

Quality Assessment of Democracy: The Domain of Design

Syed Jaffar Ahmed
Pakistan Study Centre
P.O. Box 8450
University of Karachi, Karachi
Email: pscuk@super.net.pk

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The design of democracy refers to the structures - constitution, rules, institutions, policies etc. - which evolve in response to the needs, aspirations and interests existing in a society. Thus, while assessing the quality of democracy in a society, reference to both domain of structures on the one hand, and the underlying social impulses and the nature and character of the state, on the other, is inevitable.

In her fifty-eight years history since independence, Pakistan's political system has demonstrated a continuous streak of authoritarianism. Despite various constitutional experiments, and changes in the system of governance, this authoritarianism has remained intact. The historical roots of this authoritarianism can be traced back to the circumstances and the conditions under which Pakistan came into being. In 1947 Pakistan was realized through a constitutional modus operandi which determined that the colonial Government of India Act 1935 would continue to serve as the interim constitution of the country till it adopted a new constitution for itself. The highly centralized system of governance with the viceroy (now the governor general) at its head was thus inherited by the new country. The viceregal system relied heavily on the administrative institutions of the state, giving to the bureaucracy extraordinary power in deciding the policies of the state.

In addition to this, the chaotic situation under which partition was realized unleashed destabilizing forces threatening the viability of the new country. At a time when even the boundaries of the state were not defined, the refugees were coming into millions without the state having sufficient resources and infrastructure to absorb them, and while a new administrative set-up in a new capital had to be put to work, the bureaucracy took the initiative in its hands and established an effective control over state power.

While the civil servants were amassing the control of the state power in somewhat aggressive manner, the political class found itself divided, and after Mohammad Ali Jinnah's death, even leaderless. Muslim League which had provided a platform to the divergent Muslim interests before partition, degenerated as a united political force after independence. Given this, the civil servants were available with a situation where they could very easily manipulate the differences within the ranks of the League in order to further enhance their power.

Within a few years of independence, Pakistan's urge to seek western approbation in order to get military hardware and equipment landed it in the pro-west military alliances like SEATO and CENTO. This development enabled the military to acquire a decisive role in the determination of the national policies alongwith the civil service. Thus, in the beginning of 1950s a civil-military bureaucratic alliance emerged as the dominant force in Pakistan. This alliance continued in the subsequent years though the internal balance of power within the alliance shifted from the civil service to the military in the late 1970s under General Ziaul Haq's military rule.

Therefore, while referring to Pakistan, two important observations may be made in the context of the correlation of the design and other variables like the promise and the working of democracy. First, given the history of authoritarianism in the country the design was rather superimposed instead of growing from the interests of the majority of the society. As a result of this many an aspect of the actual political practices in the society appear to be in contrast and contradiction with the ascertained rules emanating from the design rather than an off- shoot of these rules. Second, in the case of Pakistan, the design itself has continuously changed in the last fifty-eight years, making it rather difficult to talk about one particular design. The constitution of the country which may be taken as the most important aspect of a design, itself has had a chequered history in the case of Pakistan.

At the time of independence, Pakistan had adopted the Government of India Act 1935 as its interim constitution. It could adopt its first constitution only after nine years, in 1956. This constitution was abrogated in 1958 when martial law was imposed in the country. Four years later, the second constitution was adopted in 1962, to be abrogated seven years later, in 1969, when martial law was imposed for the second time. Pakistan adopted its third constitution in 1973 which itself had difficult sailing in the last three decades. It was suspended in 1977 upon the imposition of the third martial law, was restored in 1985 in a drastically changed form, was put in abeyance in 1999, on the occasion of the fourth military take-over, and was restored, again, with further substantial changes, in 2002. The continuous break-up of the system and the subsequent inconsistent constitutionalism speaks well about the un-sustainability of the design. As a direct corollary of the lack of constitutional persistence, the rules and the institutions also remained subservient to the dictates of the time and expedience of the regimes in power. Therefore,

while talking about the design, the context of the particular time one is talking about may not be lost sight of.

State-Institutional Domain

Pakistan's 1973 constitution¹ provides a fairly long and detailed chapter on fundamental rights and lays it down that any law or any custom, having the force of a law which is inconsistent with the fundamental rights enshrined in the constitution will be void. Moreover, it also makes the state binding to the fundamental rights to the extent that any law made by the state in contravention of these rights will also be void. The constitution prohibits slavery and forced labour (Article 11), and ensures freedoms of movement, assembly, association, trade, business or profession, speech, religion (Articles 15-20). The constitution also declares all citizens to be equal before law and entitled to equal protection by law. A special mention has been made regarding discrimination on the basis of sex, and the constitution prohibits this (Article 25). Similarly in respect of the access to places of public entertainment or resort, the constitution denounces discrimination against any citizen on the ground of race, religion, caste, sex, residence or place of birth (Article 26). Article 27 disallows discrimination among citizens for appointment in the service of Pakistan on the grounds of race, religion, caste, sex, residence or pace of birth. In order to ensure an enlightened and an inclusive nationhood the constitution, in its chapter on 'Principles of Policy' makes the state binding to discourage parochial, racial, tribal, sectarian, and provincial prejudices among the citizens (Article 33). It also lays it down that the state would take all necessary steps to ensure full participation of women in all spheres of national life (Article 34). Regarding the minorities the constitution makes the state responsible to safeguard their legitimate rights and interests including their due representation in the federal and provincial services (Article 36).

In order to promote social justice, the state is bound to promote the educational and economic interests of the backward classes or areas, and remove illiteracy and provide free and compulsory secondary education within minimum possible period. Moreover, with a view to uplifting the people hailing from underdeveloped areas, the constitution asks the state to enable such people through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan (Article 37). Another principle of policy determines that the state should 'secure the well-being of people irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth, and means of production and distribution in the hands of a few, to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants'.

The state is also responsible for providing for all citizens, facilities for work and adequate livelihood with reasonable rest and leisure. To those citizens who are permanently or temporarily unable to earn their livelihood due to infirmity, sickness and unemployment, the state is responsible to provide basic necessities of life, such as food, clothing, housing, education and medical relief, irrespective of sex, caste, creed or race (Article 38).

Despite this detailed chapter on fundamental rights and an equally impressive chapter on the principles of policy, there are clauses in the constitution which may not appear in consonance with the letters and spirit of these chapters. For example, the constitution's decision to make Islam the state religion (Article-2) may raise question about the equality of the citizens irrespective of their religion. Moreover, despite claiming equal rights of the citizens, the constitution prohibits a non-Muslim from becoming the president of the country. Therefore, the article delineating the qualification for a presidential candidate determines that such a person should be a Muslim, apart from fulfilling other conditions (Article-41).

The partiality of the constitution towards of the citizens of the state may also be discussed with reference to the electoral system being followed in the country. For the major part of the country's history both before and after the adoption of the 1973 constitution, separate electorates remained in practice. It was in the elections of 2002, that for the first time joint electorate was adopted. However, the election rules as laid down by the "The Conduct of General Elections Order - 2002", made it binding on the Quadianis and 'Ahmadis' to declare themselves as non-Muslims. Furthermore, it was held that if a person got himself enrolled as a voter and objection was filed that such a voter was not a Muslim, the authority concerned could issue a notice to him and require him to sign a declaration regarding his beliefs about the finality of

the Prophethood of Muhammad (peace be upon Him). In case, he refused to sign the declaration he could be deemed to be a non-Muslim and his name was to be deleted from the joint electoral rolls and added to a supplementary list of voters in the same electoral area as non-Muslim.²

Though the rights recognized by the constitution are generally supplemented with laws enacted at various stages to ensure these rights, there are areas where either the laws are not substantial enough to check the violation of these rights or manipulated easily by the offenders by using deceptive means.

The whole edifice of fundamental rights as erected in the constitution is seriously threatened by the emergency provisions incorporated in the constitution. Accordingly, if the president is satisfied that a grave emergency exists in the country in which its security or the security of some of its part is threatened either by war or external aggression or by internal disturbance which is beyond the power of a provincial government to control, he may proclaim emergency (Article-232). In such case some of the fundamental rights like the freedoms of movement, assembly, association, trade, business or profession, speech, and property rights may cease to exist allowing the state to take any executive action and make any proclamation which will hold ground until the emergency is revoked. Moreover, in case of the proclamation of emergency, the president can, by an Order, suspend the right of an individual to move any court of law for the enforcement of the suspended fundamental right (Article-233).

In order to ensure the independence and accountability of the national government the constitutional scheme provides a mixed picture of both securities and omissions. Pakistan has opted for a parliamentary form of government, a choice which was made even before the creation of the country. However, in the last 58 years a genuine parliamentary system with a sovereign parliament could not be realized in the country which has oscillated between a powerful presidential executive and a powerful prime ministerial executive. The constitution of 1973 made the prime minister powerful without letting the parliament to have noticeable control over the executive but the system was adopted on the consideration that given the country's experience with powerful presidents in the 1956 and 1962 constitutions, a powerful prime minister would help lead the system towards parliamentary form. However, before this expectation could bear fruit the then prime minister Zulfikar Ali Bhutto was removed from power by the military which imposed martial law in July 1977. Under the dictates of the martial law regime, the constitution was amended in 1985 giving to it an explicit presidential form. It was only in 1997 that another civilian prime minister Nawaz Sharif mustered support from the opposition and repealed the clauses that had deprived the prime minister of his powers. However, this arrangement did not last longer and after his removal from power in 1999 by another military rule, the 1985 presidential powers were brought back in 2002 by the new military ruler of the country General Pervez Musharraf.

In all these shifts between presidential and prime ministerial executives the legislature has remained almost dormant. The constitution does speak about the legislative powers of the parliament's two Houses, yet in practice, laws are more often enacted in the form of ordinances for which constitution has provided sufficient room. Accordingly, in case the National Assembly is not in session and the circumstances exist in which the president thinks that necessary action is needed, he can make and promulgate an ordinance which may later be put before the National Assembly for adoption. An ordinance so presented in the Assembly would, according to the constitution be deemed to be a bill introduced in the Assembly. In case, the ordinance is not put to the Assembly for four months after its promulgation or if in this period a resolution disapproving it is passed by the assembly, it will stand repealed (Article-89).

Notwithstanding the inherent structural limitations of legislature, it can exercise some influence over policy formulation and scrutinize taxation and public expenditure through the committee system where the legislators belonging to the Opposition and the treasury benches may discuss these matters in detail with ministers of the respective departments explaining the backgrounds of various policy decisions. In the last few years the Public Accounts Committee (PAC) has acquired renewed importance with the relative freedom of press and other media bringing up the issues of corruption and highlighting the importance of transparency.

From the point of view of independent functions of the various organs of the national government, judiciary's independence from executive and legislature is of utmost importance. Pakistan had inherited a system of governance in which the judicial and executive functions had converged. This was further enhanced in the years following independence despite the recommendation of the various law reforms commissions made on different occasions asking for the separation of the two. The constitution in its

section on judicature, laid it down that the judiciary would be separated from the executive within five years from the commencing day. The commitment was made in 1973 but before this could realize, the constitution was suspended. When it was restored in 1985, the period of five years was amended to fourteen years (Article-175).

Given the background of military take-overs, the constitution in 1973 furnished an article with a view to check the military bonapartism. It decided that any person who abrogated or conspired to abrogate, subverted or conspired to subvert the constitution by force or by any other unconstitutional means should be guilty of high treason. Moreover, any person who aided or abetted these acts would likewise be guilty of high treason. The parliament was entitled to provide for the punishment of such person (Article-6). Despite this, the constitution could not get itself secured and remained hostage to military's ambitions. Taking a critical view of Pakistan's unstable political history one notes that the functioning of democracy has been marred and affected not as much by the constitutional inconsistencies or weaknesses as by the extra-constitutional forces having their stakes in the political control of the power structure.

A critique of the military take-overs does not, however, absolves the political class from its role in destabilising the system whenever it got an opportunity, though, under harsh conditionalities. Similarly, the constitutional inconsistencies, too, could not be overlooked while discussing the frequent breakdowns of the political system. In as far as the viability of the constitution is concerned, a good constitution would be the one which on the one hand represents the long-term and permanent needs of the society, and on the other, responds to the newly emergent situations more swiftly. The process of amending the constitution should therefore be such that neither it makes it so easy for any incumbent government to change the basic law according to its short-term motives, nor should it be so rigid that even the most imperative of the changes are not made in it. According to the constitution of Pakistan, a bill to amend the constitution may originate in either House and, after it has been passed by the votes of not less than two-third of the total membership of the House, it is transmitted to the other House where it is passed in a similar manner (Article-239). Though the condition of two-third majority in both Houses of the parliament was considered sufficient for preventing the constitution from frequent changes yet the past experience showed that the governments with the required numerical support tried to amend the constitution more to shape it to their political needs rather than to adjust it to the changes in the society. Moreover, being a federal country, the provinces could justifiably be given a role in the amending process as is allowed in many a federal countries. This however is not available in the case of Pakistan.

The quality of democracy at a given point of time can also be determined in the light of respective roles played by the national, sub-national and local governments. Pakistan has opted for a federal system but its scheme of division of powers between the national and sub-national governments demonstrates a highly centralized tendency. The constitution has provided two legislative lists. In the Federal List those subjects have been arranged on which the centre alone can legislate while on the subjects mentioned in the Concurrent List both the centre and provinces have the right of legislation. But in the latter case if the legislations made by the centre and the province over a subject are inconsistent or are in conflict with each other it is the legislation of the centre which will prevail irrespective of whichever legislation was made first. The subjects which do not find place in either of these lists are left for the provinces. A careful study of the lists shows that almost all-important subjects have found place in the Federal List. A comparison of the Federal List with the similar lists of the previous constitutions including the Government of India Act 1935 demonstrates that it is richer than all the previous ones. Moreover, some of the important subjects which are not mentioned in the Federal List and are placed in the Concurrent List are also, practically, the centre's subjects as if the legislation of a province on any of these subjects is against the centre's desires it can simply replace it with its own legislation. Moreover, with the more important and particularly the revenue generating subjects being put in the Federal and the Concurrent Lists, the scope and extent of the residuary subjects has come to be quite insignificant.³

As regards the local government institution, in the major part of the country's political history these have remained non-existent. It is interesting that the local self-government institutions were mostly established during the military rules whereas the civilian regimes remained reluctant towards them. The major reason being that the civilian regimes were not prepared to diversify the funds between the provincial and the local governments and wanted to maintain the provincial level of administration and governance as viable as possible given the limited resources available to it. On the other hand the military rules which did away with the national and the provincial levels of democratic governance dissolving the national and provincial assemblies looked for some institutions which could act as the via-media between them and the society at

large. These institutions could also provide legitimacy to the military rulers who could claim that they have established democracy at the grassroots level. The local governments, whenever they were allowed to function, have always been weak and vulnerable to political pressures, coming particularly from their creators. Their financial powers have generally been very limited with the result that they were to rely on the grants and donations from the donor agencies. The new system of 'devolution of powers' introduced by the regime of General Pervaiz Musharraf also does not ensure autonomy of the local government institutions. In fact, it provides a unusual arrangement wherein the federal government directly controls and supervises the local government without either giving to these governments their independent role or giving to the provincial governments a meaningful part in supervising the lower tier of governance, even though according to the constitution, local government constitutes a provincial subject.

As regards the encroachment of one tier of government over the powers of other tier, the Constitution gives to the Supreme Court the power of original jurisdiction in any dispute between any two or more governments. The concerned clause addresses the possible conflict between the federal and a provincial government or between two provincial governments (Article-184). The differences between the local government and provincial government may be settled at the provincial level.

In order to ensure accountability of the administration, the Constitution, in the first place, determines in its chapter on Fundamental Rights, equal opportunity for entrance into the civil services. Moreover, the Constitution also ensures control of political executive and legislature over administration. Accordingly, the laws made by the legislatures regulate the role of the services. The constitution lays down that the parliament in relation to the affairs of the federation, and the provincial assembly of a province in relation to the affairs of the province, may legislate to provide for the establishment and constitution of a Public Service Commission (PSC). The chairman of the PSC constituted in relation to the affairs of the federation is appointed by the president. Moreover, a Public Service Commission performs such functions as may be prescribed by the legislation of the concerned legislature (Article-242).

In order to ensure proper and honest functioning of the civil servants, laws have been made with prescribed punishment for violation of the rules. Pakistan Penal Code provides a full chapter on 'Offences by or Relating to the Public Servants'. It specifically mentions laws and punishments pertaining to a public servant's taking gratification other than legal remuneration in respect to an official act, framing an incorrect document to cause injury, unlawfully engaging in trade, unlawfully buying or bidding for property etc.⁴

Moreover, in order to make administration answerable and responsible to the citizens the Constitution has established the institution of the Ombudsman. The institution of the Federal Ombudsman was established in 1983 and provincial Ombudsmen were created subsequently. The various Ombudsmen receive complaints of the citizens against various administrative organs of the state and seek to provide justice. In the past, the annual reports of the Ombudsmen have shown numerous weaknesses in the practice of government agencies and have highlighted the reasons thereof. However, the institution of Ombudsman has to strive hard to be taken seriously by the government and to win the confidence of the people.⁵

B. The Party Political Domain

Prior to the creation of Pakistan, localized political organizations had been playing a major role in the politics of the provinces, which later came to constitute the new country. The Muslim League had an all-India character, but in order to be able to demonstrate its Muslim representative character, it had to have its roots in the Muslim majority provinces. Thus in the decade before partition, at times it came in conflict with the regional political organizations like the Unionist Party in the Punjab and the Krishak Parja Party in Bengal, while on other occasions it also struck deals with some of these parties. On partition, League had acquired an ascendant role in most of the provinces and where it was still faced with regional challenge, like in the Frontier, with the Congress ministry still intact, the post-partition circumstances enabled it to establish its sway. Thus on partition, one may say, the League was in power both at the center and in the provinces. Pre-partition regional organizations had either succumbed to the circumstances or their leaders had joined the League bandwagon. The Opposition in the central legislature in 1947 mainly comprised the members of the Congress party. Of the total sixty-nine members of the Constituent/ Legislative Assembly, fourteen belonged to the Congress. The size of the Congress shrank to only four members in the second

Constituent Assembly established in 1955, but by that time various other opposition groups had also emerged and had entered the Assembly.⁶

On independence, the exclusive rule of the Muslim League at the center and in the provinces, became a source of tension within its ranks instead of strengthening its rule. Consequently new oppositional groups emerged from among the ranks of the League. The most of the leaders of the Jinnah Awami League, Awami League, Krishak Sramik Party, Nizam-e-Islam Party, and the Republican Party which shared the political scene along with the Muslim League in the first decade of independence, had been in the League in the past. League's preeminence receded since 1954, when it lost provincial election in the East Bengal and, subsequently, lost control at the center as well, in 1956, when its prime minister Chaudhry Muhammad Ali who presided a coalition ministry, was removed. With the imposition of martial law in 1958, the country entered into another phase of her history with the military and bureaucracy controlling the levers of power and political parties including the officially formed Convention Muslim League, playing a secondary role after the so called restoration of democracy in 1962.

In 1970, the second martial law regime held the first ever general elections on the basis of universal adult franchise. These elections brought to the fore two political organizations to compete for political power: Awami League in the former East Pakistan and Pakistan Peoples Party in the western wing of the country. Since each of the two parties capturing the most of the seats in the country were exclusively confined to only one wing of the country, without winning a single seat in the other wing, the national elections, in fact, exposed the national cleavage. The failure of the military regime to broker a deal between the leadership of the two wings and its political mistakes in managing the subsequent crisis, set in motion a series of events which culminated in the dismemberment of the country in December 1971.

Political parties in Pakistan have generally lacked internal democracy and organization. At the time of independence, the Muslim League had earned its place not as much due to its organization as due to its being a platform of Muslim separatism. It did have its structures but at the center, Jinnah and his nominees were all powerful at least since the middle of the 1930s. The provincial Leagues witnessed infighting of the various groups but the central leadership somehow managed to contain it. After partition, political process was not allowed to take its course enabling the political parties to bring themselves in harmony with the democratic principles. The recurrent military take-overs left political landscape with parties most of whom do not meet the essential criteria of democratic organizations. The cumulative result of the lack of the political process and the authoritarian policies of the state is that the political parties are either parochial, or ethnic, or if they are national in character, even in that case, they are overwhelmingly influenced by individuals and families. Party programs, manifestos, and organizational structures have been rendered insignificant.

Legally and officially, the affairs of the political parties have been regulated through successive Orders and Acts. The latest being the Political Parties Order 2002, the Political Parties Rules 2002, and the Legal Frame Work Order 2002. These orders and rules guided the political parties' participation in the elections of 2002. Accordingly, conditions were laid for the formation of the political parties. Of these, some are: a) a political party shall have a distinct identity of its structures at the national, provincial and local levels, b) it shall not undermine the sovereignty and integrity of Pakistan, or indulge in terrorism, c) it will not promote sectarian, regional, or provincial hatred, d) should not bear a name as a militant group, e) it should not impart any military or paramilitary training to its members, etc. The Order made it binding on the political parties to formulate their constitutions, stating clearly: a) the aims and objectives of the party; b) its organizational structure at the federal, provincial and local levels, wherever applicable; c) criteria of membership; d) membership fee; e) qualifications and tenure of the party leader and other office bearers; f) criteria for receipt and collection of funds; and g) procedure for the election of party leader and other office bearers, selection or nomination of party candidates for election to public offices and legislative bodies, and method and manner of amendment in the constitution of the party. The Order further held that every political party shall have an elected general council at the federal, provincial and local levels. Elections within the political parties have also been made a prerequisite. Therefore, the party leader and other office bearers of every political party are required to be elected periodically, in accordance with party's constitution, at least once in four years. Political parties are also required to provide equal opportunities for contesting party office including that of the party leader and all members of the party should constitute the electoral college for the intra-party elections. The order binds the parties to submit to the Election Commission, within sixty days from the close of each financial year, a consolidated statement of the accounts of the party duly audited by a chartered accountant.⁷

In order to ensure free and fair election, the Constitution provides the institution of the Chief Election Commissioner (CEC) and the Election Commission. Appointed by the president, the CEC is a serving or retired judge of the Supreme Court or a High Court, or is qualified to be appointed as a judge of these courts (Article 213). The CEC may not hold any other office of profit in the service of Pakistan (Article 216). According to the Constitution for each general election to the National Assembly and to a Provincial Assembly, an Election Commission is constituted with the responsibility to organize and conduct the election and to make necessary arrangements 'to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against' (Article 218). In order to facilitate the Election, Commission and the Commissioner, the executive authorities in the center and the provinces are made responsible to assist the two in the discharge of their functions. (Article 220).

Though the election laws and rules do not prohibit any section of the society from the electoral process and the provisions regarding special seats in the legislatures for women and the minorities are a source of ensuring the representation of the under-privileged sections of the society, yet social practices and norms do prevent the marginalized groups from getting representation or exercising their right to vote. As has been noted in the past elections, women in the tribal areas are not allowed by their men-folk to get their names registered in the electoral rolls.

C: Non-Party Political Domain

At the time of independence, a number of groups and organizations had been mobilized in politics. The student organizations and the women groups were all the more visible on the political scene. After independence, with growing political polarization, social unrest and awareness, there grew organized movements among students, workers, professionals and women. By the time of the introduction of universal adult franchise in 1970, these movements had consolidated and had acquired a pivotal role. Particularly the student organizations and the trade unions played key role in the mass mobilization against the dictatorial rule of General Ayub Khan towards the end of 1960s.⁸ After 1971, though the industrial workers were successful in making some of their long standing demands accepted through the labour policies introduced by the Bhutto regime, yet given the economic crisis in the country, the nationalization of industries by the government and Pakistani workers' migration to the Middle East, the trade union movement gradually weakened. In the 1980s and later, the privatization policies along with the industrial relations arrangements, favorable to the owners, and their being in a position to influence the workers' capacity to organize into unions, resulted in the further decay of the trade union movement. The Industrial Relations Ordinance, 2002, provided some relief to the workers but it continued to depict a favorable bias for the owners.⁹

Students organizations played an important role in the 1950s and 1960s, and remained useful source of the middle class' recruitment in national politics. As one can see, a number of the middle class political leaders of 1970s onwards, had been recruited into politics through the student organizations of different shades. The leftist student organization, the Democratic Student Federation (DSF), which was found in early 1950s, transformed into the National Students Federation (NSF) towards the end of the decade. In the middle of 1960s, the NSF was divided in two groups of pro-Chinese and pro-Moscow leanings. By the beginning of 1980s, these groups were significantly removed from political scene.

The more important and organized student organization belonging to the right has been the Islami Jamiat-e-Talaba. Being the student wing of Jamaat-e-Islami, it has provided the political recruits for its mother organization. At present the most of the Jamaat-e-Islami leadership comprises people who once were members of its student wing.

Apart from these parties, a number of other student organizations operating at the national and regional levels have contributed to the mobilization of students for their educational demands and have supported the overall political mobilization in the country. However, during the martial law of General Zia-ul-Haq, students unions in educational institutions were banned. This decision on the one hand encouraged authoritarianism in educational administration, and on the other, contributed to the overall de-politicization of the society which, certainly, had other reasons, too.

A third area of non-party political action is the role of the non-governmental organizations (NGOs). The NGOs have mushroomed since the 1980s and they are working in the areas of education, health, human rights, women emancipation, eradication of child and bonded labour, political teaching and awareness, local self-help, etc.

The formation and working of the NGOs is regulated by different laws of which the following are more important.¹⁰

- a) *Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961*: According to this law a voluntary social agency is an organization, or association established by persons on the basis of their free will for the purpose of rendering welfare services and depending for its resources on public subscriptions, donations, or government aid. Such agencies can carry out their activities in the fields of child welfare, youth welfare, women's welfare, welfare of physically and mentally handicapped, welfare of beggars, recreational programs, social education, family planning, etc.
- b) *Societies Registration Act, 1860*: According to this Act, a society or organization, association or undertaking is established by persons of their own free will. The purposes for which the societies are established, include promotion of science, literature, the fine arts, construction, the diffusion of useful knowledge, political education, charitable services, the foundation and maintenance of libraries/reading rooms, painting galleries, collection of natural history, mechanical and philosophical inventions, religious and educational services, etc.
- c) *Companies Ordinance (Section 42), 1984*: The Ordinance allows for the formation of associations for the purposes of commerce, arts, science, religion, sports, social services, charity, as non-profit companies provided they apply or intend to apply their profit, if any, or other income, in promoting their objectives and prohibits the payment of dividends to their members. The non-profit registered companies are mostly organizations involved in research with donor funding, clubs, and very large organizations engaged in social and welfare services.
- d) *The Trust Act, 1882*: A trust is defined as an obligation with an attribute of ownership of property. A trust may be created with a creator or author of the trust, a person in whom the confidence is reposed, i.e. the trustee and a person for whose benefit the trust is created, i.e. the beneficiary. The Trust Act provides to the private acts of public charity a legal cover and allows the creators of the trusts flexibility in their operations.

By June 2000, about 56,000 non-profit organizations had been registered under different legal statutes. A number of NGOs have made noticeable contribution towards the objectives for which they were created. The Edhi Foundation, All Pakistan Women's Association (APWA), Human Rights Commission of Pakistan, Aurat Foundation, Sustainable Development Policy Institute, Social Policy and Development Centre, Pakistan Institute of Labour and Research, Orangi Pilot Project, Shirkat Gah, etc. are some of the NGOs, which have earned repute due to their mass awareness programs and research output.

In the promotion of the values of democracy, and for ensuring transparency in the decision-making of the institutions of the state, an independent and free media plays a pivotal role. In Pakistan, the media, for a large part of the country's history, remained under the state control and the press had to operate under strict rules and regulations depriving it of independence. Since independence numerous black laws governed the working of the press. These laws enabled the state to give or to decline to give declaration for the publication of a newspaper or magazine. Press had also been subjected to official dictates which would come in the form of 'advice' from the Press Information Department. At times, the press was also subjected to pre-publication censorship, a violation of which could invite closure of the newspaper or magazine.¹¹ After the 1958 martial law, a National Press Trust was established by the government which brought out its own newspapers and magazines.

The black laws regarding the press and media were criticized and protested against by the journalist community and the civil society at large. It was after 1985 that the pressure on the print media was gradually released. The National Press Trust was also dissolved subsequently.

At present, the Ordinance No. XXXV of 1997 regulates the affairs of the electronic media. It lays down the terms and conditions for issuing licenses for the establishment and operation of privately owned broadcast stations. Accordingly a broadcaster who is issued a license under this ordinance is required to: 1) promote respect for the sovereignty, security and integrity of the Islamic Republic of Pakistan; 2) promote respect for the national, cultural, and religious values as enshrined in the Objective Resolution (passed by the

Constituent Assembly in March 1949); 3) promote respect for the principles of public policy; 4) ensure that its programs and advertisements do not encourage violence, terrorism, racial discrimination, religious sectarianism or hatred; 5) promote respect for law, order and justice, etc. An important undertaking to be made by the applicant for the license is to broadcast programs specified by the Federal Government or the Authority (i.e. the Electronic Media Regulatory Authority established under this very Ordinance) in the manner indicated by the government or, as the case may be, the Authority.¹²

Regarding the freedom of information, Ordinance No. XV of 1997 ensures transparency and freedom of information, declaring them as essence of good governance. The ordinance declared a set of record of public offices as the public record. This included instructions, policies and guidelines, record relating to sale, purchase, lease, mortgage, acquisition or transfer of properties, record pertaining to approval, consent, concessions, permissions, benefits, privileges, licenses, contracts, permits, agreements, and final orders including final decisions in all meetings. The Ordinance declares that any citizen of Pakistan, on the payment of prescribed fee, may make written application for obtaining the information contained in any public record including copy of any such record. The concerned official was made responsible to supply to the applicant the required information within twenty-one days of the receipt of the request.¹³

The above are only a few of the rules and regulations initiated in the recent past which suggest that a relatively relieved environment as compared to the past seems to be emerging. With the opening up of the society, and a progressive decline in the official interference, the press seems to be much free in comparison with its past.

D: Social, Economic and Cultural Domain

The region which constituted Pakistan on independence, demonstrated a variance in socioeconomic background at the time of national independence. While East Bengal had a good size of educated middle class along with the land owning elite, the Western wing of the country was predominantly rural, feudal and tribal along with a very small middle class confined to the urban centers, such as Lahore, Rawalpindi and Karachi. A large majority of migrants coming from India due to the violence that had erupted on the occasion of partition, settled in the big cities of the Western wing, especially Karachi.

Politically, the Muslim majority provinces had different lengths of political experience. While Bengal and Punjab had experienced electoral politics and had their institutions established as early as 1919 when the Montague Chelmsford Reforms introduced 'diarchy' in the provinces, Frontier and Sindh attained provincial status in the 1930s and embraced electoral politics in 1937. By the time of the creation of the country, these provinces had a fairly good background of political experience and their elite had acquired experience in parliamentary affairs as well as in working with the bureaucracy. However, the provincial politics in the Western wing was, by and large, influenced and shaped by the feudal social and economic structure of the region. In the Punjab, the Unionist Party represented the feudal interests and served as their platform to resist other interest groups, and to accrue maximum benefits for this class from the British colonial government. In Sindh the feudal class was pitted against itself. In the decade before partition, the politics in Sindh could be defined by the political infighting. In Frontier, the Muslim League mainly represented the interests of the land-owning class and a section of the urban Muslim intelligentsia. Baluchistan was mostly tribal.

Pakistan was faced with the challenge of constructing democratic institutions in a socioeconomic background which, being predominantly feudal and tribal, was not conducive to their growth. Unless radical land reforms were introduced right in the beginning and the political power of the feudal class was neutralized, there were not much chances for democratic construction. In the first Constituent/ Legislative Assembly (1947-54) of the country, landlords had a good representation as out of its 79 members, 27 belonged to the landed class. In the second Assembly (1955-58) they had emerged as the biggest bloc as they got 28 out of 80 seats.¹⁴

The socio-economic system was highly hierarchical while the politics itself was elitist in nature. As the franchise was restricted, not all segments of the population, particularly the poor and the under-privileged, had a political voice. In terms of gender, this politics was primarily patriarchal, as very few women were recruited in politics at the elite level, and that, too, in the urban politics.

The political class' interest in politics was determined by its socioeconomic interest. Thus the Muslim elite, who had strived for provincial autonomy during the British rule, also had the background of working with the British administration. After partition, the feudal class conveniently readjusted with the military-bureaucracy's alliance when it acquired control of the power structure of the country.

Social values themselves supported authoritarianism as the society imbibed values of submission without questioning. The patriarchal family structure, the educational system, and the popular perception of religion, all supported authoritarianism. Moreover, the romance of an Islamic state which was cultivated during the freedom movement, and Pakistan's failure in evolving a nation state perception after independence, encouraged the clergy to acquire a role in the post-independence politics. The military-bureaucracy oligarchy's search for legitimacy provided it a good slogan in the form of religion, which was invoked progressively after independence, which further strengthened the religio-political organizations.

This socio-cultural background had all along been a disabling factor for the growth of democracy in the country. The constitutions Pakistan experimented with, have not been able to undo the inherent authoritarianism of the society and have in fact, provided political structures with centralization of power, executive's dominance over legislature, curtailing of provincial autonomy, and protection of privileged interests. Democracy, thus, remained only an ideal and could not become a living reality in the country.

End Notes

- ¹ *The Constitution of the Islamic Republic of Pakistan 1973 (As Amended by Legal Framework Order, 2002 & Constitution Seventeenth Amendment Act 2003)* (Lahore: Punjab Law Book House, 2004).
- ² Article-7B: 'Status of Ahmadis etc. to remain unchanged', The Conduct of General Elections Order, 2002 (Chief Executive Order No. 7 of 2002), in *Manual of Election Laws*, compiled by Syed Aley Maqbool Rizvi (Karachi: Asia Law House, 2002), pp.15-27.
- ³ See for a detailed discussion of the legislative lists and their comparison with the respective lists of the previous constitutions, Syed Jaffar Ahmed, *Federalism in Pakistan: A Constitutional Study* (Karachi: Pakistan Study Centre, University of Karachi, 1990).
- ⁴ See Chapter IX: 'Of Offences by or Relating to Public Servants', *Pakistan Penal Code* (Lahore, Mansoor Book House, 1999).
- ⁵ See for details on this theme Mobeen Ahmad Khan, *A Commentary on Ombudsman: Law, Scope and Prospects* (Karachi: Asia Law House, 2001).
- ⁶ See Mushtaq Ahmad, *Government and Politics in Pakistan* (Karachi: Space Publishers, 1970), pp.89 and 106.
- ⁷ See the Political Parties Order, 2002, in *Manual of Election Laws, op.cit.*, pp. 29-41.
- ⁸ See Tariq Ali, 'Pakistan: Military Rule or People's Power?' (London: Jonathan Cape, 1970); and Khalid bin Sayeed, *Politics in Pakistan: The Nature and Direction of Change* (New York: Praeger, 1980).
- ⁹ See Industrial Relations Ordinance, 2002, with the comments by Ch. Ghulam Rassol Ranjha (Lahore: Mansoor Book House, 2003).
- ¹⁰ See Aisha Ghaous-Pasha, Haroon Jamal, and Muhammad Asif Iqbal, *Dimensions of the Non-profit Sector in Pakistan* (Karachi: Social Policy and Development Centre, 2002), p.4.
- ¹¹ See for a chronicle of anti-press measures and policies, Zamir Niazi, *Press in Chains* (Karachi: Karachi Press Club, 1986).

- ¹² See Ordinance No. XXXV of 1997, in Javed Jabbar and Qazi Faez Isa *Mass Media Laws and Regulations in Pakistan and a Commentary from a Historical Point of View* (Karachi: Asia Media Information & Communication Centre, 1997), pp.424-31.
- ¹³ Ordinance No. XV of 1997, in *ibid.*, pp.472-75.
- ¹⁴ Mushtaq Ahmed, *op.cit.* Also see: Y.V. Gankovsky and L.R. Gordon-Polonskaya, *A History of Pakistan 1947-1958* (Lahore: People's Publishing House, n.d.), especially see chapter VII: 'The Big Landlords and the Upper Bourgeoisie of West Pakistan Rule in the Country', pp.113-27.
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