

1973 Constitution and the Conflict between Secular and Islamic Forces

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Abstract

Right from its very inception the state and society of Pakistan has been confronted with the question of identity and direction. Some wanted to see Pakistan clad in secular and others in Islamic cloak. The supporters of these two schools of thought have been so positioned that they enjoyed influence on both sides of state and society. The tussle between the two groups resulted in serious confusion at different stages of Pakistan's history. This has in its turn, provided ample opportunity to any of the above mentioned camps to twist and turn the constitution according to their own sweet will. The unhappy result of all this experimentation with the constitution has been that the Pakistani society is still waiting for harmony that a constitution is suffered to provide.

This research is an in-depth study of the causes and consequences of the struggle between secular and Islamic forces in Pakistani state and society. It aims to explore new avenues for positive progress.

Introduction

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed.¹ Constitution is representative of the socio-religious and cultural norms and expectations of a society. It gives a political and authoritative voice to the social demands of the people. The formulators of a constitution are supposed to take into account all the norms and trends of any given society to prepare an all-encompassing version of the supreme law. Technological and informational advancements have removed all barriers of isolation and has attempted merger and fusion of, otherwise, diversified societies which in certain cases was not possible before.² In

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¹ *The New Oxford American Dictionary*, 2nd edn., Erin McKean (ed.), (New York: Oxford University Press, 2005), p.2051.

² Jayshree Bajoria, 'Islam and Politics in Pakistan', Council on Foreign Relations, 5 May 2011, available at <http://www.cfr.org/pakistan/islam-politics-pakistan/p24728>, accessed on 21 October 2015.

modern systems of government, diversities are addressed by providing constitutional protections and ensuring impartiality of law.

The case of Pakistan was unique in the sense that the Muslims consider Islam as a complete code of life³ with *Sharia* as the deciding force for each expression of life. Nevertheless, there were some reservations from some sections, primarily educated under western systems of education, regarding the inaptness of Islamist forces to deal impartially with the diversified religio-social and cultural traits of Pakistani society.⁴ Apparently, it seems difficult that any single political, social or religious group can tolerate and help other group with an open heart to live and prosper in peace. This atmosphere of mistrust has now reached to an extent that we are not prepared to listen, what to talk of attending to other's opinion. No doubt involvement of external forces cannot be ruled at but if we really want to cure, focus must be on identifying and overcoming our own weaknesses. It is also a reality that leadership of each section of Pakistani society, political as well as religious, have been unable to promote harmony and integration. This repeated failure of leadership is interwoven with a number of other causes that needs to be identified, addressed, or at least should be worked upon, for minimization of their negative impacts.

Instead of Islamization of constitution, it would be better if Islamization of society is attempted. Besides, its outright Hanafi Muslim majority, Pakistan comprises a number of other sectarian elements who have concerns about the supreme law of the land. If they accept *Sharia* to be the supreme law their sectarian and communal interests will be prone for being bulldozed.

The ideal and ideological state

Quaid-i-Azam, though himself not a very practicing Muslim, was very clear in his thoughts about Pakistan and Islam. When he talked about a piece of land where rules and law of Islam would be practiced freely by the Muslims, which would serve as an example for others as well, he was aware of the broad vision of Islam. Keeping in view his intellectual and legal background, and identification with liberal political traditions, it cannot be said that he was asking for a *Sharia*-based religious-Islamic

³ Dr Tanveer Khalid and Azra Anjum, 'Pakistan, Islam and Modernity', *JHSS*, 1:2 (July to December 2010), p.34.

⁴ *Ibid.*

state.⁵ He did attempt to work upon the formation of a Muslim nation from a Muslim community as this happened to be the only tool to safeguard their interests against the so called secular but biased Hindu leadership and majority. The slogan of Islam was used by Quaid-i-Azam because of its easy acceptance with the Muslim masses. In order to mobilize majority Muslim support against a well-established and deceptive Hindu leadership, Jinnah felt it to be the most effective weapon in his armory.⁶

This narrative of competition between Islam and secularism was quite valid in that particular background of united India. However, when it came to the case of Pakistan, it would have been ideal if the secular verses religious forces had worked on the commonalities between the two.⁷ In the absence of sincere and mature leadership, this fear of both the social groups paved the way for some politicians and privileged sections to exploit the situation for their personal betterment at the cost of general public. The result is that presently Pakistanis do not have the state as mother, or to be more precise, the state rather behave like a 'step-mother'.

The idea that Pakistan is suffering from a clash between secular and religious forces⁸ is a reality but astonishingly funny. It is so because the perpetrators and supporters of these theories are stressing upon their stances without realizing that their rigidity is adding to the bank of national confusion and delivering nothing productive to Pakistani culture and society. The religious society founded by Prophet Muhammad ﷺ placed no restriction on difference of opinion and mostly tried to maintain harmony despite extreme ideological differences and threats. Even the bitterest opponents of the religion of Islam failed to identify weaknesses in the system of government established at Medina by the Prophet ﷺ of Islam.⁹ It was no doubt an ideal state with an excellent expression of ideology in the background. Unfortunately, today the

⁵ Dr Hasan Askari Rizvi, 'Jinnah, Islam and the political system', 25 December 2014, available at www.dawn.com/news/1153119, accessed on 21 December 2015.

⁶ *Ibid.*

⁷ Rubina Saigol, 'Radicalization of State and Society in Pakistan', available at http://pk.boell.org/sites/default/files/downloads/Chapter_Rubina_Final.pdf, accessed on 20 October 2015, p.3.

⁸ Hussain Haqqani, 'The Role of Islam in Pakistan's Future', *The Washington Quarterly*, Routledge, January 2010, p.88.

⁹ Dr Tanveer Khalid and Azra Anjum, *op.cit.*

question and struggle is for ideological state alone and not the ideal one. The stress seems to be more on theory than practices.

Reh gai rasm-e-Azan rooh-e-Bilali na rahi
*Reh gaya falsafa talqeen-e-Ghazali na rahe*¹⁰

(Iqbal)

On the other hand, the fundamentals of secularism also attempt to ensure even handed dispensation of justice and equality of mankind irrespective of cast, color or creed. The ultimate objectives of both the ideas seem to be the same, i.e. the wellbeing of mankind. Now the question arises what is the point of clash or who would like to depict it like a clash? The story of Pakistan shows that most of the standard bearers of both the camps were showing something else and intending something different. A thorough study reveals that the popular slogans and ideas of Islam and secularism, instead of being used were abused in reality. The result is that, even after about 68 years of independence prosperity and well-being, instead of knocking at the doors of the majority, if not all the Pakistanis, is restricted to a limited number of families. Nevertheless, saying so it seems appropriate to acknowledge the services of a few individuals from both the religious and secular camps who endeavored with full sincerity to illuminate each section of Pakistani society indiscriminately through their parent philosophies.

The so-called process of Islamization worked to the satisfaction of all privileged sections of the society, namely military, bureaucracy, land owners and industrialists. The military elite considered that the continuation of status quo will be easy through the slogan of Islamization¹¹ as the economically deprived lower cadres of the army got solace in it, courtesy to their traditional background. The civil bureaucracy that has learnt the art of surviving in all type of governments found it safe and convenient with Islamization as it has not substantially altered the socio-political realities in Pakistan. The land-owning and trade communities were well protected to own unlimited private property. The nominal land reforms introduced during Ayub and Bhutto's terms were reversed easily in the name of Islam.¹² In order to better understand the issue we need to look first into the details of

¹⁰ Allama Muhammad Iqbal, *Bang-e-Dara*, 'Jawab-e-Shikwa' (Lahore: Shaikh Ghulam Ali, 1977), p.110.

¹¹ Arshi Saleem Hashmi, 'Pakistan: Politics, Religion and Extremism', *IPCS*, New Delhi: 21st May 2009, p.5.

¹² Abdus Sattar Ghazali, *Islam and Modernism*, Appendix-II, 'Islam and Politics in Pakistan', available at <http://www.ghazali.net/book4/Appendix-II/appendix-ii.html>, accessed on 20 October 2015.

Pakistani society, and its challenges, and then see how the ruling elite draw the curtain of Islam to accumulate and build up their personal empires at the cost of general public.

Divides of Pakistani society

In case of Pakistan, there were some unique and distinct challenges and options for the people assigned with the task of constitution making. The country was demanded and formed on the basis of Islamic distinctions but then there were people who did not want excessive religious coloring of it.¹³ What they preferred was rather a secular outlook of the constitution and society. For these feelings we can account for the liberals and other socio-religious minorities of the society. Liberals are one significant part of Pakistani Muslim society. They usually idealized western models of government in which there is a clear dichotomy between the state and religion. They seem to be impressed of the western concept of Caesar's domain and Pope's domain in which religion is one declared private business and has got nothing to do with the affairs of the state. They believe that if religion is allowed to interfere freely in the state affairs, or certain social matters, it will add to confusion and adversity. They sometimes develop anti-religion sentiments and advocate for the control and authority by secular forces. Realizing the consequences of any open anti-religion remarks in a pre-dominant Muslim Pakistani society, they abstain from confrontation but they keep on pleading for the authority of secular and liberal forces of Pakistan. In an environment of intra-state and inter-state rivalries these type of people can be free thinkers as well as implanted and could cause damage to the process of national integration.

Sectarian forces

The society of Pakistan comprises of certain distinct sectarian divides. Some prominent sects are Deobandi, Barailvi, and Shia etc. These sects mostly keep each other engaged, sometimes due to their extreme, rigid, impolite and non-considerate attitude from within Pakistan leadership; sometimes at the instigation of their foreign supporters (both Muslim and non-Muslim) for whom Pakistan's engagement in countering internal disorder serves well their international political and economic agendas. These sectarian elements always try to overcast the constitution of the land to justify their positions and acquire more room for themselves. Though a Sunni Muslim majority country, with more than 70% of Sunni

¹³ Dr Tanveer Khalid and Azra Anjum, *op.cit.*, p.37.

population, the fears of insecurity and carnage are always looming large upon this part of the land.

The poorly defined direction and lack of resolve on the part of executive forces at various stages of its history has added to the prevalent confusion and insecurity. Non-Muslim communities of Pakistan are generally very docile and non-problematic. In an environment of lawlessness and conflict they are attacked sometimes by internal miscreants and often by anti-state internal and external forces. This section of Pakistani society, in the absence of any supreme power to ensure peace and prosperity to them, can display violent behaviour.

Formed in the name of Islam, Pakistan always remained a fertile ground for cultivation of religious slogans.¹⁴ Religious forces attempted to move and intervene in every direction with their books and agenda as a right. However, sometimes their stance was so aggressive that other elements, including the institutions, had to step in to ensure peace and stability. The general atmosphere of uncertainty provided opportunity to fortune seekers to exploit the situation in their own personal interest. The politicians and institutions not only sacrificed national and general interest at the altar of their own but, in their attempt to provide legitimacy to their rule and authority, added fuel to the fire of intolerance amongst the intra religious as well as other sections of Pakistani society. Presently Pakistani society is engulfed in the flames of sectarian conflicts, everyone pointing fingers towards each other with no certainty.

Besides policies even the constitution underwent exigencies on the basis of different poles of the society. The doors of constitutional alteration once opened for satisfying different sections of society were also used for implantation of amendments resulting in pure protection and undue extension of individual's authority. The constitution which was supposed to ensure, assign and safeguard the rights of all the people of Pakistan has been used and abused for the interests of few; masses have remained deprived of its benefits. The rights and blessings promised for the people of Pakistan in that document have not trickled down to them. The intermediary institutions, the responsible for the smooth and progressive delivery of those commitments, have failed to perform their duty. Instead of serving the purpose of the state and the dwellers of the state, they started filling their own coffers, either with the connivance of the politicians and policy makers or even at their own; in the general atmosphere of looting and polluting their getting away unnoticed was easy.

¹⁴ *Pakistan Times*, 7 July 1977, p.8.

The problems

Pakistani society and Islam are closely tied with each other. This union, whether someone likes it or not, has always played an important role in each and every phase of the history of Pakistan.¹⁵ From the struggle for Pakistan till present it facilitated the leaders and the masses to present their case with logic. Islam has always remained one hub of activity and inspiration for the masses. The other important reality seems to be that the authority and mandate bestowed upon the leaders, instead of being appropriately used for development and growth of Pakistani society, has been misused by both politicians and theologians equally for obtaining their personal objectives mostly at the cost of general interests. Even the institutional leadership from Pakistani army and judiciary failed to make use of the religious resource in its true proportion. They rather made it more complex for the society. The ultimate impact is that today we are still looking for answers about our fair and genuine direction.

Abused constitution

An extremely absurd joke with the Constitution of Pakistan has been that the custodians of constitution instead of keeping the constitution ahead of them to seek guidance from it preferred to keep it subservient and behind them. Actually they never wanted to surrender and sacrifice their personal designs for the sake of the nation. In this way the constitution was never allowed to take roots and produce fruits of its own in the form of national integration and contentment. Since 1973, the constitution has been suspended or held in abeyance on two occasions; first, when the martial law was imposed on 05 July 1977,¹⁶ and, later, when the fourth military coup took place on 12 October 1999. Since its adoption till 2014, 21 amendments have been sought in the constitution of which three (the ninth, the eleventh, and the fifteenth amendment bills) could not become the Act of the Parliament due to one reason or the other. The Eighth (1985) and Seventeenth Amendment (2004) changed the government from a parliamentary system to a semi-presidential system. However in 2010, the Eighteenth Amendment reversed the major legislation efforts made in 1985 and 2004 and effectively reduced presidential powers, returning the government to a parliamentary republic and also defining any attempt to subvert, abrogate, or suspend the constitution as an act of high treason.

¹⁵ Dr Tanveer Khalid and Azra Anjum, *op.cit.*, p.37.

¹⁶ Lawrence Ziring, 'Public Policy Dilemmas and Pakistan's Nationality Problem: The Legacy of Zia ul-Haq', *Asian Survey*, 28:8 (August 1988), p.795.

The Taliban phenomena

The Constitution of Pakistan was also threatened by the emerging Taliban phenomena. In the event of failure of governmental institution to satisfy the aspirations of masses these Taliban not only successfully established and maintained law and order but also satisfied the religious sentiments of the general public. The situation went out of hand when they attempted to extend their sphere of influence from tribal areas to settled areas. Till that moment the state and its agencies, not realizing its long term implications, opted for a criminal silence. They took it as a free service for the promotion of their foreign policy towards neighboring Afghanistan and also as help in the management of tribal affairs. However, when they attempted to dictate to the state of Pakistan and refused to accept the supremacy of its constitution vis-à-vis the Holy Quran, the state had to respond along with its agencies.

The present regime of Prime Minister Nawaz Sharif, in a bid to ensure peace and order and to protect the Pakistani society of the unwanted scars of terrorism, embarked upon an extensive policy of engagement with Taliban factions of Pakistan.¹⁷ First the much controversial dialogue was initiated that resulted in anticipated failure.¹⁸ Nevertheless, it did furnish the sitting regime with the moral justification, in the eyes of general public and the religio-political groups and parties, before entering into phase two — the use of force — to quell the large looming threats to the state and society of Pakistan. During the dialogue phase, questions were put forth from the Taliban side regarding law under which the dialogues were supposed to take place. They insisted for *Sharia* law,¹⁹ whereas, the government side advocated for the Constitution of Pakistan to be qualified enough even if assessed through *Sharia* base to adjudicate upon the issue.

Possible solutions

Every new system and setup requires a certain amount of time to adjust accordingly. Pakistan also needed time to work out what, when and how things will work for it. Constitution making was a dilemma for Pakistan at one stage but now things are different. Though we did lose a good deal

¹⁷ *Dawn*, 7 March 2014, available at <http://www.dawn.com/news/1091384>, accessed on 23 October 2015.

¹⁸ Farhan Zahid, 'The success and failure of Pakistan's operation Zarb-e-Azb', *Terrorism Monitor*, XIII:14, 9 July 2015, p.5.

¹⁹ *The Nation*, 'Taliban demand Islamic system', 10 February 2014, available at <http://nation.com.pk/national/10-Feb-2014/taliban-demand-islamic-system>, accessed on 30 October 2015.

of time, energies and trust in our process of learning but the good thing is that things are moving towards betterment. This is something which was there in each and every developing society and so is the case with Pakistan.

Education and awareness can also help Pakistanis in realizing their responsibilities and performing accordingly. Shunning away with injurious emotionalism also seems to be a must for Pakistan's safe journey to progress. History tells us that Pakistanis are emotional in their temperament.²⁰ This emotionalism can be both positive as well as negative, the direction depends mostly on certain factors like education, awareness, leadership, satisfaction and contentment etc. In the absence of developed, responsible, and respectful institutions, the Pakistani populace is bound to learn the lessons of tolerance, responsibility and respectful co-existence. They have been beaten all around and it is now the right time for them to come up shining and set positive examples for others.

The smooth change of governments under any system is another excellent example of maturity that our leadership and institutions have provided to the society. The abrupt and extra-constitutional changes need to be buried in the books alone for any guidance and instead systems and institutions be allowed to deliver. History tells that after every long or short war the opposing parties had to ultimately resolve the issue at the table of negotiations. Use of bullets and bayonet generally fail to provide permanent solutions. Keeping in view these historical realities the conflicting sections of Pakistani society must try to consider the heavy price which they had to endure. If they had to ultimately decide it on table than why to go for unnecessary loses. In this regard the government is supposed to come forward and set the precedence in all those areas where conflict resolution is possible through dialogue.

Flexibility in approach by the Pakistani politicians may also help in overcoming our problems. The politicians are supposed to find out solutions in a manner where general good remains intact. However, we have often seen that they go for such rigid stances that national interest gets adversely effected or opportunists start playing their own tunes. The opposition to ZA Bhutto by the Pakistan National Alliance (PNA), or the stories of inflexibilities of politicians in the 90's clearly show that for the immaturity of politicians, public had to suffer. Hope our present parties will pick up lessons from history and will not let the reins of authority slip away from public mandate.

²⁰ *The Nation*, 'Most Pakistanis are emotional', 15 April 2009, available at <http://nation.com.pk/politics/15-Apr-2009/Most-Pakistanis-are-emotional>, accessed on 30 October 2015.

The bureaucracy and the top brass of military of Pakistan has enjoyed some extra ordinary status and advantages in our setup.²¹ Being beneficiaries of that level they were supposed to deliver accordingly but that did not happen. It does not, however, mean that there is any doubt in their competence or they be turned out of their offices as punishment of their past inability. It may be a suicidal thought and may lead to clash between institutions and further destabilization. Strengthening the system of accountability and punishment at every level and development of effective system of check and balance may help in streamlining the system at large. Various functionaries of the state instead of crosscutting or undermining the authority of each other must try to perform in line with each other. Government must keep a watch of public interest and performance of the executive; opposition should keep an eye over the acts of government; the legislative part of the state should try to legislate speedily to address the emerging genuine issues within shortest possible time; judiciary should ensure that constitution be upheld by all those responsible for it and easy dispensation of justice for all; media can keep a watch of all the above performers to mobilize and educate the masses and also to keep people responsible for various duties at their toes. The final check will be left for the general public who, after being educated through the media and other available sources, can make their final verdict through their ballot in a peaceful manner.

Conclusion

Pakistan has against all odds achieved numerous accomplishments; most importantly it has accomplished the vision to see beyond all the issues and challenges that the country is facing today and has started to look towards the future – a future of options and a future of possibilities. Pakistan's policy and constitution makers must realize the mistakes of the past. Instead of slogans of Islam or secularism focus must be on the practical facilitation of society through them. No doubt, root, stem and leaves are all important in a tree but actually it is the fruit and its quality and quantity that we must be concerned about. Once the public starts getting the fruits their frustration and impatience will wither away by itself. These are high times for effective leadership, national coherence and concern for each and every section of the society. Patience, tolerance, soft tones, local solutions and performance from one's own self must be the road map for getting out of this quagmire.

²¹ Lawrence Ziring, 'The Pakistan Bureaucracy: Two Views', *Asian Survey*, 14:12 (December 1974), pp.1087-88. available at <http://www.jstor.org/stable/2643202>, accessed on 24 October 2015.