

## Introduction

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There is no gain in saying that the judiciary, executive and legislature are the most important pillars of governance of any state and Pakistan is no exception. However, in the past, relationship between these organs have not been without hindrances and this has badly marred the march of democracy in the country. Upon loss of one wing of the state in 1971, all political parties agreed to draft another constitution which was ultimately passed in 1973. This constitution sought to introduce much needed checks and balances, mitigate the hitherto controversial role of judiciary and executive, and preclude the future issuance of highly controversial doctrines of necessity. Despite best intentions and a quasi-unanimous passing of the constitution, implementation turned out to be yet again highly centrist at the cost of federating units. It is only through the 18<sup>th</sup> Amendment in 2010 that a proper devolution has been initiated. The division of powers has been constitutionally determined, yet the *modus operandi* needs to be properly put on track in some instances. Although in many instances, the constitution seemingly continues to be self-contradictory. This especially applies to the status of the Federally Administered Tribal Areas (FATA). While there is the guarantee of fundamental rights for *all* citizens, inhabitants of FATA do not enjoy access to the judiciary, e.g. the High Court or Supreme Court. Instead, pursuant to the Frontier Crimes Regulation of 1901, civil and criminal cases are tried through a hotchpotch of legal norms derived from *riwaj* (customs and norms) and *shariah* (Islamic laws) by local *jargah* (council of elders) and religious scholars respectively, duly sanctioned by a political agent.

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The Department of History, University of Peshawar in collaboration with Hanns Seidel Foundation Islamabad organized our first conference on '1973 Constitution of Pakistan: Theory and Practice', held from 26 to 27 May, 2015 and selected papers were published in *Pakistan Perspectives*, 20:2 (July-December 2015). To accelerate the academic debate started during our first conference the department and Hanns Seidel Foundation organized second conference on '1973 constitution of Pakistan: the Role of Executive, Legislature and Judiciary' from 30<sup>th</sup> to 31<sup>st</sup> May 2016. The conference aimed at debating different aspects of the division of power and the role of respective organs of the state. A total of 15 papers were selected from 40 abstracts received. Fourteen presenters were asked to submit their respective revised manuscripts after incorporating comments and feedback received during the conference. All manuscripts were sent for comments to foreign and local reviewers as per policy of the journal and eventually 8 were selected for publication. These publications covered different aspects of the constitution from theorizing federation to local governments and creation of leadership through election process in FATA.

Syed Jaffar Ahmed's 'Constitution and Constitutionalism in Pakistan' looks into the experience of Pakistan with constitution and concept of constitutionalism. With no exception, all the constitutions of Pakistan had been subjected to violation to the extent of abrogation or suspension or having been put in abeyance. The study suggests that a constitution cannot ensure its survival no matter how carefully it is made. The sustainability and smooth working of a constitution rests on the society and the state that manages it. Hence the notion of constitutionalism becomes extremely relevant to the context. The article investigates the spirit of, and adherence to, constitutionalism in the country, in its society and in its state.

Abdul Qayum Khan's 'Local Government and Judiciary in Pakistan after 2010' discusses the role higher judiciary played in ensuring and holding elections to local government in Pakistan. It focuses in specific context of politics with focus on issue of elections to local government in the specified period of about five years — 2010 to 2015. It also aims to investigate whether such role of judiciary helped in democratization of polity or was itself a constraint on it.

Muhammad Salman Khan's 'Institutional Design Variance in Local Governments across Pakistan: What has Social Capital got to do with it?' argues whether the weakness of local government systems in Pakistan results in the emergence of social capital that has significant implications for service delivery. For this purpose, institutional design is defined as a deliberate act of creation of institutions, and the role of informal institutions is cited as a consequence of weakness in the

institutional design of local governments. The study suggests that the 18<sup>th</sup> Amendment to the Constitution, in 2010, and passage of local government acts, in 2012-13, across provinces have decentralized the local governments to provincial administration. It is hoped that this decentralization of designing local governments will allow a faultless incorporation of social capital into institutional design of local governments. Contrary to the neoliberal perspective, it is argued that local governments cannot create social capital, although it is an unintended outcome of formal institutional capacity.

Amna Mahmood's 'Restoration of Democracy under Siege: A Study of Junejo Government in Pakistan 1985-1988' examines the first phase of transition in 1985, when military government of General Zia-ul-Haq conducted party-less elections and concluded a constitutional amendment with the civilian government before lifting martial law. Key questions of the study are: What methods and procedures do the military rulers adopt for transition?, How far the civilian regimes established by military rulers are genuinely civilian and powerful? and How do the top commanders attempt to protect and promote their interests in the political system once they disengage from direct military rule?. The paper concludes that relinquishing of power by the military is not a real transition to democracy. Military institutes its permanent role in political system to protect its corporate and organizational interests. The complete disengagement of military from decision making and governance is not seen in any of the post-military states in recent past.

Mehran Ali Khan and Fazal Saeed's 'Constitutional Spaces for Leadership in FATA: Analysis of Leadership Crisis and Conflict Management' assesses the prevailing conflict in FATA that requires a sophisticated mechanism of conflict management which can be provided by the local socially established leadership—a vacuum created by stake holders through targeted killing since the advent of militancy in FATA. Since creating socially established leadership is a lengthy process, the prevailing violent conflict requires an immediate response of leadership institution to provide an indigenous pattern of conflict management to end the crisis. The electoral politics has provided opinion makers and leaders those who articulate people's interests. The study strives to find answers to basic questions like: Can the new-institution of electioneering bring forth genuine leadership in FATA while searching for solutions? Or what possible role, will the state play in the process? The paper further analyzes the capability of new leadership in respect to conflict management in the north-western region of Pakistan.

Hina Khan's 'Constitutionalism: Theory and Issues from Pakistan's Perspective' looks into wide disagreements on a single

institutional design that often lead to ‘recurring tensions that lie at the intersection of law and politics’. While Article 5(2) of the Constitution clearly establishes compulsory obedience to the constitution and law as ‘inviolable obligation of every citizen’, instances of indifference towards the sanctity of the constitution abound. Hence constitutionalism, in its own right, has been reduced to a subject of occasional judicial reviews. The paper aims at a theoretical overview of the major tenets of classical constitutionalism with an attempt to finding their implementation in Pakistan’s constitutional issues. It also seeks to trace the extent and consequences of ‘instability’ in Pakistani constitutionalism. It is organized in to two main sections. First section covers theoretical aspects of the idea of constitutionalism and the second explores the relevance of those concepts of constitutionalism in the political setup of Pakistan highlighting the issues and hurdles in its way.

Kishwer Khan’s ‘Bicameralism in a Federation: An Historical Analysis of Role of Senate in Promoting Federalism in Pakistan’ traces the role and importance of bicameralism in a federalism. The study suggests that Senate provides a feasible platform to federating units for representation on the principle of parity. Pakistan adopted bicameralism in 1973, though it became a federation in 1947. Since then it remained under a unicameral legislature as per two early constitutions and has severely compromised the essentials of federalism. The paper attempts to investigate the reasons why this country could not flourish as a true federation and the Senate could not perform its basic functions. It also explores the lacunas in the working of the Senate and the possible remedies for its proper functioning.

Rahat Zubair Malik’s ‘Dictum of Majority and Performance of Legislature: A Comparative Study of PPP (1988-90) and PML-N (1997-99s)’ explores the challenges faced by Constituent Assembly in drafting a workable constitution for the nascent state. The body failed to complete its assignment before its dissolution, followed by a martial law and a subsequent constitution by the dictator, replaced by the Constitution of 1973 by an elected government. Apparently, the unanimous constitution essence was changed by the amendments introduced by Z. A. Bhutto and Zia-ul-Haq. The paper assesses the different reasons for failure of democratic developments in Pakistan including the dictum of majority inside the parliament that shadowed working of the governments during the whole decade (1988-99). Moreover, the study compares two governments in this particular time period i.e. Benazir’s first tenure (1988-90) and Nawaz Sharif’s second term as Prime Minister (1997-99). The study has also attempted to analyze the dictum of numbers and its significance in the working of legislature in Pakistan.