**Immunity in Narnia**

Muhammad Rafeh Hyder

Thursday, May 16, 2024

In the saga of legal escapades, President Asif Ali Zardari pulls off a spectacular move, invoking Article 248 of the constitution.

This provision suspends ongoing legal proceedings against him, kicking off a rather riveting debate on presidential immunity from criminal charges. Ah, the wonders of constitutional perks – designed to uphold the dignity of high offices while giving a warm hug to accountability and justice.

For the unversed, Article 248 essentially does two things: no criminal proceedings can be instituted or continued against the president during his tenure and the president’s actions during his tenure cannot be called into question in a court of law. While this provision aims to protect the sanctity and independence of the presidential throne, it also sparks curious musings on accountability and rule of law.

Article 248 is like a Swiss Army knife for presidents – handy, versatile and occasionally perplexing. Akin to a legal invisibility cloak, it provides the president immunity from all legal proceedings (civil and criminal) during his tenure. However, the issue arises when it also shields them from their past actions. Alas, a frozen sand clock for ready use in this magical land of Narnia.

Is Pakistan the only state handing immunity coupons or have our counterparts progressed for the better? In India, Article 361 of the Indian constitution whispers sweet nothings about presidential immunity during their term. Largely the immunity granted to presidents in the Indian constitution is similar to that of Pakistan. But wait, there’s a twist. This immunity is not airtight. Upholding rule of law, the actions of the president during their tenure can be brought under judicial review by either house of parliament. Indian presidents can face impeachment for constitutional faux pas, like a game of political Jenga, adding a dash of excitement to the game.

And then there’s the US – the democratic heartthrob with its constitution, a living, breathing document of democratic ideals. Here, the doctrine of executive privilege bestows upon the president a cloak of immunity, shielding them from certain legal proceedings and congressional inquiries. But this cloak is not invincible; judicial review stands guard, ensuring a balance between executive authority and accountability. Not only did the Supreme Court of the US in 1997 abolish the principle of temporary immunity for presidents from proceedings initiated before their tenure but sitting presidents like Richard Nixon and Donald Trump were also investigated on pre-tenure criminal charges during their tenure.

While Pakistan’s constitutional provisions aim to protect the presidency from legal ambushes, they also run the risk of turning into a safety net for political escapades. Perhaps it is time for a constitutional makeover – a remix that harmonizes presidential immunity with accountability, justice and a dash of democratic flair. Let’s add a provision that demands individuals clear their legal cobwebs before donning the presidential crown. After all, in the grand theatre of democracy, transparency and integrity deserve a standing ovation.

It is no secret that the corridors of power are buzzing with discussions of constitutional amendments, courtesy of our beloved law minister. Amidst the clamour for change, I implore the minister to ponder over a crucial matter: presidential immunity.

While it is without a doubt commendable that the president is shielded from legal repercussions for tasks performed during their tenure, one cannot help but question the wisdom behind staying proceedings against presidents that were initiated before they assumed office. What frail object is to be achieved by such a provision?

It is also noteworthy that parliament under Article 47 has been empowered to impeach the president for violating constitutional principles. However, the president remains immune from inquiries in the court of law before and after assuming office. In India, parliament has been empowered to suggest a judicial review of the president’s actions but here, would it be bold enough to suggest that the president set foot in a courtroom? Have we overprotected our president or are we suffering vertigo from the dark past of presidential democracy?

Dare I utter the insinuation in this piece that the incumbent president is guilty of any accused offences? Certainly not. However, it is pertinent to address the fundamental principle that no one, regardless of stature or station, should ascend to high office while under the shadow of unresolved charges. In the spirit of transparency, accountability and rule of law, we must ensure that those who hold the highest positions of authority do so with clean slates.

A counterargument is that it is not the fault of the incoming president that the judicial system has failed to bring an end to all proceedings instituted against him/her. In this event, one can either make the age-old argument that the judicial system needs to be strengthened or reason with the idea that if the possibility of ascending to the presidential throne on a clean slate is far-fetched, the laws of accountability at least demand that no proceedings are stayed against the said president.

This is not an indictment of individuals but rather a reaffirmation of the principles that underpin our democracy. It is incumbent upon us, as custodians of democracy and guardians of rule of law, to ensure that those who hold the highest positions of authority do so with integrity and transparency. For in the end, it is not the privileges of power that define us, but rather our commitment to upholding the principles of justice and rule of law.

The writer is a lawyer.