

# **Parliamentary Oversight Over the Acts Of Government Under The Palestinian Basic Law Of 2003**

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Received: 05 May 2020 Revised: and Accepted: 15 July 2020

**ABSTRACT:** Parliamentary oversight is the monitoring method over the acts of government in terms of its performance of the authorized powers under the Basic Law of 2003. The objective of this paper is, therefore, to examine the effectiveness of parliamentary oversight over the government's actions. The tools of parliamentary oversight are the right to the inquiry, interrogation, parliamentary investigation, and withdrawal of confidence. This article explains the applicability of the tools in the Palestinian legal system and the effectiveness of these tools in influencing the acts of the government. In order to achieve the objective of this paper, the socio-legal research using the qualitative approach was engaged. This study found that the parliamentary oversight in Palestine was ineffective because of the ambiguity in the law, disruption, and suspension of Parliament, lack of experience on parliamentary customs and the absence of partisan diversity.

**KEYWORDS:** Parliamentary Oversight - Acts of Government - Palestinian Basic Law of 2003.

## **I. INTRODUCTION**

The system of governance in Palestine is a parliamentary democratic system based on political and party pluralism, in which the President of the state were elected directly by the people and the government is accountable to the President and the Palestinian Legislative Council. [1]

Under the Palestinian Basic Law of 2003, the Palestinian legal system is a parliamentary system based on the principle of separation of powers exercised through cooperation and balance between the three authorities within the state, especially between the Parliament and Executive authority. The Parliament is an essential element and a cornerstone in the consolidation of the democratic approach in a state that will promote the concepts, principles, and criteria of good governance through its main functions of legislative and oversight over the acts of the government. [2]

The parliamentary oversight is a necessity because it achieves popular sovereignty and balance between the Parliament and Executive authorities. It also raises the level of governance within the state, where it exercises in the name of the people, source of all authorities. Accordingly, parliamentary oversight plays a role in achieving a balance between authority and responsibility. [3]

In accordance with the principle of separation of powers adopted by the Palestinian Basic Law of 2003, the Palestinian Parliament, exercises, the oversight through several parliamentary tools that are the right to inquiry, interrogation, parliamentary investigation, withdrawal of confidence and the consequent movement of ministerial responsibility. [4] However, there is an ambiguity of specifying and clarifying the tools of parliamentary oversight by the Palestinian Basic Law of 2003. In addition, disruption and suspension of the work of the Parliament also contribute to the ineffectiveness of these tools in influencing the acts of the government together with the lack of experience in parliamentary customs and traditions and the absence of partisan diversity among members of Parliament. [5] Therefore, in order to achieve the objective of this paper, the study will explain the parliamentary oversight and its importance and the tools of oversight over the government's actions under the Palestinian Basic Law of 2003.

## **II. PARLIAMENTARY OVERSIGHT AND ITS IMPORTANCE**

Parliamentary oversight is one of the most critical issues under the Palestinian Basic Law of 2003, [6] which is an essential part of the process of democratization and a manifestation for cooperation and coordination between the Parliament and Executive authorities. [7]

### **2.1 Parliamentary Oversight**

The Parliamentary Council in Palestine exercise the political function in oversight over the acts of the government. Therefore, it is customary to stipulate that this oversight was an important aspect in the constitutions, as did the Palestinian constitutional legislator. [8] In view of the gravity of this right and the consequences of its use, the Basic Law of 2003 included the text on the content, conditions, procedures, and methods of parliamentary oversight. [9] A constitutional law expert referred to the Parliamentary oversight as "A mutual influence between the government and the Parliament, so that the Parliament can influence the government by exchanging opinions and expressing about desires". [10] In addition, Dr. Fares Omran, defined parliamentary oversight as "Fact-finding by the Legislative authority for the actions of the government to reveal the lack of proper implementation of the general rules in the state, and the identification the official and his or her accountability". [11] Another author defined it as "The oversight which exercised by the Legislative body elected over the Executive body through the knowledge of the actions of the government and public policies, and to ascertain the extent of commitment to them". [12] Parliamentary oversight also was defined as the "set of powers used by the state with a view to respect the law in term of the institutions controlled or for the public interest" [13]

Based on the above definitions, the basic elements of parliamentary oversight are:

- a) Parliamentary oversight is official monitoring and one form of political oversight, in the state.
- b) Parliamentary oversight contributes to the reduction of bureaucracy and individuality in decision-making; and the strengthening of foundations the principles of democracy and the principle of separation of powers.
- c) Parliamentary oversight shall be restricted to the members of the Parliament who shall exercise this right individually or collectively, in accordance with the oversight tools used.

Based on the above definitions, parliamentary oversight is an oversight over the acts of the government which was exercised by the members of Parliament either individually or jointly by using the tools of oversight vested in them under the Palestinian Basic Law of 2003 and the Internal Regulation of the Legislative Council of 2006. [14] The objective is to ensure the implementation of public policies in order to protect the rights and interests of the people who elected them.

### **2.2 The Importance of Parliamentary Oversight**

The parliamentary system is characterized by two pillars: the dual Executive authority and the principle of flexible separation of powers. [15] Britain is the cradle of this system and its birthplace. [16] In addition, parliamentary oversight is one of the most important issues in constitutional law and it is a central pillar in the process of democratization and a manifestation of cooperation and coordination between the Parliament and Executive authority. [17]

The importance of parliamentary oversight comes from the fact that the Parliament represent the people and assume the responsibility in oversight and accountability. [18] This responsibility is gaining importance in the existence of a strong accounting framework for the government by Parliament where the importance of parliamentary oversight stems from moving the political responsibility of Parliament in the face of the government or one of its members. [19]

The Palestinian Basic Law of 2003 and the Internal Regulation of the Legislative Council of 2006 included some of the tools of oversight that would enable the member of the Parliament to oversight over the government's actions. The purpose of these tools is to prevent the government from exceeding its Executive powers. [20]

**III. THE EFFECTIVENESS OF THE TOOLS OF PARLIAMENTARY OVERSIGHT**

The tools of parliamentary oversight are the right to inquiry, interrogation, parliamentary investigation and the withdrawal of confidence and the consequent movement of ministerial responsibility.

**3.1 Right to Inquiry**

The right to inquiry is one of the tools of parliamentary oversight in Palestine. [21] The members of Parliament who exercises the right to inquiry is seeking information or investigating about a particular issue or knowing what the government intends to take on a particular issue. [22]

Article (56/3) of the Palestinian Basic Law of 2003 provides that: "Each Member of the Council has the right to address inquiries and interrogations to the government or to any Minister...".

Moreover, Internal Regulation of the Legislative Council of 2006 defines the right to inquiry, as "The right of a member of the Legislative Council to inquire about a matter that he wants to know, or to ascertain from the occurrence and know what action have been taken or may be taken in any of these matters without comment". [23] Mustafa Fahmy defined it as "The right which allows any member of the Parliament to request clarifications or queries on a particular matter of Ministers that the member of the Parliament is unaware or to ascertain what the government intends to take on a particular issue which is not an accusation." [24]

In addition, the right to inquiry means the right that allows any member of the Parliament to request clarifications on a particular matter from the Ministers. [25] It is also a question or clarification of public affairs directed by a member of the Parliament to the Prime Minister, or to a member of the government in matters of their jurisdiction. This tool can be use in inquiring about an order that the member of the Parliament is unaware or to ascertain from occurrence of a particular incident or to ascertain what the government intends to take on a particular issue. [26]

Furthermore, the right to inquiry is a constitutional tool to oversight the government's actions in applying the rules of law in general and the constitutional rules in particular, and therefore is one of the tools of communication between the Parliament and the government through which the Parliament can identify and examine some issues. [27] The importance of this tool and its impact appears to be through the practice that shows that there are oversight and political goals behind the question to the government, and thus aims to know the facts in order to avoid harming the public interest. [28]

The Internal Regulation of the Palestinian Legislative Council in Articles (75) to (79) stipulates the necessary procedures for the exercise of the right of the member of the Legislative Council to ask parliamentary questions to members of the government. The Internal Regulation explains on the procedures and conditions to be adhered to when the parliamentary inquiry presented as follows:

a) The inquiries should be clear and specific as stated in Article (75) of the Internal Regulation of the Palestinian Legislative Council.

"The inquiry must be clear and specific about the issue without any comment"

b) The inquiries shall be submitted in writing to the President of the Palestinian Legislative Council with a view to approve and include it in the agenda and report it to the competent Minister, as provided in Article (76) of the Internal Regulation of Palestinian Legislative Council.

"The inquiries shall be submitted in writing to the President and shall be communicated to the competent Minister then at least one week has elapsed from the date of notification to the Minister. The Legislative Council shall, at the first meeting, allocate half an hour to the inquiries, unless the Legislative Council decides otherwise."

c) Non-intervention or inquiry of any members of Parliament other than the applicant who submitted the inquiry only, since the inquiry is a direct and has exclusive relationship between the member of the Legislative Council and the Minister. This is the provision in Article (78) of the Internal Regulation of the Palestinian Legislative Council.

"A member of the Legislative Council who inquire may ask the Minister to clarify and comment on a reply in a concise manner once."

In practical terms, the Palestinian Legislative Council has used the right to inquiry 300 times in 12 years of the Palestinian Parliament period. The financial issue has the largest part of these questions, where 69 questions asked to the Minister of Finance, to clarify the financial situation and the reasons for not having all the money in

the treasury of the ministry, in addition to spending outside the ministry. Other issues asked were education, local government, and justice. This reflects a failure to exercise the effective oversight from the Palestinian Parliament, because of the lack of experience in parliamentary customs and traditions, the absence of partisan diversity among members of parliament. [29]

### **3.2 Right of Interrogation**

Interrogation is one of the tools of oversight, exercised by the Parliament against the government because of the political responsibility that may lead to the withdrawal of confidence, including the accusation on the entire government or one of its members in its policy. [30] If the right to question has the meaning of asking for knowledge, exchange of opinion or reaching to the truth, the interrogation carries an accusation against the government or one of its Ministers in a particular case. [31]

In addition, parliamentary interrogation is more effective to other tools of oversight, such as the question and the commissions of inquiries. It is one of the tools stipulated by the Palestinian Basic Law of 2003, in which to achieve a balance between the Parliament and Executive authority. [32] Furthermore, interrogation is not merely a bilateral relationship between the Parliament and the Minister who is subject to interrogation, as for the inquiry, but the interrogation leads to a general discussion, which ends with a decision about interrogation, so interrogation is a more effective tool than the question. [33] Article (56) of the Palestinian Basic Law of 2003 stipulates that: "... An interrogation may only be discussed seven days after submission, unless the addressee agrees to reply immediately or within a shorter period. However, the seven-day period can be shortened to three days in urgent cases and with the approval of the President of the National Authority".

By presenting the legal framework for the right to interrogation, the most important points related to this right are:

- a) The interrogation involves a direct accusation of the government or the Minister interrogated, in contrast to the parliamentary inquiry, which aims to inquire and is not involve any accusation.
- b) Interrogation is one of the most important tools of oversight over the government because it leads to the move of political responsibility to reach the condition of withdrawal of confidence.
- c) The right of interrogation is not remaining exclusively on the Parliament member who put it but shares in this right all the members of Parliament, contrary to the parliamentary question, which is the right of the Parliament member who put it only.

However, in practice, the Palestinian Parliament has not been able to use the right of interrogation that is an important tool of oversight over acts of the government, due to the disruption and suspension of the work of the Parliament. This reflects a failure to exercise the effective oversight from the Palestinian Parliament. In addition, the Palestinian Parliament used the right of interrogation only once, which was on 21/1/1999, against the Minister of Finance Dr. Muhammad Nashashibi, regarding the delay in presenting the draft general budget law for the year 1999. At that time, the Minister replied that he had submitted the draft budget law to the Council of Ministers on 27/11/1998. The investigation ended by blaming the Council of Ministers for delaying the submission of the draft budget, and the Parliament waved withdrawal confidence in the government in the absence of submission on the specific date. [34]

### **3.3 Parliamentary Investigation**

Parliamentary investigation plays an important role in practical life as a tool by which the Parliament can oversight the government's actions in order to find out facts on a specific topic of government activity. Hassan Al-Bahari defined it as "The right of Parliament to reach by itself to what it wants to know by establishing a committee from among its members to make the necessary amendments to it, so as to inform the matters that fall within its competence." [35]

In addition, a parliamentary investigation is a multilateral oversight method that is not limited to both sides, such as interrogation, and not individual as the question. The parliamentary investigation differs from the interrogation and the question in the sense that it is a series of questions and discussions rather than just a query and answer. What distinguishes this tool is that Parliament is itself investigating these statements from their original sources by its committees so there is no doubt about its validity. [36]

Moreover, the parliamentary investigation takes a deeper collective appearance than an interrogation. Interrogation may last one- or two-days sessions, but the investigation may extend for several months. [37]

The right to the parliamentary investigation as a tool of oversight is recognize in all Arab Parliaments, whether the constitution is explicitly or implicitly states about this right. [38] Article (58) of the Palestinian Basic Law of 2003 explicitly stipulates the right to the Parliament to form fact-finding committees as follow: "The Council may form a special committee or entrust one of its members to conduct information gathering and fact-finding regarding any public matters or regarding any public institution."

Article (48/3) of the Internal Regulations of the Palestinian Legislative Council of 2006 states that: "The Parliament may establish other committees for immediate or permanent purposes and for specific purposes"

In practice, the Palestinian Parliament has used this oversight tool to a small extent, because of the lack of experience in parliamentary customs and traditions, the absence of partisan diversity among members of Parliament, and the absence of partisan diversity among members of parliament, where dominated over it, the one-party system. One of the most prominent committees formed in the history of the Palestinian Parliament is the Corruption Investigation Committee. This Committee was form following the report of the general control and inspection, which revealed a set of administrative, financial and legal violations to the Ministries and institutions of the authority. This was confirmed by the Committee, which invited more than 39 Ministers and officials to investigate, and the committee recommended at the end of the investigation to prosecute those involved in corruption. [39] The Committee of investigation also investigated a case of rotten flour in the stores of the Municipality of Nablus, which was on 1/3/1997. The committee recommended that the Minister of Finance and Supply is questioned about the rotten flour and that the Minister of Supply been prevented from importing the flour. [40]

### **3.4 Withdrawal of Confidence**

The withdrawal of confidence considers one of the most important oversight tools that the Parliament has against the government and is essentially base on radical accountability for government performance. It is also one of the principles recognized in the Parliamentary system is that the government's responsibility before the Parliament has two types. [41]

First is the collective responsibility when the fault or failure attributed to the entire government. Thus, the entire government is accountable to the Parliament. Second is the individual responsibility when the mistake is related to a particular Minister, this means that this Minister is individually responsible for the mistakes made, therefore, the Parliament withdraws confidence in this Minister only. [42]

In addition, the tool of withdrawal of confidence used by the Parliament after fact-finding or interrogation committees and without use this tool, one of the most important pillars of the parliamentary system will disappear. [43] Article (57) of the Palestinian Basic Law of 2003 states: "Ten members of the Legislative council may upon completion of the interrogation, submit a motion of withdrawal of confidence from the government or from any of the Ministers. At least three days after the date of submission, the decision shall be passed by a majority of the member council, and the withdrawal of confidence shall result in the expiration of the mandate the government or one of the Ministers"

Article (43) of the same law stipulates that Prime Minister and members of his government shall be individually and jointly responsible before the Legislative Council.

Article (15) of the Internal Regulation of the Legislative Council stipulates about "vote of confidence mechanism."

Therefore, if confidence is withdrawn from the government or one of its Ministers. The President of the state must provide a replacement for the previous Prime Minister within a maximum period of two weeks from the date of withdrawal of confidence. In the case of the withdrawal of confidence from one or more Ministers, the Prime Minister shall provide a replacement from the previous Ministers to the Parliament at the next session of the withdrawal confidence decision within a maximum period of two weeks.

Moreover, the Palestinian political system unlike some Arab regimes, neither the Prime Minister nor any Minister allowed to maintained office unless they have the confidence of Parliament. Therefore, any ministerial reshuffle whether for one or more Ministers must be presented to Parliament within a maximum period of two weeks for a vote of confidence, so that their work will be exercised in accordance with the Palestinian Basic Law of 2003. [44]

**IV. CONCLUSION**

This article explains the effectiveness of the tools of parliamentary oversight over the acts of the government in Palestine. The Palestinian Basic Law of 2003 did not detail out the procedures for using the tools of parliamentary oversight. It did not also regulate all tools of parliamentary oversight, for example, raising a general topic for discussion that is of great importance especially in the face of the continuous increase in the tasks of the Executive authority and its control over all authorities in the state. Moreover, the internal regulation of the Palestinian Legislative Council of 2006 lacks some provisions regulating the parliamentary oversight tools, and this matter loses these tools their intended value by the legislator, which is the parliamentary oversight.

At present, the lack of experience in parliamentary customs and traditions, the absence of partisan diversity among members of Parliament, where dominated over it, the one-party system, and the dominance of the Executive authority represented by the President of state and government over other authorities within the state, all of the above led to weakened the effectiveness of parliamentary oversight. In addition, the parliamentary oversight in Palestine was ineffective because of the disruption and suspension of parliament.

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