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Institutionalization in Pakistan: A Study of Parliament Vis a Vis other state institutions during Martial Law regime 1985-1988

Abstract

This paper discusses the mutual relationship of some important institutions of the state of Pakistan, the institutions of bureaucracy, cabinet, president, and the parliament. It observes the domination of the one over the other. The discussion covers the period from 1977 to 1988. The Assembly was formed under the election order of 1977 and functioned from 1985 to 1988. The phase of the Assembly marked the testing time for some sort of Presidential type of Government introduced through 8th amendment in the constitution of Pakistan. 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 highlights the strong domination of President over the bureaucracy, cabinet and Parliament. The paper then examines the power and influence of the parliament which were weaker than those of bureaucracy and cabinet. The findings have been made through the analysis of the events, the quotations from some reliable research works, statements of various key leaders and the analysis of the debates of National Assembly is major tool of research.

Key Terms: Constitution, Domination, Institution, Parliament, Cabinet, President,

Introduction:

The main political advancements discussed in the paper are background of the elections of 1985, elections of 1985, formation of Junejo's government, political development of parliament, amendments during three years of parliament, major bills of the parliament, and role of the bureaucracy, relations of the parliament with different institutions and different debates of the parliament. Military was administering the state and civil institutions were also hijacked by one powerful institution. In time period of 1985 to 1988 parliament was prevailed under the umbrella of dictator. If we talk about the tenure of eleven years of General Zia ul Haq then it can be said that their paradigm shifts in politics, society and economy of Pakistan. As well as judicial system had also played a pivotal role in law

making. Ban was imposed on political parties' leaders. Political parties were not allowed to participate in elections. General promised elections after taking power but he delayed elections as per his own will. Supreme Court was aligned with General to legalize his take over¹. He appointed his favorite Justices on key position of Supreme Court. Judiciary supported General in forming approving Legal Framework Order and he was allowed to run the country with abeyance of the Constitution of 1973².

As political system at that time was moving towards semi-presidential system. System was hijacked by military-bureaucracy oligarchy. They were not interested in working with the parliament and they tried to align with General because military was so powerful to align them with military institution³. Bureaucrats created stumbling blocks for the smooth transition of administration of the state. Parliament tried to create a harmony with them but on many fronts' civil servants refused to adopt the motions which were passed by the house. Military was not willing to devolve powers to parliament⁴. If we talk about the speeches of President then he said that he would not keep martial law imposed after the formation of democratic government.

If we talk about the role of senate then it will not be an exaggeration to say that Senate had passed bills according to the will of martial law administrator.

They took control of all the institutions and our political culture which is based only on personal interests and lack of will of the politicians to think about the welfare of the public has created this system full of woes.

As military was running the state affairs so they didn't want to make parliament powerful as compared to their own institution⁵. Main portfolios like foreign policy, economy and interior of the state were in hands of military. They didn't want to involve politicians in foreign policy. Foreign policy was not discussed in the house. There was no harmony between bureaucracy and parliament had created more problems for the people of Pakistan. Parliamentarians were blaming bureaucracy for the failure and vice versa. Parliament became only a debating society in which only debates among members of OPG and IPG group continued. Every amendment and law was a product of martial law administrator. Military was trying to usurp all the powers of the house by planting their own agenda.

¹ Hassan Askari Rizvi, "The Paradox of Military Rule in Pakistan", *Asian Survey*, 21(06), May 1984, p 530

² Ian Talbot, *Pakistan: A Modern History*, 2010, p, 242

³ A. McGrath, *The Destruction of Pakistan's Democracy*, OUP, 96, 87

⁴ Hassan Rizvi, *Military and Politics in Pakistan, 1947-1999*, Sang e Meel Publications, 2000, p. 145

⁵ S.H Javaid., *Journali Hakomat*, Nazar Publications, Karachi, 1999, p. 45

Martial law was imposed and military had major institutions in their hands which could be manipulated by them for the fulfillment of their vested interests. Mr. President was not in favor of uplift or martial law as well as for the removal of his uniform. On the other hand, Mr. Junejo was continuously asking for the uplift of martial law. Junejo opposed president on many occasions like Geneva Accord discussion. In which he called Ms. Benazir Bhutto for the discussion on withdrawal of Russian forces from the Durand Line⁶. Ms. Bhutto demanded that President wouldn't be the part of the house discussion. Mr. Junejo accepted the condition of Ms. Benazir Bhutto and house was gone in confidential meeting. On the other hand, Mr. Junejo was in favor of revival of political parties but President didn't want to revive them.

The president tried to capture the political system with the help of paralyzed parliament. Parliament was not able to amend any articles according to their will or masse's will as all directions were given by him to usurp the powers of parliament and to secure his own position. He changed all the administrative as well as economic structure of the country. His predecessor Mr. Zulfikar Ali Bhutto introduced an economic system based on socialism. He didn't adopt the same structure but changed all of the political as well as economic structure. He tried to impose Islamic provisions and teachings on the political system. Many advancements in Sahriah Court and Islamization was done by him.

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Parliament's Relation with President:

Elections of 1985 was not held in a democratic way or for the revival of democracy in Pakistan. General Zia was pressurized by the masses and USA to form the representative government. As he already had delayed the elections in eight years. Now, it was the demand of USA that there should be representative government.

⁶ Anayatullah, *State and Democracy In Pakistan*, Vanguard Books Publishers, 97, p. 123

⁷ Anayatullah, *State and Democracy In Pakistan*, Vanguard Books Publishers, 97, p. 123

So, elections were announced and separate electorate system was introduced by the dictator. As Zia was admirer of Islamization in the state. He said that he would make Pakistan an Islamic Welfare state. If we look towards the history of Indian Subcontinent then it can be seen that separate electorate was demanded by the All India Muslim League in 1906 and Government of India Act, 1909 allowed separate electorate for Muslims. On the other hand, before elections Zia ensured that he would remain in the house and there wouldn't be any changes to his office. All powers would be vested to him. That's why he did referendum in 1984 and people were asked to vote in favor of him and be a part of his way towards Islamic welfare state in South Asia. Referendum shows that he was accepted by masses with high majority in favor of him. Although many observers raised points on the fairness of referendum but he said that he had been elected as a President for next five years.

Then legislative elections were held, as it was non-party based elections. So, no political party was allowed to contest elections except Jamat-i-Islami. Many restrictions were placed on the candidates and candidature was accepted by fulfilling many prerequisites. Independent candidates contested elections and MRD members had boycotted the election⁸. Elections were held with independent candidates and after the elections it was difficult to examine that which party would form government and which would be sit in opposition. Mr. Muhammad Khan Junejo was chosen by President General Zia as Prime Minister.

Uplift of Martial Law and Eight Amendment

Junejo promised to uplift martial law after the formation of government but the approval of Eight Amendment in the august house showed that martial law was again imposed in the state. As, it was mandatory for General Zia to approve Eight Amendment because under 1973 constitution martial was illegal. If the original constitution would be revived then there would be any implications and stumbling blocks in the way of General Zia. So, he forced the house to pass amendment which legalize all the steps taken by the General Zia in last eight years would be legalized. Punishment, changes in constitution, military courts and their punishments, ban on political parties and political activities by these parties⁹. All of the steps were legalized by the house. After the approval of Eight Constitutional Amendment Bill martial was uplift in end of year 1985. Now, masses and other political figures which were victims of martial law took a sigh of relief and started their political activities in the state. Many draconian laws under the auspices of martial law like press freedom and public political gatherings were not be allowed after the approval of Eight Amendment Bill.

⁸ K.K. Aziz, *Party Politics in Pakistan*, National Commission on Historical and Cultural Research, Islamabad, 1976, p. 212

⁹ B. Cloughley, *A History of the Pakistan Army*, OUP, Karachi, 1999, p. 49

If we talk about the performance of Junejo then it was seen that he had challenged President on many occasions¹⁰. As, he had a vote of confidence of parliament so he tried to oppose President. Junejo questioned the promotions of military personnel which was approved by the President as well as he also invited all the parties for the discussion of Geneva Accord. The session which was conducted on Geneva discussion was attended by many political parties as Ms. Benazir Bhutto Shaheed also attended the discussion as a party leader of PPP. If we talk about the relations of the august house and Prime Minister with President then it is a part of history that both had tried to oppose the vested interests of an individual for the security of his position as powerful dictator cum president¹¹.

Impasse between President and Parliament on issues

If we talk about the relations of President and Parliament then it shows us that there many reasons for Zia to be unhappy with Junejo and his house. As mentioned above he opposed him on many occasions and he was trying to revive full democracy in state. As, these steps were not in favor of President because it would open avenues for minimization of President's powers. So, President dissolved the National Assembly in the end of May, 1988 and it was a surprise for the masses as well as parliamentarians.

Relations of President with Parliament was not in favor of democracy as members always said that President shouldn't have such powers which would allow him to dismiss the elected candidates of the public. Parliament passed the bill for the revival of political parties but President was not in favor of revival of political parties.

Presidential Powers and the Constitution

If we look at the Article 47 then it says that President cannot hold any other office of profit if he is President. But, amendment in Article 47 permitted Zia to maintain both offices. The main purpose of non-party elections of 1985 was to secure the position of President by amending that article. If we look in the 1985 Constitution which was changed by Zia in 1973 Constitution showed us that President had discretion to appoint governors of any province with the consultation of Prime Minister. President could promulgate ordinances if there wasn't any session of Parliament. He had also powers to dissolve the national assembly under Article 58. On the other hand Article 90 showed that there was a shift in balance of power of Prime Minister and President which had made latter more powerful.

¹⁰ Ghafoor Ahmad, *Zia kay Akhri Das Saal*, Alqamar Publications, Lahore, 2001, p. 112

¹¹ Ghafoor Ahmad, *Zia kay Akhri Das Saal*, Alqamar Publications, Lahore, 2001, p. 93

Parliament's Relation with Army:

Military was playing its role in every field of the state. As there was military coup since seven to eight years. So, military had taken the control of many institutions in the state. After the formation of parliament of 1985, demands were raised by the members that military should return back to their barracks now¹². On the other hand parliament was not powerful as compared to military institutions. Major portfolios like foreign affairs, defense and economy all were controlled by military directly or indirectly. Policy making and law making was the prime task of parliament. But, if we talk about the defense policy then it would be seen by us that it was in the hands of military. As defense policy can't be separated from the foreign policy in Pakistan's context. Indian factor in our foreign policy had always manipulate the defense policy of the state. Now, if we look towards the constitutional amendment then powers were shifted to military¹³. In which President had absolute power to remove head of the government. Such powers had given leverage to military in lieu of civilian government.

Although the military's constitutional mandate in Pakistan, laid down in the constitutions of 1956 and 1962 as well as 1973, is limited to securing the frontiers against external threat and assisting in national emergencies or natural disasters on the request of civilian authorities yet since independence of country the Pakistan military is the most politically influential institution in the country.¹⁴ Military intervention in politics is the most conspicuous feature of Pakistan's political landscape.¹⁵ Pakistan's polity has been under the influence of the military through most of its history, even when not in power it has been 'behind the steering wheel.'¹⁶

The military considers itself as an alternative institution capable of contributing to socioeconomic and political development. It is claimed that the military is sucked into governance and politics because it is the most modern and capable institution.¹⁷ The military's organizational discipline versus the inefficacy of political institutions is one of the major justifications for the Army's political intervention.

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¹² Dawn, Karachi, December 3, 1986

¹³ I. A. Rehman, *So Far, So Quiet*, The Herald Magazine, 1988, p.34

¹⁴ Iftikhar H. Malik, *State and Civil Society in Pakistan, Politics of Authority, Ideology and Ethnicity*, (London:Macmillan Press, 1997), 71.

¹⁵ Hasan Askari Rizvi, "The Military: Role Enhancement and the Political Process," in *Pakistan Perspectives on State and Society*, ed. Abbas Rashid, 117-140 (Lahore: Society for the Advancement of Education 2004) 117.

¹⁶ Malik, *State and Civil Society*, 71.

¹⁷ Rizvi, *Military & Politics*, 207.

state. As, it was mandatory for General Zia to approve 8th Amendment because under 1973 constitution martial was illegal. If the original constitution would be revived, then there would be any implications and stumbling blocks in the way of General Zia. So, he forced the parliament to pass the 8th amendment which legalize all the steps taken by the General Zia in last eight years. Punishment, changes in constitution, military courts and their punishments, ban on political parties and political activities by these parties.

All of the steps were legitimate by the house. Now, masses and other political figures which were victims of martial law took a sigh of relief and started their political activities in the state.

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Presidential Powers to dissolve Assembly.

President had power to dissolve the national assembly under Article 58 (2b). On the other hand, Article 90 showed that there was a shift in balance of power of Prime Minister and President which had made latter more powerful. 58(2B) had given powers to President for the removal of head of the government. As President was also the Chief of Army Staff so there wasn't balance of power between military and civilian government. General Zia elected himself as President through referendum and Junejo was selected by him he would be able to run the house according to his own will.

Another major event that was seen in that period was National Security Council establishment. General Zia formed council which would provide say to military in formation of constitutional setup. President was also authorized to appoint members of the council other than Chairman Senate.

Relations with Judiciary:

Military coup was imposed in 1977 and it was too much challenging for General Zia to validate his military coup. He was pressurized by the international community and by masses also. He had to maintain his legitimacy with the help of judiciary. As, judiciary was the only source through which his actions would be unlawful. So, he tried to manipulate judges and Provisional Constitutional Order was passed and Judges legalized his military coup. He had to face challenges on all the fronts like on administrative level as well as in local matters. As CMLA order No. 1 of 1977 was passed in which official working was done under the umbrella of that order. On the other hand Provinces were working under the provincial Martial Law order. Military Courts were established under that order. Article 212(A) was added through these courts were secured. For that purpose General Zia held meetings with Justice Anwar Ul Haq, Moulvi Mushtaq and Sharifudin Pirzada at President's residence. They drafted a new order which prohibited the civil and high courts to intervene in decisions of military courts.

If we talk about the role of Judiciary specially Supreme Court then it would not be an exaggeration to say that Judges did a favor to General Zia in Nusrat Bhutto case of 1977. He tried to clear his path from all of the front and he blocked all the way of politics for PPP. In the end he decided to remove Bhutto from his way. Zia-judiciary nexus masterminded the Bhutto's murder and according to Stanley Wolpret Zia not only planned to remove Bhutto from his way but also from the world¹⁸. That's why Bhutto's assassination was named as judicial murder. Supreme Court adopted a doctrine of necessity and also allowed CMLA to amend the constitution without the announcement of any date of general elections.

Martial law had always changed the political structure of Pakistan. It had changed the nature of Parliament and it had always destroyed the media, judiciary, and civil society. Future of democracy had always been in shadow after the imposition of martial law.

The main issue of the Parliament and Judiciary was related to establishment of Military Courts. In an International World these courts were blamed for the violation of human rights and judicial rights of the common citizens. Relations were disturbed on the establishment of these courts. As no one could file an appeal against decision of the military courts in civil and high courts.

Islamization and Judiciary of Pakistan

Islamization was the ultimate goal of General Zia in his tenure of eleven years. So, he tried to amend laws according to the teachings of Islam. For that purpose he formed Zakat committee, interest free banking system as well as Federal Shariat

¹⁸ Tahir Kamran, *Democracy and Governance in Pakistan*, South Asia Partnership, Lahore, 2008, p.31

Court. Court consists of eight judges and judges were appointed by the President. As Zia considered himself soldier of Islam and he passed Zakat Ordinance in which Zakat would be deducted from the bank. Shariat Court would decide cases according to the Islamic laws and punishments would be given. In court ulema were appointed for decision making.

Relations with Bureaucracy:

Bureaucracy was the senior partner in the military- bureaucratic oligarchy that ruled Pakistan since its inception. It was powerful enough to keep the military at bay even during the Martial Law regimes.¹⁹ The power equation between the executive and the legislative during the early days of the country's independence was inherited from the British. The Colonial Power controlled India through strengthening the state Bureaucracy. This pattern persisted in the ensuing years, and the civil military Bureaucracy developed an interest in controlling the state and its politics. Thus, the ultimate arbiter role could only be played by the stronger civil-military Bureaucracy and not by democratic institutions.

In 1985 after the formation of Parliament, members tried to control the bureaucracy but their roots in administrative system were so strong that they felt powerless and with no authority to them. As, budget session was blamed to be framed by the civil servants. As it was not according to the policies of parliament and members. So, many debates were held in the august house to curb the powers of civil servants. But, many politicians were new to the house and they were not eligible for the policy making as considered by the senior civil servants²⁰. They didn't want to consult members of concerned ministries but nexus of the civil and military bureaucracy was so strong that they didn't allow them to participate or would they put some suggestions to new policies.

Bureaucracy plays an important role in the administration of the state. As it considers a backbone of state machinery. Without bureaucracy government can't run the state affairs. Bureaucracy runs the government and plays an important role in the policy making of the state. If we talk about the role of martial law then representatives of the people can't do anything in policy making. Same case with the tenure of martial law of General Zia in which he tried to manipulate the bureaucracy by taking control on key institutions and key issues of internal and external policy matters.

¹⁹ Hamza Alavi, "Politics of Ethnicity in India and Pakistan," in *Sociology of Developing Societies South Asia*, ed. Hamza Alavi and John Harriss (Hampshire: Macmillan, 1988), 242.

²⁰ M. Waseem, *Politics and the State in Pakistan*, Progressive Publishers, 1989, p. 145

If we talk about the relations of Parliament and Bureaucracy, then on many fronts Parliament blamed them for usurpation of powers as parliamentarians were not allowed to participate in policy making. If we talk about the General Zia's views about the bureaucracy, then he tried to grasp the opportunities of bureaucrats and policy makers but soon he realized that it was not an easy task. He was keen interested in foreign policy domain in which he tried to usurp the powers of bureaucracy which was also understood by him that it was difficult to handle.

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Bureaucracy had always been stronger than the democratic institutions. Power in the Executive branch usually controlled by the civil and military bureaucracy on the expenses of the judiciary and legislature. Usually, political parties were blamed by the failure of policies of the state in Zia's era. As these failures paved the way for more weakness of the democratic institutions in the state. Public thought that politicians were not capable of dealing with the issues. But, in reality this strong oligarchy had always destroyed the will of the Parliament in those years. Civil servants were also responsible for the manipulation of elections and these institutions were strong enough at that time.

Civil servants were also responsible for the manipulation of elections and these institutions were strong enough at that time. Elections were held under the supervision of Deputy Commissioners as Returning Officers. They were authorized for the approval and rejections of nomination papers²¹. Many steps were taken by the military ruler by using these bureaucrats to manipulate elections. Members also criticized the role of civil servants in forming government and result of elections were changed by them.

Power sharing between Parliamentarians and Bureaucracy

That concentration of powers in both institutions had left politicians and parliament to perform the role of rubber stamp. Politicians were so much afraid of them that they couldn't pass any legislation against them. Strong bureaucracy always tried to bypass the national assembly for policy making and some time for the legislation. Major change in that era that was taken in Zia's era was shift of power from the civil

²¹ Salim Younas., Civil-Military Bureaucracy

bureaucracy to military bureaucracy. There had been always a relationship between civil servants and political elites. Civil service was continued to decay and administrative work was towards decline in that three years. Parliament was set aside as that time foreign aid was rampant and foreign donors were trying to take on board military not civil institutions. As well as separation of judiciary from the civil service also created a bone of contention between Parliament and bureaucracy. Zia also introduced militarization of bureaucracy as politicization of civil service in Bhutto's era became more subject to political influence. Military bureaucracy was strong enough than civil bureaucracy and military government was trying to curb the powers of them.

Relations with Senate:

Senate is a body which represents the equality and promotes peace and harmony between provinces and territories. It is being considered a stabilizing factor in federation of Pakistan. As National Assembly is based on count of population according to provinces. Seats of the assembly are assigned according to population of the provinces. As Pakistan's ideology is based on parliamentary democracy and equality is the main purpose of Senate. Equal representation would be given to provinces in Senate. So, when the bill would be passed in the house then there would be equal representation of the provinces. National cohesion and harmony among different federating units is the main agenda of Senate.

Conclusion:

Pakistan has never been a country where the institutions had been stronger than personalities. The country has generally done well under authoritarian rule though much depends on the way in which that authority is exercised. Given the domination of extra-Parliamentary forces over the power structure of Pakistan, Parliamentary institutions are often considered by political players as necessary accoutrements of a modern ruling structure. In other words, these institutions legitimize the existing political order. Even if real power resides outside the legislature, the power holders need to win legal and moral authority. Not surprisingly, each of the four military governments tried to fill the gap of legitimacy by creating assemblies through holding elections. If we look towards the basis of true democracy then Parliament would have authority to question any public servant including military officials. But, power was in the hands of military officials and it was not acceptable for them to be questioned by the civilian government. In the history of Pakistan, Military had ruled majority of the time and they had strong foundation in state through which they could keep control on all the powerful sectors.

In short the autonomy of the institution of Parliament was not preserved in face of the institution of strong institution of military. The strength Army was remained

stronger than Parliament's institution in era under discussion. The boundary lines between the Judiciary and the Parliament had been well defined in the Constitution. The Parliament tried to subdue Judiciary through her constitutional role but judiciary aligned with the power of the time that was president. The members of the Parliament could not assert much as due to their in capabilities of inexperience and weaknesses.

If we look towards the history of Pakistan then it can be said that provincial autonomy with parliamentary form of government was a promise of which was made by the founders of Pakistan. The basis of an ideology of Pakistan is on parliamentary form of government²². People who tried to manipulate the system of Pakistan had always destroyed the societal and political fabric of Pakistan. Parliament and the powers of the parliament should be understood by the politicians. Steps should be taken by the upcoming governments to fulfill the need of powerful parliament. Institutions should work in their domains and there should be clear line for the division of powers between institutions. Parliament of 1985 to 1988 was a step towards the revival of democracy and members tried to curb the powers of martial law in the state. In future, more democratic governments would pave the way for strong democracy and powerful parliament.

²² M. Hassan., Causes of Military Intervention in Pakistan: A Revisionist Discourse, Pakistan Vision, PU, p. 23