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THE CONSTITUTIONAL EXPERIMENT IN PAKISTAN

LATIF AHMED SHERWANI

If Mohammad Ali Jinnah, the founder of Pakistan, or his principal lieutenant, Liaquat Ali Khan, were alive today, parliamentary democracy might well be functioning in Pakistan as it is in India under the leadership of Jawaharlal Nehru. The importance of a dominant personality to the sustenance and survival of parliamentary government in this part of the world during its early years cannot be denied. However paradoxical, the parliamentary system has been greatly abetted by the presence of a strong, charismatic leader dedicated to its support. In the absence of such a leader in Pakistan, parliamentarianism failed to take root. Its failure in such countries as Egypt, Iraq, Indonesia, Burma, and Nepal is related in some measure to a similar problem.

Two or three instances indicating how the Pakistan parliamentary system functioned in actual practice might be given here. In April 1953, the Governor General dismissed the Prime Minister, even though at that time the latter commanded an absolute majority in Parliament, and replaced him with a person who had been out of the country for nearly five years. Those members of Parliament who had previously supported the dismissed Prime Minister transferred their loyalty to his successor within two days. In 1955 when the provinces of West Pakistan were merged into a single unit, the Governor General nominated as Chief Minister of the integrated province, a political leader who was unwilling to join the party that commanded an overwhelming majority in the Provincial Assembly. Later, when the majority party refused to elect this man as its leader, the Governor of the province, obviously under instructions from the Central Government, helped him in forming a new political party, which was then joined by nearly half the members of the Assembly. In March 1956, the Ministry in power in East Pakistan failed to obtain the approval of the Assembly for its budget. Thereupon the Central Government intervened, suspended the Ministry and thus enabled the Provincial Governor to certify the budget. After some time the suspended Ministry was reinstated, even though it was quite obvious that its strength in the Assembly had not increased in the least during the intervening period.

In those circumstances it was quite natural that most of the time and energies of the Ministers were expended in finding means to maintain themselves in power while the members of the Central and Provincial Assemblies were frequently engaged in changing their party loyalties with a view to securing the best possible price for their support. It will be recalled that between 1953 and 1958 there were six Prime Ministers at the Center alone, and shortly before martial law was proclaimed in Pakistan, every

other legislative member of the ruling coalition party at the Center was a Minister, while seven others were holding offices as Ministers in the Provinces. The depths to which the Parliamentary system had sunk in the Provinces and the incapacity of the Central Government to handle the situation was fully indicated by the events in East Pakistan in 1958, when the ruling party, facing an unfriendly Speaker in the Provincial Assembly, passed a resolution in which the Speaker was characterized as insane. A few days later, opposition party members attacked the Deputy Speaker in the Assembly itself and caused injuries that led ultimately to his death. Throughout this uproar, the Central Government was unable to intervene effectively.

By 1958 the country was also on the verge of economic ruin. Despite an acute shortage, foodgrains were being smuggled out of the country on a large scale with the connivance of the Ministers and leaders of the ruling parties. The foreign exchange resources of the country had gone down to the dangerously low level of 720 million rupees (about 150 million dollars); mills and factories in Karachi, the industrial center of Pakistan, were working at only 35% of their installed capacity, and there was an acute shortage of consumer goods.

Like the people of other countries that have recently achieved independence, Pakistanis had expected that with the coming of freedom their living standards would rise rapidly. After Jinnah and Liaquat Ali Khan, the persons who came to the helm of affairs in Pakistan proved themselves unworthy of the trust that the people placed in them. As a result, there was a good deal of criticism not only of the leaders but also of the system of government that had been adopted in Pakistan. Indeed, a number of people had even suggested that, under the circumstances, the only solution to the crisis in Pakistan was a benevolent dictatorship.

The martial law regime proclaimed in Pakistan on October 7, 1958, did provide the type of government needed to eradicate the evils that were eating into the vitals of the country. But after three years and eight months, it was replaced by a democratic system which however is very different from that prevailing before the martial law era.

The new Constitution, for obvious reasons, places a great deal of emphasis on the stability and efficiency of the government. This is perhaps the main reason why the presidential system has been adopted in place of the parliamentary system. The Constitution provides for the election of a President in whom the executive authority of the country is vested, and a Central Assembly consisting of 156 members (including six seats reserved for women), divided equally between the two provinces of Pakistan. Both the President and the Assembly are elected for five-year terms. The President has the power to appoint Ministers to assist him in his work who will be responsible to him and not to the legislature. But to enable the Executive to keep close contact with the legislature, the Constitution also provides for the appointment of Parliamentary Secretaries who, in contrast to the Ministers, will be sitting members of the Assembly. This innovation is intended to spare the Ministers the necessity of their continued presence

in the Assembly when it is in session and to enable younger people to be trained for responsible positions.

The two provinces are headed by Governors and each province has its own Assembly, which as in the case of the Central Assembly, consists of 156 persons (including six seats reserved for women). As at the Center also, there are Ministers and Parliamentary Secretaries at the provincial level. New taxes can be levied and new expenditures incurred only with the consent of the National and Provincial Assemblies in their respective spheres. The National and Provincial Assemblies will also have absolute powers of legislation and the validity of a law cannot be challenged in a court of law on the ground that the law violates the Constitution.

It is the view of President Ayub Khan, shared by many of Pakistan's educated class, that compared with the parliamentary system, the presidential system is easier to work and more akin to the talents of Pakistanis. One obvious advantage of the presidential system is that there should be no pulling in different directions between the head of the State and the Prime Minister, a process which Pakistanis witnessed frequently between 1953 and 1958. Another advantage is that the President, elected by the representatives of the entire country, will not need the support of the legislature to keep himself in power and, thus, will be able to provide the political unity and stability so badly needed for many social reforms and bold development projects.

Of course, as in the case of members of Assemblies, the electors can sometimes be misled by clever candidates and choose the wrong man as President. To reduce the chances of having this happen, the Constitution stipulates that candidates for the Presidency must be screened by the National and Provincial Assemblies, and that not more than four candidates will be allowed to contest the Presidential election at one time. This procedure will also prevent any candidate from being elected by a small fraction of the electors, a distinct possibility if there were a large number of candidates in the field.

A cross-section of public opinion in Pakistan, given voice by *Dawn*, a Karachi daily, has in the past strongly advocated a unitary form of government. But in view of the geographical division of the country into two separate halves, the Constitution provides for a federal form of government, with parity "as nearly as is practical" for the two provinces in all spheres of the Central Government. The Executive Department is to be located at Islamabad in West Pakistan but Dacca in East Pakistan will also serve as a subsidiary capital. In addition, Dacca will be the principal seat of the Central Legislature and the Supreme Court will sit in Dacca at least twice a year. Also a convention has been established that the Speaker of the National Assembly, who will act as President when the latter is sick or abroad, will be from East Pakistan if the President belongs to West Pakistan or vice-versa. There will be two national languages, Bengali and Urdu.

The powers assigned to the Central Government are delimited in the Constitution and all residuary powers have been vested in the provinces.

Some of the functions, such as Railways, at present under the control of the Center, are transferred to the provinces under the new Constitution. Similarly, autonomous institutions, such as the Pakistan Industrial Development Corporation, are in the process of bifurcation and will be made subject to provincial control.

With a view to insuring that the Center and the provinces work in harmony, however, the Constitution stipulates that the provincial governors are to be appointed by the President and that the provincial ministers are to be nominated by the Governor with the concurrence of the President. Moreover, in matters involving national security, coordination between the provinces, and economic planning, the Central Government will have overriding powers.

While both sections of the country are underdeveloped, East Pakistan is much less developed than West Pakistan. Unscrupulous politicians have exploited this situation in the past without, of course, doing anything to remedy it. The new Constitution provides for the formation by the President of a National Economic Council, whose principal task will be to formulate plans for insuring "that disparities between the provinces, and between different areas within a province, in relation to income *per capita* are removed."

In view of the disappointing records of most of the politicians in Pakistan, President Ayub is personally opposed to the revival of a political party system in the country. On the other hand, it is the view of the Constitution Commission (whose report served as a working draft for the new Constitution), shared by a large number of politicians, that democracy, whether of the presidential or of the parliamentary type, cannot function successfully without the existence of political parties. As it is difficult for the candidates to project themselves on a national basis before the electors without the assistance of political parties, there is much to be said for the view of the Constitution Commission. The question of reviving the political parties has, therefore, been left to the National Assembly for a final decision.

The first elections to the national and provincial assemblies, which were just completed in May 1962, were held on the basis of the "personal qualifications" of the candidates. The government in a sense compensated for the absence of political parties by helping the candidates project themselves before the electorate. It arranged meetings between electors and candidates. To avoid charges of favoritism or prejudice, the government caused these meetings to be presided over by judicial officers. This again is a novel idea and one that might be regarded as a substitute for the television shows which proved so important in the last American Presidential election.

It would appear from the results of the recent elections that about half the central and provincial legislators have in the past belonged to political parties and are in favor of reviving them. Therefore, it seems likely that the National Assembly will approve the revival of political parties though, probably, it will regulate party activities, especially in the matters of fund raising and party loyalty.

The institution of Basic Democracy (under which each basic democrat

is the elected representative of some 1000 persons in his locality) created by the President about 2½ years ago served as electoral college for the just-concluded elections. This was no doubt a wise decision, for elections on the basis of adult franchise (which would have involved preparation of new electoral rolls) would have delayed the restoration of democracy for a considerable period. The number of elected "basic democrats" provided under the law were comparatively few in number (40,000 in each province). The President himself seems to share the feeling that the number of elected "basic democrats" should gradually be increased. He has already decided that in the future the procedure, under which the Government is authorized to nominate half as many "basic democrats" as those elected, should be abolished so that the number of elected "basic democrats" would automatically rise to 120,000. The President has also promised to appoint a Franchise Commission which would go into the question of widening the suffrage and will no doubt consider the suggestion of the Constitution Commission that persons who have attained a certain standard of literacy, who possess property, or who "have a stake in the country" should be granted the right of franchise.

One aspect of the new Constitution deserving notice is its Islamic basis. Pakistan was founded with the express purpose of enabling Muslims to fashion their lives according to Islamic principles. It was therefore inevitable that the Constitution should be based on the Islamic religion. Accordingly, it provides that the head of the State must be a Muslim and that it is his duty to defend the ideology of Pakistan. It is also written in the Constitution that

the Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam, and should be provided with facilities, whereby they may be enabled to understand the meaning of life according to those principles and concepts.

The Constitution provides for an Advisory Council of Islamic Ideology, consisting of eminent jurists, economists and others, to be supported and assisted by an Institute of Islamic Research. The Council will recommend measures for enabling Muslims to order their lives according to Islamic values. It will also advise the legislatures on whether or not a proposed law goes against Islamic principles. At the same time, full religious rights have been guaranteed to religious minorities. The Constitution stipulates that

No law should prevent the members of a religious community or denomination from professing, practising or propagating, or from providing instruction in their religion, or from conducting institutions for the purposes of, or in connection with, their religion.

One unusual feature of the Constitution may be noted here. Five Regulations passed during the martial law regime have been incorporated directly into the Constitution, including the West Pakistan Land Reforms Regulation, the Pakistan Capital Regulation, and the Evacuee Property Claims Regulation. Since these measures are of great importance and their revision or amendment by a simple majority of the National Assembly would mean large-scale dislocation, they have been made a part of the Constitution.

Thus, they now can be amended only in the same way as other provisions of the Constitution.

Writing in *Foreign Affairs*, two years ago, President Ayub Khan said that the success of democracy in a country like Pakistan depended upon a system which was easy to understand, simple to work, cheap to sustain, which put questions to the voters that they could answer in the light of their own knowledge, which expected the effective participation of the people to the extent of their intellectual attainments and produced strong and stable governments. The new Constitution of Pakistan has been framed with those principles in view. It is an experiment which takes into consideration not only the geographical, political, educational, social and economic conditions of the country but also its historical traditions.

It may be added that like many other new states, Pakistan is at the moment passing through a transitory phase. President Ayub has expressed the view that, as the conditions of the country change, the Constitution of the country should also change, perhaps after every twenty years. A provision in the Constitution permits the amendment of any provision by a two-thirds majority of the National Assembly, if the President concurs with the proposed amendment, or by a three-fourths majority of the Assembly without the President's concurrence unless the President refers the matter to a referendum or dissolves the Assembly. In the latter case, the President himself must seek re-election within 120 days of the dissolution of the Assembly.

The new Constitution of Pakistan, which is partly based upon the American model, and partly upon the new French model, with some features of its own, is a new experiment in this part of the world. Its success will no doubt depend upon the close cooperation of those upon whom lies the major responsibility—the President, the Ministers and the Parliamentary Secretaries. For, however promising a Constitution, if those charged with responsibility under it do not act honestly and efficiently, it cannot work successfully. But if Pakistan's experiment succeeds, it might serve as a useful model for other newly independent countries of Asia and Africa, countries faced with the problem of achieving in a few years the degree of political stability and economic viability that older nations took decades to attain.