P L D 2002 Supreme Court 994

Present: Sh. Riaz Ahmed, C. J., Munir A. Sheikh,

Nazim Hussain Siddiqui. Iftikhar Muhammad Chaudhry

and Qazi Muhammad Farooq, JJ

PAKISTAN MUSLIM LEAGUE (Q)

and others---Petitioners

versus

CHIEF EXECUTIVE OF ISLAMIC REPUBLIC OF

PAKISTAN and others---Respondents

Constitutional Petitions Nos.29 to 33 of 2002, decided on 11th July, 2002.

Conduct of General Elections Order [Chief Executive's Order No.7 of 2002]------

----Art. 8A--Constitution of Pakistan (1973), Arts. 184(3), 17, 25, 62 & 63---Constitutional petition under Art.184(3) of the Constitution before Supreme Court---Educational qualification for member of Majlis-e-Shoora (Parliament) and a Provincial Assembly---Contention was that eligibility of a candidate to become a member of the Parliament or a Provincial Assembly being a graduate as prescribed under Art.8A, Conduct of General Elections Order, 2002 was not only violative of the provisions of Arts. 17 & 25 of the Constitution but also travelled beyond the parameters set by Supreme Court in Syed Zafar Ali Shah's case (PLD 2000 SC 869): that the qualification so prescribed was unreasonable and irrational to view of the prevailing state of literacy to the country and tended to create an elitist class, curtailed the choice and consent of the governed and took away the right of adult franchise and universal suffrage and that the Conduct of General Elections Order, 2002, in essence and spirit, was an amendment in the Constitution which the Chief Executive was not empowered to make in view of fetters imposed by the Supreme Court on his power to amend the Constitution ---Validity-- Educational qualification prescribed for membership of Assemblies will not only raise their level of competence and change the political culture but will also be an incentive to education---Conduct of General Elections Order, 2002 deserved approval being the first step aimed at bringing about a change in the political culture---Political culture---Concept---Provision of Art.62(2) of the Constitution provided that further qualifications in addition to those laid down in Art.62, which dealt with the qualifications for membership of Parliament, could be prescribed by a law by the law-making body only---All citizens were though equal before law and were entitled to equal protection but the State was not prohibited to treat its citizens on the basis of a reasonable classification---Principles of equal protection of law and reasonableness of classification enumerated---Conduct of General Elections Order, 2002 having been issued by the Chief Executive on the strength of the powers conferred on him by Supreme Court in Syed Zafar Ali Shah's case (PLD 2000 SC 869) was thus a validly promulgated law and did not suffer from any legal defect or infirmity and did not transgress the limits laid down by the Supreme Court as it was linked with the holding of general elections in the country and aimed at good governance which was the hallmark and soul of democracy and the ultimate outcome of general elections---Judging the Conduct of General Elections Order, 2002 also in the light of the principles of equal protection of law and reasonable. classification the education related qualification was reasonable and not arbitrary or

whimsical because being a step towards transformation of the political culture it was founded on reasonable basis and equally applied to all the graduates and did not discriminate any graduate or create a class within the graduates-- Principles.

In the present case the political parties as well as politicians, have challenged Article 8A, Conduct of General Elections Order, 2002 mainly on the ground that it is not only violative of the provisions of Articles 17 and 25 of the Constitution but also travels beyond the parameters set by this Court in Syed Zafar ,Alt Shah's case (PLD 2000 SC 869), it is unreasonable and irrational in view of the prevailing state of literacy in the country and tends to create an elitist class curtail the choice and consent of the governed and take away the right of adult franchise and universal suffrage.

Political History of Pakistan -as narrated in the present judgment distinctly points to a political culture, which leaves much to be desired. It demonstrated utter disregard for parliamentary values and deliberate attempt to injure the soul of democracy The establishment of a democratic order and the institutions therein require utmost responsibility on the part of the elected representatives of the people but the record of most of the elected representatives of the four dissolved National and Provincial Assemblies speaks volumes about their psyche, lack of education and sense of responsibility. It also shows that the political field was dominated by a coterie of individuals representing a special class of vested interests, which ensured that if not they, their kith and kin were elected as members of the Assemblies, Regardless of the ideal standards, their main effort was directed to have their hegemony in the political field. There are known cases where through manoeuvring and machination one faction deliberately went to the opposition and the other to the treasury benches.

In the light-of what has been narrated above, it is crystal clear that the political scenario in Pakistan is a sad tale of failure on the part of the public representatives. Eleven years history of the Political events is an eye opener. Four National Assemblies in succession were dissolved on the ground of misdemeanour on the part of the government, and the party forming it. The grounds on which the Assemblies were dissolved and which were upheld by Supreme Court are sufficient for and necessitate a drastic change in the political culture of the country. No doubt it is the privilege of the public representatives to side with their party in power but it does not absolve them of their responsibility and look at the degree of responsibility that the 13th and 14th Amendments were bulldozed and nobody raised his little finger. against the proposed legislation. These amendments pertained. To the constitutional changes and were not germane to the ordinary law. A constitutional amendment requires sane thinking, deliberation and composition; which were totally absent and none took it seriously. In fact what was practised in those years was nothing but parliamentary dictatorship. A whim of the party' leader in the House could not have become a substitute for the will of the people or their representatives in the Assemblies. Of course. It cannot be totally attributed to lack of education but nevertheless it was one of the most important factors owing to which the representatives had allowed themselves to be driven by their leaders Supreme Court also owes a duty to the posterity. It is a matter of common knowledge that changes in the social, political and economic fields are not brought about at once with a magic wand but involve a journey of thousands miles, which requires a start with the first step. The Conduct of General Elections. Order, 2002 deserves approval being the first step aimed at bringing about a change in the Political culture.

Political culture is the set of attitudes, beliefs, and sentiments which give order and meaning to a political process and which provide the underlying assumptions and rules that govern behaviour in the political system. It encompasses both the political ideals and the operating norms of a polity. Political culture is thus the manifestation in aggregate form of the psychological and subjective dimensions of politics. A political culture is the product of both the collective history of a political system, and the life

histories of the members of that system, and thus it. is rooted equally in public events and private experiences.

The change in the political culture with reference to the educational qualification for members of the Assemblies is also necessitated by the fact that with the transfer of power at the grass roots level through implementation of the devolution plan all the civic work has been assigned to the chosen representatives at different levels of the local government and new the business in the Parliament would mainly be confined to lawmaking. The menacing of new laws in the light of the changing circumstances and social and political values is an uphill task. In this view of the matter, it is all the more necessary that the public representatives are well versed with the modern trends, changing social order and the events on the international scene. No doubt wisdom is not related with degrees but this is an exception to the rule. Education certainly broadens the vision adds to knowledge brings about maturity and enlightenment, promotes tolerance and peaceful co-existence and eliminates parochialism. The educational qualification prescribed for membership of Assemblies will not only raise their level of competence and change the political culture but will also be an incentive to education.

It was urged that the conduct of General Elections Order, 2002 in essence and spirit was an amendment in the Constitution which the Chief Executive was not empowered to make in view of the fetters imposed by. Supreme Court on his power to amend the Constitution. The argument is misconceived inasmuch as the Election Order does not amend the Constitution but is a law within the purview of Article 62(i) of the Constitution.

Section 99 of the Representation-of the People Act. 1976 also deals with the qualifications for membership of the Parliament and is pari materia with Article 62 of the Constitution. A perusal of Article 62(2) clearly shows that further qualifications in addition to those laid down in Article 62, which deals with the qualifications for membership of Majlis-e-Shoora (Parliament), can be prescribed by a law enacted by the law-making authority: The Conduct of General Elections Order, 2002 having been issued by the Chief Executive on the strength of the powers conferred on him by Supreme Court in Syed Zafar Ali Shah's case is thus a validly promulgated law and does not suffer from any legal defect or infirmity. It also does not transgress the limits laid down in the aforesaid case as it is linked with the holding of general election in the country and aims at good governance which is the hallmark and soul of democracy and the ultimate outcome of general election.

Article 17 of the Constitution clearly allows a citizen to have the right to form associations or unions subject to any reasonable restrictions imposed by law. Similarly, every citizen not being in the service of Pakistan, has the 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.

The "Fundamental Right" conferred by Article 17(2) of the Constitution whereby every citizen has been given "the right" to form or to be a member of a political party comprises the right to participaie in and contest an election.

Every citizen has a right to contest election but the principle enunciated in Mian Muhammad Nawaz Sharif's case does not confer an unbridled right on every citizen to contest an election. The right to contest an election is subject to the provisions of the Constitution and the law and only those citizens are eligible to contest election who possess the qualifications contained in Article 62 and the law including the law made under Article .62(i) and do not suffer from disqualifications laid down in Article 63 of the Constitution and the law.

Under Article 25 all citizens are equal before law and are entitled to equal protection of law but the State is not prohibited to treat its citizens on the basis of a reasonable classification. Article 2.5 of the Constitution enshrines basic concept of religion of Islam. However, this is now known as the golden principle of modern jurisprudence, which enjoins that all citizens are equal before law and are entitled to equal protection of law. Following are the principles with regard to equal protection of law and reasonableness of classification:--

(i) That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be-treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons to different age groups, persons having different financial standings, and persons accused of heinous crimes;

(iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification, which is arbitrary and is not founded on any rational basis, is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based--

(a) on an, intelligible differentia .which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification.

(a) A law may be constitutional even though if relates to a single individual if, on account of some, special circumstances, or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) there is always a presumption in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles. The person, therefore, who pleads that Article 25 has been violated, must make out that not only has he been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment has been unjustifiably made. However, it is extremely hazardous to decide the question of the Constitutional validity of a provision on the basis of the supposed existence of facts by raising a presumption. Presumptions are resorted to when the matter does not admit of direct proof or when there is some practical difficulty to produce evidence to prove a particular fact;

(c) it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based on adequate grounds;

(d) the Legislature is free to recognize the degrees of harm and may confine its restriction to those cases where the need, is deemed to be the clearest;

(e) in order to sustain the presumption of constitutionality, the Court, may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation;

(f) while good faith and knowledge of the existing conditions on the part of the Legislature are to be presumed, if there is nothing on the face of the law or, the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of the constitutionality cannot be carried to the extent, of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation;

(g) a classification need not be scientifically perfect or logically complete;

(h) the validity of a rule has to be judged by assessing its overall effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is a just one, taking all aspects into consideration.

Judging the Conduct of General Elections Order, 2002 in the light of the above principles, the education related qualification is reasonable and not arbitrary or whimsical because firstly, being a step towards transformation of the political culture it is founded on reasonable basis and secondly, it equally applies to all the graduates and dogs not discriminate any graduate or create a class within the graduates.

Syed Zafar Ali Shah's case PLD 2000 SC 869; Mst. Parveen Zohra . v. Province of West Pakistan PLD 1957 Lah. 1071; Mian Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473; Symbol's case PLD 1989 SC 66; Ihsanul Haq Piracha v. Wasim Sajjad PLD 1986 'SC 200; Ata Elahi v. Mst. Parveen Zohra PLD 1958 SC 298; Farooq Ahmed Khan Leghari's case PLD 1999 SC 57; Nisar Ahmed v. Federation of. Pakistan 1999 SCMR 1338; Benazir Bhutto's case PLD 1988 SC 416; Abul A'la Maudoodi v. Government of West Pakistan PLD 1964 SC 673; Haji Saifullah Khan's case PLD 1989 SC 166; N.P. Ponnuswarni v. Returning Officer, Namakkal AIR 1952 SC 64; Jamuna Prasad v. Lachhi Ram AIR 1954 SC 686; Hamida Begum v. Provincial Election Authority PLD 1966 Lah. 560; Jyoti Basu v. Debi Ghosal AIR 1982 SC 983; Dhartipakar v. Rajiv Gandhi AIR 1987 SC 1577; I.A. Sherwani's,case 1991 SCMR 1041; AI-Jehad Trust's case PLD 1996 SC 324; Begum Shamsunnehar v. The Speaker, East Pakistan Provincial Assembly, Dacca PLD 1965 SC 120; Mir Ghous Bakhsh Bizenjo v. Islamic Republic of Pakistan PLD 1976.Lah. 1504; .Ata Muhammad Mari v. Federation of Pakistan 1994 CLC 409; Dr. Tariq Nawai v. Government of Pakistan 2000 SCMR 1956: Government of Sindh v. Khalil Ahmed 1994 SCMR 782; Lahore Improvement Trust v Custodian of Evacuee Property PLO 1971 SC 811; Ch. Muhammad Yusuf v. Azad Government PLD 2001 Azad J&K 60; 2002 CLC 1130; Dosso's case PLD 1958 SC (Pak.) 533; PLD 1992 SC 646; PLD 1998 SC 388 and International Encyclopaedia of the Social Sciences by David L. Sills, Vol . 12, p. 218.ref.

Syed Iftikhar Hussain Gillani, Senior Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record for Petitioner (in Constitutional Petition No. 29 of 2002).

Qazi Muhammad Anwar, Senior Advocate Supreme Court with Ejaz Muhammad Khan, Advocate-on-Record for Petitioner (in Constitutional Petition No. 30 of 2002).

Qazi Abdul Basit, Advocate Supreme Court for Petitioner (in Constitutional Petition No. 31 of 2002).

Shakil Ahmad, Advocate Supreme Court for Petitioner (in Constitutional Petition No. 32 of 2002).

Islamic Republic of Pakistan (Sh. Riaz Ahmed, C J)

Aftab Gul, Advocate Supreme Court with M. Shan Gul, Advocate for Petitioner (in Constitutional Petition No. 33 of 2002).

Makhdoom Ali Khan. Attorney-General for Pakistan, Maqbool Elahi Malik, Advocate-General, Punjab, Jehanzeb Rahim, Advocate General, N.-W.F.P., M. Sarwar Khan, Addl. A.-G., Sindh, Akhtar Zaman, Addl. A.-G., Balochistan, Khurram Hashmi, Advocate (with Permission) and Mehr Khan Malik, Advocate-on-Record for Respondents.

Dates of hearing: 9th, 10th and 11th July, 2002.

JUDGMENT

SH. RIAZ AHMED, C J.--Through these petitions the jurisdiction of this Court under Article 184(3) of the Constitution has been invoked to assail the provisions of Article 8A of the Conduct of General Elections Order, 2002 (Chief Executive's Order No. 7 of 2002), inserted therein by the Conduct of General Elections (Amendment) Order, 2002, hereinafter called the Election Order, whereby a new qualification has been added for the eligibility of a candidate to become a member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly. It has been provided by the said Article of the Election Order that a person would be ineligible to contest election if he is not a graduate. To be precise about the condition, Article 8A of the Election Order is reproduced hereunder:--

> "8A. Educational qualification for a member of Mailis-e-Shoora (Parliament) and a Provincial Assembly.--Notwithstanding anything contained in the Constitution of the Islamic Republic of Pakistan, 1973, the Senate (Election) Act, 1975 (LI of 1975), the Representation of the People Act, 1976 (LXXXV of 1976), or any other law for the time being in force, a person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly unless he is at least a graduate possessing a bachelor degree in any discipline or any degree recognized as equivalent by the University Grants Commission under the University Grants Commission Act, 1974 (XXIII of 1974)."

2. The petitioners, who are the political parties as well as politicians, have challenged the above legislation mainly on the grounds that it is not only violative of the provisions of Articles 17 and 25 of the Constitution but also travels beyond the parameters set by this Court in Syed Zafar Ali Shah's A case (PLD 2000 SC 869), it is unreasonable and irrational in view of the prevailing state of literacy in the country and tends to create an elitist class. curtail the choice and consent of the governed and take away the right of adult franchise and universal suffrage.

3. The respondents have resisted the petitions essentially on the following common pleas taken in their written reply/statement.

(1) Article 8A of the Election Order has been validly and competently enacted in consonance with the parameters laid down in Syed Zafar Alt Shah's case. It is neither violative of the Constitution nor does it amend any salient feature

thereof and it would strengthen and not dismantle the parliamentary form of Government; and

(2) With the passage of time and the evolution of civil society great changes occur in the political, social, economic conditions of the society. The impugned legislation is aimed at improving the standard of the Parliament and other legislative bodies for the welfare of the people of Pakistan.

3. Syed Iftikhar Hussain Gillani, Senior Advocate Supreme Court, learned counsel for the petitioner in Constitution Petition No. 29/2002 at the outset formulated his contentions as under:

(1) Article 8A of the Election Order is ultra vires Articles 17 and 25 of the Constitution.

(2) The said Article is tantamount to amending the salient features of the Constitution as it impacts on the parliamentary system of Government.

(3) Promulgation of the Election Order is neither permissible on the strength of the dictum laid down in Syed Zafar Ali Shah's case nor Justified on the touchstone of state necessity.

(4) The impugned enactment is discriminatory, arbitrary and fanciful as the nexus thereof with the object to be achieved is irrelevant, fanciful and not even remotely germane to the purpose to be achieved. In fact it would lead to creation of political aristocracy.

4. Elucidating his contentions, the learned counsel made the following submissions:

(a) The preamble to the Election Order does not contain any reason for its promulgation. However. the reason is .traceable to the proposed Constitutional Package-I issued by the National Reconstruction Bureau wherein it has been proposed to amend Article 62(i) of the Constitution by adding qualification of graduation for a candidate for election of the Parliament on the ground that minimum educational qualifications have been prescribed for any job in the service of Pakistan as defined in the Constitution. The reason is fallacious as the members of Parliament do not fall within the definition of 'service of Pakistan'.

(b) The impugned legislation is aimed at controlling the Parliament and circumventing democracy. It militates against the universally accepted definition of democracy that it is a government of the people, by the people and for the people.

(c) The Courts in Pakistan have always adopted a progressive and advanced approach with regard to political rights of the citizens and their violation. It was held in Mst. Parveen Zohra v. Province of West Pakistan (PLD 1957 Lahore 1071) that right to vote and stand for election is a political right and the guarantee of equal protection extends to political rights. In Mian Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473) it was observed with reference to Symbol's case (PLD 1989 SC 66) that the 'Fundamental Right' conferred by Article 17(2) of the Constitution whereby every citizen has been given the right to form or to be a member of a political party comprises the right to participate in and contest an election.

(d) Para. 16 of the Short Order in Syed Zafar Ali Shah's case enumerates the powers of the present Government and also provides 12th October, 2002 as a cut off date till when those powers can be exercised. Therefore, whatever has to be done by the present Government has to be done before 12th October. 2002 and it cannot

lay down any roadmap for the post-October, 2002 period. The impugned legislation goes beyond that period and as such is not sustainable. Moreover, it does not fall within the declared objectives of the Chief Executive.

(e) The members of the Parliament only discuss and decide the policy matters and legislation is not their job. Drafting of laws is done by the draftsmen in the Ministry of Law. Besides, only one-third of Parliament's business relates to legislation.

(f) Wisdom has nothing to do with graduation. Most of the sages were illiterate. On the other hand, some of the highly qualified graduates are totally uneducated. In the past the performance of graduate and non-graduate members of the Parliament was at par with each other. There is no substitute of experience. As a matter of fact it is a question of representation. The elected members represent the people 65 % of whom are illiterate.

(g) In view of definition of the expressions 'Democracy' and 'Aristocracy' contained in the Black's Law Dictionary the prescribed educational qualification will only create another elitist class instead of eliminating classes in the country.

(h) The enactment in question, militates against the provisions of Articles 17 and 25 of the Constitution, which are to be read together. Article 25 is more exhaustive than the Fourteenth Amendment of the American Constitution. It has borrowed two expressions -- one from Dicey who first introduced the concept of 'equality before law' and the. other 'equal protection of law' from the Fourteenth Amendment of the American Constitution.

(i) Clauses (a), (b) and (c) of Article 37 of the Constitution cast a duty on the State to promote the educational and economic interests of, backward classes or areas, remove illiteracy and provide free and compulsory secondary education within minimum possible period; and make technical and professional education generally available and higher education equally accessible to all on the basis of merit. The ground reality is that hardly two per cent. of the population are graduate including doctors, engineers, scientists and simple graduates are about 5 per cent. The said Principles of Policy have neither been implemented in letter and spirit so far nor have been kept in view while promulgating the Election Order.

(j) In England where the literacy rate is hundred per cent there is a distinct differentia in the major political parties, viz. Conservative and Labour Parties. In Labour Party, there is a Member for every class of people to participate in the governance. - In the chart showing background of all Labour Members (1945--83) given in the book titled 'Parliament -- Functions, Practice and Procedures' by 1.A.G. Griffith, manual workers' percentage was 27.6 in 1945, which was reduced to 15.3 in 1983. Thus, the qualifications for members of Parliament have to be prescribed with reference to the conditions of the people whom they represent. In the United States there is no condition of educational qualification for the members of the Congress who are assisted by the experts in the relevant fields.

(k) There is no requirement of a graduation degree in respect of a technocrat as laid down in Ihsanul Haq Piracha v. Wasim Sajjad (PLD 19'86 SC 200). A technocrat indeed is of a higher calibre than a simple graduate who because of his professional competence and at least fifteen years' experience and expertise at a high level, administers or manages an operational or policy-making unit. In the Government service there are qualifications for the lower posts but there are no qualifications for the heads of organizations/bodies controlled by the Government; and

(l) The 1973 Constitution is the only Constitution in the world. which has been adopted unanimously and with complete consensus. The Constitutional Package-I itself makes it clear, that the proposed changes are going to impact the parliamentary features. There will be utter disaster if serious damage is done to the 1973 Constitution.

5. Qazi Muhammad Anwar, Senior Advocate Supreme Court, appearing in support of Constitution Petition No. 30 of 2002; adopted the arguments addressed by Syed Iftikhar Hussain Gillani and added that with reference to .the Principles of Policy it is the duty of the State to promote education in the backward areas, but in the Provincially Administered Tribal Areas of the N.-W.F.P. (PATA) except Swat there is no degree college for women. Same is the position in the Federally Administered Tribal Areas (FATA) and Baloehistan. He further added that there were no educational facilities in the far-thing rural areas of the country.

6. Qazi Abdul Basit, Advocate Supreme Court, learned counsel for the petitioner in Constitutional Petition No. 31 of 2002 also adopted the arguments advanced by Syed Iftikhar Hussain Gillani and further submitted that in view of lack of educational facilities `and other peculiar conditions prevailing in the backward areas of Swat, Dir, Malakand and Chitral the candidates from these areas for membership of the Parliament and the Provincial Assembly may be exempted from application of the educational qualification for a period of twenty years.

7. Mr. Aftab Gul, Advocate Supreme Court, learned counsel for the petitioner in Constitutional Petition No. 33 of 2002 besides adopting the arguments of Messrs Qazi Muhammad Anwar and Qazi Abdul Basit formulated his contentions as under:--

(1) The power to legislate and amend the Constitution given to the Chief Executive to enable him to establish his declared objectives is not limitless and uncontrolled but is confined to his objectives declared between 14th October, 1999 and the judgment of this Court in Syed Zafar Ali Shah's case.

(2) The Constitution being the supreme. law of the land cannot be amended through a sub-Constitutional legislation.

(3) Article 8A of the Election Order is a blatant and naked attempt at political engineering in converting the majority, rule into a minority rule and thereby destroying. one of the twin pillars on which all democratic dispensations rest, i.e. the majoritarian rule.

(4) Article 8A seeks to--

(a) curtail the consent of the governed;

(b) usher an elitist anti oligarchic dispensation:

(c) create political segregation and establish electoral apartheid and is, therefore, a total negation of the democratic order envisaged by the Constitution: and

(5) Article 8A is irrational insofar as it seeks to create unreasonable classification because no person can be disqualified except through, his own default.

8. The learned counsel elaborated his formulations as under:--

(a) The declared objectives of the Chief Executive as contained in his speeches of 13th and 17th October, 1999, the Proclamation of Emergency, the PCO or the written submissions of the Attorney General for Pakistan reproduced at pages 1058 and 1064 of the judgment of this Court in Syed Zafar Ali Shah's case do

not envisage raising the educational level of the elected representatives nor the impugned legislation is covered by the plenary powers to legislate and amend the Constitution given to the Chief Executive.

(b) Article 8A being outside the purview of Syed Zafar Ali Shah's case is ultra vires the Constitution:

(c) Democracy is a rule by the majority. There can be no democracy in which the rule is by minority. Article 8A takes away the right of the majority to choose their representatives who reflect the aspirations of the people. Thus, there may be a Government by the people and for the people, but it can never be a Government of the people because 98 % of the population win be excluded from that exercise. 'Besides Article 8A will widen the gap between the elected and the electors and the spirit of democracy envisaged by the Constitution would be eroded.

(d) People cannot be asked to choose their representatives from a particular class and intellectual level of an individual has nothing to do with the formal education: and

(e) Article 8A seeks to create unreasonable classification because no person can be disqualified except through his own default. All the qualifications already listed in Article 62 of the Constitution are within the reach of every citizen but the qualification of B.A. is not within the reach of every citizen of Pakistan. However, the position would have been different if there was compulsory and free education in Pakistan.

9. Mr. Shakil Ahmed, Advocate Supreme Court, learned counsel for the petitioner' in Constitutional Petition No. 32 of 2002 adopted the arguments of the learned counsel appearing in the other petitions. He placed reliance on the Provincial Census Report of Balochistan, 1998 to contend that the rate of literacy in Balochistan was dismal.

10. Mr. Makhdoom Ali Khan, learned Attorney-General for Pakistan, opposing the petitions, made the following submissions:--

(1) The expression 'impact' in the Constitutional Package has been used in its ordinary dictionary meaning, i.e. effect, influence, etc. and the criticism to the contrary levelled by Syed Iftikhar Hussain Gillani was unfounded.

(2) The judgment in Mst. Parveen Zohra's case (PLD 1957 Lahore 1071), cited by Syed Iftikhar Hussain Gillani, was reversed by the Supreme Court in the case reported as Ata Elahi v. Mst. Parveen Zohra (PLD 1958 SC 298).

(3) Enforcement of fundamental rights under Article 17 is subject to the provisions of Article 232 of the Constitution. Although Article 25 of the Constitution is not one of the excluded Articles but enforcement of Article 17 is.* suspended in view of the two Proclamations of Emergency, one of 28th May, 1998 and the other of 14th of October, 1999. Reference in this context may be made to the law laid down by this Court in Farooq Ahmed Khan Leghari's case (PLD 1999 SC 57), Nisar Ahmed v. Federation of Pakistan (1999 SCMR 1338) and Benazir Bhutto's case (PLD 1988 SC 416).

(4) All the four cases relied upon byL the petitioners, viz. Abul A'la Maudoodi v. Government of West Pakistan (PLD 1964 SC 673), Benazir Bhutto's case (PLD 1988 SC 416). Haji Saifullah Khan's case (PLD 1989 SC 166) and Mian Muhammad Nawaz Sharif's case (PLD 1993 SC 473) are distinguishable from the present case because here no political party has been denied the right to contest election and only a new qualification has been introduced in line with

the qualifications listed in Article 62 of the Constitution. Article 62 empowers the legislative authority to add new qualifications.

(5) Consistent case-law both in India and Pakistan unequivocally suggests that the right of an individual to contest election is not a fundamental right but a statutory right, which is regulated by law as held in N.P. Ponnuswaini v. Returning Officer, Namakkal (AIR 1952' SC 64), Jamuna Prasad v. Lachhi Ram (AIR 1954 SC 686), Hamida Begum v. Provincial Election Authority (PLD 1966 Lahore 560), Jyoti Basu v. Debi Ghosal (AIR 1982 SC 983) and Dhartipakar v. Rajiv Gandhi (AIR 1987 SC 1577).

(6) Article 51(2) of the Constitution lays down the qualifications of a voter and there is no power with the Parliament or any other authority to add to those qualifications. In contrast, the Constitution makers have given power to the lawmaking organ to add new qualifications under Article 62 of the Constitution, therefore, the competence of the lawmaker is placed beyond question under Article 62 as compared to Article 51 of the Constitution. In all the Constitutions of the world including the Constitution of Pakistan and the Government of India Act, 1935, the criteria for voling or to be a voter is different from the criteria to get elected. There is always a higher criteria. Article 51 says that the voter should be of 21 years of age but Article 62 says that the Member of Parliament should be 25 years of age. Similarly, different age is prescribed for the members of the Senate, the President of Pakistan, the Judges of the superior Courts, etc. So, there .is always a higher criteria, for a person who wants to get elected from a person who wants to cast a vote because higher level of maturity is required. In a nutshell, standards are different for the voters and the members of the Assemblies.

(7) Article 25 of the Constitution, relied by the other side, does not envisage absolute equality and a classic statement on the issue has been made by this Court in I.A. Sherwani's case (1991 SCMR 1041 at 1086).

(8) Article 8A of the Election Order is an attempt at good governance because the business of the State requires certain level of competence as is required in other professions and not only that, it can also be read as an incentive to education.

(9) In the context of Pakistani society, the common experience is that richer the family the less the incentive to education. The directories of members of the Assemblies show that the bulk of the non graduate members were not those who came from straitened circumstances but belonged to the affluent families with feudal/tribal backgrounds and the people from the other classes are generally highly qualified. Realizing their chances in life people from lower/middle class always go for education. It cannot be said that the persons who contest election did not have access to education. Thus, there is no direct relationship between a person in straitened financial circumstances and not being a graduate. Time limits are always arbitrary, be it 2 years, 4 years, 10 years or 20 years. 14 years' period cannot be given for acquiring B.A. Degree. It has to be left to the Legislature.

(10) The qualifications listed in Article 62, particularly clauses (e) to (f) are very subjective inasmuch as it is very difficult for a returning officer to assess adequate knowledge of Islamic teachings, sagacity, etc., of a person. Therefore, Article 8A is an attempt at introducing an objectiveness in otherwise subjective qualifications already listed.

(11) While applying the test of reasonableness in such a situation the Court will only see that the condition is not blatantly unreasonable as observed at pages

364-365 of the book 'Administrative Law' by Sir William Wade. Eighth Edition.

(12) In the United States, earlier many statutes were struck down on the test of reasonableness even in cases where the Legislature tried to regulate hours of work or women should be made to work for lesser hours, etc. but with the passage of time greater deference is given to the Legislature. (Treatise on Constitutional Law -- Substance and Procedure by Ronald D. Rotunda, Third Edition, Volume 1, page 348).

(13) Tests do change with the changing times. Thomas Jefferson who wrote the Federalist Papers and was one of the founding fathers of the US Constitution and whose definition of democracy 'Government of the people, by the people, for the people' has been quoted by the petitioners' side, himself owned slaves who had no right of vote.

(14) In the past history of Pakistan, particularly from 1988 onward, every National Assembly was dissolved, inter alia, on the charges of corruption and in every case, which came to the Supreme Court except that of Mian Muhammad Nawaz Sharif, this Court upheld the charge of corruption and the dissolution order. It was observed in Syed Zafar Ali Shah's case that the National Assembly did not exercise any check on the Prime Minister. Given that background an attempt has been made to achieve certain level of competence and refinement.

(15) During the last days of Mr. Zulfiqar Ali Bhutto the 7th Amendment providing for first localized martial law by amending Article 245 of the Constitution was passed both by the National Assembly and the Senate. When the bill was introduced in the Senate, the members wanted to deliberate on it stating that the amendment changes the character of the Constitution as it brings the Armed Forces into politics and affects the jurisdiction of the Courts and they were already accused of passing 5-6 amendments in a short span of time but the Law Minister said that the Prime Minister had called the session of the Senate to have this amendment passed, therefore, no debate could take place. Similar is the position, of the 13th, 14th and 15th Amendments.

(16) The composition of the members of the House of Commons in England, relied upon by the other side, shows that with the working of the party system over hundreds of years the system has been so refined that better people are elected. The chart itself suggests that most of the members were highly qualified such as barristers, doctors, engineers, etc.

(17) Even in England where education is compulsory, the example of Churchill who did not go to any college but was Prime Minister of England twice, is an exception and exceptions are everywhere,

(18) There is no such legislation in India but the Courts have stepped in to say that the voters need to be informed about the candidates for election. An NGO went to Delhi High Court by filing a petition that the Indian politics is polluted by crime, mafia has taken control and charge of the Parliament, so there is need to refine the system and information about the candidates must be made available to the people at the time when they go to polls. The Court directed the Election Commission to provide to the voters the information about the candidates including their educational background etc. In Pakistan the lawmaking authority has move in to prescribe educational qualification of candidates for information of the voters. The condition cannot be held to be unreasonable.

(19) The Constitution of Pakistan is different in many respects from the Constitutions of the rest of the world. Except for Iran, the qualification about adequate knowledge of

Islamic teachings is not there in any of the Muslim countries even. So, other jurisprudence will not really be relevant over here. , The case-haw from foreign jurisdiction cited in the Al-Jehad Trust case (PLD 1996 SC 324) in the context of our peculiar conditions, was held irrelevant. The Courts in Pakistan have always maintained this position. See Begum Shamsunnehar v. The Speaker', East Pakistan Provincial Assembly, Dacca (PLD 1965 SC 120), Mir Ghous Bakhsh Bizenjo v. Islamic Republic of Pakistan (PLD 1976 Lahore 1504) and Ata Muhammad Mari v: Federation of Pakistan (1994 CLC 409).

(20) There is a consistent jurisprudence in our country that the presumption is always in favour of the Constitution. Whenever the validity of a statute is challenged, every explanation must be found for the statute or even the executive legislation. See Dr. Tariq Nawaz v. Government of Pakistan (2000 SCMR 1956 at 1959), Government of Sindh v. Khalil Ahmed (1994 SCMR 782 at 790) and Lahore Improvement Trust v. Custodian of Evacuee Property (PLD 1971 SC 811); and

(21) Article 8A is not tantamount to amending the Constitution but it is a law within the purview of Article 62(i) of the Constitution.

11. Mr. Maqbool Ellahi Malik, learned Advocate-General, Punjab adopted the arguments made by the learned Attorney-General for Pakistan and submitted that--

(1) Being uneducated the members of the legislative chambers did not assert themselves and easily succumbed to allurements and indulged in floor crossing for reasons altogether ulterior. Keeping in view the past experience the Government has felt it necessary that some qualification be prescribed-for members of the Parliament and it is high time that the Legislature should have persons who can understand the intricate problems with which the country is faced.

(2) In all the four cases pertaining to dissolution of Assemblies, instead of dismissing the Government, the Assemblies were dissolved because they did not perform their duties and responsibilities and were privy to the wrong doings of the party in power.

(3) The Holy Prophet (p.b.u.h.) always selected educated and learned men for important assignments, therefore, learning and knowledge are the basic requirements. The value of knowledge and education cannot be undermined. Laying down certain qualification for election is a legislative fiat acid it does not pertain to the fundamental rights.

(4) The qualification of being a matriculate was prescribed for the election of Nazim and Naib Nazim under the devolution plan.

(5) The sole function of the members of the Assemblies is to legislate and without being educated they cannot participate in the legislative work; and

The Election Order does not change the basic structure of the Constitution.

12. Mr. M. Sarwar Khan, learned Additional Advocate-General, Sindh adopted the arguments of the learned Attorney-General for Pakistan and submitted that the Election Order is in consonance with Article 62(i) of the Constitution.

13. Mr. Jehanzeb Rahim, learned Advocate-General,, N.-W.F.P. also adopted the arguments of the learned Attorney-General for Pakistan. He placed reliance on the judgment reported as Ch. Muhammad Yusuf v. Azad Government (PLD 2001 Azad J&K 60) affirmed by the Supreme Court of Azad Jammu and Kashmir in 2002 CLC 1130, which pertained to qualification of Matric prescribed for membership of AJK

Assembly to contend- that the points urged in the present petitions were raised in the precedent case but were repelled. He submitted that besides the Universities in Peshawar, Dera Ismail. Khan and Hazara. various colleges have been established even in remote areas of N.-W.F.P. and thus educational facilities have been provided to the people. He placed reliance on a list of graduates prepared by the National Reconstruction Bureau before introducing the impugned legislation, which is based on a survey conducted by an NGO called Pattan, containing data regarding male and female graduates in various districts of N.-W.F.P.

14. Mr. Akhtar Zaman. learned 'Additional Advocate-General, Balochistan also ado fed the arguments of the learned Attorney-General for Pakistan.

15. The question raised before us is very crucial and its determination would go a long way to carve out the path on which the politics of Pakistan has to run. The first Constituent Assembly was dissolved because it failed to give a Constitution to the country and thereafter the National Assembly and the Provincial Assemblies, which came into being under the 1956 Constitution, were dissolved when the Constitution was abrogated by General Muhammad Ayub Khan by imposing Martial Law in the country. The dissolution was hailed by the public in both the wings of Pakistan. The background and the circumstances prevalent in the country before dissolution of the National and Provincial Assemblies in 1958 are enumerated in Dosso's case (PLD 1958 SC (Pak.) 533). General Muhammad Ayub Khan thereafter gave a new legal order by promulgating the 1962 Constitution under which one National Assembly and two Provincial Assemblies in the East and the West Pakistan came into being and the presidential form of Government was introduced. Unfortunately, that system too did not cure the core problems of the country with the result that on the one hand 10 years of Ayub Khan's rule were being celebrated under the auspices of the Government of Pakistan and n the other the entire public in both the wings of Pakistan was on the streets agitating against the presidential rule and their plight. The National Assembly and the Provincial Assemblies which came into being under the 1962 Constitution had been elected indirectly on the basis of the votes of the basic democrats and the general feeling of the public was that they had nothing to do with the same and neither they were allowed to participate in the affairs of the Government nor their problems had been solved. Field Martial Ayub Khan instead of handing over the power to the Speaker under his own Constitution asked General Agha Muhammad Yahya Khan to take over the reins of the country. General Agha Muhammad Yahya Khan dissolved the National and the Provincial Assemblies, imposed Martial Law and promulgated Legal Framework Order, 1970. In addition thereto one unit in the West Pakistan. was dissolved, the old four provinces were restored and election to the Constituent Assembly/National Assembly under the Legal Framework Order was announced and held in 1970. Unfortunately, the members returned to the Assemblies could not see eye to eye with each other and no compromise formula could be arrived at. The Awami League led by Sh. Mujeebur Rehman was the majority party in the East Pakistan while the Pakistan People's Party led by Mr. Zulfiqar Ali Bhutto was the majority party in two provinces, namely, Punjab and Sindh. The session of the Assembly, which had to take place, was postponed. The Awami League led by Sh. Mujeebur Rehman was returned with a thumping majority on the basis of 6-Point Political Programme announced by it, The postponement of holding of session of the Assembly infuriated the Awami League and the public in the East Pakistan and thus a revolt took place in the East Pakistan, To cut the long story short, ultimately the separation movement in the East Pakistan succeeded and the East Pakistan became Bangladesh, a separate independent State. In the remaining Pakistan, Mr. Zulfiqar Ali Bhutto, the leader of the majority party in the two provinces, became the President of Pakistan and the Chief Martial Law Administrator on the eve of transfer of power to him by General Agha Muhammad Yahya Khan. The Interim Constitution of 1972 was promulgated. and then through Herculean efforts but by consensus of all, the 1973 Constitution was framed which came into force on 14th August, 1973. Mr. Zulfiqar Ali Bhutto became the Prime Minister under the said Constitution. However, the country could not be brought

on rails and in 1977 election was announced which was allegedly rigged leading to countrywide agitation against the Pakistan People's Party as a result of which the Pakistan Army had to intervene and Martial Law was imposed by General Ziaul Haq. The Constitution was not abrogated but was put in abeyance and the National as well as the Provincial Assemblies were dissolved. After the general election of 1985, which was held on non-party basis, General Ziaul Haq nominated Mr. Muhammad Khan Junejo as the Prime Minister of Pakistan. There are painful circumstances which need not be repeated. However, ultimately the National and Provincial Assemblies were dissolved in 1988 by General Ziaul Haq on the following grounds:--

"Whereas the objects and purposes for which the National Assembly was elected have not been fulfilled:

And whereas 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-

And whereas the life, property, honour and security of the citizens of Pakistan have been rendered totally unsafe and the integrity and ideology of Pakistan have been seriously endangered;

And whereas in my 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."

General Ziaul Haq publicly announced that the next election would also be held on non-party basis. Before General Ziaul Haq could do so, he died in an air crash and Mr. Ghulam Ishaq Khan, Chairman of the Senate became the President of Pakistan who announced that election would be held in November, 1988. In the meantime, Ms. Benazir Bhutto tiled a petition in this Court praying that the soul of parliamentary democracy, which was the hallmark of the 1973 Constitution, required that the election be held on party basis. This Court allowed the said petition through the judgment reported as Ms. Benazir Bhutto's case (PLD 1988 SC 416) and it was directed that the election would be held on party basis. The election was held on party basis and Ms. Benazir Bhutto formed the Government at the centre and two Provinces namely, Sindh and N.-W.F.P. while Pakistan Muslim League, which was the rival political party, formed Government in the Punjab. Simultaneously, an unfortunate period of confrontation between the two rival parties and their leaders started. The two leaders were at daggers drawn with each other. Hardly any tolerance was shown and instead of solving the problems of the country and the people they were trying to malign and humiliate each other-. Attempts for vote of no confidence in the centre against Ms. Benazir Bhutto were made. The members of the National Assembly of both the factions were taken to different places by the leaders. The stories of corruption, maladministration, nepotism, favouritism, etc. were rampant. In this background, in 1990 Mr. Ghulam Ishaq Khan under Article 58(2)(b) of the Constitution dissolved the National and the Provincial Assemblies on the following grounds:--

> "The President having considered the situation in the country, the events that have taken place and the circumstances, and among others for the reasons mentioned below is of 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 is necessary:

(a) The utility and efficacy of the National Assembly as a representative institution elected by the people under the Constitution, and its mandate, is defeated by internal dissensions and frictions persistent and scandalous 'horse-trading' for political gain and furtherance of personal interests, corrupt practices and inducement, in contravention of the Constitution and the law, and by failure to discharge substantive legislative functions other than the adoption of the

Finance Bill, and further the National Assembly has lost the confidence of the people.

(b) The Constitution envisages the Federation and the Provinces working within the spheres respectively assigned to them with clearly delineated executive and legislative authority, and with a view to safeguarding the structure of the Federation also contains special provisions of mandatory nature to ensure and protect the authority granted to provinces, by creating the specific Constitutional institutions consisting of Federal and Provincial representatives, but the Government of the Federation has wilfully undermined and impaired the working of the Constitutional arrangements and usurped the authority of the Provinces and of such institutions, resulting in discord, confrontation and deadlock, adversely affecting the integrity, solidarity and well-being of Pakistan, in that, inter alias--

(i) The Council of Common Interests under Article 153, which is responsible only to Parliament, has not been allowed to discharge its Constitutional functions and exercise its powers despite persistent demands of the Provinces, and Parliament has also not been allowed to function in this regard as required by Articles 153 and 154, and in relation to Articles 155 and 161.

The National Finance Commission under Article 160 has never been called to meet and allowed to function, thus blocking mandatory Constitutional process in the matter of allocation of shares of revenues to the Provinces despite their persistent demands.

Constitutional powers and functions of the Provinces have been deliberately frustrated and extension of executive authority of the Federation to the Provinces in violation of Article 97 and by the general manner of implementation of the Peoples' Programme.

The Senate, which is representative of the Federating Units under Article 59 and is an integral part of Parliament, has been ridiculed and its Constitutional role has been eroded.

(c) Corruption and nepotism in the Federal Government, its functionaries and Authorities and Agencies statutory and other corporations including Banks, working under its supervision and control and the holders of representative offices has reached such proportion that the orderly functioning of the Government in accordance with the provisions of the Constitutional including the requirements of the Oath(s) prescribed therein, and the law, does no longer carry public faith and credibility and despite being subject to wide public condemnation, the Government has failed to take appropriate action in this behalf.

(d) The Federal Government has failed in its duty under Article 148(3) of the Constitution to protect the Province of Sindh against internal disturbances and to ensure that the Government of that Province is carried on in accordance with the provisions of Constitution, despite the heavy loss of life and property, the rule of terror in urban and rural area, riots, arson, dacoities, kidnapping for ransom, politics of violence among citizens and widely condemned failure of the Provincial Government and its law-enforcing agencies, and also, in this behalf. failed to act under appropriate provisions of the Constitution.

(e) The Government of the Federation has violated the provisions of the Constitution and the law in that:--

(i) The Superior Judiciary has been publicly ridiculed and its integrity attacked and attempts made to impair its independence.

(ii) Authority, 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 gains.

(iii) The Civil Services of Pakistan have been undermined by disregarding the provisions of Articles 240 and 242.

(iv) The powers under Article 45 have been exercised by the Government without prior approval of the President."

Next election was held in 1990 and at that point of time, an alliance of certain political parties known as Islami Jamhuri Ittehad (IJI) was formed which won the majority seats and Pakistan Muslim League formed the government headed by Mian Muhammad Nawaz Sharif and the Pakistan People's Party sat in opposition. There was utter personal hostility between the leaders of the two factions, which escalated the confrontation. On account of this acute confrontation, absence of attempt on the part of the leaders to arrive at a consensus and to solve the problems of the country, failure to improve the lot of the man in the street. and the deteriorating economy of the country again led Mr. Ghulam Ishaq Khan to dissolve the National Assembly in 1993. In the dissolution order, the President gave the following grounds:--

> "The President having considered the situation in the country, the events that have taken place and the circumstances, the contents and consequences of the Prime Minster's speech on 17th April, 1993 and among others for the reasons mentioned below is of the opinion that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to IN the electorate is necessary:--
>
> (a) The mass resignation of the members of the Opposition and of considerable number from the Treasury Benches, including several Ministers, inter alia, showing their desire to seek fresh mandate from the people have resulted in the Government of the Federation and the National Assembly losing the confidence of the people, and that t dissension therein, has nullified its mandate.
>
> (b) The Prime, Minster held meetings with the President in March and April and the last on 14th April, 1993 when the President urged him to take positive steps to resolve the grave internal and international problems confronting the country and the nation was anxiously looking forward to the announcement of concrete measures by the Government to improve the situation. Instead, the Prime Minster in his speech on 17th April. 1993 chose to divert the people's attention by making false and malicious allegations against the Pre4dent of Pakistan who is Head of State and represents the unity of 'the Republic. The tenor of the speech was that the Government could not be carried on in accordance with the provisions of the Constitution and he advanced his own reasons and theory for the same which reasons and theory, in fact, are unwarranted and misleading. The Prime Minister tried to cover up the failures and defaults of the Government although he was repeatedly apprised of the real reasons in this behalf, which he even accepted and agreed to rectify by specific measures on urgent basis. Further, the Prime Minister's speech is tantamount to a call for agitation and in any case the speech and his conduct amounts to subversions of the Constitution.
>
> (c) Under the Constitution the Federation and the Provinces are required ic, exercise their executive and legislative authority as demarcated and defined and there are specific provisions and institutions to ensure its working in the

interests of the integrity, sovereignty, solidarity and well-being of the Federation and to protect the autonomy granted to the Provinces by creating specific Constitutional institutions consisting of Federal and Provincial representatives, but the Government of the Federation has failed to uphold and protect these, as required in that, inter alia:--

(i) The Council of Common Interests under Articles 153 which .is responsible only to Parliament has not discharged its Constitutional functions to exercise its powers as required by Articles 153 and 154, and in relation to Article 161, and particularly in the context of privatization of industries in relation to Item 3 of Part II of the Federal Legislative List and Item 34 of the Concurrent Legislative List.

(ii) The National Economic Council under. Article 156, and its Executive Committee, has been largely bypassed, inter alia, in the formulation of plans in respect of financial, commercial. social and economic policies.

(iii) Constitutional powers, rights and functions 'of the Provinces have been usurped, frustrated and interfered with in violation of inter alia Article 97.

(d) Maladministration. corruption and nepotism have reached such proportions .in the Federal Government, its various bodies, authorities and other corporations including banks supervised and controlled by the Federal Government: the lack of transparency in the process of privatization and in the disposal of public/Government properties that they violate the requirements of the Oath(s) of the Public representative together with the Prime Minister, the Ministers and Ministers of State prescribed in the Constitution and prevent the Government from functioning in accordance with the provisions of the Constitutions.

(e) The functionaries, authorities and agencies of the Government under the direction, control, collaboration and patronage of the Prime Minster and Ministers have unleashed a reign of terror against the opponents of the Government including political and personal rivals, relatives and mediamen, thus creating a situation wherein the Government cannot be carried on in accordance with the provisions tit the Constitution and the law.

(f) In violation of the provisions of the Constitution:--

(i) The Cabinet has not been taken into confidence or decided upon numerous Ordinances and matters of policy.

(ii) Federal Ministers have for a period even been called upon not to see the President.

(iii) 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.

(iv) There has been massive wastage and dissipation of public funds and assets at the cost of the national exchequer without legal or valid Justification resulting in increased deficit financing and indebtedness, both domestic and international, and adversely affecting the national interest including defence.

(v) Articles 240 and 242 have been disregarded in respect of the Civil Services of Pakistan.

(g) The serious allegations made by Begum Nuzhat Asif Nawaz as to the highhanded treatment meted out to her husband, the late Army Chief of Staff, and the further allegations as to the circumstances culminating in his death indicate that

the highest functionaries of the Federal Government have been subverting the authority of the Armed. Forces and the machinery of the Government and the Constitution itself.

(h) The Government of the Federation for the above reasons inter alia, is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic; situation confronting the country, necessitating, the requirement of a fresh mandate from the people of Pakistan."

Although this Court in the judgment reported as Mian Muhammad Nawaz Sharif's case (PLD 1993 SC-473) restored the Assembly but the system. did not work and the Prime Minister had to advise dissolution of the Assemblies. Thereafter, the Government of Ms. Benazir Bhutto formed as a result of the 1993 election was dismissed by President Farooq Ahmed Khan Leghari in 1996 on the, following grounds:--

"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 to the tight 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 compromise 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 tier 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 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 to 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 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 tactual 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, they 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 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 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 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 fulfil the Constitutional requirements.

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 appointee 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 till 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 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 eavesdropping techniques. The phones which have been tapped and the conversations that have been monitored in this un-Constitutional 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 have 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 for 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 nave 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 asset valued in several billions of rupees the President required the Prime Minister to place the matter before the Cabinet for consideration /re-consideration 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.

It may be stated here that on both occasions when the governments of Ms.Benazir Bhutto were dismissed the dissolutions were challenged and this Court in the judgments reported as PLD 1992 SC 646 and PLD 1998 SC 388 upheld the dissolution orders and the grounds on which the. Assemblies were dissolved,

16. In the 1997 general election Pakistan Muslim League again returned tit power with a thumping majority in the Assemblies and by means of the 13th Amendment, Article 58(2)(b) of the Constitution was omitted and the President's power to dissolve the National Assembly was taken away. A tug of war started between the Prime Minister and the Chief Justice of Pakistan. The Prime Minister introduced the 14th Amendment to the Constitution as a result of which the persons elected on the ticket of a particular party were debarred from speaking against the policies of the party concerned at the floor of the house or outside. A petition was moved challenging the 14th Amendment on the ground that it infringed the fundamental right of freedom of speech and the then Chief-Justice of Pakistan suspended the operation of the 14th Amendment which was resented by the party in power. The justification advanced by the party in power to introduce 14th Amendment was that they were trying to bring an end to the floor crossing. The suspension of the operation of the 14th Amendment made the Prime Minister and others to ridicule the Chief Justice and certain derogatory remarks were made against this Court. which led to initiation of contempt of Court proceedings against the Prime Minister and others. Although the Prime Minister appeared in Court but as expected this Court desired to proceed further in the matter which again infuriated ,the party in power and thus through a concerted effort this Court was attacked by an unruly mob to deter the Court' from hearing the contempt case as a result of which the Chief Justice of Pakistan and other Judges had to leave the Court-room. Crocodile tears were shed by the party in power over the incident the mob

which attacked this Court included elected members. The Chief of Army Staff General Jehangir Karamat delivered a speech in the Pakistan Naval War College. and while commenting upon the prevalent circumstances in the country he suggested that a National Security Council should be formed to advise the Prime Minister so that appropriate measures are taken to reform the administration in running the affairs of the country. This speech was disapproved by the Prime Minister and consequently General Jehangir Karamat had to relinquish his office. Then follow the circumstances leading to the Proclamation of Emergency of 14th October, 1999. which stands validated by this Court in Syed Zafar Ali Shah's case.

17. It is pertinent to mention that the personal hostility between the two leaders and the confrontation between them never ceased. Both of them on coming to power tried to involve each other in criminal cases. The government of Mian Muhammad Nawaz Sharif filed references against Ms. Benazir Bhutto, her husband and others and similar course of action was followed by Ms. Benazir Bhutto when she was in power. On a reference about the receipt of kickbacks in SGS case Ms. Benazir Bhutto was convicted but on appeal the conviction was set aside and the case was remanded for fresh trial When General Pervez Musharraf took over the reins of power. there was a sigh of relief because the people were fed up with the confrontation and lack of understanding between the two leaders and their followers. The takeover by General Pervez Musharraf was challenged before this Court and by virtue of the judgment of this Court in Syed Zafar Ali Shah's case the same was validated on the basis of doctrine of State necessity and three years' period was given to General Pervez Musharraf to achieve his declared objectives, which are reproduced hereunder:--

* Rebuild national confidence and morale;

* Strengthen federation, , remove inter-provincial disharmony and restore national cohesion:

* Revive the economy and restore investor confidence;

* Ensure law. and order and dispense speedy justice; .

* Depoliticize State institutions;

* Devolution of power to the grass roots level; and

* Ensure swift and across the board accountability.

18. While validating the military takeover, this Court allowed General Pervez Musharraf to exercise the powers and perform functions as under:--

> "6.(i) That General Pervez Musharraf, Chairman, Joint Chiefs of Staff Committee and Chief of Army Staff through Proclamation of Emergency, dated the 14th October, 1999, followed by PCO I of 1999, whereby he has been described as Chief Executive, having validly assumed power by means of an extra-Constitutional step, in the interest of the State and for the welfare of the people is entitled to perform all such acts and promulgate all legislative measures as enumerated hereinafter, namely.--
>
> (a) All acts or legislative measures which are in accordance with, or could have been made under the 1973 Constitution, including the power to amend it;
>
> (b) All acts which tend to advance of promote the good of the people;

(c) All acts required to be done for the ordinary orderly running of the State; and

(d) All such measures as would establish or lead to the establishment of the declared objectives of the Chief Executive.

(ii) That Constitutional amendments by the Chief Executive can be resorted to only if the Constitution fails to provide a solution for attainment of his declared objectives and further that the power to amend. the Constitution by virtue of clause (6), sub-clause (i) (a) (ibid) is controlled by sub-clause b (c) (d) in the same clause.

(iii) That no amendment shall be made in the salient features of the Constitution i.e. independence of Judiciary, federalism. Parliamentary form of government blended Islamic provisions.

(iv) That Fundamental Rights Provided in Part II, Chapter I of the Constitution shall continue to hold the field but the, State will be authorized to make any law or take any executive action in deviation of Articles 15, 16, 17, 18, 19 and 24 as contemplated by Article 233(1) of the Constitution, keeping in view the language of Articles 10, 23 and 25 thereof.

(v) That these ac s, or any of them, may be performed or carried out by means of orders issued by the Chief Executive or through Ordinances on his advice.

(vi) That the superior Courts continue to have the power of judicial review to judge the validity of any act or action of the Armed Forces, if challenged, in the light of the principles underlying the law of State necessity as stated above. Their powers under Article 199 of the Constitution thus remain available to their full extent, and may be exercised as heretofore; notwithstanding anything to the contrary contained in any legislative instrument enacted by the Chief Executive and/or any order issued by the Chief Executive or by any person or authority acting on his behalf.

(vii) That the Courts are not merely to determine whether there exists any nexus between the orders made, proceedings taken and acts done by the Chief Executive or by any authority or person acting on his behalf, and his declared objectives as spelt out from his speeches, dated 13th and 17th October, 1999, on the touchstone of State necessity but such orders made, proceedings taken and acts done including the legislative measures, shall also be subject to judicial review by the superior Courts."

In terms of the judgment of this Court in Syed Zafar Ali Shah's case General Pervez Musharraf was obliged to give a date for holding of election before 12th October, 2002, therefore, the Government has taken in hand the process of holding of election. One of the reforms introduced is that the age of a voter has been reduced from 21 to 18 years. Fresh delimitation is in progress, seats of the Houses of Parliament and the Provincial Assemblies and women have been increased and as one of the reforms, the Election Order which has been challenged in these proceedings, was promulgated. In process to achieve the declared objectives and to introduce the democracy at gross-roots under the devolution plan, election to the local bodies were held and Nazims and Naib Nazims have been elected.

19. It was necessary to narrate this history briefly as its certain parts distinctly point to a political culture, which leaves much to be desired. It demonstrated utter disregard for the parliamentary values and deliberate attempt to inure the soul of democracy. The establishment of a democratic order and the institutions therein requires utmost responsibility on the part of the elected representatives of the people but the record of most of the elected representatives of the four dissolved National and Provincial Assemblies speaks volumes about their psyche, lack of education and sense of

responsibility. It also shows that the political field was dominated by a coterie of individuals representing a special class of vested interests, which ensured that if not they, their kith and kin were elected as members of the Assemblies. Regardless of the ideal standards, their main effort was directed to have their hegemony to the political field. There are known cases where through manoeuvring and machination one faction deliberately went to the opposition and the other to the treasury benches.

20. In the light of what has been narrated above, it is crystal clear that the political scenario in Pakistan is a sad tale of failures on the part of the' public representatives. We may not go into the past but the 11 years history of the political events is an eye opener. Four National Assemblies in succession were dissolved on the ground of misdemeanour on the part of the Government and the party forming it. The grounds on which the Assemblies were dissolved and which were upheld by this Court are sufficient for and necessitate a drastic change in the political culture of the country. No doubt it is the privilege of the public representatives to side with their party in power but it does not absolve them of their responsibility and look at the degree of responsibility that the 13th and 14th amendments were bulldozed". and nobody raised his little finger against the proposed legislation These amendments pertained to the Constitutional changes and were not germane to the ordinary law. A Constitutional amendment requires sane thinking, deliberation and composition, which were totally absent and none took it seriously. In fact what was practised in those years was nothing but parliamentary dictatorship. A whim of the party leader in the House could not have become a substitute for the will of the people or their representatives in the Assemblies. Of course, it cannot be totally attributed to lack of education but nevertheless it was one of the most important factors owing to which the representatives had allowed themselves to be driven by their leaders. This Court also owes a duty to the posterity. It is a matter of common knowledge that changes in the social, political and economic fields are not brought about at once with a magic wand but involve a journey of thousands miles, which requires a start with the first step. In our view the a change in the political culture, has described in the International Encyclopaedia of the Social Sciences by David L. Sills, Volume 12, page 218 as under:--

"Political culture is the set of attitudes, beliefs, and sentiments which give order and meaning to a political process and which provide the underlying assumptions and rules that govern behaviour in the political system. It encompasses both the political ideals and the operating norms of a polity Political culture is thus the manifestation in aggregate form of the psychological and subjective dimensions of politics. A political culture is the product of both the collective history of a political system and the life histories of the members of that system and thus it is rooted equally in public events and private experiences. "

It was argued that the imposition of educational qualification would not bring about any change because the kith and kin of the old politicians would reach the Assemblies. Be that as it may, there is something known as generation gap. We are confident that the new generation would play their due role in changing the political culture and enhancing the prestige and image of the representative institutions in the polity of nations.

21. The change in the political culture with reference to the educational qualification for members of the Assemblies is also necessitated by the fact that with the transfer of power at the grass-roots level through implementation of the devolution plan all the civic work has been assigned to the chosen representatives at different levels of the Local Government and p now the business in the Parliament would mainly be confined to lawmaking. The making of new laws in the light of the changing circumstances and social and political values is an uphill task. In this view of the matter, it is all the more necessary that the public representatives are well-versed with the modern trends, changing social order and the events on the international scene. No doubt wisdom is

not related with degrees but this is an exception to the rule. Education certainly broadens the vision. adds to knowledge, brings about maturity and enlightenment, promotes tolerance and peaceful a coexistence and eliminates parochialism. We are convinced that the educational qualification prescribed for membership of Assemblies will Not only raise their level of competence and change the political culture but will also be an incentive to education.

22. It was urged with vehemence by all the learned counsel for the petitioners that the Government had not taken any interest. for promotion of education and a negligible amount of GDP is spent on education. It was also argued that in the far-flung areas like PATA, FATA and Balochistan the Government has not provided any facilities for education. Surprisingly the contention was not supported by any authentic data and this omission has rendered it more speculative/hypothetical than real. We thus find it difficult to accept.

23. We may now advert to the legal status of the Election Order. It was urged by all the learned counsel appearing before us that the Election Order in essence and spirit was an amendment in the Constitution which the Chief Executive was not empowered to make in view of the fetters imposed by this Court on his power to amend the Constitution. The argument is misconceived inasmuch as the Election Order does not amend the Constitution but is a law within the purview of Article 62(i) of the Constitution, which is worded thus:--

"62 person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless--

..

.

(i) he possesses such other qualifications as may be prescribed by Act of Majlis-e-Shoora (Parliament)."

Section 99 of the Representation of the People Act, 1976 also deals with the I qualifications for membership of the Parliament and is pari materia with Article 62 of the Constitution A perusal of the Constitutional provision highlighted above clearly shows that further qualifications in addition to those laid down in Article 62, which deals with the qualifications for membership of Majlis-e-Shoora (Parliament. can be prescribed by a law enacted by the lawmaking authority. The Election Order having been issued by the Chief Executive on the strength of the powers conferred on him by this Court in Syed Zafar Ali Shah's case is thus a validly promulgated law and does not suffer from any legal defect or infirmity. It also does not transgress the limits laid down in the aforesaid case as it is linked with the holding of general election in the country and aims at good governance which is the hallmark and soul of democracy and the ultimate outcome of general election.

24. It was next urged before us that the Election Order is ultra vires Articles 17 and 25 of the Constitution. We will first, reproduce Article 17, of the Constitution, which reads as under:--

> " 17. (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality
>
> (2) Every citizen, not being in the service of Pakistan, shall have the 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 and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such

declaration. refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) Every political party shall account for the source of its funds in accordance with law."

Article 17 clearly allows a citizen to have the right to form associations or unions subject to any reasonable restrictions imposed by law. Similarly, every citizen not being in the service of Pakistan, has the 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 In this i context, we are reminded of the following observations made by this Court' in Mian Muhammad Nawaz Sharif's case at page 558 while interpreting G Article 17 of the Constitution:

"This approach was again in evidence in the Symbol's case (PLD 1989 SC 66) wherein it was observed that the 'Fundamental Right' conferred by Article 17(2) of the Constitution whereby every citizen has been given 'the right' to form or to be a member of a political party comprises the right to participate in and contest an election. "

There is no cavil with the proposition laid down by this Court that every citizen has a right to contest election but the principle enunciated therein does not conifer an unbridled right on every citizen to contest an election. The right to contest an election is subject to the provisions of the Constitution and the law and only those citizens are eligible to contest election who possess the qualifications contained in Article 62 and the law including the law made under Article 62(i) and do not suffer from disqualifications laid down in Article 63 of the Constitution and the law.

25. Article 25 of the Constitution, which is equality before law clause and is equivalent to 'due process of lam and equal protection of law' clause of the United States Constitution, has been interpreted by this Court in various cases. The leading judgment on the subject was delivered in I.A. Sherwani's case. It was laid down therein that under Article 25 all citizens are equal before law and are entitled to equal protection of law but the State is not prohibited to treat its citizens on the basis of a reasonable classification. The concept of reasonable classification, its basis and criteria for classification to avert violation of Article 25 were also highlighted. The Court held that Article 25 of the Constitution enshrines basic concept of religion of Islam. However, this is now known as the golden principle of modern jurisprudence, which enjoins that all citizens are equal before law and are entitled to equal protection of law. In the case of I.A. Sherwani at page 1086 this Court with regard to equal protection of law and reasonableness of classification laid down the following principles:--

(i) That equal protection of law does not envisage that every citizen is f to be treated alike in all circumstances, but it contemplates that. persons similarly situated or similarly placed are to be treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;

(iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification, which is

arbitrary and is not founded on any rational basis, is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed

(vii) that in order. to make a classification reasonable, it should be based--

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification.

(a) A law may be Constitutional even though It relates to a single individual if, on account of some special circumstances, or reasons h' applicable to him and not applicable to others, that single individual may be treated as a class by himself. '

(b) There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles. The person, therefore, who pleads that Article 14 (corresponding to Article 25 of Pakistan Constitution) has been violated, must make out that not only has he been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment has been unjustifiably made. However, it is extremely hazardous two decide the question of the Constitutional validity of a provision on the basis of the supposed existence of facts by raising a presumption. Presumptions are resorted to when the matter does not admit of direct proof or when there is some practical difficulty to produce evidence to prove a particular fact;

(c) it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations. are based on adequate grounds;

(d) the Legislature is free to recognize the degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest;

(e) in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation;

(f) while good faith and knowledge of the existing conditions on the part of the Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of the constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation;

(g) a classification need not be scientifically perfect or logically complete;

(h) the validity of a rule has to be judged by assessing its overall effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is a just one taking all aspects into consideration."

We need not refer to the plethora of case-law on the subject because the above principles summarize the entire case-law. Judging the Election Order in the light of the above principles, we are of the view that the education related qualification is reasonable and not arbitrary or whimsical because firstly, being a step towards transformation of the political culture it is founded on reasonable basis and secondly, it equally applies to all the graduates and does not discriminate any graduate or create a class within the graduates.

26. The above are the reasons in support of the Short Order, dated 11th July, 2002 of this Court whereby these petitions were dismissed. The Short Order reads as under:

> "For reasons to be recorded later, the petitions are dismissed."

M.B.A.//P-63/S Petitions dismissed

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