

## Constitutional and Political Heritage of Pakistan: An Analysis in Democratic Perspective

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### ABSTRACT

*To understand the nature and functioning of democracy in Pakistan, it is important to trace the evolution of representative government in Indian sub-continent during the Colonial era. With the fall of great Mughal Empire in India, the British Crown successfully established the colonial authority in order to fill the power vacuum. Although at that time democratic government was effectively functioning in England, however, being a colonial power they intentionally avoided to launch a full-scale democracy in India, because introduction of democracy would meant a rule of locals with a little place for foreigners. However, with the passage of time elected institutions were introduced at central and provincial level yet ultimate power remained in the hands of official administrators. Extraordinary powers lied with the institutions of military and civil bureaucracy whereas feudalism remained an important pillar of colonial government. In point of fact, feudal class, on most of the occasions, helped the colonial state to strengthen its control and exercised through civil bureaucracy over the vast rural areas. This paper is an attempt to analyze these aspects of colonial government and their impact on political system of Pakistan.*

**Keywords:** Colonial legacy, civil bureaucracy, democratic process, feudalism, Pakistan

### INTRODUCTION

Pakistan inherited the state institutions that had evolved during the course of more than a century of British colonial rule. In this perspective, it is important to trace evolution and growth of system of representative government in colonial South Asia, because it exerted considerable influence on political dynamics of post-partition Pakistan (Syed, 1995 p 110). According to the political analyst, Mohammad Waseem (1993), “most of the problems of electoral democracy in Pakistan have their roots in institutional and constitutional nature of the state system which it inherited from the colonial period”.

Political structure of the Muslim rule in India was mainly a monarchical and non-democratic. They knew that it is not possible for them to introduce a democratic system based on the concept of majority rule in a country where they have formulated a marginal representation not enough to maintain their hold on the governmental affairs. While explaining the nature and functioning of the government of Muslim empire during the period of “Ghiyasuddin Balban” K. Ali (1985) writes, “he was absolute in all affairs of the state and there was no check on his powers. His government was no doubt a highly organized dictatorship”. Succeeding Muslim rulers followed the same pattern of the government. Similarly, Robert L. Hardgrave thinks that British rule started in 1857, introduced a system of government which

“was in effect a continuation of the autocratic rule by the Muslims whom they succeeded” (Yousaf, 1980 p 2).

On the other hand, British rule was not an autocratic yet they had not provided full access to a comprehensive democracy to the people of Indian Subcontinent. Although they had an experience of full-fledged democracy in England, however, they could not afford to launch a majoritarian democracy which has no place for foreigners. British wanted to strengthen their rule in India. They did not want to hand over complete power to Indians, but in order to keep calm their emotions certain type of constitutional reforms were introduced. So they were guided by one set of values in their own country and had a different code of political conduct in their dealing with the rest of the world. Thus, though practicing democracy at home, they indulged in imperialism abroad. They introduced some selected democratic devices either to facilitate their colonial rule or to pacify public pressure for democratization.

The colonial bureaucratic system had operated under a Viceregal system in which viceroy was the representative of the British Government. While explaining characteristics of this Viceregal System Khalid Bin Sayeed (1978) writes:

The main components of the Viceregal system were a commanding Viceroy, otherwise known as Governor-General, an Executive Council chosen by the Governor-General, a Central Assembly with limited powers, subordinate Provincial Governments, and, above all, a powerful bureaucracy placed in strategic positions in the Centre, in the Provinces, and in the districts. The army in this system provided the coercive cover...

Appointed official state actors; viceroy in center, governors in provinces and district commissioners in districts were basic pillars of colonial government while police and army were its sources of strength. Colonial system was based upon the concept of centralization of authority with bureaucracy, which played the role of a colonial structure between the rulers and the ruled and its training and traditions were designed to fulfill the needs of colonial government. Due to this position Indian Civil Service was known as the ‘Steel Frame’, through which ‘a handful of men governed the colonial state with an iron grip’ (Hussain, 1979 p 65).

Contemporary democratic system closely associates—tolerance, participation and equality against hierarchy, impersonality and centralization presented by modern bureaucracy (Duncon, 1983 p 235). However, in a real democratic set-up bureaucracy acts under the supervision of elected representatives of the people and is always responsible to the Parliament. No doubt, the concentration of power in the hands of bureaucracy created an unfavorable environment for the growth of democratic institutions. ‘The Indian Civil Services (ICS) developed a paternalistic attitude to the masses and an approach that was often authoritarian in tone and contact. They tolerated no outside interference and exercised absolute power over the public. As a consequence, the civil servant in British India had no experience of working with the politicians as an equal’ or superior partner in the government and bureaucracy had so dominant position in the colonial structure that even the lowest-ranking position in its hierarchy, the deputy commissioner, was regarded as the “government in the field” (Hussain, 1979 p 62). British India was predominantly rural in nature and position of Deputy Commissioner was really subjugating in rural population. He not only maintained law and order but also controlled or supervised most of activities related to socio-economic development in the district. ‘In the matters like remission of land revenue, granting of agricultural loans, or building of schools, the people in the countryside depended almost entirely upon the goodwill and leadership of the Deputy Commissioner. This seriously undermined the role of politicians, for which he could neither put forward vigorously the

interests of his constituents, nor was much patronage available to him at district level' (Sayeed, 1978 p 281).

With the passage of time, elected institutions were introduced at Central and Provincial levels but ultimate power remained in the hands of official administrators. The British never intended to initiate a real democratic system of government in India. All the representative institutions introduced by the British *Raj* were merely consultative bodies and that too in a very limited sense. "In fact it was this stark contrast between the values of representation professed in England and their practice in India that forced the Indian political leaders, Muslims and Hindus alike to criticize and more often than not condemn various constitutional reforms from 1833 to 1935" (Hayat, 1981 p 16). British mindset is reflected in the statements of few leading personalities of British government. Indian Viceroy Lord Curzon while taking part in a debate on the Indian Council Bill 1892 said that "The Government assumed the responsibility of stating that in their opinion. The time had not come when representative institutions....could be extended to India. The idea of representation was alien to the Indian mind" (Hayat, 1981 p 18).

Similarly, Secretary of state for India Lord Morley who played leading role in the formulation Minto-Morley reforms (1909) said:

I am no advocate representative of government for India in the western sense of the term.....From time immemorial in India the power of the state has rested in the hands of absolute rulers. Neither under Hindu kings nor Mohammadan Emperors had the people any voice in the affairs of state...As heirs to a long series of Indian rulers we are bound to reserve ourselves the ultimate control over all executive action and the final decision in matters of legislation (Hayat, 1981 p 20).

While speaking about Minto-Morley reforms of 1909 he asserted: "if it could be said that this chapter of reforms led directly or necessarily to the establishment of a parliamentary system in India, I for one would have nothing at all to do with it", similarly, viceroy Lord Minto recommended that:

The Indian government must remain domineering: the sovereign power must be with the British authorities and would not be delegated to any sort of representative assembly. No such assembly could claim to speak on behalf of the Indian people, so long as the uneducated masses, forming nearly ninety percent of the adult male population are absolutely incapable of knowing what representative government means and of taking any effective part in any system of election (Bunarjee, 2006 p 139).

Most of the Intellectuals and scholars also supported colonial autocracy in India. Dr. Sikandar Hayat observes that James Mill, otherwise a firm believer in pure democracy saw no prospects of anything approaching to representation in India. The growth of representative institutions started with the introduction of Charter Act of 1833, with only a clause which promised that someday Indians may hold any office in the government, however, high. Despite this promise, practically it introduced autocratic government. The act suggested that the government of India was to be "a purely official government where executive power was exercised by the Governor-General and his council of officials and in the Governors of the Presidencies and their councils." Legislative authority was again given to the Governor-General in Council alone. The war of 1857 and Government of India Act 1858 which came as a natural product of the war ended the rule of East India Company and the administration of Indian sub-continent was assumed by the crown. Uprising of 1857 also revealed to the British the gap and misunderstanding between Government and the people. So they sought to

establish closer contact with the Indians. Sir Bartle Frere underlined the rationale of the contact when he said:

“....the addition of the native element has, I think, become necessary owing to our diminished opportunities of learning through indirect channels what natives think of measures and how the native community will be affected by them” (Hayat, 1981 p 18-19).

The original cause of the war, wrote Sir Syed Ahmed Khan in 1858 in his treatise known as “*Risala Asbab-i-Baghawat-i-Hind*” (The Causes of Indian Revolt) was the non-admission of Indians into the legislative councils so that the Government remained ignorant of the approach of the people, about the regulations under which they lived. Moreover, it also deprived the people to protest against what they thought an imprudent measure, or not in favor of their wishes. If some sons of the soil had been included in the legislative council, they would have kept the rulers informed of the trends of public opinion (Qureshi, 1988 p 805).

### **The Indian Council Act 1861**

By realizing the *White Man's Burden* the colonial authorities through ‘Top to Bottom Approach’ took first step under the Indian Council Act 1861 for associating Indians with the legislative work of the Government. According to this act, Legislative Council of the Governor General was enlarged by the addition of not less than six and not more than twelve members and most importantly half of the associates were to be taken from non-officials. However, these members were selected not elected. According to M.G.N Sinha, “The Indian Council Act 1861 is important in the constitutional history of India for two reasons i.e., firstly it enabled the Governor General to associate the people of the land with the work of legislation, and secondly, by vesting legislative powers in the Governments of Bombay and Madras and by making provision for the institution of similar legislative councils in other provinces, it laid the foundations of policy of legislative devolution which resulted in the grant of almost complete internal autonomy to the provinces in 1937” (Ali, 1993 p 375).

### **The Indian Council Act 1892**

This act represented a distinct improvement on the act of 1861. It not only extended the functions of Central and Provincial Legislative Council but also enlarged their representations. In the Imperial Council maximum numeral digit was raised to 16 in the provincial councils to 20 in the major provinces and to 15 in the minor provinces. The act permitted the councilors to discuss, criticize or to make proposals in order to improve the annual budget. It also introduced an elective element in the councils. Similarly, in order to allocate the seats for different organizations i.e., chambers of commerce, universities, municipalities, associations of land-holders or district boards etc. proper regulations were reformulated. “The structure was not strictly a system off election, for the elective bodies could only recommend their representatives to the head of the Government for nomination. In practice, however, “nomination was never refused” (Qureshi, 1988 p 821). In spite of its draw backs, this system provided a gateway for election of politicians to the central as well as provincial councils.

### **Minto-Morley Reforms 1909**

For the first time in the constitutional history of British India, the Council Act of 1909 introduced the principle of election along with the nomination. Introduction of representative government in India is considered as an important landmark in the constitutional history of the country. However, it considerably lacked the characteristics of a democratic government. Although it introduced the principle of elections but franchise highly restricted and

discriminatory. Every citizen did not have right to cast vote and only people having property had this right. Number of voters was very small as property qualifications were very high. Moreover, these qualifications were unfair being different in different regions. Women were not given any political status as they did not have the right to vote. The act adopted indirect method of election which was somehow undemocratic as it prevented direct contact between electors and elected. According to the act, functions of legislative councils were enlarged where members could discuss the budget clause by clause or move a resolution on any public matter. However, reforms denied the demand of a responsible government. Real spirit of parliamentary form of government; the responsibility of the executive to legislature was absent. Official majority was retained in the Centre but it introduced non-official majority in the provinces. Despite it, power was not in the hands of representatives of the people because elected members were still in minority due to presence of non-official nominated members. The act also represented the policy of racial discrimination and inequality between British and Indians which is against to democratic norms. The Act divulges that Indians were prevented from holding high posts, because they were subject people.

### **Government of India Act 1919**

This act initiated partially responsible governments in the federating units through the system of Dyarchy but irresponsible government at the centre. The central government continued to be vested in the Governor General as before and remained responsible to the British Parliament. The members of executive were not chosen out of the central legislature and were not responsible to it. The legislature could not alter, repeal or amend the act of 1919 or any other legislation passed by the British Parliament. The Governor General was empowered to refuse his assent to any bill accepted by the Parliament. Moreover, no bill could be introduced in the legislature lacking the previous endorsement of the Governor General on the matters about public debt, revenue, religious affairs of the British residing in the sub-continent, army, navy and foreign relations, any provincial subject or repealing and amending an legislation of the provincial assembly and about an Ordinance issued by the Executive. The process of election for Central Legislature was to be direct, franchise consisting of an electorate of five million voters. This was considerable advance over the Act of 1909, according to which process of election was indirect through municipal or local bodies, franchise consisting of only five hundred voters.

According to Government of India Act 1909, for the first time during British rule, India received parliamentary system and responsible government at provincial level. Although it was partially responsible government but we can consider it significant advance democratization. According to system of Dyarchy, administration of the provinces was divided into “Reserved” and “Transferred” subjects. Indians were to take control of transferred subjects, not as official nominees, as had been the case according to previous systems, but as leaders of elected majorities in their legislatures and responsible to them. Transferred subjects include Local-Self Government, Public Health, Education, Agriculture, Co-operative Societies and Sanitation etc. However, more important subjects like Finance, Police, Law and Order, Justice, control of Newspapers, Books and Printing Press, Land Revenue, Irrigation, Electricity, Labor Problems, Jails, Forests, Famine Relief etc were reserved and continued to run by the Executive Councilors responsible not to the provincial legislatures but to the Governors who were empowered to decide whether a subject should be reserved or transferred. However, the Governor General could revoke or suspend the transfer of any or all subjects in any province and in that case these would relapse into the position of reserved subjects and would be administered by the Governor of that province. So it can be



said that all of these arrangements left very limited powers in the hands of legislature. Indians received only a sip of democracy and responsible government through this act.

### **The Government of India Act 1935**

The most significant feature of the Indian Government Act of 1935 was the introduction of fully responsible parliamentary government at the provincial level. Autonomy replaced Dyarchy in the provinces and all the provincial subjects were transferred to the ministers who were chosen from the legislature and were responsible to it. The provincial legislatures were empowered to enact laws on all subjects included in the provincial and concurrent lists provided such laws did not have clash with the federal laws. But for the Indians “Key to the problems lay at the center not in the provinces” (Brailsford, 1946 p 47-48). The franchise was extended as the property qualifications for suffrage were lowered. However, still the enfranchised electors amounted to a mere 11 per cent of the total population. A negligible number of women enfranchised, but the landless labors and peasants were not represented (Hayat, 1981 p 47).

Similarly, federal legislature was also established but with much more less powers than the state assemblies. It had no effective control over the Central government. Ultimate decision making power continued to be vested with Governor General at the Centre who was appointed by British government. The federal legislature was empowered to formulate regulations on all areas included in the federal list but this power was seriously restricted by the ordinances and law-making authority of the Governor-General, his special responsibilities and in an emergency situation his clout to suspend the Constitution. System of Dyarchy was now introduced at the Centre. Important subjects, foreign affairs, defense and finance etc. were to be governed by the Governor-General with the assistance of three Councilors. The transferred subjects were to be controlled by the ministers responsible to the Legislature. Domination of the British Parliament remained intact as Federal and Provincial legislatures were not empowered to modify or amend the Constitution. Prior approval of the Governor-General was essential to initiate any bill affecting any act of the Legislature extending to the British India, any act or ordinance issued by the Governor-General in his discretion and any matter in which he was required to act in his individual judgment.

The Indian Act of 1935 restricted the autonomy given to the regions through the control of the Governor General over provincial affairs via the Governors and Governor General's power to assent to or with-hold assent to the provincial legislature and by the Governor General's discretionary powers. Provincial Governors like the Governor-General had extraordinary powers including powers to issue ordinances, enact laws, discretionary powers and authority according to special responsibilities. Every province was given a council of ministers whose advice was binding on the Governor except in so far he acted 'in his discretion' or exercised his 'individual judgment' (Qureshi, 1987 p 64).

According to the Act, size of legislature was enlarged which further helped the Indians to feel a larger share of responsibility in the government. But the Act fell far short of complete representative and responsible government in India. Since it did not concede full self-government at the centre, it was rejected by the popular opinion. Governors and Governor-General's power to assent or to withhold assent any bill passed by the provincial legislature on the basis of discretionary powers seriously undermined the role of provincial legislature and in fact representative government at provincial level (Ahmad, 1988 p 5).

However, most of the prominent politicians of India opposed the Act. Pandit M.M.Malaviya remarked, “It has a somewhat democratic appearance outwardly but it is absolutely hollow from inside” condemning it Mr. Nehru said that it is “a new chapter of slavery, a sort of machine with strong brakes but no engine” (Ali, 1993 p 394). Mohammad Ali Jinnah

described it as “thoroughly rotten, fundamentally bad and totally unacceptable” (Qureshi, 1988 p 207).

Political system introduced by the India Act of 1935 was not conducive for a real democracy. Abdul Hamid (1967) explained the nature and functioning of this system in the following words:

The introduction of democratic elements into the constitution did not lead to the democratic practice. The form of democracy like election addresses, canvassing and the ballot box were there. But the spirit of popular government was lacking....In these circumstances, the prospects for the growth of parliamentary institutions were bleak.

In point of fact, legacy of political and constitutional system of colonial India haunted political system of Pakistan. After getting independence on 14 August 1947, Pakistan, under Section 8 of the Indian Independence Act of 1947, adopted the Government of India Act 1935 as an interim constitution of the country. To make it more suitable for a newly established society certain adaptations were incorporated which turned it into a more workable Constitution of Pakistan (Symonds, 1976 p 93). However, along with some positive aspects, political system of Pakistan inherited the tradition of military intervention in the civilian affairs that created a major hurdle in the establishment of a viable democratic system in the country.

## CONCLUSION

During the course of colonial authorities in India, British frequently used the Indian Army to maintain law and order in the country. Very often ‘authority was passed to local military commander for the duration of the disturbance’ and ‘when the task was completed, authority reverted back to civilians’ (Cohen, 1984 p 48). Talking about such a situation, Stephen P. Cohen (1984) describes, “Entire architecture and city planning of colonial government was dominated by this role of British Indian Army. The location of Indian Army units in cantonments adjacent to major cities was certainly no coincidence”. Like India, Pakistan inherited the feudal system. No doubt, the colonial state in some provinces of India created and in other strengthened the existing feudal class (Inayatullah, 1997 p 24). From time and again this class helped the colonial authorities to strengthen its control exercised through civil bureaucracy over the vast rural areas. Colonial powers, instead of implanting democracy in India, use to help anti-democratic forces in order to prolong their existing rule. In return these mercenaries often owed its continued existence and power to exploit the poor masses, to the protection and support it has been receiving from the civil and military bureaucracy (*Dawn*, 2005). In point of fact, strength of the democratic institutions depends upon political parties and political leadership committed to democratic principles. However, Pakistan neither inherited a sturdy party system, nor a seasoned democratic plank on the eve of independence (*Frontier Post*, 1998). Considerable number of the political leaders who contested elections in 1945-46 on the platform of Muslim League was lacking commitment with democratic principles and had joined Muslim League just before the elections realizing prospects of Muslim League’s victory due to its increasing popularity (*Daily Jung*, 2005). To a greater extent, this situation provided an ideological fissure and a fragile naissance to the newly established state. Undoubtedly, the colonial inheritance of lacking people’s true representations and uneven institutional growth in the country badly affected the establishment and continuation of a viable democratic culture in Pakistan.

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