

INSTITUTIONAL IMBALANCE AS DISRUPTIVE OF DEMOCRACY IN PAKISTAN: A RECONSIDERATION OF THE ARGUMENT WITH REFERENCE TO THE 1956 CONSTITUTION

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Abstract

After independence from the British rule, Pakistan was established as a parliamentary democracy based on the Westminster model. During the first six decades of its history, the country experienced repeated disruption of democracy through military interventions. The analysts generally attributed these disruptions to the civil-military imbalance; considering the two as institutional entities and describing the institutional imbalance in terms of civil-military relationship. Dispelling this general approach, this article has undertaken analysis of the institutional imbalance in Pakistan as a disruptor of democracy in terms of the constitutional framework – focusing on the circumstances leading to the first Martial Law in 1958 in the backdrop of the 1956 Constitution. The research is pivoted on the concept of Westminster model of parliamentary democracy, which has been adopted in Pakistan's constitutional framework from the very onset. Exploring the circumstances leading to the formulation of the first constitution of Pakistan (the 1956 Constitution), the article explains the importance of constitutional conventions in a Westminster parliamentary model, indicates the inclusion/exclusion of conventions in the 1956 Constitution and analyses effects of these inclusions/exclusions that contributed towards the disruption of democracy and imposition of the first Martial law in 1958.

Keywords: Institutional Imbalance, Democracy, Argument, Constitution.

Introduction

Pakistan, initially a dominion, inherited parliamentary form of government based on the Westminster model, which had its influence on the first constitution, formulated after a haggling of 9 years. Founders of the nation were also visibly supportive of this type of governance, which placed the executive powers to the Prime Minister heading a cabinet of ministers. However, the country has suffered political instability both in terms of changes in governmental heads as well as regime changes i.e. switching from democracy to dictatorship and back to democracy.

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Roots of constitutional governance in Pakistan can be traced to the Government of India Act 1935, which was formulated and promulgated by the United Kingdom Parliament.¹ The Act was envisaged to mature into a constitution on the lines of the British parliamentary system if and when the Princely States acceded to this Act's provisions. This, however, did not materialize and the Act was eventually adapted through the Independence Act 1947 to become the interim constitution for two separate dominions – India and Pakistan – within the framework of the Westminster model.

The interim constitution gave executive powers to the country's Prime Minister and relegated Governor-General's post to a customary role, but it gave transitional power to the Governor-General till 31 March 1948. Also, the first Governor-General of Pakistan, Muhammad Ali Jinnah, in practice enjoyed the real control over the reins of government by virtue of the respect he enjoyed as the Quaid-e-Azam and the parallel powers in capacity of the President of the Constituent Assembly and the Legislature. This imbalance in contrast to the Westminster model was resolved after Jinnah's demise on 11 September 1948, when Liaquat Ali Khan chose to remain the Prime Minister; thus strengthening the cabinet form of governance. The new Governor-General, Khawaja Nazimuddin, remained the constitutional figurehead as per conventions of the Westminster model, while the Prime Minister held the executive power along with his cabinet. This harmony was disturbed with sudden death of Liaquat Ali Khan in October 1951.

Khawaja Nazimuddin took over as the next prime minister, while Ghulam Muhammad, a bureaucrat and the Finance Minister since 1947, got elevated as Governor-General. Ghulam Muhammad sacked the Prime Minister in April 1953, in disregard of the conventions restraining him to do so, followed by dissolving the Constituent Assembly in 1954. After court verdicts on the dissolution and other constitutional matters and its guidance to elect a Constitutional Assembly anew, the first indigenous constitution of the country was promulgated in March 1956. However, instable political environment led to a fast changing of country's leadership, with six prime ministers coming and going in a row under the Constitution – culminating in its abrogation in 1958.² This has been followed by the checkered history of Martial Laws/military takeovers on the one hand, and return to democratic dispensation on the other.

The subject of regime changes in Pakistan has been extensively studied by various researchers and academia, but the scope of study has been largely confined to civil-military relationship or the politico-military institutions. Political institutions, it is averred, were underdeveloped at the time of independence, while military institutions were overdeveloped in terms of organization and mobilization capacity. Imbalance between the two was, so to say genetic. The debate, so far, has largely focused on such imbalance and resulting extra-constitutional activity, mainly on the part of the military. Not much attention has been given to the structure of the constitution, especially ambiguities in the powers of the President as head of state vis-a-vis the cabinet with Prime Minister as its head to aid and advise the President.

This study attempts to identify major constitutional ambiguities leading to institutional imbalance in Pakistan's political landscape. Such ambiguities in the 1956

Constitution arose out of adoption of a compromise between the presidential and the Westminster model of parliamentary government. The Westminster model is a parliamentary form of governance with executive powers lying with the Prime Minister heading a cabinet of ministers. In absence of a formal constitution, the United Kingdom parliaments have evolved and sustained the Westminster model largely based upon conventions that are generally not enforced by courts. No legal proceedings can be taken for a breach of established conventions, since they are merely a matter of practice and not written into law. In Pakistan's constitutions based on the Westminster model, conventions were either retained with some modifications (as in the 1956 Constitution), or codified into laws (as in the 1973 Constitution).

While the country has experienced repeated disruption of democratic processes both by the military and civil regimes, most of the research undertaken to explore the disruption has emphasized on the perceived imbalance between the civilian and of military institutions. Literary analyses of causes of institutional imbalances in Pakistan by various scholars can be categorized as the heritage, the outcome of civil-military nexus, the deliberate measure by the military for overall supremacy, the anomalies in civil-military relationship, the military being suspicious of civil institutions, the inability of political parties to organize themselves, and the influence of intelligence agencies. In terms of heritage, Jamshed Khan and Asmat Ullah Wazir view the imbalance persisting between the representatives of the people and bureaucratic institutions (both civilian and armed) from the very inception of Pakistan, as a consequence of the legacy inherited from colonial era. They view the military and the bureaucracy almost in harmony with each other in impeding the country's uneven progress to democracy through strength and assertiveness.³ According to Jamil Hussain Junejo, Pakistan already had institutional imbalance upon independence due to well-structured and powerful civil and military bureaucracies while the political institutions were weak and political parties had a non-democratic culture. Consequently, the country did not have stable, vibrant and powerful political institutions that could undertake regular elections on the basis of universal franchise, develop confidence of the people into democracy, safeguard democratic practices from constitutional misdemeanor and attain suitable environment for growth of democracy so that it could respond to the wishes and expectations of the people.⁴ Michael Kugelman does not consider Pakistan to have any semblance of civil-military balance – the old norm becoming the new normal.⁵

As an outcome of civil-military nexus, Hassan Askari Rizvi attributes the imbalance to the overwhelming of the weak civil institutions by relatively strong bureaucratic-military nexus since the very inception of Pakistan.⁶ Safdar Mahmood emphasizes that democratic process in Pakistan has been subverted as a consequence of manipulation of politics and destabilization of elected governments by the military-bureaucratic elites.⁷ In Ayesha Jalal's opinion, the country's political system has been systematically broken down by civil-military personnel.⁸ Mohammad Waseem opines institutional imbalance in Pakistan in the context of civil-military relationship to accentuate the processes of military takeover.⁹

As a deliberate measure, Anthon Bell considers Pakistan's military to be responsible for weak civilian governments.¹⁰ Siegfried Wolf characterises the military to be responsible for non-consolidation of democracy in the country owing to its prominent role in all spheres of socio-economic and political life.¹¹ Akmal Hussain describes the institutional imbalance in terms of legislature, executive and judiciary but attributes its existence in Pakistani political landscape to the military's tendency of dominating the government with little regard for institutional balancing.¹²

Among other reasons for institutional imbalance, Talat Masood recognizes the civil-military balance to make significant in the last few years, but mentions of serious anomalies in civil-military relationship that weaken the national vigor.¹³ Aqil Shah views the Pakistan Army as an institution profoundly suspecting politicians of being incapable to govern the country effectively, intervening repeatedly to weaken the civilian institutions, that has destabilized the development of representative institutions.¹⁴ Ian Talbot considers weak institutionalization of the ruling Pakistan People's Party to be a crucial factor in Bhutto regime's inability to strike a balance with the military and bureaucracy,¹⁵ while not evaluating this dilemma in terms of the constitutional institutions. Ismail Khan expands the canvas of civil-military imbalance by linking the involvement of Pakistani intelligence agencies in the country's important national events, as an extended arm of the one among the two components of the power equation.¹⁶

The study argues that parliamentary institutional imbalance affecting the functioning of democracy in Pakistan emanated largely from the structure of the country's constitution, in that the 1956 Constitution was based on the Westminster model i.e. the British Parliamentary system. The Westminster model has evolved over time wherein political institutions and procedures are largely based on conventions. Following this basic model for Pakistan, the 1956 Constitution retained several conventions, which interested office holders – particularly the President – could breach imperiously; thus disrupting the functioning of democracy in the country.

The following pages are devoted to the explication of conventions-based Westminster model, some major conventions incorporated in Pakistan's 1956 Constitution and the dynamics whereby such conventions became the basis of institutional imbalance, consequent political instability and disruption of democracy.

Constitutional Conventions in the Westminster Model

Constitutionalism is the product of the European political experience, with roots in the theory that governments are derived from the will of people organized into societies that are mindful of their rights as well as obligations.¹⁷ The models of governance based on democratic ideology are fundamentally of two types: Presidential, and Parliamentary. In a presidential system, the power and authority of the head of government and the head of state are merged into single office, while a parliamentary system comprises of the office of the head of state separate from the head of government. Some countries have a hybrid system of government with a combination of the presidential and parliamentary systems.

The parliamentary system has originated from the British democratic principles and in its basic form is referred to as the Westminster model; named so after the location of the UK parliament – the Palace of Westminster. It is essentially a progression of conventions and procedures for legislation.¹⁸ Most procedures within and utilized by the Westminster model evolved with conventions that were in practice and are now precedents of the British parliament; being significant parts of the British Constitution. While the United Kingdom does not have any written and fixed constitution, most countries following the Westminster model have adopted a formally written constitution for their system of governance. But even those countries frequently refer to conventions, practices and precedents because some important aspects of various procedures are not adequately covered in the constitution.

The phrase 'Constitutional Convention' was introduced by British legal scholar A. V. Dicey in 1883. He indicated that in Britain two complementary and parallel sets of rules governed the actions of political actors and institutions:¹⁹ The one set of rules are in the strictest sense "laws", since they are rules which (whether written or unwritten; enacted by statute or derived from the mass of custom, tradition; or judge-made maxims known as the common law) are enforced by the courts. The other set of rules consist of conventions, understandings, habits, or practices that—though they may regulate the conduct of the several members of the sovereign power, the Ministry, or other officials—are not really laws, since they are not enforced by the courts. This portion of constitutional law may, for the sake of distinction, be termed the 'conventions of the constitution,' or constitutional morality.

Dicey defined constitutional conventions as the rules to determine the manner in which the monarchy's discretionary powers should be exercised.²⁰ He further wrote that the conventions had a purpose of watching over and regulating the behavior of the monarchy. A century after him, Marshall argued that Dicey did not take note of other governmental institutions and personnel that are bound by convention.²¹ Canadian scholar Peter Hogg emphasized that some conventions effectively transfer effective power from the legal holder to another official or institution, while other conventions limit a broad power or even advise against its application.²² Hilary Barnett presented a more modern definition by summing up that breaching or violating a convention would have the consequence of encouraging legitimate criticism, which may be in form of alleged 'unconstitutional conduct'.²³

Constitutional conventions evolve from traditions, tendencies and normal practices, regulating the conduct. Due to their very nature, they readily adapt to changes in the society and are considered the moral backbone of the constitution. While being greatly important in the British legal system, courts do not consider conventions as legal obligations. It is generally accepted that if a constitutional convention is breached, then the ramifications of that will be political, not legal. Despite the fact that the conventions have no real legal standing, they do have informal influence to consecrate and associate the working of the state and its institutions. A few such conventions are Royal Assent, collective responsibility and political impartiality. Despite of no legal ramifications for not following conventions, their adherence is

considered obligatory to avoid 'unconstitutional' practices, or losing political office. In Westminster model, laws and conventions co-exist in a major fusion. Converting conventions into laws can induce several problems within the legal system, due a number of conventions clashing with their legal equivalent.²⁴

The 1956 Constitution and Inclusion/ Exclusion of Conventions Therein

After the dissolution of the First Constituent Assembly in October 1954, introduction of the presidential system in Pakistan was seriously considered, which would have excluded Cabinet responsibility, However, it soon became obvious after the elections to the Second Constituent Assembly in May 1955 that majority of its members favoured the Cabinet form of Government i.e. the parliamentary system.²⁵ The 1956 Constitution was thus a result of the two conflicting views and contained a number of conventions of the Westminster model as a written rule, while disregarding a few. Presence of such conventions in the absence of a political culture whose reflection such conventions were, led to instability in Pakistan's politics. Key aspect in this regard were:

- The 1965 Constitution provided a parliamentary form of government, in which the executive was responsible to and drawn from the legislature. Under Article 37(3), the President had the discretion to appoint any member of the legislature as the prime minister whom he considered to be "most likely to command the confidence of the majority of the members of the National Assembly". This was a convention in the Westminster model i.e. an unwritten obligation. When transplanted to Pakistan it could, and did, become a great source of instability²⁶.
- Under Article 37(1), the Prime Minister was to be the Head of the Cabinet of the Ministers, which was to advise the President on how and when he was to exercise his functions. Under Article 37(5), the Cabinet was collectively responsible to the legislature. These aspects were also derived from the Westminster model, where the cabinet headed by the prime minister is answerable to the legislature i.e. the parliament.
- Provincial Governments' structure was identical to that of the Federal Government; Cabinet headed by the Chief Minister being drawn from and responsible to the Provincial Legislature under Article 71, and the Governor taking the place of the President as the head of the Provincial Government.²⁷ Hence, the provincial governments were also inherently based on the Westminster model.
- Under Article 37(6), the Prime Minister was liable to dismissal if the President was of the opinion that he had lost the confidence of the majority of the legislature. This clause empowered the President to dismiss the Prime Minister when of the opinion that the Prime Minister no more enjoyed the confidence of a majority of the legislature. Being a convention in the Westminster model, this power of the head of the state has been seldom invoked in the United Kingdom. However, in Pakistan, it acted as the Damocles' sword; always proving lethal in the hands of the President during 1956-58.

- An important aspect of the Westminster model is the collective responsibility of the Cabinet, which mandates resigning of the body as a whole or a Minister thereof in case of an expression of non-confidence by the legislature. The 1956 Constitution did not contain this convention; thereby making it non obligatory for a defeated Ministry to resign and throwing unnecessary burden upon the courts of law to settle such matters.²⁸

While the Constitution of 1956 envisaged a parliamentary government on the Westminster model, it did not run on the form and spirit of that system and, instead, created a conflict between the President and the Prime Minister.²⁹ The framers of the 1956 Constitution reduced some conventions of the British Constitution to the forms of express statutory provisions, which could later confront the judiciary.³⁰ Ambiguities arising out of conventions facilitated intervention of the President in politics.³¹ Notable ambiguities in the Constitution and implications with respect to the Westminster model are discussed below.

While the general tenor of Part IV of the 1956 Constitution (describing the structure and working of the Federation) gave credence to the assumption that the adoption of the presidential system was originally contemplated, Article 37 (the Cabinet) pointed to the contrary.³² According to Article 37(7) of the Constitution, the President, in the exercise of his functions, was to act in accordance with the advice of the Cabinet or the appropriate Minister or Minister of State, as the case may be, except in cases where he was empowered by the Constitution to act in his discretion, and except as respected the exercise of his powers under Clause 37(6), which stated that, "The Prime Minister was to hold office during the pleasure of the President. The President was not to exercise his powers under this clause unless he was satisfied that the Prime Minister did not command the confidence of the majority of the members of the National Assembly." This binding of ministerial advice on the President's powers was derived from the conventions of the Westminster system, which prescribe that the Crown (in capacity of the head of state) cannot act except upon advice of ministers;³³ for the last 250 years or so the British monarchy having acted only upon the *advice* in taking such important decisions such as the dismissing a government or dissolving a parliament.³⁴ By adhering to the advice of ministers in exercising its prerogative, the monarch has distanced itself from political controversies. Retaining this convention in the 1956 Constitution distanced the President from political controversies that may arise if the advice of a responsible minister was not the basis of a presidential course of action. However, such limitation was more of a matter of convention, rather than legal obligation, in absence of a specific documentary requirement, i.e. the requirement of countersignature of the Prime Minister or the relevant Minister as contained in the French, German, Norwegian and Swedish Constitutions.³⁵ On the other hand, keeping the ministerial advice obligatory in written constitution made any deviation from it illegal; thereby restricting the prerogative of the head of the state to exercise contrary to or in the absence of a ministerial advice. Keeping this aspect as a convention in the Westminster model facilitates the Crown to retain such option as perfectly legal, while the 1956 Constitution made it illegal.

In Westminster model, as a matter of law the power of the Crown to dismiss a Government or to dissolve the House is unlimited. Even though the Crown has disdained to exercise this authority for the last 250 years, the power to do so exists and can be exercised should appropriate situation arise for the Crown to act for the good of the country.³⁶ Due to the non-exercise of this personal power or authority by the Crown, the foundations of constitutional monarchy in the United Kingdom have been strengthened. The framers of 1956 Constitution adopted this convention of the British Constitution in form of an express statutory proposition without indicating measures if the provision was breached. The only sanction which could be presumed to operate upon the President to submit to ministerial advice was the fear that in the event of his violating the Constitution he may be summoned by the Legislature for impeachment. But such fears could not offer effective restraint in power politics pursued by an irresponsible President, because the President could not be called to court for anything done in his official capacity. As such, any disregard of Article 37(7) by the President could only be dealt with outside the judicial forum – presumably, by the legislature through impeachment proceedings.³⁷

A variance in the 1956 Constitution from the British constitutional conventions existed in form of Article 37(4), which stated that: “Other Ministers, Ministers of State and Deputy Ministers shall be appointed and removed from office by the President, but no person shall be appointed a Minister of State or Deputy Minister unless he is a member of the National Assembly.” This implied that the resignation of Ministers, Ministers of State and Deputy Ministers was to be regulated through the President’s office, on the advice of the Prime Minister. However, the practice adopted in the British parliamentary system is that the Prime Minister asks a cabinet colleague to tender his resignation if the Prime Minister is convinced that continuation in office of that colleague is not in the interest of the country.³⁸ In such case, the Minister is bound to resign.

A major departure from the Westminster model conventions resided in Article 50 of the Constitution, which expressly conferred upon the President the power to summon, prorogue or dissolve the Legislature, and to fix the time and place of its meetings. Read in conjunction with Article 37(7), the President would dissolve the National Assembly on the advice of the Prime Minister and his Cabinet. These provisions raised query as to what extent the Prime Minister’s advice to dissolve the Parliament was constitutionally binding on the President; such as, when a Prime Minister may be deserted by a majority of National Assembly Members and necessarily desired that the House be dissolved so that he could approach the electors for majority support in the new legislature for the proposed programme or measures. The 1956 Constitution was silent on this important question; presumably on the presumption that conventions of the British Constitution and established practices of parliamentary democracy would be followed in Pakistan too.³⁹ Leaving the matter to convention created opportunities for manipulation by the President. Indeed, President Iskandar Mirza clinched resignations of Prime Ministers, particularly of Sahrawardy and Chandigarh through the power to dissolve the legislature that was presumed to be regulated by convention.⁴⁰

Constitutional Deviations and Exploitation of Conventions

The parliamentary situation envisaged through the 1956 Constitution necessitated a credible party system, but the only party with significant national following at that time (the Muslim League) had lost its appeal and was in advance state of deterioration.⁴¹ With the adoption of new Constitution, Major General (Retired) Iskandar Mirza assumed the office of the President. But on manipulation, the existence of weakly organized parties served him well. The President and the Chief Minister of West Pakistan, Dr Khan Sahib, had been friends since the former's appointment in the 1930s as the Political Agent in the tribal areas of the North-West Frontier Province. Dr. Khan Sahib was a non-Muslim Leaguer, but was appointed the Chief Minister despite the Muslim League having the absolute majority in the West Pakistan provincial legislature and deserving to have the chief ministership. This appeasement of Dr Khan Sahib by the President was at the cost of violating the Constitution and flouting the universally accepted norms of parliamentary democracy.⁴² The 'wrong person,' Dr Khan Saheb, launched his own political party, the Republican Party,⁴³ which grew in strength in the National Assembly at the cost of further weakening the Muslim League. In the process, constitutional conventions were ignored by employing pressure on legislative assembly members and central MPs to change their political and party allegiances.⁴⁴ Prime Minister Chaudhri Mohammad Ali was ultimately replaced by Hussain Shaheed Suhrawardy, who was later himself ousted by President Mirza through political intrigue.⁴⁵

With diminished political strength partly due East Pakistan background and political association with Awami League (the party ruling then East Pakistan when the 1956 Constitution was adopted), Suhrawardy became increasingly subservient to Iskandar Mirza. As such, he lent support to the President's rule in West Pakistan on 20 March 1957 on the pretext of its requirement to ratify the provincial budget, while it was actually imposed on the call of Dr Khan Sahib whose party had lost majority in the Provincial Assembly. The opposition was in a position to form an alternate government; it was hence wrong to say that the government of the province could not be carried on in accordance with the provisions of the Constitution.⁴⁶ The President's rule was a subversion of the Constitution, because Article 37(3), on the basis of convention, required the President to invite the Muslim League (then majority part in the Provincial Assembly) to form the next Government. The President's non adherence to conventions became a major source for political instability. Ironically, he criticized the British parliamentary system as unsuitable for Pakistan and asked for adopting the American system. He even recommended suspension of all political parties and presiding of state affairs by a revolutionary council for at least five years.⁴⁷ Such gross deviation of constitutional norms could not be sustained under ordinary circumstances but for the manipulation of conventions being out of courts' jurisdiction.

The Republican Party's return to power in West Pakistan was facilitated by Suhrawardy at the behest of President Iskandar Mirza. But under Mirza's intrigue, the Republicans at the center withdrew coalition support for Suhrawardy. The President asked for the Prime Minister's resignation, not allowing him to get the vote of confidence from the Assembly.⁴⁸ As per Westminster conventions, the Prime Minister

should have been given the opportunity for a vote of confidence. But the President again exploited constitutional ambiguity in matters of his powers vis-à-vis constitutional conventions, which forced Suhrawardy to resign.

Chundrigar was succeeded by Feroz Khan Noon, with support of 5-party coalition, who remained embroiled in political instability inherited by his predecessor. Developments in West Pakistan gave President Mirza opportunities to dismiss any ideas of forthcoming elections.⁴⁹ In the midst of deep political and financial crisis, the central government was in dire straits by the summer of 1958. The matters were no different in East Pakistan. On 31 March 1958, Chief Minister Aatur Rahman Khan requested the Governor Fazlul Haq to prorogue the National Assembly because the cabinet had obtained a majority of only fifteen votes in a debate on the Budget estimates. This request had a merit in terms of constitutional provisions but was denied by the Governor which was contrary to the Westminster model conventions embedded within the adopted British parliamentary system. Haq instead, dismissed the Ministry of Aatur Rahman and placed Sarkar on the post. To make the matters worse, President Mirza adopted the same tactic, doing away with constitutional conventions, by replacing Fazlul Haq with the then Chief Secretary West Pakistan as the Governor, who promptly sacked Sarkar and brought Aatur Rahman back. There were brawls in the provincial legislature, including the one on September 23, in which Deputy Speaker Shahid Ali was injured and died two days later.⁵⁰

Meanwhile, in West Pakistan Qayyum Khan demanded early elections in capacity of the President of the Muslim League. He threatened to launch 'direct action' if the government refused to announce a firm date for elections. The central government placed a ban on all paramilitary organizations, which led to resistance by Muslim League workers in Karachi and clashes with police. Subsequent to ensuing political turmoil, the military staged a successful coup; declaring Martial Law in the country on 7 October 1958, while abrogating the 1956 Constitution.

Conclusion

Democracy in Pakistan has been gravely affected by the institutional imbalance induced by the constitutional provisions and conventions adopted by various stakeholders. The country inherited the Westminster system of democracy essentially through the 1935 Act, then the 1947 Act and the Interim Constitution. However, colonial experience of constitutional governance left a mark of the authority that the head of the state enjoyed in capacity of the Governor-General over the elected legislature, which was displayed in the formulation and subsequent implementation of the 1956 Constitution.

In a typical Westminster model, the prime minister and the cabinet evolve from the legislature and remain responsible to it; the head of the state, President, being a mere symbolic figurehead. Accordingly, executive powers in matters of governance were to lie with a cabinet of ministers, headed by the prime minister or the first minister in some instances. The prime minister is chosen to head the government from and by the legislature comprising of elected representatives of the people, while the

ministers are chosen by the prime minister from the legislature, so that the people have their participation in governance through their elected representatives. The prime minister and his cabinet are answerable only to the legislature for the lawful execution of their powers, according to the wishes of the people, which is manifested through the legislature. In the whole process of governance, head of the state does not have any power over the executive and gives consent for specific milestone activities of a democratically elected government, such as inviting a member of the legislature to form government, confirming the ministers' appointment, dissolving the legislature, etc. It, however, can interfere under certain circumstances through constitutional conventions, which are rarely applied in respect of the wishes of the people that are reflected through the legislature and the executive.

The concept of head of the state in the Westminster model has evolved from the British parliamentary system, where the monarchy has been kept politically alive as the sovereign, with occasional exertion of power over the executive through conventions – not laws. In absence of a monarchy, adoption of the Westminster model mandates the head of the state to remain apolitical, and adhere to constitutional laws as well as conventions. In doing so, constitutional conventions are a key element, which provide great flexibility to the application of the constitutional provisions.

The period 1953-58 in Pakistan's political history was characterized by an unending process of political manipulation by the head of the state (represented first by the Governor-General and later the President), which contributed in disruption of political system and eventually leading to the establishment of military regime.⁵¹ The President reportedly ignored the limitations placed on his powers and duties as a constitutional head of state and indulged in partisan political activity.⁵² Submission of the constitutional institutions to this excessive use of power by the head of the state encouraged the Governor-General further. It was because of this enhanced confidence that he countered the next Prime Minister's move to take away his discretionary powers by dissolving the legislature (the Constituent Assembly) and declaring a state of emergency throughout Pakistan in October 1954, without adequate constitutional provisions. The cabinet subsequently formed was at variance with the Westminster model due to the absence of the legislature. In fact, the very nature of the powers the Governor-General exerted was more akin to the presidential form of governance, which was actually neither adopted nor practiced in the country's adopted constitution.

The effects of the heads of state's persistent interference into the executive's working and disregard for the legislature were evident in the application of the country's first constitution – the 1956 Constitution. While the Constitution itself was based on the Westminster model, President Iskandar Mirza's style of governance was similar to the presidential form, and his frequent interference inside the working of the executive resulted in dismissal of four prime ministers within two years from September 1956 to October 1958, without any elections and ending with a military coup.

However unfortunate and unceremonious the closure of the first chapter of Pakistan's democratic period may have been, it was indeed facilitated by the loopholes in the Constitution in the form of conventional dictates which were exploited by the

President to serve this cause. Furthermore, the disorganized political leadership and its continuous struggle for power shifted the real political power from the legislature to the head of the state; establishing a trend to violate the norms of parliamentary democracy.⁵³ The President repeatedly manipulated things to take advantage of the absence of fixed rules. Indeed, constitutional provisions contained in the Constitution of 1956 were adequate to have stable governance in the country, provided conventions contained therein were followed in spirit. But that was not to be, and the country had to learn its lessons in parliamentary democracy the hard way.

It can hence be concluded that institutional imbalance in Pakistan as an aftermath of the 1956 Constitution was primarily due to variances from the Westminster model of parliamentary democracy and non-adherence of stated as well as implied constitutional conventions.

NOTES

- ¹ Hamid Khan, *Constitutional and Political History of Pakistan*, (Karachi: Oxford University Press, 2001), 31.
- ² Anthony Bell, "Military Disengagement from Politics: The Case of Pakistan's Revolving Barracks Door," *Georgetown University Review*, June 10, 2014, <http://georgetownsecuritystudiesreview.org>.
- ³ Jamshed Khan and Asmat Ullah Wazir, *Civil-Military Imbalance in the Administration of Pakistan: A Case Study of Musharraf Era*, The Dialogue, Vol VI, No. 2, April-June 2011, p. 147, http://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/6_2/Dialogue_April_June2011_147-160.pdf.
- ⁴ Jamil Hussain Junejo, *Why Democratic System is Weak in Pakistan: Causes and Solutions*, Indus Asia Online Journal, 12 December 2010.
- ⁵ Michael Kugelman, "Washington Doesn't Help Pakistani Democracy," *Foreign Policy*, October 20, 2015, <http://foreignpolicy.com/2015/10/20/washington-doesnt-help-pakistani-democracy/>
- ⁶ "Democracy", Hassan Askari Rizvi, CSS Forum, January 27, 2013, <http://www.cssforum.com.pk/general/news-articles/74446-democracy-hassan-askari.html>.
- ⁷ Safdar Mahmood, *Pakistan: Political Roots & Development 1947-1999* (Karachi: Oxford, 2013), 351.
- ⁸ Ayesha Jalal, *The Struggle for Pakistan*, (Harvard, 2014), <http://www.wsj.com/articles/book-review-the-struggle-for-pakistan-by-ayesha-jalal-1419614523>.
- ⁹ Mohammad Waseem, "Civil-Military Relations in Pakistan," in *Pakistan in Regional and Global Politics*, ed. Rajshree Jetly (New Delhi: Routledge, 2009), 185.
- ¹⁰ Anthony Bell, "Military Disengagement from Politics: The Case of Pakistan's Revolving Barracks Door," *Georgetown University Review*, June 10, 2014, <http://georgetownsecuritystudiesreview.org>.
- ¹¹ Siegfried O. Wolf, "Civilian Control and Democratic Transition: Pakistan's Unequal Equation," Pakistan Security Research Unit, University of Bradford, May 18, 2012, 4.
- ¹² Akmal Hussain, "Pakistan's Economy in Historical Perspective," in *Pakistan: The Struggle Within*, ed. Wilson John (Delhi: Pearson Longman, 2009), 67.
- ¹³ Talat Masood, "Restoring the Civil-Military Balance," *Express Tribune*, April 15, 2014.
- ¹⁴ Aqil Shah, "Getting the Military Out of Pakistani Politics," *Foreign Affairs*, May-June 2011, <https://www.foreignaffairs.com/articles/south-asia/2011-04-15/getting-military-out-pakistani-politics>.
- ¹⁵ Ian Talbot, *Pakistan: A Modern History* (London: Hurst & Company, 2005), 244.
- ¹⁶ Muhammad Ismail Khan, "Institutional Role Behind Civil-Military Equation," *Criterion Quarterly*, Vol. 4, No. 4, January 9, 2013.
- ¹⁷ Lawrence Ziring, *Pakistan: The Enigma of Political Development* (Folkestone, Kent: Dawson Westview, 1980), 33.
- ¹⁸ "The Westminster System of Parliament," Radical Centrist, Thought Under Mind, June 30, 2013, <http://thoughtundermind.com/2013/06/30/the-westminster-system-of-parliament-tray-government/>
- ¹⁹ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (Indianapolis: Liberty Fund, 1982), 82.
- ²⁰ *Ibid.*, 246.
- ²¹ Joshua Rozenberg, *Conventions of the Constitution*, BBC News Online Network, 3 June 1998.
- ²² Peter Hogg, *Constitutional Law of Canada*, (Carswell Legal Publications, 2010), 7.
- ²³ Barnett, Hilaire. *Constitutional & Administrative Law* (London: Routledge, 2013), 33.
- ²⁴ "What are Constitutional Conventions," Law Teacher, November 2013. <http://lawteacher.net>
- ²⁵ K. J. Newman, op. cit. p. 147.
- ²⁶ Jahan Ara Shah Nawaz. *Father and Daughter A Political Autobiography*, (Lahore: Nigarishat, 1971), 233
- ²⁷ A. K. Brohi, *Fundamental Law of Pakistan* (Karachi: Din Muhammadi Press, 1958), 65.
- ²⁸ K. J. Newman, op. cit. p. 147-8.
- ²⁹ Safdar Mahmood, *A Political Study of Pakistan* (Lahore: Educational Book Company, 1984), 67.
- ³⁰ A. K. Brohi, op. cit. p. 130.
- ³¹ Hasan-Askari Rizvi, *The Military & Politics in Pakistan 1947-1986* (Lahore: Progressive Publishers, 1987), 54.
- ³² K. J. Newman, op. cit. p. 143.
- ³³ *Ibid.*, 266.
- ³⁴ A. K. Brohi, op. cit. p. 108.
- ³⁵ K. J. Newman, op. cit. p. 144.
- ³⁶ *Ibid.*
- ³⁷ A. K. Brohi, op. cit. pp. 109-110.
- ³⁸ *Ibid.*, 116.
- ³⁹ K. J. Newman, op. cit. p. 267.
- ⁴⁰ The conventions of the British Constitution have one ultimate objective: to see that the Parliament or the Cabinet shall ultimately implement the will of the majority of the electors or the nation.⁴⁰ Accordingly, a prime minister not enjoying the support of the majority in the Lower House can rightfully pursue dissolution of Parliament. Conversely, under various circumstances, the monarchy has a right to dismiss a prime minister despite the fact that it is able to command a Parliamentary majority and to dissolve the Parliament which supports the prime minister. In its essence, dissolution is an appeal from the legal to the political sovereign;⁴⁰ deemed to be doable or essential when intent of the legislature differs from the people's wishes. The main aspect of dissolution is to verify whether or not the will of parliament matches with the will of the nation; derived from the concept that intent of the House should represent the will of the nation.
- ⁴¹ Lawrence Ziring, op. cit. p. 173.
- ⁴² Inamur Rehman, *Public Opinion and Political Development in Pakistan* (Karachi: The University of Karachi, 1982), 183.

⁴³ Khalid Bin Sayeed, op. cit. p. 84.

⁴⁴ Inamur Rehman, op. cit. p 188.

⁴⁵ Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2001), 199.

⁴⁶ Inamur Rehman, op. cit. p. 191.

⁴⁷ Hamid Khan, op. cit. p. 202.

⁴⁸ Khalid Bin Sayeed, op. cit. p. 90.

⁴⁹ Hamid Khan, op. cit. p. 206.

⁵⁰ Khalid Bin Sayeed, op. cit. p. 87.

⁵¹ Inamur Rehman, op. cit. p. 176.

⁵² Ibid, 207.

⁵³ Hasan-Askari Rizvi, *The Military & Politics in Pakistan 1947-1986* (Lahore: Progressive Publishers, 1987), 52-53.