

Impact of Dictators on the Constitution of 1973 Of Islamic Republic of Pakistan

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Abstract

The Constitution of 1973 came into effect on 23rd March 1973 and has been recognized as the most suitable and well written document of the state since its independence. But the constitution of 1973 which included the Article 6 of high treason has been also unable to stop the military dictators from violating the constitution of the Islamic republic. In 1977 general Zia-ul Haq violated the constitution and overthrown the elected government and prisoned the elected prime minister Zulfiqar Ali Bhutto and later in 1979 hanged him, and again in 1999 another military general Pervez Musharaf through a coup dissolved the Nawaz Sharif government and prisoned him and later exiled him to Saudi Arabia. These events marked the turning points in the history of the Pakistan's constitutional development as Supreme court of Pakistan rather than halting these men from violating the constitution has legitimized their rule under the doctrine of necessity and have allowed them to make changes to the constitution of the state as they seem fit to continue their dictatorial rule.

The dictators' changes to the constitution have completely changed the nature of the constitution as it has transferred the constitution from Parliamentary democracy to the Presidential form of government where the president has the powers. As Zia ul Haq introduced the 8th Amendment with clause 58(2)b which has ended the governments of the 1990s by the president, and Islamization of the society through the Islamic laws including 'Hudood Ordinance' which has transferred a liberal state to a theocratic state.

Keywords: Dictator, Islamization, Coup, Amendment, Ordinance.

Introduction

The State of Pakistan was created under the Independence Act of 1947. The Act made the existing Constituent Assemblies, the dominion legislatures. These Assemblies were allowed to exercise all the powers which were formerly exercised by the Central Legislature, in addition to the powers regarding the framing of a new Constitution, prior to which all territories were to be governed in accordance with the Government of India Act, 1935 (www.na.gov.pk). Pakistan has faced constitutional crisis since its independence as they haven't done any serious work on the framing of the constitution for the newly born state, and

with the death of founder Quaid-e-Azam Muhammad Ali Jinnah in 1948 and the assassination of the first prime minister Liaquat Ali Khan in 1951 the situation was further aggravated.

At the time of the independence they have adopted the India Act of 1935 with some modifications as a constitution to run the affairs of the state and this has established the first Constituent assembly which was assigned to frame the new constitution of the state. The forward looking Indian Independence Act (1947) created a Constituent Assembly to perform legislative functions and, more crucially, to frame the country's first constitution. (Mahmood 33-35)

As a result in 1949 they came up with the Objective Resolution which defined the future guidelines for the constitution of the state. The importance of this document lies in the fact that it combines the good features of Western and Islamic democracy. It is a happy blend of modernism and Islam. The Objectives Resolution became a part of the constitution of Pakistan in 1985 under the Eighth Amendment. (<http://storyofpakistan.com>). The first constituent assembly failed to achieve its objective i.e., framing the new constitution and was dissolved by the governor general Ghulam Muhammad on 24th October 1954 by declaring the state of emergency. The emergency rule was challenged in highest court of the country but to vain as the court has given the decision in favor of governor general Ghulam Muhammad and has laid the foundation for the military dictators in future.

The second constituent assembly reconstituted on May 28, 1955. The constitution was promulgated on March 23, 1956, and Pakistan became an Islamic republic. On October 7, 1958, martial law was clamped on the country. The new regime declared the constitution unworkable and abrogated it. (www.wikipedia.org) Ayub Khan became the chief martial law administrator and first military dictator he ruled Pakistan until 1969 when another general Yahya Khan took over the charge and during his time the first general elections were held under the Legal Framework Order (LFO) 1970, which resulted in the overwhelming majority of the Awami League of Shaikh Mujeeb ur Rahman. But the establishment refused to hand over the power to the East Pakistani politician as a result violence broke out in East Pakistan and Pakistan Armed forces has started an operation against the Bengalis. The operation has ended in the civil war in East Pakistan and India came for the rescue of Bengalis resulted in the Indo-Pakistan war of 1970-71. Pakistani forces lost the battle in Pakistan and surrendered to the Indians and East Pakistan was declared a new state of Bangladesh. The time was crucial as the 1971 war had a negative impact on the Pakistani Armed Forces as they lost the battle to India, and their troops numbering more than seventy thousand were in the Indian custody and more importantly East Pakistan was declared independent state.

1973 Constitution and Era of Democracy

This brief period of 1971-77 is regarded as the golden era of democracy when the politicians were in complete charge of the affairs for the first time as the main stakeholders of power the armed forces of Pakistan were weakened and down in the morale in 1971 war with India.

Constitution of 1973

With the separation of East Pakistan from the West Pakistan and the foundation of Bangladesh Pakistani establishment face severe problems in political and constitutional matters as Bengalis were deprived of their constitutional rights and the constitution of 1962 has been unable to hold the federation in a single entity as it has centralized the powers. 1962 constitution is another legacy of the dictator general Ayub Khan which has framed the constitution according to his wishes rather than strengthening the provincial autonomy, and the nation.

1973 constitution is a written constitution which consists of 280 articles divided into 12 parts and it also includes the Objective Resolution of 1949, and the Islamic provisions of the previous constitutions had been added to create an Islamic republic. It has established a parliamentary form of government consists on two houses (National Assembly and Senate), and can be amended through two third majority from booth the houses of parliament.

President is the head of the state whereas prime minister controls the executive branch of the government. The constitution ensures the direct elections of the provincial and national assembly members through general elections, whereas Senate members are indirectly elected as it gives the percentage of members to party positions in national and provincial assemblies.

Age of Dictators 1977-2008

I has given the title to this era as the age of dictators as directly or indirectly the military has ruled the state in this era and particularly the article 58(2) b has an immense impression on this era as it has ended the four elected governments (i.e., Muhammad Khan Junejo in 1988, Benazir Bhutto in 1990 and 1996, and Nawaz Sharif in 1993).

Zia's rise to power was helped by Z. A. Bhutto policies to curb the influence of the military in the Pakistani politics which has paved the way for the Zia ul Haq's coupon 1977. The elections of 1977 have become a controversial one as the opposition parties blamed that they were rigged. This led to the political and constitutional crisis which was not solved between

the talks between the government and opposition parties and Zia benefitted it by imposing the martial law on 5th July 1977. The Supreme court of Pakistan has once again legitimized the Zia's rule hence once again gave the constitutional umbrella to a military dictator who violated the Article 6 of the 1973 constitution.

Zia took over the advantage of constitutional crisis and has engineered the constitution which made him the powerful as he transferred the powers to the presidency which he has occupied. His inclusion of the RCO in the 8th Amendment has further weakened the elected governments in the coming decade as the Article 58 (2) b has given the president power to dissolve the government if he seems fit enough in the interests of the nation.

i. Zia ul Haq (1977-1988)

General Zia ul Haq promised to hold elections within 90 days, but he didn't fulfilled his promise until 1985, and 1985 elections were completely a changed dynamic to the Pakistani politics as it was non party basis elections.

Zia rather than holding the general elections he decided to himself elect the president through a highly controversial referendum, and he has taken both the charges as the president of Islamic Republic of Pakistan and Chief of the Armed Forces of Pakistan.

The Supreme Court of Pakistan in the case titled “Nusrat Bhutto V. Chief of Army Staff” (PLD 1977 S.C 657) conferred the power to amend the constitution on General Zia-ul-Haq. Exercising such power, General Zia comprehensively amended the constitution through a presidential Order, known as Revival of the Constitution of 1973 Order (RCO), on 2nd March 1985. (Khan: 2001) In 1981 Zia introduced the PCO which allowed the Zia to by pass the constitution of 1973. In 1985 he revived the constitution by inducting his Revival of the Constitution Order (RCO), which has been engineering to the constitution of 1973 as it amended the constitution. The newly formed government in 1985 had to compromise with Zia on RCO as they reached on a compromise to incorporate the RCO in the constitution through an amendment in parliament. The Amendment done by the parliament is known as 8th Amendment of the constitution of 1973.

The opposition in parliamentary has tried to buy a deal with Zia and government on the issue of 8th Amendment as they have signaled to vote for the amendment if Zia approves the following issues:

- Lift the Martial Law.

- Will not dissolve the parliament for next five years as he sets the precedent for the future governments. In case the prime minister loses majority of the parliament members, president should give parliament a chance to elect the new prime minister within 15 days.
- Right of the appeal to challenge the dissolution order.

Zia ul Haq rejected all the opposition demands as he has a clear majority in parliament to approve the 8th amendment. The VIII Amendment (Eighth Amendment) to the Constitution of Pakistan was short-time amendment to the Constitution of Pakistan, which was passed by the Majlis-e-Shoora, in the absence of elected Parliament, in 1985 (www.wikipedia.org).

The main themes of the 8th Amendment were:

- It has added the power of Article 58 (2) b which empowers the president to dissolve the national Assembly and end the government, and the governors to the provincial assemblies.
- The appointment of all the higher posts including the Chief of the Armed Forces, Governors and others were transferred to president.
- Objectives Resolution of 1949 became the part of the Constitution.
- Electoral College for the President was changed as it now included both the houses of the parliament and the provincial assemblies.
- Seats were increased in both the houses of the Parliament.
- The legal cover was given to the actions done by Zia ul Haq during martial law period.

ii. **Pervez Musharaf (1999-2008)**

General Pervez Musharaf overtook the Nawaz government through a military coup on 12th October 1999 when he was dismissed by the elected prime minister he ordered from the plane to take over the government and Armed Forces controlled the whole machinery of the government and arrested the Prime Minister Nawaz Sharif. Nawaz Sharif was later charged in the hijacking case and he was sentenced for 10 years, and later was exiled to Saudi Arabia during his rule Musharaf was granted permission from the Supreme Court of Pakistan that he may run the government until his objectives are not achieved, as a result of this declaration he announced his seven point agenda and declared himself as the chief executive but later in 2002 he held a referendum for electing the president of the nation in which he himself was the candidate and won the overwhelming majority like general Zia ul Haq.

Pervez Musharaf has brought many changes to the constitution of 1973 as he legalized all

his orders by incorporating them in the 17th Amendment which was passed in December 2003. This amendment made many changes to Pakistan's constitution. Many of these changes dealt with the office of the President and the reversal of the effects of the Thirteenth Amendment (www.wikipedia.org).

Main Features of the 17th Amendment

It has incorporated the major portion of the Legal Framework Order (LFO) 2002 which was issued by the general Pervez Musharraf and in this he has amended 29 articles of the constitution. But since the Supreme Court in its judgment (Zafar Ali Shah V. General Pervez Musharraf case PLD 2000 S.C 869) has legalized the Musharraf military coup in 1999 and has allowed the Musharraf to amend the constitution as a result the LFO was incorporated. The main features of the 17th Amendment are:

- The power to dissolve the National Assembly was restored to the president, and provincial assemblies' dissolution to the governors, but with the approval of Supreme Court. (The Article 58 (2) b was taken back by the 13th Amendment in 1997).
- It has legalized all the actions done by the Musharraf during the period of 1999-2003 until 17th Amendment was passed.
- Article 63(1) (d) of the Constitution to become operative after December 31, 2004. The intent of this was to prohibit a person from holding both a political office (such as that of the President) and an "office of profit" - an office that is typically held by a career government servant, civil or military - such as the office of the Chief of Army Staff. Although this was supposed to separate the two types of office, a loophole - "... *other than an office declared by law* ..." - allowed Parliament to pass an ordinary law later in 2004 - permitting the President hold on to the office of Chief of Army Staff, an option that President Musharraf then exercised (www.wikipedia.org).
- The retirement age of the judges were fixed to 65 years.
- President has the power to appoint the higher posts including Chief of the Armed forces with the advice of the prime minister.
- The number of seats in both houses of Parliament and provincial assemblies were increased.
- 17th Amendment has stopped the way of Benazir Bhutto and Nawaz Sharif to become prime minister for third time as it has restricted to hold the office for only two times.

Impact of Dictators on the 1973 Constitution

Major impact on the constitution of the 1973 was the introduction of the 8th and 17th Amendments in the constitution as they have changed the nature of political setup in Pakistan as President was changed from ceremonial head to powerful head of the state that holds the complete dominancy in all the matters of state. Although Nawaz Sharif in his second tenure as prime minister (1997-99) has removed the article 58(2) b from the constitution by introducing the 13th amendment but this could not last as General Pervez Musharraf through a coup has taken the power and put the prime minister behind the bars and later exiled him to Saudi Arabia. Pervez Musharraf in his LFO 2002 has brought back the 58 (2) b which was incorporated in the 17th Amendment to the constitution in the Musharraf controlled parliament.

The Islamization of the constitution and society as Zia introduced certain laws which have not only made the state an Islamic society but has also contradicted the basic human rights. His controversial Hudood Ordinance has been the bone of contention between governments of the present and the human rights organizations. “Jinnah’s vision of human rights anticipated the Universal Declaration of Human Rights” (Abdul Sattar, 2010: 16).

Both the military general have a profound impact not only on the constitution of the state but has also changed the nature of politics and society as the Article 58 (2) b has not only empowered the president with immense power of the dissolution of the assemblies’ but also has made the vulnerable and weak to the elected representatives of the people of Pakistan. As the cases were witnessed in the 1990s, and during the Musharraf controlled parliament of 2002-2007 where three prime ministers were changed at the wish of the dictator. The political instability in the country due to the powerful president has witnessed a downfall in the belief of the democracy and has brought the lawlessness and weapon culture in Pakistan. The rise of the armed groups like Taliban in the country has been due to the lack of democratic culture and the islamization and culture of jihad by the general Zia ul Haq during his early years. The dictators has violated the fundamental rights of the persons by suspending the constitution and imposing martial law, and by introducing the laws which were not in conformity with the society, and the forceful introduction of the Zia’s islamization and Hudood Ordinance, and denying the political parties top contest the elections on party basis in 1985 elections and the Local government of General Musharraf. The PCOs brought by the both the dictators to bring the judiciary under its control, and as a result judiciary acted as a tool for the dictators and have verified their authoritarian rule and legalized their actions which has made the mockery of the justice and the constitution of Pakistan until the emergence of the strong and powerful Supreme Court after 2007.

At last the politicians have realized their mistakes and have dealt with the authoritarian rulers in a move when they compelled the general Musharaf to resign from the presidency in 2008 and bring the 18th Amendment which was an effort of the politicians to restore the original shape of constitution of 1973 by and to some extent decentralizing the powers and giving autonomy to the provinces, and eradicating the name of general Zia ul Haq from the constitution of 1973 of Islamic Republic of Pakistan, and the most important factor was the eradication of the presidential and governors powers to dissolve the elected assemblies. But there is still lot of things to be done to stabilize the constitutional and political system from the impact of the dictators, and all the branches of the government need to ensure that next time they should not become a tool for the ambitious persons so that he may not be dared to violate the constitution of the Islamic republic.

Conclusion

The constitution has been violated many times by the dictators who were ably supported by the politicians and the courts of Pakistan, which has made the constitution of the republic as a document which protects the authoritarian and corrupt dictators, politicians and judges who were allowing the dictators to amend the constitution as he wishes. The entry of the Article 58(2) b in the constitution by the general Zia ul Haq and later Pervez Musharaf as the article was omitted in the 13th Amendment in 1997 had a profound impact on the constitution and politics of Pakistan. As this article has empowered the president with immense powers which has made him the authoritarian ruler as we have witnessed during the 1990s era when even the civilian presidents were powerful that they have sacrificed three elected governments. This political instability in the state has further destabilized not only the economic position of the country but has aggravated the constitutional crisis as there were very few checks and balances on the powers of the president.

The dictators' impact on the constitution has been profound one as until the 18th Amendment was not passed the dictators has ruined the country but also haunted the democratic governments in Pakistan by empowering a single person and introducing the laws which were alien to the people of Pakistan. The introduction of Zia 's Islam has brought the security threat to the nation as today what we are reaping is due to the impact of the dictators on not only our political system but also on constitution of the Islamic republic of Pakistan.

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