



RULING OF THE CHAIR

PROMULGATION OF ORDINANCE AND DELAY IN LAYING

In the Senate sitting held on 9th April, 2018, Senator Mian Raza Rabbani pointed out the issuance of four Ordinances by the President soon before the sessions of both Houses of the Parliament and stated that it is breach of the Parliament. He further pointed out some glaring irregularities in the promulgation of the Ordinance.

2. On 10th April, 2018, the Orders of the Day for the Senate sitting, carried a motion in the name of Minister for Interior, to lay before the Senate the Anti-Terrorism (Amendment) Ordinance, 2018 (Ordinance No. II of 2018), as required by clause (2) of Article 89 of the Constitution of the Islamic Republic of Pakistan. Before laying of the said Ordinance, Senator Mian Raza Rabbani raised objection as to the delay in laying of the Ordinance and termed it as violation of the Constitution, Rules of Procedure and the Rulings of the Chair. On which I reserved my ruling, however, adhering to the constitutional requirement of clause (2) of Article 89, allowed the Minister for Law and Justice to lay the Ordinance on behalf of Minister for Interior.

3. The objections raised by the Hon'ble Member are with regard to two issues namely,-

- i. Promulgation of Ordinances after the summoning of both or any of the Houses of Parliament; and
- ii. Delay in laying of Ordinances before the Parliament

4. With regard to the first objection, the Constitutional position is provided in clause (1) of Article 89, Constitution, 1973, which provides that,-

“(1) The President may, except when the Senate or National Assembly is in session if satisfied that circumstances exist which render it necessary to take

immediate action, make and promulgate an Ordinance as the circumstances may require."(emphasis provided)

5. In terms of Article 89 of the Constitution, the President has power to promulgate Ordinances only if the Senate or National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action. The purpose of this power is that when both the Houses are not in session or the National Assembly has been dissolved and, a situation arises where immediate and necessary legislation is required, in order to prevent a legal vacuum, the President has been conferred this power.

6. The Ordinances in question namely,- (1) The Foreign Assets (Declaration and Repatriation) Ordinance, 2018 (No. III of 2018), (2) The Voluntary Declaration of Domestic Assets Ordinance, 2018 (No. IV of 2018) (3) The Income Tax (Amendment) Ordinance, 2018 (No. V of 2018) were promulgated on 8th April, 2018, and published on the same date, wherein, the President had already summoned the Senate and National Assembly to meet on 9th April and 10th April, 2018, respectively. There is no denial of the fact that promulgation of ordinance is a constitutional power of the President of Pakistan, however, this power needs to be exercised only in cases where such circumstances exist which render it necessary to take immediate action. In the instant case the Senate and the National Assembly were already summoned to meet on the very next day and day after the promulgation of the Ordinances. More so, the Ordinances under reference were to be treated as Money Bills in terms of Article 73, Constitution, 1973, hence were required to be passed by one House only i.e. the National Assembly.

7. **In view of the above mentioned, the Government is advised to give due consideration to the constitutional provisions before giving advice to the President for promulgation of Ordinance especially when the date for session of the House is very clear. In the instant case the date was not only clear but also near, in such cases, unless there are very special reasons, Ordinances should be avoided.**

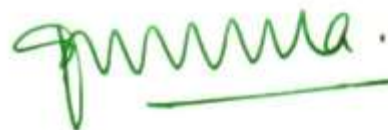
8. The second objection was with regard to delay in laying of "The Anti-Terrorism (Amendment) Ordinance, 2018 (Ordinance No. II of 2018)". The said Ordinance was

promulgated on 9th February, 2018, and published on the same date. In terms of rule 145, Rules of Procedure and Conduct of Business in the Senate, 2012, read with the Ruling of the Chair dated 25th July, 2016, "*an Ordinance shall be laid on the first day of the sitting of the House held after the promulgation of the Ordinance on which formal Government Business is to be transacted*".

9. The 273rd Session of Senate was held from 12th to 23rd February, 2018, and in terms of the position explained vide para 8, the Anti-Terrorism (Amendment) Ordinance, 2018 (Ordinance No. II of 2018), should have been laid before the Senate on 13th February, 2018. The Government did not lay the said Ordinance during the 273rd Session and even during the subsequent 274th Session of Senate which was held from 5th to 9th March, 2018. This casual attitude of the Government is against the Constitutional scheme which gives right to the Members of Parliament to move for disapproval of the Ordinance within 120 days. In the instant case the period of 59 days had already lapsed when the Ordinance was laid before the Senate.

10. In terms of the Constitution, Senate Rules and Ruling of the Chair, the Government should lay an Ordinance on the first day of the sitting of the House held after the promulgation of the Ordinance on which formal Government Business is to be transacted.

11. The Secretariat is directed to send this ruling to the President of Pakistan, Prime Minister of Pakistan and Minister for Parliamentary Affairs.



(MUHAMMAD SADIQ SANJRANI)
CHAIRMAN

Dictated in the Chamber
Senate Sitting dated 14th November, 2018
284th Session - Announced in the House