**Ruling the Constitution out**

[Mohsin Raza Malik](https://nation.com.pk/authorpost/columnist/mohsin-raza-malik/)

On **Apr 8, 2022**

**Share**

Prime Minister Imran Khan’s much-hyped ‘surprise’ in the wake of the no-confidence motion against him in the National Assembly eventually shocked many Pakistanis. Paving the way for this surprise, the National Assembly Deputy Speaker Qasim Khan Suri dismissed the “foreign-backed” no-confidence move on Sunday after declaring it “unconstitutional” under Article 5 of the Constitution. Shortly afterwards, President of Pakistan, Dr Arif Alvi dissolved the National Assembly on PM Imran Khan’s advice under Article 58 (1) read with Article 48(1) of the Constitution. This surprising move by the PTI-led government has triggered a constitutional and political crisis in the country. On the same day, immediately reacting to it, Chief Justice of Pakistan Umar Ata Bandial also took a suo motu notice of what is being dubbed a “civilian martial law”. As I am writing these lines, a 5-member bench of the Supreme Court of Pakistan, headed by CJP, is hearing this case alongside the presidential reference seeking interpretation of Article 63(A) of the Constitution. I believe that there are two fundamental legal questions in this complex legal as well as constitutional case. Firstly, the propriety and constitutionality of the Deputy Speaker’s ruling, whereby he instantly rejected the no-trust move against PM Imran Khan in the National Assembly, terming it unconstitutional in the context of Article 5 of the Constitution. Indeed, this ruling has provided PM Imran Khan an opportunity to initiate a controversial constitutional process to dissolve the National Assembly through the President of Pakistan. Secondly, whether or not the Supreme Court of Pakistan can intervene in the current political crisis in the presence of Article 69, which apparently bars the judiciary from interfering in the parliamentary proceedings. Before analysing the legal aspect of this case, it is really important to discuss the alleged ‘foreign conspiracy’, which provided the government a justification for its entire recent manoeuvring to sabotage the opposition’s no-trust move against PM Imran Khan. These are, undoubtedly, serious allegations against the leaders of the opposition parties and assembly members. It is advisable to conduct a high-level inquiry into this matter. Whoever is found guilty must be prosecuted and punished in accordance with the law of the land. However, the very facts of the alleged transfer of funds to opposition leaders, and their collusion with “foreign powers” are yet to be legally established. Therefore, at this stage, it is by no means appropriate to justify or support the government’s recent move to dissolve the National Assembly on the basis of these unsubstantiated allegations.
It is also really pertinent to discuss the political phenomenon of ‘in-house change’ in the parliament, which is, indeed, a fundamental characteristic of any parliamentary form of government. In a parliamentary system, the majority of parliament decides who should act as the chief executive of the country. And, if a chief executive loses the confidence of the majority, he simply resigns, or is removed through a no-trust move in the parliament. Such sort of in-house change has frequently been observed in the world’s functional democracies. However, in Pakistan, the country’s constitutional scheme and political culture hardly supports, or encourages, any kind of in-house change in the parliament. Historically, no prime minister has ever been removed through a no-trust move in the National Assembly. It has resulted in establishing the dictatorship of political party heads, leaving no room for disagreement and difference of opinion in the parliament. The Speaker of the National Assembly is the custodian of the house who is supposed to conduct the business of the house in accordance with the law and Constitution. He also formally takes an oath to do so before assuming his official position in the National Assembly after being elected by its members. The Rules of Procedure and Conduct in the National Assembly, 2007, provide a codified legal procedure to the Speaker to conduct the entire business in the National Assembly. These rules have been made by the President of Pakistan under Clause 2 of the Article 67 of the Constitution. These rules also authorise the Speaker to give a number of rulings on certain day-to-day procedural matters to ensure discipline and order in the house. ‘Subject to the Constitution’ is the opening phrase of Article 67 under which the National Assembly’s rules have been devised. It essentially implies that such procedural rules can’t derogate, contradict or override the Constitution. Therefore, the Speaker of the National Assembly has no legal authority to give his ruling on any constitutionally-defined procedure in the house. Nor can such ruling override any expressed constitutional provisions.
The people, who are readily interpreting Article 5 to label their opponents a traitor after doubting their “loyalty to the state”, should also read clause 2 of the same which clearly states that “Obedience to the Constitution and law is the inviolable obligation of every citizen”. At the moment, all eyes are on the country’s apex court. The decision of the Supreme Court can help ease the ongoing political crisis in Pakistan. Simultaneously, it would also determine the scope of the very phenomenon of in-house change, which is both a democratic convention as well as the hallmark of a parliamentary form of government.