

## **An Analysis of the Constitutional Crisis in Pakistan (1958-1969)**

Yasmeen Yousif Pardesi\*

### **Abstract**

*Since Pakistan's independence, many Constitutional problems have stemmed from the role of the army in the state. The growing strength of the army and the corresponding weakening of political parties have made the army the prime political force in the country. On October 7, 1958, President Iskander Mirza abrogated the Constitution and declared Martial Law in the country. This was the first of many military regimes to mar Pakistan's history. With this step, the Constitution of 1956 was abrogated, ministers were dismissed, Central and Provincial Assemblies were dissolved and all political activities were banned. General Muhammad Ayub Khan, the then Commander-in-Chief of the armed forces, became the Chief Martial Law Administrator. The parliamentary system in Pakistan came to an end. Within three weeks of assuming charge on October 27, 1958, Iskander Mirza was ousted by General Ayub Khan, who then declared himself President. Ayub Khan set up a Constitution Commission which was not only given the responsibility to make recommendations on the future Constitution, but was also to examine the causes of failure of parliamentary government in Pakistan. Ayub Khan was not satisfied with the findings of this commission. The 1962 Constitution was very different from the recommendation of the Constitution Commission, as Ayub Khan favored a presidential form of government. The 1962 Constitution was promulgated on March 1. This ended the three-and-a-half-year Martial Law regime of Ayub Khan. A civilian constitutional government under Ayub Khan replaced his previous military regime. This paper will provide an analysis of the constitutional crises in Pakistan during the period from 1958 to 1969, first Martial Law, pre-requisites of parliamentary system, Ayub Khan's Basic Democracies, framing of 1962 Constitution, failure of democratic set-up, and his resignation and exit from power. It also analyses the behavior of dictators and their supporters and even opponents which legitimize unconstitutional actions taken by the dictators.*

---

\* Dr. Yasmeen Yousif Pardesi, Assistant Professor, Department of Political Science, University of Sindh, Jamshoro. Email: [yousifpardesi@gmail.com](mailto:yousifpardesi@gmail.com)

**Keywords:** Constitution, Ayub Khan, Basic Democracies, Pakistan

### **An Account of Constitutional Crises**

Iskandar Mirza had taken over as Acting Governor-General of Pakistan in August 1955 when Ghulam Muhammad became unwell. He was confirmed as fourth and last Governor-General of Pakistan on October 4, 1955 and then on the adoption of the Constitution 1956, he assumed the office of the first President of Pakistan on 23 March 1956. He had publicly voiced his conviction that religion and politics ought to be kept quite separate, and that some sort of 'controlled' democracy - an executive appointed for a fixed term and not dependent for its existence on a shifting and uncertain parliamentary majority was the best form of polity to aim at.<sup>1</sup>

The struggle for Independence during the British period was almost synonymous with the struggle for responsible parliamentary institutions. On independence of Pakistan, a full-fledged parliamentary government started to work. Lawyers and most of the members of both the Constituent Assemblies of Pakistan were trained in parliamentary pattern of Government. The Constitution-makers of the country therefore framed the Constitution of 1956 on the basis of parliamentary system.<sup>2</sup>

At the time of the enforcement of the Constitution of 1956, the country had great expectations from the trained administrators set at top positions and it was hoped that the influence of professional politicians would curtail and consequently the real needs of the people will be attended to by suppressing corruption, undertaking agrarian reforms, and promoting economic development. Unfortunately, Chaudhri Mohammad Ali, who successfully unified West Pakistan and induced the Assembly to accept and ratify the draft Constitution of the Islamic Republic of Pakistan, could not stand the political intrigues he was faced with.

### **Pre-requisites of Parliamentary System**

A parliamentary system establishes a high degree of social and political awareness, universal education, and an advanced system of mass communication for speedy and accurate dissemination of information on a wide variety of themes of individual and general interests. In the absence of these pre-requisites, people cannot be expected to exercise their right of vote in the context of broad national policies.

Educated people with enlightened approaches are the first condition for the success of parliamentary system. An opposition of the same caliber must be there to watch the administration as well as to provide alternative government. There should be a vigilant press for the

support of the Government on the merits of issues and to expose its weakness whenever desirable.

Unfortunately Pakistan lacked the requisites for a successful parliament. In this country we had a limited parliamentary experience. A strong executive authority persistently influenced the parliamentary system. The government and the Governor-General always held special powers. In a parliamentary set up the Legislature has to sustain and control the executive but Parliament in Pakistan was not allowed to function independently. It could never survive from its subservient position, and always felt that it was only an interim body. The story of the parliamentary era would have been different if the Legislature could attain its proper place in Pakistan.

Cabinets were frequently installed and removed with no regard to the Legislature. The choice of Liaquat Ali Khan as the first Prime Minister did not spring from the Constituent Assembly. The second cabinet (of Nazimuddin) was also not an option of the Legislature. In fact, it was the President who changed the cabinets.

Political parties in Pakistan were not developed on sound basis. The Muslim League, which led Pakistan Movement in the 1940's, declined rapidly after 1947. Formation of Opposition parties were deplored and discouraged by the persons in key positions of the Government. After assassination of Liaquat Ali Khan, there was no competent parliamentary leadership. This situation encouraged the politicians to indulge in intrigues and conspiracies while the economic affairs of the country were heading for the worst.

The Constitution of 1956 promulgated on 23rd March 1956 was said to be a document of despair - not a Constitution but a hotchpotch of alien concepts, which had already brought enough confusion and chaos to the country. The promulgation of this Constitution gave new inputs to the political leaders, parties, cliques and coteries. The Minister shall serve during the pleasure of the President – under the garb of this clause of the Constitution, the President Iskander Mirza dismissed Ministries after Ministries both at the Center and in the provinces at his sweet will. To keep himself in absolute position he used the Constitution to promote political intrigues and bargaining.

Hussain Shaheed Suhrawardy appointed as Prime Minister in 1958, was a powerful person. The country expected much from him, and he appropriately declared that, our problems are vast and intricate, and many of them need speedy solution. It can never be attained unless we allow free play of democratic processes and uphold the Constitution in letter and in spirit, and ensure the rule of law...we must have a clean administration and clean politics. But, unfortunately he was soon asked to resign and was hence unable to implement his plans. Suhrawardy was

in favor of the National Assembly taking democratic decisions by the vote. The President who rather forced Suhrawardy to resign did not accede to his democratic proposal. The difference between the earlier outright dismissal of Khwaja Nazimuddin in 1953 and effective elimination of Suhrawardy in 1958 was only one of the various methods. Thus Iskander Mirza made democracy and the Constitution itself the victims of his political ambition.

Under these circumstances, the Muslim League declined and over-night a new party the Republican Party emerged on the political platform. Party indiscipline and lack of solidarity within the parties became the order of the day. Members crossed the floor, changed their political affiliations so freely and frequently that no one knew who belonged to which party. "A Muslim Leaguer today Republican tomorrow; and yesterday's 'traitor' was tomorrow's Chief Minister".<sup>3</sup>

The unconstitutional dismissal of Chief Minister and the Governor in East Pakistan developed an even more serious situation. By mid of 1958, the alarming economic conditions increased worries for the country. Graph of foreign exchange was very low while that of foreign exchange liabilities was on a big rise. The situation was indicative of collapse of monetary and banking system of the country.

In this disappointing situation, the government had promised to hold elections. The President however seemed inconsistent with this promise. Exploiting the deficiencies in the Constitution, and having engaged everyone in the political chaos, clearly indicated that he was awaiting a suitable opportunity to abrogate the Constitution. On the other hand, leaders like Khan Abdul Qayyum Khan were spoiling the situation further. The Working Committee of the Muslim League adopted a Resolution on 28th September that the Government would be dislodged, if need be, by extra-constitutional methods. The Khan of Kalat, taking advantage of the general confusion, started conspiring to secede from Pakistan. This state of affairs worsened the complications of the situation. To the worst, some politicians had started contacts with the armed forces. All these developments were instigating the army for involving in the power game, as there had arisen a question of maintaining law and order in the country.

President Iskandar Mirza, on 7th October 1958, issued a proclamation whereby the Constitution of 1956 was abrogated and the central and provincial governments were dismissed.<sup>4</sup> The National and Provincial Assemblies were dissolved, all political parties were banned and Pakistan was brought under its first Martial Law. President Iskandar Mirza while abrogating the Constitution said:

*"The constitution, which was brought into being on 23rd March, 1956 after so many tribulations, is unworkable. It is full of*

*dangerous compromises that will soon disintegrate Pakistan internally if the inherent malaise is not removed. To rectify them the country must first be taken to sanity by a peaceful revolution, then it is my intention to collect a team of patriotic persons to examine our problems in the political field and devise a constitution more suitable to the genius of the Muslim people. When it is ready at appropriate time it will be submitted to the referendum of the people”.*<sup>5</sup>

Iskander Mirza and Ayub Khan though working together as duo had different views on changing issues. Ayub Khan knew that power was only with the Army and he was ready to assert himself, while Iskander Mirza wanted more powers as an administrator for himself. He realized the difficulty of sharing of power and soon entered into an intense powers struggle with General Ayub Khan. He appointed Ayub Khan as Prime Minister to maintain a balance in the power equation and hand picked a new cabinet. Ayub Khan who had more powers, as Chief Martial Law Administrator was not satisfied with this set up. Taking his colleagues and military Generals in to confidence he arrested Iskander Mirza on October 27, 1958 and sent him in exile to Britain and himself became sole authority in Pakistan.

On becoming President, Ayub Khan wanted to obtain maximum support for the Constitution. The masses were to be invited to participate in the process to be accomplished by the referendum of Basic Democrats on 14 February 1960. This process involved prominent citizens, political groups, and the bureaucracy leaving few people to complain of having not been consulted.<sup>6</sup> To justify a presidential form of government, it was necessary for Ayub Khan to describe the 1956 Constitution as a failure and unworkable. This would pave the way for a new constitution. Ayub Khan wanted a prestigious and respected body of persons to arrive at this conclusion in a report formally to be submitted to him.

### **Ayub Khan’s Basic Democracies**

The imposition of Martial law in the first week of October 1958 had its roots in the violation of the Constitution. The consequence was chaos in the legal institution. To overcome this chaos, the Laws Order was introduced on October 10, 1958, which aimed at validating certain laws to support the martial law. This new Order restored powers (including issuance of writs of prohibition, quo warranto, habeas corpus, certiorari and mandamus) of all the High Courts and the Supreme Court, while the Government of Pakistan was advised to act in accordance with the late Constitution to the possible extent. The Chief Martial Law Administrator or anyone who exercised powers or jurisdiction under the CMLA was

provided immunity from such writs. In the light of the new Order, no court of law or person could question the military action and proclamation of October 1958, the military courts or the Governors of provinces. The Governor was to obey the directives of the President or the Chief Martial Law administrator or any person having authority of the Martial Law Administrator.<sup>7</sup> In fact such parts of the 1956 Constitution were manipulated by the military regime to suit their power and for running the day –to-day administrative affairs. The validity of Laws (Continuance in Force) Order and imposition of martial law itself was soon challenged in the Supreme Court of Pakistan. The then Chief Justice Munir upheld the martial law and the Laws (Continuance in Force) Order.

The process earlier started for constitutional development was reversed due to the judgments in Dosso's and Tamizuddin Khan's cases. The Supreme Court legitimized the martial law in haste. The cases before it could have been decided without entering into the question of the validity of Laws (Continuance in Force) Order. The appeals before the Supreme Court had been pending since long before the imposition of martial law and the validity of the Order was unnecessarily dragged into the controversy. These appeals were heard on 13 and 14 October 1958 and decided on 27 October 1958, only a few days after the imposition of martial law. Why could the Supreme Court not wait until somebody had directly challenged the vires of Laws (Continuance in Force) Order or the validity of martial law? In their unholy haste to legitimize the martial law, the Supreme Court Judges not only undid the writ jurisdiction of the High Courts but stripped the citizens of their fundamental rights, only to appease the new masters of the country.

Besides, Chief Justice Munir had adopted the legal logic applicable to a popular revolution such as the French, Russian, or Iranian revolutions to justify a coup d'etat, which can by no stretch of the imagination be described as a 'revolution'. He used the term 'revolution' even in his later writings to defend his reasoning<sup>8</sup> by posing a question: 'Could any court having discretion in the matter, issue an enforceable writ on the 8, 9, or 10th October against the government that had been brought into existence by the Proclamation of President Iskandar Mirza?'<sup>9</sup> This argument also justified his verdict in Tamizuddin Khan's case. It was not for him to see if the verdict would be accepted. His sole duty was to stand for what was right and to decide each case on that basis alone, regardless of the enforceability of writs. A wrong verdict is not given only because a correct one might not be enforced. Had he risen above these evidently irrelevant considerations, the constitutional history of Pakistan might have been very different.<sup>10</sup>

An appraisal of the various actions taken by President Ayub Khan after the 27th of October 1958 would leave no room for doubt that his object throughout this period was to weaken all elements which had a popular support and to perpetuate himself as a Ruler. By the 1962 Constitution, which he was to enact in early 1962, he was successful in creating a puppet Parliament and a band of mercenaries in the form of members of the Electoral College to help him to continue to remain in power, indefinitely, as a dictator.

President Ayub Khan constituted a Constitution Commission headed by the Chief Justice of Pakistan, on February 17, 1960. Ten-member Commission comprised experts from fields of administration, law and civil service, which was asked to examine the causes and nature, which led to the abrogation of the Constitution of 1956 and to submit Constitutional proposals to give strength and stability to the government. According to Ayub Khan, the Commission was set up because:

*“It has been explained by the present President that he, as the Head of Army was on more than one occasion asked to take over by the then Heads of the State and still he desisted and when he did take over in 1958, he promised to restore Government after establishing the conditions in the country and the fact that this Commission was appointed indicates that he is going to carry out that promise.”<sup>11</sup>*

The Terms of Reference of this Commission included claim of failure of parliamentary government, need of constitutional and administrative changes; need of democracy based on Islamic principles of justice, equality and tolerance; consolidation of national unity; social and economic reforms etc. The Terms of Reference also asked the Commission for acquiring feedback on Basic Democracies performance. The Commission issued a Questionnaire, toured East and West Pakistan and after interviewing 565 persons, from different walks of life, and examining replies to the Questionnaire, submitted on April 29, 1961, an almost, unanimous report – only one of the members had shown his dissent.

The Commission, in its Report, recommended a Presidential form of Government. The structure of the Constitution was to be Federal a bicameral Legislature at the Center and unicameral Legislatures in the two Provinces of West and East Pakistan. The Upper House at the Center, to be known as the Senate, was to consist of 48 Members, 40 elected by an Electoral College consisting of the Lower House at the Center and the two Provincial Houses on the basis of parity, i.e., 20 from each Province and 8 to be nominated by the President from certain categories. The Lower House at the Center, to be known as the House of

the People, was to consist of 200 Members to be elected on the principle of parity, each Province electing half the number. The term of the Senate was being six years and of the House of the People four years, like that of the President and the Vice-President. The Legislatures in the two Provinces were to consist of 310 Members, including 10 seats reserved for women. The term of the Provincial Legislatures was also to be four years. In West Pakistan, the seats, then allotted to the various areas were to continue for a period of 10 years.

The Commission, for the purpose of elections, suggested a restricted franchise instead of adult franchise, on the basis of property and literacy qualifications to be determined on the recommendations of a Franchise Committee to be set up after the new Constitution came into force. The Commission recommended that on the basis of restricted franchise, the President, the Vice-President and Members of the House of the People and the two Legislative Assemblies of East and West Pakistan should be directly elected. To avoid delay in the elections, the Commission recommended that the Provincial Assemblies should conduct elections of the House of the People and members of the Basic Democracies and that the first term of these newly elected Members should be only of three years. Having accepted the Basic Democrats as the electorate for election of the President only for the first term of 3 years, the Commission recommended that the then President should continue in office for that period without offering himself for election.<sup>12</sup>

The report was submitted in April 1961, but the President being otherwise busy in strengthening his position kept it in cold storage and published it long after the 1962 Constitution had been framed. Some of the contents of the report, however, leaked out. People were becoming impatient and were clamoring (through not very openly because of Military Rule) for restoration of the democratic institutions and return of the Civilian Government.

It was in the winter of 1961, that the Judges of West Pakistan High Court requested the President for a meeting. This meeting was attended by almost, all the Judges of the High Court and from the President's side by him and his Foreign Minister. In the meeting, one of the Judges pointed out that it was time that the rule of law was re-established and that elections should be held as early as possible to restore democratic institutions. It was pointed out that in case of indirect election through the members of the Basic Democracies, fresh elections of Basic Democracies are held, so that the members elected should have a mandate from the electorate. Before the President could reply, the Foreign Minister intervened and said that they were committed to allow the present Basic Democrats their full term and, therefore they would form the Electoral College, in case the elections were held indirectly.

The Commission also summarized the causes of failure of Parliamentary Government as follows:

- Lack of proper elections and defects in the late Constitution.
- Undue interference by the Heads of State with Ministries and political parties and by the Central Government with the functioning of the governments in the provinces.
- Lack of leadership resulting in lack of well ordered and disciplined parties, the general lack of character in the politicians and their undue interference in the administration.

In spite of all these arguments, there was a difference of opinion whether the 1956-Constitution, which was of Parliamentary pattern, was a success or failure. Some argued that it failed, but most of the old politicians were of the opinion that the system was not given a fair trial and not experimented with honesty and sincerity. The party-in-power at the Center was desperate to maintain its position instead of giving a fair trial to the parliamentary institutions. According to A.K. Brohi, the report was not implemented in its original shape and recommendations were modified during the cabinet meeting.<sup>13</sup> He further said that, "President rejected all the recommendations made by the Constitutional Commission, accepted only one namely that the constitution should be Presidential in form".<sup>14</sup>

### **Framing of the Constitution of 1962**

The Constitution Commission submitted its report on Mary 6, 1961, which was not considered satisfactory by General Ayub Khan and it was re-drafted which was entirely different from the earlier report. It was promulgated on June 8, 1962 as a Constitution of Pakistan having 250 Articles 12 Parts and 3 Schedules proposing a Presidential system with absolute power for the President of Pakistan. He was to hold office for five years and could be re-elected. His important powers were appointment of Chiefs of Armed Forces. The country was to have unicameral legislature called the National Assembly having 156 members and 6 women. Seats for both wings of the country were equal and system of Basic Democracy and indirect elections were proposed. According to this the President was to be elected by 80000 basic democrats, which was increased to 120000 by a latter amendment to the constitution.

The executive was the part of legislature and the President could use his veto in the law making process and issue ordinances if the assembly was not in session, which he could also, dissolve during emergency. The government was to be federal in nature and federal list consisted of all-important powers on which the provinces had no

authority. The governors in the provinces had the same powers as the President at the centre, the Islamic clauses were a part of the constitution but the state was named the Republic of Pakistan. Some changes were made in the nomenclature as well as the Islam and not Quran and Sunnah were used to express the spirit of the Constitution. The constitution also upheld the rights of the citizen but the Judiciary was not independent in the sense that all appointments in the Supreme and High Courts at the apex level were in the hands of the President. The President could also remove a Judge from his position on grounds of misbehavior or health. Urdu and Bengali were national languages while all official business was to be in English. The constitution retained its flexible nature and could be amended by two-third votes of the National Assembly with the approval of the President. The Assembly amended the constitution eight times during its life of seven years.

### **Main Features of the 1962 Constitution**

The following were the main features of the 1962 Constitution:

#### *Preamble*

The Constitution began with a preamble, which asserted in its first paragraph that the sovereignty over the entire universe belonged to Almighty God alone and that the authority exercisable by the people within the limits prescribed by God is a sacred trust.

Quaid-i-Azam's declaration that Pakistan would be democratic state based on Islamic principles of social justice as wished by the people, as well as the principles of democracy, equality, tolerance and social justice as having been enunciated by Islam to which the Muslims of Pakistan, individually and collectively, should be able to order their lives in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah. These parts of the preamble also included declarations regarding the safeguarding of the legitimate rights of non-Muslims, and the preservation of fundamental human rights.

#### *Fundamental Rights*

The 1962 Constitution granted certain fundamental rights to the citizens, which were non-justifiable. Later on, by the first amendment through the Constitution Act 1963 Fundamental Rights were made justifiable, as they were incorporated in the 1956 Constitution.<sup>15</sup>

#### *President and His powers*

The 1962 Constitution provided Presidential form of government. The President was the Head of the Executive as well as of the State and enjoyed extensive powers. The Constitution provided that the President

could be removed from his office before the expiry of his term on the grounds of gross misconduct and physical or mental inability. For that purpose a resolution was to be tabled by one-third (52) members of the Assembly and would not be carried out unless three-quarters (177) of the members voted in its favor.<sup>16</sup> Further the Constitution provided that in case the resolution failed to obtain desirable majority of the half of the members; the originators of the resolution were to lose their seats in the National Assembly.<sup>17</sup>

### *The Legislature*

The central legislature of Pakistan consisted of one House known as the National Assembly. There were one hundred and fifty members of the National Assembly, of whom one half were to be elected from the East other half from West Pakistan by the Electoral College. Six seats were reserved for women, 3 for each province who were elected by the members of the National Assembly of their respective provinces.<sup>18</sup> The National Assembly was elected for a term of 5 years unless the Head of the State prematurely dissolved it. The Assembly was to meet twice in a year and one session had to be held in Dacca.<sup>19</sup>

The President had powers to dissolve the National Assembly at any time but he could not to do so (a) when expired time of the life of National Assembly was less than 120 days (b) a notice for the impeachment of the President was given to the Speaker (c) a resolution of impeachment had been voted upon.<sup>20</sup> When the offices of the President, the Speaker and the Deputy Speaker were vacant, the Chief Justice of the Supreme Court was to summon the Assembly.

When the President had dissolved the Assembly he had to vacate the office thereupon. If a conflict arose between the President and the central legislature; the President was to refer the matter to the Electoral College for a referendum. When the National Assembly passed a bill, it was to be presented to the President for assent, and the President was to give his assent within 30 days of presentation. If the President did not assent for want of amendments in the bill, he was to refer the bill to the Assembly for reconsideration and if the bill was again passed by Assembly by the majority of not less than 2/3 of the total number of members, the President was to assent to the bill or refer the same to a referendum after which the bill would become a law.<sup>21</sup>

### *Federal Judiciary*

- The Supreme Court  
The Constitution provided for a Supreme Court of Pakistan consisting of a Chief Justice and as many other Judges as were

determined by law, and in the absence of such law, by the President.<sup>22</sup>

The Chief Judge of the Supreme Court was to be appointed by the President and other judges by the President after consultation with the chief judge.<sup>23</sup> A person could not be appointed as a Judge of the Supreme Court unless he was: (a) citizen of Pakistan (b) he had served as a Judge of High Court for a period of 5 years, and (c) he had experience of not less than 15 years as an advocate of a High Court in Pakistan.

The Supreme Court had appellate, advisory and original jurisdictions.<sup>24</sup> Under appellate jurisdiction the Supreme Court could hear and determine appeals, judgments, decrees, orders or sentences of the High Courts. Under advisory jurisdiction it was to consider the question referred by the President and was to suggest solution to the President. Under original jurisdiction if there was dispute between Central and Provincial Government at both the sides the Court was to pronounce declaratory judgments.

#### *Supreme Judicial Council*

The concept of Supreme Judicial Council was a brainchild of the 1962 Constitution makers.<sup>25</sup> In case of complaint of incapacity to perform duties due to physical/mental problem on part of a judge of Supreme Court or High Court, the President was empowered to refer the matter to the Supreme Judicial Council for inquiry. And on recommendation of the Inquiry, he was empowered to remove that judge.

#### *Provincial Structure*

- Governor  
Under the Constitution of 1962 there was a governor of each province (East and West wing) who was the executive head of the province. He was to be appointed by the President.<sup>26</sup>  
Each Governor had a Council of Ministers composed of members of the Provincial Assembly. The Governor and his Council of Ministers both were subjected to the directions of the President in the performance of their duties.
- Provincial Assembly  
Each Provincial Assembly consisted of 155 members of whom the members of the Electoral College of the Province elected 150 and five seats were reserved for women who were elected by the members of their respective provincial assemblies.<sup>27</sup> The Speaker, the Deputy Speaker and members of the Assembly

enjoyed all the privileges available to the members of the National Assembly. A Provincial Assembly was elected for a term of five years.<sup>28</sup> The Governor was empowered to dissolve the Provincial Assembly with the concurrence of the President. The Legislative powers were distributed between the Center and the Provinces. The Central legislature had the power to legislate matters specified in the Third Schedule and the Provincial legislature like all other matters.

#### *Provincial Judiciary*

The High Courts were regular courts of appeal and revision in the provinces. They also exercised writ jurisdiction. The Judges of the High Courts could hold offices until they attained the age of sixty years or until the time they were removed on the recommendation of the Supreme Judicial Council.

#### *Islamic Provisions*

With the adoption of the First amendment Act, 1963, the original name of the state as the "Islamic Republic of Pakistan" was restored. The Principles of Policy referred once more to enable Muslims individually and collectively to order their lives in accordance with Islamic Principles and concepts. According to Article-8 added to the Constitution, no law repugnant to the teachings and requirements of Islam was to be made and all existing laws were to be brought in conformity with the Islamic laws. Article 10 prescribed that the President of the state must be a Muslim.

Under Part-X of the Constitution, Islamic institutions like Advisory Council of Islamic Ideology and Islamic Research Institute were set up. The former was entrusted the duty of recommending ways and means by which Muslims of Pakistan were to order their lives in accordance with the principles and concept of Islam. The latter was assigned the task of research about the reconstruction of the Muslim society.

An analysis of the 1962 Constitution indicates that it created a hybrid of Presidential and parliamentary kind of franchise. It were these 80,000 electors in all, who became the Electoral College responsible for electing a President and the members of the Provincial and National Assemblies as well. Thus the elections of the President, the National Assembly and the Provincial Assemblies were indirect.<sup>29</sup> Further, the Electoral College was given powers of local self-government. In that capacity the electors were called Basic-Democrats responsible for the administration of the affairs of local self-government, at the Union Council, District Council and Provincial Council levels. Generous funds were placed at their disposal with the result that the Basic-Democrats

began to misuse and misappropriate these funds. As long as they supported the nominees of the ruling party, they enjoyed immunity, but as they began to flex their muscles, they were threatened with criminal misappropriation of money. This was a case of the use of the stick and the carrot. The stick was used to punish them with prosecution and the carrot was offered to eat if they obliged the people in power. That is why the masses raised a great deal of hue and cry, and the 1962 constitution came under bitter criticism.

The constitution was not based on the theory of separation of powers i.e. the President, the Legislature and the Judiciary was not independent of one other. The constitution was not described as the Constitution of the Islamic Republic of Pakistan. Again the 1962 Constitution professedly provided a Federal structure, but in fact it had provided a unitary form of government. The government established under the 1962 Constitution was highly centralized and authoritarian. It provided one legislative list wherein the authority of the Central government was specified and residuary powers were left to the provinces.<sup>30</sup> The subjects given to the Center included Defense, External Affairs, Inter-provincial Trade and Commerce, National Economic Planning and National Economic Coordination, Currency, Foreign Exchange, Central Banking, Insurance, Nuclear Energy, Mineral Oil and Natural Gas, Industry Preventive Detention. Furthermore, the Central Government was empowered to step into any field outside that list. There was no provincial autonomy whatsoever because the Center repeatedly made inroads into Provincial and Residuary fields. G.W. Choudhry has rightly observed that, "The crux of the whole relationship between the Center and the provinces in Pakistan today lies in the financial sphere. Federalism implies an allocation not only of legislative power but also of financial power."<sup>31</sup>

The popular dissatisfaction against the 1962 Constitution and authoritarian governance by Ayub Khan led to countrywide street agitation in the last quarter of 1968 while the Ayub regime was busy celebrating the decade of his rule as the Decade of Development. The major political parties demanded, inter alia, resignation of Ayub Khan, abrogation of the 1962 Constitution, and restoration of the parliamentary system of government. They also demanded the dismemberment of the 'One Unit' and restoration of four provinces in West Pakistan. From East Pakistan came the old demand for provincial autonomy and representation on population basis in the national legislature. Agitations created political chaos in the country and no compromise formula could be evolved to overcome the crisis. In view of the deteriorating law and order situation, Ayub Khan resigned from office and handed over power

to the Army Chief, General Agha Muhammad Yahya Khan, who abrogated the constitution and declared martial law on 25 March 1969.

There was a sharp disagreement amongst the leaders over the shape of the future constitution. Twenty-two years after Independence, the country was again faced with a constitutional dilemma. The basic issues such as maximum provincial autonomy, disintegration of the 'One-Unit', and representation on the basis of population, were again revived. These were the major obstacles in constitution making during 1947 to 1956, and delayed the framing of the 1956 Constitution. When the Constitution was enforced in 1956, people thought that constitutional differences had been resolved forever. But now the leaders were up against the old problems again.

In a nutshell, introduction of the Constitution of 1962 became a strong base for resignation of Field Marshall Muhammad Ayub Khan from power.

### **Conclusion**

The period between 1958 and 1969 is marked with the martial law rule. Hussain Shaheed Suhrawardy was a determined Prime Minister (1958) who wanted to see a strong democratic government in the country. A parliamentary system demands educated, and enlightened voters, which unfortunately this country lacked at that time and the same deficiency persists even today. Iskander Mirza asked Suhrawardy for resignation, and managed somehow to dismiss the latter from the office of Prime Minister. Constitution and democracy once again fell victim to the dictatorial attitude on part of the President and his political ambitions. The Muslim League once very popular at the time of independence of Pakistan had lost its popularity. Other politicians also did not enjoy trust of people. The nation was already deprived of Mr. Jinnah and Liaquat Ali Khan in 1948 and 1951, respectively. The political chaos gave chances for the non-political forces to establish strong. Moreover, there were unconstitutional dismissals of Chief Minister and Governor in East Pakistan. By mid of 1958, economic conditions including low foreign exchange were indicative of collapse of monetary and banking system in the country. However, the government took no remedial measures.

When martial law was promulgated in 1958, the Constitution of 1956 was abrogated. Later, Gen. Ayub Khan transformed this Constitution into Constitution of 1962 on the plea that the Constitution of 1956 had been a failure. However, the very spirit of the Constitution was changed. The parliamentary system of government provided in the 1956 was given the outlook of a presidential system where the President was handed immense powers over the parliament. The 'constitutional' powers gave control to the President and his executive over the

legislature. The military rulers issued Orders to get immunity from any writs. No courts of law or person was allowed to question the military action, proclamation of martial law, the provincial Governors or the military courts. It is not difficult to understand the situation that the judiciary was going through. In order to prolong his rule, General Ayub Khan introduced Basic Democracies.

The President headed the state as well as the Government. He had the authority to appoint Provincial Governors, Federal Ministers, Advocate General, Auditor General and Chairmen and Members of various administrative commissions. As the Supreme Commander of the Armed Forces of Pakistan, the appointment of the chiefs of the forces was also within his powers. The President was also involved in the appointment of Chief Justice and other judges of the Supreme Court.

The authoritarian governance by Ayub Khan under the 1962 Constitution caused countrywide street agitation against Ayub Khan towards the end of 1968. Supported by this agitation, the major political parties demanded resignation of Ayub Khan, restoration of parliamentary system and restoration of four provinces in West Pakistan. The East Pakistan demanded provincial autonomy and representation in the national legislature on the basis of population. Eventually, the deteriorating law and order situation forced Ayub Khan to resign from office. He, however, handed the power to yet another military general Yahya Khan who abrogated the constitution and declared martial law on March 25, 1969.

## Notes & References

- <sup>1</sup> President's Order (Post-Proclamation) No: 1 of 1958, Laws (Continuance in Force) Order, 1958, PDL 1958 Central Statutes 497.
- <sup>2</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2001), 171.
- <sup>3</sup> Ayesha Jalal, *The State of Martial Rule, 1990* (Cambridge: Cambridge University Press, 1990), 260-62.
- <sup>4</sup> Manzoorduddin Ahmed, *Pakistan: The Emerging State* (Karachi: The Allies Corporation, 1966), 209.
- <sup>5</sup> Daily Dawn, Karachi: October 8, 1958.
- <sup>6</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, op.cit., 224.
- <sup>7</sup> President's Order (Post-Proclamation), op.cit.
- <sup>8</sup> Muhammad Munir, *Constitution of Islamic Republic of Pakistan* (Lahore: All Pakistan Legal Decisions, 1965), 50-51.
- <sup>9</sup> Nasir Husain Chudhri, *Chief Justice Muhammad Munir: His life, writings and judgments* (Lahore: Research Society of Pakistan, University of the Punjab, 1983), 21.
- <sup>10</sup> Ibid.
- <sup>11</sup> Report of the Constitution Commission, 31.
- <sup>12</sup> Report of the Constitution Commission, 78-80.
- <sup>13</sup> Interview with A. K. Brohi, Supreme Court Advocate, *Daily Dawn*, February 22, 1985
- <sup>14</sup> Ibid.
- <sup>15</sup> Government of Pakistan, *The Constitution of the Islamic Republic of Pakistan 1962*, (Karachi: Ministry of Law and Parliamentary Affairs, 1968), Articles 1 to 12, Part-II
- <sup>16</sup> Abdul Sattar Pingar "Office of the President of Pakistan," *Law Journal*, Vol. 14, No. 1, (1966): 59
- <sup>17</sup> Government of Pakistan, *The Constitution of the Islamic Republic of Pakistan 1962*, op.cit., Articles 13.
- <sup>18</sup> Ibid., Article 20 (2).
- <sup>19</sup> Ibid., Article-22 (4).
- <sup>20</sup> Ibid., Article-23.
- <sup>21</sup> Ibid., Article-27.
- <sup>22</sup> Ibid., Article-49.
- <sup>23</sup> Ibid., Article-50.
- <sup>24</sup> Ibid., Article-57, 58 & 59.
- <sup>25</sup> Ibid., Article-128.
- <sup>26</sup> Ibid., Article-66, 80.
- <sup>27</sup> According to the Constitution 8th Amendment Act 1967 the number of members was increased up to 256, Article-71.
- <sup>28</sup> Government of Pakistan, *The Constitution of the Islamic Republic of Pakistan 1962*, op.cit., Articles 72.
- <sup>29</sup> Manzooruddin Ahmed, *Contemporary Pakistan* (Karachi: Royal Book Company, 1982), 9.

---

<sup>30</sup> G. W. Choudhry, *Constitutional Development in Pakistan* (London: Law and Brydone, 1969), 222.

<sup>31</sup> *Ibid.*, 222