as purported analysis carried out by some journalists. Proceeding on these premises, learned counsel argued that the analysis/comments in various publications, both Foreign and Domestic, should be ignored.

M-r.Khalid Anwar, learned counsel appearing for the respondents submitted in reply that under the relevant provision, the President was required only to form an opinion which he could form on some evidence not required to be conclusive, definitive and overwhelming because sufficiency of material is: not justifiable. It was contended that the Court when examining the validity of the dissolution order is not supposed to substitute its own opinion for that of the President because the Court does not sit in an appeal against the Presidential order. Quantum of material for forming the requisite opinion, according to the learned counsel, should be such that a reasonable and prudent man can base his opinion thereon. It was submitted by the learned counsel that law of evidence is not strictly applicable to the proceedings under Article 58(2)(b) nor is the Court in such matters required to adopt criminal law approach and insist on strictly legal evidence. These submissions were made with reference to the afore-noted objections of the petitioner's counsel with respect to the documents produced by the respondents particularly the objection regarding inadmissibility of the newspaper reports/press clippings. With respect to the admissibility of newspaper reports/press clippings, reliance was placed by the learned counsel on the cases of Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1976 Supreme Court 57 at pages 111-113 and Federation of Pakistan v. Aftab Ahmed Khan Sherpao PLD 1992 Supreme Court 723 at page 743. It was further submitted that apart from the material appended with the written statement which the President had before him when he passed the impugned order, he even otherwise was quite aware of extra judicial killings which fact, it was contended, was so widely and well known that even this Court can take judicial notice thereof.

26. The first question which need be attended to is whether at the time of passing the impugned dissolution order, the President had any material with him in support of the ground of extra judicial killings. Needless to state at this stage that when determining the validity of the impugned order, the Court has to see whether the President had any material before him at the time of passing the impugned order so as to examine whether he had applied his mind to that material before passing the impugned order; Contention of the learned counsel for the petitioner, of course, was that the President had no material before him at the relevant time and the material adduced in Court was collected/prepared subsequent to the passing of the dissolution order. In support of his submission, learned counsel contended that not only no material was referred to in the dissolution order in support of the ground of extra judicial killings; the President even in - his speech delivered on the following day viz. the 6th of November, 1996 did not expand on this ground and cited no proof in support thereof and simply reproduced, the ground as set out in the dissolution order. The contention of the learned counsel, prima facie, appears to be correct. It is no doubt asserted in the two affidavits accompanying the Written Statement that "the Dissolution Order is based on the contents/material thereof", but on closer scrutiny of the documents appended with the Written Statement, I find that the documents contained in Volumes IB and IC were manifestly prepared/collected after the passing of the dissolution order and as such they could not have been before the President at the time of passing the impugned order. Refer the points raised in this behalf by the learned counsel for the petitioner which have been noted at pp.143 - 144. In the circumstances, it is not possible to place any implicit reliance on the said two affidavits and there is nothing else on the record to show that the President had any material with him in support of the grounds stated by him in the dissolution order which he could be said to have perused before passing the impugned order.

27. Next question to be addressed is the admissibility of and the weight to be attached to the press-clippings which form the bulk of the material adduced by the respondents in support of the charge of extra judicial killings. It is true that as contended by the learned counsel for the respondents, the Court when examining the validity of the dissolution order does not sit as a Court of appeal and, therefore, it cannot go into the question of sufficiency of the material nor can it substitute its own opinion for that of the President but since the formation of opinion by the President in terms of Article 58(2)(b) is judicially reviewable, the Court can certainly examine whether the opinion in question has been formed honestly, fairly and reasonably and on the basis of such material as would justify the formation of that opinion. As noted above, the material placed on record by the respondents includes the press-clippings which consist of the newspaper reports and the articles/stories/comments by the journalists in various newspapers/magazines. It was no doubt held in the case of Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1976 SC 57 relied upon by the learned counsel for the respondents that the newspaper reports of contemporaneous events are admissible in evidence but proceeding further, it was noted in the said case that the same commentator (basing on whose statement in the American Jurisprudence, 2nd Edn. Volume 29, the aforesaid view was held) conceded that "newspapers or newspaper articles are not ordinarily admissible as evidence of the facts

stated therein". It may pertinently be observed that even according to the aforenoted view expressed in the precedent case, the newspaper reports of contemporaneous events are to be admitted in evidence only in certain circumstances when for instance "testimony of an eye-witness is not readily available". Needless to observe that in the instant case, witnesses were very much available as is manifest from the judicial inquiries held into the cases of custodial deaths and killings in police encounters. Press-clippings were not relied upon by Saad Saood Jan, J. in the case of Muhammad Nawaz Sharif as in his view, the press-clippings can hardly form a basis for holding that the accusations made therein stand proved. Saleem Akhtar, J. also did not consider the press-clippings filed with the petition in the case of Muhammad Nawaz Sharif holding that they "sometimes exaggerate the situation or describe it according to their own assumptions and inferences": It may pertinently be observed that the respondents in their written statement had also rejected the story/comments by a journalist stating that "What interpretation others (including the print media) put on the President's statements is a matter for which the President obviously cannot be held answerable". Respectfully agreeing with the immediately preceding views of the two learned Judges, 1 consider it neither proper nor safe to place any reliance on the press-clippings for sustaining a charge which has resulted in a drastic action of dissolving the National Assembly.

28. Be that as it may, the more crucial question is whether the petitioner and/or the Federal Government or for that matter the National Assembly was responsible for the extra judicial killings in Karachi and elsewhere. The dissolution order simply stated that thousands of persons were killed in police encounters and police custody but it was not even alleged therein that the encounters were fake and false or that there was any order or direction issued by the petitioner or the Federal Government to any agency to kill certain persons in police custody and/or the police encounters. Even the material produced by the respondents which has been highlighted in Chart Part II was intended to show, so says the chart itself "Federal Government's involvement in Sindh law and order situation" and not its involvement in extra judicial killings. I have minutely studied all the documents specified in the said chart particularly the documents referred to by the learned counsel for the respondents during his submissions. None of them holds the petitioner and/or the Federal Government responsible for extra judicial killings. Merely because the Federal Government in response to the request of Provincial Government of Sindh had agreed to deploy/direct the civil Armed Forces (Pakistan Rangers) focated within civil administrative boundaries of that Province to act in aid of civil powers according to law and issued a Notification "to confer and impose the powers and duties of Police Officers with regard to arrest and search of any person(s) provided for in Chapter-V of Code of Criminal Procedure 1898 (Act V of 1898), or any other law for the time being in force on every member of Pakistan Rangers Sindh whenever called for duty or to reinforce the Police and Civil Administration for the maintenance of law and order throughout the Province of Sindh" does not mean nor can such actions be construed by any stretch of logic or reasoning to mean that the Federal Government had authorised or permitted the law enforcing personnel to resort to extra judicial killings. Similarly, no such inference can reasonably be drawn from the decision of the Interior Division, Government of Pakistan to declare the HQrs. Pakistan Rangers Sindh (South), Karachi as an Attached Department of the Federal Government under the Ministry of Interior and Narcotics Control which decision, it appears, was necessitated owing to the bifurcation of the HQrs. Pakistan Rangers into Pakistan Rangers Punjab and Pakistan Rangers Sindh. It further appears from the Office Memorandum dated 22nd February, 1995 at page 496 IA that Pakistan Rangers Punjab (North) with its HQrs. Lahore had already been declared Attached Department of the Federal Government vide Interior Division's O.M. No.l/11/R/77, dated 14-9-1977. It may be stated that in view of the prevailing law and order situation in the Province of Sindh and inadequate strength of the police force, arms, ammunition and other equipment?s including transport, Government of Sindh vide its letter dated 24-5-1995 addressed to the Secretary, Interior Division, Government of Pakistan, "decided to entrust part of the responsibility for the maintenance of public peace and security to the officers of Federal Government (Pakistan Rangers) under Article 147 of the Constitution and section 131-A (Act V of 1898) of Cr.P.C., 1898 for a period of 12 months" and requested the Federal Government "to consent to the proposed arrangement and to issue necessary instructions in this regard". It was in pursuance of this request that the Federal Government deployed Pakistan Rangers in Karachi and other areas of the Province of Sindh. Needless to observe that in doing so, the Federal Government had only discharged its obligations under Article 148(3) of the Constitution which provides that it shall be the duty of the Federation to protect every Province against external aggression and internal disturbances. It may also be stated that under Article 147 of the Constitution, the Government of a Province is empowered, with the consent of the Federal Government, to entrust, either conditionally or unconditionally to the Federal Government, or to its officers, functions in relation to- any matter to which the Executive Authority of the Province extends. Similarly, section 131-A, Cr.P.C. provides that if the Provincial Government is satisfied that, for the public security, protection of life and property, public peace and the maintenance of law and order, it is necessary to secure the assistance of the Armed Forces, it may require, with the approval of the Federal Government or the Federal Government may, on the request of the Provincial Government, direct, any officer of the Armed Forces to render such assistance with the help of the Armed Forces under his command, and such? assistance shall include the exercise of powers specified in sections 46 to 49, 53, 54, 55(a) and (c), 58, 63 to 67, 100, 102, 103 and 156. It thus appears that Provincial Government of Sindh in seeking the assistance of the Federal Government for maintenance of public peace and security in the Province of Sindh and the Federal Government in accepting the request of the Provincial Government acted strictly under the mandate of the Constitution and the law. It also appears that the President had then approved of giving more powers to the Rangers in order to improve Karachi situation and for that purpose, law was also amended through a Presidential Ordinance. As regards the deaths in police custody and in policy encounters in the Province of Punjab sought to be proved by the respondents through the material contained in Volumes IB and IC, I find that the Federal Government has not been shown to be involved in any manner. In all the cases mentioned in these two volumes, only the police personnel were allegedly involved. On the overall assessment of the material produced by the respondents, involvement of the petitioner or of the Federal Government in the extra judicial killings does not appear to have been substantiated on record.

29. The accusation made in the dissolution order that the Government of the Federation and the Provincial Governments took no meaningful steps to put an end to the crime of extra judicial killings and no proper investigations into the extra-judicial killings were made nor persons guilty of such crime punished can also not be sustained in law and on facts. There is ample material on the record placed by the respondents themselves which shows that judicial inquiries were conducted into the cases of custodial deaths and killings in police encounters. Summary of 26 such judicial inquiries including one enquiry held by a learned Judge of Sindh High Court is available at pages 216 to 223 of Volume IA and again copies of inquiry reports in seven other cases are placed at pages 439 to 479 of Volume IA. Copy of the report of a judicial inquiry into the deaths of Faheem Commando and others in police custody is available in Volume VII N at pages 187 to 195. Similarly, the reports/findings of the judicial inquiries conducted under section 176, Cr.P.C. into the cases of custodial deaths and killings in police encounters in the Province of Punjab are available in Volumes IB and IC. Perusal of these documents shows that in a number of cases, version of the police was not accepted, police

officers/officials were found guilty of extra judicial killings and criminal cases were registered against them. In the face of this record, the accusation/allegation that no steps were taken and no proper investigations into extra judicial killings were held does not hold water. Note at this stage may also pertinently be taken of an averment made in the Constitutional petition that after the completion of some of the judicial inquiries held into the allegations of extra judicial killings, 2000 police constables were sacked and 146 police officers proceeded against which averment has been sought to be controverted by the respondents with reference to a letter of DIG, Karachi dated 3-12-1996. Much reliance cannot be placed on this letter as it was procured after the 5th of November, 1996 and then its contents are not supported by any affidavit of the concerned officer and in any case, the statement made therein that "legal action in connection with extra judicial killings/custodial deaths was taken against Police Officers in 4 cases which are appended, Annexure A" stands belied by the aforenoted material placed on record by the respondents which shows that as many as 37 judicial inquiries were held in respect of cases in Karachi alone and as a result of the findings in those inquiries, penal/departmental action was recommended/taken against quite a good number of police personnel. It may also be pointed out that my brother Saleem Akhtar, J. in his judgment in the instant case has taken note of a list provided by the Government of Sindh regarding extra judicial killings of 3 persons in Hyderabad. In two cases, inquiry was stated to be pending while in the third case, the inquiry had been completed and a case registered against the police officials who have been charge-sheeted in the trial Court and the case against them is still pending. A report from Sukkur is also published in Daily Dawn, Lahore dated January 19, 1996 (copy supplied by the respondents) stating that the police had registered a case against 24 personnel of the Rangers for allegedly killing 4 innocent persons and injuring another 4 persons in police encounters. I also find force in the contention of the petitioner that in view of the principles of Federalism and Provincial autonomy enshrined in the Constitution, it was not legally available to the Federal Government to investigate into the incidents of extra judicial killings in the Province moreso when the Government of the Province was already moving in the matter as shown above. It is also significant to note that the claim of the petitioner that? with a view to ensuring peace in the city of Karachi, the Federal Government had entered into negotiations with MQM which gesture was appreciated by the President in his address to the Parliament on 29-10-1995 has not been seriously controverted by the respondents. For all these reasons, the Federal Government could not lawfully be held liable for any alleged lapse/omission on its part or for any lapse on the part of the Provincial Government of Sindh or for that matter any excesses committed by the law-enforcing agencies.

30. Presumably to justify his action of dissolving the National Assembly, the President has stated in the dissolution order that in his speech to the Parliament made on 29th October, 1995, he had warned that the law enforcing agencies must ensure that there is no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected.' It is really intriguing to note as to why in the backdrop of his assertion that thousands of persons had been killed in Karachi and other parts of Pakistan in Police encounters and Police custody, the President did not consider it appropriate to condemn this horrifying and reprehensible phenomena, the phenomena which he later described in the dissolution order as "the crime of extra-judicial killings ....an evil abhorrent to our Islamic faith and all canons of civilized Government", in a straightforward and forthright manner and in specific and categorical terms and chose to give only a warning to the law enforcing agencies and that too in a round about manner using phrases like 'harassment of innocent citizens' and protection of human and legal rights. In his said speech, the President in fact appreciated the efforts of the Government to restore law and order and to fight crime and terrorism. It may be of advantage to refer to the relevant portion of the President's speech of 29th October, 1995 which is reproduced hereunder:-

"3. Recognizing the gravity and depth of problems that have haunted Karachi for over a decade, the Government initiated discussions with the MQM to find ways to end the violence and resolve the issues. I want to assure you that the Government is sincerely and fully committed to finding a political solution, We are doing so in fulfilment of God's commandment that "The Believers are but a single Brotherhood; So make peace and reconciliation between your two (contending) brothers; And fear God that ye may receive mercy." But it should be equally well understood that the use of violence and terror to achieve political and economic objectives will not be tolerated. It is the responsibility of the Government to protect the life and property of its citizens. Violence and terror in Karachi have adversely affected business in the once thriving metropolis. I call upon all parties to renounce violence and together with the Government try to seek a political solution. The law enforcing agencies must also ensure that there is no harassment of innocent citizens in the fight against terrorism and that human and legal rights of all persons are duly protected. I hope the MQM leadership will fulfil the trust reposed in them by their supporters by resuming negotiations with the Government. Karachi is a national problem and I invite the Opposition to play a constructive role in resolving the same. "

The speech of the President speaks for itself. He has nowhere referred to the extra judicial killings muchless accused or Condemned the Government for such killings. On the contrary, he seems to appreciate the Government initiative to hold talks with the MQM to find ways to end the violence and resolve the issues and assures that the Government is sincerely and fully committed to finding a political solution. Speaking for the -Government, he warns the perpetrators of violence that the use of violence and terror to achieve political and economic objectives will not be tolerated. Even in his address of the previous year made to the joint session of the Parliament on 14th November, 1994, no reference at all was made to the extra judicial killings. In fact he made no mention at all of Karachi in that address and only generally observed that the problems of sectarianism and ethnicity were multi-dimensional which required a national debate and national consensus. Petitioner has also made a grievance and in my view rightly that the President did not address any letter to her or to the Interior Ministry complaining about the alleged extra judicial killings. It was contended by the learned counsel for the petitioner that the President being a part of Government machinery had been presiding over the meetings held in Karachi in conection with the law and order situation and he never took any exception to the alleged extra judicial killings nor complained of any violation of fundamental rights of the citizens to life and liberty by the petitioner and the Federal Government. On the other hand, he had been supporting the Government's policy to curb terrorism in Karachi and appreciating the Government's efforts to restore peace in Karachi. Petitioner has placed on record a story by a journalist (Mr. Amir Mir) published in the Daily News, Rawalpindi dated November 9, 1996 titled "Leghari's volte face on extra-judicial killings". The contents of this story on the factual plane have not been denied by the respondents and the only objection taken by them is that the story in question "is not a report, but a purported 'analysis' carried out by some journalist". The said story is quite revealing and makes a very interesting and instructive reading. It highlights the previous stance of the President on the Karachi situation by referring to his earlier statements/observations on the matter. It states "On several occasions, President Leghari presided over some high-level meetings in the State Guest House, Karachi to review the law and order situation. The President, however, maintained an unholy silence during his whole tenure.

"On November 2, 1994, delivering his concluding address at the twoday conference on 'Pakistani Financial Markets' at Karachi, President Leghari had observed, "the Government would deal with the trouble-makers with a firm hand and will take stringent action against all the sectarian, ethnic and linguistic parties to improve the law and order situation in Karachi. The Government has decided to crush violence with an iron fist in Karachi and there is going to be no let-up" (The Nation report, November 3, 1994).

"On December 17, 1994, President Farooq Leghari had observed in Karachi, 'the performance of Karachi police had improved a lot and let us hope it continues to do so' (The News report, December 18, 1994). Leghari also apprised reporters of the plan which aimed at restoring peace in Karachi in the same report, 'the police department has been further strengthened and I hope that with the latest steps, the police would be better placed to confront terrorists in Karachi".

"On March 29, 1995, President' Farooq Leghari directed the Sindh Government to 'further beef up the police force and come down with a heavy hand on the criminals and terrorists responsible for violence and terrorism in Karachi". He gave these directives during a briefing given to him by the Sindh Chief Minister Syed Abdullah Shah about the law and order situation in Karachi." (The News report, March 30, 1995).

"A month later, on May 30, 1995, while talking to a delegation of the Islamabad Foreign Correspondents Association, Leghari had observed at Aiwane Sadar, 'we have proofs that India, Mohajir Qaumi Movement and Murtaza Bhutto are conniving in aggravating the unrest in Karachi." (The Nation report).

"In an interview with Okaz Saudi Gazette on May 13, 1996, at Madina after performing Haj, President Leghari had maintained, 'some groups in Karachi developed terrorists units thinking they could achieve their goals through violent acts. No Pakistani could allow this. Terrorism in Karachi has existed for more than a decade now and, by the grace of God, in the last six months, it has come down drastically. The people of Karachi now feel much happier." (The Nation report, May 14, 1996). "

The aforenoted statements/observations of the. President quite clearly show that he had been presiding over the meetings held in connection with the law and order situation in Karachi and fully shared the Government perception regarding the situation in Karachi. He was completely satisfied with the steps taken to improve the situation in Karachi and in a briefing given to him by Sindh Chief Minister, he gave directions to Sindh Government to further strengthen the police force and deal with a heavy hand with 'the criminals and terrorists responsible for violence and terrorism in Karachi'. It is significant that as late as May, 1996, he in his interview with a Saudi paper blamed some groups in Karachi for violent acts and terrorist activities and reiterated his view that terrorism in Karachi has existed for over a decade and pointed out that during the last six months, it has come down drastically and 'The people of Karachi now feel much happier'. It may pertinently be observed that until 5th of November, 1996, the President never talked of extra-judicial killings in Karachi.
Reference at this stage may also pertinently be made to the speech delivered by Governor Sindh (Mr, Kamal-uddin Azfar) at the National Defence College on 12th September, 1996 and an Article written by him in the daily News dated 6-10-1996 on Karachi: Problems and Prospects to which our attention was particularly drawn by the learned counsel for the petitioner. In his speech at the National Defence College, the Governor traced the history of political turmoil and violence in Karachi and blamed the MQM (which was formed in August, 1986) for introducing violence in politics in Karachi and stated 'For a whole decade between 1985 and 1995 Karachi was caught in the grip of violence'. After the General Elections of 1990, however, the MQM was made a coalition partner in the Government ushering in a brief interlude of peace but soon thereafter, "the situation worsened and most part of Karachi became hostage in the hands of MQM militants. Extortion, elimination of political rivals and exploitation by militant elements of the MQM became the order of the day. In order to check the situation from going further adrift "Operation Clean UP" was launched by the army in Karachi on June 19, 1992 on the invitation of the then Prime Minister Mian Nawaz Sharif. The immediate reaction to the crack down was that the entire MQM leadership went underground. Altaf Hussain sought asylum in the U.K. The militant activities temporarily dropped to a low key. However, with the passage of time terrorist activities increased. Inter factional clashes between MQM(A) and the splinter MQM Haqiqi and attacks on law enforcement agencies gained momentum.' It was further observed by the Governor that the MQM(A) launched a bitter propaganda campaign against the Pakistan Army and by drawing a parallel between the Indian occupied. Kashmir and Karachi "Charged the Army and Police of extra judicial killings and repression of Mohajirs". It was stated that in September, 1994, Government reviewed the situation and decided to wind up Operation Clean-Up as it was one of the main demands of MQM(A). "The. army withdrew in November, 1994 but there was no change in the MQM(A) stance. The MQM(A) accelerated its terrorist activities and subversive propaganda while MQM(A) militants continued to paralyse civic life in Karachi. The Sindh Government decided to initiate a process of dialogue. This step, however, had no effect on the M.Q.M(A) strategy and M.Q.M(A) sponsored terrorism continued unabated".

Speaking about the present situation in Karachi the Governor stated that since middle of the year 1995 (when he took over as Governor Sindh), "there is a sea change. The law and order situation in whole of the Sindh Province particularly in Karachi is well under control and has shown a tremendous improvement since August, 1995". It was further pointed out by the Governor in his speech that the number of killings of citizens and members of law enforcing agencies has been brought down from 276 during the month of June, 1995 to only 4 during the month of June, 1996. It was further stated that as against 37 policemen killed in Karachi in June, 1995, "the figure for June, 1996 is Zero". The speech of the Governor was accompanied by 3 charts (Annexures C, D & E) giving month-wise figures of the persons killed during the years 1994, 1995 and 1996 respectively to show the improvement in the law and order situation and considerable reduction in the killings. It was shown in these charts that 817 persons were killed during the year 1994 which number increased to 1742 in the year 1995 but was reduced to only 141 from January to June, 1996. The persons killed during the year 1994 included 113 (MQM-A), 81 (MQM-H), 47 (Shia), 67 (Sunni), 76 (Police), 7 (Rangers), 5 (Army) and 420 others. The number of the persons killed during the year 1995 included 96 (MQM-A), 101 (MQM-H), 57 (Shia), 41 (Sunni), 175 (Police), 13 (Rangers), 11 (Army) and 1248 others. The chart Annexure 'E' relating to the period January to June 30, 1996, however, shows that no one from MQM(A) was killed during this period, 9 persons of MQM(H), 17 persons from Police, 3 from Rangers and 2 from Army were killed during these 6 months. According to the Chart Annexure ' E' , in the month of June, 1996 no one was killed from MQM(A), MQM(H), Police, Rangers and the Army. Only one person of Shia sect and 4 others were killed in the month of June, 1996. Similar situation was depicted by the Governor in his Article published in the Daily News of 6-10-1996 stating therein that "City life has returned to normal, socio - cultural activities are on the increase, a construction boom is visible. The general public is cooperating with police. Collection of Bhatta has been stopped. The people who earlier left Karachi

are coming back. five star hotels are booked to their full occupancy". It was further stated by the Governor "The number of killings has been brought down from 276 during the month of June, 1995 to only four during the month of June 1996. The statistics of killings in 1994 shows that the number killed was 817, while army operation was still continuing. This reached its peak in 1995 after the army operation was withdrawn and the number of killed was 1742 which included the death of 175 policemen, 13 Rangers and 11 Army personnel. There has been a remarkable decline in the number of killings. Until August this year 158 were killed, out of which 2 are from Armed Forces, 3 Rangers and 23 Policemen. Thus, there has been a 90 per cent. decline in the number of killings in Karachi from 1742 in 1995 to 158 in 1996".

Relying upon the aforereferred speech of Governor Sindh and the Article written by him in the Daily News, it was argued by the learned counsel for the petitioner that the viewpoint canvassed by the Governor and the position stated by him was wholly incompatible with the President's opinion/perception projected in the dissolution order. Learned counsel' vehemently contended that if the President was genuine in his belief regarding the charge of extra judicial killings, he should at least not have retained Mr. Azfar as his Governor. I quite agree with the learned counsel for the petitioner that the Governor's analysis and assessment of Karachi situation was at variance with the observations of the President in the dissolution order regarding the extra judicial killings. In my view, if the assessment of the Governor about the Karachi situation, past and present, is to be accepted as correct, it coupled with the President's own previous stance highlighted in the 'story' published in the daily News dated 9-11-1996, would seriously reflect upon the validity of the ground of extra judicial killings as set up in the dissolution order. It may pertinently be observed that as per the figures given in the Charts appended with the speech of the Governor, correctness whereof has not been disputed by the respondents, as many as 309 personnel of the law enforcing agencies (Pakistan Army, Rangers and Police) were also killed during the last 3 years. Question arises whether their deaths too were the result of extra-judicial killings? Going by what the Governor Sindh had stated in his speech and the Article in the Daily News, the situation in Karachi was brought under control and it was so stated even by the President himself when giving an interview to a Saudi Newspaper in May, 1996. It is also borne out from the Charts annexed with the aforementioned speech of the Governor that there had been remarkable decline in the number of killings in the year 1996 so much so that in the month of June, 1996, no one was killed from any faction of MQM or from Police, Rangers or the Army. That being so, it was incorrectly observed in the dissolution order that despite the President's warning/advice to the law enforcing agencies in his speech to the Parliament on 29th October, 1995, "The killings continued unabated". In the circumstances, reliance by the President on the ground of extra judicial killings was wholly unwarranted. It appears that the President sought to press into service the ground of extra judicial killings when the killings had almost ceased to exist in Karachi and this ground was no more available. Needless to observe that the provision of Article 58(2)(b) is curative in nature and may be preventive at the most but certainly not punitive.

31. Learned counsel for the petitioner also sought to contend that the charge of extra-judicial killings essentially relates to law and order problem which is the responsibility of the Provincial Government and, therefore, the said charge could not be made a basis for dissolving the National Assembly. In support of his contention, learned counsel relied upon the cases of (1) Haji Muhammad Saifullah Khan (PLD 1989 SC 166) and (2) Ahmed Tariq Rahim PLD 1992 SC 646. In reply to this contention, learned counsel for the respondents submitted that the entire Karachi operation during which extra judicial killings took place was controlled by the Federal Government. It had deployed Pakistan Rangers, a force under direct control of the Federal Government, in Karachi and entrusted to it the duties/functions and powers of Police. Reliance was also placed on Article 148(3) of the Constitution to contend that it is the duty of the Federal Government to ensure that the Government of the Province is carried on in accordance with law and the provisions of the Constitution which duty, it was submitted, the petitioner and her Government failed to perform. It is true that the Federal Government had deployed Pakistan Rangers in Karachi and conferred on every member of this force the powers and duties of police officer but as noted above, this was done at the request of the Government of the Province of Sindh to assist the civil powers in maintenance of law and order, public peace and security and for protection of life and property of the citizens. Federal Government was in fact under a duty imposed on it by Constitution (Article 148(3) and section 131-A, Cr.P.C. to protect every Province against internal disturbances and to offer/render assistance to the Provincial Government as and when sought by the latter for maintenance of law and order and public peace etc. Problem of law and order nonetheless essentially and ultimately remains the responsibility of the Provincial Government. Learned counsel for the petitioner was, therefore, right in contending that the extra-judicial killings could not form a valid basis for dissolving the National Assembly. It may be stated that breakdown of law and order was one of the grounds for dissolution of National Assembly in the case of Haji Muhammad Saifullah (supra). While dealing with this ground, it was observed by this Court "The second reason given is that 'the law and order in the country have broken down to an alarming extent resulting in tragic loss of innumerable valuable lives as well as loss of property'. It has been attended to in the judgment of the High Court. The learned Chief Justice observed "Firstly, law and order problem is to be tackled under the Constitution by emergency powers provided under Part X. Secondly, the law and order problem is perennial. Only in one Province it was rather serious. Rest of the country was normal". Another learned Judge (Rustam S. Sidhwa, J.) observed that "Grounds (ii) and (iii) relate to law and order, which is a Provincial subject. The National Assembly has no power to legislate on it". These grounds are also extraneous to the conditions laid down in sub-clause (b)". Again in the case of Ahmed Tariq Rahim, Sajjad Ali Shah, J. (as he then was) held in paras.28 and 29 of his dissenting opinion "Ground (d) in the order of dissolution is that the Federal Government had failed in its duty under Article 148(3) of the Constitution to protect Province of Sindh against internal disturbances despite heavy loss of life and property. In this respect, stand taken on behalf of the petitioner is that matter relating to law and order situation in the Province was responsibility of the Province as enshrined in the Constitution . ... In order to solve the problem of law and order in the Province of Sindh it was not necessary to dissolve the National Assembly and all other Provincial Assemblies and dismiss the Governments at Centre and in Provinces. This problem could have been sorted out within the four corners of the Constitution and laws firstly by the Provincial Government, failing which by the Federal Government, which has been allowed several options in the Constitution". The view taken and the observations made in the aforereferred two cases equally apply to the instant case.

Upshot of the above discussion is that the ground of extra judicial killings was neither legally nor factually available to the President for exercise of power under Article 58(2)(b) of the Constitution. In fact, the President having remained actively associated with the Government policies regarding the situation in Karachi for a period of three years and having all along applauded and appreciated the policies of the Government and the steps taken by it to combat terrorism and violence in Karachi was precluded from pressing this ground into service for dissolving the National Assembly.

32. The second ground of dissolution of the National Assembly relates to the murder of petitioner's brother Mir Murtaza Bhutto and seven of his companions. This ground has been set forth in detail in the beginning of this judgment. Main allegation was that the petitioner appeared on Television insinuating that the Presidency and other agencies of the State were involved in the conspiracy of Mir Murtaza Bhutto's murder which insinuation, it was complained, undermined the institution of the Presidency and caused damage to the reputation of the agencies entrusted with the sacred duty of defending Pakistan i.e. Armed Forces. It was also alleged in this ground that the widow of Mir Murtaza Bhutto and the friends and supporters of the deceased have accused Ministers of Government including the petitioner's spouse, the Chief Minister Sindh, the Director of Intelligence Bureau and other high officials of involvement in the conspiracy of the said murder. It was claimed that in such a situation where powerful Members of the Federal and Provincial Government were accused of the crime, justice could not be ensured. While dealing with this ground in her Constitutional petition, the petitioner denied, inter alia, that she had implicated the Armed Forces in the conspiracy of the said murder. It was also pleaded that "such an allegation relating to the statement of Mrs. Nuzhat Asif Nawaz, widow of no less a person than the Chief of Army Staff, was not, taken to be relatable to an order under Article 58(2)(b) by this Hon'ble Court in the case of Muhammad Nawaz Sharif PLD 1993 SC 473. How can it be held valid now, and in respect of the petitioner?"

In the short order passed by the majority, no finding has been given on this ground for the reason that the matter is sub judice before an Inquiry Tribunal headed by a learned Judge of this Court and also because F.I.Rs. have been filed which are being investigated into in accordance with law. I respectfully share this view and do not consider it appropriate to record any finding on merits of the allegations made in this ground. However, I would like to observe that the allegations as made in this ground bear no nexus with the preconditions prescribed in Article 58(2)(b) and as such this ground could not form a valid basis for dissolution of the National Assembly.

33. The third ground of dissolution is relatable to the judgment of this Court dated 20th March, 1996 delivered in what is commonly known as the 'Appointment of Judges' case. It is alleged in the dissolution order that the petitioner ridiculed the said judgment in her speech in the National Assembly and that the implementation of this judgment was resisted and deliberately delayed in violation of Constitutional mandate requiring all Executive and Judicial Authorities to act in aid of the Supreme Court. It is further stated in the dissolution order that the directions in the said judgment with regard to regularization and removal of the Judges of the High Courts were finally implemented on 30th September, 1996 with a deliberate delay of six months and ten days and that too after the President informed the petitioner that if she did not implement the judgment by the end of September, 1996, he would himself proceed further in the matter to fulfil the Constitutional requirement. It was accordingly said in' the dissolution order that in so doing, the Government not only violated Article 190 of the Constitution but also sought to undermine the independence of the judiciary guaranteed by Article 2A of the Constitution. Petitioner has denied the allegation of ridiculing the judgment and submitted that "Whatever she said was fair comment on the judgment". Her further plea is that "a speech by a Prime Minister in a forum that has elected her and the President, and that is representative and sovereign, cannot form the basis of the Dissolution of the entire Assembly. The speech of any one person cannot form the basis of the packing up of all the members, regardless of what is said. Otherwise no House would survive". According to the petitioner, the speeches in the Parliament are a matter of internal proceedings of the House which are Constitutionally protected and no complaint or grievance can be made with respect thereto. She has pleaded that if the learned Judges themselves were broad-minded enough not to take any action on any statement made by her, how could the President do so?

Petitioner has also denied the allegation of resisting or delaying the implementation of the judgment and submitted that concrete steps were taken by her Government to implement the judgment. A list of such steps is furnished in the Constitutional petition at PP 18 -19. According to the petitioner, first steps towards implementation were taken as early as 28-3-1996 and the process of regularization was initiated within thirty days of the appointment of permanent Chief Justices of High Courts. Plea of the petitioner is that the delay, if any, occurred because the Government had filed the Review Petitions to seek clarifications on some important points in the judgment and then the views of the Governors who were Constitutional Consultees had also to be obtained. The Governors, it is stated, were advised by the Law Ministry on or about 10-7-1996 to expedite their consideration but they took time in examining the cases of the affected Judges with respect to the allegations/insinuations of corruption and the number of years of legal practice of some of them. Thus the delay was neither intended nor deliberate. Petitioner has contended that neither she nor any of her Ministers ever said that they would not implement the judgment. Petitioner has further contended that the judgment had already been admittedly implemented and in any case, the delay, if any, in implementation of the judgment was hardly a valid and sufficient ground for dissolving the National Assembly.

The respondents in their written statement have controverted the averments made by the petitioner in her Constitutional petition and have asserted, inter alia, that the petitioner deliberately delayed implementation of the judgment by resorting to the steps like filing the Reference and the Review Petitions on frivolous grounds and she did not move in the matter until the President told her that if her Government took no action, he would be obliged to take the necessary steps for implementation of the judgment. According to the respondents, it was only with the greatest reluctance that the judgment was finally implemented and that too was done incompletely. The respondents also disputed the petitioner's plea that her speech in the National Assembly was only a fair comment on the judgment in the Judges' case and submitted that the speech "was contumacious both in content and intent". It was asserted by the respondents that what the petitioner said in her speech was neither "fair" nor a "comment" but "was a deliberate attack on the Judiciary". In para. 133 of the written statement, it is stated that "the petitioner's speech amounted to a gross attack on this Hon'ble Court". Reference in the written statement was also made to the petitioner's address to the Jacobabad and Nasirabad Bar Associations on 4-1-1996 as also to some press-reports quoting the petitioner's remarks/observations about the judiciary. The respondents also sought to contend in the written statement that notwithstanding the conclusions/directions recorded in the judgment in the Judges case, the vacancies were not filled in this Court as also in all the High Courts and two Additional Judges (who were dropped) one in the Lahore High Court and the other in the Sindh High Court were not confirmed in terms of the judgment in the Judges' case.

Learned counsel for the petitioner contended that do the President's own showing, the judgment in question stood finally implemented on 30th of September, 1996 and argued that in view of this admitted position, there could be no deadlock, breakdown or jam in the functioning of the Government on or after September 30, 1996 assuming that there was any such deadlock or stalemate before that date owing to the non-implementation of the judgment. That being so, it was argued by the learned counsel

that in view of the law consistently declared by this Court, there was no valid basis or justification for invoking Article 58(2)(b) of the Constitution on 5th of November, 1996. It was pointed out by the learned counsel that the respondents sought to set up a new case in the written statement by contending that the judgment was only partially implemented. This was contrary to what has been said in the dissolution order. With respect to the accusation of ridiculing the judgment of this Court, learned counsel submitted that this charge was belied by the tenor of the petitioner's speech. To support his submission, learned counsel particularly referred to the following passages from the petitioner's speech:-

"We did not wish to see majesty and awe of the judiciary undermined by ridicule and crude behaviour, witnessed since the passing of this short order. "

We concede that the judiciary can interpret the Constitution

We will do what the Supreme Court decides, because that is the proper body to adjudicate such matters."

Learned counsel submitted that the petitioner's speech complained of gave only a critical analysis of the judgment with reference to various provisions of the Constitution which does not amount to ridiculing it and in any case, the charge of ridiculing the judgment or the judiciary does not justify the dissolution of the Legislative Assembly. Learned counsel relied upon the observation of Sidhwa, J. in the case of Ahmed Tariq Rahim PLD 1992 SC 646 at page 704) to contend that such a charge cannot form a valid basis for dissolution of the Assembly and resort could more appropriately be had to Articles 62 and 63 of the Constitution which no one chose to invoke. Learned counsel also submitted that the dignity of the Courts, as observed by Lord Denning in a contempt matter, rests on surer grounds and cannot be impaired by any derogatory remarks. It was finally submitted by the learned counsel for the petitioner that the charges of ridiculing and non-implementation of the judgment of this Court and of sustained assault on the judicial organ of the State (contained in the ground next following) were made by the President probably to influence this Hon'ble Court.

Learned counsel for the respondents, submitted a Chart (Part-V) highlighting therein the material in support of the third ground described in the Chart as "FAILURE TO IMPLEMENT DECISION IN THE JUDGES' CASE AND RIDICULING OF JUDICIARY". It may be stated that the dissolution order accused the petitioner of ridiculing the judgment of this Court dated 20th March, 1996 and not the judiciary as an institution and similarly, the allegation in the dissolution order was not one of failure to implement the judgment in question but of deliberate delay in its implementation. That being so, most of the material produced by the respondents and highlighted in the Chart Part-V to prove the charges visualized in the said chart may not be strictly relevant for proving the ground as stated in the dissolution order. Be that as it may, since it is an admitted position that the judgment was finally implemented on 30th September, 1996, learned counsel for the petitioner was right in contending that there was no deadlock or impasse after the 30th of September, 1996 on account of non-implementation of the judgment and, therefore, there was no justification for dissolving the National Assembly in exercise of powers under Article 58(2)(b) on November 5, 1996 on the ground of deliberate delay in the implementation of the judgment. Needless to observe that the provision invoked by the President was not intended to be punitive and the power conferred thereunder could not be exercised to punish the Prime Minister and/or his/her Government for any alleged past acts of omission or commission or for any violation of some Constitutional provisions allegedly committed in the past. It also need be observed before parting with this aspect of the charge that on the facts stated in the Constitutional Petition particularly the steps said to have been taken by the Government towards the implementation of the judgment as manifested in the list furnished in the Petition at PP 18 - 19 which have not been seriously controverted and the explanation offered for further delay which I consider to be quite valid, cogent and reasonable in the circumstances of the case, there does not appear to be much substance in the charge that the implementation of the judgment in question was resisted or deliberately delayed. It may pertinently be noted at this stage that Mr. Khalid Anwar, learned counsel for the respondents during the course of his submissions stated that the President has informed him that after the petitioner had signed the files relating to the implementation of the judgment, he was satisfied but after the Bill (Constitution (Fifteenth Amendment) Act, 1996) was approved by the Cabinet, he took the view that the petitioner was all out to humiliate the judiciary. This statement of the learned counsel (stated to be on instructions) also tends to support the view that the ground relating to non-implementation of the judgment was not really available to the President after the judgment was finally implemented on 30th September, 1996. As regards the charge against the petitioner of ridiculing the judgment of this Court, suffice it to observe, without entering into the controversy as to whether the speech of the petitioner was a 'fair comment' on the judgment or it was contumacious (as alleged by the respondents), that this charge too has no nexus with the preconditions specified in Article 58 (2) (b). It could not have been in the dreams of the law-makers that by using this provision, the whole Assembly shall be packed off for a speech, howsoever objectionable, delivered by one individual, be he/she the Prime Minister. In the case of Ahmad Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646, one of the grounds of dissolution of the Assembly was that "The Superior Judiciary has been publicly ridiculed and its integrity attacked and attempts made to impair its independence". This allegation, it may be stated, was based on a very severe criticism of Judges of superior Courts and of the judgment delivered in the case of Mr. Zulfiqar Ali Bhutto which judgment, it is stated, was described as dishonest. It was, however, held by two of the learned Judges in their separate notes that the ground aforementioned does not justify the dissolution of the Assemblies. It was observed by Rustam S. Sidhwa, J. that it was not the first time that those at the helm of power have demeaned the status of the Superior, Judiciary or its members but they ignored the matter in keeping with their dignity and grace. It was further held that "such actions and remarks do not justify the dissolution of the Legislatures. The remedy is with the voters whether to support or avoid such a candidate. What lies in the field of electorate, must be reserved to them. Such power must not be usurped by others". Sajjad Ali Shah, J. (as he then was) with reference to the aforenoted ground as also some other grounds like undermining the civil services of Pakistan and misuse of statutory corporations and banks etc, held that these grounds "not only independently but collectively also are not sufficient to justify dissolution of Assemblies for the reasons stated above. These grounds do not fulfil and satisfy criteria laid down in the case of Haji Saifullah Khan (supra), requiring that discretion conferred by' Article 58(2)(b) of the Constitution on the President cannot be regarded to be l absolute but is deemed to be qualified one in the sense that it is circumscribed by the object of law that confers it. Further obligation is cast on the President that before exercising his discretion he has to form his "opinion" that a situation has arisen which necessitates grave step of dissolving the National Assembly. Within the framework of the Constitution several other remedial measures were available in the Constitution which could have been taken instead of resort to the dissolution of assemblies". Reference may also usefully be made to the case of Khalid Malik v. Federation of Pakistan (PLD 1991 Karachi 1) wherein it was held by Mamoon Kazi, J. (as he then was) that the

allegations in respect of the Superior Judiciary appear to have no nexus with the prerequisites for exercise of power under Article 58(2)(b). With respect to the criticism of the judgment, it was observed by the learned Judge that the superior judiciary can itself take notice of such contempt, if any, and if no notice was taken by the judiciary itself, the same would again not call for the dissolution of the Assembly under Article 58(2)(b)."

In the aforesaid view of the matter, I hold that the ground of ridiculing the judgment and its non-implementation/deliberate delay in its implementation was not available to the President for taking the drastic action of dissolving the National Assembly. Needless to observe that before taking the impugned action, the President does not appear to have taken into consideration the fact that no proceedings in contempt or for disqualification under Article 63 of the Constitution were taken for the alleged actions which he was making the basis of a far more severer action and whether in such circumstances his action of dissolving the National Assembly was at all justified.

34. Fourth ground mentioned in the dissolution order relates to the Constitution (Fifteenth Amendment) Bill, 1996 moved in the Parliament for

prevention of corrupt practices. The dissolution order states that this Bill was an assault on the judicial organ of the State and an attempt to destroy the independence of the judiciary as it proposed that on a motion moved by any 32 members of the National Assembly, a Judge of the Supreme Court or High Court could be sent on forced leave and thereafter, if on a reference made by the Special Committee proposed in the Bill, Special Prosecutor appointed by such committee formed the opinion that the Judge was, prima facie, guilty of misconduct, the matter would be referred to the National Assembly which could remove the Judge from office by passing a vote of no-confidence. It was further said that the Government did not have a 2/3 majority in the Parliament and the opposition was openly and vehemently opposing the Bill. In the circumstances, Government's persistence with the Bill was designed only to embarrass and humiliate the superior judiciary and also to frustrate .and set at naught the efforts made and initiative taken by the President to combat corruption and to commence the accountability process. A grievance was also made in the dissolution order that the Bill was approved by the Cabinet and introduced in the National Assembly without informing the President as required under Article 46(c) of the Constitution. (Relevant provision is clause (a) of Article 46 and not clause (c)).
Learned counsel for the petitioner contended that the mere fact that a Bill was approved by the Cabinet and moved in the National Assembly could not form a valid basis for dissolving the National Assembly. As regards the provisions in the Bill to which exception has been taken in the dissolution order, learned counsel submitted that the Bill was only a proposed legislation, it had yet to pass through many stages in the two Houses of the Parliament and their committees where all its provisions would be thoroughly debated and considered. There was thus enough room for rectification/improvement of the proposed provisions. Learned counsel referred to the record of the proceedings of the Senate and pointed to the following portion of the statement of the Raza Rabbani, the Minister for State for Law and Parliamentary Affairs:--

"We have also at this stage tried to cover the eventuality that would flow as a consequence of this Bill. I do not at this stage state that the Bill is all encompassing. Yes, there can be certain lacunas, there can be room for improvement in the Bill and as it was said by the Prime Minister while introducing the Bill on the floor of the National Assembly that we are willing to sit down and discuss with the Opposition or with the Independent group or with anybody else who feel that they can make a positive contribution in making this piece of legislation better."

Learned counsel also relied upon the following observations in the case of Muhammad Nawaz Sharif v. Federation of Pakistan PLD 1993 SC 473 at page 628 to canvass the point that grievance cannot legitimately be made in respect of matters which are still under consideration of the appropriate authority/body where rectification are possible:--

"Even if omissions have taken place while the matter is under active consideration, the scope for appropriate rectification, consensus and resolution is still there. It is normal feature of the functioning of the Government that a preliminary exercise is undertaken by experts before a matter is taken up for final decision to the Constitutional body established for the purpose. Wherever rectification are possible and the action is not yet finalized, the more appropriate course is to proceed about? it constitutionally, ?to associate in the on-going exercise and assist in?? final ?decision making. It is not the grievance made which is decisive of ? constitutionality of the action but the final decision yet to follow

Learned counsel also referred to the observations of Saad Saood Jan, J. in the case of Muhammad Nawaz Sharif (supra) made in the context of the contention of the learned Attorney-General that the Government of the petitioner therein was negotiating an agreement with a Foreign Firm which will not only compromise the defence of the country but also hand over an organization in which Pakistan had vital interest to a Foreign Company Repelling this contention, the learned Judge observed:--

"It does not appear that the agreement has yet been finalised and there can be little doubt that the matter will come before the Parliament for enacting the requisite law to give effect to the provisions thereof. However, that may be, it cannot reasonably be said on the basis of the agreement which has yet to be finalised that the petitioner's Government cannot function in accordance with the Constitution."

It was further contended by the learned counsel for the petitioner that legislation is the personal domain of the Legislature. If it passes a Bill in accordance with law, the President has to assent to it even if he disagrees with it. He can at the most return the Bill to the Parliament under Article 75 of the Constitution and if after reconsideration, the Bill is again passed with or without amendment, by the Parliament, the President is bound to give his assent to it. He cannot object to the moving of a Bill in the Assembly on any ground and in any case, he cannot take any punitive action like dissolving the National Assembly if he disapproves of the Bill. Learned counsel also sought to contend that the charge of frustrating and setting at naught the efforts made and the initiative taken by the President to combat corruption shows that the President was personally offended at the moving of the Bill in question. It was submitted by the learned counsel that in the context of the Parliamentary system of Government envisaged in our Constitution, the National Assembly is not required to follow the Agenda of the President. Learned counsel relied upon Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 166 wherein it was held at page 214 "National Assembly has a

Charter of its own, an existence distinct and separate, and its utility, efficacy, representative character, success or failure could be judged not by any test or opinion outside the provisions of the Constitution but by reference to the provisions of the Constitution itself. Therefore, we are unable to endorse the view of the learned Attorney-General that the National Assembly had to earn its existence and continuance by maintaining such a pace and progress on the question of Islamization as could satisfy the late President". With reference to the objection in the dissolution order that even though the Government did not have two-third majority in the Parliament, it persisted with the Constitutional Amendment Bill with ulterior motives, learned counsel submitted that the Bill was moved in the hope that in view of the national demand for accountability, consensus would develop in the House. It was also pointed out by the learned counsel that even the message sent by the President asking for amendment of P.O. 1 of 1983 and the Accountability Bill moved by the opposition required amendments in the Constitution. As regards the complaint in the dissolution order that the Bill was approved by the Cabinet and introduced in the National Assembly without informing the President, learned counsel for the petitioner submitted that Article 46(a) (which was the relevant provision and not Article 46(c) erroneously mentioned in the dissolution order) no doubt required the Prime Minister to communicate to the President all decisions of the Cabinet relating t6 the administration of the affairs of the Federation and proposals for legislation but under the Rules of Business, this duty was assigned to the Cabinet Secretariat. It was contended that failure to communicate to the President the approval of the Cabinet for the Bill in question was a lapse on the part of the Cabinet Secretariat for which the Cabinet Secretary was admonished in the very next Cabinet meeting. It was also argued by the learned counsel that this was an unintentional lapse which could not be trade the basis for the dissolution of the National Assembly. It was also pointed out that the grievance of the President appeared to be that the Bill before being placed before the Cabinet was not communicated to him. According to the learned counsel, this was not the requirement of Article 46(a) which mandated to communicate only the Cabinet decisions to the President.

Learned counsel for the respondents referred to various provisions of the Bill aforementioned as also to the Statement of Objects and Reasons and submitted that the Bill in question was intended to harass the superior judiciary and to keep them under a constant threat of being suspended on a motion of only thirty-two members of the National Assembly. Learned counsel also referred to the petitioner's speech in the National Assembly on Judges' case and her address to Jacobabad and Nasirabad Bar Associations as also to the speech of Mr. Raza Rabbani in the Senate on October 22, 1996 and submitted that these speeches demonstrated an attitude of disrespect for the judiciary. Reference was also made by the learned counsel to the proceedings of a Parliamentary party meeting of P.P.P. and its allied parties reported in the Daily Nation, Lahore dated 25-3-1996 wherein with reference to the Supreme Court verdict on appointment of Judges, it was suggested by an MNA from Lahore to institute treason cases against the Judges. Argument of the learned counsel, of course, was that the Bill in question was a step in continuation of a sustained attack on the judiciary and to curb and destroy its independence.

I have given my anxious consideration to the submissions of the learned counsel for the parties with reference to their pleadings and the relevant provisions of the Bill in question. Clause 15 of the Bill proposed the impeachment of the Judges of superior Courts in the manner mentioned therein and it appears that the allegations made in the dissolution order were based on the procedure proposed in the said clause. It is so manifest from the averments made in the written statement. It may be stated that in reply to the petitioner's averment in her Constitutional petition that where Parliamentary systems prevail, "there are such procedures in practice, as in India for instance", respondents have stated in para. 174 of their written statement that "In no system of democracy do a tiny majority of legislators have the right to send a Judge packing and nor does the power to remove Judges vest in only one House (when there are two legislative Chambers)." The respondents then referred to Article 124(4) of the Indian Constitution which lays down the procedure for impeachment/removal from office of a Judge of the Supreme Court and, it is stated that, the same procedure is applicable for the removal of High Court Judges. Article 124(4) of the Indian Constitution lays down that "A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of' the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity". Respondents have explained that majorities required under the Indian Constitution for removal of a Judge are the same as are required for the amendment of the Constitution and in fact, the procedure for removal of a Judge is even more stringent and they have suggested that the Bill in question too ought to have provided the same procedure for removal of a Judge as is laid down for amending the Constitution. Now the Bill only contained proposals and the matter was still under consideration in the Legislature. The Bill hail to pass through many stages in the two Houses of the Parliament and their committees where all the proposed provisions would have been thoroughly considered, debated and discussed and their implications examined. Petitioner or her Government was in no position to bulldoze the Bill as they admittedly did not have two-third majority in the Parliament requisite for carrying the Constitutional amendment. This crucial fact was known to every body in the country and it has been even taken note of in the dissolution order. It has also been noted in the dissolution order that the opposition was vehemently opposed to the proposed Bill. In the circumstances, there was no possibility whatever of the Bill being passed in its present form. It would either have been rejected outright or its provisions objected to in the dissolution order may have been rectified and improved. Such an eventuality was, however not allowed to come about and the President, it appears, sought to utilize the Bill for drawing the impugned inferences. This, to say the least, was not quite fair and I am constrained to hold that in the facts and circumstances of the case, the allegations made by the President in the dissolution order regarding the impact of the Bill on the judiciary were wholly misconceived. I also quite agree with the learned counsel for the petitioner that mere moving of a Bill in the Assembly cannot be made a ground for dissolving the National Assembly under Article 58(2)(b) of the Constitution. If the National Assembly which is the highest elected/representative body in the country is allowed to be dissolved on the premises that a Bill was moved therein which the President disapproved, then there will be no end to it and no Assembly will be able to survive. Such a course of action is in fact a negation and gross violation of the Constitutional Scheme. The Government can move any bill, howsoever objectionable it may be in the perception of the President and it is for the Parliament to adopt or reject it. If it passes such a bill with or without amendments, it becomes a law after it receives the assent of the President who can, of course, withhold it but only once and return the bill to the Parliament under Article 75 of the Constitution with a message requesting that the Bill or any specified provision thereof be reconsidered and that any amendment specified in the message be considered. If the Parliament again passes the Bill in accordance with the procedure laid down in clause (2) of Article 75, the President cannot withhold his assent and on his assenting to the Bill, it becomes law. Viewed in this light, the impugned Presidential action amounts to pre-empting/nullifying the legislative functions/powers of the Parliament which is violation of the Constitutional mandate and scheme. Needless to observe that even if the impugned bill had ultimately been carried and Constitution amended accordingly, the same could possibly be assailed before and examined by the superior Courts.

Apart from what has been said above, the allegations made in this ground have no nexus whatever with the pre-conditions mentioned in Article 58(2)(b). Similarly, any lapse/omission in following the, provision of Article 46(a) can also not be made basis for dissolving the National Assembly. In the case of Muhammad Nawaz Sharif (supra), it was held by this Court that an unintentional lapse on the part of the Government can hardly lead to the conclusion that a stage had come where the Government of the Federation could not be carried on in accordance with the provisions of the Constitution. Thus; viewed from whatever angle, the ground relating to the moving of Constitution (Fifteenth Amendment) Bill, 1996 as set up in the dissolution order was wholly misconceived and could not have been made a basis for dissolving the National Assembly.

35. I now take up the fifth ground of dissolution which relates to the separation of Judiciary from the Executive. Precise allegation made in the dissolution order is that the judiciary has still not been fully separated from the executive in violation of Article 175(3) of the Constitution and deadline fixed by Supreme Court of Pakistan. Learned counsel for the petitioner rebutted this ground by contending that the learned Chief Justice of Pakistan had observed in the case of Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324, that the Judiciary stands separated from the Executive. Relevant observations at page 403 of the Report are quoted hereunder in extenso:-

"In the judgment of this Court further guidelines have been provided for financial independence of the Judiciary. The cut off date given by this Court was 23rd March, 1994. Later the review petitions were filed by the Federal and the Provincial Governments for extension of time, which was extended up to 23rd March, 1996 to enable the respective Governments to take steps and finalise the separation of the Judiciary from the Executive as required by the Constitution and the judgment. It may be mentioned that under the judgment of this Court, Judicial Magistrates have been separated from the Executive Magistrates and the former are to act under the supervision and control of the High Courts and would have no connection whatsoever with the Executive. The Magistrates, who would remain with the Executive, would be called Executive Magistrates, who would not be given any judicial powers except under some minor Acts. With this accomplishment, the Judiciary stands separated from the Executive and even in financial matters the Judiciary. has been given independent control over the funds allocated by the Government which can be reappropriated from one head to another by the Chief Justices." (Underlining is mine).

Confronted with this position, learned counsel for the respondents relied upon the minutes of the meeting of the Chief Justices Committee held on 31st October, 1996 in which while reviewing the progress of separation of Judiciary from the Executive. It was noted that in the Law Reforms Ordinance (NO.XL) of 1996, the Executive Magistrates have been given powers to deal with the cases in which they can award imprisonment up to three years which was not consistent with the spirit of separation of Judiciary from the Executive as contemplated in the judgment of the Supreme Court. Learned counsel for the respondents submitted that in the Law Reforms Ordinance aforementioned, the Executive Magistrates have been empowered to try offences falling under Chapters VIII, X, XIII and XIV of the Pakistan Penal Code (Act XLV of 1860), and it has been further provided therein that the offences punishable with imprisonment for a term not exceeding three years, with or without any other punishment, shall be tried by the Executive Magistrates. These provisions, according to the learned counsel, were inconsistent with the concept of separation of Judiciary from Executive. Learned counsel pointed out that the Ordinance aforementioned was issued on 20-3-1996 and it has been subsequently repeated on 4-7-1996 and 2-11-1996 which showed that the? Judiciary was not fully separated from the Executive. Learned counsel for the petitioner in reply submitted that the first Ordinance was issued before the cutoff date viz. 23rd March, 1996. He further submitted that the President himself has been promulgating the Ordinances. He never took any objection to the promulgation of the Ordinances in question nor did he ever refuse to issue the same. This position has not been controverted by the learned counsel for the respondents. In the circumstances, I am of the view that this ground too was not available to the President for taking action under Article 58(2)(b). Needless to observe that the ground in question was wholly extraneous to the objects and' purposes of Article 58(2)(b).

35-A. The sixth ground of dissolution relates to illegal phone-tapping and eaves-dropping techniques. It is alleged that the petitioner and her Government have deliberately violated, on a massive scale, the fundamental right of privacy guaranteed by Article 14 of the Constitution through illegal phone-tapping and eaves-dropping techniques for monitoring the conversations of the Judges of the superior Courts, leaders of political parties and high-ranking military and civil officers.

Petitioner has denied this charge and pleaded that she "never authorised any phone-tapping." Her plea was that in fact she herself was a victim of phone tapping and she also had the impression that the phones of all her Ministers and Secretaries were also being tapped. She has further stated that "She complained to the Defence Secretary, Communications Secretary, and her Military Secretary, and was keen to find out the truth. At least on one occasion her Military Secretary wrote to the Secretary Communications that the Prime Minister's own phones were being tapped, and required him to investigate". She also brought this complaint to the notice of the President but he did not bother much. Petitioner has stated that "she was so concerned with this illegal tapping that the Communications Ministry had placed an order for a 300-line tapping proof exchange for Constitutional functionaries of the State and the Armed Forces so that no such conversations could be tapped".

The respondents in their written statement took the stand that "The phone-tapping and eaves-dropping was being done by the Intelligence Bureau ("IB") which works directly under the control of the Prime Minister. Thus, it is completely contrary to the facts for the petitioner to suggest that no phone tapping or eaves-dropping was ever authorised by her". It has been stated by the respondents that the transcriptions of those recorded conversations in which the petitioner had a special interest for any reason, were delivered by I.B. operatives to the Prime Minister in a sealed envelope. The respondents alleged that even the phone-tapping of her Ministers and the Secretaries was being done at the behest, and with the knowledge and for the purposes of the petitioner herself.

The material produced by the respondents in support of this charge (placed in Volume VI with the Written Statement) consists of the lists of the persons tapped and subjected to eaves-dropping and the statements of three officials of Intelligence Bureau namely Muhammad Sadiq Malik, Deputy Director, Muhammad Afzal Haq, Director and Ghulam Nabi, Inspector (Operations). The lists mention, amongst others, the names of some of the learned Judges of this Court and of the High Courts. The statements of Muhammad Sadiq, Deputy Director and Muhammad Afzal Haq, Director show that they were associated with the technical operations of telephone tapping/monitoring. It is stated that Muhammad Sadiq, Deputy Director was detailed to prepare summaries

of telephone-tapping/monitoring and he used to deliver all the summaries prepared under his supervision to the Prime Minister's House in presence of D.M.S. and he also used to deliver sealed envelope given to him Mr. Ashraf Bhatti (P.S. to JDG (T) to the Prime Minister House. Ghulam Nabi Inspector in a short note dated 10-12-1996 marked to Director (Tech) has stated that he retrieved nine BTs/Modified telephones from the Office of Chief Justice of Supreme Court of Pakistan, the rest room of the Judges and Senate Chairman's residence. These statements, it may be observed, have not been made on oath before any Court or Tribunal but seem to have been obtained from the officials of the Intelligence Bureau after the dissolution of the Assembly presumably for the purpose of using them to support the charges of phone-tapping. For all these reasons, no reliance can be placed on these statements. Even otherwise, these statements do not advance the case of the respondents as they do not say that the petitioner had directed or authorized the tapping of the phones of the persons concerned or bugging their offices or residential premises. It was pointed out by the learned counsel that apart from these statements, there was no other material on the record to show that the petitioner was responsible for the alleged phone-tapping and eaves-dropping. Learned counsel for the petitioner further contended that the phone-tapping is a perennial phenomena which is the handiwork of supra-Government agencies so much so that the petitioner's own-telephone was being tapped. In reply to the respondents' contention that the phone-tapping was being done by Intelligence Bureau on the direction of the petitioner, learned counsel for the petitioner placed on record an affidavit of Masood Sharif, Ex-D.G. I.B. (now confined in jail) stating therein:

"That in the day to day discharge of my duties as the DGIB I had to, on numerous occasions, resort to technical operations (including telephone monitoring) in the civilian sphere of our national life.

That all such operations during my entire tenure were always ordered by me personally. The initiative to do so had invariably been mine."

Learned counsel for the petitioner relying upon the observations of Rustam S. Sidhwa, J. in the case of Ahmed Tariq Rahim PLD 1992 SC 646 at page 703 submitted that the allegation of phone-tapping even if true cannot be permitted to be used as a ground for dissolution of the National Assembly.

In view of the position aforestated, I am of the view that there was no material available with the President at the time of passing the dissolution order in support of the allegation of phone-tapping and eaves-dropping which could l not, therefore, have been validly made the ground of dissolution. Needless to l observe that in order to determine the validity of the dissolution order, the Court has to see whether at the time of passing the impugned order, the President had any material before him and had applied his mind thereto for forming the opinion in terms of Article 58(2)(b). It appears from the ex-post facto statements of I.B. officials that the material to support the charge of phone-tapping was sought to be collected after the dissolution of the Assembly. No reliance could, therefore, be placed on these documents which in any case do not show that it was on the direction of the petitioner that phone-tapping and/or eaves-dropping complained of were resorted to. There is no other incriminating material available on the record. On the contrary, the affidavit of Exh.DG IB" which has remained un controverted absolves the petitioner completely and the officer has accepted the entire responsibility for all the technical operations including phone-tapping. In the circumstances, the charge of phone-tapping and eavesdropping was neither available to the President at the time of passing the dissolution order as he had no material with him in support of this charge nor can the charge be said to have been substantiated against the petitioner and in any case, such a charge can have no nexus with the Constitutional requirement and as such it cannot justifiably be invoked for taking action under Article 58(2)(b) of the Constitution. Telephone-tapping, in fact, is a perennial problem. It is on record that the telephones installed at the Election Commission are being tapped by "some intelligence agency", even after the dissolution of the Assembly. Refer Daily Dawn; Karachi dated January 16, 1997 (Photocopy at page - 98 of the Rejoinder Part -III).

36. l now revert to the next ground of dissolution, the seventh ground in the series, which relates to corruption, nepotism and violation of rules in the administration of the affairs of the Government and its various bodies, authorities and corporations and it is alleged that these malpractices have become so extensive and widespread that the orderly functioning of Government in accordance with the provisions of the Constitution and the law has become impossible endangering in some cases the national security and destroying public faith in the integrity and honesty of the Government. It has been further alleged that the members of the Government and the ruling parties are either directly or indirectly involved in such corruption, nepotism and rule violations. Complaint is also made in this ground that innumerable appointments have been made at the instance of members of the National Assembly in violation of the law declared by the Supreme Court and the quotas for various posts have been allocated to the MNAs and MPAs which was offensive to the Constitution and the law. It is further alleged in this ground that the transfers and postings of a large number of Government servants have been made at the behest of the members of the National Assembly and the ruling parties and thereby the members violated their oaths of office. The Government, however, took no effective steps to ensure that the legislators do not interfere in the orderly executive functioning of the Government.

Petitioner in her Constitutional petition took an objection that various allegations made in this ground are too vague and general in nature and also in utter disregard of the previous judgments of this Court holding consistently that the allegations of corruption, nepotism and violation of rules do not constitute a ground sufficient in itself to justify the dissolution of the Assembly. Respondents in their written statement have sought to explain that the earlier cases in which it was held by this Court that corruption and nepotism by itself was not sufficient for taking action under Article 58(2)(b) involved isolated instances of corruption and nepotism and the charges were also not supported by credible evidence and were based mainly on newspaper reports and stories and similar allegations. In the present case, however, the position was different as the whole system of Government, according to the respondents, was subverted by corruption, nepotism and rule violations carried out on "widespread, pervasive and systematic basis" which can validly form the basis for action under Article 58(2)(b). The respondents also controverted the petitioner's claim that the allegations of rules violations in the matter of appointments, postings and transfers were vague and undefined and alleged that the appointments were indeed made in violation of rules through what the respondents described as "Centralized Posting System" i.e. even where the posts were advertised and tests and interviews held, selections/appointments were made on the recommendations of the petitioner, her supporters and advisers both inside and outside the Government and the Parliament. The respondents then proceeded to cite what they described as "specific instances of corruption and abuse of power" which according to them furnish credible evidence of corruption and gross abuse of power by the petitioner, her spouse and Senior Cabinet Ministers. Under the head of specific instances of corruption/abuse of power, the respondents in the first instance referred to "an astounding news report"

published in the Sunday Express of 9-6-1996 under the banner headlines "Bhutto's Surrey Retreat" further stating that the petitioner and her spouse had acquired a L2.5 million mansion known as Rockwood House standing on a 355 acre estate, having its own private landing strip, indoor swimming pool and the security system directly linked to Scotland Yard. Reference was also made in the Written Statement to further details regarding the Surrey Mansion published in daily Dawn dated 16-6-1996 which reported that the shipments destined for Surrey Mansion had been flown to England by PIA from Bilawal House. Yet another report published in the Sunday Express about the application of the petitioner's spouse for permission to build a stud farm on the estate for his Polo Ponies was also mentioned in the written statement. Reference in the written statement has also been made to some material showing the despatch of two consignments of 8 and 13 cartons of personal effects from Pakistan to London, one sent from Bilawal House and the other from Lahore which were cleared by one Paul Keating who is allegedly identified as a director of the company which was involved in a supervisory capacity in renovation and decoration of Rockwood House. Reference was also made to some telephonic record which it was said showed that some calls were made from Rockwood House on telephone numbers being used by Mr.Asif Ali Zardari and Mr. Javaid Pasha. These facts, according to the respondents, proved that the petitioner and her husband had acquired the Rockwood House. It was further alleged by the respondents that the petitioner's father-in-law Hakim Ali Zardari and his wife had also acquired a property in France as far back as 12-4-1990 for a total sum of six millions French franc. It was alleged that the Surrey Mansion/Rockwood House as also the property in France have been purchased by the petitioner, her spouse and her father-in-law on the basis of the resources acquired illegally and through a gross abuse of power.

Another instance of corruption/abuse of power given in the written statement relates to the misappropriation of Bait-ul-Mal Funds. It was alleged, that on or about 24-3-1994, Interior Minister (Maj.-General. Retd. Naseer-ullal: Khan Babar) wrote a secret letter to the Chairman of Bait-ul-Mal demanding the release of rupees ten millions for the relief of 4000 displaced Bugti Tribesmen. A letter was also received by the Chairman from Deputy Secretary, Social Welfare and Special Education Division directing Bait-ul-Mal to comply with the order of the petitioner to provide assistance to the Tribesmen. A meeting was accordingly held in the Prime Minister's Secretariat on 3-4-1994 which was presided over by the petitioner's Principal Secretary. The meeting urged the Chairman to provide promised relief of rupees ten millions and also relax the procedure to provide a further amount of rupees ten millions. It was alleged that on the following day i.e. 4-4-1994, a cheque for a sum of rupees ten millions was issued by the Bait-ul-Mal in the personal name of the Interior Minister. The cheque was encashed the same day. A second cheque dated 24-4-1994 for rupees ten millions was also issued in the personal name of the Interior Minister. The respondents alleged that Bait-ul-Mal later received evidence showing that the funds released by it were disbursed to bogus persons. It was alleged that rupees twenty millions disbursed personally to the Interior Minister were thus misappropriated. It was further alleged that Ms. Naheed Khan, Political Secretary of the petitioner also received Cheques from Baitlil-Mal for a total sum of Rs.34,90,000 on 1-9-1995 on behalf of 55 persons without following proper procedure and sums totalling Rs.6.171 millions and 27.05 millions were also sanctioned on the directions received from Ms. NaheM Khan and Rehmat Ullah Khan, a Consultant of the petitioner.

It was also alleged that Financial Sector (Banks and DFIs) was particularly targetted for corruption and abuse of power by the petitioner and her Government as a result of which bad debts increased by 31 % in Habib Bank Ltd., United Bank Ltd. and National Bank of Pakistan during three years and in the case of the ADBP and IDBP, the bad debts which stood at Rs.5.712 billions had skyrocketed to Rs.13.195 billions by 1996, an increase of 131 %. The position of the Development Finance Institutions was even worse where the bad debts had ballooned from Rs.6.12 billions to Rs.16.396 billions, an increase of 168 % . The net worth of the banks was also wiped gut during the period of the petitioner's Government and the ratio of their. profitability also suffered a decline by about 50 % . It was pointed out that illegal recruitments/appointments were made in the Banks on the direction from the Prime Minister's Secretariat and the Ministry of Finance. In U.B.L., 2500 "ghost" employees were shown on the bank's payroll. Crores of rupees were thus skimmed off through this scam. All this was done under the aegis of Mr. Aziz Memon, the Banks Union Leader and PPP MNA who was later arrested. A number of other instances of wasteful expenditure such as donations and massive write-off of loans were also highlighted. All this, it was alleged, was the direct result of the policies adopted by the petitioner's Government. Petitioner was thus responsible for the virtually complete collapse of the financial sector in Pakistan.

Reference was also made in the written statement to the affairs of Pakistan Steel Mills, Karachi which, it was alleged, were grossly mismanaged under the Chairmanship of Mr. Usman Farooqi (who was appointed by the petitioner's Government). It was pointed out that the said Chairman had ordered the sale of 15,900 tonnes of steel at rates far below the prices fixed by the management as a result of which, the Mills had suffered a loss of about rupees ten crores. These scandalous deals were brought-to the notice of the National Assembly. The Standing Committee of the Assembly on 30-1-1996 requested the Steel Mills not to proceed with the matter. On 6-2-1996, however, the Ministry of Industries issued a letter to Pakistan Steel Mills to go ahead with the deals. It was stated that even Mr. V.A. Jaffery, Advisor to the Prime Minister for Finance wrote to the Minister for Production on 11-7-1996 complaining about severe financial deterioration in the Steel Mills condition. Yet the petitioner failed to take any action.

Further instances of abuse of power mentioned in the written statement related to the allocation of quotas for sugar export, textile quotas, the grant of monopoly to import gold in Pakistan and the right to export the rice. It was alleged that the quotas for sugar export were allocated to undeserving persons as a means of political patronage to enrich them at public expense and similarly, textile quotas were also granted to the individuals and the firms recommended by the petitioner's supporters both within and without Parliament. It was also alleged that a Dubai Based Company (M/s. ARY Traders) was given monopoly to import gold into Pakistan. Similarly, the right to export about half of all rice exports from Pakistan was given to one man without any public auction or bidding and that too at a price below that prevailing in the International Market. It was also pointed out that to procure the rice for export, petitioner took the decision that RECP should purchase the rice at the market price. In this manner, loss of Rs.7,62,63,445 was caused to the exchequer. Power policy of the petitioner's Government was also subjected to severe criticism in the Written statement saying that as a result of this policy, both WAPDA and KESC would have to pay millions of dollars annually for power that they would not need and could not utilize. It was alleged that the Liberty Power Project was given undue favours and concessions by the petitioner in violation of all the rules and regulations. It was further alleged in the Written Statement that the O.G.D.C. too was subjected to gross abuse of power by the petitioner's Government. It was pointed out that a consultancy for studying dry holes involving U.S. $ 393,256 was awarded to a U.S. company which was previously represented by Saif International, company owned by Saifullah family. Reference was also made to two MOUs signed by the then Chairman of O.G.D.C. with Cooper & Lybrand (Cooper) a U.S. Company and it was alleged that 80% of the total cost of the contract was paid to the company even though no work at all had been done by it. It was also alleged that the then Chairman had sold some scrap and

store items without public auction and at throwaway prices causing estimated loss of Rs.67,906,161 to O.G.D.C. Proceeding further, the respondents pointed out the cases of alleged abuse of power in the affairs of C.D.A. particularly the allotments of plots to certain individuals in violation of the Regulations governing the disposal of lands in Islamabad. Reference was particularly made to an allotment of a plot of land for the purpose of Hospital to Dr. Javed Saifullah a brother of Mr, Anwar Saifullah, a Minister in the petitioner's Cabinet. Special mention was made of the allotments of plots to Sindh People's Welfare Trust (headed by the petitioner), Educational Trust Nasra School (headed by the mother of Ms. Shahnaz Wazir Ali), Wahid Public School, run by a sister of Ms. Naheed Khan and Islamabad Grammar School, run by Mrs. B.A. Qureshi, wife of an old PPP supporter which allotments, it was alleged, were made on extremely consessionary rates in violation of the applicable Regulations. It was further alleged in the written statement that the petitioner's Government concocted a scheme for setting, up a Cooperative Housing Society for the Parliamentarians and it was decided that 192 plots of 1000 sq. yards be made available for allotment .to the Parliamentarians in Sectors F-10 and I-8 on consessionary rates. This scheme, according to the respondents, was in violation of rules and regulations. Yet another allegation made in the' written statement was that M/s. Inter Hotel (Pakistan) Ltd., a company in which, among others, Mr. Asif Ali Zardari's brother-in-law had an interest, was given permission to build a Five Star Hotel on a 16 acres piece of land at Shakarparian which as per Islamabad's Master Plan was earmarked for recreational and sports purposes. It was alleged that the allottees were allowed to put their own valuation which was estimated at Rs.310 millions out of which amount, Rs.150 millions were payable by the allottee company over a period of 5 years but this period was subsequently extended to 10 years. The company statedly deposited only Rs.10 millions and thus a piece of Prime Land was practically given to the said company for a sum of Rs.10 millions only. It was also alleged by the respondents that a contract for the National Grid, a multi-million dollar project was put to bid but only 6 working days were given to the bidders to put in their applications with the result that only one company was able to submit the requisite application. The allegation was that the whole matter was so stage-managed that only that company could make an effective bid. The award of contract in this manner to that company was protested by the French Ambassador.

37. Petitioner put in a rejoinder controverting the allegations made by the respondents in the written statement and further submitting that much of the written statement including the instances of the alleged corruption contained therein was an afterthought and the documents pertaining to the allegations were also collected after the dissolution order. It was pointed out in the rejoinder that it was surprising that the President having omitted to mention any specific charges in the dissolution order claimed in the written statement that the corruption, nepotism and rules violations had been carried on "a widespread, pervasive and systematic basis", when even the instances quoted in the written statement do not justify such a conclusion. Reference in the rejoinder was made to the repeated statements issued by the Care-taker Prime Minister and his colleagues in the Government that they have found no evidence of corruption. Their statements, it was contended, were testimony of the fact that the evidence referred to in the written statement was fabricated. Petitioner also appended a Brief Note to her Rejoinder containing a reply to the charges mentioned in the respondents' written statement which, it was said, were only an attempt to pad up the dissolution order. It has been contended that the allegations made in the written statement were picked up from "smear campaigns and inadmissible newspaper articles" which allegations, in any case have no nexus with Article 58(2)(b). It has been further contended that if some of the allegations made in the written statement are demonstrated to be false and untenable, the theory developed by the respondents that the corruption in the instant case was "widespread, pervasive and systematic" will fall flat. Some of the instances of alleged corruption/abuse of power mentioned in the written statement have been briefly attended to in the Brief Note.

With regard to the Power Policy of the petitioner's Government and the respondents' objections thereto, it has been stated that the said policy has been acclaimed the world over as a Model Policy. During the World-Bank annual meeting held in October, 1994 in Midrid, Spain and in October, 1995 in Washington D.C. U.S.A., Pakistan Power Policy was tabled as a Model by all the experts. It has also been pointed out in the Brief Note that the President of Pakistan himself participated in the formulation of the said policy. The final draft of the Policy was presented to him in March, 1994. He made some suggestions which were incorporated in the draft policy. It has also been stated that the Care-taker adviser for Finance and Planning, Mr. Shahid Javed Burki "personally praised this policy in several of his interviews in Latin America ... ... " As regards the signing of projects in excess of the demand for Electricity, it has been pointed out that P.P.I.B. was given a mandate to induct 3000 MW from the private sector by the end of the year 1998 and this figure was based on the recommendation of WAPDA, Planning Department and Atomic Energy Commission. As regards the contention that WAPDA did not require additional power due to slow-down in demand, it has been stated in the Brief Note that according to the recent study of I.F.C., 330,000 applications for new connections were pending implementation which negates the aforesaid contention. It has also been pointed out in the Brief Note that according to the Planning Division study of 1990 and the World-Bank study of June 1996, Pakistan's economy was losing 1 billion dollars every year due to load-shedding and black-outs. It is stated that it was to save the nation from this colossal loss which it was incurring for the last 15 years that the power policy in question was devised.

The allegation of giving undue concessions/favours to Liberty Power Project has been denied as incorrect and it has been stated in the Brief Note that all agreements were signed by WAPDA/OGDC keeping in view their respective interests and within the policy framework. "Liberty Project was issued LOI after the decision (to cap all imported fuel base Power Project) was taken because Government had decided that as a policy it will allow processing of a Power Project based on indigenous fuels such as low BTU Gas, Coal and Hydel". The allegation with regard to the contract for the National Grid (multi million dollars transmission project) has also been denied as incorrect and it has been stated that since there was no Model for such transmission projects in private sector available in the World, a committee of WAPDA and Nespak was constituted to recommend rate on which contracts could be awarded to private sector. As there was no consensus among the experts on the rate on which contract should be given to the private sector, the Cabinet decided in March, 1995 that tender bids should be invited and contract awarded to those firms which can come with lowest rate. It has been further stated that as the petitioner (then Prime Minister) was leaving for U.S.A. on official State visit in first week of April, 1995, it was decided to finalize the matter before her departure to avoid any lobbying with her during her visit. It was accordingly decided by the Cabinet that the matter be finalized on open bid base before Prime Minister's departure and thus 10 days were allowed for submitting the bids. It is also denied that only one company put in the bid. It is stated that 14 companies purchased tender documents on payment of Rs.50,000 non-refundable. "This International consortium participated in the tender itself by providing substantial amount of bid guarantee which was an indication that they were serious bidders. This consortium consisted of leading power utilities of Canada, U.S.A., U.K., France, and Asia. The LOI was issued to the lowest bidder which happened to be the World's largest independent transmission company and U.K. National transmission and grid utility. The rates which were offered by the U.K. Company were substantially lower than the estimated rates which were recommended by the

committee of experts of WAPDA - Nespak. with regard to the protest of the French Ambassador, it is stated in the Brief Note that the French bid was most expensive - "it was about 40% more than the lowest ... ... Their costing was totally out of line with the bids received from the other reputable utilities of the world".

The allegation regarding the award of consultancy by O.G-D.C. for study/evaluation of dry holes has also been denied by the petitioner and it is stated in the Brief Note that I.P.R. is an internationally recognized corporation. There is no connection between Mr. Anwar Saifullah and I.p.R. It is pointed out in the Note that O.G.D.C. sank 26 unproductive wells (out of a total of 28 wells drilled) from July, 1991 to January, 1994 causing a net loss to the exchequer of $104 million. It is explained that it was on account of this abysmal failure that the contract for dry holes study was signed with I.P.R./H.D.I.P. The contract was thus fully justified.

The allegations with respect to the giving of monopoly to ARY Traders for import of gold, the allocation of quotas for sugar export, textile quotas and the right to export the rice have also been denied by the petitioner and it has been stated in the Brief Note that the petitioner's Government did not make any illegal transaction with M/s. ARY Traders. The monopoly resulted because no other parties were able to meet the requirements mandated by the Government. It has been further claimed that by levying a low but fixed duty on the import of gold, the revenue has been raised by over 1000 % . As regards the textile quotas, it has been explained that the allocation in question related only to the "Growth Quotas" i.e. the increases in the annual quotas and not the actual quotas. It has been stated further that under the Nawaz Sharif Government 35 % of the Growth Quotas used to be distributed through the textile mills association but under the petitioner's Government, it was decided that 75 % of the growth quotas would be auctioned in the open market and the remaining 25 % would be allocated to the Industries located in the backward areas and even for this allocation, applications were examined by a Committee consisting of:

(i) D.G. Textile Quota Management Directorate,

(ii) Additional Secretary,

(iii) Joint Secretary Textiles, and

(iv) Deputy Secretary Textiles;

and only those applications which were approved by this Committee were forwarded to the Minister and the applicants were required to produce Original Export Registration Certificate and Membership Certificate of the concerned Textile Association together with the evidence of belonging to an underdeveloped region.

As regards the sugar export policy, it has been stated that 50% of the allotted export target was given to the sugar mills and 50 % to commercial exporters and the quota given to the sugar mills was distributed by the sugar mills association on the basis of their crushing capacity and the remaining quota was distributed by the Ministry of Commerce amongst the traders on first come, first served basis. With respect to the export of rice, the losses allegedly suffered by R.E.C.P. are sought to be justified on the ground that such losses have occurred even previously since 1988 and it has been pointed out that during the three years of Nawaz Sharif Government, R.E.C.P. suffered total losses of Rs.2.8 billions. It has been further stated that the decision to purchase the rice at the market rate was obviously for the benefit of the poor Pakistani formers.

It has been denied that Mr. Asif Ali Zardari's brother-in-law had any interest in the company which was allotted land at Shakarparian for the construction of Five Star Hotel. It has been pointed out that one Mir Munawar Ali son of Mr. Mushtaq Ali was the Director in that Company but he was not the brother-in-law of Mr. Asif Ali Zardari. It is stated that Mr. Zardari's brother-in-law is Mir Munawar Ali Talpur whose father's name (to the knowledge of the ,President) is Mir Allah Bukhsh Talpur. The allegation, according to the petitioner, is "a mala fide attempt to mislead this Honourable Court and the public at large since this allegation, through the written statement, has been given wide publicity in the Government controlled media". It has been further added that as per the information collected by the petitioner, the site in question was selected for the project as early as March, 1993 and the bids were also invited through an advertisement published on 30th July, 1993, during the tenure of Mr. Moeen Qureshi, the then Prime Minister. It is stated that the project including the Five Star Hotel was revived in April, 1994 and the bic documents were issued to ten parties but the bids were submitted by two parties namely Hashwani Hotels Ltd. and Inter Hotels (Pakistan) Ltd. out of which the bid of Inter Hotels (Pakistan) Ltd. was higher and it also submitted N.O.C. fron P.B.C. The plot was, therefore, offered to Inter Hotels.

Petitioner has also controverted the allegation regarding Surrey Mansion stating that it is absolutely false and untrue. She has denied the suggestion that she or her husband have bought any such property in England o~ elsewhere. She has also denied having any connection with "any of the properties or effects mentioned in the Written Statement" and stated that she i; prepared to face any prosecution or trial with respect to this allegation further contending that if the respondents choose to press this allegation, the onus must rest on them to prove their case in the Court of competent jurisdiction in which a full and fair inquiry on the facts can be undertaken. As regards the allegation about the purchase of properties by Hakim Ali Zardari, petitioner has stated that the documents show that the alleged purchases were made, if at all, in 1990 and raised a question as to how could the Assembly be dissolved for such purchases in 1996. She has also stated that she is not responsible for any of his actions and in any case, on such allegations, National Assembly could not be dissolved.

With respect to the affairs of Pakistan Steel Mills, it has been stated by the petitioner that Usman Farooqi was appointed as Chairman of the Mills "being the most senior upon the transfer of Mr. Sajjad Hussain. Inquiry was initiated against the latter even during the tenure of the petitioner's Government". So in either case, there was no favoritism and "in any case if they are guilty of any defalcation, they must face the law. The National Assembly could not be dissolved on this ground". In answer to the allegations regarding misappropriation of Bait-ul-Mal funds, it has been pointed out in the rejoinder that the amounts were actually disbursed by the Governor of Balochistan and if there have been any irregularities in the actual disbursements, it is for the Governor to answer. It has been stated that as the Governor who disbursed the amounts has been retained by the President, there is no substance in the allegation. Grievance has been made by the petitioner that the record concerning the transmission of the allocated funds to the

Governor has been deliberately withheld. As regards the involvement of Ms. Naheed Khan, it is stated that the letter attributed to her is a forged document for which a case was registered and the accused arrested. With respect to the allotment of plots for schools and the hospital, it has been stated that no special privilege was extended to any body. It is contended that the respondents have withheld the relevant record which is produced, "the propriety of the decisions of the concerned authorities can surely be justified".

38.. Learned counsel for the petitioner argued that the charge of corruption/nepotism as levelled in the dissolution order sought to create an impression as if the whole system of Government was corrupted/subverted but this impression was not justified by the instances giving in the written statement in support of the charge which have not been supported by any cogent evidence and have been effectively rebutted/explained in the rejoinder submitted by the petitioner. It was pointed out by the learned counsel that most of the material produced by the respondents was collected after the dissolution order was passed. It was next contended by the learned counsel that the allegations of corruption, nepotism and violation of rules in administrative matters have no nexus with Article 58(2)(b) and as such they could not be used for dissolving the National Assembly. Reliance for this submission was placed on the observations of Shafiur Rahman, J. in the case of Muhammad Nawaz Sharif PLD 1993 SC 473 at page 630 that "The allegation of corruption, of maladministration, of incorrect policies being pursued in matters financial, administrative and international are independently neither decisive nor within the domain of President for action under Article 58(2)(b) of the Constitution. These are wholly extraneous and cannot sustain the impugned order". Learned counsel further contended that the instances of alleged corruption/nepotism and abuse of power quoted in the written statement had not resulted in the breakdown of the Constitutional machinery and as such these allegations could not be said to have any nexus with the reasons mentioned in Artilce 58(2)(b). In support of this submission, learned counsel relied upon the following observations in the case of Muhammad Nawaz Sharif at page 724:-

"However, the basic question remains, whether mere allegations in the form of complaints or news items without ascertainment of their trustfulness are sufficient or above alleged special favours to Mr. Gohar Ayub to furnish a ground in the order under Article 58(2)(b) of the Constitution. In other words, the precise question for consideration is, whether such irregularities can have nexus to the reason mentioned in the above provision of the Constitution or can they be subject-matter of investigation in appropriate proceedings under the relevant laws. In my view, the alleged irregularities/favours may be subject-matters of appropriate legal proceedings under the relevant laws, if they constitute breach of such laws and are. true, but such individual instances cannot have nexus with the ground mentioned in the above provision of the Constitution. However, if the corruption, nepotism and favouritism are on such a large scale, that it resulted in the breakdown of Constitutional machinery completely it may have nexus with the above provision."

It may pertinently be observed that the aforenoted observations were made while dealing with the allegations relatable to the ground mentioned in sub-para.(iii) of para. "f" of the dissolution order challenged in that case viz. "Resources and agencies of the Government of the Federation including statutory corporations, authorities and banks, have been misused for political ends and purposes and for personal gain". The irregularities/favours which it was held cannot have any nexus with the ground mentioned in Article 58(2)(b) included the allegations (i) that two Sugar Mills belonging to Ittefaq Group had obtained a loan of rupees three hundred millions from Muslim Commercial Bank in an illegal manner (this allegation was made by Mr. Farooq Ahmed Leghari, the then Deputy Leader of the opposition in his reference addressed to the Speaker), (ii) that the petitioner's (Mr. Muhammad Nawaz Sharif petitioner therein) family's borrowing from financial institutions was Rs.2.5 billions which during two years of his incumbency shot up by 1000%, (iii) that the bid bf the lowest bidder for the construction of Motorway between Lahore-Islamabad was not accepted but the higher bid of M/s. Daewoo of South Korea was accepted besides making payment of some additional amounts for designing etc. (This allegation formed the subject-matter of a reference addressed to the Speaker of the National Assembly by Mr. Salman Taseer, then Central Information Secretary, PPP), (iv) that two members of Ittefaq Group of Companies obtained a sum of 4 millions Dirhams each from B.C.C.I., Dera Branch, Dubai on 21-2-1989 when the petitioner (Mr. Muhammad Nawaz Shard) was the Chief Minister of Punjab who allegedly allotted 343 Kanals forestry land at Bhoorban at a throwaway price to Mr. Zafar Iqbal who was running affairs of B.C.C.I. (Reference with regard to this allegation was trade to the Speaker of the National Assembly by Mr. Abdul Rashid Qureshi, Advocate), (v) the chargesheet submitted by the combined opposition against the petitioner (Mr.. Muhammad Nawaz Sharif) and I.J.1. Government under the captions (a) Fraud and corruption, (b) incompetence of Nawaz Sharif Government, (c) disruption of National Fabric (d) failure of foreign policy, (vi) irregular grant of contracts, exorbitant expenses on foreign trips, (mentioned in the press-clippings), (vii) construction of road in Raiwind area to provide benefit to Ittefaq Group who have their factories near Raiwind, (viii) that the rates of customs duty on import of re-rollable scrap were reduced with a mala fide object of facilitating profitmaking by Ittefaq Group, and (ix) that Mr. Gohar Ayub Speaker/M.N.A. was twice given additional .quota for electrification of 46 villages and 11 villages of his constituency from the Prime Minister's quota besides his normal quota of five villages and he was given Rs.10 millions for his schemes out of total amount of Rs.14 millions allocated for N.-W.F.P. from the Prime Minister's discretionary fund of 'Tameer-e-Watan'. Most of these allegations, it may be observed, are analogous to the instances of alleged corruption and abuse of power in the instant case which instances as held in the aforenoted observations in the case of Muhammad Nawaz Sharif may well have been the subject matter of appropriate proceedings under the relevant laws but they cannot have any nexus with the provisions of Articles 58(2)(b) of the Constitution. It was contended by the learned counsel that not a single reference based on any of the alleged instances of corruption/abuse of power/violation of rules was ever moved by the President against the petitioner and none has been filed even after the dissolution of National Assembly. Learned counsel also relied on the observations of Saad Saood Jan, J. in the case of Muhammad Nawaz Sharif to contend that the allegations of corruption, nepotism and maladministration made on the basis of press-clippings without being subjected to any inquiry cannot form a valid basis for dissolution of the National Assembly. Learned counsel for the petitioner while dealing with the instances of corruption etc. mentioned in the written statement submitted that the allegations have been duly explained and rebutted in the rejoinder and the Brief Note appended thereto. With reference to the Housing Scheme for the Parliamentarians, learned counsel submitted that this scheme was not launched on partisan basis or for the purpose of 'horse-trading' as the members of the Parliament irrespective of party affiliations were to be benefited by it. As regards the allegation about the appointments made in various Government departments and statutory corporations/autonomous bodies, learned counsel for the petitioner submitted that all the documents placed on record by the respondents in support of this allegation were collected after the dissolution of the National Assembly. Learned counsel finally contended that the President should have addressed the Parliament and pointed out the charges aforementioned to the Members of the Parliament before taking the extreme step of dissolving the National Assembly. Learned counsel for the respondents argued that the law declared in the earlier cases could not be applied to the instant case as the

corruption, nepotism and violation of rules in the administration of the affairs of the Government during the petitioner's tenure had been carried out on such a large scale that the entire system was subverted making it impossible for the Government to be run in accordance with the Constitution and as such action could validly be taken under Article 58(2)(b) for such malpractices which, in the submission of the learned counsel were fully substantiated by credible documentary evidence brought on record.

39. On closer examination/analysis of aforenoted pleadings of the parties and the material placed on the record, it is not possible to hold that corruption, nepotism and violation of rules in the administration of the affairs of the Government had really become so extensive and widespread that orderly functioning of the Government had become impossible. The instances cited in the written statement when subjected to scrutiny do not justify such a conclusion as most of these instances if not all do not hold water. Take for example the case of Surrey Mansion described by the Sunday Express as Pounds 2.5 millions mansion which according to the respondents was purchased by the petitioner and her husband with money "acquired illegally and through corrupt practices". The allegation is mainly based on the press reports which as noted above can hardly form a basis for holding that the allegations made therein have been substantiated. Other documents relied upon by the respondents nowhere mention the name of the petitioner. The allegation made is very serious and it has been vehemently denied by the petitioner in her rejoinder. In the circumstances it was for the respondents to produce cogent and valid evidence of the purchase of the property in question by the petitioner rather than falling back upon surmises and inferences. It is an admitted position that there were no title documents executed in favour of the petitioner or her husband. Should it be accepted that the petitioner had purchased this palatial building worth approximately Rs.175 million (as estimated by the respondents) but no documents were executed? The whole allegation appears to be the result of subjective perception based on hearsay, and at the most a matter of inference and conjecture. The allegation in question essentially and in ultimate analysis is one of acquiring money through corrupt means (with which Surrey Mansion was allegedly purchased). It is, in fact, so stated in they written statement accusing the petitioner of having "acquired resources through corrupt and illegal means which were then splurged on, among other things, the purchase of a palatial mansion in England". It is significant, however, that the petitioner has not been proceeded against for any such charge. Similarly, the allegation made in the written statement (para. 255) that the petitioner's father-in-law Hakim Ali Zardari and his wife acquired a property in France on 12-4-1990 for a total value of French France 6 million is also of no consequence being wholly irrelevant to the charge of corruption and nepotism evidently relatable to the tenure of the petitioner's Government from October/November, 1993 to 4th November, 1996. The allegation regarding the misappropriation of Bait-ul-Mal Funds has also been effectively controverted by the petitioner by contending that the amount though released to the Interior Minister (Major-General Retd. Naseer Ullah Babar) was actually disbursed to the so-called 'bogus' recipients by the Governor of Balochistan. In the circumstances, petitioner and/or her Interior Minister could not be held responsible for misappropriation, if any, of Bait-ul-Mal funds. It may pertinently be observed that the Governor who had disbursed the amounts in question has been retained by the respondents after the dissolution of the National Assembly. The allegations/charges regarding the allocation of quotas for export of sugar, textile quotas, the right to export the rice and the grant of monopoly to ARY Traders to import gold into Pakistan, Power policy of the petitioner's Government, grant of concessions/favours to 'Liberty Power Project'. Award of contract for the National Grid, a multimillion dollar project and of consultancy for studying dry holes and the allotment of land at Shakarparian for the construction of Five Star Hotel, amongst others, have been duly explained by the petitioner in her rejoinder and in any case, the alleged irregularities/favours have no nexus with the grounds mentioned in Article 58(2)(b). As regards the second limb of the ground under consideration namely, the appointments of innumerable persons at the instance of Members of the National Assembly in violation of the law declared by this Court, it may pertinently be observed that on perusal of the voluminous record produced by the respondents, it has been noticed that the entire material was collected after the passing of the dissolution order which is manifest from the forwarding letters placed in Volumes VII-A to VII-D (with the written statement), addressed to the Deputy Attorney-General, Government of Pakistan. These letters show that different Government departments/statutory corporations forwarded the requisite information/material after the passing of the dissolution order. That being so, the opinion recorded by the President in the dissolution order with respect to the appointments in question cannot be sustained as the President at the relevant time had no material before him to support/justify his opinion.

In the aforesaid view of the matter, the President had no valid basis for forming the opinion that corruption, nepotism and violation of rules had become rampant and widespread. In any case, the alleged malpractices have not been shown to have resulted in the breakdown of Constitutional, 'machinery completely. As such the allegations made in this ground had no nexus with the provisions of Article 58(2)(b) and the same could not, therefore, form a valid basis for dissolving . the National Assembly. It may pertinently be observed that this has been the consistent view of this Court in the dissolution matters.

40. Next two grounds of dissolution have not been attended to in the short order passed by the majority nor have they. been dealt with in the judgment of my learned brother Saleem Akhtar, J. One of these two grounds relates to the induction of Mr. Muhammad Nawaz Khokhar as a Minister which it was said was violative of the Constitutional principle of collective responsibility of the Cabinet to the National Assembly because the Interior Minister refused to withdraw the criminal cases pending against the newly inducted Minister. Petitioner has not denied the factual position stated in this ground but pointed out in the Constitutional petition that the President himself had been a member of a Cabinet in which two of his colleagues were facing trial on murder charge. Not only that, even in April 1993, when he was appointed Care-taker Finance Minister, he met Ghulam Ishaque Khan, the then President and requested him to appoint Mr. Asif Ali Zardari as Federal Minister even though the cases were pending against Mr. Zardari in those days. It has also been pointed out that even now the President has selected and appointed Mr. Mumtaz Ali Bhutto as the Care-taker Chief Minister of Sindh although he is an accused and an absconder in a sedition case pending against him. These instances have been pointed out to question the honesty of purpose in taking this ground and it has been further contended that a person is presumed to be innocent unless proved guilty and, therefore, all the Ministers in the petitioner's Cabinet continued to feel their collective responsibility. It was also pleaded that the ground taken is not at all relatable to the object of Article 58(2)(b). Learned counsel for the petitioner during the course of his submissions contended that the President took this ground out of personal ire as he believed that it was Nawaz Khokhar who leaked information to involve him in Mehran Bank scandal. It was also submitted that the President though had the power to ask the petitioner to reconsider the decision to include Mr. Khokhar in the Cabinet but he did not exercise that power and instead administered the oath to Mr. Khokhar. In the circumstances, it was contended that it was not available to the President to make this as a ground of dissolution of the Assembly. The fact that the President had twice been a Minister in the Cabinet in which one or two of his colleagues were facing trial in criminal cases has not been denied. Similarly, it has also not been denied that he did not ask the petitioner to reconsider the decision to induct Mr. Nawaz Khokhar as a Minister. In the circumstances, learned counsel for the petitioner was right in contending that in all fairness, it was not available to the' President

to press this ground into service which even otherwise had no nexus with the grounds mentioned in Article 58(2)(b) for exercise of power thereunder.

41. Last ground mentioned in the dissolution order complained of the petitioner's failure to comply with the requirement/direction of the President to place the matter of sale of Burmah Castrol shares in PPL and Bone/PPL shares in Qadir Pur Field before the Cabinet for consideration/re-consideration of the decision taken by E.C.C. in this matter which failure, it was alleged was in violation of the provisions of Articles 46 and 48. Both the petitioner and the respondents, have, however: gone into the merits of the sale transactions referred to in the ground. The fact, however, remains that the sales have been challenged in the Balochistan High Court and in this Court. Balochistan High Court is also stated to have issued an injunction in the matter. In the circumstances, petitioner was right in not taking any steps in pursuance of the President's directive. Even otherwise, viewed in its correct perspective, the ground is unsustainable as the requirement of the President is not covered by any of the two provisions of the Constitution mentioned in the dissolution order. Under Article 46(c) only such matters can be required to be placed before the Cabinet for consideration in which a decision has been taken by the Prime Minister or a Minister and which has not been considered by the Cabinet. In the instant case, the decision in the matter was taken by E.C.C. and not by the Prime Minister or any Minister. Article 46 was, therefore, not attracted and there was no question of its violation. Similarly, Article 48 which provides, inter alia, that the President shall act in accordance with the advice of the Cabinet or the Prime Minister and that he shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so, has, no relevance whatever to the grievance/complaint made in the last ground of dissolution. The ground in any case is wholly misconceived as mere failure of the Prime Minister to comply with some requirement of the President within a certain time-frame cannot be visited with the penalty of dissolving the National Assembly and dismissing the Government.

42. The above mentioned are the reasons recorded in support of my short dissenting order dated 29th January, 1997 whereby it was held that the dissolution order dated the 5th November, 1996 impugned in these petitions cannot be sustained and consequently "the National Assembly, the Prime Minister and the Cabinet stand restored".
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(Sd.)

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???Zia Mahmood Mirza, J

M.B.A./B-4/S? ?? Order accordingly

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