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Legislation in National Assembly (1962-1965): A Comparative Review of Powers of President and Parliament.

Abstract

This paper offers an analysis of the performance of first National Assembly of Pakistan. The Assembly was formed under the Constitution of 1962 and functioned from 1962 to 1964. The phase of the Assembly marked the testing time for Presidential form of Government introduced/ following first martial law in Pakistan under General Muhammad Ayub Khan. While studying the legislation during this time span the powers of President and the style of their implementation has been compared with the powers and working of the institution of parliament. How semblance of parliamentary work was used to cover the authoritative and administrative control over the legislative business is the focus of study. The analysis of the debates of National Assembly is major tool of research and the archival sources along with debates and secondary material provides the main source material for study. The study complies that the significant part of legislation was made out of the ambit of parliament. The legislative business within Assembly too was controlled by the administration and president.

Keywords: Legalization; Presidential government; Authoritarian rule; Parliamentary powers; institutional control

Ayub Khan, first military ruler of Pakistan from 1958 to 1969, wanted a soft and democratic face for his so-called revolution. A Constitutional and democratic setup was necessary to lift the martial law. The international pressure agreed him to lift the martial law and implement the Constitution but as Martial Law Administrator, he had made himself President of Pakistan as the most powerful man in the country and central point of all the authorities. The power structure was made with authorities of the president all around. He had the powers to dissolve the assemblies and nominate cabinet members. All the administrative authorities were made under his centralized command.

The 1962 National Assembly had significance in the democratic history of Pakistan, as Ayub Khan desired to set democratic setup in the country with low intensity. The Assembly was elected through indirect elections. President Ayub required a low density polls where candidates remained attached with local level

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issues and National and International issues would not be discussed at mass level. The adult franchised election would become the cause of mass level political activities and public promises of political figures. The Ayub regime did not require open public discussions upon issues like Pakistan's relations with UK, USA and other global forces.¹ There was no political freedom for parties, nor for populace because the elections were held during the Martial Law and it was lifted after poll as the members of National Assembly took oath and unicameral parliament started its official working. It had been announced by the Chief Martial Law Administrator and President of Pakistan General Ayub Khan during the address in first session of the Assembly. President Ayub address the Assembly before the oath of the members and the sessions was chaired by the Chief Election Commissioner (Akhter Hussain) and oath had also been taken by chair.²

Constitution Making and Amendments without Assembly

Generally, in the democratic societies the Parliament formulates the Constitution but as for 1962 Constitution, it was not made by any Assembly, nor approved by legislature. President Ayub Khan articulated the Constitution and did not feel need for formal approval of the Assembly which he had created to fulfill the international demands for the restoration of the democracy. As for the Constitution making, The President Ayub did not rely upon his own formulated Constitution Commission and violated its suggestions and drafted the Constitution with a large number of modifications.

The powers of the Assembly for the legislation are recognized internationally. The basic function of the parliament is defined as the body that has powers to make legislations. But it seems that the Ayub regime remained focused upon legislation with Presidential order. During the tenure of the 1962 Assembly, the government presented with a small number of legislations for prior approval of the legislature which had been shown by the reports of the Ayub government regarding the introduced acts and ordinances.

The Law Minister verbally admitted the power of the Assembly at floor of the house. He acknowledging the Assembly's power during very first session declared the Assembly as highest representative body of state. He admitted that the Assembly had powers which reflected the supremacy of the masses.³ The power of legislature to amend and alter the Constitution was also acknowledged by the President Ayub Khan in his address to newly elected Assembly, although he directed the members not to hurry for the amendments and alterations.⁴

The 1962 Constitution was not passed by the Assembly but it had been made by the Ayub Khan with the recommendations of a Commission formed by him. General Ayub admitted that he had added all his ideas of reforms regarding social, legislative, political and administrative affairs in the Constitution. Addressing the first session of the National Assembly Ayub Khan commented about the 1962 Constitution as "What I have produced in this Constitution has become from my heart and soul and it is my belief that the country can run sensibly and can prosper under this system". Contrary to the parliamentary traditions and acting in authoritative way he advised the legislators not to amend the Constitution at large but to defend it. He categorically declared that the primary purpose of the Assembly was not to amend the Constitution⁵.

Negating the parliamentary traditions of constitution-making through public representatives the authoritative Ayub gave the National Assembly no role in formulation of the Constitution. The Constitution was promulgated before the birth of Assembly.⁶ In other words the Constitution was not production of the legislature but Assembly was product of the Constitution and it had not been permitted to look into or approve the Constitutional draft. The old parliamentarians and politicians, trained under British system where only parliament is assigned with the work of constitution making, had thought that they had authority and power to amend the Constitution according to their will. It was natural perception of every democratic minded parliamentarian and politician that Assembly would have a major and fine role to amend the Constitution but the scenario presented the picture that the Assembly was influenced by the Presidential powers and legislators could not go beyond the wishes of authoritative Ayub Khan.

The Opposition legislators committed with democratic ideals declared the 1962 Constitutions as man-made document and full of error. They did not agree to consider this as perfect as the government proclaimed. They had also shown determination to amend the objectionable and obnoxious elements of the Constitution. The democratic minded legislators also showed commitment to restore the fundamental rights of the masses by amending the Constitution. Mohammad Ali (An Assembly member) showed happiness on lifting of Martial law and declared that time period as the evil influence. The democracy-loving legislators clearly mentioned that 1962 Constitution had not fulfilled the democratic fundamentals and it had to be amended by Assembly⁷.

The treasury benches, influenced by authoritative government in different ways, praised and defended the Constitution in Assembly. The treasury legislators labeled the 1962 Assembly as the first and best democratic institute since independence. They praised the revolutionary reforms of the Ayub regime and expressed their satisfaction with the Constitution. Some treasury legislators who had moral courage of not denying the fact did not discuss the Constitution-making process at all. They spoke upon Muslim unity and Islamic integrity in the previous times and showed commitments for the future unanimity of Muslim world under the command of Pakistan, especially with the current Pakistani setup⁸.

President Ayub Khan admitted that the Constitution had not been outlined by God and it was a human creation. He raised this point on the floor of the House. The democratic legislators picked the point and argued that human framed document could be amended and made better for the populace. They were determined to amend the Constitution and would make it democratic with the power of Assembly.⁹ However the authoritative regime's control over Assembly did not let them materialize their intentions. They could not comply with their commitments as major portion of the legislation was made by the Presidential orders instead of the acts of Assembly. The Assembly had only passed five acts during 1962 but the legislation made by the presidential office in shape of ordinances was in 80 in number during first parliamentary year.¹⁰

General Ayub declared that "the Constitution is the suitable for the requirement of the country"¹¹ and advised the legislators not to amend it in hurry. Acting upon

this authoritative direction it was insured by the Law Ministry and treasury parliamentarians that amendments must be taken in consideration of the Assembly only with the prior approval of the President¹². The independent members presented the amendments in the Assembly but secretariat did not consider them due to non-consideration of the President. The Treasury benches presented the amendment bill with the prior approval of the president but the opposition and independent members had no access to the President and their amendments were even not allowed to be presented in the House. The Speaker recognized this issue and promised with the members an access to the President or their amendments would be presented to the President for his consideration.¹³

The vast majority of the Assembly members remained silent upon the Constitutional amendments on direction of the President during and soon after his address but Mufti Mahmood, an independent opposition member from West Pakistan, raised the voice against this point soon after the presidential speech. Mufti addressed the chair and viewed that the Assembly members took oath to protect and defend the Constitution but would use the powers to amend the defective clauses of Constitution if needed. Mufti pointed out the powers of the Assembly to amend the Constitution but the Chair did not allow him to carry on further and he was advised to have oath first and then express his ideas.¹⁴

There was some hidden pressure on Speaker and Assembly Secretariat who were not free to present the members' proposed amendments in the Assembly. This became evident by the attitude of speaker during the consideration of amendments. Legislators insisted to present their amendments related to the amendment bill presented by the treasury benches and Speaker refused to allow their consideration and could not explain the reason behind the refusal. Aziz Din, a member from West Pakistan, emphasized upon presentation of his amendments. He wanted the explanation for the refusal. The Speaker replied "These matters I cannot discuss in the open house. See me in my chamber but you have not to discuss that conversation on the floor of the house".¹⁵

President Ayub Khan, the sole creator of the Constitution had managed the upcoming situation in the provisions of the Constitution. One of the Constitutional provisions required prior approval of the President for every amendment to be tabled in the House. The provision said that the legislators must have a prior approval of the President to recommend the amendments in any clause of the Constitution. The members read out the rules again and again and tried to find out any solution to present the amendments in the house. They proposed to get the drafts passed by special committees or standing committees but there was nothing to do without prior approval of the President in all cases¹⁶. The Assembly could not even discuss various amendments which had no prior consideration by the President.¹⁷

The point was raised in the Assembly that if the President did not give consent for the amendments and denied their discussion then what would have been done. The opposition members from East Pakistan up stretched this issue again and again and suggested the procedure other than Presidential consideration but the Assembly could not take decision. The Senior Deputy Speaker, Afzal Cheema, agreed upon the point but could not resolve the issue. The legislators demanded that the

Assembly Secretariat played role for bridging between legislators and President's office for taking consent on amendments as it had been done in previous two Assemblies but their demand remained unattended.¹⁸

The rules of business for Assembly were also not framed by the legislators and even the legislators were also not aware about it before the start of first session. The president addressed the National Assembly when the legislators had not resumed the oath and their candidature was not confirmed at that time¹⁹. The house was also chaired by the person who was not elected member of the house and never had been an elected representative of the people.²⁰ Instead Abdul Wahab, Speaker of last Constituent Assembly who was de-seated with dissolution of the Assembly when the Martial Law was imposed, could be called to chair the first Session.. This parliamentary practice was followed even during later authoritative regimes in Pakistan. During the Musharraf regime later, the first session of the 2002 National Assembly was chaired by Elahi Bukhsh Soomro, the previous PML-N tenured Speaker.²¹

Authoritative Ordinances instead of Legislation from Assembly:

Table: Legislation during Assembly tenure 1962-1965

| Year | Total Legislation | Assembly Act | Percentage | Ordinances | Percentage |
|-------|-------------------|--------------|------------|------------|------------|
| 1962 | 85 | 5 | 6 | 80 | 94 |
| 1963 | 32 | 23 | 72 | 9 | 28 |
| 1964 | 22 | 9 | 41 | 13 | 59 |
| Total | 139 | 37 | 27 | 102 | 73 |

The powers of Assembly to legislate were curtailed through the legislation through Ordinances. Assembly was deprived of its major function as the authoritative President continued to legislate through Ordinances. During complete tenure of Assembly, the Ayub government passed 139 legislations, only 27 percent of these (37 in number) were passed as the acts of Assembly and 73 percent (102 in number) was enforced through the means of ordinances (legislation by Presidential order). In 1962, The Ayub government enforced 85 legislations with only five passed by Assembly and 80 by ordinances²². In 1963, legislation by Assembly increased than ordinances. During this year 23 acts were passed by Assembly and nine ordinances were enforced by president office²³. In 1964, nine acts were passed by Assembly and 13 ordinances were imposed by presidential order²⁴.

In terms of legislation the Assembly was not relied during the year 1962.²⁵ The reliance on Assembly for legislation was increased in the year 1963²⁶ but it again decreased in 1964²⁷. During the year 1962, more than 94 percent, 80 in numbers pieces of legislation were done by the Presidential Office in terms of ordinances and around six percent, five in numbers items of legislation were done by Assembly in terms of acts. The year 1963, remained significant for Assembly importance in accordance with the legislation by legislature, as 72 percent legislation, 23 in numbers, were done by the Assembly and 28 percent, nine in numbers pieces of legislation were done by the Presidential office in form of Ordinances. Assembly passed 23 acts during its third parliamentary year. The first

session of the Assembly in the year 1963 was held in Dacca and legislation bills was introduced at large in that session which had shown by the series of acts enforced during the month of April and May after the final moniker of the President and gazette notification. The rate of legislation within the Assembly again reduced in 1964 as the 59 percent laws were made by the Presidential order and only 41 percent by the legislature. The legislators repeatedly criticized the attitude of government regarding legislation by the ordinances.²⁸

The reports of the Ministry of Law and Justice of that time presented the view that Ayub government had the attitude of legislation by presidential order even the Assembly had been formed. The trend of imposing ordinances changed in 1963 and majority of legislation was made by the Assembly only when Ayub regime had formed its own political party and this party had gotten full control of the Assembly. This attitude again changed in 1964 and majority legislation made by presidential ordinance, as it had been shown in the reports of the ministry of law and justice of Ayub government. The return to authoritarian legislation in the third parliamentary year was owing to the rising strength of the Opposition in the Assembly.

Powers of Assembly on Passage of Various Bills:

“The Members of National Assembly (Salaries and Allowances) (Amendment) Act, 1962” was passed unanimously. It was the first legislation made by the Assembly and members passed it without any vote against it. According to the Assembly record, it was the first Act²⁹ presented in the National Assembly formed under the 1962 Constitution but Assembly approved it after the Finance Act and it came into force from 05 July 1962.³⁰ Basically this bill was introduced as the amendments in the “The Members of National Assembly (Salaries and Allowances) Act, 1956”³¹ and Assembly made these amendments with no vote against it. Some members voiced against the expansion in salaries but at the time of the voting none of them was against the bill.³²

The first act passed by the Assembly was “Finance Act 1962” which was presented during the budget session and introduced as the part of the budget. The Assembly passed the Finance Act unanimously. This act was about the fiscal proposals of Central Government for the financial year of 1962-63. The act was presented in the Assembly on 30th June 1962 and the same day it was passed by the legislature without any detailed discussion. The Finance Minister presented the Act clause wise and voice for approval was raised from the house. This act also provided the provisions of various taxes and duties. There was no voice against the Act, the treasury benches presented the finance bill as the part of the budget. The reason of the silent approval from legislators was that they had already been conveyed that they had no role on vote upon budget passed the Finance Act 1962 and they could not vote against it. The Minister of Finance, Abdul Qadir, presented the Finance Bill clause wise soon after the approval the law minister, Mohammad Munir who presented the bill about the salaries and allowances of the members of the Assembly.³³ Knowing the fact that their debate had no practical value, the members kept silent even when the Speaker offered the legislators to debate upon various clauses of the bill in detail.³⁴

The Finance Act and Salaries Act was introduced in the Assembly at the same time. The Minister introduced the bill of amendments in salaries but did not discuss that and presented the Finance Act for approval. Soon after the approval of the Finance Act with the will of the government the bill for the increase in salaries was presented in the house for consideration. The scenario presented an image of linkage between both the bills. Thus the opposition legislators were not properly informed about the nature of the legislation and authoritative measure of misinformation was used to hoodwink the legislators.

“The Political Parties Act 1962” was presented in the Assembly for consideration on 4th July 1962 by Minister of Law and Parliamentary affairs, Mohammad Munir. A number of legislators had already presented their bills regarding political parties and political freedom. The movers were demanding separate special committees to discuss the legal aspects of the bill. Mr. Aziz Din, a member from West Pakistan seemed very keen upon the issue. Speaker denied various separate committees upon the bills on same issue. After the detailed discussion the Assembly formulated a ten members committee with representation of different groups in the Assembly.³⁵

The bill was again discussed in the house on 9th July after the consideration of the special committee.³⁶ The Minister of Law and Parliamentary Affairs, Mohammad Munir, presented the report³⁷ of the committee and introduced the Act clause wise as bill³⁸. The movers of private bills of same nature withdrew their motions and agreed upon government bill. The government amended various points from the Act during the consideration in the committee, especially the clause three was removed which restricted the detained personalities for the political office holding. Assembly had detailed discussions upon the bill and members expressed their thoughts again and again upon all the clauses of the bill. The Assembly discussed the bill in eight sittings but most the times the general conditions and common considerations were expressed instead of technical points of the act.³⁹

The formation of political parties and grouping in Assembly had become necessity for Ayub Khan to run the legislature business and also to gain political support from masses. The grouping within Assembly had already announced by the treasury benches, as the political parties bill was passed by parliament on 16 July 1962, the Ayub regime announced its Political Party, Pakistan Muslim League (Convention) just six weeks after imposition the act. In May 1963, Ayub Khan officially joined the Convention League⁴⁰ and held its presidency in December 1963. The scenario was presented as “Ayub Khan realized that Election and Assemblies necessitated the existence of political parties, thus one of the earliest bills to be passed by the National Assembly was the Political Parties Bill. It permitted the revival of political parties with truncated and restricted manner. In December, 1963, Ayub Khan assumed the presidency of the Pakistan Muslim League, thus giving the finishing touch to his control of the country politics and political activities”.⁴¹

The passage of Political Parties Act witnessed positive activity of the Assembly in contrast with other legislations. The authoritarian complexion of the regime was softened through this Act as it allowed the revival of the parties. That was the reason that the Opposition as well as treasury benches all supported in some way

to this enactment. Though the opposition was not fully allowed to take part in amending different clauses they had chances to take part in legislation to some extent.

“The Preventive Detention Laws Amendments Act, 1962” was passed by the Assembly in July 1962 and implemented from last week of the same month.⁴²This act was basically about the prevention from extra-judicial arrests and restricted the detention period till the 60 days. The security forces restrained with two months detention and investigations without the judicial custody. The Act was implemented with all the laws related to arrests and forces involved with the security of Pakistan concerns.⁴³ The Assembly had detailed discussion upon the bill and formed the 14 members committee having representation of all groups in the Assembly. The Special Committee discussed upon all the clauses of the bill and submitted its report in house. After clause by clause approval of the content of the bill the law was enforced. In the basic draft, the government proposed three month detention period but on the suggestions of opposition the detention period remained with two months. The Opposition members opposed the bill at large, declared it against the fundamental rights and demanded prohibition upon detention. But the treasury benches ignored the suggestions of opposition and introduced the bill with decreased time period for detention. The opposition members expressed against it in general with reference to fundamental rights and democratic rules but did not vote against the clauses of the bill when that passed.

The Assembly also discussed the Press and Publication Ordinance (PPO) 1960, an important legislation regarding the periodicals and publications, and amendments in it were proposed by Ayub’s minister. The legislators opposed the PPO and proposed amendments and demanded to amend the law with democratic terms.⁴⁴ The legislators suggested amendments in PPO and demanded a more liberal and having freedom of expression law for the periodicals but failed to have the approval for their amendments. The Law minister, Khursheed Ahmed, welcomed the suggestions from the opposition during his address in Assembly session but could not acknowledge them in law.⁴⁵ The treasury benches amended the PPO as the ministry had already suggested.

Conclusion:

The parliamentary institution worked under President Ayub Khan’s firm presidential control. The legislation that is main parliamentary business was controlled in fully authoritative manners. Most of the significant legislation was made through the ordinances issued by president. The bills approved by the Assembly marked obvious directions of the administration and the treasury benches decided not by debate and discussion but followed the directions of president or his administration. The bills were passed without following any parliamentary traditions of proper consideration, debate, publicity and consensus. The National Assembly’s business and existence, in fact, was a semblance of the parliament created only to give cover to the authoritarian rule of Ayub Khan.

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