

## Academic Reflection of Eighth Amendment on Political Stability of Pakistan

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### Abstract:

*The work is focused on impact of eighth amendment in constitution of 1973. The constitutionalism has deep impact on state stability. The constitution is actually state structure for institutional functioning. It reflects the public aspiration of governance. Sometime dictators come in power and gripes state institutions for personal image formation. Pakistan has to face such issues and challenges in earlier period. Zia-ul-Haq suspended law during martial law and constitutional amendments to hold power in his hand after election in 1985. The objective of paper to evaluate findings related impacts of Eighth Amendment on political stability and democratic process. It will be discussed the historical background of constitutional amendment in Zia-ul-Haq era. There will be debate on its impact on political stability in Pakistan.*

**Key words:** Constitutional Developments, Majlis-i-Shoora, Eighth Amendment, Revival of the Amended Constitution and Impact of Eighth Amendment

### Introduction

Pakistan has to face multifaceted circumstances after independence. These disorders affect the political system in

Pakistan. The illogical constitutional implications have to handle the parliaments since 1947. The irresponsible political leadership is performing in parliament. The parochial role of superior court can help to decide statutory questions. The judiciary gives endorsement decisions in such cases that can design remained critical system to the military adventurism attraction. Pakistan constitutional development has several manifestations of martial law rule. The eighth amendment is reflection of martial law rule for authoritarian pattern of government development. The military had been a central role for protection of Pakistan after independence. Due to social flexibility military acquired multiple socio-political roles. So that it progressively becomes most persuasive institution in the state. Unitary-federal system of government was introduced in Pakistan that is not only provocative but also a poor document grounded on conflict as well as compromise politics in assembly. Other half-life goes on to extend impacts of these eras. The civilian leaders in constitution familiarized variety of self-government under drafted constitutional documents. General Ayub and General Zia-ul-Haq regimes will study as authoritarian period. The objectives of constitutional amendments made in Zia –ul-Haq are under discussion in paper.

## **Historical Background of Constitutional Developments**

The constituent assembly of Pakistan framed interim constitution Indian Act of 1935. The constituent assembly has to fail in instituting a constitution in seven years. Governor General Ghulam Muhammad dismissed Constituent Assembly on October 24, 1954. (Mahmood, 2000 p. 46). Maulvi Tame-ud-Din speaker of constituent assembly challenged dismissal action in Sindh High Court in the head of article 223-A of Government of India Act 1935. Such actions at administrative

level lead to political instability in Pakistan. (Moulvi Tameezuddin V. Federation, 1955 Bucharest, 102, 1955)

It has prayed for the issue of securities and mandamus quo warrant. Federation of Pakistan objected that the requested of warrant issue about Article 223-A was not valid. It cannot adopt without consent of Governor General. Chief judgment of Sindh High Court endorsed the opposition petition. The federation appealed to Federal Court rendered inoperative the decision on the disability law the Court allowed the head of petition. The incidence of dissolution of the constitution assembly and the decision of federal court has imprudent impact on the political life of country. The political faith developments have declined in state. The legislative process of assembly has ended with these decisions. Legislature and judiciary important institutions remained failed for long time to offer strengthening democratic process for society. (PLD, 1993)

After promulgation of new constitution of 1956, it can scarcely subsist for two and a half years. President Iskandar Mirza was rescinded on October 7, 1958 with declaration of martial law in management of Commander-in-Chief General Mohammad Ayub Khan in the country. The destructive process for democratization is instigated by Ghulam Muhammad. Iskandar Mirza has finalization of democratic process with blame of ineffective and inoperable constitution. The electoral system is not fulfilling the need of newly established state. The performance of elected legislatures is hypothetical worthwhile on constitutional norms. The negated constitution never delivered such experiments in small period of life. (Shahab, 2008 p.715). It has foundation stone for unconstitutional decisions which gifted the instability in country. Ayub Khan has affirmed objectives to impose martial law. The major resolution is establishing a modern self-governing system that made enlightenment in present laws. It has to provide assistance for public authorities. (Shaikh, 2009) Iskandar Mirza has envisioned of lengthening of administration. Just

after twenty days of nuisance of martial law, the situation has changed. Iskandar has forced to resign from President. He was sent on exile. Ayub Khan has taken the responsibility of president on October 28, 1958. (Talbot, Pakistan: A Modern History, 1998 p.146)

Prime Minister of Pakistan Zulfiqar Ali Bhutto has made appointment of new Army Chief on April 01, 1976. Zia-ul-Haq selected as new Army Chief of Pakistan. He was most junior officer. Zia-ul-Haq persuaded Z A Bhutto of his entitlement for Chief of Army Staff. He convinced with interesting qualities which are as, “piety, patriotism and professionalism turned him in the circumstances of 1977 PNA Nizam-e-Mustafa agitation from an apolitical soldier into a successful coup-maker.” (Kamran, 2008 , pp 106-107) General Zia-ul-Haq came in power on 5 July 1977, after deposing the constitutionally elected Prime Minister Zulfiqar Ali Bhutto. General Zia-ul-Haq as Army Chief has overthrown the civil government of Bhutto. The 1973 constitution was suspended and martial law was imposed in the country. The national and provincial assemblies are dissolved. (Mahmood, 2002, p.91.). Hasan Askari Rizvi rightly says when he refers to the military takeover in 1977 “The coup of July 1977 is as nonviolent as happened in 1958 and 1969 coups. (Hassan Askari Rizvi, 1976, P.239) At mid night of July 4 and 5 military forces took over the management of kingdom. Z A Bhutto with his cabinet members as well as leadership of PNA retained in protection. After imposing martial law the constitution of Pakistan was suspended. The operation to take over government is commonly known as “Operation Fair play.” (Khan, 2009 p.348). This operation reversed the political stability of Pakistan.

General Zia-ul-Haq is gripping power in country. Now he started projecting himself as a disinclined ruler. He argued insistently about military decision to step into power politics of country. The politicians are not in position to handle the political catastrophes. It was accentuated that military

establishment has no political ambition or agenda. There are no uncertain expressions like preceding military rulers. He has showing determination to return the democratic rule within ninety days in country.

General Zia-ul-Haq declared as, “My sole aim is to organize free and fair elections which would be held in October this year (1977). Soon after the polls, power will be transferred to the elected representatives of the people. I give a solemn assurance that I will not deviate from this schedule. During the next three months my total attention will be concentrated on the holding of elections and I would not like to dissipate my powers and energies as Chief Martial Law Administrative on anything else”. In other statement General Zia-ul-Haq said, “I will not accept a political office because I do not think I am fit for that”. (Rizvi, PP 240.) General Zia promised assured to conduct general elections within a period of three months. He further assured that politically he would remain neutral. (Yasmeen, 1991) It further quantified about constitution of Pakistan that it had not been annulled but transitorily deferred. However Zia instead of keeping his promise of holding elections in 90 days, embarked on an unending and equally convoluted process of accountability. It was considered that it was more important to hold local bodies elections in 1979 and then in 1983.

Very soon it became evident that General Zia’s claim of adherence to political neutrality was only a hollow promise. He, in fact, gradually began to extend his powers. Through his pro-Islamic postures and anti-Bhutto measures, he tried to legitimize his autocratic rule.

The people of Pakistan have to wait till 1985 when general elections were eventually held, on non-party basis. But before analyzing general elections and the referendum that Zia held, it would not be out of place to mention about the judiciary, which acted as accomplice to the martial law regime.

From beginning military establishment assumed authority on July 5, 1977. The judiciary involved to support military establishment. General Zia has meeting with Yakub Ali Chief Justice of Pakistan on same day assuming power of state. The significance of meeting has manifested that superior judiciary supporting martial law. It was cleared when serving Chief Judges of four High Courts has made appointments as temporary governors of respective four provinces. This was scandalous situation in which judiciary is going to fell in the lap of military. Ultimately it becomes trap of martial law government for judiciary and enthusiastically accepted several obligations entrusted to them without any conspicuous demur. The military leadership has instantly identified susceptibility judiciary officials for high offices and the incentives and privileges concomitant with them. These members have swiftness for acceptance. (Khan, Political and Constitutional History of Pakistan, 2009 p.348)

The prejudiced role of judiciary undoubtedly revealed in execution case of Z A Bhutto. It is announced first vengeance then conducted elections later was the agenda of Martial Law regime. The adjournment of election proposal is announced in October 1977. The process of accountability has decided to undertaken preferably which was People's Party centered. General Zia has changed his decision on strong public demand for scrutiny of political leadership. It is blamed that political leadership had engaged in malpractices in the past due to which he has to cancel his promise.

The tribunals were established for hearing for ineligibility of members of parliament. These tribunals comprised of judges of High Courts and military officers Brigadier rank. 180 members parliament are alleged of malpractice in these courts. These members are disqualified for next seven years has participation in politics. Nusrat Bhutto filed a case against military regime in which challenged the legitimacy of military coup in July 1977. The Superior Court of

Pakistan declared legal the overthrow of Bhutto government on theory of necessity that later be known as Doctrine of Necessity. It becomes dangerous precedent for unstable political situation of some specific time. This judgment not only has validation of overthrow of Bhutto government but also caused to strengthen of General Zia footings in administration. The former Prime Minister Bhutto was hanged on April 4, 1979 when Supreme Court sustained death sentence by Lahore High Court. Lahore High Court has decided death sentence on responsibility of father of assassination of Ahmad Raza Kasuri. (Kamran, 2008 , pp 106-107)

The white paper published to impeach overthrown government of Bhutto on numerous reckonings. The white lies as termed by Mr. Bhutto in his last book *If I am Assassinated*, the White Paper was a momentous effort to tarnish the image of Z.A. Bhutto. Right wing press, duly supported by the military regime unleashed scathing criticism on the deposed Prime Minister. Zia ul Haq did not leave even a single stone unturned to deal a death knell to the political legacy of Bhutto. For his own sustenance in power it was necessary that People's Party must be precluded to be the part of political process. Constituting Majlis-i-Shoora or holding the referendum and the general elections on the non-party basis were the machinations to keep PPP out of contention. It would be pertinent to deal with Majlis-i-Shoora here.

### **Majlis-i-Shoora**

PCO has given authority to Head of State that may establish a National Assembly (Majlis-e-Shoora). It has to perform functioning of legislation for state. President has assigned to formulate a nominated National Assembly. The nomination process is political bribery in first step generate a political vestibule for General Zia. It was for his associates to mentor for forthcoming elections of assemblies. The local bodies elected

representatives has outstanding adherence with General Zia. The extensive care and caution has taken by provincial governors for recommending members for Majlis-Shoora. Their recommendations were based largely on the reports of deputy commissioners and intelligence agencies. Their potential to secure a niche in the future assemblies was contingent with family belongings.

Keeping in mind such benchmark the scions greeting from protruding feudal families have lavish representation in the council. The section process had been finalized till end of 1981. President has issued an Order and Federal Council was established. The purpose of this council has to resolve issue of restoring democracy and people representative institutions. It was reckoned to make provisional arrangement for dialogue concerning state affairs. There was a conditional plan under military rule. There was expectation from contenders to serve as political ally for General Zia Government. President has authority for nomination of up to 350 federal council members. The council has first session in 1982 and Khwaja Muhammad Safdar veteran worker of Muslim League was designated for chairman. (Ibid.,pp.370-371).

Majlis-i-Shoora was at best a damp squib. It lacked political credibility that comes only through ballot. He has much testing political waters. Therefore it is observed that elected bodies has role nothing more than that of an advisory body. The advice or the suggestions advanced by members of Majlis-i-Shoora will not binding on President. All said and done the creation of such body was one among many gimmicks of Zia regime which served absolutely no purpose and it had no utility. (Referendum & General Elections , 1985)

Zia ultimately publicized in autumn of 1984 that he will withstand as President even after holding of the national elections. Thus referendum swiftly organized in December. The purpose of design is to provide the semblance of a prevalent mandate and legitimacy before to conduct general elections.

The question that is put on ballot paper for public is much complex. The situation is much difficult for voters have to oppose Zia is like to apparently vote against Islam. Other issue is reinforced in printing as “Yes” column in green and “No” in white. (Talbot, Pakistan a Modern History, 1998, PP 260-261) The referendum suggestion can be read as whether Pakistani people endorsed the process instigated President General Zia ul Haq. These laws conventionality with commands of Islam as laid down in Holy Quran and Sunnah. It can be preserved the ideology of Pakistan. It is requisite for continuance and amalgamation of progression to systematic and methodical transfer of power to chosen legislatures of masses. (Talbot, 1998, PP 260-261) When the MRD called for a boycott, Zia effectively silenced their campaign making such appeals a criminal offence. The deserted polling stations on 19 December indicated a considerably lower turnout than the official figure of 62.15 percent with 97.71 per cent voting “Yes”.<sup>14</sup> Although the right wing enthusiasts are not tired of raving ranting about the rigging and indiscretion demonstrated by Bhutto regime in 1977 yet they quite conveniently overlook the atrocious exercise that had been carried out in the name of referendum. Many dubbed it as the fraud of the century. State machinery was used in utter disregard of rules and regulations.

General Zia-ul-Haq has secured his position in farcical referendum as a President. Zia-ul-Haq reckoned it suitable has to announcement for conduction of elections of National Assembly and Provincials Assemblies on February 25 & 28, 1985. MRD has boycotted elections because on their demands elections are not conducted on party basis. The other demand was the restoration of constitution 1973 yet was not met. For them, those were the deaf and dumb elections because public meetings or processions had been proscribed. (Hasan Askari Rizvi, October 1986 p.1069) On the contrary General Zia-ul-Haq contended that political parties will not have to take part in elections. The political leadership has detained during

electoral process. (Khan, 2005 p.373). General Zia-ul-Haq issued ordinance to amend constitution of 1973 for increasing number of seats of National Assembly from 218 to 237 for election 1985. As result of this the number of general seats for Muslim increased from 200 to 207, the reserved seats for Baluchistan and Sind increased by 4 and 3 respectively, and the reserved seats for women were raised a 100 % from 10 to 20.

### **Eighth Amendment** (Its Background and Impact on the 1973 Constitution and on Political Culture of Pakistan)

The Eighth Amendment had played a significant role in determining political processes in Pakistan with serious implications for democratic values and institutions. It was the most undemocratic and autocratic step taken by General Zia-ul-Haq, the former president of Pakistan, though his act was not the first autocratic step towards concentration of power in a single hand.

In fact, Pakistan's political history is replete with instances of rulers having the proclivity of concentrating power in their own hands, and General Zia was no exception. But the promulgation of this amendment had the most far reaching impact on Pakistan's constitutional and political history, not only in General Zia's own lifetime, but even after his death right until 1977, when it was finally repealed. (Anupama, 2001)

The Soviet military intervention in Afghanistan in December 1979 provided an opportunity for the consolidation of military leadership. General Zia played the Islamic card well internally and externally, and followed a well calculated policy of eliminating potential rivals in the political areas. By the year 1981 the opposition parties in Pakistan had come to the said conclusion that they had committed a fatal mistake by sporting General Zia's military autocracy.

In March, 1981, General Zia issued the temporary constitutional ordinance, thereby increasing enormously the

power of President. General Zia-ul-Haq exercised unlimited political power as Chief Martial Law Administrator and self-appointed President. He had been opposed to a constitutional system that was modeled on established democratic norms, rights from the beginning and wanted, like General Ayub before him, to establish in Pakistan an Islamic democratic system based on Islamic values (Nizam-e-Mustafa), under which neither the parliamentary system nor any such arrangement based on political parties had any place.

On August, 12, 1983, General Zia announced August Plan, recommending certain modifications in constitution of 1973, particularly the curtailment of the unlimited powers which constitution 1973 had vested in the office of Prime Minister.

He wanted to concentrate the enormous powers of Prime Minister in the office of President. In this way, his main objective in August Plan was to legitimize presidential supremacy in Pakistan. Under this plan he promised to hold General Elections in Pakistan on a nonparty basis. But before holding these general elections he wanted to achieve for himself political legitimacy as president.

With this objective, he, therefore, arranged within the August Plan itself that prior to General Elections he would, by December 1984, hold a referendum for the extension of his tenure as president for another five years. (Mehmood, 1995, p.166)

This referendum would be held in the name of Islam. In referendum, he achieved a majority and was able to legitimize his position as the legitimate president for the next five years. Having achieved legitimacy as president through referendum, General Zia held General Elections in February 1985 on a nonparty basis. The election results turned out to be against his hopes. Contrary to General Zia's estimates Pakistan Muslim League (PML) supported candidates emerged victorious while

Jamat-i-Islami backed candidates and General Zia administration had to face heavy defeat. (Yasmeen, 1991)

## **Revival of the Amended Constitution**

After election 1985 newly Assemblies has to start functioning. Before the inauguration of newly elected Assemblies President has circulated revival of constitution order of 1973 on 2 March. The order incorporates particular key amendments with a view to redefine President-Prime Minister future power relationship and to create the National Security Council consisting of 11 members to deal with emergencies. Revival of the Constitution of 1973 Order (RCO) can be regarded with justification as part of the English Amendment without which the significance and importance of Eighth Amendment cannot be fully comprehended, appreciated, or analyzed. (Revival of the Constitution of 1973 Order, 1985)

## **Impact of Eighth Amendment**

The analysis of these important amendments would reveal that these changes were designed to ensure effective continuation of President Zia-ul-Haq in the future constitutional and political set-up as the new system envisaged sharing of power instead of transference of power to chosen legislatures. In fact, "Eighth Amendment was basically designed to maintain the primacy of an executive steel frame over the representative bodies".

Firstly, the presidential election of General Zia-ul-Haq through the referendum of 1984 was made part of the Revival of the Constitution Order which subsequently formed part of the Eighth Amendment. Secondly, President has awarded power of nomination of Prime Minister up to 23 March 1990, so that he could select the most dependable horse for a safe ride at least for the first two General Elections scheduled for 1985 and early 1990. According to the Amendments, the President was to

be elected by the Provincial and National Assemblies for which President Zia-ul-Haq could depend on Prime Minister nominated by him. (Nazim, 2005, March, 27)

The self-conceived amended Constitution had given all pervasive and omniscient authority to President for dissolution of National Assembly. In later years this power was to be an abiding Damocles Sword over the heads of members of National Assembly. Nobody at that time visualized that President Zia-ul-Haq would actually exercise his dissolution power. (Hassan, 1991, pp.413-414.)

The unexpected announcement is made for dissolution of National Assembly and removal of Prime Minister. The power is awarded under constitutionally by article 58-2(b) of constitution on 29 May 1988. It was received by the nation with extreme shock and was termed as a “Constitutional Coup” by the press. This abruptly ended once again the re-established parliamentary system in Pakistan. General Zia-ul-Haq died due to airplane crash on August 17, 1988. With this incident military rule has ended, but the black shadow of Eighth Amendment continued to haunt Pakistan’s politics, and the next two Presidents, Ghulam Ishaq Khan and Farooq Leghari, fully used their discretionary powers to dismiss governments of Benazir Bhutto and Nawaz Sharif. (Yasmeen, 1991)

The special power under the Eighth Amendment which General Ziz-ul-Haq had exercised in such an autocratic manner was his legacy to the new President. In the coming years, even though there was a shift in favor of nonmilitary democratic governments in Pakistan, Parliament and the Prime Minister continued to remain at the mercy of the President. No political party was able to achieve required 2/3 majority so as to enable it to revoke the Eighth Amendment, political and administrative systems thus continued to be administered under the Revival of Constitution Order.

Ishaq Khan started functioning as acting President after plane crushing of General Zia-ul-Haq. He promised to hold

elections till November 1988. Benazir Bhutto led Pakistan People's Party in these elections has secured maximum votes and larger party in parliament. She was nominated as Prime Minister by President Ishaq Khan, and was formally sworn in on 2 December 1988.

Miss Benazir Bhutto was not really able to exercise authority firmly since her party did not have a 2/3 majority, and frequently had to make compromises with President and Army Chief. Finally, she had to accede to demands of President Ishaq Khan who was a member of opposition Islami Jamhoori Ittehad (IJI) that he was elected President unopposed. Thus, he becomes the legitimate President of Pakistan for a term of five years.

As long as Prime Minister Benazir Bhutto followed the dictations of President, she received his support, but this situation continued only for a brief period of twenty months. Making use of discretionary powers given under Eights Amendment, President Ishaq Khan dismissed Government of Benazir Bhutto in August 1990, and declared midterm elections.

Mid-term polls were held in October 1990, in which the Islami Jamhoori Ittehad (IJI) emerged victorious, and its leader Mian Nawaz Sharif was nominated by President, on 2<sup>nd</sup> November 1990, as Prime Minister, Mian Nawaz Sharif remained Prime Minister until April 1993, in comparison to Miss Benazir Bhutto, he was more experienced and mature in politics, and succeeded in having a longer tenure as Prime Minister.

The main reason was probably that both President and Prime Minister were belonged to ruling party Islami Jamhoori Ittehad (IJI), but finally he too got the same treatment as the earlier Prime Ministers, whereby making use of the Eights Amendment President dismissed his government in April 1993. The action created instability in Pakistan. (Shahid, 2007. p.216)

Mian Nawaz Sharif retaliated by seeking the intervention of the Judiciary, and moved to Supreme Court against the arbitrariness of the President. On 26<sup>th</sup> May 1993, the Supreme Court ordered that the Nawaz Sharif government be reinstated.

President Ishaq Khan was extremely unhappy about this reinstatement. The opposition leader Miss Benazir Bhutto demanded that Prime Minister Nawaz Sharif be dismissed and General Elections held. There was growing animosity between President and Prime Minister. Third powerful actor of troika Army Chief Abdul Waheed Kaker forced both the Prime Minister and the President to resign on 18<sup>th</sup> July, 1993. An interim government was established under Moeen Qureshi. (Yusuf, 1999, pp.241-242.)

Pakistan People's Party (PPP) under leadership of Benazir Bhutto got a majority, but even this time she failed to secure a 2/3 majority. (The News, 1993). Prime Minister Benazir's position appeared stronger as second term. The member and candidate of the Pakistan People's Party, Farooq Ahmed Leghari, was elected President.

It was thus hoped that working relationship between President and Prime Minister would not be established. But on 6<sup>th</sup> November 1996, the Benazir Bhutto government was summarily dismissed by President Leghari, an act which brought to mind a previous experience when President Ishaq Khan had dismissed Mian Nawaz Sharif despite the fact that both had belonged to the same political party. It can thus be seen that the Eighth Amendment which gave tremendous fillip to Presidential autocracy again came into play during the tenure of President Leghari. It was obvious that so long as the Eighth Amendment existed, the President, irrespective of their party affiliations and so called commitment to democracy, would be tempted to use it.

## **Conclusion**

Such amendments have deep impacts on stability of political system of country. These amendments strengthened to authoritarian pattern of government. It becomes the cause to convert governing system to centralized system which raised issues of provincial autonomy. The authoritarian pattern of governing system required such amendment to grip over the ruling system for concentration of power in one man hand. When the dictators established such amendments they started making the institutions weak. The issues raised in such eras are weak political parties, declining state institutions and gape of political leadership. The undemocratic and weak institutions minimized the public participation in political system which leads to instability of political system. The authoritarian and nondemocratic governments have deep adversely affected on democratic institutions for long period that created issues of integrity of country. Constitution of 1973 should be remained in its original position. To strengthening of democratic institution and stability of political system, constitutional irregular / validation of amendments must be dismantled. The requirement of civil society is based on state is sustainable on economic growth, social progress, democratic mature institutions.

## **Recommendations**

The democratic system required maximum public participation in political system. Public participation is linked with their aspirations which can be fulfilled with development of democratic institutions. The strong federal unit is base of Federal state which has to consist of ideological tolerance, respect the peaceful international and regional interest of the people. Political parties must undiluted commitment to democracy, internal party democracy, political tolerance and

how the commission system of strong bipartisan parliament. There is need for decentralization of power with empowerment of people at local level, maximum provincial autonomy and emancipation from poverty, ignorance and diseases. It is necessary that the 1973 constitution must be maintained and functional on its original composition. All constitutional unbalanced validation of amendments must be annulled that are introduced in military regimes in constitution.

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