

The Birth Pangs of Democracy: A Critical Analysis of Pakistan's Early Constitution Making

Saqib Ullah Khan

Lecturer, HITEC University Taxila

Habib Ullah

M.Phil. Scholar, NIPS, Quaid-i-Azam University Islamabad

Jafar Nazir

Lecturer, NUML Rawalpindi at Corresponding Author-jafar.nazir@numl.edu.pk

Abstract

Pakistan's independence in 1947 marked the beginning of a constitution-making period, which is known to be one of the most critical. This paper introduces justifications and dilemmas that were essential for this young democracy's establishment. It examines an ideological conflict over an Islamic state vs secular democracy, which at the same time are intrinsically interwoven and tend to create complications in the process of defining individuals' religious identity within a democratic system. The paper then looks into federalism issues, discussing the disputes on regulation of provincial rights, management of power, and existence of federal institutions that cater for the interests of the diverse ethnicities. Notwithstanding the statement, the author will be peering into the cups of how to find the middle position between the executive, legislature, and judiciary powers while also examine the military position within the constitution. Socioeconomic matters and integrity of social justice is also analyzed in the module with the focus being to determine how the initial constitution was receptive or unresponsive to inclusive land reforms, economic imbalance and women and minorities' rights. Through critical examination of these challenges that will permanently mark the history about the development of Pakistani democracy and the early constitutional system, this paper makes some critical points regarding today's affairs.

Keywords: Constitutional Dilemma, Islamic State, Secular Democracy, Social Justice.

Introduction

Independence of Pakistan in 1947 was a remarkable event, the outcome of the extended and tedious strife for the formation of a separate Muslim state within British India (Jalal, 2009). Nevertheless, that kind of sweet independence did not last long and the harsh realities of state institution building came to take the place of joy. Thus, the partition of India happened in 1947 the Indian subcontinent became too divided, the apparatus of the state was still in the process of formation, the economy was struggling, and a deep societal division was a matter of fact (Moodie, 2011). Migrants were arriving in thousands to live in the then newly formed state, and as a result, limited resources and inter-ethnic and inter-religious tensions were greatly multiplied. The national identity question was wide open and fierce standoff between those who identified Pakistan as a secular democracy and those who believed Islam will make the state.

These challenges of creation of a single nation from diversely varied ethnicities, religions and linguistic groups surely touched the process of making Pakistan's first constitution which is

how the document came to be. The constitution of the state is the nucleus of its political system that gives the thumbprints of the basic principles of power, political organization and the rights of the individuals and duties of the citizens (Shahabuddin, 2017). It was the constitution that stood as the cornerstone in the building of a democratic framework after the transition of Pakistan into a civil democratic nation. As per Ahmed's thought in (1998), before independence Pakistan did not have criminal or civil law or any system to give justice to populations through codified laws and devised its own laws as per the Government of India Act – 1935 (Sherif, 1987). Based on the constitution which stipulates the structure and roles of the government, the first element of the representative system has been created having a legislature, executive and judiciary that will realize the vision (Rahman, 2019). It recognized democratic principles such as the fundamental rights, equality before law and periodic elections, thereby, opening the way to a system of governance where the people are the key stakeholders.

At first the Constitution defined the core principles which guided further democratic advancement of the country though the problems, the country encountered in the road were many. In spite of the early stage of constitution-making process of Pakistan, there were a number of problems as well. The paper is to a large extent dedicated to the careful analysis of the most characteristic problems and complexities of the period under consideration. The obstacles arrived from different reasons that include, the resistance of ideas regarding the nature of the state, the complexity of the constitution of the federal structure, and the tension between different institutions which are balancing out power. The nation come to a more profound realization of the birth pangs witnessed by Pakistani democracy and the enduring role of these issues in shaping today's political scenario, after being confronted with the challenges and the compromises made.

Justification of the Study

Examining "The Birth Pangs of Democracy: A Critical Analysis of Pakistan's Early Constitution Making", the article not only provides an important insight into the problems Pakistan faces in its efforts to build a solid democratic platform but also sheds light on current and future issues. The original constitution, accepted during the turbulence of the nation's birth after the costly appropriation, was the basis for the political development of the country. Through a critical assessment of the obstacles that surfaced during this period, such as the emergence of different concepts of the state, federalism matters and debate on power separation, we acquire crucial experience on the main reasons, which promote political instability. These birth pangs would help us understand how produced problems change relations in the political landscape of Pakistan in the process debates on military intervention, civilians control and the role of religion in governance are inflamed. Another vital aspect of the study is that it gives a historical framework for judging all rehearsals of intra-constitutional reforms and strengthening of democratic institutions of the state. At its core, the study of this key era provides us with a tool that enables us to make sense of the complex and often controversial chapters of Pakistan's nation building process as a democratic state.

Ideological Debates

The principal challenge that the Constitution-making process in Pakistan faced at an early stage was a tug of war between ideas about what the new nation should be. Under the banner of the Muslim League and Muhammad Al Jinnah as its head, a separate Muslim home for Muslims based on Islamic values was a proposal (Ahmed. 1997). While being challenged by the concept of an "Islamic state" that left room for different interpretations, the idea of the superiority of Islam gained far-reaching appeal against the other religions. Some implanted a theocratic regime to be ruled by Islamic law (Sharia), and others thought the static approach to be insufficient, to revise matters to be governed by Islamic values, and yet another larger democracy to be introduced.(Jalal, 2009). This ideological schism therefore set up nationalists against the population that demanded a secular democracy created on the foundation of the Western models. The Secularist camp considered that religion is a subject to be dealt with privately while the Islamist group had the conviction that Islamic beliefs should be the core of the judicial system and the societies (Hassan, 20). This conversation on the essence of the state undoubtedly correlates with the constitution's content and the fieldwork of power between the religious and the secular bodies.

Another critical challenge in the formation of a democratic system was to reconcile a strong religious identification with the system of democratic management. Majority of the population in Pakistan were Muslims, and Islam was an important role in uniting them during the struggle for independence. Though democratic issues like secular governance and freedom of religion were to be in odds with some interior understanding about being an Islamic state, thus, establishing a new entity did not happen immediately (Rahman, 2019). The main issue was with the draft of the constitution in which Islam was not just presented as a state religion but also as the supreme legal authority. This involved removing the elements that could lead to a threat to democracy. Debates around the source of legislature have also arose where some argued for the discretionary law as the ultimate source of legislation, while others rejected such a position and recommended a balancing position between the Islamic laws and the codified laws (Shahabuddin, 2017). Primarily, the charter designed Islam as the official religion and in the same way protected all fundamental rights no matter religion. But, its persistence as a major dilemma of Pakistani State and the course of its political philosophy never ends as well.

The early constitution-making process was greatly affected by the ideologies and agendas of the various political parties that emerged after the country gained independence. The Muslim League cast doubt on arch lines with Jinnah's death but they were still one of the most powerful parties in the country. Their main purpose was to have a central government which was dominated by Islam a socially and ethnically homogenous state (Ahmed, 1998). Socialist and communist parties, which were somewhat trying to overcome the influence but working hard for social justice and economic reforms (Moodie, 2011). Regional parties standing for numerous ethnic groups of the province called for substantial autonomy in provinces and a central system that responded to their demands. These conflicting ideologies, thus, defined the discussions on the place and nature of religion, the state versus the nation, and the value and meanings of social

and economic rights. If the ideology by no single one was fully realized, compromise however, was the constitution the result of different political powers as political powers. Nevertheless, although the influence of these earliest politics at this point of time cannot be seen, but it is still felt in the current political landscape of Pakistan.

Federalism and Representation

It was a herculean task to build a federative structure that could accommodate Pakistan's multifaceted ethnicities and regions (Ahmed, 1998). The nation acquired a complicated carpets of ethnic groups, languages and cultures, dispersed the show bags and felt into distinct geographical areas. However, among many the issue of substantial distribution resources, police power and basic; freedom in the provinces and prevents domination by any majority group was raised (Rahman, 2019). Creating the way for achieving the unity of nation with the certain degree of autonomy of regions became the problem during the constitution making. The division was taking place not only on the subject of the degree of provinces' autonomy, but also on the problem of distribution of power between the federal government and the local provinces (Hasan, 2000). Provinces like Sindh, Punjab and Balochistan demanded greater control over resources and legislations, requiring separate financial structures along with new governments, to cater their specific areas of needs and desires.

Nevertheless, the challenge here was to come up with a federal setup that represented unity as a nation as well as respecting autonomies of provinces and their regions. In spite of that the constitution eventually brought about a parliamentary political system with a government of checks and balances, but political turmoil arising out of provincial autonomy is still simmering on Pakistan's political horizon. The problem of representation for the minorities in the constitution another obstacle (Shahabuddin, 2017). Pakistan was gifted with a multi religious society with the Hindu, Christian, and Sikh communities that were highly influenced. Such debates revolved around how to ensure similar minorities were represented and their basic rights given an equal footing in the legislature dominated by Muslims. The constitution provides a guarantee of equality to every citizen in this country, and although doubts may remain regarding the political participation and the social inclusion of minorities in Pakistani society, the explicit recognition of religion in the constitution has, at least, addressed one of the main sources of inequality.

Balancing Power and Institutions

Developing a constitution that provides a balance of power between the legislative, executive, and judicial branches posed a great challenge (Shahabuddin, 2017). The establishment of the initial constitution was in the same vein as the Westminster- parliamentary legislative system and therefore the legislative power was based on the National Assembly that was in place (Jalal, 2019). Nevertheless, there was fear that the executive side, particularly The Prime Minister, was gradually becoming the powerful section of the house of the legislature. To the contrary, the creation of autonomy and independence of judiciary was another challenge in the gravity of this design. Urged by the initial debates, the process leading to subsequent debates was set and further framed the discussions on strengthening democracy and ensuring appropriate balance within the political environment of Pakistan. In the constitution, the role of the military is a difficult issue,

which hints at historical military coups and the military's perceived strong influence in national politics (Hassan, 2020).

There were some as regarded the military's task as clearly exclusively ensuring the national security while others conceived its broader scope which included matters of national security. Article XVI of the constitution is unclear with respect to this matter, and it has allowed the armed forces the discretion to be very much politically involved. These remain the source of friction and disagreement that still poses danger to Pakistan's attempts to solidify democratic control. The armed forces still play the active role in politics as in the past. It is imperative to emphasize on the autonomy of judiciary and laying a strong foundation for the fundamental rights of all citizens during the process of constitutions making (Rahman, 2023). The issues under discussion were the effort to assure unbiased courts and to safeguard judiciary from executive power and politicians' intervention. Furthermore, the engagement of the constitutional development towards the establishment of fundamental rights, including freedom of speech and assembly, the freedom of speech among others, as a vital process was inevitable to complete the setting of a democratic society. It is true that Pakistan's constitution contains these principles, and while that is indeed important, the quest to secure judicial independence and to make sure that the rights accorded to all citizens are fully realized continues.

Socioeconomic Issues and Social Justice

The constitutional solutions to land tenures, as well as economic inequality was also a major hurdle to be solved. (Ahmed, 2022). Pakistan confronts the feudal landholding system which systematic extremes of wealth distribution was part of. Discussion emerged concerning the land redistribution equalizer and flexibility enough to come up with what is fairly referred to as property rights. The constitution had aspects of land reforms though their effective implementation proved rather impracticable, thus, the cropping up of economic inequalities was greatly overlooked. This advances inevitably to be a troublesome impediment which Pakistan passes through while trying to achieve social justice and economic development. Women's and minorities' rights were raised as questions right from the beginning (Hasan, 2018). Despite the fact that the constitution was supposed to be a guarantee for equal rights for all the people of a country, a lot of discussions were still going on what kind of rights and protections women and minority groups could get from the constitution.

Debates about women inheriting, breaking sanitary restrictions with their political participation, and whether or not minorities (regarding religion) would have the freedom belong them. Although the first draft unprecedentedly paved a way to tackle the discrimination problems, it still remains a subject of continuous struggles that clearly require a new approach and measures aimed at providing equal opportunities for all people in the country. The ability of constitution to create the foundation for social justice and economic growth persists as a subject that can be debated (Jalal 2021). The creation of principles as equality and rights of the people has formed the basis for a society which is just under fairness and supremacy. While the constitution did provide a range of mechanisms for handling sensitive issues such as land reforms and economic disparity, the fact that it did not go far enough towards actually promoting equitable economic

growth is a flaw. At last, even more difficulties with actual realization of this concept through measures and legal principles are the reason for the Indian justice system not working in full.

The Legacy of Early Constitution Making

The challenges portraying Pakistan during the constitution making process carry on casting deep and long shadow upon the country (Rahman 2023). The dilemma which still prevails as to the fundamental substance of the state such as Secularization which will contribute to the recurrence of ideological divisions and creation of the new political narratives. The connection soaring high between federalism and provincial self-determination is what constitutes one of the controversies shown by some ethnic groups and that is the more control, they want over their affairs (Hassan, 2020). However, the military's concern about maintaining a caring balance of power among other political arms i.e. the executive, legislature and judiciary continues to persist thus posing the risk of undue influence on the military on politics. Summing up the above mentioned issues, the political imbalance still exists and it is the reason for the instability of the Pakistan's democratic government and its ineffective integration. These constraints and constraints built into the first constitution have been the biggest factors which does the learn, evolving and development of the Pakistani democracy. The indeterminate position on the issue of the responsibility of religion con to the functioning of the government law has been at the core of disputes concerning Islamic jurisprudence and its application in the legal system. Implementation of such limitations, from center to provinces, is still impeding relations between the two and requests of having greater control over the regions are continuously heard and trickled down.

Moreover, judiciary independence faces great obstacle which in some sense slows the development of strong balance of power within the state (Jalal, 2021). These shortcomings have been scrutinized and extensively examined, which has been mostly due to the struggle for reform and re-interpretation that the journey of Pakistan's democracy has gone through, and this just goes on to show the dynamic nature of Pakistan's democratic way. Maintaining the integrity of democratic institutions, preserving civilian oversight of the military, and increasing the civil and human rights of all citizens are the subjects of current debates. In debates too the very role of religion in the constitution is at stake as well as whether the need for the amendments exists at all for the purposes of avoiding the country's bifurcation along diverse lines of its society. The agendas of these on-going debates will be an important indicator of where democracy in Pakistan is headed, and whether it will be possible for its institutions to deal with changing needs of the society.

Conclusion

Pakistan's earliest process of constitution building which included ideology, federalism, power structures which are continuing to be challenges along the way to forging a deep-rooted democracy. The protracted discussions on the establishment of the state and constraints on the possibility of provinces to act independently are one of the factors that hinder the national unity. Even though the early constitution was the milestone moment that defined the country, the important amendments which would make democracy stronger are the revising of military role, increasing judicial independence, and enforcing of social reform which can help by redistributing

the land. Pakistan can put a more an inclusive and balanced, political system in place, in order to find the way through this difficult moment and achieve a better and more mature democracy.

References

- Ahmed, A. (1997). *Jinnah, Pakistan and Islamic Identity: The Collected Speeches and Writings of Muhammad Ali Jinnah*. Routledge.
- Ahmed, A. (1998). *Jinnah, Pakistan and Islamic Identity: The Collected Speeches and Writings of Muhammad Ali Jinnah*. Routledge.
- Ahmed, A. (2022). *Democracy and the Crisis of Governance in Pakistan*. Oxford University Press.
- Hasan, K. U. (2000). *Pakistan and the Middle East: The Dynamics of Muslim Diplomacy*. Oxford University Press.
- Hasan, Khalid Usman. (2018). *Islam and Politics in Pakistan: The Quisling Connection*. Routledge.
- Hassan, Khalid Usman. (2020). *Military and Politics in Pakistan*. Routledge.
- Jalal, A. (2009). *The Struggle for Pakistan: A Muslim Homeland in Colonial India*. Westview Press.
- Jalal, Ayesha. (2021). *Neither Secular nor Islamic: State and Society in Pakistan*. Princeton University Press.
- Moodie, A. (2011). *Partition and Post-Colonial South Asia: A Bibliography*. Routledge.
- Rahman, H. (2019). *Constitutionalism in Asia: Challenges and Developments*. Cambridge University Press.
- Rahman, Habib Muhammad. (2023). *Constitutionalism in Asia: Challenges and Developments (3rd ed.)*. Cambridge University Press.
- Shahabuddin, Yusuf. (2017). *Constitutional Development in Pakistan*. Oxford University Press.