



**RESEARCH PAPER**

**Problems of Federalism and Provincial Autonomy in Pakistan during the Military Rule of General Ziaul Haq (1977-1988)**

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**ABSTRACT**

The modern governments require wider legislative powers particularly with respect to the economic and fiscal fields in order to fulfil the objectives of socio-political welfare of its citizenry, therefore, centralization of state authority is normally adopted as a constituent ingredient of federal systems by the ruling elite. A centralized political authority is attained through knitting such organizational structures where the decision making capability and authority rest with only the top tier of management whereas decentralized organizational arrangements function while establishing such hierarchies which work through delegating decision-making capabilities to multiple teams across different territorial boundaries. Various Martial Law regimes in Pakistan preferred to excessively apply a highly centralized model of exercising state authority and the Zia regime of 1980s was not an exception in that regard. Based on these arguments, the current work examines the constitutional maneuverings and the consequent problems of federalism faced by the state of Pakistan during the Zia rule and analyses different measures taken by that regime which, in one way or the other, were related to that problem. It finds that the Provisional Constitutional Order of 1981, the Constitutional Amendment Formula of 1983 and the Revival of Constitution Order (RCO) of March 1985 undermined the federal nature of the 1973 constitution quite seriously and a complete absence of provincial autonomy had exacerbated the issues of national integration. The study recommends that the integrity and unity of Pakistan can be saved by applying federal solution to its various political and constitutional problems and ensuring the maximum provincial autonomy.

**KEYWORDS** Federalism in Pakistan, Zia Regime, 8th Constitutional Amendment, Provincial Autonomy

**Introduction**

In July 1977, the Bhutto regime was ousted by General Zia ul Haq who proclaimed martial law, dissolved all the assemblies, banned the political parties and suspended the 1973 constitution. Since July 1977 until December 1985, Pakistan was governed under martial law. During various martial law regimes in Pakistan, the centre-province relationship became almost inconceivable as martial law did not allow any decentralization of powers and the provinces became purely administrative units under such a system. We do not intend to suggest that in the years prior to 1977 Pakistan ever had a federal system notwithstanding that the constitutions of 1956, 1962, 1972 and 1973 claimed that Pakistan was a federation. Some scholars believe that Pakistan was never a federation since its emergence in 1947 whereas some political scientists and sociologists like Almond & Powell had not mentioned Pakistan even among the category of regimes (like the Soviet Union and Czechoslovakia) which they characterize as formally federal but practically unitary (Almond & Powell, 1978:233-35).

In this respect we shall discuss, how, under the martial law regime of General Zia, the problem of federalism, which was closely related to the problem of national integration, had been aggravated through that period and analyse the different constitutional measures taken by that regime during the 1980s which were directly related to the problem of provincial autonomy, i.e. federalism and consequently, the problem of national integration in Pakistan. For this purpose, we shall be discussing the Provisional Constitutional Order (PCO), 1981, Constitutional Amendment Formula 1983, the referendum held in December 1984, the general elections held in February 1985, the Revival of Constitution Order (RCO) in March 1985, the ratification of the amendments made by Zia under the RCO by the National Assembly and the Senate (October-November 1985) which were elected in February 1985 and the uplifting of Martial Law and restoration of a "civilian rule" in the country.

We shall also discuss the reactions against several measures taken by the Zia regime in different political quarters, causing unrest and rebellion in the provinces, the formation of an alliance named the Movement for the Restoration of Democracy (MRD) by the different political parties, and the establishment of Sindhi Balochi Pushtoon Front in London by the political leaders in exile. The details of the working of the martial law regime are not relevant to our study except for those aspects which are related to the problem under discussion. Invariably, military rule in Pakistan has caused severe deprivation and frustration among the provinces (other than the Punjab which has an overwhelming majority in the armed forces) and has failed to unite the different ethnic, cultural and linguistic groups into the framework of a single nation. Rather, it had caused disintegration of the country and had been a potential danger to the survival of the post 1971 Pakistan (Cohen, 1984; Also see Mumtaz Daultana's statement in the Daily Jang, Lahore 23 January 1984 and Eqbal Ahmad's article in the New York Times, 31 November 1983. Fayyaz Ahmad Hussain, one of the authors of the instant study, also had an interview with Eqbal Ahmad, London June 1983). So we shall discuss only those aspects of the Zia regime and the measures taken by it which are relevant to our study of the problems of federalism in Pakistan.

### **Literature Review**

There has been excessive literature on the problem of federalism in Pakistan during Zia period. A few mentionable books and titles published during these years included Ziring (1980), Sayeed (1980), Wilson & Dalton (1982), Gardezi & Rashid (1983), Khan (1983), Bhutto (1983), Ali (1983), Hayes (1984), Cohen (1984), Awan (1985), Syed (1982), Rashid (1985), Khan (1985), Baxter (1985), Burki (1986) and Azam (1986). Although, some of these studies were not precisely related to our subject in hand, nevertheless, had relevance to this field in general. We have referred to some of these studies while formulating our arguments as presented in the current work.

### **Methodology**

Our main sources for conducting and concluding the instant study were our interviews with eminent political leaders of that time in Pakistan, their statements appearing in the press from time to time and the observation based on various surveys conducted during the 1980s in different provinces of Pakistan. Moreover, primary data as appeared in the form of government reports, gazette notifications and press releases were also consulted and relied for formulating and arranging the results of the study.

### **Validating and Empowering the Zia Regime-The Judgment of Nusrat Bhutto Case**

To understand constitutional and political developments under the Zia regime it is necessary to go into the constitutional history of Pakistan beyond the case of Begum Nusrat Bhutto vs Chief of the Army Staff (PLD (Pakistan Legal Decisions) 1977, SC (Supreme Court),

657). In that case, the state counsel's argument was that a *coup d'etat* is its own justification and allegiance is due to the *de facto* sovereign. The court expressly rejected this contention (PLD 1977 SC 706) and categorically stated that the courts cannot overlook all the juridical concepts and notions of morality, justice and the ideology of Pakistan on the basis of which the State of Pakistan had come into existence (PLD 1977 SC 716). The court, however, after analysing all the factors, accepted the military takeover as an extra-constitutional step and held that the Chief Martial Law Administrator (CMLA), having validly assumed power by means of an extra-constitutional step in the interest of the state and for the welfare of the people. The Court held that the CMLA was entitled to perform all such acts and promulgate all legislative measures which had been consistently recognised by judicial authorities as falling within the scope of the law of necessity, namely, all acts or legislative measures which were in accordance with, or could have been done under the 1973 constitution, including the power to amend it (PLD 1977 SC 716). The Court also affirmed that it continued to have the power to lay down the limits of the rule of necessity (Wolf-Philips, 1979) which justified the take over, on case to case basis (PLD 1977 SC 722) and that the court would continue to exercise supervisory jurisdiction notwithstanding the mandate of "The Laws Continuance in Force Order 1977." The Court also expressly held that the constitution of 1973 continued to be the fundamental law of the land; it was not dead but was held in abeyance except to the extent that the Laws Continuance in Force Order had kept it alive under its own provisions for certain limited purposes of running the day to day administration of the country (PLD 1977 SC 715-16).

If we analyse the judgment of the Court, we can make the following points.

- 1) The military takeover was an extra-constitutional step.
- 2) The 1973 constitution continued to be the fundamental law of Pakistan.
- 3) The Martial Law authorities were given the power to adopt certain legislative measures in accordance with the 1973 constitution including the power to amend it.
- 4) The Court reserved for itself the power to lay down the limits of such measures taken by the martial law authorities and the power to exercise supervisory jurisdiction.

### **Denial of Electoral Process**

It appears from the study of the Zia regime in Pakistan that, to start with, the martial law authorities submitted to the decision of the Supreme Court as at the least it had to legitimise their takeover in the hour when they were facing enormous political pressure built up by the ousted political party of Bhutto against imposition of the martial law. When it was announced by the Zia regime that the general elections would be held in October 1977, the PPP of Bhutto still commanded tremendous political support in the country. That fact worried the martial law authorities as well as the political forces opposed to Bhutto which had formed an alliance, namely the Pakistan National Alliance (PNA) for the elections of March 1977. The said elections, according to common belief, were widely rigged by the Bhutto government which was in power at that time. In these circumstances, the PPP of Bhutto was singled out as a common enemy of the martial law regime as well as the political parties opposing Bhutto before the military takeover. Zia, in collaboration with the political elite forming PNA, postponed the general elections in October 1977 for an indefinite period. Those political leaders seemed to have taken this step as a blessing in disguise for Zia. Zia repeatedly blamed the political leadership for advising him to postpone the general elections.

Again in 1979, after the execution of Bhutto and the release of a White Paper on the performance of the Bhutto regime, the martial law authorities for the second time

pronounced that the general elections would be conducted in November 1979, following the elections to the local bodies scheduled to be held in September 1979. The results of the local bodies elections brought home to the martial law regime and the PNA that the PPP of Bhutto still enjoyed the support of a large number of people in the four provinces of Pakistan particularly in the Punjab and Sindh and for the second time, the Zia regime postponed the general elections. It is worth mentioning that the PNA not only supported the Zia regime in postponing elections in 1977 but also joined his administration as civilian ministers. After the execution of Bhutto when the martial law regime was able to establish itself, these civilian ministers were sacked by the regime. It is interesting to note here that Zia was quite straightforward when he declared that he could not hold an election unless he was sure of some positive results. It was obvious that his positive results meant the complete elimination of the PPP from Pakistan's politics which by then was not likely to happen soon.

### **Playing with the Judicial Oversight through Constitutional Maneuverings**

After the execution of Bhutto when the Zia regime felt secure and comfortable within Pakistan, developments took place on the western borders of Pakistan which further strengthened the regime inside Pakistan as well as on the international level, particularly among the western powers and their media. The prestige of the regime was enhanced. These developments were the Russian occupation of Afghanistan and the establishment of the theocratic regime of Khomeini in Iran. After the Russian occupation of Afghanistan, the USA and its western allies were obliged to render moral and material support to the Zia regime. It is not germane to go into the details as we are concerned with the problem of provincial autonomy and national integration in Pakistan. In the succeeding years, the Zia regime shifted from the commitment to hold the general elections and restoring the 1973 Constitution to an emphasis on Islamisation of the society and the state. At that juncture, Zia saw it convenient to eliminate the judiciary from the balance of power which it (the judiciary) had been holding by virtue of the Nusrat Bhutto case.

In March 1981 Zia issued a Provisional Constitutional Order (PCO) promulgated as CMLA order 1981 *inter alia* to remove doubts about the jurisdiction of the Supreme Court and the High Courts. It was categorically stated therein that, notwithstanding any judgment of any court, certain provisions dealt with in Article 2 of that order would have effect subject to that order (the PCO) and any other order made by the President or CMLA. Under that order, the Court's authority and supervisory jurisdiction over the martial law administration was expressly rejected and superior courts were required to take a new oath of office under that new order. Of course, a number of judges of the superior courts including the Chief Justice of Pakistan, who had delivered the leading judgment in the Nusrat Bhutto case declined to take the oath, while some judges were not invited to take the new oath and were sacked by the regime. Nevertheless, many others took the oath and accepted the mandate of PCO. From 1981 until March 1985 when the Zia regime partially restored the 1973 constitution after substantial amendments, the said PCO was the constitutional mandate for running the country and was incorporated in the amended constitution. Article 16 of the PCO provided that the President as well as the CMLA would have, and would be deemed to always have had, the authority of amending the constitution.

Zia, by promulgating the PCO, used the judgement of the Supreme Court in Nusrat Bhutto Case as acknowledgement of his regime's legitimacy and derived his power of amending the constitution from the said judgement. On the other hand, he refused to acknowledge the supervisory jurisdiction of the court reserved by it in the said judgement and thus proclaimed an unqualified power to amend the constitution which was a vivid repudiation of the said judgement.

We can analyse this development and offer arguments why Zia took such a step, supporting our interpretation by the succeeding developments which took place in 1983, 1984 and 1985-87. In 1983, Zia announced a constitutional formula which was a significant

departure from the principles of parliamentary and federal forms of governments as had been incorporated into the original 1973 constitution. In 1984, Zia held a referendum which was in contravention of the provisions of the said constitution and again in 1985 he unilaterally amended the constitution, altogether turning its emphasis from a parliamentary-federal form of government into a presidential-unitary combination. These points shall be discussed in detail later. Zia's contention appears to be that, had the courts continued to hold the supervisory power, those acts would have been challenged in the courts and could be declared as null and void being found in violation of the requirements of the 1973 constitution. Zia's contention proved right when the above mentioned steps taken by him were declared as unconstitutional by the former members of judiciary who had to quit after the promulgation of the PCO.

### **Reviewing Major Political Developments under the Banner of MRD**

Now we shall discuss the political developments which took place as a reaction against the measures taken by the Zia regime in 1980s. As mentioned above, MRD, an alliance of 11 political was formed against the martial law regime in February 1981. This alliance included almost all the prominent and influential political parties except the Jamaat-i-Islami, the Muslim League of Pir Pagara and Jamiat Ulema-e-Pakistan. Some of the leading parties which joined the alliance were the Pakistan Peoples Party, National Democratic Party, Pakistan National Party, Pakistan Democratic Party, Tehrik-e-Istiqlal, Jamiat Ulema-e-Islam, Pakistan Muslim League (Khairuddin group), Qaumi Mahaz e Azadi (National Freedom Front) and Mazdoor Kisan Party (Workers and Peasants Party). These parties signed a four-point agenda to collaborate with each other. Their main intention was to achieve:

- 1) An immediate withdrawal of the martial law.
- 2) Restoration of the pre-Martial Law Constitution of 1973.
- 3) Ensuring the conduct of elections according to the original 1973 Constitution.
- 4) Guarantees to safeguard the provincial interests.

Moreover, upon the insistence of the National Democratic Party, Pakistan National Party and Tehrik-e-Istiqlal, the MRD agreed that after the reinstatement of democracy, the 1973 constitution would be modified to provide a four-subject centre only entrusting all the residuary powers into the provinces. Those four subjects included Defense, Foreign Affairs, Currency and Communications.

As political activities were banned, the MRD, for about two years, remained quite inactive, nevertheless, in the summer of 1983 it demanded that its four point programme be accepted and implemented otherwise it threatened to launch a movement against the martial law regime. In response to their demands, Zia announced a constitutional formula on 12 August 1983 which abandoned all the hopes for the restoration of the 1973 constitution and an undiluted democracy (See Zia's statement in the Pakistan Times, Lahore, 13 August 1983 and the Daily Jang, London 13 & 14 August 1983). The main points of the said formula were as follows:

1. The 1973 constitution shall be amended to the effect that the President shall have the power
  - a) to appoint the Prime Minister and dismiss him.
  - b) to veto any legislative measure.

- c) to dissolve the legislature at his own discretion.
  - d) to appoint chiefs of the armed forces.
  - e) to appoint Chairmen of the Election Commissions.
  - f) to appoint Governors of the provinces, who should have the same powers in the provinces as the President at the centre, albeit under the President's instructions.
  - g) to appoint the cabinet members at the centre and provincial ministers.
  - h) to appoint the Chief Justices and judges of the Supreme Court and High Courts.
2. A national security council containing the chiefs of the armed forces should be formed which should act in any emergency situation and the government should be bound to seek the approval of this council for taking any measure in any emergency situation.
  3. The general election should be held before 23 March 1985 and the martial law should be lifted.

When this formula was announced, the MRD took it as the total negation of the 1973 constitution and their contention was that the establishment of the national security council amounted to perpetuation of the martial law even after a civilian government was restored as, in any given situation in this council, the decision taken by the members of the armed forces would prevail and the supremacy of the civilian authorities would be undermined. It was also seen as a negation of the parliamentary principle as in any such situation a few persons in their own discretion would act over and above the Parliament which is considered to be the most powerful and responsible body in a parliamentary form of government. As a reaction against the abovementioned step taken by Zia, the MRD decided to launch a movement of disobedience and protest against the Zia regime in August 1983 which continued until the end of September, 1983.

The MRD movement of protest was met by the Zia regime with an iron hand and there were a large number of deaths, casualties and arrests in Pakistan. There was an extensive coverage of these events in the foreign press while the national media in Pakistan did not report the truth due to the press censorship policy of the regime. The Guardian, the Times, the Daily Telegraph and the Financial Times followed the day to day developments over a period of two months (For details see these newspapers from 15 August 1983 to 30 September 1984). News bulletins on British television and radio provided a full coverage of the events. The intensity and the momentum of this movement was not the same in all the provinces of Pakistan. The province of Sindh became the heartland of that movement which received harsh treatment at the hands of the military government including aerial bombardment of some areas where the activists had their bases. The movement in Sindh turned out to be a forceful display of destruction and harassment which created a delicate problem of law and order. The regime dubbed that movement as a non-political, criminal activity undertaken by the anti-Pakistan personnel. After Sindh, the movement achieved a forceful expression in Balochistan where the Pakistan National Party of Bizenjo played an active role during that period. In the Punjab and NWFP, the movement could not go beyond offering voluntary arrests by the workers of different political parties. This led the political leaders of Sindh and Balochistan to the conclusion that the Punjab did not share with them the feelings of frustration and deprivation caused by a strong central government run by the civil military bureaucracy as the Punjab had an overwhelming majority in those two institutions (See Mengal's open letter to Wali in the Daily Jang, London, 15 May 1984). Certain political leaders from the smaller provinces had touched the extreme end and advocated for a loose federation or a confederation for the future constitutional arrangement in Pakistan. This point shall be discussed at some length later in this study. The MRD was crushed in 1983 by the Zia regime, nevertheless, the problem of law and order and

general unrest had continued to exist in Pakistan particularly in Sindh where the students had become very active for the achievement of a free and independent Sindh Desh. Benazir Bhutto, who seemed to believe in a United Pakistan, was not optimistic about the situation when she said that if a referendum was to be held in Sindh, the majority of people would vote for separation (See Benazir's statement in the Daily Jang, London 26 April 1984).

### **Referendum of 1984**

In December 1984, Zia held a referendum which was opposed by the political leaders on the ground that there was no provision in the 1973 constitution to hold such referendum by the President for taking any decision. We are not concerned with the constitutional merit of the referendum but it would be useful to discuss how it was utilised by the Zia regime. The question asked by the Zia regime through that referendum was totally ambiguous and irrelevant to the purpose it was used for. Zia put the question before the people as to whether they supported his programme of Islamisation and should it be continued. He proclaimed that if the majority of people voted for the process of Islamisation it would amount to his election as the President for the next five years. This was an illogical conclusion as the people of Pakistan, whose overwhelming majority believe in Islam, would never say no to such a question, but it is interesting to note here that the said referendum met a total failure as only 10 to 15% voters turned up to cast their votes. The results of the referendum were reported by the foreign press (See The Guardian, the Daily Telegraph, The Times, London 20 Dec. 1984) as widely rigged by the Zia regime which declared a 64% turnout and announced that 97% of the total cast votes were positive. Thus, the regime claimed a mandate to Islamise the society for the election of Zia as President to serve for the next five years. The political leaders opposing Zia condemned the referendum as fraudulent, rigged and wastage of public funds. Their contention was that the people had rejected the Zia regime through that referendum; he should hold a general election and transfer the power to the elected civilian government.

### **Restoring the Parliamentary Democracy**

In February 1985, the Zia regime held general elections to the National Assembly and four provincial assemblies, albeit on a non-party basis which were widely condemned by the prominent and influential political forces in the country which had formed MRD in 1981. The MRD boycotted the general elections on the basis that such elections were against the spirit of the Parliamentary system and the 1973 constitution of Pakistan. The regime detained all the MRD leaders to make their protest and boycott ineffective, nevertheless, the Jamaati-Islami and the Muslim League (Pagara group) contested the elections while some persons associated with the political parties constituting MRD participated in the elections in individual capacity and won at 47 out of 237 seats of the house. Out of these 47 successful candidates, 40 belonged to the PPP. The Jamaat-i-Islami which had contested the elections vigorously could secure only 8 seats while the voters rejected numerous contestants who were linked with the Zia regime. Four provincial ministers and five federal ministers were included in those rejected candidates. There were different comments by the foreign news agencies regarding the electoral outcome. The New York Times praised the elections and said that the people had rejected the MRD's call for boycotting the elections while the Russian news agency, Tass, held that the defeat of several ministers of the Zia regime and members of his self-appointed National Assembly as well as the candidates supported by the Jamaat-i-Islami, a strong ally of the regime, amounted to the rejection of Zia's policies of Islamisation, its stand on the Afghanistan issue and its autocratic rule. However, the British newspapers had a balanced view of the situation. They observed that, on the one hand, the people did not respond to the MRD's call for boycotting the election while, on the other hand, they expressed their opinion against the martial law by participating in the elections and rejecting several persons associated with the regime. The Press further observed that those elections would not bring any substantial change in the power structure and Zia would continue to hold extensive power unless he himself decided to part with it. The Zia regime

declared that the total turn out in the elections was 52.93% while the opposition leaders claimed that the polling stations were empty and the turnout was very low and the people had rejected the designs of the Zia regime to amend the 1973 constitution.

### **The 8<sup>th</sup> Constitutional Amendment**

As mentioned earlier, Zia announced in August 1983 that he would amend the 1973 constitution before the restoration of the civilian rule in Pakistan. In early 1985, when he fixed the dates for the elections to the National Assembly and the provincial assemblies to be held in the last week of February 1985, he promised that he would announce the amendments before those elections, but it appears that reviewing the situation in the country after the MRD's boycott of the elections, he postponed that announcement out of apprehension that such an announcement might cause the withdrawal of some candidates and reduce the turnout of voters in the said elections. On 2 March 1985 after the elections were held, Zia, while addressing the people on radio and television, announced his controversial amendments in the 1973 constitution through a martial law decree named as the Revival of Constitution Order 1985 (See Constitutional Amendments Announced, Address to the Nation, President General Mohammad Zia ul haq, Rawalpindi, 2 March 1985, Government of Pakistan, Islamabad, n. d.).

The amendments made under the said order were as follows:

- 1) The Executive authority of the Federation shall vest in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the constitution.
- 2) The President shall have the power to dissolve the parliament.
- 3) The President shall appoint the Prime Minister, albeit from amongst the members of the National Assembly, who will have to obtain the support of the majority of the members of the National Assembly to form the cabinet.
- 4) The President shall be the Supreme Commander of the armed forces and he shall appoint the armed forces' chiefs at his own discretion.
- 5) He shall appoint the four provincial governors at his own discretion, who shall have the same powers as the President at the centre.
- 6) He shall appoint the judges of the Supreme Court and the four High Courts.
- 7) He shall have absolute power to decide his powers under the constitution, and indemnity clauses ensured that he could not be questioned.
- 8) The cabinet will aid and advise the President in the exercise of his functions. The President shall act in accordance with the advice of the cabinet, amended Article 48 said, but it was followed by an unequivocal subparagraph giving the President full discretion to act in any way he was empowered by the constitution. The arbiter of those powers was the President whose decision on the matter shall not be called into question.
- 9) The constitution shall be amended by the 2/3 majority of two houses of Parliament and a simple majority of each provincial assembly.
- 10) There shall be a national security council consisting of 11 members including three chiefs of the armed forces.

If we analyse the above mentioned amendments, it appears that the office of the President under the new constitutional order had become all powerful, nevertheless, without being responsible either to any elected institution or the people at large. Moreover, whereas the powers of the President had been increased, the method of the election to the office had remained untouched which was indirect and without any popular mandate. The President had been authorized to formulate rules for the allocation and transaction of the business of the federal government. Conceivably, in view of the amendment, the President could keep certain aspects of executive authority outside the jurisdiction of the cabinet. The President, who was empowered to appoint the Prime Minister and other members of the cabinet, had to act according to the advice of the cabinet and not the Prime Minister which left room for the President to find his allies in the cabinet and then would be able to take certain measures in collaboration with them, thus undermining the principle of collective responsibility practiced in a parliamentary form of government. Moreover, in a parliamentary form of government, the Prime Minister who was head of the majority party, invariably felt an obligation to accommodate different pressure groups in the parliament while forming his cabinet, whereas under the new constitutional arrangement, the Prime Minister had to look towards the President for these appointments, and he could undermine the smooth functioning of the cabinet by appointing the individuals of his own choice and not that of the Prime Minister, which the Prime Minister might think was essential to create a workable cabinet and unite the parliamentary party. The most significant aspect of the President-cabinet relationship was that the cabinet might many times find itself in a difficult situation when facing the consequences of certain policies for which they were not responsible and were carried out by the President who was not responsible either to them or to the people. It created a strange situation that we can term as responsibility without power for the cabinet and power without responsibility for the President.

### **Working of the Federal Form of Government**

As far as the federal aspect of the new constitutional arrangement was concerned, we find substantial changes in centre-province relationship. The amendments had curtailed the power of the Parliament and the cabinet to affect such a relationship on the one hand and had undermined the power of the provincial legislature to form or dislodge the provincial ministries on the other hand. The President, at his own discretion, had power to appoint a provincial governor who shall, under the instruction of the President, exercise substantive power, nevertheless not being responsible to the provincial legislature but only to the President and shall act as his agent. In that regard, the new amendments had departed from the provision of the 1973 constitution which empowered the federal government to suspend a provincial government only in the case of an emergency whereas, in normal circumstances, it was the provincial legislature and the Chief Minister who were all powerful to exercise the executive authority and the provincial governor acted as a figurehead only. We do not intend to suggest that the provisions of the 1973 constitution did not have any loopholes and the federal government did not interfere in provincial affairs but the point we have to make here is that the 1985 amendment order had provided a constitutional coverage to any such act of undermining the provincial autonomy by the federal government which should jeopardize the principles of federalism and consequently might cause unrest and frustration among the provinces. It is interesting to note here that the political elite demanded more provincial autonomy and constitutional protection against the powers of the central government than the 1973 constitution had provided, but the 1985 amendment order had reversed the process and had established complete control of the provincial governments by the central government. This we can compare with the 1962 constitution of Ayub which provided the President with extensive power to control the provincial governments through his appointed governors and had caused unrest and rebellion in the provinces that ultimately resulted in the dismemberment of Pakistan in 1971.

In March 1985, when Zia amended the constitution unilaterally, it was declared by his regime that he had the power to amend the constitution by virtue of his provisional

constitutional order of 1981 and judgement of the Supreme Court in the Nusrat Bhutto case hence those amendments did not require ratification by the Parliament and that he might make more amendments to overcome any difficulties in the future (See the Daily Jang, London 12 March 1985). It appears that the Zia regime had not done enough homework before announcing those amendments as Zia issued many contradictory and hotchpotch statements following those amendments. In the first instance, it was declared that the National Assembly could reject the amendments in total or in part (See the Daily Jang, London, 6 March 1985). This was the reason why Zia, while amending the constitution, made the procedure of amendment in the constitution difficult and complicated as mentioned above, but when he decided to take away the power of the National Assembly to review the amendments made by him, he altered the procedure of amending the constitution as well. He issued another martial law order to the effect that no Presidential order could be amended or abandoned by anybody without the prior approval of President (See the Daily Jang, London, 19 March 1985). Subsequently, Zia's appointed Prime Minister, Junejo, declared that the constitutional amendments shall not be discussed or debated in Parliament (See the Daily Jang, London, 28 March 1985). The point we have to make is that, to start with, Zia insisted that he had the lawful authority to incorporate any amendments in the 1973 constitution without being questioned by any representative body elected by the people but soon he realised that any power assumed by him through his provisional constitutional order of 1981 could be questioned in the higher courts as the said order was issued in contravention of the judgement of the Supreme Court in the Nusrat Bhutto case which established the supervisory power of the court over any act of the martial law authorities done under the 1973 constitution. It is very interesting how Zia changed his mind about his unilateral amendment.

On 8 March, Justice Anwarul Haq, who delivered the leading judgement in the Nusrat Bhutto case, issued a declaration that the Provisional Constitutional Order of 1981 and the Revival of the Constitutional Order of 1985 were against the spirit of that judgement of the court and had no constitutional or legal validity. He recommended to the martial law authorities to leave the task of incorporating constitutional amendments to the elected Parliament (See the Daily Jang, London, 9 & 10 March 1985). Moreover, many other constitutional and legal experts believed that the PCO and RCO had many constitutional and legal flaws and lacunae and as soon as the martial law was lifted they could be challenged in the courts of law (See an article by Farooq Ahsan "A Review of the Constitutional Amendments" in the Daily Jang, London 14 March 1985) and should create a difficult situation of constitutional legitimacy. Moreover, besides these constitutional and legal complications, the Zia regime had to face political reaction caused by those amendments. The amendments were almost unanimously criticised by the political elite including the Jamaat-Islami which was closely associated with Zia. The Jamaat Chief Tufail condemned the amendments made by Zia as unwanted and urged the withdrawal of the same which, in his opinion, otherwise were bound to create a severe crisis and chaos in the country (See Tufails' statement in the Daily Jang, London 12 April 1985). Justice Anwarul Haq, Justice Durrab Patel, Justice Qadiruddin, Justice Changez, leading lawyers like S.M. Zafar, Farooq Ahsan and Aitezaz Ahsan condemned the amendments and believed that they had changed the basic structure of the 1973 constitution to a presidential form of government albeit with a powerful and irresponsible President. The foreign press also condemned the amendments as an act by-passing assembly to seize extra powers and believed that the announcement had crushed a brief flowering of optimism about the restoration of democracy in Pakistan (See The Guardian, London 4 March 1985).

### **Disowning the Constitution by MRD**

These constitutional amendments opened a debate over the basic constitutional issues and the political parties forming MRD disowned the unanimously approved constitution of 1973 which they were demanding to be restored in 1981. After the amendments were announced, the political elite including Asghar Khan, Jatoi, Wali Khan,

Bizenjo, Nasrullah Khan and others believed that 1973 constitution no longer existed and a new constitution was to be framed on the basis of the 1940 Lahore Resolution. Jatoi issued a 14-point formula for the restoration of democracy and threatened that otherwise a popular movement should be launched against martial law. As a response to those amendments, a Sindhi Baluchi Pashtoon Front was established in London on 1 April 1985 by Hafeez Pirzada, Mumtaz Bhutto, Ataullah Mengal and others which demanded that the four provinces of Pakistan must form a confederation which, in their opinion, was the only way to save Pakistan from further disintegration. The confederation formula was a substantial departure from the federal constitutional arrangement which was unanimously agreed upon by the elected parliament in 1973. In those circumstances, it appeared that the said amendments had damaged the minimum agreement among the political elite regarding fundamental constitutional problems and once again had initiated a hot discussion involving controversial constitutional matters which were settled by the 1973 constitution, notwithstanding the reality that the Bhutto government had misused authority to the resentment of the opposition parties which believed that the 1973 constitution could be upgraded to guarantee more provincial autonomy and less intervention by the federal government in provincial matters. The political elite in Pakistan including Jatoi, Asghar Khan, Benazir, Wali Khan and Bizenjo disowned and condemned the demand of a confederal constitution by the Sindhi Baluchi Pushtoon Front but they believed that such demands were a logical consequence of political suppression, economic exploitation and frustration and warned that the frustrated and deprived people could go beyond that demand (See Asghar's statement in the Daily Jang, London 22 April 1985).

### **Parliamentary Response**

Now we shall discuss how the Zia regime after realising that their actions taken under the PCO lacked constitutional and legal validity decided to refer the said constitutional amendments to the Parliament which was elected on a non-party basis in February 1985. This was obviously a second thought in the light of Zia's previous statements that he himself had the power to amend the constitution and such amendments did not require any ratification whatsoever by the Parliament. As already mentioned, the Zia regime changed its mind as the validity of various actions under the PCO were challenged by the political elite as well as by eminent lawyers, jurists and former judges of the higher courts. In an interview to the Jang Forum, three retired judges of the Supreme Court, Justice Durrab Patel, Justice Fakhruddin Ibrahim, Justice Fazal Ghani and an eminent Jurist, Hafeez Lakhu emphasised that the judgement of the Supreme Court in the Nusrat Bhutto case provided the martial law regime a conditional power to act under the 1973 constitution and to amend it subject to the supervisory jurisdiction of the higher courts. They believed that after the promulgation of the PCO of 1981, the power acquired by the martial law authorities under the said judgement had ceased to exist and consequently the PCO itself had no constitutional or legal validity (Reported in the Daily Jang, London 19 November 1985). The same opinion was expressed by the retired Chief Justice of the Supreme Court, Justice Anwarul Haq, who was author of the judgement in the Nusrat Bhutto case. In these circumstances the Zia regime could not help seeking constitutional coverage for its acts and referred the said amendments to the Parliament in September 1985.

At first, when the Amendment Bill was placed before the Parliament, a substantial number of members were against the passage of such a bill but the Zia regime used both the methods of carrots and sticks and made it abundantly clear to the members of Parliament that if the martial law orders were not ratified by them, the existence of Parliament would be in danger. It could be dissolved by the martial law authorities in any such situation (See Junejo's statement in the Daily Jang, London 9 September 1985). This statement came from Junejo, the Zia appointed Prime Minister, who a few weeks ago had categorically ruled out any intention of the regime to place the bill before the Parliament. Many of the members were bribed or pressurized through their relations occupying high posts in Zia's administration while others were threatened that if they did not support the Bill, the

petitions of their opponent candidates in February 1985 elections regarding the election procedure and results would be accepted (See Irshad Haqqani's article in the Daily Jang, 16, 17 Nov. 1985). The most important factor which played a significant role in persuading the members of the parliament was the political situation and the balance of power held by different forces in the country. As mentioned earlier, the 1985 elections were on a non-party basis which were boycotted by the political parties forming MRD which resulted in the return of different individuals in the Parliament who lacked substantial political support in the country and had managed to win the elections while the powerful political elite was out of the competition. In that situation, the balance of power was held by the armed forces on the one hand being the de facto rulers and, on the other hand, by the MRD in general and the PPP in particular which had a real potential of mustering political support.

In these circumstances, the Parliament seemed to be an odd entity in the power structure which was not recognized as a representative body by the political elite who enjoyed a substantial political support in the four provinces of Pakistan. In such a situation, it was very likely that the Parliament would act in accordance with the requirements of the Zia regime to save its existence for the next five years. In August 1985, there were two significant events which brought Parliament closer to the Zia regime. There was a huge public meeting addressed by the MRD leaders in Lahore on the day of independence and a very warm welcome of Benazir by the people of Karachi and other parts of Sindh when she visited Pakistan for the burial of her brother. These two events worried the Zia regime as well as the Parliament who had been under the impression that the PPP had lost its popular support (See the Times, London 12 November 1985). It appears that Parliament had no alternative but to collaborate with the Zia regime to save its existence at the hands of Zia on the one hand and the potential political forces on the other hand which had to stay outside the Parliament as a result of their boycott. Consequently, the majority of the members of the National Assembly unanimously voted for the Amendment Bill on 16 October 1985, nevertheless, 66 members out of 237 abstained from voting thus expressing their disagreement. The Bill was then sent to the Senate which passed it unanimously, though 13 members out of 87 abstained from voting.

Parliament authenticated all the acts of the martial law regime since 4 July 1977 and passed an indemnity bill which not only provided constitutional coverage to the previous acts of the martial law authorities but also validated in anticipation all the acts of the said authorities which they might take to the day of the lifting of martial law. This pre-validation of the martial law acts appeared to be an unprecedented act by the parliament which amounted to the effect that before martial law was lifted, the Zia regime could do anything it desired under that coverage of constitutional and legal validity. Moreover, Parliament exempted Zia from the restriction of holding any other post of benefit being the President under the 1973 constitution thus giving him an open choice to retain the job of army chief as long as he needed it. This was again an unprecedented phenomenon.

### **Turning into Unitary State**

If we analyse the constitutional development in Pakistan at that time, it appears that, although, the Zia regime had obtained a constitutional and legal coverage of its acts by the Parliament, nevertheless, it still lacked real popular political support and legitimacy as the potential political forces did not recognise the regime's legitimacy and they had challenged the representative character of the parliament elected on the non-party basis which excluded all the genuine politicians from any such elections. Moreover, the constitutional amendment bill had altogether changed the spirit of the 1973 constitution which provided a federal and parliamentary form of government. The new constitutional arrangement amounted to a presidential unitary form of government (see Wali's statement in the Daily Jang, London 19 November, 1985) rather a return to the Viceregal system of the Government of India Act of 1935 (Baxter, 1985:112) which was not capable of uniting the different ethnic, linguistic and cultural groups into the framework of a single nation.

The political elite belonging to the smaller provinces had blamed the Zia regime for establishing a strong unitary form of government and denying the rights of provincial autonomy. In these circumstances, there was a polarisation among the political elite and many of them had threatened to use forceful measures to get their political rights and provincial autonomy if the Zia regime continued to deny the same (See Wali's statement in the Daily Jang, London, November 19, 1985). The said developments had damaged a minimum consensus among the political elite over basic constitutional issues and many of them seemed to be pushed by those developments towards an extreme of demanding a confederal arrangement in Pakistan. Mr. Fayyaz Ahmad Hussain, one of the authors of the current study, was told by Bizenjo that he was the only Baloch leader left who believed in a federation and peaceful settlement of the problem through negotiations (Interview of Ghaus Baksh Bizenjo with Fayyaz Ahmad Hussain London September 1984). A substantial part of the political elite in Balochistan, Sindh and NWFP had resorted to a violent reaction and it was reported that in those provinces people were gathering arms for any such struggle.

Mr. Fayyaz Ahmad Hussain was told by eminent political leaders like Wali, Bizenjo, Khar, Pirzada, Asghar Khan, Bugti and many others in their interviews that the martial law regime of Zia had widened the gulf between the Punjab and the smaller provinces and had aggravated the suspicion, distrust and fear of domination among them. These leaders believed that the apprehensions of the smaller provinces about their exploitation and domination by the Punjabi dominated civil and military bureaucracy were no more unfounded and had been confirmed by the successive Martial law regimes in Pakistan. They believed that in such a situation the four provinces of Pakistan were standing somewhat behind the starting point in 1947 as far as the process of nation building was concerned. In the given situation, it appeared that the Zia regime, though being successful in retaining power by its sheer force for more than ten years, had failed to advance the process of nation building, rather it seemed to have reversed it. In fact, the regime continued to exercise authority for a few years to come and successfully resisted the political pressure from its opponents by using coercive means but it remained without a genuine and popular political support notwithstanding that Zia had been trying to attain legitimacy for himself and his government since December 1984 by adopting different measures. He patronised the establishment of a government sponsored political party, the Muslim League headed by his appointed Prime Minister Junejo in the National Assembly and the four provincial assemblies and proceeded towards the civilianization of his military rule through a "carefully tailored constitutional system" (Rizvi, 1986) on the one hand, whereas, on the other hand, the continuance of a civilian military regime was bound to sharpen the polarization and widen the gulf among the political elite and when such regime ceased to have the power to rule (which happened in 1988), the elite disagreed on the basic issues as they did in 1969 and 1971 which caused the dismemberment of Pakistan and the same was being feared to happen again. The Zia regime benefited from the polarization among the political elite to perpetuate what the successive regimes in Pakistan had done, but such regimes always disrupt the process of nation building and cause severe problems of national integration. In short, the Zia regime achieved temporary administrative success but was bound to lack good will and popular political support. To sum up we can quote Raja Gopalachari, a prominent leader of the Indian National Congress in British India, who observed:

"National goodwill is, however, a far more precious asset than temporary administrative success. Such success at the cost of goodwill is fraught with evil for the future (Gandhi, 1944:138)."

## **Conclusion**

During the Bhutto regime in Pakistan, the political elite of the smaller provinces doubted the possibility of any peaceful solution to the problem of provincial autonomy but after a lengthy spell of martial law they felt more frustrated than ever. Now, a substantial

portion of the regional elite abandoned the hope of getting their rights within the framework of a United Pakistan and were convinced that a central government dominated by the Punjabi civil military bureaucracy could not deliver any goods to them. The amendments made in the 1973 constitution in 1985 had intensified the problem of national integration in Pakistan. These amendments had undermined the Parliamentary and federal nature of the constitution and had facilitated a permanent army rule, albeit under a constitutional arrangement. The dissolution of the National Assembly and dismissal of Junejo's cabinet by Zia in the last week of May 1988 had further deteriorated the situation and had confirmed the doubts of the regional elite that the Punjabi civil military bureaucracy had no intention to withdraw itself from power. There was a widespread unrest in Sindh, NWFP and Balochistan at that time which posed a potential danger to the integrity and solidarity of Pakistan and its survival as a united country. It seemed that the Zia regime had overlooked the intensity of the problem and underestimated the desire of the different subnational groups for self-government and self-realisation. The constitutional arrangement introduced in 1985 seemed to lack a political vision of those who were in power and was bound to prove an administrative not political, a temporary not long term arrangement, and was based on suppression and coercion rather than on goodwill.

The impulse of self-government and self-realisation among the different ethnic, cultural and linguistic groups in Pakistan has proved to be irresistible while its resistance has caused its dismemberment in 1971. Even Hegel, who enunciated the divine theory of state, realised that a progressive self-realisation was at work in history. We conclude that the Zia regime under martial law or otherwise under the new constitution had been able to remain in power for a few years but it had not been able to suppress the political forces and resist them forever. Since the demands of the subnational groups were not responded to and the problem was not solved through peaceful means, negotiation and political dialogue, the subnational and regional feelings culminated in separate nationalisms, as they did in Bangladesh. In such a case, the struggle by the subnational groups to get their rights had been turned to force and an armed rebellion was seen in urban Sindh and Balochistan at various intervals of recent history of Pakistan.

In short, the survival of Pakistan as a united country very much depends upon the attitude and responsiveness of the civil military coalition towards the demands of different subnational groups. If they are responded to as highly as wished, it may lead to a settlement of peaceful co-existence between these subnational groups, otherwise the hatred and resentment which has been simmering for quite a long time may heat up and boil any time in the not too distant future, and in such a case, the possibility of a civil war and further dismemberment of Pakistan, cannot be ruled out.

To conclude: "Unless philosophers are the kings or kings are the philosophers, the states shall never rest from evil."(Plato)

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