Constitutional Development and Political (in) stability of Pakistan: An Analysis Since Inception of Pakistan till 2018

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Abstract: The paper attempts to study constitutional development in Pakistan in relation to the political instability or stability of the country. Analysis of the secondary data qualitatively revealed that the country suffered much due to political instability which was a result of the non-development and non-availability of the constitution. As the constitution provides a set of rules for people of a state who agree to live together and it is the basic set of principles through which a state is governed, the newly established state of Pakistan initially adopted the 1935 India Act to run the affairs. The process to frame a fresh constitution started after the transitory of Objectives Resolution in 1949 while Islamic and democratic values were considered as foundations to formulate a constitution for Pakistan. Three constitutions in 1956, 1962, and 1973 were framed in order to maintain political stability and to govern the state. Pakistan in its 72 years of age was governed by 49 Heads of State or Heads of Department including five military dictators (Naz, 2019). Only during the early eleven years, twelve Heads of State or Heads of Departments administered the oath to run the government. Two Prime Ministers were assassinated and one was hanged while two sitting Prime Ministers were declared disqualified by the court. East Pakistan was separated due to political instability and eight times constitutional assemblies were dissolved (Obaidullah, 2020). Several times, the Constitutions were abrogated or suspended and federalism was lacking in the country that also resulted in political instability. It is only since the last decade, political stability is emerging due to prevailing, implementing, development, and intactness of the Constitution. The objective of the paper is therefore to analyze the reasons and events that contributed towards the instability of the political situation in Pakistan through constitutional developments. The paper concludes that there have been several factors since inception of Pakistan but the democracy has grasped its roots and peaceful and democratic shifts between various governments will further strengthen the political situation in the country.

Keywords: Constitutional development, political stability, 1935 India Act, political instability, Pakistan.

1 Introduction

The newly born state of Pakistan adopted the Indian 1935 and Independence 1947 Acts as interim constitution because during the early years, formulating a new constitution for such a newly emerged state of Pakistan was a very difficult task (Aftab et al., 2020). Later on, based on the Objectives Resolution, 1949, three constitutions in 1956, 1962, and 1973 were framed in order to maintain political stability to govern Pakistan (Memon et al., 2011). The process of the constitutional development of Pakistan started with some constitutional documents preceding the 1956 Constitution and ended with a number of amendments in the Constitution of 1973. Different
constitutions with many amendments indicate political instability in the history of Pakistan (Memon et al., 2011; Khan et al., 2011).

A constitution provides a set of rules for the people who agree to live together in a state. The constitution is defined as “basic principles through which a state is governed” (Memon et al., 2011). The constitution is the supreme law from which other laws of the state emerge. It provides a framework to exercise political power and legal authority in order to have good governance (Aftab et al., 2020). Constitution clarifies relationships among the institutions of the state and society as well. Constitution being supreme law has superiority over other laws of the states. Initially, the process of making a new constitution started in 1949 when the Objectives Resolution was passed. Islamic and democratic values were considered as foundations to formulate constitutions for Pakistan (Khan et al., 2011; Rahman, 1973). This study is focused to analyze the constitutional development in Pakistan and its relation with the political stability or instability in the framework of the qualitative research method by analyzing secondary data.

1.1 Research Question

The study is based on the following research questions:

i. What is the history and background of constitutional development in Pakistan?

ii. What are the main reasons associated with constitutional development that have contributed towards political instability of Pakistan?

1.2 Constitutional Development

After independence, the urge was felt to develop the new constitution representing the true feelings of the nation. For the purpose different efforts were made. The Constituent Assembly in 1949 passed a resolution fulfilling objectives of the prospect constitution of the newly emerged state of Pakistan. This resolution is historically also called the Objectives Resolution. It has distinctive value and counts as a foundation towards formulating a Constitution (Khan, 2017). The Objectives Resolution is considered a very primary document in the history of the constitutional development of Pakistan. After a lot of discussions, arguments, opposition, and consideration, the Objectives Resolution was finally approved and implemented (Kazimi, 2012). After nine years-long struggle, the 1956 Constitution, the first-ever constitution of the state, was made (Choudhury, 1956). The country was named as the Islamic Republic (Rahman, 1973). The Constitution was consisting of 234 Articles, having 13 divisions and 6 agendas. Salient Points of the constitution were as under:

i. President was elected through national and provisional assemblies of Pakistan. Moreover, it was decided that only Muslims will have the right to become the president of Pakistan.

ii. Equal seats were given to both wings of Pakistan i.e. West and East.

iii. The two-third majority was mandatory to pass any bill and amend the Constitution.

iv. Urdu, along with English, was declared the official language of Pakistan. It was also decided that within a limited time, all documents will be translated into Urdu.

v. The 1956 Constitution was silent regarding conducting of elections both for the Central and the Provincial legislatures (Choudhury, 1956).

vi. It was decided that provinces will have the right to work and plan for their development and the federal government will not interfere in their matters.
vii. It was also decided that the judiciary will be considered supreme and will be free from all kinds of pressures.

viii. The legislation will be done while keeping in view Islamic laws or orders given by Almighty in the Holy Quran and they will be also incorporated (Rahman, 1973).

Later on, General Ayyub Khan and his followers decided that the constitution should be presidential. It was decided because he himself was looking to take the authorities in his hand not to let others use those constitutional authorities. The second Constitution of Pakistan was framed after discussions, feedback from Governors’ Conference, and finally according to the wish of General Ayyub Khan. The Constitution came into effect on the 8th of June 1962. This constitution had 250 Articles, 12 divisions, and 3 schedules (Khan, 2017).

The salient points of the constitution were that President would be a Muslim of at least 40 years of age or above. If the president keeps the office for beyond 8 years then re-election would be conducted with help of Provincial and National Assemblies. National Assembly had the power to remove the President from the office that was practically impossible. The President had the authority to end the National Assembly and then re-election would be conducted. The President was almost completely powerful as he had judicial, financial, legislative, and executive powers. The Cabinet was responsible to President and he had the authority to make appointments of all key posts. He was empowered to promulgate Ordinances and declare Emergency in the country. National Assembly being of only House had 150 seats plus 6 seats for women. Although, National Assembly was empowered to formulate laws the President was the sole authority to adopt or reject the bill. East Pakistan and West Pakistan were declared two provinces and only one Central List was available (Obaidullah, 2020). Governors were appointed as heads of the provinces having cabinets. Provincial Governments were directly under the control of the President. Initially, Political Parties were banned but later on the Political Parties Act was introduced (Memon et al., 2011; Khan, 2017).

After experiencing two failed Constitutions, political instability, losing East Pakistan, doing long deliberations, and making compromises, the third Constitution of Pakistan was successfully framed in 1973. It was framed by one of the famous politicians of Pakistan, Zulfiqar Ali Bhutto. the presidential type of constitution was changed to a parliamentary constitution where the prime minister and ministers under him possessed the authority to exercise power (Memon et al., 2011). The third constitution which is the presently enforced constitution of Pakistan was enforced on August 14, 1973. The Islamic Republic of Pakistan was the new name of the country (Rahman, 1973). The constitution has 280 Articles and 12 divisions with 06 Schedules (Khan, 2017). The 1973 constitution remained operational and functioned (Memon et al., 2011) as per the details mentioned below:

i. 1973 to 1977 Operational

ii. 1977 to 1985 Suspended

iii. 1985 to 1999 Operational with changes

iv. 1999 to 2000 Suspended

v. 2000 to date Operational with changes

The main features of the constitution are that it is a parliamentary constitution with a powerful Prime Minister and weak President. Prime Minister has all executive authority. He has the power
to end the National Assembly and is empowered to appoint a caretaker PM. The President must be a Muslim of 45 years old or above. Parliament and Provincial Assemblies elect the President for a period of 5 years. Islam was declared as a religion of State (Rahman, 1973; Khan et al., 2011).

2 Discussion

Few initial years of the country experienced continuous political instability (Memon et al., 2011). Muhammad Ali Jinnah as the first Governor-General of Pakistan remained on this position till his death on September 11, 1948. Earlier on July 26, 1947, the first Constituent Assembly was formed and this assembly was empowered to frame a new constitution. Despite huge problems like the untimely death of Jinnah, and economic, refugees, Kashmir (Ali & Saeed, 2019) and other issues (Bashir et al., 2019), Liaquat Ali Khan, the first Prime Minister of Pakistan, moved Objectives Resolution in March 1949. As a draft constitution in the light of Objectives Resolution was underway, the first Prime Minister was assassinated in 1951. Khawaja Nazimuddin took over the country as a second Prime Minister. In 1954, the final draft of the constitution was about to be finalized, when, Muhammad Ali Boga became the prime minister (Kazimi, 2012).

In 1956, there was no law to keep a check on the issue of floor-crossing; resultant instability further emerged in the country (Choudhury, 1956; Citizen, 2016). In 1958, General Ayyub continued with Martial Law, and later on, he became the second President of Pakistan. He introduced the Basic Democracies Order and through Basic Democrats (about 80,000 BDs as the Electoral College), he elected himself the President in a referendum on February 14, 1960, and lifted martial law in June 1962. Under the leadership of General Muhammad Ayyub Khan, through a Commission, the second Constitution of Pakistan, the Constitution of 1962, was formulated and implemented on March 1, 1962. General Elections as per the new Constitution were conducted. In June 1962, the next National Assembly was formed, and a Presidential form of government was introduced in the country. As per the new Constitution, all executive authority was held with the President of Pakistan but in 1969, Field Marshal Muhammad Ayyub Khan repealed the constitution and imposed second martial law. He made General Yahya Khan the new Chief Martial Law Administrator and handed over the country to him. President Ayyub Khan did this to bring stability in Pakistan but when he left the government, the constitution prepared by him and his people failed to fulfill the need of the country (Aftab et al., 2020). General Yahya ended one Unit and restored former provinces. He placed Baluchistan on the status of province in West Pakistan. General Yahya made LFO (Legal Framework Order) and held new elections in December 1970. Awami League of Sheikh Mujib-ur-Rehman obtained a majority in National Assembly whereas PPP (Pakistan People’s Party) secured the majority in the West Pakistan provinces. A crisis in the form of political instability surfaced in the country (Citizen, 2016). General Yahya Khan tried to resolve the issue by force through military action but failed (Naz, 2019). Resultantly, East Pakistan was separated as Bangladesh on December 16, 1971. General Yahya Khan left and handed over the government to Zulfikar Ali Bhutto, a leader of PPP (Kazimi, 2012).

In April 1972, Bhutto ended Martial Law and National Assembly agreed on an interim constitution in which the Presidential form of government was made in the country. The National Assembly, through the Constitution Committee, made and passed the third Constitution in which form of government was parliamentary and the Prime Minister had all the executive authority. Zulfiquar Ali Bhutto became the next Prime Minister and Fazal Illahi Choudhary was made the President of Pakistan (Kazimi, 2012).

The Constitution was revived and a lot of amendments were made in the Constitution in March 1985 (Bhatti, 2017). By November 1985, 8 Constitutional Amendments were made. Article 58 (2) (b) was inserted in the constitution that empowered President to dissolve National Assembly as
discretionary power (Aftab et al., 2020), resultantly, President General Muhammad Zia-ul-Haq dissolved the Assembly in 1988 (Kazimi, 2012).

After the death of General Zia ul Haq, General Elections were held in November 1988. Benazir Bhutto became the prime minister of Pakistan but President Ghulam Ishaq Khan again used his constitutional power and dissolved the Assembly in August 1990. Mian Muhammad Nawaz Sharif became the next Prime Minister of Pakistan after the 1990 General Elections but President Ghulam Ishaq Khan again dissolved the assembly. Although the Supreme Court of Pakistan restored the assembly in May 1993, it was again dissolved with the consultation of Prime Minister in July 1993 (Kazimi, 2012).

In October 1999, General Pervez Musharraf took over the government and appointed himself as Chief Executive. General Pervez Musharraf suspended the Assemblies through PCO (Provisional Constitutional Order). The next General Elections were held in October 2002 after which Mir Zafar Ullah Jamali became the prime minister of Pakistan. In 2004, he resigned from his office and Chaudhry Shujaat Hussain became the prime minister in June 2004. Later on, Shaukat Aziz was elected as Prime Minister in August 2004 (Kazimi, 2012).

In November 2007, National Assembly ended its Constitutional term; General Pervez Musharraf left the army post. The same year, Benazir Bhutto was assassinated (Kazimi, 2012).

Next General Elections were held in 2008 and Syed Yousaf Raza Gilani was chosen as the Prime Minister of Pakistan. General (R)1 Pervez Musharraf resigned from the presidential office and Asif Ali Zardari became the president of Pakistan. On the recommendations of the Constitutional Reforms Committee, the parliament passed the 18th and the 19th Constitutional amendments in 2010 and 2011 respectively. Later on, the 20th Constitutional Amendment was also passed by the Parliament unanimously in 2012. In June 2012, Raja Pervez Ashraf became prime minister of Pakistan. The National Assembly completed its tenure in March 2013 and Justice (R) Mir Hazar Khan Khoso was appointed as the caretaker prime minister of Pakistan (Kazimi, 2012).

In July 2017, The Supreme Court of Pakistan's five-judge Bench disqualified Prime Minister Mian Nawaz Sharif for holding a public office (Bhatti, 2018). In August 2017, the ruling party made Shahid Khaqan Abbasi the next Prime Minister of Pakistan. The National Assembly once again completed its tenure in May 2018 and Justice (R) Nasir-ul-Mulk was appointed as the caretaker prime minister of Pakistan. New General Elections were conducted in July 2018 and Imran Ahmed Khan Niazi was elected as prime minister (“Government of Pakistan, 2018). In September 2018, Dr. Arif-ur-Rehman Alvi became President of Pakistan as Mr. Mamnoon Hussain had completed his five years tenure. The year 2018 once again witnessed a smooth and democratic shift of power from one to another elected government. The present constitution is considered the most comprehensive constitution of Pakistan prepared until now although the governments have brought eighteen changes in this constitution which have changed the actual shape of the constitution (Aftab et al., 2020).

The Second Constituent Assembly made the first Constitution of 1956 based on concessions and compromises (Choudhury, 1956). Resultantly, the Constitution failed to maintain political stability as it was made for a parliamentary form of government but the maximum powers were held with the President. This Constitution also failed to settle down the issues relating to the electorate. It only simulated equality but in reality, no equality existed between two wings of Pakistan that were West and East. No elections were conducted after the implementation of the Constitution as

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Sikander Mirza disliked Islamic provisions and provincial autonomy (Rahman, 1973). As a result, this Constitution worked only from March 23, 1956 to October 7, 1958, i.e. for about two and a half years (Kazimi, 2012).

The Constitution of 1962 was quite different from that which the Constitution Commission recommended and General Muhammad Ayyub Khan himself liked and wanted presidential type of government. The second constitution was framed according to the mindset of General Muhammad Ayyub Khan and therein parliamentary form of government was discarded. The constitution empowered the President overwhelmingly and he became dominated in constitutional system. Resultantly, the one-man show prevailed in the country. The Constitution worked only from June 8, 1962 to March 25, 1969 as Field Marshal Muhammad Ayyub Khan himself imposed Martial Law and resultantly, Constitution was abrogated (Khan, 2018).

East and West Pakistan remained united for 24 years but the two wings had grave distrust, suspicion, and misunderstandings between them. Although it was a difficult political union, it could have been maintained by a fair Constitution. Unfortunately, the flawed Constitutions failed to ensure justice and trust among the people of two wings, due to their diversities found in their languages, cultures, and ethnicity. The two wings could only have been united under a true Constitution that was acceptable to the people of both wings (Khan, 2017). President General Zia-ul-Haq added the 8th Constitutional Amendment in November 1985. This so-called significant Article 58 (2) (b) empowered the president to dissolve the National Assembly as discretionary power. Resultantly, three presidents of Pakistan used this power and dissolved the national assemblies, creating political instability in the country (Bhatti, 2017).

3 Conclusion

Pakistan out of 71 years of age experienced five military dictators for about 36 years (Naz, 2019). 49 Heads of State or Heads of Department took an oath to reign the country. Only during early eleven years, 12 Heads of State or Heads of Departments administered the oath to run the government. Two sitting and former prime ministers were assassinated, while one prime minister was hanged. Three sitting prime ministers were declared disqualified by the court. East Pakistan was also separated due to political instability (Obaidullah, 2020). About eight times, constitutional assemblies were dissolved. About three to four times Constitutions were abrogated or suspended. These constitutions with number of amendments highlight political instability in the history of Pakistan (Citizen, 2016). During the first ten years of history from 1947 to 1956, it was the weakness of the political players which invited the military to interfere in politics (Ahmed, 2019; Naz, 2019).

Khan (2018) depicts that the democracy has grasped its roots in Pakistan as the democratic transformation has been completed successfully. This was a third time as the successful political and democratic transformation was held in 2018 consecutively in the first time of 71 years history of Pakistan. Overall, the transformation took place peacefully. Besides other factors, a mature, developed, and intact constitution plays major role in order to maintain the political stability in a state. 25 amendments have been incorporated in the Constitution of 1973, and now it has been

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2 Four Governors-General, 15 Presidents and 30 Prime Ministers.
3 Four Governors-General, one President and seven Prime Ministers.
4 Benazir Bhutto and Liaqat Ali Khan
5 Z A Bhutto
6 Yousaf Raza Gilani, Raja Pervez Ashraf, Nawaz Sharif
mature enough and developed to an extent that for the last ten years smooth and democratic shift of government has happened.

Reference