



RESEARCH PAPER

The Structure of Domestic Politics and 1973 Constitution of Pakistan

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PAPER INFO	ABSTRACT
Received: August 23, 2021 Accepted: December 22, 2021 Online: December 25, 2021 Keywords: Constitutionalism, Identity, Islam, South Asia *Corresponding Author: fidabazai456@gmail.com	Pakistan is located in a pivotal region. Its geo-strategic location affects its national identity as a nation state. Unlike Europe in South Asia security dilemma, proxy warfare and nuclear arms race are consistent features of the regional politics. The identity of Pakistan as security-centric state gives its army disproportional power, which created institutional imbalance that directly affected constitutionalism in the country. The constitution of Pakistan is based on principles of civilian supremacy and separation of power but in reality Pakistan's army is the most powerful institution in country. This paper argues that the structure of Pakistani politics; created institutional imbalances by the disproportionate distribution of resources is the key variable in creating dichotomy. The structure of domestic politics is based upon the principles of hostility to India, use of Islam for national unity and strategic alliances with major powers to finance defense against the neighboring countries.

Introduction

This article argues that the non-implementation of the 1973 constitution in its true letter and spirit is the mother of all evils in Pakistan. The current constitution of Pakistan is the best it can get and unequivocally acceptable to all political stake holders in the country (Rabbani, 2018). However, it does not represent the distribution of power in the country. There are some serious questions regarding the role of army in Pakistani politics, which should be addressed before formulating a grand strategy for national development.

The constitution of Pakistan is based on principles of civilian supremacy, separation of power between the judiciary and Parliament and distribution of resources between the federation and provinces, but in reality Pakistan's army is the most powerful institution in the country. It doesn't only have command on domestic politics, but also have unequivocal control on its foreign policy. According to Hussain Haqqani, (2006), "Since General Ayub Khan assumed power in 1958, the military has directly or indirectly dominated Pakistani politics, set Pakistan's ideological and national security agenda, and repeatedly intervened to direct the course of domestic politics" (p.281). This paper argues that the structure of

Pakistani politics, which created institutional imbalances by the disproportionate distribution of resources to the defense and giving profound role to the army in decision making, is the key variable in creating dichotomy between the constitution and ground realities in domestic politics. The structure of domestic politics is based upon the principles of hostility to India, use of Islam for national unity and strategic alliances with major powers to finance defense against the neighboring countries.

The article is divided into three sections. The first part of the paper discusses the existing scholarly works and divisions within the literature on the nature of Pakistani state whether it is security, rent-seeking or an ideological state. The second section of the paper discusses the social structure of the domestic politics in the country that empowers the military to continuously sustain its control over Pakistan's domestic and foreign policies. The third section is conclusion of the paper.

Literature Review

The literature on Pakistani politics can be divided into three categories: Pakistan as a security-seeking state, as an ideological state, and Pakistan as a rent-seeking state. There are scholars who analyze Pakistan's behavior from the neorealist perspective. They believe that Pakistan is a 'security-seeking state'. The second group considers Pakistan as a 'rent-seeking state'. They argue that Pakistan's army support democracy as long as that serves its institutional interest internationally and domestically at the expense of country economic and social developments (Shah, 2011); (Grare, 2009); (Rubin & Rashid, 2008). The third group of analysts believes that Pakistan is an 'ideological state'. They are of the view that the Pakistani Army skillfully projected India through mainstream media and educational institutions as a Hindu state that threatens the existence of the Islamic Republic of Pakistan (Haqqani, 2005, Fair, 2008). They are of the opinion that the Islamic discourse of Pakistan's national security does not allow it to restore true democracy in the country.

Social structure of domestic politics in Pakistan

There are three phenomenon; strategic alliance with great powers, the role of Islam and enmity with India, which define the social structure of Pakistani politics. These three forces created a social structure in domestic politics that automatically empowered military over the civilian forces and made a natural alliance between the security and religious forces in the country. The Constitution of Pakistan in 1973 was created when the military was at its lowest point in the history of the country after the 1971 defeat to India and breakup of the country into two pieces. It was an attempt to change the structure of domestic politics by empowering civilians and restoring basic principles of liberal democracy. The civilian forces initially succeeded in developing a consensual constitution and ruling the country for five years, but failed miserably in sustaining their supremacy after allegations of massive riggings in 1977 election that precipitated a ruthless periods of military dictatorship and hanged the most popular Prime Minister of the country on fake

charges of murder. The dichotomy between social structure of the domestic politics and civilian supremacy as enshrined in the Constitution of 1973 is still responsible for the ongoing conflict between civil and military in the country.

Strategic alliances with Great Powers

Pakistan has been at forefront of rivalries between superpowers since its inception in 1947. Unlike India that did not join any block during the cold war, Pakistan willingly subscribed to the western one, led by the US. Pakistan's joining of the west was primarily because of its geo-strategic concerns. It could not sustain its rivalry with India due to sheer imbalance in the distribution of capabilities between the two countries, therefore needed a super power to finance its arms race. Islamabad preferred the western block because of the technological advancement and economic strength of the United States over the Soviet Union, irrespective of the strategic alignment at the international level. The United States first preference was India, but when New Delhi declined to join any of them, then it offered Islamabad economic and military assistance in return for signing SEATO and CENTO. According to the Congress Research Service report,

U.S. aid levels to Pakistan (after adjusting for inflation) peaked in 1962 when Pakistan aligned itself with the West by joining two regional defence pacts, the South East Asia Treaty Organization (SEATO) and the Central Treaty Organization (CENTO, also known as the "Baghdad Pact"). President Dwight D. Eisenhower famously called Pakistan America's "most allied ally in Asia." (CRS, 2013, p9).

The strategic alliance with the United States proved to be a game changer at the regional level for Islamabad. It enabled Pakistan's military to successfully deter Indian aggression in the first two decades, but unfortunately could not avoid the debacle of 1971, when country was divided into two pieces. The US military and economic assistance to Pakistan did not only embolden its army to deter Indian aggression but also increased its confidence to monopolize domestic politics. The US willingness to compromise on democracy for the sake of its strategic interest; the containment of the Soviet Union, encouraged Pakistani army to ignore opposition from liberal domestic forces for the restoration of democracy and supremacy of the civilian. According to Guardian, "Pakistan has historically been among the top recipients of US aid - since 1948, the US has sent more than £30bn in direct aid to the country. Nearly half of this has been for military assistance" (Guardian, 2011). The real partnership between Pakistan and the United States' started after the Soviet invasion of Afghanistan in 1979. The US did not only massively increase economic and military assistance to the military dictator General Zia ul Haq, but also ignored the enrichment of uranium, which led Pakistan to become a nuclear weapon state in May 1998.

In 1981, the Reagan Administration negotiated a five-year, \$3.2 billion economic and military aid package with Pakistan. As a result, Pakistan became a key transit country

for arms supplies to the Afghan resistance, as well as home for millions of Afghan refugees, many of whom have yet to return (CRS, 2013, p9).

Surprisingly, the period of the US massive economic and military assistance to Pakistan coincides with military dictatorship whether it was to General Ayub Khan in early 1960s, General Zia-ul-Haq in 1980s or to General Pervez Musharraf after 2001. On the other hand, democratic governments are always bearing the brunt of the US economic and military sanctions, cut off of aids from multi-donor agencies and conditions of strict financial reforms, which precipitates economic crisis and political turbulences in the country. The US sanctions and cut off of economic and development aids were major causes of economic crisis in 1990s, when there were democratic government in Pakistan. According to CRS report,

After the 1990 suspension of aid to Pakistan, U.S. aid to that country remained at low levels not seen since the early 1950s, largely due to a disengagement from Pakistan and Afghanistan after the defeat of the Soviet Union there, as well as an overall reduction in foreign aid in an effort to balance the U.S. budget (CRS, 2013, p10).

From 1990 to 2000, the total economic and military assistance of the US to Pakistan were less than \$200 million in the whole decade (Guardian, 2011). It had given more than \$20 billion to Musharraf regime from 2001 to 2008, which allowed the military government to divert the extra money to public development sector and improve its image in comparison to democratic one. The strategic alliance between Islamabad and the Washington at the international level significantly helped the non-democratic forces domestically to rule the country indefinitely.

Islam at the core of Pakistani politics

When Pakistan came into being on 14 August 1947, it was facing serious political, legal and social problems. The complex task of making the constitution was handed-over to a constituent Assembly, which was set under the Indian Independence Act of 1947 (Singhal, 1962). The task proved to be highly complex and started endangering the national unity of the newly born country. The Constituent Assembly, which was also serving as Pakistan's first national assembly, adopted The Objective Resolution on 12 March 1949 (Aziz, 1967). It proclaimed that the constitution of the country would not be based entirely on the secular principles, but rather be on the ideology of Islam. The opening words of the Objective Resolution were 'whereas sovereignty over the entire universe belongs to Allah alone, and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him is a sacred trust'. The objective Resolution was adopted as preamble of 1956, 1962 and 1973 constitutions and made operational part of the constitution through eighth amendment in 1985 (Dawn, 2019). The adaptation of the objective resolution was an attempt to resolve controversies between the liberal and religious forces in Pakistan. According to Chaudhary:

Ulema wanted the country to become a full-fledged Islamic state, and those Muslim elements who consider the "Back to Sharia Movement" as incompatible with Pakistan's ambition to find an important place for itself in the modern world. The latter liked to interpret Islamic principles in terms of twentieth-century democratic constitutional practices (Choudhury, 1955).

The objective resolution was the first legal document, which created the structure of domestic politics around the principles of Islam that automatically empowered the Islamic forces over the liberals to influence the direction and nature of the country. According to Professor Ahmed, the Objective Resolution had made Pakistan a theocracy:

It was in February of 1949 that the Constituent Assembly met and the draft of the resolution was presented after which Shabbir Ahmed Usmani sent it to jail to Maulana Maududi there who was doing time for his fatwa on jihad in Kashmir. It was after Maududi had made amendments to the text of the Objectives Resolution that it was passed by the Constituent Assembly (dawn, 13th March, 2019).

The Objective Resolution did not only give a specially role to Islam and Ulema in decision making, but also put a train of Islamic provisions like changing the name of Pakistan from Democratic Republic of Pakistan to Islamic Republic of Pakistan, definition of a Muslim, Muslim to be a President and Prime Minister, and many others, which ultimately affected the whole structure of Pakistani Constitution (Pakistan Affairs online, 2019). Professor Ahmed further says,

So what then is the role of the parliament?" he asked. "For example, if the parliament is discussing a bill which has been proposed, who will decide the will of God or His intention? Therefore the parliament was given a devolved authority as for all laws it needs to be seen whether they fulfil the spirit of the Quran and Sunnah," he explained (dawn, 13th March, 2019).

The Objective Resolution determined the direction of Pakistan that it would not be a normal secular nation state, but an Ideological one to serve and promote the interest of Islam. Since then Islam has been at the core of Pakistani politics. According to Professor Ahmed, The Objective Resolution was a deviation from Quaid vision of a secular and neutral state, where minorities could go to their places of worship freely. He said that eighteenth amendment made a good attempt to make Pakistan's constitution in line with the Quaid-e-Azam's vision of a neutral state.

Enmity with India

The rivalry between India and Pakistan is a colonial legacy of the British raj in the subcontinent. It was the hasty withdrawal of the Britain from the subcontinent, before resolving some fundamental questions about the distribution of resources in United India,

the accession of princely states and the drawing of international boundaries on sound principle, which created permanent enmity between India and Pakistan. Pakistan, which was geographically divided into two parts; East and West, was extremely vulnerable to Indian interference from the beginning. There were strong chances that India's political elites would undo the partition and create a united country after the withdrawal of the Britain (Talbot & Singh, 2009). The denial to release Pakistan's share of financial assets, displacement of millions of refugees and the military occupation of Kashmir and other princely states further confirmed the intention of Indian political elites to permanently damage the newly created state.

The Indian rivalry did not only affect external security of the country, but also profoundly damaged the domestic structure of the country politics by creating acute institutional imbalances. Pakistan, which was achieved purely through a political movement without any war and violence, was supposed to focus on the socio-economic developments, but unfortunately turned into a garrison state due to security threat from India. The security problems did not allow the newly established country to allocate resources and define its national interest in geo-economic terms. The geo-strategic situation demanded that Pakistan create a strong army in order to defend its national unity and territorial integrity, which forced the political government at the initial stages to allocate a major chunk of its budget (73%) to the military and national defence apparatus at the expense of other institutions including Parliament and Judiciary. Pakistan's defence took a clear priority over the other socio-economic sectors, which empowered the military officers to influence and dictate policies. However, the allocation of maximum resources did not prevent the breakup of the country in 1971, but created all powerful military to dominate internal politics. The military did not only rule for more than 33 years but also influenced and pressurised political governments even at the time of democracies through its intelligence wing; the Directorate of Inter-Service Intelligence (ISI) (Gul, 2009).

After 1971 debacle, when the country was divided into two parts after a defeat to India, Pakistan's army voluntarily handed over power to the civilian government. It was the first time in country's history that army was not in position to influence politics in the country and totally returned to its professional sphere. Political elites became independent to make a constitution for the country. They designed one of the best constitutions in the world, which was unanimously approved by all members of the National Assembly in 1973 that clearly determined the direction of the country. The Constitution of 1973 explicitly adopted civilian supremacy, parliamentary form of government, provincial autonomy, and Islamic sovereignty as core principles of politics in the country. It also vividly defined the role of military and declared usurpation of power by illegitimate means as mutiny through Article 6 of the Constitution. According to the article 245, section 1 of the Constitution of Pakistan, the main duties of armed forces are described as "The Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so," while its sub-clause 2 states: "The validity of any direction issued by the Federal Government

under clause (1) shall not be called in question in any Court” (Shah W. A., 2014). The responsibilities and duties of the armed forces of the country are crystal clear under the constitution, which are to defend the country against any foreign aggression and come to the assistance of federal government whenever called upon like in natural disasters, famine and law and order situations.

The dawn of democracy did not remain for long in Pakistan. Military dictatorship returned in its worst form just after five years of civilian rule. During the parliamentary elections of 1977, two major contenders emerged; Bhutto led PPP and Pakistan National Alliance that was comprised of six parties-NDP, JUI, Muslim League, Jamaat-i-Islami, JUP and PDP and Tehrik-i-Istiqlal” (Mazari, 1999). When PPP won landslide majority in the election, opposition parties rejected results and started country wide protest and agitations. Using carrot and stick policy, Bhutto oppressed street protest and offered negotiation with opposition leaders but talk did not materialize and situation went out of civilian control, which precipitated a third Martial Law that lasted for 11 years. The third Martial permanently damaged civilian supremacy and further strengthened the grip of military on Pakistani politics;

On 5th July 1977, the military staged its third coup on the orders of General Muhammad Zia-ul-Haq. One of the key players, instrumental in taking the decision to overthrow Bhutto, Lieutenant General Faiz Ali Chishti, corps commander of Rawalpindi, denied that any agreement had been reached between the government and the opposition. He justified the military takeover as imperative to saving the country from civil war (Ahmed I. , 2013).

In 1988, democracy again returned to Pakistan accidentally in its crippled form, when General Zia Ul Haq, along with his 10 close confidants including the US Ambassador Arnold L. Raphel, was killed in a mid-air plane crash (The New York Times, 1988). Benazir Bhutto, the daughter of Zulfiqar Ali Bhutto, was the strongest candidate in 1988, who was expected to win a landslide majority. Pakistan’s army with the help of the ISI created a new party; Islamic Jamhoori Ittehad, (IJI) an alliance of right-wing political parties in order to challenge the overwhelming popularity of Bhutto. The military establishment did not only form an alliance of religious political parties, but also distributed money among them to prevent absolute majority of the PPP. Finally they succeeded in daunting PPP majority in the House when IJI got 53 seats against 92 of the PPP. The former chief of the ISI, General (R) Hamid Gul admitted that “PPP could have got landslide victory in 1988 if the Islami Jamhoori Ittehad (IJI) had not been formed” and further said that “They feared that the PPP was returning to power after the execution of Zulfiqar Ali Bhutto. I take the responsibility of the forming of IJI though it was not my idea” (Gul, 2009). The army temporarily handed over power to the civilian government after 1988 election, but did not allow it to deliver on its promises to discredit the democratic system in the country.

The Pakistani politics in 1990s was the best example of army covert interference through back channels by orchestrating alliances and manipulating elections result. They did not allow any government in 1990s to complete its tenure and badly damaged the credibility of democratic system in the process. The army even did not allow its own candidate, Mian Muhammad Nawaz Sharif to assert his political authority. According to Guardian report, "By the time of the coup Mr Sharif had become Pakistan's most powerful prime minister since independence in 1947, using his huge parliamentary majority to amend the constitution and increase his powers" (11th December 2000). When Nawaz Sharif started asserting political authority over the army, General Musharraf overthrew his government and put him in jail under charges of kidnapping, hijacking and corruption (Guardian, 2000). He was finally released after tremendous international pressure and was sent on exile to Saudi Arabia for 10 years (New York Times, 2002). The coup was carried out on the pretext that the civilian government led by Sharif tried to bring military under the civilian control. General Musharraf said, "They tried to interfere with the armed forces, the last remaining viable institution in which all of you take so much pride and look up to at all times for stability, unity and integrity of our beloved country " (DUGGER, 1999).

When General Musharraf was forced to restore democracy especially after the event of 9/11 due to pressure from the US Congress that refused to allow security and financial assistance without democratic reforms, Pakistan's army allegedly made an alliance of the religious parties called Muthahida Mujlas Amal (MMA) and Pakistan Mulim League –Quaid-e-Azam (PML-Q) in order to qualify for the US security and economic aids. The military wanted these two political parties to make Legal Framework Order (LFO) and 58(2B) part of the Constitution of 1973. Article 58-2B gives extensive powers to the President, who was General Musharraf at that time, at the expense of National Assembly. The court and civil society including political parties finally forced General Musharraf not only to give up the idea of LFO but also to resign from his position as President and Chief of Army staff at the same time (Guardian, 2008; Karamat, et. al, 2019).

The end of Musharraf period in 2008, as always in Pakistani politics, is not the return of permanent democracy. The Government of PPP from 2008 to 2013 had to face several constraints from the military; Memo gate scandal in Zardari period, when army wanted to implicate President Zardari and Pakistan's Ambassador to the US, Hussain Haqqani, in a conspiracy to de-nuclearize Pakistan with the help of the US Joint Chief of Staff General Michael Mullen (Dawn, 2009). Similarly, there were differences between former Prime Minister Nawaz Sharif and Army Chief Raheel Sharif. Finally, Nawaz Sharif was disqualified from the Premiership through Supreme Court on charges of corruption. When he did not give up his struggle for the supremacy of the civilian over the army, he was put in jail through National Accountability Bureau, whose integrity as an independent anti-corruption watchdog is dubious. It shows that no matter who wins elections in Pakistan, the real powerhouse is the General Headquarter of the Army, which is called (GHQ). The current existing structure of Pakistani politics will not allow the return of true democracy in its spirit and letter. According to Micheal Hoffman, Pakistan does not have any

favourable condition or structure of sustainable democracy. It is characterised by ethnic conflict, nation building problems, colonial neglect and military intervention. The last thing that has demamaged the growth of democracy in Pakistan according to Hoffman is the presence of conservative Islam (Hoffman, 2011, p75).

Conclusion

The key features of the 1973 constitution of Pakistan are; Islamic sovereignty, supremacy of the National Assembly over other institutions, equal distribution of resources between center and provinces, greater role to small minorities in decision making, freedom of speech and association, protection of minorities and independence of judiciary. Pakistan's constitution of 1973 is one of the best in the world. The 1973 constitution of Pakistan was the only document, which was unanimously approved by all members of the National Assembly in 1973 at that time, which shows that it was a consensus document. The 1973 constitution made an effort to change the structure of domestic politics in favor of civilian supremacy, provincial autonomy and religious harmony, but unfortunately, it did not succeed to change the structure of politics, which is strongly protected by the vested interest of powerful institutions and individuals (Muzaffar, et. al. 2017)

According to Alexander Wendt, International system is what states make of it. Pakistan is a located in a region that has been integral part of international politics and has been playing active role in international rivalries. Unlike Europe and South East Asia, where economy, free trade and foreign direct investment have been the driving forces in determining the national interests of regional countries, in South Asia, security dilemma, arms race, proxy warfare, interstate hostilities, and nuclear weapons have been the prevalent concepts. The interstate rivalry at the regional level changed Pakistan identity and national interest, which very badly affected domestic politics of the country. The identity of Pakistan as security-centric state due to its hostility with India gave its army disproportional power and resources in comparison to other institutions, which created an acute institutional imbalance that directly affected constitutionalism, democracy and rule of law in the country.

Pakistan willingness to join the superpowers rivalry was not because of its common national interest with any one of them, but due to its geo-strategic concerns in the region. The distribution of capabilities at the regional level was clearly in India's favor due to its size, economy and military strength, which cost Pakistan 75% of the total Kashmir. In order to contain India and develop a respectable military to defend its national unity and territorial integrity, it was essential for the newly established country to join any great power to finance its military buildup. The inflow of economic and military assistance from the United States created a strong army in comparison to other institutions, which did not only dominate Islamabad's foreign policy, but also became kingmaker of the country. On the domestic front, Islam was the rallying cry of the powerful military establishment for support in order to defeat the liberal forces, who were asking for more resources to social

development and economic prosperity. The religious forces were the staunchest supporters of the powerful military and successfully challenged the narrative of the secular section of the society. The last but not least component of the domestic structure of the domestic politics was the enmity with India that let the military to emerge as the most powerful institution in the country due to threat from external power. These three forces did not allow the constitution of the 1973 in the country to function according to its true spirit. Therefore, it was amended several times to accommodate the vest interest of the military establishment. Currently, there are not good opinion about the 18th amendment in the powerful corridor of power, which considers it as an obstacle in the way of national development and cause of Pakistan's balance of payment crisis.

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