

Constitutional and Political Dilemma: A Case Study of Pakistan

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Abstract

The system of governing a state is based on its political culture and no political system can be adequately run which is not in harmony with the psyche of the nation. Pakistan was liberated in 1947, and the subcontinent's Muslims separated under the leadership of Quaid-e-Azam. So, at the same time, Pakistan faced many initial challenges but the most important was the formation of a constitution. But the task of constitution-making proved to be more difficult for the Pakistani nation. Whenever a nation accepts its full independence and political existence with certain territories, its first requirement is to develop a formal constitution. Forming the constitution is an important step in achieving the country's independence. This paper discusses the complete story of the constitutional and political dilemma in Pakistan and describes the major factors behind the weak political system and how these factors were involved and become a reason to delay the process of constitution-making in Pakistan. The research-related data was collected from secondary sources.

Keywords: Constitution, Politics, Dilemma, Pakistan, Democracy

1. Introduction

In the subcontinent's history, Pakistan's emergence is a great event as a sovereign and independent state. In the world Pakistan is the 1st nation to be created for religious purposes. Therefore, the establishment of Pakistan annulled the ancient belief or principle of the politics internationally that religion did not shape the nations destiny and nations foundation are constantly based on political goals (Mohammed, 2011). The whole of Pakistan revolved around the Islamic Movement, which became a key element of the Muslim struggle for independence. Hence, the main purpose of Pakistan's demand was to establish a post-independence economic, political and social order based on Islamic principles. It aims to endow with Muslims in the subcontinent with a society where they can freely and easily their religion put into practice and adapt their lives to the Islamic teachings. On March 24, 1940, the stipulate for a separate homeland was announced, and it was declared by the Quaid-e-Azam that by any test or definition of a nation Muslims and Hindus are two separate nations. Hence, on the principle of self-determination, the state of Pakistan was claimed and argued as a homeland for the Muslims of India. "For the Muslims the idea of a separate Muslim state was a struggle for survival for the Hindus it was to avoid vivisection of the motherland" (Rubanni, 2012). Eventually, the India's partition was become visible, and a new sovereign and independent state of Pakistan was formed.

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The system of governing a state is based on its political culture and no political system can be run properly which is not in harmony with the psyche of the nation. Pakistan came into being as a democratic state and initially the rulers did not pay much attention to building proper democratic institutions because their major concern was the very survival of the state because of internal and external challenges (Mahboob, 2020). Internally Pakistan was faced with national, public, financial and linguistic lacunas and serious imbalances in the federation and its socio-economic structure. Many communities and tribes were fighting each other on issues of identity (Qazi, January 2013). Pakistan is one of the few states among the developing world and Muslim countries, where overall the people have vigorously supported democracy except for some sectors in the intelligentsia and religious circles and vested interests in the bourgeoisie and feudal class. Mr. Jinnah believed in a democratic parliamentary system for Pakistan. A. G Noorani writes that 'His vision of Pakistan was of a democratic secular state based on the rule of law' (Oldenburg, 2011). Ardeshir Cowasjee writes in a semi-serious vein,

'He professed to be a democrat, but in reality, was a benign dictator who harmed no one. He merely put his foot down when necessary and that was most of the time' (Oldenburg, 2011).

Quaid stated in London, December 14, 1946, that 'democracy, equality, and liberty are Muslim beliefs. Democracy is in the blood of Mussalmans, who believe in fraternity, equality, and liberty' (Zaka M. R., 2018). Repeatedly mass movements have been held against military dictatorships. These authoritarian governments have always a problem of legitimization and been condemned afterwards (Akhtar, Hussain, & Saleem, 2019).

2. Research Questions

- What were the major factors behind the weak political system?
- How these factors were involved and become a reason to holdup the process of constitution-making in Pakistan?

3. Constitutional Importance

The Constitution of the nation is a manifestation of his thinking and aspiration. The constitution protects the rights of a nation and protects the rights of its people. The presence of the constitution leads to the existence of an independent nation and defines all the political structure of that country. The constitution describes the duties and interactions of the administrative courts and legislative bodies (Vorys, 2015). Whenever a nation accepts its full independence and political existence with certain territories then its first requirement is to flourish a formal constitution. The formation of the constitution is an important step in achieving the independence of the country. Pakistan was liberated in 1947 and the Muslims of the subcontinent made their separation under the leadership of Quaid-e-Azam (Hamid Khan, 2009). So, at the same time, Pakistan faced many initial challenges but the most important was the formation of a

constitution. But the task of constitution-making proved to be more difficult for the Pakistani nation.

i. Interim Constitution

Under Section 8 of the Indian Independence Act, 1947, the Indian Act of 1935 was enacted by the Government of Pakistan with some adaptations and amendments to the Provisional Constitution. Pakistan emerged under a UK Parliament Act which was an 'Independence Act of 1947' (Aqil Shah, 2014). Through this Act, the sub-continent was partitioned into two self-governing dominions of Pakistan and India. The Act made the existing dominion legislatures and the constituent assemblies and allowed to these assemblies to implement and work out all powers according to Government of India Act 1935 with necessary additions unless framing their own new constitution (Ahmed N., 2020). Pakistan implements the British Constitution Government of India Act 1935 with some necessary changes and amendments as an Interim Constitution of Pakistan. Unluckily, Pakistan had faced multiple Constitutions and under the prolonged rule of military, their political histories always remained turbulent. The prolonged and frequent military intervention wiped out the process of democratization and its norms in Pakistan and smashed the institutional development. The Military rule which is much attractive for the people of Pakistan and always remains prominent and is considered the cure of the problems that are facing in Pakistan (Korson, 1974). The fact is that the military considered efficient, honest and patriotic as compared to the civil government or the administration. Constitutional history of Pakistan observed the many militaries and the civilian dictators that shaped many barriers in the evolution of the state's democratic parliamentary culture. Due to increasing political ambitions of military generals and the unbalanced institutional development, Pakistan collapsed the parliamentary democracy four times (Baqal, 2010). However, in Pakistan, four military takeovers are 1958, 1969, 1977, and 1999. People of Pakistan always had given the red-carpet welcome to the government of military. The military interrupted the civilian government and shifted the political system from the federal parliamentary government to the centralized presidential model (Marc van der Hulst, 2000).

ii. First Constituent Assembly of Pakistan

Before the partition of the subcontinent, the general election in 1946 resulted to elect the constituent assembly. This assembly was divided into two parts. Thus, separate assemblies existed for each of the two countries of Pakistan and India. Members of the Indian assembly who have decided to associate their futures with Pakistan are considered members of the constituent assembly of Pakistan. Thus the first constituent assembly of Pakistan came into being (Choudhury, 1955). The first meeting of the first constituent assembly was chaired by Joginder Nath Mandal who belongs to the minority community. Later Quaid-e-Azam has been elected as the permanent president. The first Constituent Assembly consisted of 69 members. But later representatives of the regions who announced their affiliation with Pakistan also participated, the

total number reached at 74. This assembly could not be called a representative's assembly. However, the assembly was given the chance to work properly under the requirements of the time (Sartaj Aziz, 2009).

iii. Objective Resolution

Four days before the independence, the first meeting of the first constituent assembly was held in Karachi. Quaid-e-Azam realized the importance of the constitution-making task and members were asked to formulate this great work. The first Constituent Assembly (15, August 1947) was assigned the basic task that was framing the Constitution of Pakistan. But the death of Quaid-e-Azam has created a huge gap. Constitutional work continues to suffer from obstacles and new problems and blockages continue to hinder it. The first important step toward the constitution-making was the approval of the objective resolution. In 12th March 1949, the Assembly passed the Objective Resolution which became the substantive part and foundation stone for future Constitution of the Pakistan (Shafqat, 1998). The resolution was approved by the Prime Minister Liaquat Ali Khan in the House. The resolution stated the basic objectives of Pakistan's future constitution, and its Islamic basis was also acknowledged. After getting a separate country, the objective resolution was the most important achievement. When the objective resolution was finally approved with the support of the majority, the nation was convinced that the work of the constitution had begun. The people and newspapers of the country called it a constructive step (Khan, 2001).

iv. Basic Principles Committee

After the adoption of the resolution, several committees were set up to tackle the different constitutional problems. These committees had begun the task of drafting the constitution. Of these, the most important of them was the Basic principles committee. The Basic Principles committee finally prepared a report in 1950 and submitted it to the assembly for the discussion. The basic principles committee presented some recommendations in its first report. According to these recommendations, the legislative assembly consisted will be formed on two Houses. It's decided that in the Upper House, the five provinces will receive equal representation and each province in the Lower House will get seats in terms of population. The powers of both Houses were equalized. The elections of the Upper House were proposed by members of the Provincial assembly. As regards the lower house, it was said that the committee was considering the issue of the Lower House elections. It was also recommended to rule the parliamentary system in the country and said that the Cabinet would be chosen from the members of both houses. After the recommendation by the first report of the Basic principles committee, opposition from East Pakistan came under intense reaction (Rubanni, 2012).

When the Liaquat Ali Khan came to know about the reaction of East Pakistan, he went to Dhaka and tore the first report and announced that a new committee would be formed keeping in view the sentiments of the people and national needs. The second committee had begun its work

when Prime Minister Liaquat Ali Khan was martyred at Rawalpindi. Prime Minister Khawaja Nazimuddin, who belonged to the Bengal, prepared another report and presented it to the public. According to the recommendation of the second report of this committee, the legislature will have consisted of two Houses (the Upper House will consist 120 and Lower House 400 members), President must be a Muslim and elected by the joint meeting of the two Houses and will last five years, the country's national language issue was removed from the report, the constitution will be flexible difficult to implement, the supreme court will have the largest court in the state which will be presided over by the president.

The second report of the basic principles committee was liked largely, but the province Punjab opposed the report. Politicians from Punjab have argued that the report is against the prevailing democratic principles. Disagreement and clashes over the second report became vast and eventually, it would end without any conclusion. But before accomplished his task the Assembly has been dissolved by Ch. Ghulam Muhammad on 24th October 1954. Maulvi Tamizuddin who was the speaker of the first constituent assembly challenged the governor general's step to break the assembly in the Sindh High court. The Sindh High Court ruled in favor of Maulvi Tamizuddin (Schoburgh, 2016). The government appealed the decision to the Supreme Court. The Supreme Court declared that the governor general's decision on the right and said that the constituent assembly elected in 1946 was not a public representative's assembly in 1954. Therefore, new elections are needed so that the new assembly come into existence and do work for constitution-making in Pakistan. Seven years had passed since the independence of Pakistan from 1947 to 1954, but now the constitution-making process was resumed. Malik Ghulam Muhammad convened the 2nd Constituent Assembly in May 1955 which was consisted of 80 members. Although, after the six-year creation of Pakistan, first martial law was imposed in the most famous city of Pakistan Lahore in 1953 when the Anti-Ahmediya insurgency took place (Laghari, 2008).

v. Muhammad Ali Bogra Formula

On 7th October 1953, the Bogra Formula was presented to the Pakistan's Constituent Assembly. It was proposed by this plan with equal representation a bicameral legislature for the country in the upper house for all five provinces. A total of 50 seats were reserved for the upper house. In the lower house, on the basis of proportional representation, 300 seats were to be owed to the provinces i.e for Punjab 75 seats were reserved, 165 for East Pakistan, 24 for NWFP (states situated in NWFP & tribal areas), 19 for Sindh, and 17 for Balochistan. Hence, an arrangement was made to avert enduring ascendancy or dominance via, any wing i.e if the Prime Minister was from East Pakistan, then the President was from West Pakistan, and vice versa. In order to the presidential election both houses of the Legislative Assembly formed an electoral college, and the president was to be elected for a five-year term. Instead of a board of scholars, the Supreme Court was empowered to make a decision whether a law was in accordance with the basic teachings of the Qur'an and Sunnah.

Contrary to both reports of the BPC, various sections of the society praised the Bogra formula (Rubanni, 2012). There was immense eagerness and excitement among the people. It was considered that it will prove a source of unity for the country that could bridge the gap between the two wings of Pakistan. Hence, in the Constituent Assembly for 13 days the proposal was debated, and on 14th November 1953, a committee was formed to draft the constitution. Though, the Ghulam Muhammad dissolved the assembly before finalizing the constitution.

4. The Constitution of 1956 and Martial Law

The Assembly framed and passed the first Constitution of Pakistan on 29th February and then promulgated in 23rd March 1956. On 23rd March 1956, the Constitution was promulgated by declaring Pakistan as the Islamic Republic and also introduced unicameral legislature with a parliamentary form of government. The Pakistani people were happy and satisfied that they were finally able to get the sacred document of the constitution for Pakistan. There will be a lot of celebrations across the country and even patriots think that the country has been secure with the implementation of their constitution. However, after the struggle of almost eight years, the Constitution of 1956 provided the Parliamentary form of government in the country with the bicameral legislature (Ahmad M., 2017). The constitution was implemented from 1956 to 1958. In 1958 the Muslim League campaigned for the general election in the country. The general elections were announced. The election campaign was underway that Skindar Mirza felt a threat to his power. He felt that the election results would not have appeared as he wanted. Skindar Mirza paved the way for general Ayub Khan's Martial Law (Kundi, 2003). Sikandar Mirza dismissed the first Constitution of 1956 on 7th October 1958 and declared Martial Law with the dissolution of both the National and Provincial Assemblies, and appointed Ayub as CMLA (Chief Martial Law Administrator). Skindar Mirza remained as the President while Ayub Khan performed his duties as the Chief Martial Law Administrator. Later, various military generals decided to abolish the presidency of Major General Skindar Mirza. He was deported from the country on October 1, 1958, and Ayub Khan took over as the President of Pakistan through Martial Law in the country (Kapur, 2006).

5. The Constitution of 1962

So, in February 1960 a constitutional commission was appointed in February 1960 for presenting the 2nd Constitution of Pakistan by the military government. Constitution of 1962 provided the unicameral legislature with the Presidential form of government (Chaudhary, 1985). Under the constitution, on 28th March 1962 general elections were detained in Pakistan. The Constitution of 1962 did not confirm the public aspirations. Provincial autonomy did not exist in this constitution; the executive had complete control on the legislature and judiciary, the President was given the numerous powers, the President also had authoritarian powers in matters of drafting and constitutional amendments. A voice was raised against it and became a nationwide movement. Then, Commander-in-Chief, General Agha Khan, imposed martial law and seized

power. This Constitution was abrogated on 25th March 1969, assemblies and other political institutions were ceased and the country has once again lost the constitution (Khan N., 2010).

6. First General Elections in Pakistan

Pakistan has twice reached the constitutional point from which this country started. While seizing power general Yahya Khan announced that he wanted to restore the democracy. But as the situation improved in the country, he started meetings with political leaders and tries to sort out these problems (Tushnet & Khosla, 2015). Yahya Khan made significant decisions on his own, one unit of West Pakistan was abolished on July 1, 1970, and four provinces Punjab, Sindh, Baluchistan and KPK were reestablished. This decision greatly benefited the rebel elements in Bengal and led to the breakup of the country. In the last month of 1970, the National Assembly and provincial assemblies' elections were held in the whole country. In West Pakistan, the PPP has had tremendous success (Khan, 2009). The Awami League won 149 seats of the 169 seats in East Pakistan. In West Pakistan, 86 seats were occupied by the Pakistan People's Party. After the separation of East Pakistan, the military generals in Pakistan were making plans to continue their government, but under pressure from the arm, they lost power and shifted to the head of the ruling party PPP, which won the 1970 elections. Zulfikar Ali Bhutto took over as President while retaining Martial Law and taking over as chief Martial Law administrator (Burki, 2010).

7. The Constitution of 1973

The National Assembly, based on the members of West Pakistan began functioning on April 14, 1972. Bhutto withdrew the Martial Law on April 21, 1972, after passing an interim constitution. However, after the General Elections in 1970, the newly established civil government of Pakistan gave the Interim-Constitution to the country in 1972. However, the Assembly framed the Constitution of 1973 that was passed on 12th April 1973 by the approval of the President and legally implemented on 14th August 1973 in the country (Hashmi, 2018). According to the Constitution of 1973, the National Assembly and the Provincial Assemblies began the legislation. The Senate elections were also implemented in the federation. The President and the Prime Minister take office at the center to decide administrative matters and appoint a Governor and Chief Minister at the Provincial level.

Though, the Constitution of 1973 is better than its previous constitutions as the current constitution and more fulfilling the requirements of the country. But it has gone through a variety of alterations, mostly by dint of two more Martial Laws under General Zia-ul Haq and General Pervaiz Musharraf and turned the country from the parliamentary form of government into the presidential form of government. At the beginning of the 1980s, General Zia-ul-Ha introduced the process of Islamization. It brings significant constitutional and legal changes in the country. The federal Shariat Court was established. As a constitutional advisory body were also enhanced more the powers of the Council of Islamic Ideology on Sharia Law issues. Unfortunately, the Parliamentary history of Pakistan faced many militaries and civilian dictators that shaped many

barriers in the evolution of the state's smooth parliamentary system. Due to the increasing political ambitions of military generals and the unbalanced institutional development, Pakistan collapsed the parliamentary system of democracy four times. However, like some other developing countries, Pakistan also faced weak political parties, prolonged military rule, and pro-democracy groups (Bassiouni, 2006).

i. 8th Constitutional Amendment

In view of this, the amendment was intended to bring a "balance of power" via dismissing provincial governments, dissolving the National Assembly and the Prime Minister, and ordering them to look for a new mandate. Nevertheless, it did greatly more: the amendment made the PM subordinate to the head of the state and altered the governmental system from parliamentary democracy to presidential. It aims to minimize the status of the prime minister's office, parliament, the cabinet and other institutions. Hence, the Prime Minister could not accomplish anything without the permission of the President. While the prime minister with his government could be dismissed by the president in case of any disagreement his government and dissolve the assemblies. President can dissolve the assemblies. These changes were also not formal. On 29th May 1988, three years later, it was demonstrated by General Zia, and he proposed to introduce the amendment whilst Zia disagreed with the PM. The government of Junejo was briefly discharged, and the assemblies suspended.

Hence, the Eighth Amendment's most imperative act was that Parliament suspended all martial law rules, ordinances, and orders via the President, endorsed the referendum, and continued from 5 July 1977 (including the martial law's proclamation). The orders were issued on 13th September 1985. This was the important result that General Zia wanted to achieve. The idea of this amendment became long after the death of General Zia, as under Article 58-2B four consecutive democratic governments were suspended. The government of Nawaz unanimously passed the 13th Amendment in April 1997 in Parliament and Article 58-2B was repealed. Thereby reinstate the status of the parliament and the Prime Minister and restored the supremacy.

ii. 17th Constitutional Amendment

The 17th Amendment is primarily the "Legal Framework Order 2002" which has been recognized with minor amendments as part of the Constitution and can therefore be called an amended Constitution in the LFO. Following a surprise agreement between the MMA and PML-Q now the 17th Amendment with the formal endorsement of President General Musharraf has become part of the Constitution of 1973. The one-year-old constitutional stalemate was busted merely via the "flexibility" shown by top leadership of the MMA and the Musharraf. It was allowed by the amendment to complete his term to General Musharraf as president, ending in 2007, and in order to regularize special powers which he had decided to give himself the right to dissolve Parliament by the removal and order of the Prime Minister. In response, Musharraf

concur to resign as army chief by 31st December 2004, which is considered the real source of his power. The 17th Amendment allows for a vote of confidence in the presidency by a majority vote. The Electoral College, comprising members of both Houses of Parliament and Provincial Assemblies, shall be constituted by the Federal Government under section (9) or by any other means, by present and by voting. Thus, on 1st January 2004, members of both the Senate and National Assembly passed a vote of confidence in favor of the head of state. Regardless of the fact that the MMA abstain from giving a vote-of-confidence to the head of state, it has accepted him as indirectly elected President via permitting a vote-of-confidence in Parliament and the Provincial Assemblies.

iii. 18th Constitutional Amendment

However, from the last 37 years of the constitutional history, just the 1st decade of the 21st century was bringing hope for Pakistan by the adoption of the 18th amendment within the Constitution of Pakistan (Jalal, 2014). The 18th amendment is the greatest accomplishment and a wide-ranging impact of the Parliament of Pakistan at the provincial and federal levels. It enhanced the role of the parliamentary system and reinstated the parliamentary and federal spirit with significant consequences. Many undemocratic constitutional changes have been removed including the 17th amendment, which was inserted during the authoritarian regimes of both Zia-ul-Haq and Pervez Musharraf. The Supremacy of parliament was restored, and more provincial autonomy was also provided to the provinces after eliminating the concurrent list as imagined in the Constitution of 1973. This amendment also put some restrictions on the personal discretions of the executive. This amendment bill was passed on 8th April 2010 by the National Assembly, and 292 votes were in favor and none were against. Senate passed the 18th amendment bill on 15th April 2010, and 90 votes were in the favor and none against.

The eighteenth constitutional amendment has consisted of the 97 articles and 100 provisions of the constitution of Pakistan. Furthermore, both the Provincial Assemblies and Parliament were strengthened by the 18th amendment. It also reinforced the fundamental rights of all the citizens and also minimized the personal discretion of the Executive. Under the 18th amendment, another important provision was to be renaming the province NWFP, in the detection of ethnic identity and the new name is Khyber Pakhtoon Khawa. Under the 18th amendment, in the constitution, many fundamental rights have been increased (Baqal, 2010). The 13th National Assembly passed the 18th amendment, which is the greatest accomplishment to reclaim the parliamentary spirit of the Constitution of 1973.

In Pakistan's history, it was the first attempt that the Parliament denied to the validating instruments of dictators and repealed the 17th constitutional amendment, Legal Framework Order and Chief Executive Orders by considering them unlawful and illegal. Through PCCR, it also amended Article 6 to deal with the issues of high treason and it was declared that the constitution suspension, it is holding in abeyance, or any such type of effort will be considered high treason.

It has also been added by this amendment that the judicial legalized authority of the military coups would be stopped. However, in any court of law, such types of acts would not be validated and considered high treason. Article-6 was brought in the amendment so that in the future to discourage especially the military takeovers. However, this way eliminated the military role from future politics and through Article 238 and Article 239 the parliamentary supremacy was brought in conformity. Though, it's affirmed that no bill would take authority of law without any approval of Parliament and an amendment may also be taken through parliamentary proceedings. While in the Constitution Article 239(5) also talks about the parliament's preeminence, no question or objection would be raised in any ground or any court on the amendment of the constitution of Pakistan (Shah, 2017).

8. Conclusion

The prolonged and frequent military interventions kept wiping out whatever democratic norms were introduced and practically destroyed the institutional development of democracy. As mentioned above there have been four military dictators and also two civilian dictators from government service that set back the evolution of the state's democratic parliamentary culture. Due to increasing political ambitions of military generals and the unbalanced institutional development, parliamentary democracy in Pakistan collapsed four times. The four military takeovers were in 1958, 1969, 1977, and 1999. Unfortunately, there is a prominent body of opinion that considers military rule to be the panacea for the ills facing the country. They consider the avowed patriotism, efficiency, lack of red tape and direct handling of problems by the military to be far better than the manner in which the civilian government or bureaucracy functions. Thus, the people of Pakistan always welcome military governments that usually come after interims of orchestrated chaos. These interrupt the civilian government and change the political system from a federal parliamentary model to a centralized presidential one.

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