

# **The Formal and Structural Determinants of the Quality of Democracy in Pakistan**

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## **Abstract**

The nature and character of a democratic system depends on two sets of factors – the politico-legal structures and the socioeconomic forces. The structures – constitution, rules, institutions, political parties, etc. – evolve in response to the needs, aspirations and interests existing in a society. Thus while assessing the quality of democracy in a society, reference to both, the domain of structures on the one hand, and the underlying social impulses and the consequent nature and character of the state and its policies on the other, is inevitable. In the present paper the first domain has been studied with respect to Pakistan. In this respect, three major areas have been identified which may, it is hoped, help provide necessary parameters for understanding the formal determinants of the quality of democracy in the country.

Democracy cannot be adjudged to be an ideal form of government at any point of time. Though it may be regarded as the best system, as compared to all other systems experienced by mankind in the past, yet it was never free of weaknesses, problems, and contradictions. Democracy has also always remained in an evolutionary state. Various democracies can certainly be compared with each other and one form of it can be designated as better than the other, but no model can be claimed to be the ultimate or the best form of democracy. The quality of democracy, therefore, remains a relative and changing reality. This paper seeks to look at the question of quality of democracy in Pakistan with respect to its formal and structural determinants. In other words, it seeks to look into the formal domain of democracy in the country. Among the formal determinants, it highlights three major domains and the changes occurring in each of them. The three domains are: state-institutional domain; the party political domain; and the non-party political domain. The present work refrains from enquiring into non-formal determinants

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of the quality of democracy, like the social formation of the country, the nature of social change, impact of education on the political process, the dynamics of elite interaction or dissension etc. Needless to say, that these informal determinants are equally important in determining the quality of democracy. These, however, may be addressed separately.

In its history of over six decades since independence, Pakistan's political system has been inflicted, and consequently defined, by a more persistent tendency of authoritarianism. Despite various constitutional experiments, and the alterations in the system of governance, this authoritarianism has, by and large, remained intact. The historical roots of authoritarianism can be traced back to the circumstances and the conditions under which Pakistan came into being. In 1947 Pakistan was realized through a legal *modus operandi* which determined that the colonial document of the Government of India Act 1935 would serve as the interim constitution of the country till it adopted a new constitution for itself. The highly centralized system of governance, with the viceroy (now, the governor general), as its head, was thus inherited by the new country. The viceregal system relied heavily on the administrative institutions of the state, giving to the bureaucracy extraordinary powers in deciding the policies of the state.<sup>1</sup>

In addition to this, the chaotic situation under which partition was realized unleashed a number of destabilizing forces threatening the viability of the new country. At a time when even the boundaries of the state were not defined, the refugees were coming in millions without the state having sufficient resources and infrastructure to absorb and rehabilitate them, and while a new administrative set-up in a new capital had to be put to work, the bureaucracy took the initiative in its hands and established its effective control over state power.<sup>2</sup>

While the civil servants were amassing power and were consolidating their control on the state apparatus in somewhat aggressive manner, the political class found itself divided, and, after Mohammad Ali Jinnah's death, even leaderless. Muslim League which had provided a

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<sup>1</sup> Khalid bin Sayeed discusses in detail the manner in which the Government of India Act impacted the political structure of Pakistan after being adopted as the country's interim constitution. Looking into the implications of the decision, it could be said that it paved the way for the colonial legal structure of governance to permeate into the political system of the new country. See Khalid bin Sayeed, *Pakistan The Formative Phase 1857-1948* (Karachi: Oxford University Press, 1978), Chapters 7 and 8.

<sup>2</sup> See for detailed treatment of this theme, Ayesha Jalal, 'Inheriting the Raj: Jinnah and the Governor-Generalship Issue', *Modern Asian Studies*, Vol. 19, No.1 (1985).

platform to the divergent Muslim interests before partition degenerated as a united political force after independence.<sup>3</sup> Given this, the civil servants were available with a situation where they could very easily manipulate the differences within the ranks of the League in order to further enhance their power.

Within a few years of independence, Pakistan's urge to seek western approbation in order to get military hardware and equipment landed it in the pro-West military alliances like SEATO and CENTO. This development enabled the military to acquire a decisive role in the determination of the national policies along with the civil service. Thus, in the beginning of the 1950s, a civil-military bureaucratic alliance emerged as the dominant force in Pakistan. This alliance continued in the subsequent years though the internal balance of power within the alliance shifted from the civil service to the military in the late 1970s under General Zia-ul-Haq's military rule.<sup>4</sup>

Therefore, while referring to Pakistan; two important observations may be made in the context of the correlation of the structures and other variables like the promises, policies and the political dynamics of democracy. First, given the history of authoritarianism in the country, the structures were often superimposed instead of growing from the interests of the majority of the society. As a result of this, many aspects of the actual political practices in the society appear to be in contrast and contradiction with the ascertained rules emanating from the structure. Second, in the case of Pakistan, the structure itself has continuously changed in the last six decades, making it rather difficult to talk about one structural edifice. The constitution of the country which may be taken as the most important aspect of a structure, itself has had a chequered history in the case of Pakistan.

At the time of independence, Pakistan had adopted the Government of India Act 1935 as its interim constitution. It succeeded in adopting its first constitution only after nine years, in 1956. This constitution was abrogated in 1958 when martial law was imposed in the country. Four years later, the second constitution was adopted in 1962, to

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<sup>3</sup> See Syed Jaffar Ahmed, 'Defeating Independence: Genesis of Authoritarian State in Pakistan', *Pakistan Perspectives*, Vol. 2, No. 2, (December 1997); and 'Consolidation of Authoritarianism in Pakistan: 1951-1958', *Pakistan Perspectives*, Vol. 3, No. 2 (December 1998).

<sup>4</sup> See Syed Jaffar Ahmed, 'The Institutional Imbalances and the Prospects of Democracy in Pakistan', in Institute of Regional Studies, *Current Domestic Policy Changes and Prospects in South Asia* (Islamabad: Institute of Regional Studies, 2003), pp. 212-31.

be abrogated seven years later, in 1969, when martial law was imposed for the second time. Pakistan adopted its third constitution in 1973 which itself had difficult sailing in the last almost four decades. It was suspended in 1977 upon the imposition of the third martial law, was restored in 1985 in a drastically changed form, was put in abeyance in 1999, on the occasion of the fourth military take-over, and was restored, again, with further substantial changes, in 2002.<sup>5</sup> After the restoration of the civilian rule in 2008, the 18<sup>th</sup> Constitutional amendment passed in 2010 restored some of the original features of the 1973 constitution, like the parliamentary system. The 18<sup>th</sup> Amendment also had far reaching implications for the federal system of the country. It substantially enlarged the domain of provincial autonomy. The continuous break-up of the system in the past and the subsequent inconsistent constitutionalism speak well about the un-sustainability of the structural edifice of democracy in Pakistan. As a direct corollary of the lack of constitutional persistence, the rules and the institutions also remained subservient to the dictates of the time and expedience of the regimes in power. Therefore, while considering the structural aspect of democracy, the context of the particular time one is talking about may not be lost sight of.

### **State-institutional domain**

Pakistan's 1973 constitution<sup>6</sup> provides a fairly long and detailed chapter on fundamental rights and lays it down that any law or any custom, having the force of a law which is inconsistent with the fundamental rights enshrined in the constitution will be void. Moreover, it also makes the state binding to the fundamental rights to the extent that any law made by the state in contravention of these rights will also be void. The constitution prohibits slavery and forced labour (Article 11), and ensures freedoms of movement, assembly, association, trade, business or profession, speech and religion (Articles 15-20). The constitution also declares all citizens to be equal before law and entitled to equal protection by law. A special mention has been made regarding discrimination on the basis of sex, and the constitution prohibits this type of discrimination (Article 25). Similarly in respect of access to places of public entertainment or resort, the constitution denounces discrimination

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<sup>5</sup> See *ibid*: and also Syed Jaffar Ahmed, 'Fauj ki Hatami Siyasi Baladasti' (Military's Definite Political Supremacy), Quarterly *Irtiqa*, No. 33, October-December 2002, pp.26-39.

<sup>6</sup> *The Constitution of the Islamic Republic of Pakistan 1973 (As Amended by the Constitution (Eighteenth Amdt.) Act, 2010 (Act No. X of 2010)* (Islamabad: Centre for Civic Education Pakistan, n.d.).

against any citizen on the ground of race, religion, caste, sex, residence or place of birth (Article 26). Article 27 disallows discrimination among citizens for appointment in the service of Pakistan on the grounds of race, religion, caste, sex, residence or place of birth. The Eighteenth Constitutional Amendment enlarged the ambit of fundamental rights by including in it chapter on fundamental rights the Right to Information. Accordingly, 'every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law'. (Article 19 A) Similarly, the Eighteenth Amendment inserted in the constitution the Article 25 A which makes it binding on the state to provide free and compulsory education to all children of the age of five to sixteen years.

In order to ensure an enlightened and an inclusive nationhood, the constitution, in its chapter on 'Principles of Policy' makes the state binding to discourage parochial, racial, tribal, sectarian, and provincial prejudices among the citizens (Article 33). It also lays it down that the state would take all necessary steps to ensure full participation of women in all spheres of national life (Article 34). Regarding the minorities, the constitution makes the state responsible to safeguard their legitimate rights and interests including their due representation in the federal and provincial services (Article 36). In order to promote social justice, the state is bound to promote the educational and economic interests of the backward classes or areas, and remove illiteracy, and provide free and compulsory secondary education within minimum possible period. Moreover, with a view to uplifting the people hailing from underdeveloped areas, the constitution asks the state to enable such people through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan (Article 37). Another principle of policy determines that the state should 'secure the well-being of people irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth, and means of production and distribution in the hands of a few, to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants'. The state is also responsible for providing for all citizens, facilities for work and adequate livelihood with reasonable rest and leisure. To those citizens who are permanently or temporarily unable to earn their livelihood due to infirmity, sickness and unemployment, the state is responsible to provide basic necessities of life, such as food, clothing, housing, education and medical relief, irrespective of sex, caste, creed or race (Article 38).

Despite this detailed chapter on fundamental rights and an equally impressive chapter on the principles of policy, there are clauses in the constitution which may not appear in consonance with the letters and spirit of these chapters. For example, the constitution's decision to make Islam the state religion (Article 2) may raise question about the equality of the citizens irrespective of their religion. Moreover, despite claiming equal rights of the citizens, the constitution prohibits a non-Muslim from becoming the president of the country. Therefore, the article delineating the qualification for a presidential candidate determines that such a person should be a Muslim, apart from fulfilling other conditions (Article 41). The Eighteenth Amendment made it compulsory that the prime minister should also be a Muslim (Article 91-C).

The partiality of the constitution towards of the citizens of the state may also be discussed with reference to the electoral system being followed in the country. For the major part of the country's history both before and after the adoption of the 1973 constitution, separate electorates remained in practice. It was in the elections of 2002, that for the first time joint electorate was adopted. However, the election rules as laid down by the 'The Conduct of General Elections Order – 2002', made it binding on the Qadianis and Ahmadis to declare themselves as non-Muslims. Furthermore, it was held that if a person got himself enrolled as a voter and objection was filed that such a voter was not a Muslim, the authority concerned could issue a notice to him and require him to sign a declaration regarding his beliefs about the finality of the Prophethood of Prophet Muhammad (peace be upon him). In case, he refused to sign the declaration he could be deemed to be a non-Muslim and his name was to be deleted from the joint electoral rolls and added to a supplementary list of voters in the same electoral area as non-Muslim.<sup>7</sup>

Though the rights recognized by the constitution are generally supplemented with laws enacted at various stages, to ensure these rights, there are areas where either the laws are not substantial enough to check the violation of these rights or manipulated easily by the offenders by using deceptive means.

The whole edifice of fundamental rights as erected in the constitution is seriously threatened by the emergency provisions incorporated in the constitution. Accordingly, if the president is satisfied

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<sup>7</sup> Article 7-B: 'Status of Ahmadis etc. to remain unchanged', The Conduct of General Elections Order, 2002 (Chief Executive Order No. 7 of 2002), in *Manual of Election Laws*, compiled by Syed Aley Maqbool Rizvi (Karachi: Asia Law House, 2002), pp.15-27.

that a grave emergency exists in the country in which its security or the security of some of its part is threatened either by war or external aggression or by internal disturbance which is beyond the power of a provincial government to control, he may proclaim emergency (Article 232). In such case some of the fundamental rights like the freedoms of movement, assembly, association, trade, business or profession, speech, and property rights may cease to exist allowing the state to take any executive action and make any proclamation which will hold ground until the emergency is revoked. Moreover, in case of the proclamation of emergency, the president can, by an Order, suspend the right of an individual to move any court of law for the enforcement of the suspended fundamental right (Article 233).

In order to ensure the independence and accountability of the national government the constitutional scheme provides a mixed picture of both securities and omissions. Pakistan has opted for a parliamentary form of government, a choice which was made even before the creation of the country. However, in the last six decades a genuine parliamentary system with a sovereign parliament could not be realized in the country which has oscillated between a powerful presidential executive and a powerful prime ministerial executive. The constitution of 1973 made the prime minister powerful without letting the parliament to have noticeable control over the executive but the system was adopted on the consideration that given the country's experience with powerful presidents in the 1956 and 1962 constitutions, a powerful prime minister would help lead the system towards parliamentary form. However, before this expectation could bear fruit the then prime minister, Zulfikar Ali Bhutto, was removed from power by the military which imposed martial law in July 1977. Under the dictates of the martial law regime, the constitution was amended in 1985 giving to it an explicit presidential form. It was only in 1997 that another civilian, Prime Minister Nawaz Sharif, mustered support from the opposition and repealed the clauses that had deprived the prime minister of his powers. However, this arrangement did not last long and after his removal from power in 1999 by another military rule, the 1985 presidential powers were brought back in 2002 by the new military ruler of the country, General Pervez Musharraf. These powers were again revoked through the 18<sup>th</sup> Constitutional Amendment which restored the parliamentary character of the constitution.

In all these shifts between presidential and prime ministerial executives, the legislature has remained almost dormant. The constitution does speak about the legislative powers of the parliament's two houses, yet in practice, laws are more often enacted in the form of

ordinances for which constitution has provided sufficient room. Accordingly, in case the National Assembly is not in session and the circumstances exist in which the president thinks that necessary action is needed, he can make and promulgate an ordinance which may later be put before the National Assembly for adoption. An ordinance so presented in the National Assembly would, according to the constitution, be deemed to be a bill introduced in the National Assembly. In case, the ordinance is not put to the Assembly for four months after its promulgation or if in this period a resolution disapproving it is passed by the National Assembly, it will stand repealed (Article 89).

Notwithstanding the inherent structural limitations of the legislature, it can exercise some influence over policy formulation and scrutinize taxation and public expenditure through the committee system where the legislators belonging to the opposition and the treasury benches may discuss these matters in detail with ministers of the respective departments explaining the backgrounds of various policy decisions. In the last few years, the Public Accounts Committee (PAC) has acquired renewed importance with the relative freedom of press and other media bringing up the issues of corruption and highlighting the importance of transparency.

From the point of view of independent functions of the various organs of the national government, judiciary's independence from executive and legislature is of utmost importance. Pakistan had inherited a system of governance in which the judicial and executive functions had converged. This was further enhanced in the years following independence despite the recommendation of the various law reforms commissions made on different occasions asking for the separation of the two. The constitution in its section on judicature has laid it down that the judiciary would be separated from the executive within five years from the commencing day. The commitment was made in 1973 but before this could realize, the constitution was suspended. When it was restored in 1985, the period of five years was amended to fourteen years (Article 175).

Given the background of military takeovers, the constitution in 1973 furnished an article with a view to check the military Bonapartism. It decided that any person who abrogated or conspired to abrogate, subverted or conspired to subvert the constitution by force or by any other unconstitutional means should be guilty of high treason. Moreover, any person who aided or abetted these acts would likewise be guilty of high treason. The parliament was entitled to provide for the punishment of such person (Article 6). Despite this, the constitution could not get itself secured and remained hostage to military's ambitions. The

Eighteenth Constitutional Amendment further tightened the clause pertaining to high treason. Accordingly, not only the abrogation of constitution or conspiring to abrogate it would be regarded as high treason but collaborating in this act would also be dealt with as high treason. Moreover, an act of high treason would not be validated by any court (amended Article 6). Taking a critical view of Pakistan's unstable political history one notes that the functioning of democracy has been marred and affected not as much by the constitutional inconsistencies or weaknesses as by the extra-constitutional forces having their stakes in the political control of the power structure.<sup>8</sup>

A critique of the military takeovers does not, however, absolve the political class from its role in destabilising the system whenever it got an opportunity and a space which could be used to strengthen the political and democratic institutions and norms. Similarly, the constitutional inconsistencies, too, could not be overlooked while discussing the frequent breakdowns of the political system. In as far as the viability of the constitution is concerned, a good constitution would be the one which, on the one hand, represents the long-term and permanent needs of the society and, on the other, responds to the newly emergent situations more swiftly. The process of amending the constitution should therefore be such that it neither makes it so easy for any incumbent government to change the basic law according to its short-term motives, nor should it be so rigid that even the most imperative of the changes are not made in it. According to the constitution of Pakistan, a bill to amend the constitution may originate in either house of the parliament and, after it has been passed by the votes of not less than two-third of the total membership of that house, it is transmitted to the other house where it is passed in a similar manner (Article 239). Though the condition of two-third majority in both houses of the parliament was considered sufficient for preventing the constitution from frequent changes yet the past experience showed that the governments with the required numerical support tried to amend the constitution more to shape it to their political needs rather than to adjust it to the changes in the society.<sup>9</sup> Moreover, being a federal country, the

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<sup>8</sup> See for a detailed discussion of the theme, Syed Jaffar Ahmed, 'Institutional Imbalances...', *op. cit.*

<sup>9</sup> Both Zulfikar Ali Bhutto and Nawaz Sharif did this. Having two-third majority in the National Assembly they got amendments of their choice passed by the legislature. The Amendments passed during Bhutto regime, particularly the Third, Fourth, Fifth, Sixth and Seventh Amendments, curtailed either the rights of the *detenu* or affected the independence of

provinces could justifiably be given a role in the amending process as is allowed in many federal countries. This however is not available in the case of Pakistan.

The quality of democracy at a given point of time can also be determined in the light of respective roles played by the national, sub-national and local governments. Pakistan has opted for a federal system but its original scheme of division of powers between the national and sub-national governments demonstrated a highly centralized tendency. The constitution had provided two legislative lists. In the Federal List those subjects were arranged on which the centre alone could legislate while on the subjects mentioned in the Concurrent List, both the centre and the provinces had the right of legislation. But, in the latter case, if the legislations made by the centre and the province over a subject were inconsistent or were in conflict with each other it was the legislation of the centre which had to prevail irrespective of whichever legislation was made first. The subjects which did not find place in either of these lists were left for the provinces. A careful study of the lists showed that almost all-important subjects had found place in the Federal List. A comparison of the Federal List of the 1973 constitution with the similar lists of the previous constitutions including the Government of India Act 1935 demonstrated that it was richer than all the previous ones. Moreover, some of the important subjects which were not mentioned in the Federal List and were placed in the Concurrent List were also, practically, the centre's subjects as if the legislation of a province on any of these subjects was against the centre's desires it could simply replace it with its own legislation. Moreover, with the more important, and particularly, the revenue generating subjects, being put in the Federal and the Concurrent Lists, the scope and extent of the residuary subjects had become quite insignificant.<sup>10</sup> The 18<sup>th</sup> Constitutional Amendment

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judiciary in an adverse manner. Similarly, during Nawaz Sharif's second period as prime minister, the Fifteenth Amendment was passed through which further Islamization of the State was tried to be pursued. But the amendment seeking enforcement of Shariah, as desired by the prime minister and his party, could not be taken to the upper house, the Senate, after it was approved by the National Assembly on 9 October 1998. Since in the Senate, Nawaz's ruling coalition did not have two-third majority the bill was kept back to be tabled after the next Senate elections which were due in March 2000. By then Sharif's government was toppled by the military.

<sup>10</sup> See for a detailed discussion of the legislative lists and their comparison with the respective lists of the previous constitutions, Syed Jaffar Ahmed, *Federalism in Pakistan: A Constitutional Study* (Karachi: Pakistan Study Centre, University of Karachi, 1990).

drastically changed the character of the existing federal system by abolishing the Concurrent List and reallocating its subjects mainly to the provinces. Only some of the subjects were put in the Federal List.<sup>11</sup>

As regards the local government institutions, in the major part of the country's political history, they simply did not exist. It is interesting that the local self-government institutions were mostly established during the military rules whereas the civilian regimes remained reluctant towards them.<sup>12</sup> The major reason being that the civilian regimes were not prepared to diversify the funds between the provincial and the local governments and wanted to maintain the provincial level of administration and governance, as viable as possible given the limited resources available to it. On the other hand the military rules which did away with the national and the provincial levels of democratic governance dissolving the national and provincial assemblies looked for some institutions which could act as *via-media* between them and the society at large. This *via-media* has been important for the point of view of streamlining a system of patronization which was considered crucial for realizing control over communities. These institutions could also provide legitimacy to the military rulers who could claim that they have established democracy at the grassroots level. The local governments, whenever they were allowed to function, have always been weak and vulnerable to political pressures, coming particularly from their creators.<sup>13</sup> Their financial powers have generally been very limited with the result that they had to rely on the grants and donations from the donor agencies. The system of 'devolution of powers' introduced by the regime of General Pervaiz Musharraf also did not ensure autonomy of

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<sup>11</sup> See for a discussion on the imperatives of the abolition of the Concurrent List, Syed Jaffar Ahmed, 'Provincial Autonomy and the Concurrent List: A Constitutional Overview', *Pakistan Perspectives*, Vol. 9, No. 2, July-December 2004; and for the shifting of the subjects of the Concurrent List to the Federal List and the new responsibilities of the provinces as a consequence of the 18th Amendment, Shahid Hamid, *Impact of the 18<sup>th</sup> Constitutional Amendment on Federation-Provinces Relations*, Pildat Briefing Paper 39 (Islamabad: Pakistan Institute of Legislative Development and Transparency, July 2010).

<sup>12</sup> It is interesting to note that the military rulers Ayub Khan, Zia-ul-Haq and Pervaiz Musharraf did not lose much time in establishing their respective local bodies systems to which lucrative federal funding was ensured. On the other hand the civilian regimes of Bhutto, Benazir, Nawaz Sharif, etc. showed no interest in them.

<sup>13</sup> Ayub even used his local bodies system as an electoral college for his own elections and for the elections of the National and Provincial Assemblies.

the local government institutions. In fact, it provided an unusual arrangement wherein the federal government directly controlled and supervised the local governments without either giving these governments their independent role or giving to the provincial governments a meaningful part in supervising the lower tier of governance, even though according to the constitution, local government constituted a provincial subject.

As regards the encroachment of one tier of government over the powers of other tier, the constitution gives to the Supreme Court the power of original jurisdiction in any dispute between any two or more governments. The concerned clause addresses the possible conflict between the federal and a provincial government or between two provincial governments (Article 184). The differences between the local government and provincial government may be settled at the provincial level.

In order to ensure accountability of the administration, the constitution, in the first place, determines in its chapter on Fundamental Rights, equal opportunity for entrance into the civil services. Moreover, the constitution also ensures control of political executive and legislature over administration. Accordingly, the laws made by the legislatures regulate the role of the services. The constitution lays down that the parliament in relation to the affairs of the federation, and the provincial assembly of a province in relation to the affairs of the province, may legislate to provide for the establishment and constitution of a Public Service Commission (PSC). The chairman of the PSC constituted in relation to the affairs of the federation is appointed by the president. Moreover, a Public Service Commission performs such functions as may be prescribed by the legislation of the concerned legislature (Article 242).

In order to ensure proper and honest functioning of the civil servants, laws have been made with prescribed punishment for violation of the rules. Pakistan Penal Code provides a full chapter on 'Offences by or Relating to the Public Servants'. It specifically mentions laws and punishment, pertaining to a public servant's taking gratification, other than legal remuneration in respect to an official act, framing an incorrect document to cause injury, unlawfully engaging in trade, unlawfully buying or bidding for property etc.<sup>14</sup>

Moreover, in order to make administration answerable and responsible to the citizens the constitution has established the institution

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<sup>14</sup> See Chapter IX: 'Of Offences by or Relating to Public Servants', *Pakistan Penal Code* (Lahore: Mansoor Book House, 1999).

of the Ombudsman. The institution of the Federal Ombudsman was established in 1983 and provincial Ombudsmen were created subsequently. The various Ombudsmen receive complaints of the citizens against various administrative organs of the state and seek to provide justice. In the past, the annual reports of the Ombudsmen have shown numerous weaknesses in the practice of government agencies and have highlighted the reasons thereof. However, the institution of Ombudsman has to strive hard to be taken seriously by the government and to win the confidence of the people.<sup>15</sup>

### **The political party domain**

Prior to the creation of Pakistan, localized political organizations had been playing a major role in the politics of the provinces, which later came to constitute the new country. The Muslim League had an all-India character, but in order to be able to demonstrate its Muslim representative character, it had to have its roots in the Muslim majority provinces. Thus, in the decade before partition, at times it came in conflict with the regional political organizations like the Unionist Party in the Punjab and the Krishak Parja Party in Bengal, while on other occasions it also struck deals with some of these parties. On partition, League had acquired an ascendant role in most of the provinces and where it was still faced with regional challenge, like in the Frontier, with the Congress ministry still intact, the post-partition circumstances enabled it to establish its sway. Thus on partition, one may say, the League was in power both at the center and in the provinces. The pre-partition regional organizations had either succumbed to the circumstances or their leaders had joined the League bandwagon. The Opposition in the central legislature in 1947 mainly comprised the members of Congress, a party with which Muslim League had contested throughout its movement prior to the realization of Pakistan. Of the total sixty-nine members of the Constituent/Legislative Assembly, fourteen belonged to the Congress. The size of the Congress shrank to only four members in the second Constituent Assembly established in 1955, but by that time various other opposition groups had also emerged and had entered the Assembly.<sup>16</sup>

On independence, the exclusive rule of the Muslim League at the center and in the provinces became a source of tension within its ranks

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<sup>15</sup> See for details on this theme, Mobeen Ahmad Khan, *A Commentary on Ombudsman: Law, Scope and Prospects* (Karachi: Asia Law House, 2001).

<sup>16</sup> See Mushtaq Ahmad, *Government and Politics in Pakistan* (Karachi: Space Publishers, 1970), pp.89, 106.

instead of strengthening its rule. Consequently, new oppositional groups emerged from among the ranks of the League. The most of the leaders of the Jinnah Awami League, Awami League, Krishak Sramik Party, Nizam-e-Islam Party, and the Republican Party which shared the political scene along with the Muslim League in the first decade of independence, had been in the League in the past. League's preeminence receded since 1954, when it lost provincial election in East Bengal and, subsequently, lost control at the center as well, in 1956, when its prime minister, Chaudhry Muhammad Ali, who presided a coalition ministry, was removed. With the imposition of martial law in 1958, the country entered into another phase of her history with the military and bureaucracy controlling the levers of power and political parties including the officially formed Convention Muslim League, playing a secondary role after the so-called restoration of democracy in 1962.<sup>17</sup>

In 1970, the second martial law regime held the first ever general elections on the basis of universal adult franchise. These elections brought to the fore two political organizations to compete for political power: Awami League in the former East Pakistan and Pakistan Peoples Party in the western wing of the country. Since each of the two parties capturing the most of the seats in the country were exclusively confined to only one wing of the country, without winning a single seat in the other wing, the national elections, in fact, exposed the national cleavage. The failure of the military regime to broker a deal between the leadership of the two wings and its political mistakes in managing the subsequent crises set in motion a series of events which culminated in the dismemberment of the country in December 1971.

Political parties in Pakistan have generally lacked internal democracy and organization. At the time of independence, Muslim League had earned its place not as much due to its organization as due to its being a platform of Muslim separatism. It did have its structures but at the center, Jinnah and his nominees were all powerful at least since the middle of the 1930s. The provincial Leagues witnessed in-fighting of the various groups but the central leadership somehow managed to contain it. After partition, political process was not allowed to take its course enabling the political parties to bring themselves in harmony with the democratic principles. The recurrent military take-overs left political landscape with parties most of whom do not meet the essential criteria of

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<sup>17</sup> See, for a detailed assessment and analysis of Ayub regime, Syed Jaffar Ahmed, 'The Martial Law and the Administrative State of General Mohammad Ayub Khan', *Pakistan Perspectives*, Vol. 5, No. 1 (January-June 2000).

democratic organizations. The cumulative result of the lack of the political process and the authoritarian policies of the state is that the political parties are either parochial, or ethnic, or if they are national in character, even in that case, they are overwhelmingly influenced by powerful individuals and families. Party programs, manifestos, and organizational structures have to a large extent, been rendered insignificant.

Legally and officially, the affairs of the political parties have been regulated through successive executive orders and parliamentary acts. Some of the ones promulgated in the recent past have been the Political Parties Order 2002, the Political Parties Rules 2002, and the Legal Framework Order 2002. These orders and rules guided the political parties' participation in the elections of 2002. Accordingly, conditions were laid for the formation of the political parties. Of these, some were: a) a political party shall have a distinct identity of its structures at the national, provincial and local levels, b) it should not undermine the sovereignty and integrity of Pakistan, or indulge in terrorism, c) it would not promote sectarian, regional, or provincial hatred, d) should not bear a name as a militant group, e) it should not impart any military or paramilitary training to its members, etc. The Political Parties Order made it binding on the political parties to formulate their constitutions, stating clearly: a) the aims and objectives of the party; b) its organizational structure at the federal, provincial and local levels, wherever applicable; c) criteria of membership; d) membership fee; e) qualifications and tenure of the party leader and other office bearers; f) criteria for receipt and collection of funds; and, g) procedure for the election of party leader and other office bearers, selection or nomination of party candidates for election to public offices and legislative bodies, and method and manner of amendment in the constitution of the party. The Order further held that every political party shall have an elected general council at the federal, provincial and local levels. Elections within the political parties were also made a prerequisite. Therefore, the party leader and other office bearers of every political party are required to be elected periodically, in accordance with party's constitution, at least once in four years. Political parties are also required to provide equal opportunities for contesting party office including that of the party leader and all members of the party should constitute the Electoral College for the intra-party elections. The order binds the parties to submit to the Election Commission, within sixty days from the close of each financial year, a consolidated statement of the

accounts of the party duly audited by a chartered accountant.<sup>18</sup>

In order to ensure free and fair election, the Constitution provides the institution of the Chief Election Commissioner (CEC) and the Election Commission. Appointed by the president, the CEC is a serving or retired judge of the Supreme Court or a High Court, or is qualified to be appointed as a judge of these courts (Article 213). The Eighteenth Constitutional Amendment added two sub-clauses (2A and 2B) which laid down the procedure for the appointment of the chief election commissioner. Accordingly the prime minister in consultation with the leader of the opposition in the National Assembly should forward three names for the appointment of the chief election commissioner to a parliamentary committee for hearing and confirmation of any one person. Moreover, the parliamentary committee, constituted by the speaker, should comprise fifty per cent members from the treasury benches and fifty per cent from the opposition parties, based on their strength in the parliament. In case there is no consensus between the prime minister and the leader of the opposition, each would be required to forward separate list to the parliamentary committee for consideration which would confirm any one name. It was further laid down that the parliamentary committee should not exceed twelve members out of which one-third should be from the Senate. The CEC may not hold any other office of profit in the service of Pakistan (Article 216). According to the Constitution for each general election to the National Assembly and to a Provincial Assembly, an Election Commission is constituted with the responsibility to organize and conduct the election and to make necessary arrangements 'to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against' (Article 218). In order to facilitate the Election Commission and the Commissioner, the executive authorities in the center and the provinces are made responsible to assist the two in the discharge of their functions (Article 220).

Though the election laws and rules do not prohibit any section of the society from the electoral process and the provisions regarding special seats in the legislatures for women and the minorities are a source of ensuring the representation of the under-privileged sections of the society, yet social practices and norms do prevent the marginalized groups from getting representation or exercising their right to vote. As has been noted in the past elections, women in the tribal areas are not allowed by their men-folk to get their names registered in the electoral rolls.

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<sup>18</sup> See the Political Parties Order, 2002, in *Manual of Election Laws, op. cit.*, pp. 29-41.

### Non-party political domain

At the time of independence, a number of groups and organizations had been mobilized in politics. The student organizations and the women groups were all the more visible on the political scene. After independence, with growing political polarization, social unrest and awareness, there grew organized movements among students, workers, professionals and women. By the time of the introduction of universal adult franchise in 1970, these movements had consolidated and had acquired a pivotal role. The students' organizations and the trade unions, in particular, played key role in the mass mobilization against the dictatorial rule of General Ayub Khan towards the end of 1960s.<sup>19</sup> After 1971, though the industrial workers were successful in getting some of their long-standing demands accepted through the labour policies introduced by the Bhutto regime, yet given the economic crisis in the country, the nationalization of industries by the government and Pakistani workers' migration to the Middle East, the trade union movement gradually weakened. In the 1980s and later, the privatization policies along with the industrial relations arrangements, favorable to the owners, and their being in a position to influence the workers' capacity to organize into unions, resulted in the further decay of the trade union movement. The Industrial Relations Ordinance, 2002, provided some relief to the workers but it continued to depict a favorable bias for the owners.<sup>20</sup>

Students' organizations played an important role in the 1950s and 1960s, and remained a useful source of the middle class' recruitment in national politics. As one can see, a number of the middle class political leaders of 1970s and onwards, had been recruited into politics through the student organizations of different shades. The leftist student organization, the Democratic Students Federation (DSF), which was founded in early 1950s, transformed into the National Students Federation (NSF) towards the end of the decade. In the middle of 1960s, the NSF was divided in two groups with pro-Chinese and pro-Moscow leanings. By the beginning of 1980s, these groups were significantly

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<sup>19</sup> See Tariq Ali, *Pakistan: Military Rule or People's Power?* (London: Jonathan Cape, 1970); and Khalid bin Sayeed, *Politics in Pakistan: The Nature and Direction of Change* (New York: Praeger, 1980); also see, Lal Khan, *Pakistan ki Asal Kahani 1968-69 ka Inqilab* (Pakistan's Real Story, The Revolution of 1968-69), transl. Asad Patafi (Lahore: Tabqati Jiddo Jehad Publications, 2009).

<sup>20</sup> See Industrial Relations Ordinance, 2002, with the comments by Ch. Ghulam Rasool Ranjha (Lahore: Mansoor Book House, 2003).

removed from political scene.<sup>21</sup>

The more important and organized student organization belonging to the right has been the Islami Jamiat-e-Talaba. Being the student wing of Jamaat-e-Islami, it has provided the political recruits for its mother organization. At present the most of the Jamaat-e-Islami leadership comprises people who once were members of its student wing.<sup>22</sup>

Apart from these parties, a number of other student organizations operating at the national and regional levels have contributed to the mobilization of students for their educational demands and have supported the overall political mobilization in the country. However, during the martial law of General Zia-ul-Haq, students unions in educational institutions were banned. This decision on the one hand encouraged authoritarianism in educational administration, and on the other, contributed to the overall de-politicization of the society which, certainly, had other reasons, too.

A third area of non-party political action is the role of the non-governmental organizations (NGOs). The NGOs have mushroomed since the 1980s and they are working in the areas of education, health, human rights, women emancipation, eradicating child labour and bonded labour, socio-political advocacy and awareness programmes, local self-help, etc.

The formation and working of the NGOs is regulated by different laws of which the following are more important.<sup>23</sup>

- a) *Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961*: According to this law a voluntary social agency is an organization, or association established by persons on the basis of their free will for the purpose of rendering welfare services and depending for its resources on public subscriptions, donations, or government aid. Such agencies can carry out their activities in the fields of child welfare, youth welfare, women's welfare, welfare of physically and mentally handicapped, welfare of beggars, recreational programs, social education, family planning, etc.
- b) *Societies Registration Act, 1860*: According to this Act, a society or organization, association or undertaking is established by persons of

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<sup>21</sup> Very little serious research has been done on the students' politics in Pakistan. A relatively better informative book is Iqbal Haider Butt, *Revisiting Student Politics in Pakistan* (Gujranwala: Bargad, 2000).

<sup>22</sup> *Ibid.*

<sup>23</sup> See Aisha Ghaous-Pasha, Haroon Jamal, and Muhammad Asif Iqbal, *Dimensions of the Non-profit Sector in Pakistan* (Karachi: Social Policy and Development Centre [SPDC], 2002), p.4.

their own free will. The purposes for which the societies are established, include promotion of science, literature, the fine arts, construction, the diffusion of useful knowledge, political education, charitable services, the foundation and maintenance of libraries/reading rooms, painting galleries, collection of natural history, mechanical and philosophical inventions, religious and educational services, etc.

- c) *Companies Ordinance (Section 42), 1984*: The Ordinance allows for the formation of associations for the purposes of commerce, arts, science, religion, sports, social services, charity, as non-profit companies provided they apply or intend to apply their profit, if any, or other income, in promoting their objectives and prohibits the payment of dividends to their members. The non-profit registered companies are mostly organizations involved in research with donor funding, clubs, and very large organizations engaged in social and welfare services.
- d) *The Trust Act, 1882*: A trust is defined as an obligation with an attribute of ownership of property. A trust may be created with a creator or author of the trust, a person in whom the confidence is reposed, i.e. the trustee and a person for whose benefit the trust is created, i.e. the beneficiary. The Trust Act provides to the private acts of public charity a legal cover and allows the creators of the trusts flexibility in their operations.

By June 2000, about 56,000 non-profit organizations had been registered under different legal statutes. A number of NGOs have made noticeable contribution towards the objectives for which they were created. The Edhi Foundation, All Pakistan Women's Association (APWA), Human Rights Commission of Pakistan, Aurat Foundation, Sustainable Development Policy Institute, Social Policy and Development Centre, Pakistan Institute of Labour and Research, Orangi Pilot Project, Shirkat Gah, etc. are some of the NGOs, which have earned repute due to their mass awareness programs and research output.

In the promotion of the values of democracy, and for ensuring transparency in the decision-making of the institutions of the state, an independent and free media plays a pivotal role. In Pakistan, the media, for a large part of the country's history, remained under the state control and the press had to operate under strict rules and regulations depriving it of independence. After independence, numerous black laws governed the working of the press. These laws enabled the state to give or to decline to give declaration for the publication of a newspaper or magazine. Press had also been subjected to official dictates which would come in the form of 'advice' from the Press Information Department. At times, the

press was also subjected to pre-publication censorship, a violation of which could invite closure of the newspaper or magazine.<sup>24</sup> After the 1958 martial law, a National Press Trust was established by the government which brought out its own newspapers and magazines.

The black laws regarding the press and media were criticized and protested against by the journalist community and the civil society at large. It was after 1985 that the pressure on the print media was gradually released. The National Press Trust was also dissolved subsequently.

At present, the Ordinance No. XXXV of 1997 regulates the affairs of the electronic media. It lays down the terms and conditions for issuing licenses for the establishment and operation of privately owned broadcast stations. Accordingly a broadcaster who is issued a license under this ordinance is required to: 1) promote respect for the sovereignty, security and integrity of the Islamic Republic of Pakistan; 2) promote respect for the national, cultural, and religious values as enshrined in the Objective Resolution (passed by the Constituent Assembly in March 1949); 3) promote respect for the principles of public policy; 4) ensure that its programs and advertisements do not encourage violence, terrorism, racial discrimination, religious sectarianism or hatred; 5) promote respect for law, order and justice, etc. An important undertaking to be made by the applicant for the license is to broadcast programs specified by the Federal Government or the Authority (i.e. the Electronic Media Regulatory Authority established under this very Ordinance) in the manner indicated by the government or, as the case may be, the Authority.<sup>25</sup>

Regarding the freedom of information, Ordinance No. XV of 1997 ensures transparency and freedom of information, declaring them as essence of good governance. The ordinance declared a set of record of public offices as the public record. This included instructions, policies and guidelines, record relating to sale, purchase, lease, mortgage, acquisition or transfer of properties, record pertaining to approval, consent, concessions, permissions, benefits, privileges, licenses,

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<sup>24</sup> See for a chronicle of anti-press measures and policies, Zamir Niazi, *Press in Chains* (Karachi: Karachi Press Club, 1986); and by the same author, *Fettered Freedom*, edited by Syed Jaffar Ahmed (Karachi: Pakistan Study Centre, 2005).

<sup>25</sup> See Ordinance No. XXXV of 1997, in Javed Jabbar and Qazi Faez Isa *Mass Media Laws and Regulations in Pakistan and a Commentary from a Historical Point of View* (Karachi: Asia Media Information & Communication Centre, 1997), pp.424-31.

contracts, permits, agreements, and final orders including final decisions in all meetings. The Ordinance declares that any citizen of Pakistan, on the payment of prescribed fee, may make written application for obtaining the information contained in any public record including copy of any such record. The concerned official was made responsible to supply to the applicant the required information within twenty-one days of the receipt of the request.<sup>26</sup>

The above are only a few of the rules and regulations initiated in the recent past which suggest that a relatively relieved environment as compared to the past seems to be emerging. With the opening up of the society, and a progressive decline in the official interference, the press seems to be quite free in comparison with its past.

## Conclusion

The facts surveyed and analysed in the present paper may help conclude that in her past history, Pakistan has permanently remained engaged with either a search for constitutional system, or for its restoration in case of it being abrogated by extra-political forces. The country has also endeavoured to correct the arbitrary changes made in the constitution and, on occasions, has also been able to improve its shape. Thus the structural elements of democratic governance in Pakistan do not portray a negative picture. When they were allowed to work the formal and institutionalized networks did operate well, though by no means should it be inferred that there is no room for their improvement. However, despite the availability of a relatively adequate lego-political arrangement if democracy has not strengthened in the country, its causes should be seen elsewhere, and the most adequate arena in this respect is the imbalance of political and non-political forces. Moreover, one can also investigate the causes of the poor state of democracy in the social and economic conditions of the country where the regimentation of society along horizontal and vertical lines may not allow all sections of society to have full participation in the political process. There is also the likelihood that the changes that have taken place in the Pakistani society may not have yet registered them in the political system. One may also argue that once aggregated and articulated, the new interests, compounded as a result of social changes, would certainly require the structures to be modified further. These issues, however, need a separate and detailed treatment.

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<sup>26</sup> Ordinance No. XV of 1997, in *ibid.*, pp.472-75.