**The assent shall be deemed**

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The president of the Islamic Republic of Pakistan has posted on X (erstwhile Twitter) that he did not sign the Official Secrets Amendment Bill 2023 and the Pakistan Army Amendment Bill 2023 as he disagreed with these laws.

He has further stated in his tweet/post – on Sunday – that he had asked his staff to return the bills unsigned within the stipulated time to make them ineffective. This, he has stated, did not happen despite his numerous confirmations to the staff that this was indeed done. In his post, while publicly apologizing to the Almighty, he also regretted that his staff ‘’undermined’’ his “will and command”.

I seek through this piece to shed some clarity on what is the constitutional status of these two Acts, and whether the president’s statement makes any difference whatsoever to their legitimacy.

Let’s start with the very basic: parliament is in fact a combination of three distinct juristic entities – the president, the Senate and the National Assembly as per Article 51 of the constitution. The president is elected by a collegium of all the elected constitutional assemblies in Pakistan: the Senate, the National Assembly and the four provincial assemblies. As with the election, it is also only parliament that can remove the president through the process of impeachment under Article 47 of the constitution. The relationship of the president with the two houses is clear as day therefore – he is elected and removed only on the instance of the elected constitutional assemblies.

President Arif Alvi assumed office, after being duly elected, on September 9, 2018. The president has a term of office of five years under Article 44 of the constitution, and so the president’s tenure is set to expire in the next 20n days. However, he is lucky as the same article (44) further pronounces that the president shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. The assemblies in the country stand dissolved, and so until a general election takes place and a new president can be elected, Arif Alvi will retain his office. This is politically important because of the president’s relationship with the two houses of parliament, and his role in lawmaking.

Under Article 75 of the constitution, when a bill is presented to the president for assent, the president shall within ten days either assent to the bill or otherwise return the bill to the houses of parliament with a message requesting that the bill be reconsidered. So the President can either make a bill law by signing it or send it back to the legislative houses. However if the president does nothing, it becomes law after ten days, due to what is known as a deeming clause in law.

This is also the position when the president has returned a bill to the legislative houses, and if it is again passed by them, the president shall give his assent within ten days, failing which such assent shall be deemed to have been given, and the bill cannot be returned again. It must be assented to or otherwise become law after ten days.

In any event, what becomes clear is that if the president does not act either to assent or otherwise, the bill becomes an Act and therefore law. This is what has happened with the above two bills, they have become law because of the inaction of the president. The president cannot now blame it on his staff, for he had to write a message to the two houses as per his opinion, and it could be sent back only after his signature.

What is important to understand here is that if the president had in fact sent the two bills back, they would not become the law, because the National Assembly stood dissolved, and it could not have been passed again which would have tied the president’s hands – at least until the National Assembly assembles again after the general elections.

What is extremely clear is that the two bills have become law due to deeming provisions of the constitution. A judicial challenge to these two bills cannot be posted either, as such a writ would not be maintainable, as held by a larger bench of the Supreme Court in the Navid Malik case of 1998.

The doctrine of de facto would also prevent the president, or anyone else, from challenging these Acts on the basis of lack of presidential assent. The only challenge that can now be made is that these Acts are unconstitutional either for being in violation of the fundamental rights or otherwise another provision of the constitution, but not Article 75 of the constitution.

The president, with all due respect, has made a mockery of the legislative process and his serious constitutional responsibilities. How can one determine the truth of what the president is saying when he has not written a message, signed by him, to the houses of parliament? It seems – quite frankly – that something is rotten in the state of Denmark.

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barrister practising constitutional and administrative law.