

A review of the orders for the depose of the President and Prime Minister in the consitution of Pakistan

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Abstract

According to Pakistan's consitution, the Prisident and primeminister can depose themselves under their signatures. This is according to Islamic political precepts. The removal of the Prisident and Primeminister after the fixed duration of of his government is valid as it is one of the permissible matters. It is actually right to do permissible things, because there is no explicit order in the sharia to depose the hea d of government after a fixed duration of time. It is also permissible to be removed by amotion of no confidence after committing any transgression and crime, because the wickedness of the ruler, it is necessary to removehim without any persecution and corruption.

Keywords: *depose, prime minister, president, fixed term.*

Introduction

In any country, the government and its leaders play a crucial role in establishing justice, fairness, peace, and security. If the ruler (head of state) is honest, trustworthy, and just, then the government and national policies are likely to be based on justice and the prevention of oppression. Conversely, if the country's fate is in the hands of a tyrant, corrupt, and dishonest person, then the lives of the people become forbidden. Therefore, it is imperative to have a system of government that includes a constitution and laws that bind the country's leaders to govern according to various rules to prevent them from violating the public's rights through oppression and exploitation due to their power. If the ruler violates the constitution and laws, they will be removed from their position. Various countries have different systems of government. Currently, democracy is the most famous form of government in the world, which can be divided into two types: parliamentary democracy and presidential democracy. In Pakistan, parliamentary democracy is prevalent, according to which all powers are vested in the Prime Minister, but the President has the authority to transfer the National Assembly. It seems that the Prime Minister will be the head of Pakistan. The person who gains a two-thirds majority in the National Assembly becomes the Prime Minister. There are also provisions for the removal of the President and the Prime Minister in the Constitution of Pakistan. It is now a matter of investigation to

what extent the laws of Pakistan regarding the removal of the head of state, whether it be the President or the Prime Minister, are in accordance with Islamic political teachings, or how they can be made in accordance with Islamic political principles

Resignation of President and Prime Minister in the Constitution of Pakistan:

The laws regarding the resignation of the President and Prime Minister in Pakistan's Constitution are almost the same. The relevant laws are explained below:

The President and Prime Minister can resign from their positions through their handwritten writings. According to Pakistan's Constitution, both the President and Prime Minister are elected for a specified term, and after the expiration of the specified term, the President or Prime Minister will automatically resign, and a new President or Prime Minister will be elected. This means that the President or Prime Minister can resign and be removed from their position after submitting their resignation or at the end of their term. Therefore, it is written in Pakistan's Constitution that:

*"According to the Constitution, the President will remain in office for a period of five years from the day he takes office. The President can resign from his position through his handwritten writing addressed to the Speaker of the National Assembly."*¹

*"The Prime Minister can resign from his position through his handwritten writing addressed to the President."*²

Resignation by a Prime Minister or a Minister is considered legitimate from a religious perspective, because governing is an important responsibility that is entrusted to the head of the country. Just as a lawyer is given a task and responsibility, it seems as if the head of government is the lawyer of the nation. Therefore, just as a lawyer can discharge himself from that task and responsibility through resignation, similarly the head of government can also dismiss himself from the government through resignation. Hence, Imam Qurtubi says that the Imam, meaning the ruler, is the lawyer of the nation and his deputy. It is agreed upon that it is permissible for a lawyer, a ruler, or any person who has been given a task by another party to discharge himself from it through resignation. Similarly, the ruler, meaning the Imam, can also dismiss himself.³

According to the Constitution of Pakistan, it is religiously correct for the President or Prime Minister to resign themselves from the position of Prime Minister or Presidency through their handwritten resignation. According to Pakistan's constitution, it is necessary for the Prime Minister to be a member of parliament, and the Prime Minister is the head of the cabinet of ministers in the parliament. In this regard, the National Assembly's term is also five years. That is, when the term of the National Assembly completes after five years of its formation, the assembly will dissolve, and like all other ministers, the Prime Minister will also resign. According to the Constitution of

Pakistan,

*"The National Assembly shall, unless sooner dissolved, continue for five years from the day of its first meeting and shall stand dissolved at the expiration of its term."*⁴

Islamic rulings on dismissal after the expiration of the prime minister's term:

Islam is a complete code of life, but the details of every aspect of life are not explained in detail in the Quran and Sunnah. However, principles related to every aspect of life are mentioned in the Quran and Sunnah, in the light of which the remaining issues and details can be inferred. Therefore, Islam has not explicitly addressed the details of politics, but it has provided some principles that can help determine the ruling on other related issues and details. Islam's approach to the political system has been very flexible. That is why many political issues have been left to the experts of the time and people of insight to resolve, according to the circumstances and events. Therefore, the issue under discussion, i.e., the dismissal of the head of state (president or prime minister) after a specified term, is also a partial issue that is not explicitly found in the Quran and Sunnah. Moreover, there is no example in Islamic history where a Muslim Khalifa was elected for a specific term and then dismissed after the expiry of that term. The method of selecting a Khalifa has been explained in the Quran and Sunnah, but there is no clear ruling on specifying a term for the Khalifa.

Setting a fixed term for the caliph or head of state is not against any ruling of the Quran and Sunnah. When there is no ruling against it in the Quran and Sunnah, it is considered permissible, and there is no indication of its prohibition. The Prophet Muhammad (peace be upon him) established guidelines regarding permissible matters, stating:

Allah has made obligations obligatory, so do not neglect them, and has prohibited some things, so do not approach them, and He has established limits, so do not exceed them, and regarding some things, He has commanded silence, so do not argue about their permissibility.⁵

Therefore, while explaining this hadith, the famous scholar Mulla Ali Qari wrote that it indicates that the origin of things is their permissibility.⁶

According to other narrations, Alama Suyuti did not quote a specific narration stating that things are essentially permissible, to the extent that the evidence of prohibition cannot be established.⁷

To determine a fixed term for the head of the government is a matter of administration, and it is permissible to determine their term because the allowance is based on the principle that what is permissible remains permissible. Secondly, determining a term for the head of the government has become a customary practice in the world. In almost all Muslim and non-Muslim countries, the head of state is elected for a specific term and is removed after the prescribed period. Therefore, it is permissible because it is

an unspecified issue, and the custom has been accepted in unspecified matters. It is said that the Islamic law considers customs as valid, which is why in some cases; the determination of benefits depends on it.⁸

Therefore, custom has a strong and decisive status.⁹

However, the consideration of custom and tradition will be valid only if it does not contradict the unequivocal text and consensus. Therefore, it is mentioned in *Al-Ashbah Wal-Nazair* that the custom is not valid in specified issues.¹⁰

Regarding the removal of the head of state after the designated term, neither is it explicitly mentioned in writing nor has any consensus been reached on it, and it is not against any ruling of Sharia law. Additionally, this has become the norm in current political systems. Therefore, it can be considered permissible.

Furthermore, Islamic law prevents means of corruption and destruction and closes off every possible path that could lead to sedition and corruption.¹¹

As such, according to Imam Ibn Qayyim, the Sharia law limits every way that could lead to corruption.

At times, even permissible actions can become prohibited and abandoned due to their potential to lead to sedition, corruption, and unlawfulness. Imam Ibn Qayyim has also cited several examples of this.

In any case, during times of turmoil, corruption, and moral and religious decline, if permission is not given to establish a designated term for the head of state, there is also a severe risk of complete disregard, tyranny, and other evils. This is because love of power and love of wealth are dangerous diseases. Therefore, establishing a designated term for the head of state is permissible to close off the path of tyrannical political systems, such as absolute disregard and control.

Second Law for Removal of President and Prime Minister in Pakistan:

According to the Constitution and rules of Pakistan, if two-thirds of the members of the Parliament pass a vote of no-confidence against the President or Prime Minister, he/she shall be removed from office. The details of this law are as follows: at least half of the members of the Parliament must present a written notice of any unconstitutional act, crime, allegations, or vote of no-confidence against the President to the Speaker of the National Assembly or the Chairman of the Senate. The Speaker will then deliver a copy of this written notice to the President. The Speaker shall call a joint session of both houses within a week and within fourteen days. In this meeting, the President may defend himself. If two-thirds of the total members of the Parliament pass a resolution for the removal of the President due to being a criminal or incompetent, then he shall be removed from office immediately. The Constitution of Pakistan also states that if, after discussion, the joint session of Parliament, comprising at least two-thirds of its total members,

passes a resolution for the President's incompetence or violation of the Constitution, he shall be removed from office.¹²

Similarly, if the majority of the Parliament passes a vote of no-confidence against the Prime Minister, he shall also be removed from office. The Constitution of Pakistan states that if less than twenty percent of the total members of the National Assembly present a vote of no-confidence against the Prime Minister, the Speaker of the National Assembly shall not entertain the motion.¹³

Lack of Confidence Motion under Shariah Law:

In addition to Pakistan, if according to the constitutions of other democratic countries, a majority of parliament passes a vote of no confidence against the President or Prime Minister, they are removed from their positions. This also means that it is not necessary to prove any crime by the President or Prime Minister. They are removed from their positions only by the acceptance of the vote of no confidence, which means that the decision is made based on the majority. It seems that whether the President or Prime Minister is actually guilty or not, if a majority approves the vote of no confidence against them, they will be removed from their positions. Therefore, according to Islam, the decision should be based on evidence, not on majority rule. In Islamic law, evidence is considered, not just the majority. Making decisions solely based on the majority is not correct because the Holy Quran clearly guides us that:

“If you follow the majority of people on earth, they will lead you astray from the path of Allah. They only follow their own whims and desires.”¹⁴

However, this command pertains to matters in which the Shari'ah has a clear ruling. For matters where the Shari'ah has declared them permissible and has no explicit ruling, it is deemed valid to make decisions based on the majority's opinion. For example, after Khalifa Umar bin Khattab (RA), a committee of six people was formed to select his successor, and he advised them to consult each other on their matter. If the opinions are equal on both sides, then consult again. If there are four on one side and two on the other, then take the majority's opinion and decide accordingly.¹⁵

It is known from the decree of Khalifa Umar bin Khattab (RA) that it is correct to make decisions based on the majority's opinion in permissible matters. With respect to the approval of a vote of no confidence, it is also a permissible matter for the president or prime minister to be removed. Therefore, removing the president or prime minister with the approval of a vote of no confidence is correct and permissible.

Secondly, the removal of the president or prime minister with the approval of a vote of no confidence is also permissible because the vote of no confidence will pass due to the dissatisfaction of the majority of parliamentarians. It is not right for a person who is disliked by the majority to remain as the president or prime minister.

As per a tradition, it is said that the Prophet of the universe stated that the prayer of three types of people is not accepted:

*"a man who leads a group of people in prayer and they dislike him, a slave who runs away from his master until he returns to him, and a woman who spends the night disobeying her husband."*¹⁶

This hadith mentions the leadership of prayer, but the analogy can be drawn to the leadership of a country and its government. Nonetheless, it is permissible to dismiss the President or Prime Minister with the approval of a vote of no confidence, but it would be preferable if the vote of no confidence in Parliament is accompanied by proving the President or Prime Minister's offense, as it would reveal the reason for their dismissal.

Disqualification under Article 62 and 63 of the Constitution of Pakistan:

It is evident from the Constitution of Pakistan that it is essential for the Prime Minister to maintain a good character and have knowledge of Islamic teachings, as well as to act upon them and not commit any major sin. Therefore, the reasons for disqualification from Parliament of a member of the National Assembly are mentioned in Article 62 of the Constitution of Pakistan. Since it is also necessary for the Prime Minister to be a member of the National Assembly, all these reasons will also apply to the Prime Minister. Other administrative reasons, as well as the reason for not being a good Muslim or violating Islamic teachings, are also mentioned. If a member is dishonest, not trustworthy, does not follow Islamic teachings, does not fulfill religious obligations, and commits major sins, he will be disqualified based on these reasons.¹⁷

Similarly, Article 63 of the Constitution of Pakistan lists the reasons for disqualification of a member of Parliament. It states that the member should not have been convicted and sentenced for any crime, at least a two-year imprisonment sentence has not been completed, and five years have not passed since the sentence was completed. It also mentions that a member should not have been removed from office or employment due to disloyalty or wrongdoings.¹⁸

These two articles of the Constitution of Pakistan make it clear that the President and Prime Minister should be good, honest, and sincere Muslims who follow Islamic teachings and fulfill their obligations as Muslims.

Analysis of Islamic Politics:

According to the Constitution of Pakistan, it is necessary for the President and Prime Minister to be honest and trustworthy. In Islamic terms, it is necessary for them to be just and righteous. Islamic law also requires these qualities for the Muslim Khalifa (the head of state). Therefore, if a person does not possess these qualities, they are not eligible to become the Khalifa or head of state. According to Imam Abu Hanifa, being a judge or head of state requires justice as a condition. A corrupt person cannot become a judge or ruler.¹⁹

Qazi Abu Yali writes that just as knowledge and justice are necessary qualities for a judge, they are also necessary for a ruler.²⁰

For a person to be just, it is necessary that their good deeds outweigh their bad deeds.²¹

While the duty of a judge is to decide on justice and right, the duty of the head of state is to work with justice and fairness instead of oppression.²²

Following the Islamic laws, if a Khalifa (head of state) commits any wrongdoing such as committing sin, oppression, or involvement in wrongdoings after becoming the Khalifa, he should be removed from power in a peaceful manner. According to Allama Shami, it is permissible for a follower to disobey a sinful Imam, but with dislike. When the Imam was just, he was appointed as the ruler, but if he later became corrupt, he should not be removed due to the fear of unrest and chaos. However, if there is no fear of unrest and corruption, it is recommended to remove him in a peaceful manner. However, armed rebellion against him is not permissible because the companions accepted the rule of some of the Banu Umayyah and offered prayers behind them.²³

In the context of these Islamic laws, articles 62 and 63 of Pakistan's constitution have been drafted in accordance with the conditions of being truthful and trustworthy. If he cannot be removed peacefully, one should bear patience in the face of major unrest, bloodshed, and the threat of civil war among Muslims, and should choose to listen and obey. As stated in a Hadith, the Prophet Muhammad (PBUH) said,

"If someone sees anything displeasing in their ruler (government leader), then they should exercise patience, because the death of ignorance is when even a pillow that separates from the Muslim community and dies."²⁴

Another narration states that Prophet Muhammad (peace be upon him) said, "Your best rulers are those whom you love and who love you, you pray for them and they pray for you, and your worst rulers are those whom you hate and who hate you, you curse them and they curse you." The companions asked, "O Messenger of Allah, should we not remove them at that time?" The Prophet replied, "No! As long as they establish prayer among you." Listen well, whoever has become a ruler.

"When they saw him committing a sin, they considered it evil but did not withdraw their obedience."²⁵

Ibn Hajar Asqalani says that the scholars agree that if it is possible to remove a tyrannical ruler without causing unrest and corruption, then it is necessary to do so, otherwise patience is necessary.²⁶

According to the Constitution of Pakistan, the Prime Minister or President will be considered ineligible if they are involved in immorality or corruption, and they will be removed from office. This is in accordance with Islamic laws. In addition, the remaining parts of Articles 62 and 63 are not against Islamic laws due to being administrative matters.

According to one part of Article 62, it is necessary for a Member of Parliament to have knowledge of Islamic teachings, otherwise they will not be considered eligible. All Islamic scholars agree that knowledge is necessary for the Khalifa (head of state). Therefore, Allama Maududi writes that... (The rest of the text is missing, please provide the complete text for translation)

The Caliph should be a scholar who is capable of using reasoning and independent judgement during times of ordinary and extraordinary events.²⁷

According to modern scholars, it is essential for a ruler to have Islamic knowledge so that they can govern according to Islamic principles. The establishment of an Islamic state includes the establishment of religion. If a person does not possess the necessary religious knowledge, they will not be able to establish it. Therefore, it is necessary for the head of state to have knowledge of religious sciences and teachings.

This is why familiarity with religious knowledge is essential for the head of state. This requirement is in line with Article 62 of the Constitution of Pakistan, which is also in accordance with Islamic teachings.

Conclusion:

1. According to the Constitution of Pakistan, resigning through a handwritten letter by the President and Prime Minister to remove themselves from the presidency and prime ministership is in accordance with Islamic teachings.
2. Setting a fixed term for the President and Prime Minister and their removal after the specified term based on three reasons is correct.
3. There is no clear ruling in Shariah about the removal of the President and Prime Minister after the specified term, so it falls under permissible matters.
4. It has become customary in the world to elect the head of government for a fixed term, and custom is also valid legal evidence. Therefore, it is considered correct for the President and Prime Minister to be automatically removed after the specified term.
5. To avoid dictatorship, absolute power, and other corruptions, setting a fixed term for the President and Prime Minister as a permanent measure is correct.
6. According to Islamic teachings, it is permissible to remove a president or prime minister from office in a peaceful manner due to proven immorality, corruption, or any crime.
7. If the head of government commits immorality, corruption, or a crime, then he should be removed peacefully. And if it is not possible to remove him peacefully and fear of discord and chaos arises, then he should not be removed and patience should be exercised.
8. In a vote of no confidence, it is permissible to remove the president or prime minister due to a crime or misconduct in a peaceful manner, therefore it is permissible.
9. It is permissible to remove the president or prime minister through a

vote of no confidence, so it is also correct for the president and prime minister to be removed from office.

10. It is also permissible to remove the president and prime minister peacefully due to their lack of honesty and integrity.



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