

CRITICAL ANALYSIS OF THE 1956 CONSTITUTION: ORIGINS AND ITS FAILURE

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Abstract

Constitution making in Pakistan remained a scrapheap challenge. The state of Pakistan, since its inception, has experienced three constitutions of 1956, 1962 and 1973. The focus of this research article is the critical analysis of the first constitution of Pakistan that was passed in 1956. Political development during the initial period of Pakistan manifests fervent political instability in the country. The significant factor of chaotic situation in the state was failure of constitution making and lack of leadership in Pakistan. The constitution of 1956 was passed for short period of time and was abrogated in 1958. The gap that was created due to failure of the first constitution has affected the future course of Pakistan and led to multiple constitutions with dozens of amendments. Many scholars are of the view that behind the failure of the constitution of 1956 was military establishment.

Keywords: *Constitution Making, Political Instability, Cabinet, Causes and Failure, 1956 Constitution*

1. Introduction

The 1956 constitution is a long, detailed document and comprehensive document; it included 234 articles, separated into 13 chapters and six programs. The 1956

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constitution was having one house and no senate which is one of the most essential parts of federation with diverse nations. The constitution divided Pakistan in to two parts, east and the west and united them under the parity principle. The federal legislature was required to perform the functions similar to the British Parliament. The constitution of 1956 gave tremendous powers to the central government that could affect the autonomy of the state in emergency situations.

The 1956 constitution included the parliamentary type of government in which the real executive powers were vested with cabinet. The prime minister would lead the cabinet.

The constitution professed that unicameral legislature means a single house would exist known as the National Assembly, and correspondence among the two wings (for example, West Pakistan and East Pakistan) upheld. The elected President would replace the Governor-General. The 1956 constitution also proclaimed Pakistan a federal state in the form of a parliamentary government.

Although the representative system has already experienced troubles because of the absence of well-organized and large political parties. We saw that the removal of chosen governments at the central and provincial levels, imposition of governors' rule, martial laws and even by the Governors General the Assemblies being dissolved. However, there was no response or reaction from the political parties.

On the issue of autonomy, the provinces gave major concessions to the central government in this constitution of 1956. All territories in the western wing were united into a single whole, and their legal existence ceased. Although the people from eastern wing accounted for more than sixty two percent of the total population, it agreed on the uniformity principle of representation in the central government. The ruling focused on the president, who represented interest groups in West Pakistan and replaced seven Premiers in less than three years.

2. Research Methodology

Descriptive and critical analysis of the reasons of failure of the constitution of 1956 has been made on the basis of secondary data. The material has been derived from various books of well-known authors who are considered authority on the political system of Pakistan and national newspapers.

Basically Pakistan's this constitution was framed to cover up and maximize the powers of civil bureaucracy which wanted more centralized federal structure where there would be only one house denying the provinces from their representation in the second house.

3. Objectives

The objectives of the study have wide dimensions and some are follows:

- To highlight the major causes of failure of the constitution.
- To discuss how civil and military bureaucracy derailed democracy which was its initial stages.
- To draw attention that how the parliamentary conventions were violated.
- To discuss the undue interference from the heads of state.
- To highlight the role of Islam in the state.

As for relations among East and West Pakistan, it appeared to be peculiar that the demand for autonomy first came from East Bengal as they thought that they could have absolute majority if there was a unitary form of government in the center. Bengali demanded autonomy because they knew that the system was dominated by non-Bengali bureaucrats from the West Pakistan. This group of bureaucrats was against Bengalis and creating problems for them continuously. Further they wanted fiscal autonomy as they thought that they were not getting fair share in financial sphere (Lawrance: 1997).

The linguistic difficulty was called into question, because the government could not measure the profundity of demand for Bengali as the official language. Speaking at an open meeting at the Dhaka racecourse in March 1948, Mr. Jinnah, the then Governor General announced that the Urdu be the only official and National language of Pakistan" was greeted with stunned quietness. However, the will of Jinnah managed to cause a restless and gloomy acquaintance; When Khawaja Nazimuddin the Prime Minister reaffirmed this view in January 1952, the protester led to riots and the death of students (Ali: 1967).

In the month of May 1954, the new Prime Minister with an amendment in the draft constitution, made both Urdu and Bengali official languages of the state of Pakistan.

Further, in the same year (1954) it was also agreed in the last draft of the commission that equality of representation would be made on the basis of parity principle. Thus both the wings would enjoy equality in the joint session of the parliament. Muhammad Ali was glad to know that his formula was unanimously adopted by all the associates of the state and provincial legislatures.

Except above there was the problem over the resource distribution among the Center and the government of provinces. One of the fundamental provisions in the principles of the United Party, which swept in the Eastern wing in 1954 provincial elections. They derived into authority on the motto of provincial self-government. They agreed to some extent that they will allow center to control foreign policy, currency and defense but when they came to office, they were less agreed.

At last it consented to make important concessions by adding subjects such as railways and industry to the list of provinces that kept the dominant government robust enough.

One significant alteration was that the provinces would control over residuary powers. Hence, the 1956 Constitution went far in satisfying Eastern wings demand for autonomy. It did not bring so much success in accomplishing parity in power distribution preparations because of its absence of representation in the more elevated ranks of the administration and the military.

In the same way, the Constitution was so helpful in pacifying the religious components in characterizing the job of Islam in the wake of careful endeavors to incorporate the values of the political system in the West, given some parts is genuine and found in simple structure in the initial years of Islam, inside the Islamic system.

It is considered exemplary models; on top of that self-misdirection and unrealistic reasoning which help overcome any issues between the teachings of Islamic and its customs, which regularly overwhelms the feelings, and the Western gauges, which are mentally acknowledged instead of profoundly touched by the leaders. The trouble of relating Islamic current was settled by an arrangement of bilateral ties.

There are different kinds of perspectives about the importance of Islam, however the wide difference is amid the mainstream and Islam. Secularists opine that the Islam has very narrow relations with politics and economics. If there is a clear and

direct statement about how the constitution should be in the Quran, then of course it must be respected, but it is impossible to extract it from the Quran text from any explicit statement about the real content of state constitution.

In his glorious speech to the Assembly on August 11, 1947, Jinnah said that there would be no restrictions on people regarding their religion, which they can belong to any caste and faith. Over the span of time, Hindus would remain to be Hindus and those who are Muslim would remain to be Muslims as it was their personal beliefs. They will be politically equal citizens of Pakistan (Mushtaq, 1967).

Despite its attractiveness, a completely secular approach poses many problems, especially in terms of the problem posed by Pakistan. For the Muslims of India, Pakistan was the Promised Land, because it was created on the basis of the theory that there were two different nations with different philosophies of life and cultures. There were two major nations in the united India, the Muslims and the non-Muslims.

Faith is the premise of numerous public and welfare dealings in Pakistan. Regardless of whether the eyes are secured on the towers of West pastor, the Western manner is mentally refreshing as opposed to profoundly felt. The Constitution accomplished a trade off by methods for which the State was religious in principle however earthly in practice. The constitution has some Islamic features specifically the beginning which expressed that sway conferred with Allah.

The part on Values of directives was actually based on the “Islamic welfare fairness”, which does not differ from the ideas about the social state of social welfare. The name was to be declared as Islamic Republic of Pakistan. The president would be a Muslim, a binding result. None of these standards would influence the typical functions of state system when using the country's religious resources. Indeed, there is an exception, known as the “repugnancy” clause, according to which not any law against the Quran and teachings of prophet can be approved, but it cannot be applied in the courts (Azfar 1987).

The Muslim League, which played a dominant role before and after the creation of the country was hijacked by the civil and military bureaucrats. That almost failed in what they promised to people. It continuously played in the hands of those who had no roots in the people. It had no program for the people, it just

continued to govern and maximize power for bureaucracy. It was against any reforms. It had no plan and it was against the foundation of political parties. This party believed in the centralized federation. The other party which was founded by Hussain Shaheed in 1949 was not much respected by the ruling elites in the west. It was against the centralization of state authority and demanded autonomy on the basis of Lahore resolution. This Awami league was labeled as anti-state party and its leaders traitors (Shaikh: 2008).

The reason for the existence of Pakistan is democratic. Indian Independence Act of 1947 states that Constituent Assembly is supreme and it will perform the functions of law making and constitution making. Parliamentary democracy was the natural outcome of the government structure for historical and legal reasons. Although this was the main purpose, the unconstitutional conduct of the “extended legislature” and the internal objections of the political parties of 1956 overlooked their place of the agents of the people and led to dissolution.

4. Reasons of Failure

The main reason for the letdown of the Structure was the absence of inner conduct in political parties, the absence of all Pakistani radical or any mainstream party. From the very beginning the Head of the state and the military elites created the dominance and their superiority on the politicians as a class.

The list of bureaucrats occupied by the governmental authorities with their weight was imposing. The first Premier, Chowdhury, Mohammed Ali, was the oldest Muslim officer and was connected with the handover of power. Chowdhury Mohammed Ali was the Minister of Finance in each cabinet after the manslaughter of Liaquat Ali Khan in 1951. Iskandar Mirza, head of the state of the state, was governor general until the month of September 1955. At that time in the Parliament Muslim was the only majority party, the seeds of 1958 were sown under the rule of officials and the formation of the Republican ruler party.

The disaster of the 1956 Constitution and supremacy of the parliament should be explained by the fall and decline of the Union. The reasons for the failure of the Union are multifaceted, not in vain to maintain their own contradictions and policies and organization in the country, but to weaken, but mainly the influence of the state on other groups. In the period from 1947 to 1954 in the Parliamentary Party of the Muslim Union, major battles were fought for the creation of a

constitution, and from time to time the Constituent Assembly summed up, even if it was procedural. This relationship was not undesirable as long as there was freedom of discussion. Unfortunately, the legislative group of the Group was unable to take advantage of the domination of political authority, which it had as a pioneer of the demands of a distinct homeland for Muslims. During the ages after the divide, the League was unable to play a new role as a person determining the policy of the future of the country, as the Congress in India did.

He continued to look back, wanting to earn money on popular patriotism and thanks to voters who had reached Pakistan. This moment could be overestimated. Thus, Jinnah's sister, Ms. Fatima Jinnah, addressed the voters of East Pakistan as follows: "I tell you, backing the League because only the League has won Pakistan and can combine Pakistan." (Quote: Kamal Azfar 1987, 59). The reaction of the voters was as follows: the League received 10 seats out of 237 seats for Muslims and nearly 11 independent in total. The united front defeated the rest. First of all, the Muslim Union did not pursue a strategy of communal change and did not demonstrate that it meets domestic political requirements and partially complaints from East Pakistan.

The view on organization within the party was softly uttered. The League Structure provides for a yearly ratification policy agreement. Meetings were not held until 1958. It was assumed that the Muslim Union Council, which was to become a decision-making body, would meet once a year in Dhaka. The Assembly convened only a few times between 1948 and 1956, and only one time in Dhaka during throughout eight years.

The League was unable to work as a single party under the control of the elites, since within the party there were groups on a provincial and personal basis. In 1953 during the crisis, the new Premier Mohammed Ali Bogra was a candidate for the position of governor-general, a normal fellow of the League, but he has been abroad in the diplomatic service since 1948. Both succeeded Muslim President Khawaji Nazimuddin. The Legislative Party of the League (the party of the parliamentary majority) appreciated the assurance of the former cabinet, the Constituent Assembly voted for the new Prime Minister, levied on the parliament by the official elite, who presided over the Assembly.

With the weakening of the Muslim Union, trust in parliament and the party has become less significant than the trust of the Head of the state. The change of authority was represented by the control of the government by the then Governor General. This switch even extended to turning off the minister's phones when they remained untouched. In the fall of 1954, the dissolution of parliament discovered that real power ultimately conceded from the Council of Ministers, the Muslim Union and the Legislative Assembly to the general governor. In fact, the crisis escalated due to a power struggle between the legislature and the governor-general in the latest efforts of the latter to limit discretion, which Ghulam Muhammad (Choudhury: 1969).

Some of the following rules which were undermined given by the Cabinet Government are as follow:

- Unnecessary meddling by the Head of the State;
- The solidarity on Party and Cabinet
- The responsibility of the legislature was to make and sustain the government.
- The Premier was to become the parliamentary leader.

There were two more reasons for friction. The formation of the center and the problem of the language of the State of Pakistan (Khan 2009)

At the same time, in October 1958, military coup was declared, and the General of the Pakistani army, Muhammad Ayub Khan, self-appointed as Chief Martial law administrator. A few days later, the president announced the succession of laws regarding the enforcement of laws, which generally affected the review of laws and the restructuring of the jurisdiction of the Court, with the exception of the written jurisdiction of the Structure. On October 27, 1958, Ayub Khan obliged as president and exiled Iskander Mirza.

The application was over verified in court, chair of Article 1, paragraph 1 of the first paragraph of the Law, which entered into force with the decree of the Law, by President Lahore (October 10, 1958).

The main decision was transcribed by the chef Justice Munir. The decisions were also inscribed by Judge Shahabuddin, Judge Cornelius, one more time by the opposition and Judge Ameruddin. He based his decision of the Supreme Judge on the legal principle of positivism and approved martial law.

Justice Munir, whose test was announced on October 7, 1958, decided that the current laws are a new legal order. For this reason, Judge Munir was suspended because the Border Rules were invalid, as they violated article 5 of the Constitution, which was repealed by the Supreme Court, and because this article did not enter into force. For this reason, convictions were passed and to mention to the body under the Border Corruptions Rule was decent.

The decision in the Doso case represents a turning point in Pakistan's constitutional past. The declaration of military intervention and the abolition of the 1956 Constitution abolished the conflict between the political leadership and the bureaucratic-military composite. At the regional level, the 1956 law provided for a mechanism for the separation of powers between most states of East Bengal, which was conquered by the political top, striving for self-government, and the readiness of the bureaucratic multifarious face of military in Western wing to a "robust" center prevailed. By violating this sharing of power, the repeal of the 1956 Constitution cemented the way for intellectuals in Bengal to extant two economic theses that ultimately led to the secession of Bangladesh (Afzal: 2007)

The review of constitutional changes in Pakistan revealed a major flaw: the government of justice lacks the ability of the defector to manage and must trust on sets outside the well-known legal structure - the army, the most powerful group. Pakistan's constitutional past shows that if the center of significance does not coincide with the mindset of the military, the former will tend to dominate. This is the equilibrium between the lawful authorities of sovereignty; one can see that in Pakistani political history there is a steady trend, right down to the most influential organized group of persons or persons who have the right to obey others and have refuge, actual physical sanction or groups. The Horde, which secured final sanction for maintaining peace and order in emergency situations, took over in 1958 (Yusuf: 1999).

This event is essential to government: an example that Pakistani leadership have preferred to disregard at their own risk. Pakistani administrative leaders were more interested in the ideal meaning of convinced endings, of which the supreme law of the state was to become part, but they did not understand the composition of authority in Pakistan as a basis.

In the case of Dosso, the main truth that Judge Munir “looked at the judges” was “is it a wise decision to return power to power by publishing unforgivable articles against the de facto government” (Jennings: 1957).

The simultaneous weakness of the constitutional crises of 1953 (Nazmuddin’s resignation) and 1954 (the Constituent Assembly being dissolved), extra-constitutional elites in the Assembly, mainly military and bureaucracy, and political members in the legislature. In an honest discriminatory logic, the shift of power from political parties to politicians and military dictators. The important reason for this was the failure in reputation of the Muslim Union in the country, but it is certainly right that a given important reasons is the shortage of political realization as a class, as a group of politicians. Rift between center and units and their con-current lines. In short, the following reasons can be credited to the catastrophe of the 1956 constitution:

- Rigged or non-transparent elections
- Unnecessary intervention of Head of the State
- Ministerial and Cabinet reshuffles.
- Deficiency of Leaders both in Government and Opposition
- Lack of Unity among political parties
- Rise of bureaucracy leading to instability in the political administration
- Illiteracy and absence of awareness

Results regarding constitutional development until 1958:

a) The main difficulty of the government is that a legitimate administration must be the actual government, and this result is not achieved due to the lack of unity in the leading political representation and the absence of sustenance in the state.

b) The main disappointment was caused by Union of Muslims. The shortage in the Muslim Unification was mainly due to political disagreements inside the country, the lack of awareness of the Union about the complexity of these disagreements and the absence of core discipline and harmony.

c) The 1956 Constitution solved the problem of autonomy within the framework of the principle of parity.

d) The situation of religion which is Islam, in the civil life of the country was reasonably decided, which leaves some space for the idea of a irreligious

government in a democratic manner. According to the Constitution, the 1956 Constitution did not contain anything that would violate the legitimacy of the government lawfully recognized in the Presidential Declaration of October 7, 1958. In the Doss case, the Supreme Court made the following decisions:

- (i) The Constitution may be canceled by a sudden radical change that is not provided for by the Constitution;
- (ii) The main condition for determining whether it has been canceled is the effectiveness of the change. This view was, in a purely abstract sense, of partial value in any government that claimed to be valid and whose requirements were universally recognized by governments to be protected from revolution. Stability cannot be a spontaneous goal in political institutions; but with a “democratic supposition” this ought to be so. The emergence of Pakistan came democratically on the foundation that most Indian Muslims expressed a desire to create a separate state through their elected representatives.

5. Conclusion

The constitutional history of Pakistan is full of crisis; due to lack of leadership, unstable political conditions of the state and long military rules have damaged the very spirit of the constitution. Even if the constitution of 1956 was short lived if this constitution had been given a chance it would have brought drastic changes in the political aspect of the state. The constitution of 1956 was the only document at that time which could have changed the political destination of the state of Pakistan. But unfortunately military of Pakistan abrogated the constitution of 1956 for their perfidious political and strategic advantages. It was evenly managed and a balance between both the Eastern and Western wing of Pakistan, Besides the parliamentary system of the Constitution was a pleasing factor for the politicians and the leaderships of the country, Unfortunately the military did not see it coming on their way and wanted to impose a unitary and a Presidential form of structure to control and claim their dominance over the State of Pakistan. The later history of Pakistan proved that the constitution 1962 that was established by military could not consolidate the future prospects of the country.

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