



POLITICAL REFORM: Constitution Sans Implementation

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A written constitution for any nation state is an assurance that the system of government itself, the division of responsibilities amongst various components of the state, popularly called 'institutions', are laid out clearly for the sake of honest implementation. If the decision-making elite of the nation state in question feels the need for a change in the modalities, the road to referendum or inhouse debate for constitutional reform is always present.

Taking a more on-the-ground look at the theoretical debate being explained in the opening paragraph, the period between the return to civilian rule in 1988 until today makes a perfect case study for why writing a constitution might not help the system unless its implementation is ensured.

A historical analysis of the situation reveals that the period after the assassination of the first popular Prime Minister of Pakistan and the failure of the State to reach the masterminds revealed that it was being discreetly hijacked by the civil and military bureaucracy. The chaotic reign of the vanguard party, Muslim League, until Ayub Khan's coup was the period in which the military was entering the political arena but not trying to dictate its terms. Following the coup in October 1958, the Constitution forwarded by the military dispensation never found any favour with the public. The lame LFO was thought enough to organise the first general elections made out of the federating units in December 1970. That election helped resulted in the battered leftover Pakistan (formerly west Pakistan) and newly created Bangladesh (formerly East Pakistan). The last impression of that election was the 1973 Constitution document which was finalised by literally all the political party leaders who were actually elected to the national assembly in the erstwhile West Pakistan assembly.

The 1973 Constitution predictably took into account the pitfalls witnessed during the Ayub and Yahya years and tried its level best to set the ground for each institution to work within its designated sphere of activity.

The oath for the military not to engage in political activity was laid out clearly to stop the road to martial law. Similarly, anyone sabotaging the Constitution in the form of suspension, abeyance or abrogation was to be dealt with Article 6. Furthermore, equating any intervention into the working of the State would be treated as treason punishable by death.

The practice of the 1973 Constitution could only be ensured until the early snap elections were called in March 1977. The rigging allegations on the ruling party of what was left of Pakistan, produced a perfect scenario for the two major institutions, Army and Judiciary, to question the sanctity of the written Constitution itself.

The 1977 coup by Zia ul Haq, followed by a meek approval of the Judiciary for the coup under the necessity doctrine, paved the path for subsequent decades in Pakistan. The famous 8th Amendment sanctifying the military takeover in 1977 and paving the way for future encrypted interventions under the presidential sword of 58 B2. The unceremonious ouster of the Junejo government in 1988 paved the way for what is being witnessed today. The Junejo government's efforts to penalise the military officers that were involved (in the aftermath of the Ojheri fiasco) and Zia reacting by sending the Junejo government packing set the tone for the practice of 'hybrid' arrangements becoming the order of the day.

The 1988 elections brought in Benazir Bhutto to power. It is an established fact amongst historians, however, that despite all processes outlined in the Constitution as to how the Leader of the House has to be facilitated to take his or her seat, it was a series of long negotiations between the Army and the United States good offices which finally paved the way for Benazir to formally take oath on December 2, 1988. Her ouster in August 1990 under 58-2(b) actually formalised the military intervention through the said clause. The events until November 1996 all revealed the security establishment pulling all strings via the President. The removal of 58-2(b) in 1997 left the military

with the only option of a coup, when happened on October 12, 1999.

The second return to democracy in 2008 changed the rules of the game for the establishment. Apparently the 1973 Constitution was in force; yet it has been the invisible hands which continue to call the shots; whether it was the case of Baloch separatism or any protest by marginalised communities like the Hazara in the same troubled province. It was the security apparatus which was allowed violation of basic human rights as enshrined in the first ten clauses of the Constitution, signifying that the military seems to have had the final say. The advancing years until 2018 formalised that intervention through the courts.

The government taking shape in 2018 actually led to a historic entrenching of the 'hybrid' set up. Falling foul of that arrangement in March and April 2022 has defined much of the chaos being witnessed along the length and the breadth of the country.

All these instances bring home the very basic question: is the 1973 Constitution itself is enough for the sound macro and micro governance of the country? Or is there a need for further discipline of the system? Is the written Constitution enough for the country to act in a sane manner could there be external factors, above the Constitution, that may be needed to ensure the smoothness of the system? Does the system need an expediency council or assembly made up of technocrats who can overrule the institutions or serve as a counterbalance to the system in an innovative manner to correct the quagmire of asymmetric power relations?

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