

## CONSTITUTIONAL HISTORY OF PAKISTAN

### Pre-mid assignment (2)

**Fatima Tariq**

**Ms. Shahzeen Jamil**

**October 11, 2018.**

### Question

*There was a shift of forms of government from the Constitution of 1956 to the Constitution of 1973.*

*Analyze the features of such forms of the government stating which form you think best fits the current situation of Pakistan.*

### Answer

The point of discussion of this paper is to analyze the forms of government in the context of three constitutions of Pakistan. The objective of this paper is to explain the reasons which state the form of government that fits the current situation of Pakistan. It considers the forms of government according to political ideology and distribution of powers. The paper at hand also figure out the differences between the parliamentary and presidential form of government. This paper precisely evaluates the significance of the federal system of government. While doing an analysis of the constitution of Pakistan 1973, this paper recommends the better system for Pakistan.

Basically, when we talk about forms of government, we take forms of government:

- i.** according to political ideology
- ii.** according to the distribution of powers

**I. According to political ideology, Pakistan is a democratic state. It is a federal parliamentary republic.**

Pakistan has a unique constitutional experience as it has witnessed frequent shifting of forms of government from the Constitution of 1956 to the Constitution of 1973. Therefore, Pakistan has kept on oscillating between presidential and parliamentary forms of government. The result has been instability and unpredictability in the relationship between the democratic institutions and a powerful civil-military bureaucracy. Very often, politicians and dictators use constitutions were used as an instrument to achieve personal interests and amend them according to their short-term objectives. Judiciary, more often than not, did not help in restraining the authoritarian rulers. Judges are said to be the guardian of the constitution, but unfortunately, in Pakistan, judiciary never play their role as custodians of the fundamental law of the land.

The first Constitution of 1956 adopted a parliamentary form of government. But due to some technical flaws and lack of leadership, it led to its failure. The constitution of 1962 conceptualized a presidential form of government but its dictatorial nature shattered the democracy in Pakistan. The basic principles regarding the adopted form if the government was not given enough weight in both cases. For example, in 1956, Governor-General was given more powers as compared to the Prime Minister, which did not suit the spirit of the parliamentary democracy. In 1962, no system of checks and balances was introduced which is the main characteristic of the presidential system. In comparison, the constitution of 1973 was a democratic one. The parliamentary form of government was adopted.<sup>1</sup>

---

<sup>1</sup> Kausar Parveen 2000: 1

The statement of this paper is to analyze the features of such forms of government and state your point of view that which form you think best fits the current situation of Pakistan.

First of all, it is important to remember that parliamentary and presidential systems are two entirely different concepts, so, I will brief both forms of government, so in end, one can analyze the suitable system for Pakistan.

1. **Nature of Government:** In presidential form, there is an administration instead of the government, working under the doctrine of Separation of Powers, which says that judiciary and lawmaking body are separate organs of state. While, in a parliamentary system, there are three organs of government, the executive, the legislature and the judiciary.<sup>2</sup> What I observe is that, theoretically, there is a doctrine of separation of power and all three organs work separately, but practically, most of the times, these institutions intervene in each other and have outreached their boundaries.
2. **Political Parties:** There is no concept of ruling party or opposition in the presidential form of government. There are only two prime democratic parties. and the president is free from any party collaboration. On the other hand, there is a multi-party system in the parliamentary form and the element of party affiliation remains in the executive and it cannot be entirely impartial.
3. **Heads of the state and government:** There is only a one-man i.e; president in the presidential form of government who is authorized to be head of state, and also played his part as head of government and executive. While, in the parliamentary system, two

different people hold these two positions. In Pakistan, according to the constitution of 1973, Prime Minister is head of the state, and the president is head of government.

4. **Election:** In the presidential form of government, people elect and appoint the president through the system of direct elections.<sup>3</sup> The team of president includes federal ministers who are experts in their fields. All technocrats are selected by the president himself. On the contrary, in a parliamentary system, people elect all members of the provincial assembly and national assembly by voting to their respective candidates. These MNA's and senators then chose the prime minister of the country who is also the leader of the parliament, by casting votes. It is a phenomenal hallmark of the parliamentary form that to be the member of the cabinet, it is prerequisite that one must be the parliamentarian. So, according to me, due to this, the cabinet of prime minister lack expertise and technocrats.
5. **Term of Office:** In a presidential form of government, the president is elected for a fixed term and no re-elections occur unless some chaotic situation arises in a country. President can only be removed by the impeachment and it is in so rare situations when he is failed to carry out his responsibilities due to some unfitness or illness. On the other hand, in parliamentary form, the prime minister has to leave his office and resign in the case of a vote of no confidence from the majority of parliamentarians. The new prime minister is elected through voting by members of the assembly. The courts have the power to disqualify him on some particular offense like corruption charges or contempt of court. Many examples can be seen in the constitutional history of Pakistan.<sup>4 5</sup>

---

3 Verma 2010: 231

4 Imran Ahmed Khan Niazi vs Mian Muhammad Nawaz Sharif (2017) PLD 2017 SC 265

5 Suo moto case PLD 2012 SC 553.

6. **Source of Powers:** Mostly, the supremacy belongs to the constitution in presidential system. All government institutions figure out their jurisdictions from the constitution. While the supremacy belongs to the parliament in parliamentary system.<sup>6</sup> No court has the jurisdiction to challenge an act of parliament or its authority.

The current political situation of Pakistan is better than previous decades, but it requires a lot of more stability. If I would be the lawmaker of Pakistan and a part of the prestigious parliament, I would recommend a presidential form of government. *What I think is that presidential system is the best way to ensure the democracy that works.*

I have been observing since the past few years is that politics is just a game of power. Our parliamentary governments have made a parliament whose only target is to acquire self-power. The system has made such broken and immobilized governments who concentrate less on governance and more on power.

After the comparative study of the political system of United States with Pakistan, I noted that there are many issues in Pakistan prevailing only because of the Parliamentary system, like caste system, feudalism, weak political parties, lesser accountability etc. What I like most in the presidential form of government is that the powers of MNA's and MPA's are limited in it. The parliamentarians just confined to law-making and oversight of national affairs, and they cannot be appointed as ministers. In this way, politicians would miss a chance to do corruption who only enter in politics to steal public money.

---

<sup>6</sup> Verma 2010: 231

Actually, due to Ayub Khan's regime, there is the wrong perception among people of Pakistan about the presidential system is that it is equivalent to the monarchy. No! the Presidential government is not the dictatorship.

The best point in my point of view is that a presidential system is justified because the head of state and the head of government will be the same person with sole responsibility.

In my opinion, the presidential system lends certainty and stability to the government. A president is elected for a fixed term of office and cannot be removed except for or misconduct through a difficult impeachment procedure. He, thus, has full opportunity to formulate long-term policies and to execute them. He can work single-mindedly for the country without losing any fear of losing the majority in the legislature.

From my perspective, the president can tackle the chaotic situation in the country, more efficiently. In times of emergency, the presidential system has the ability to respond quickly and effectively by resorting to firm measures. It is not hostage to changing and fluctuating majorities in the legislature.

Moreover, the strong principle of separation of powers in the presidential system is the biggest need of Pakistan. I believe that the presidential system promotes strict separation of power among the three organs of the State and the legislature has the opportunity to focus more on lawmaking.

However, to reach the aim of the transformation of the form of government is not easy, the conspiracy of feudal lords and Pakistani politicians will never allow this happen. Efforts should be therefore be made to curtail the vices and excess of the presidential system such as an amendment

in the constitution. In short, at the end of the day, it's not about which system is better but which system is better for Pakistan.

**II.** Now, I will discuss precisely the form of government **according to the distribution of powers.**

Power in a government can be distributed into three forms: unitary, confederation, and federal. In light of the text of all three constitutions of Pakistan (1956, 1962 and 1973), **Pakistan is a federation.** In the federal system, powers are divided between center and provinces.

Although, according to the 1962 constitution, the Republic of Pakistan was consist of the two provinces east and West Pakistan, thus there is a federal form of government. But, to me, it appeared to be a mixture of unitary and federal form. I said so because the provision of the constitution said that if the provincial law was inconsistent with Central Law, the central law would prevail and the provincial law would be declared invalid due to inconsistency.<sup>7</sup> The result thus was that if the central legislature were to legislate on matters in the provincial fields, the central law not being liable to be declared as ultra vires would be valid, although it thereby trespassed into the provincial sphere. The vesting of such powers in the federal legislature is to be found in the unitary constitution.

Thus, the federal system is far better than the unitary system. This system protects the country from autocracy and dictatorship. Moreover, it allows for more local and effective responses by government to current needs. It strengthens the provinces and triggers the provincial autonomy.

---

<sup>7</sup> Article 134, Draft Constitution of 1956

## References

- i. Newman, K.J. (1956). *Essays on the Constitution of Pakistan, including the draft and final constitutions of Pakistan with comments*. Dacca: Pakistan Cooperative Book Society.
- ii. Pakistan Law Site. (n.d.). Retrieved October 11, 2018, from <http://www.pakistanlawsite.com/>
- iii. Perveen Kausar(2000) *The Constitutional and Political Dimesnsions of Eight Amendemnet* Volume XXI Pakistan Journal of History and Culture-nihcr.edu.pk.(n.d.). Retrieved October 11, 2018, from <http://www.nihcr.edu.pk/journals.html>
- iv. Verma, G. L. (2010). *Parliamentary versus presidential system of government*. New Delhi: Atlantic & Distributors.