

Legal Framework Order (LFO) 2002

On August 24, 2002, Chief Executive General Musharraf issued the Legal Framework Order 2002, announcing general elections for the National and Provincial Assemblies to be held in October 2002. Constitutional Provisions were amended for smooth and orderly transition of power from the Chief Executive to the newly elected Prime Minister after the elections.

The main text of the L. F. O. 2002 stated as follows:

It has been specified that it will come into force henceforth and in the first meetings of National Assembly, Senate and Provincial Assemblies and that if any necessity arises for any further amendment of the Constitution or there is any difficulty in giving effect to any of the provisions of this Order, the Chief Executive will have the discretionary power to make provisions and pass orders for amending the Constitution or for removing any difficulty. It has been further asserted that the validity of any provision made, or orders passed, under clauses (1) and (2) shall not be called in question in any court on any ground whatsoever. The main points of L. F. O. 2002 may be summed up as below:

i) Every political party shall, subject to law, hold intra-party elections to elect its office-bearers and party leaders.

ii) Having received the democratic mandate to serve the nation as President of Pakistan for a period of five years, the Chief Executive on relinquishing the office of the C. E., shall assume the office of President of Pakistan forthwith and hold office for a term of five years under the Constitution, and Article 44 and other provisions of the Constitution shall apply accordingly.

iii) There shall be 342 seats of the members in the National Assembly, including seats reserved for women and non-Muslims.

iv) The seats in the National Assembly are allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital as under:

- Balochistan: General 14, Women 3, Total 17

- N. W. F. P.: General 35, Women 8, Total 43

- Punjab: General 148, Women 35, Total 183

- Sindh: General 61, Women 14, Total 75

- F. A. T. A.: General 12, Women 0, Total 12

- Federal Capital: General 2, Women 0, Total 2

- Total: General 272, Women 60, Total 332

v) In addition to the number of seats referred to in clause (iv), there shall be, in the National Assembly, ten seats reserved for non-Muslims.

vi) Members to the seats reserved for non-Muslims shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the National Assembly. A political party securing less than five per centum of the total number of seats in the National Assembly shall not be entitled to any seat reserved for women or non-Muslims.

vii) If any question arises whether a member of the Parliament is disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, within 30 days, refer the question to the Chief Election Commissioner who shall give his decision thereon not later than three months from its receipt by the Chief Election Commissioner.

viii) If a member of a Parliamentary Party resigns from membership of his political party or joins another; or votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs concerning election of the Prime Minister or the Chief Minister; a vote of confidence or no-confidence; or a Money Bill, he may be declared in writing by the Head of the Parliamentary Party to have defected from the political party. The Head of the Parliamentary Party shall forward a copy of the declaration to the Presiding Officer, and a copy thereof to the member concerned.

ix) A member of a House shall be deemed to be a member of a Parliamentary Party if he having been elected as a candidate or nominee of a political party constituting the Parliamentary Party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of a declaration in writing.

x) With an addition of "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 clause 58 is revived.

xi) Where a Bill is referred to the Mediation Committee, it shall, within 90 days, formulate an agreed Bill likely to be passed by both Houses of the Parliament and place the agreed Bill separately before each House. If both the Houses pass the Bill, it shall be presented to the President for assent.

xii) All decisions of the Mediation Committee shall be made by a majority of the total number of members of each House in the Committee.

xiii) The President may, in consultation with the Speaker of the National Assembly and Chairman of the Senate, make rules for conduct of business of the Mediation Committee.

xiv) With an insertion of a new article 152A, there shall be a National Security Council whose chairman shall be the President in order to serve as a forum for consultation on strategic matters pertaining to the sovereignty, integrity and security of the State, and the matters relating to democracy, governance and inter-provincial harmony. Other members of N. S. C. shall be the Prime Minister, the Chairman of the Senate, the Speaker of the National Assembly, the Leader of the Opposition in the National Assembly, the Chief Ministers of the Provinces, the Chairman Joint Chiefs of Staff Committee, and the Chiefs of Staff of the Pakistan Army, Pakistan Navy and Pakistan Air Force. Meetings of the National Security Council may be convened by the President either in his discretion, or on the advice of the Prime Minister, or when requested by any other of its members, within the time frame indicated by him.

xv) On dissolution of an Assembly under article 58-2 (b) or, on completion of its term, the President, in his discretion, or, as the case may be, the Governor, in his discretion but with the previous approval of the President, shall appoint a caretaker Cabinet. When a caretaker Cabinet is appointed, on dissolution of the National Assembly under Article 58 or a Provincial Assembly under Article 112, or on dissolution of any such Assembly on completion of its term, the Prime Minister or, as the case may be, the Chief Minister of the caretaker Cabinet shall not be eligible to contest the immediately following election of such Assembly.

xvi) The Proclamation of Emergency of the 14th October, 1999, all President's Orders, Ordinances, Chief Executive's Orders, including the P. C. O. No. 1 of 1999, the Oath of Office (Judges) Order 2000, the Referendum Order 2002 (Chief Executive's Order No. 12 of 2002), and all other laws made between the October 12, 1999 and the date on which this Article comes into force, are hereby affirmed, adopted and declared notwithstanding any judgment of any court, to have been validly made by competent authority and notwithstanding anything contained in the Constitution shall not be called in question in any court on any ground whatsoever.

xvii) All Proclamations, President's Orders, Ordinances, Chief Executive's Orders, laws, regulations, enactments, notifications, rules, orders or bye-laws in force immediately before the date on which this Article comes into force shall continue in force until altered, repealed or amended by competent authority.

Through L. F. O. 2000, the President and Chief Executive revived the Constitution of Pakistan, except a few articles pertaining to the Provincial Governments and the Senate of Pakistan, etc., with effect from 16th November, 2002, which are to be restored later. Those parts of the Constitution which are restored include "Preamble, Article 1 to 58 (both inclusive), Article 64 to 100 (both inclusive), Annex, insertion of Article 152A and the schedule to the Constitution".

Some of the immediate implications of the L. F. O. 2000 are:

a) L. F. O. 2000 has been sanctified by postulating that no body can challenge it in any court of law "on any ground whatsoever."

b) It is now assumed to be an integral part of the Constitution and there is no imperative left for the newly and duly elected National Assembly but to accept it willingly or unwillingly. The present Parliament is quite unable to reverse or do away with any of the Amendments, especially

the one relating to the National Security Council. The Prime Minister and the whole Parliament are at the will of the President for their survival.

c) Many believe that the L. F. O. 2000 has been enforced without any regard for the Constitutional and democratic norms and proprieties. By terminating the Thirteenth Amendment that was not passed by two-third majority but a unanimous vote of the Parliament, the President has again been authorized to enjoy the power of dismissing the Prime Minister along with his Cabinet and the Parliament.

d) With the adoption of the Legal Framework Order 2002, Pakistan has virtually advanced from the parliamentary form of government to the presidential system. The Article 58-2 (b) clause has been revived and the insertion of the new clause 152A has created the National Security Council.

e) Though the function of National Security Council and the clause 58-2 (b) is to provide a system of checks-and-balances, there are some issues to consider. In case of a confrontation between the President and the Prime Minister, the majority of votes in the National Security Council will automatically go in favor of the President who can thus easily remove the Prime Minister, putting the Parliamentary form of government once again in jeopardy.

f) With a radically altered Constitutional Framework, in whose making the people of Pakistan have had no say, the sovereignty of the Parliament has been severely crippled.

g) Although the Article 58-2 (b) does not specifically mention the President as having the power to sack the Prime Minister, the dissolution of the Assembly automatically makes the Prime Minister go. As the recent past shows, this clause was misused by three Presidents to remove Prime Ministers for purely political reasons, even though the Constitution authorized the President to take such a drastic step only after it had become clear that "a situation had arisen in which the government of the federation cannot be carried on in accordance with the provisions of the Constitution." There is no doubt that every future Prime Minister will have to work under the constraints of 58-2 (b) at all times.

The only way to constitutionally amend the Constitution is through the Article 239, which lays down the following procedure:

"A bill to amend the Constitution may originate in either House (National Assembly or the Senate) and, when the bill is passed by the votes of not less than two-thirds of the total membership of the House, it shall be transmitted to the other House." As such, it is still considered by the Constitutional experts that General Musharraf requires two-thirds majority to have his Constitutional Amendments or L. F. O. 2000 validated. In addition, the legal position of General Musharraf is also not in accordance with the Constitution of Pakistan for it does not recognize a uniformed Army Chief as the Head of State. Under the Constitution of 1973, only a majority vote in National Assembly, Senate, and four Provincial Assemblies can elect a President.