[**Much ado about Article 6**](https://www.dawn.com/news/1700983/much-ado-about-article-6)

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*“Article 6 must gather its meaning from experience and history. Time and again, a legal and constitutional order had been overthrown by imposing dictatorships and Article 6 was meant to be a constitutional deterrence to any such attempt in future.” — Justice Shahid Karim*

ARE the president, former prime minister, former Speaker, former deputy Speaker and the former law minister guilty of high treason under Article 6 of the Pakistani Constitution, for their actions leading to the initial unconstitutional [rejection of the no-confidence resolution](https://www.dawn.com/news/1683067) against former prime minister Imran Khan and the unconstitutional dissolution of the National Assembly?

The federal cabinet has recently [formed a committee](https://www.dawn.com/news/1699744) to probe this question about the initiation of treason proceedings against them, basing its decision on certain alleged findings in the recent Supreme Court [judgement](https://www.dawn.com/news/1699501) on the issue of the no-confidence resolution and dissolution of the National Assembly. Is this understanding of the federal government constitutionally correct, or is it merely another example of using law as the continuation of politics by other means?

Article 6 — text and context: An examination of the text and context of Article 6 reveals the following:

Firstly, only those persons are guilty of high treason under this article whose actions lead to the abrogation, subversion, suspension or holding in abeyance of the Constitution by the use of force or show of force or by any other unconstitutional means.

This means that every gross violation of constitutional provisions is not high treason but that high treason involves only those special category of unconstitutional actions of abrogation, subversion, suspension or holding in abeyance of the Constitution by use or show of force or by other unconstitutional means. In other words, every act of high treason under Article 6 is an unconstitutional action but not every gross violation of the constitutional provisions is necessarily an act of high treason.

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Secondly, the specific category of abrogation, subversion, suspension or holding in abeyance of the Constitution by the use or show of force or by other unconstitutional methods, means that the action or attempt or conspiracy is to actually overthrow or subvert or suspend the Constitution or constitutional order under it — which is exactly why it has been called an act of high treason. In other words, the ominous title of ‘high treason’ has been reserved for the gravest of all unconstitutional acts ie the overthrow, suspension or subversion of a constitutional order.

Thirdly, the punishment of high treason under The High Treason (Punishment) Act, 1973, is death or life imprisonment. This ultimate punishment itself shows that parliament surely did not intend to send people to their death or imprison them for life for every gross violation of constitutional provisions.

**Editorial:** [*Treason season*](https://www.dawn.com/news/1700220)

Fourthly, the report of the Constitution Committee presented on Dec 31, 1972, describes the historical context of this provision, asserting that “another new provision regarding high treason has been introduced to eliminate any possibility, in the future, of the Constitution being abrogated”. In other words, Article 6 was enacted to safeguard against military, or possibly civilian, dictatorships abrogating, subverting or suspending a democratic constitutional order.

Supreme Court judgement misinterpreted: It is surprising that the federal cabinet’s decision to consider the initiation of treason proceedings against the PTI leadership is based on the detailed reasons of the Supreme Court judgement on the issue of the no-confidence resolution and [dissolution of the National Assembly](https://www.dawn.com/news/1683230) on the advice of former prime minister Imran Khan.

This is because, firstly, the detailed reasons are authored by three different judges — Chief Justice Umar Bandial, Justice Mazhar Miankhel and Justice Jamal Mandokhail. As far as the lead judgement of Chief Justice Bandial and the concurring judgement of Justice Mandokhail are concerned, there is not even a reference to Article 6 in the findings. Nor do these three judges (including Justice Miankhel) even describe or declare the unconstitutional actions of the rejection of the no-confidence resolution and the subsequent dissolution of the National Assembly as an abrogation, subversion, suspension or holding in abeyance of the Constitution by use of force or show of force or by any other unconstitutional means or as an act of high treason.

But the federal cabinet has misleadingly relied on the following passage by Justice Miankhel where he states “whether the stated acts attract Article 6 of the Constitution is also left open to be determined by the parliamentarians as to whether they leave open the doors for such unconstitutional acts or take suitable measures to stop like mess in future”.

Firstly, Justice Miankhel has left this question open, which shows that he has his doubts about the application of Article 6 in this case.

Secondly, he has left this question open not for the federal government or cabinet but parliamentarians which clearly indicates that he accepts new legislative action to deter and punish such unconstitutional acts.

Thirdly, even otherwise, Justice Miankhel’s minority findings on Article 6 do not have the support of the other four judges.

Dangerous implications of overuse: The federal government does not understand the implications of applying Article 6 to cases such as the unconstitutional ruling of deputy Speaker Qasim Suri and Speaker Asad Qaiser. Firstly, such judicial declarations of gross violations of constitutional provisions against politicians are common occurrences. Will politicians be charged with high treason every time such a judicial declaration is given?

Secondly, if gross violations of the constitutional provisions per se become acts of high treason, then this will become a lethal political tool in the hands of any ruling party, or the establishment, to literally eliminate, by death or life imprisonment, political opponents.

Thirdly, such trials of high treason will be conducted by the court. So, this will further shift political power away from the political parties and parliament to the judiciary.

A misapplication of Article 6 may be the ultimate gravestone for both politicians and judges on this road to the hyper-judicialisation of politics, combi­ned with the politicisation of the judiciary, on which we are fast travelling without any introspection.

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