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Separation of Powers and Political Development: Analysis of Vote of No Confidence in Parliament of Pakistan 2022

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Abstract

Elected governments in the western and developed democracy may be removed through a vote of no confidence or popular protests. If the motion succeeds, then the party in power is compelled to replace the head of government through constitutional means. But if we look at the political history in Pakistan, since (1947), the executive branch used to manage the judicial and legislative powers. Controversies arise whether judiciary can intervene in the domain of parliament or not? For this the theory separation of powers is applied to observe the constitutional domain of the three institutions. Under this approach no one whether individual or department has an authority to encroach the constitutional jurisdictions of the others. For this, the different clauses of the constitution are analyzed to observe the theory of separation of powers in the country. This descriptive and analytical study aims to highlight the political development through the involvement of judiciary in the test case of Prime Minister Imran Khan's removal. The representatives are elected (or rejected through elections) by the people to ensure the fundamental rights of the citizens in parliament. The procedure adopted to change the PTI Government on April 09, 2022 and the role of judiciary seems positive development in the enforcement of rule of law. Finally the study shows that the removal of PM Khan through the parliamentary procedure is a step towards political development.

Keywords: *Rule of Law, Parliament, Judiciary, Democracy, Vote of No Confidence*

Introduction

No confidence motion is a constitutional step against the rulers to oust them from power. This constitutional move is initiated by the opposition to show trust deficit on the governing bodies for not fulfilling the assigned responsibilities or making the dangerous decisions for others. If this legislative motion succeeds, then prime minister is forced to resign. Thus confidence motion is the trust of the parliament over the ruler while no confidence means prime minister has lost confidence in the parliament. The motion of no confidence, vote of no confidence and motion of censure are interchangeable terms. During these parliamentary procedures, parliament passes or rejects the motion. Under the west minister system of governance, it is necessary that government has to resign or in the alternatively, parliament is dissolved for the next general election if the motion is passed. These motions of no confidence are the norms of the parliament under the political play books. Sometimes, this constitutional step is used to pressurize the government. It is not necessary that this move by the opposition may be successful. It sometimes empowers the government more than earlier. To avoid from the defection of the dissidents, prime ministers launch a motion of confidence for precautionary measures (Iqbal, et.al, 2023).

The procedure of confidence or no confidence is commonly called motion of censure and the motion of no confidence. Thus typically it is said that vote of confidence is a political and institutional arrangement enabling prime minister's dependence on the members of the parliament. This procedural and institutional arrangement has two types. In the first procedure, members are allowed to initiate vote for the survival of the government. This procedure exists in variety of ways with different features. Other type of this institutional arrangement is initiated by the government. It is generally called vote of confidence. In the parliamentary democracy Prime Ministers has to get vote of confidence at the time of assuming the power. This getting the vote of confidence by the prime minister has different method in different countries. Prime minister can also request for general vote of confidence without attaching any specific policy declaration (Huber, 1996).

The vote of no confidence is different from other voting. For this, bell is rung for five minutes to inform the members if any outside the hall. Then the gates are closed. Then again the members who are in the no confidence favor exit from one gate and those who are against the no confidence are exit from other gate. After the hall is emptied the counting began and the every one reenters the hall. Then speaker announces the result. After that speaker submit the result to the president if the vote of no confidence is supported by the majority members. Finally parliamentary secretary has to issue the notification. Once the resolution is moved (except the budget related session is going on) the speaker of the assembly allots a day after the due consideration of the state of the business. The vote on the resolution is to be held between three to seven days. For the success of vote of no confidence in the assembly, the majority of the total membership is necessary. If so, then PM ceases to hold office. Generally, when the leader of the house loses confidence in the parliament, it is enough for him to leave the office with esteem and dignity. This constitutional move is not applicable on the criminal practices of Prime Ministers (Niazi, 2022).

On 8th March, PDM submitted the vote of no confidence motion while deputy speaker dismissed it on 3rd April 2022. Supreme Court set aside this ruling of the deputy speaker on 7th April. It was on 10 April 2022 when the majority of 174 members passed vote of no confidence. Consequently, Prime Minister Imran Khan lost the confidence of the house and as well as ceased to hold office. He was ousted from power after three and half years of rule. (PILDAT, 2022)

The vote of no confidence-a constitutional procedure adopted by the parliament on April 2022 to oust the PTI PM Khan, but the other branch of the Government (Executive) tried to block this procedure by one way or other. The intervention of the court resolved the deadlock. In this whole process it was observed that three branches of the government functioned separately. While in the parliamentary system of Pakistan it is difficult to evaluate the no confidence motion in the light of theory of separation of powers.

This theory presented by Montesquieu in 1748 revolves that in every government there are three kinds of powers. These three governmental powers are generally the legislative, executive and judicial power. Legislation is made in the parliament. This legislation in the form of policies or laws is implemented by the body of executive. And if there is any deadlock in the interpretation or understanding the complexities of laws, then the third branch of the government that is judiciary, which operates according to Montesquieu, by the separate body to check the authority of the executive.

He presented this theory in the light of liberty of the people. According to him, if the legislative and executive power is entrusted to one person or one institution, the liberty of the common people is at stake. Because the concentration of powers in one person leads towards the abuse of power and that powerful man or institution acts in a tyrannical manners. He further stated that "…there would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise these three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals." (Harmon, 2000) In this paper the analysis of the vote of confidence is made within the parameters whether the three institutions are functioning within their constitutional limits or not?

Methodology

It is descriptive and analytical study where secondary sources of data have been used.

Hypothesis

Whether or not the Executive, Legislature and Judiciary of Pakistan played their role within the constitutional limits in the test case of Vote of no confidence motion in the parliament of Pakistan? The success of vote of no confidence was the success of the constitution of Pakistan as the April 10, 2022 is named as the constitutional day and the political development in the country.

Literature Review

Talbot, I. (2012) urges to defuse the perception about the stereotypes and authoritarian in the country. Comparison is also made with the tolerant, democratic and progressive India. Pakistan, having complex plural society fashioned by the colonial inheritance is also undergoing the transitionary phase. Author tried to change the stereotype perception and supports in answering the problematical question of democratic success in India. Finally writer argued that Pakistan has been subject to long term rule of authoritarianism and hence political development could not be promoted. (Talbot, 2012)

Jalal (2009) pointed out the inherited colonial effects of political development in India and authoritarianism both in Pakistan and Bangladesh. The analysis of the writer shows that despite having different forms of government, the central political authority also exists in each state. The threats in the form of disputes like regional, linguistic, religious and sectarian and other class and caste differences have to face this central authority. By comparing the structures of the states with political processes, the writer redefines democracy, citizenship, sovereignty and the nation-state. (Jalal, 2009)

McGrath (1947) discusses that Pakistan departed from democracy to undemocratic regimes. It is the findings of the author that this transition from democracy was not due to the military establishment, but by the ruling elites and the executive class of the country. The judicial branch of the government used to provide legal protection to the wrongdoings and actions of both political elites and the army. This book clearly presents the events in detail regarding this dramatic change at governmental level. (McGrath, 1996)

Niaz (2010) focuses the issues of governance in Pakistan. According to him, the crises of governance are both historical and philosophical perspectives. He opined that the ruling elites have not brought positive changes in their behaviors in spite of having got the independence

from the British since 1947. Consequently, the behavior of the political elites with the people remained more untrustworthy, unreliable and proprietarily. Writer has emphasized in his arguments that the regression in the behavior of the ruling elites in South Asia is due to the reassertion of the indigenous orientations. This Work of Niaz recounts the declassified record of Pakistan on the crisis of governance (Niaz, 2010).

Vyacheslav et.al (2013) describe the political history of Pakistan from1947 to Musharraf era. He has highlighted the main features and ongoing trends in the political culture of Pakistan. Writer has highlighted the performance of different ruling elites by analyzing the socio economic interests. All the seven chapters of the book comprehensively discuss the civil military relations. He has also discussed and analyzed the policies of the Musharraf rule in the Pakistan (Belokrenitśkiĭ & Moskalenko, 2013).

Tushent & Khosla (2015) highlighted the latest features of constitutional and political development in the modern times. But these changing trends in the modern era have not still affected the culture of South Asia. Although, this region has the largest democracy yet it is still lagging behind. This book suggests the remedy for the lack of attention towards the region (Tushnet, & Khosla, 2015).

Cheema & Gilani (2015) highlighted the tenure of Pakistan‘s chief justice Iftikhar Chaudhry from 2005 to 2013. During this period in Pakistan the remarkable progress in the field of constitutional politics as well as in the jurisprudence of the Supreme Court has been observed. It is also fact that the role and function of the court remained controversial. However, the detailed scrutiny of the actions in Chaudhry court remained lacking. In this volume, an attempt has been made to fill this gape (Cheema & Gilani, 2015).

Vote of No Confidence in the Parliamentary System in the World

In liberal democracies, it is the common practice that incompetent Prime Ministers face a vote of no confidence by the parliament. If we trace the historical roots of the vote of no confidence, it goes back to 1782 in UK. During American independence, British were defeated in American Colonies in Yorktown (Balarajah, 2011). So, in the democratic institutions this is the way of replacing the people from office without going to fresh elections. But it is also fact that such practices of removing the person from the office is considered a serious insult because he has to vacate the office due to mistrust of the house. People tend to change the head before the scheduled polls. It is considered the democratic right as well as divine right, sweet will and pleasures of the electorate whatsoever the reason best known to them to elect or reject in the mid-stream. Thus the government under the west minister styles has the important features of hiring and firing the leader of the house through no confidence motion. In UK- considered the oldest democracy, there have been 11 prime ministers who were removed through the no confidence motion. In USA, this motion is symbolic act to draw the attention of the government of losing the confidence of the people and the alerts for the governments about the problems needs to be addressed (Mason, 2022).

History of No Confidence in Pakistan

Since 1947, political system of Pakistan did not function smoothly. Unparliamentarily forces of the state have been influencing the functioning of the parliament. International forces also have been undermining the significance of the parliament. Frequent changes of governments and the imposition of military rule did not fulfill the aspiration of the people. In the early phase of parliamentary history, Pakistan remained under the bureaucratic-cum parliamentary rule. This system shaped the power structure in such a way that the procedure of removing the prime ministers have been assassination, hanging , military take overs, use of article 58(2)(b) by the presidents or through the contempt of the court. Constitution of 1973 provides opportunity to the People of Pakistan to elect their prime minister through popular vote for the term of five years. Unfortunately, this term of five years could not be completed. The popular leader with heavy mandate were removed from office before completing their constitutional limits. The Prime Minister Zulfiqar Ali Bhutto who was the framer of constitution was removed by the 1977 military coup of General Zia. After becoming the president, Zia also sacked another Prime Minister in 1988 by his own introduced eighth amendment of 1985. Under this amendment both Nawaz Sharif and Benazir Bhutto were victims by the presidents during fragile period of democracy 1988-1999.While Yousef Raza Gilani and third time Prime Minister Nawaz Sharif were removed by the judiciary (Iqbal, et al., 2023).

In the history of the national assembly of Pakistan, two Prime Ministers had to undergo for this vote of no confidence. In 1989, PM Benazir Bhutto had to face and was survived. Similarly, in 2006, Mr. Shaukat Aziz had to face the no confidence and was also survived as the vote against him remained unsuccessful.

When Benazir Bhutto assumed the power during her first term (1988-1990) she lacked heavy mandate. For making government, she had to make allied government at center and three provinces with likeminded parties. She secured 94 seats out of 217 from the assembly. This new government of PPP was already divided as the larger province Punjab was working under the IJI (*Islami Jamhoori Itehad*). In such a weak ruling setup it was natural that there was pressure on the weak government of Benazir from the regional politicians in the form of Sindhi and Balochi nationalism and demanding for provincial autonomy. This divided and week composition of the parliament makes Bhutto to compromise on various political objectives.

During this weak government period, ‘troika’ was also first time introduced in the parliamentary history of Pakistan. This formation confirmed that military was overall controller of all the political matters. In such a weak political base of the Benazir Government from the very start, she had to pacify the politics towards opposition. Ultimately many differences emerged in the corridor of the powers. Despite of all difficulties, Benazir govt. survived one way or other, but the major jolt her government had to face was the Nov.1st 1989, when combined opposition led by Nawaz Sharif launched motion of no confidence against the Govt.(Khan,2017)

The government faced courageously this motion. The strong constitutional stand was adopted by the Benazir and maintained that she would not go for protest rather will be ready to sit in the opposition benches. The voting process of the no confidence was started and opposition got only 107 hence short of twelve votes for the success of the motion. After the vote of trust Benazir reflected that her government would work with harmony. (Iqbal, et.al. 2023)

Before Shaukat Aziz, Mir Zafarullah khan Jamali was Prime Minister under Musharraf's military regime. He unexpectedly resigned on June 2004. Shaukat Aziz, the former banker (Citibank Executive) and finance minister at that time became next Prime Minister. Under his premiership, Pakistan progressed in the area of automotive industry, energy mega projects, nuclear industry, telecommunication sectors and so many. It was evident during his term that Pakistan made tremendously progress in the economic sector, but his policies regarding privatization and energy sector were suspicious in the eyes of general public at large. Thus the main reason behind launching of the no confidence motion against him was privatization policies, incompetency and corruption. Opposition alleged that privatization policies did not produced the desired results and failed to mitigate the economic issues faced by the country. The wrong doings of the government was presented in the dossier of 500 pages as evidence. This indicated the widespread poverty and unemployment in the country in spite of 8.4 % GDP growth rate. It also highlighted the embezzlement of privatization process of the Pakistan Steel Mills (the biggest steel producer in the country) as Supreme Court disallowed its sale on cheaper rate. But finally the Prime Minister survived from no confidence motion by getting 201 vote of 342 members while opposition secured 136 vote. After the vote, PM Aziz defended his regime by claiming that the government is performing for the larger interest of the nation. He also claimed that there were no corruption proofs against him as was alleged by the "champions of negative politics" (Khan, 2017).

PM Khan's Removal

In the parliamentary and political history of Pakistan, the first successful vote of no confidence was passed on April 10,(hour past midnight) 2022 against the PTI (Pakistan Tehreek Insaf) PM Imran Khan who was elected MNA from NA-95 Mianwali (Punjab) in the general elections of 2018. It was the 41st session of the parliament held on March 25th, 2022. During this session PM Khan lost the confidence of the house by 174 votes. Resultantly, on 11 April 2022, PML (N) leader Mr. Muhammad Shebaz Sharif, MNA (NA- 132) from Lahore was elected as PM of Pakistan by securing 174 votes in the house (PILDAT, 2022).

The case of PM Khan's removal from office dates back to 8th March 2022, when the alliance of nine political parties called PDM (Pakistan Democratic Movement), headed by Fazlur Rehman launched a motion of no confidence. For this, two sets of documents were submitted by the PDM in the national assembly secretariat, Islamabad. One for the requisition of the session of the lower house (under article 54) and other for the resolution of calling for the vote of no confidence against Prime Minister Imran Khan. Under the article of 95, the motion for no confidence was initiated by the opposition parties (Ali, 2022).

On 28th March leave was granted for the vote of no confidence. According to the article 54(3) of the constitution, speaker is duty bound to call the session of the assembly within 14 days if the requisition is filed to call the session of the assembly. Earlier on 8th march, opposition (also called PDM) submitted a requisition for assembly session. In this perspective, assembly session was held on 25th march instead of 21st march due to the unavailability of the Hall as the OIC (Organization of Islamic Cooperation) conference was going on. When opposition filed no confidence motion on 8th March 2022, speaker of the assembly was constitutional bound to summon the session of the assembly and convene the chamber within fourteen days(PILDAT, 2022).

We see that speaker did not convene the session up till the deadline. It seems as if delaying tactics for the maximum time being provided to the Khan for bargaining with the opposition. After three days of the deadline, means 25.03.2022, speaker adjourned the session without conducting the business. The session was adjourned for one and half hour without any specific reason. Normally the adjournment of the sitting is due to the lunch break or prayer time. In this session it was neither lunch break as it was the month of Ramadan (fasting) nor prayer time (The News, April 9th, 2022).

Although it was parliamentary procedure to be proceeded on, but the deputy speaker of the national assembly Mr. Qasim Suri dismissed the motion on 3rd April 2022.The speaker of the assembly is duty bound to act impartiality to maintain the confidence of the house. On this day when assembly session started, the then federal law minister Fawad Chaudhry resorted the article 5 (1) that under that clause of the constitution, it was the fundamental duty of every citizen to be loyal to the state. He supported the claim of the then PM Khan about the foreign conspiracy (cipher) in toppling down his government. He then asked the deputy speaker to decide the legality of the no confidence motion launched by the PDM. Thus deputy speaker dismissed the motion on the ground of article 5 of the constitution of Islamic republic of Pakistan. Article 5 stresses on the loyalty of the citizen. As it is stipulated in the Constitution that loyalty to the state is the basic duty of every citizen. Thus keeping in view the statement of federal Law minister, deputy speaker termed that the motion was the utter violation of the constitution, because according to him it was backed by the foreign country-USA. Earlier in different occasions without concrete evidences, PM Khan accused the USA supporting PDM and conspiring against his government.

Constitution empowers the speaker that his decision or ruling on any matter in the parliament shall be final. In this regards, deputy speaker Qasim Suri passed the ruling on April 3rd 2022.But speaker did not comply with this constitutional limit. He rejected the no confidence motion against PM Khan on the pretext of foreign involvement (American involvement in the form of cipher). Thus according to him it was unconstitutional (under article 5) move by the PDM and intention of the motion was against the national interest. Thus the session was prorogued without vote on the requisite purpose. After the dismissal of the motion, PM Khan advised the president to dissolve the assembly. President immediately dissolved the assembly although election commission at that time declined to conduct election within stipulated time of 90 days. (PILDAT, 2022)

Before this Imran Khan firmly took the stand of not facing the trust motion and resorted to other options he had. He expressed his message to the nation that we had two ways: the way of destruction and the path of pride. He urged the nation that the path of pride was the difficult way, but it was the way adopted by our Holy Prophet (PBUH). Likewise Shaikh Rasheed the then interior minister stated his point of view that Khan will not resign even if he lost the trust vote until the new leader of the house is elected. It was alleged by the PM Khan that the relations between the military establishment and his government did not remained ideal and thus the neutral role of the army encouraged the PDM to launch the movement of toppling down his government. Khan also retreated that dislodging of his government through vote of no confidence was due to the international conspiracy as his government was working on independent foreign policy. It was also fact that several coalitional partners of different parties

especially MQM having seven candidates defected him and left his party with clear minority (Ghosh, 2022).

Role of Supreme Court against the Ruling of Deputy Speaker

The voting on the no-trust motion could take place within seven days of its submission and (3rd April) was the last day of voting, so the larger bench of SC ordered the speaker to revive the April 3rd agenda of the National Assembly and conduct voting on the no-confidence motion. Therefore, April 9th will be considered the last day (seventh day) of voting on the no-confidence motion and it is essential to move with the set agenda.

The role of Supreme Court is very important for the smooth functioning of the democracy. Because it is custodian of the constitution and it cannot support any unconstitutional act. In this instant case with the prevailing constitutional turmoil, court used its jurisdiction of suo moto under article 184(3) and started proceeding without waiting for petition. On 7th April 2022, it set aside the ruling of the deputy speaker and also restored the assembly dissolved by the president on the advice of the PM which was contrary to the constitution. The verdict of the Supreme Court restored all the cabinet as on the 03.04.2022.Thus Court restored the assembly and directed it to convene the ongoing session as per the order issued for 3rd April.

Under the separation of powers concept, court should act independently without undue involvement of other state institutions. If we see the role of court at this particular case, it looks like independently functioning of the court. The constitutional conditions-article 54(3) for the completion of the requisite number for the requisition of the assembly session was fulfilled by the opposition parties on 8th March 2022. The article 95(1) stipulates that when the majority members in the assembly pass the resolution, means the no confidence motion is successful, and then the assembly under the present session shall proceed for the election of the PM. For this, less than twenty percent of the total membership of the assembly (means 68 MNAs out of 342) is required for the resolution to be moved. Thus the summoning of the assembly by the speaker on 20-03-2022 for 25-03-2022 was legal and its prior dissolution was illegal. Thus the abrogation of the assembly session by the speaker was set aside by the court.

As for as the dissolution of the assembly by the Prime Minister Imran Khan is concerned, article 58 of the Constitution stipulates the comprehensive procedure. Under this article president shall dissolve the assembly if so advised by the assembly. But the legal point is very clear that the prime minister cannot send the advice for this regards if the resolution of no confidence vote is submitted. on April 7, 2022,in a landmark verdict, the Supreme Court of Pakistan ruled that the deputy speaker's ruling to dismiss the opposition's no-confidence motion and subsequent dissolution of the lower house by the president on the PM's advice were contrary to the law and Constitution. Although under article 58, president shall dissolve the assembly, if so advised by the Prime Minister. But, the president is also constitutionally bound under the same article of not entertaining the advice of prime minister against whom the vote of no confidence is initiated. (Suo Moto Case no.1 of 2022)

Deputy Speaker Qasim Suri had breached his constitutional duty by dismissing the no confidence motion. Chief justice said that the ruling had failed to qualify for protection of the internal proceedings of Parliament under article 69(1) as it was not the outcome of a vote in the National Assembly instead it was a unilateral decision. Constitutionally 69(1), the validity of

any proceedings in the parliament is not called in question by the court, means superior judiciary cannot interfere into the internal proceedings of the Parliament. But the decision of the court stipulates that the ruling of Deputy Speaker on 3rd April did not satisfy the constitutional clause of internal proceedings of the parliament. The majority members declared that the ruling of the deputy speaker was the unilateral decision (Suo Moto Case no.1 of 2022).

In this case if we analysis whether court has the constitutional power to intervene in the internal proceedings of the court or not? The theory of separation of power demarcates the constitutional limits for the three branches of the state. The current constitution of Pakistan empowers the court to intervene in the jurisdiction of the other two branches if either of legislature or executive overstep in the domain of the other. The final remarks of the court 'if the basic order is without lawful authority, then the entire superstructure raised thereon falls to the grounds automatically' justify its authority to intervene (Ahmad, 2022).

Court also clarified the matter of immunity under the article 69 which does not allow court to intervene in the internal proceedings of the parliament unless and until there is irregularity in its procedure. According to the unanimous decision of the court the ruling of the deputy speaker did not qualify for this constitutional protection of internal matter of the legislature, because the ruling was the unilateral decision of the deputy speaker suggested by the law minister instead of the result of the vote.

Conclusion

Bertrand Russell's said that "Men who allow their love of power to give them a distorted view of the world are to be found in every asylum." In this changing universe nothing is stagnant. One day we are highly respected and the next day may lose our popularity. When the house votes a no confidence or it fails to get vote of confidence, then government has to either resign or to seek dissolution of the assembly for the new elections. This is all because that the house is all supreme and is the highest authority and representative of the organized society. So the elected leaders are also have self-esteem and respect and they face the no confidence motion against them with graceful manners. Thus the genuine politicians should show the respect of the democratic institutions for the political development. But the changing policy statements of the politicians are major hindrance in this process of political development. It is open fact that PTI members used to justify the removal of ex PM Nawaz Sharif in Panama Case as the success of the constitution. But when the same constitutional method was adopted to remove PM Khan, they started to run the top trend of 'imported government' on social media and thus misled the public.

If democracy is allowed to function, it will take its course. The democratic and parliamentary procedure was allowed for the first time in the history of Pakistan. Ousting of the PM Khan through vote of no confidence, ended the constitutional imbroglio, but political crisis have been much more deepen than ever. The theory separation of power ensures the rule of law and political development for the liberty of the people. In this case it has been observed through various constitutional clauses and their application that PDM (opposition) did according to the constitution while executive branch (ruling elites) of the state remains struggling to hold power by lame excuses. There were different politically structured blames to defeat the motion. The story of American involvement in regime change was not based on fact as later on many

occasions, PM Khan built another narrative of removing him from the power was due to the wish of the top leadership in the establishment.

Role of parliament is to serve the country without being rubber stamp under the undue influence of executive. Within the parliament strong role of opposition is mandatory for efficient functioning of the government. Similarly, apex court showed its neutrality and protected the parliament from dissolution with the unilateral decision of the PM. Thus for the political development, democratic process 'has its own dynamics and in-built mechanism to correct itself. Constitutional responsibility bounds the establishment to provide security to the political system. The way three institutions played their roles support the democratic principles and that is developed over the time through the parliamentary voting. Threatening or creating any hindrance in the voting process is not the government duty. Thus the removal of PM Khan from the office seems constitutional as this time the regime was changed through the parliamentary procedure of no confidence motion.

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