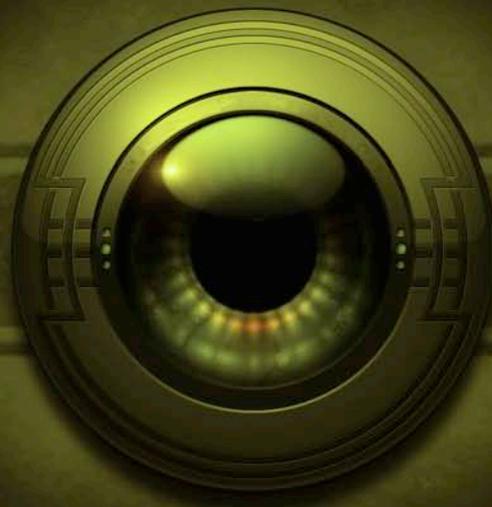


*FROM THE
LIBERAL
SPECTACLE*



FREEDOM GATE

P a k i s t a n

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Acknowledgements

Freedomgatepakistan would welcome reproduction and dissemination of the contents of the report with due acknowledgments.

First edition: December 2008

Number of copies: 2000

Designed by: dzignet (www.dzig.net)

supported by

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Preface

Munazza Batool

This publication “From the Liberal Spectacle” aims to present a liberal analysis of current pressing issues that concern every Pakistani who learns from the past, lives in the present and aspires for a better future. It invites all those who are willing to contribute and ready to go an extra mile for a peaceful today and tomorrow. The booklet is a compilation of articles on the challenges the people of Pakistan are faced with from the liberal minded people. Having a futuristic vision, the articles dissect the problems endeavouring to address their grass root causes.

FreedomGate Pakistan, a liberal think tank is a network of alumni of International Academy for Leadership (IAF) in Germany that strives to provide the liberals an access to the liberal positions on multiple issues creating platforms to discuss and deliberate. This publication is an attempt to generate a debate to find sustainable solutions to the problems.

Liberals emphasize individual rights and equality of opportunity. Within liberalism there are various streams of thought which compete over the use of the term "liberal" and may propose very different policies, but they are generally

united by their support for a number of principles, including freedom of thought and speech, limitations on the power of governments, the rule of law, an individual's right to private property, free markets, and a transparent system of government. All liberals, as well as some adherents of other political ideologies, support some variant of the form of government known as liberal democracy, with open and fair elections, where all citizens have equal rights by law. The ideology presents a picture of a utopia hence painting it in very earthly colors. The contributors of articles in this booklet envision these issues *From the Liberal Spectacle*.

Liberal democracy in Pakistan

Gulmina Bilal

During an informal discussion on Pakistan politics, a friend once remarked that Pakistanis love the democracy of adjectives i.e. some favor controlled democracy, some a sham democracy etc. Just what exactly are these different kinds of democracy, my friend wasn't sure. Perhaps liberal democracy is also a kind of adjective democracy, you may wonder? My mental jury is still out on this and therefore this article is more of a sharing of my mental rumblings on the issue of democracy and liberalism and should be taken as such.

Except for some exceptions globally, in most of the socio-political world, democracy is the preferred proverbial lesser of the two evils. This acceptance of democracy as the most effective tool for citizens political expression has now strong historical roots. In his landmark Democracy in America, Alexis de Tocqueville wrote, "the progress of democracy neither can nor ought to be stopped. The problem is not to determine whether democracy shall come, but how to make the best of it when it does come". John Stuart Mill further emphasizing this acceptance declared, "We have it not in our power to choose between democracy and

In his landmark Democracy in America, Alexis de Tocqueville wrote, "the progress of democracy neither can nor ought to be stopped. The problem is not to determine whether democracy shall come, but how to make the best of it when it does come".

aristocracy; but the choice we are still called upon to make is between a well and an ill-regulated democracy; and on that depends the future well-being of the race".

A democracy is a liberal democracy only when government does not have the political and administrative space to curtail the civil liberties of its citizens, it is restricted in its role to intervene in the political, social, economic, religious and other matters of the citizens and thus in this manner facilitates the development of an open, pluralistic society.

Although most liberals will cringe at the use of the word "regulation of democracy" however, this is perhaps the most clearly expressed difference between democracy as viewed by any other political ideology and liberalism. Seen through the liberal prism, of course this "regulation" is done by individual citizens and not by any agency or department. In other words, civil liberties and rights have a strong role to play in a liberal democracy. A democracy is a liberal democracy only when government does not have the political and administrative space to curtail the civil liberties of its citizens, it is restricted in its role to intervene in the political, social, economic, religious and other matters of the citizens and thus in this manner facilitates the development of an open, pluralistic society.

Let us now examine the question as to how liberal democracy fares in Pakistan. An examination of it will have to start from the very basis of Pakistan for that has a direct effect on the space for liberal democracy in the country.

Basis of Pakistan: four groups; four perspective

At the time of creation of Pakistan, broadly speaking there were four groups each exerting an influence on the course which the country would take. The thinking of these four groups have a direct bearing on how the country is governed even today. These four groups are :

Religious Puritans

The main stream political expression of these puritans was carried by Jamiat-e-Ulema Hind of Deoband under its revered leadership of Maulana Madani, along with a reformist Maulana Maududi the pioneer of Jamat-e-Islami, who had not attended the traditional madrassah system. They were in the forefront

of opposing the idea of Pakistan. The argument against the proposed state was firstly that “Islam does not recognize the geographical boundaries in its pure and literal interpretation of the scripture” and secondly the individuals involved in the movement have not assimilated the Islamic ideals themselves. To them religion remained an inward belief system which can be practiced without interfering much the political arrangement.

A New Band of Bureaucrats trained in the British Tradition

The small number in the community who had an opportunity to be raised in the English medium of education sought careers in the Indian Civil Service and British Royal Army who would inherit the future civil/military bureaucracy of the newly created state.

Sub nationalist groups

The Khudai Khidmatgars of the Frontier region initially a social reform movement associated itself with the Congress eulogizing the United India and playing an important role in ousting the British Raj responding to the identity question in ethno-linguistic terms rather than religious color.

The Muslim Elite of U.P and Bengal

A new bourgeoisie class of U.P and Bengal found a lot of fascination with the idea of this proposed state. The leadership of this area presumed that the new state would offer tremendous economic and political opportunities which might not be available in the case of a United India. There was an intellectual apathy towards the merit of this idea later known as “Two Nation Theory” with a prominent exception of Alama Iqbal. At a mass level in its approaching days to independence people found a romance with the idea and to them it was an emotional fulfillment of their past glory and clarity to an identity that at best can be labeled enforced and at worst called blurred.

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At this point, it is also important to mention that Pakistan, inherently had diversity of language, culture, traditions and even religion at the time of its creation. The Baluch, Pathans, Sindhis, Punjabis, Seriaki speaking that made up the country's population had decades old of history with their distinct languages and cultures. Not only was there diversity amongst the provinces but also within the provinces. For instance, in Baluchistan to this day there are Pathans, Balochs and Brahavi speakers. Religiously speaking just in that province there are Muslims, Parsis, Hindus and Zikrias. This is just one province. The same is true for the other provinces such as the North West Frontier Province where ethnically speaking there are the Pathans, the Punjabis, the Hazaras and religiously speaking Hindus, Muslims and Christians. However, this diversity was not taken into consideration from the onset. The Pakistani or Pakistani identity was, as mentioned earlier, problematic and there was an attempt to have a unitary identity which led to over-centralization. This imposition of a unitary identity and over-centralization is contrary to the very essence of liberal democracy.

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 letters.*

Liberal democracy is based on citizens freedom which is best expressed through decentralization. However, in Pakistan there is over-centralization. According to Hamid Khan "Provincial autonomy has been a constant subject of debate and discussion for constituent assemblies while framing the Constitution. A number of provisions were made particularly in 1956 and 1973 with the avowed object of guaranteeing autonomy to the provinces but they have never been put into effect and have remained dead letters. The federal government has endeavored to maintain its dominance over the provinces. The political party in power at the center has rarely tolerated or even countenanced a provincial government headed by a party in the opposition. Provincial governments have been forced to remain dependent on the central government and have not been allowed to function autonomously. In 1971, this was a major cause for the alienation and ultimate secession of East Pakistan from the federation. In 1973, the provincial governments in NWFP and Baluchistan were unfairly dismissed and the fiat of the central government was imposed on them. This led to an armed revolt in Baluchistan which was

responded to by military action.” This over centralization continues to date with inter and intra provincial disputes with little or no functional mechanisms to resolve disputes like the National Finance Commission Award, the controversy over the construction of the Kalabagh Dam and other r questions of provincial autonomy. This has led to other problems like armed struggle in provinces like Baluchistan, infighting amongst the various ethnic groups such as the Urdu speaking and other ethnicities, increased role of the military and intelligence agencies and the question of “missing persons”

In the 2006 Human Rights monitor on religious minorities printed by the Commission, a number of such causes for “sense of emergency” for minorities have been identified such as social discrimination, challenges arising from the bhalsempy laws, from discriminatory legislation, hate speech and the police and politics.

This Islamic-oneness-unified national identity has adverse implications for the non Muslim citizens of Pakistan too. Non Muslim Pakistanis over the years have felt alienated and insecure because they have been made to feel that they are not equal participants in the political process and in public affairs. An early example of this is that all members of the Assemblies belonging to the minorities voted against the Objectives Resolution of 1949 which was apparently bulldozed against their will without making any attempt to ally their fears or reach any political accommodation with them on matters that they had reservations about. The Second Amendments to the Constitution of 1973 has only created fears among members of the minorities. Ordinance XX of 1984 restricting the religious practices of the Ahmadis further added to the fears of the minorities.” According to Hamid Khan , “ Christians have been deprived of their educational institutions in the name of nationalization and the promise of returning these institutions to the original owners have not been honored in their case.”¹

In the 2006 Human Rights monitor on religious minorities printed by the Commission, a number of such causes for “sense of emergency” for minorities have been identified such as social discrimination, challenges arising from the bhalsempy laws, from discriminatory legislation, hate speech and the police and politics.

¹ Constitutional and Political History of Pakistan . Khan,Hamid 2001. Oxford University Press.

Challenges in the political arena in which the religious minorities have a faltering voice are just one aspect of the challenge. However, according to Mr. M. Prakash a former member of the District Assembly from Hyderabad,² “ since everything in life has a political basis, the minority community feels that if they have a stronger political voice, they would be able to take up the cause of their community more forcefully. However, unfortunately we still have a very weak political role. “

There were a number of reasons for attempts at de-politicization but broadly speaking the reasons can be categorized as (a) Constitutional provisions based on the unified national identity construction (b) attempts to weaken political parties for power (c) power acquisition by the bureaucracy and (d) military as a political power.

(a) Constitutional provisions based on the unified national identity construction

There were a number of reasons for attempts at de-politicization but broadly speaking the reasons can be categorized as (a) Constitutional provisions based on the unified national identity construction (b) attempts to weaken political parties for power (c) power acquisition by the bureaucracy and (d) military as a political power.

The 1949 Objective Resolution of Pakistan has become an operative part of the Constitution with the incorporating of Article 2A which declared the Objectives Resolution as a substantive part of the Constitution and took effect accordingly. The resolution declares at the very beginning:

Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him is a sacred trust.

In other words, the Pakistani Parliament is not sovereign but subject to the authority of Allah Almighty which He has delegated to the State of Pakistan to be exercised within the limits prescribed by Him.

² Interview with the writer on July 5th 2008

This declaration is subject to two interpretations according to Hamid Khan. According to the constitutional expert, “ Those who want Pakistan to be a theological state would like to interpret it to mean that the entire Constitution and the laws formed there under are subject to the general principles of Islam and have to be read as such. This would mean that the Constitution would lose its paramountcy and its provisions can be struck down or ignored in order to enforce the principles of Islam. This interpretation is likely to result in reducing the Constitution and its provisions to secondary importance and making them subject to the concepts of Islam as propounded by various schools.

According to the constitutional expert, “ Those who want Pakistan to be a theological state would like to interpret it to mean that the entire Constitution and the laws formed there under are subject to the general principles of Islam and have to be read as such.

The second interpretation which is narrower would mean that the Constitution as the basic law of the country, cannot be ignored or marginalized through judicial review and those laws, or provisions thereof, framed by competent legislatures, can be struck down if they are found to be repugnant to clear injunctions of the Holy Quran and Sunnah. Such interpretation clearly narrows down the scope of judicial review.”

What are the implications of this? One glaring one is the establishment of the Federal Shariat Court established through Constitutional Amendment in 1980 .Thus creating a parallel system of judiciary. According to Hamid Khan this was not necessary for “initially in 1979, the Provincial High Courts were vested with jurisdiction to declare any law or any provision thereof, repugnant to the injunctions of the Holy Quran and the Sunnah.After having done so, there was no necessity of creating a new and parallel court for the exercise of such jurisdiction.This Court system completely by passes the Supreme Court and the High Courts.”

In addition to this , other constitutional amendments were made to consolidate power by the establishment at the cost of weakening political parties and processes. For years, there was debate over the form of government. As a further attempt to acquire diversity and over centralize , according to Hamid Khan “The blame for the political crises in 1977 was laid

The impact of the Eight Amendment on the Constitution of Pakistan, particularly in relation to the discretionary power of the President to dissolve the National Assembly has become the dominant constitutional issue in Pakistan of late. This discretionary power has been exercised rather too often.

squarely on the parliamentary system and a weak presidency. It was widely publicized that had the president been strong, the political crises in 1977 could have been resolved without the imposition of martial law. Zia called for an amendment of the Constitution to create a balance in the powers between the president and the Prime Minister with the help of government controlled media and the press. Revival of the Constitution of 1973 Order (RCO) and the Eight Amendment became the culminating point of this campaign and this Amendment strengthened the position of the President by conferring wide powers on him including the discretionary dissolution of the National and Provincial Assemblies and the appointment of the Chiefs of the Armed Forces.

Increase in the powers of the president under the RCO and the Eighth Amendment was thus the price extorted from a helpless parliament for the lifting of martial law and the restoration of the civilian government. The impact of the Eight Amendment on the Constitution of Pakistan, particularly in relation to the discretionary power of the President to dissolve the National Assembly has become the dominant constitutional issue in Pakistan of late. This discretionary power has been exercised rather too often. “

(b) Attempts to weaken political parties for power

At the time of creation of Pakistan, there was only one national political party, the Muslim League whose position was undisputed in view of its having led the movement for independence and creation of Pakistan. It was the party of Muhammad Ali Jinnah who once remarked that he would be leaving behind two legacies for the people: Pakistan and the Muslim League. “³

However, after Pakistan’s creation the Muslim League started cracking up. Some analysts believe that it was because the party couldn’t make the transition from waging a freedom movement to running a government. According to

³ missing

Hamid Khan, "Leading a movement and organizing a political party are two different things. The demands of a liberation movement generally engage the attention of the party leaders and leave little time for concentration on matters of internal organization and raising and training of a political cadre. During the liberation movement, it is generally difficult to judge the credentials of those joining the party and in any case a liberation movement needs support from all quarters. In this situation, self seekers get an opportunity to join the ranks of the party and play a negative role when the liberation movement comes to an end and the party faces the serious business of governance. This is what happened to the Muslim League, particularly at the hands of the feudals of Punjab. They were, as a class, hostile to the Muslim League which was initially a party of the middle class. They opposed the Muslim League and supported the Unionist party which believed in a United India but when the popularity of the Pakistan movement led by the Muslim League became irresistible in 1945-6, many feudals in Punjab decided to jump on the bandwagon of the Muslim League. When Pakistan came into existence, their machinations destroyed the party and rendered it unpopular amongst the people. Hence from the very beginning the political party system was not allowed to take root in Pakistan.

According to Hamid Khan "During the last few months of his life, Jinnah's relationship with Liaqat had been strained. He was exasperated at the infighting amongst political leaders of his party in the Punjab and Sindh particularly the Mamdot-Daultana feud in Punjab. He was forced to remark that he had false coins in his pocket. The language issue in East Bengal became a test of the popularity of the Muslim League and it's started losing ground politically. At the time of Jinnah's death, the Muslim League has started showing signs of losing control over political affairs. After Jinnah, Liaqat became the pre-eminent leader of Pakistan. He has the stature and the clout to hold the Muslim League together but he was, however, not successful in achieving this. Suharwardy became its chief opponent in East Bengal who separated his party from the Muslim League and named it Awami Muslim League and later Awami League.

It will be an understatement to say that political parties are the essential tools of democracy.

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Parties essentially not only provide people with a platform to voice their opinions but also give the people the voice. History has shown that attempts by people like France's General de Gaulle or America's George Washington to do away with political parties have always ended in disaster and both of them had to facilitate the establishment of party based political system. In recent times, Russian Presidents Mikhail Gorbachev and Boris Yeltsin tried to undermine the party based political systems. Gorbachev tried to modernize the system without replacing the Communist Party with competing alternatives and this is considered as one of the factors for the fall of Soviet Union. Although Boris Yeltsin organized regular competitive elections in the new Russia but curbs were set on effective political activity with devastating results.

According to Hamid Khan "Pakistan is a classic example of the democratic form being imposed from above without any context. Those who run the system do not believe in it. They see it as an object of exploitation for their own narrow ends. They think that election to a democratic office is a license to abuse power and to repress civil rights. They deny rule of law to the people and deprive them of individual liberty. A democracy without constitutional liberation is not only inadequate but dangerous bringing with it erosion of liberty, the abuse of power, ethnic divisions and even war.

Every political government, since the death of Liaqat Ali Khan has bowed to the authority of la pouvoir, the permanent reality of military dictate and refrained from challenging it."

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Major political parties do not offer any healthy alternatives. People are then forced to make a choice between two groups of political gangsters and rouses. The electoral system and structure on which democracy is supposed to rest has lost its moral standing. The political system has degenerated into a contest between feudal and industrial powers. The PPP, originally a populist party, represents feudal interest in the country and the PML-N is the stronghold of industrialists, traders and businessmen. The interests of these classes are intrinsically in conflict. The feudals have a stake in keeping the country backward, illiterate, dependent and retrogressive so that they can reign supreme.

Industrialists and businessmen are trained to maximize their profits and for them politics is business.

Martial law regimes have become a major cause of political instability and constitutional floundering in Pakistan. The electoral process could not gain credibility because in order to keep itself in power, every regime has used the administrative machinery to manipulate elections in its favor. After every general election or even a by election, the losing parties allege rigging at the polls. The military and its intelligence agencies have generally played a negative role during the general elections by attempting to tamper the results. Except for the general elections of 1970, which were followed by events leading to the breakup of Pakistan, the outcome of all other elections have been disputed by the party or parties that lost or were declared to be lost at the polls. ⁴

According to Wikipedia, "This engineering of political parties started as far back as the early 50s to date. Between 1958 and 1962, while martial law was in force under Muhammad Ayub Khan, the League was officially defunct. Later, the League reformed into two separate factions: the Convention Muslim League (under Ayub) and the Council Muslim League."

Clubbed with weak parties, another tool of depoliticization is the artificial creation of political parties. According to Wikipedia, "This engineering of political parties started as far back as the early 50s to date. Between 1958 and 1962, while martial law was in force under Muhammad Ayub Khan, the League was officially defunct. Later, the League reformed into two separate factions: the Convention Muslim League (under Ayub) and the Council Muslim League. This latter group joined a united front with other political parties in 1967 in opposition to the group led by Ayub. The Convention Muslim League ceased to exist when Ayub Khan resigned in 1969. The Council Muslim League, which had brought about the founding of Pakistan, was virtually eliminated from the political scene in the elections of 1970.⁵ There was also the creation of a Republican party which met the same fate. Even today military dictators engineer political parties.

⁴ Constitutional and Political History of Pakistan . Khan,Hamid 2001. Oxford University Press.

⁵ missing

According to Hamid Khan, "The meddling of bureaucrats in politics in the early and mid fifties destroyed whatever party structure existed. They created new political parties and alliances encouraged floor crossings in the legislatures, maneuvered temporary and unstable alliances and coalitions and destabilized them when it suited their interests."

These efforts were clubbed with other attempts at curbing dissent, diversity and promoting oneness national identity and centralization by other de-politicization tools like the non party elections of 1985, imprisonment of political activists like Ghaffar Khan, G.M. Syed and Samad Achakzai along with free spirited intellectuals (the Rawalpindi Conspiracy case of 1951) as well as banning short stories of Saadat Hassan Manto to using the state media as a propaganda tool.

Signs of this practice can be seen to a certain extent even today. For instance, the curriculum has no mention of democracy or post partition significant political leaders like Zulfikar Ali

Bhutto. Most of the heroes are military ones.

Thus due to systematic de-politicization tools the political parties were so strait jacketed that all political parties started to look alike.

According to Hamid Khan, "The meddling of bureaucrats in politics in the early and mid fifties destroyed whatever party structure existed. They created new political parties and alliances encouraged floor crossings in the legislatures, maneuvered temporary and unstable alliances and coalitions and destabilized them when it suited their interests. Political parties and their internal structures became instruments in the hands of manipulators who used them for their own self advancements and perpetuation. Repeated imposition of martial law liquidated whatever party structure existed in 1958. The creation of political parties became the domain of marital law regimes. There has been a clear and significant trend over the years for political leaders to personalize rather than institutionalize their parties."

(c) Acquisition of power and influence by the bureaucracy

The four groups described earlier were incorporated in the newly created state of Pakistan.

After losing the charismatic leadership of its founder and lacking the center authority gave a serious blow to the constitution making in its first decade. In the absence of a guiding document to run the state affairs shaped an alliance between civil and military bureaucracy, affecting the executive, judicial and legislative branch.

According to the Hamid Khan, "Bureaucrats were busy destroying whatever was left of political parties. They created a party of lackeys and sycophants called the "Republican Party" which has no grass roots support or even organization. It was a creation of the establishment which feudals and political opportunist has joined with their own axe to grind. They were active in the formation, destabilization and the fall of governments to please Iskander Mirza. When martial law was declared in 1958, this party evaporated into thin air. Nevertheless it caused incalculable harm to the institution of political parties in Pakistan and paved the way for martial law."

According to the Hamid Khan, "Bureaucrats were busy destroying whatever was left of political parties. They created a party of lackeys and sycophants called the "Republican Party" which has no grass roots support or even organization. It was a creation of the establishment which feudals and political opportunist has joined with their own axe to grind.

Political infighting between Mamdot and Daultana had weakened the Muslim League in Punjab and the party has fallen prey to intrigue and manipulation. Liaqat, instead of acting as a statesman to resolve the dispute, became partisan. He sided with Daultana and tacitly approved the rigging of polls during elections in Punjab in 1951. Daultana was aware of the weaknesses of his party in Punjab which led him to condone the rigging and laid the foundation of the destruction of confidence in the credibility of the electoral process. What Daultana did not foresee was that when you ask the administration to rig the polls for you, you cannot expect it to remain loyal and play second fiddle to you. The bureaucracy demanded its share in political power. When Liaqat died, they got their representative, Malik Ghulam Mohammad appointed Governor General. The rest is history." ⁶

⁶ Constitutional and Political History of Pakistan. Khan, Hamid 2001. Oxford University Press.

This "history" keeps repeating itself over and over again. Whether it is in the form of exorbitant MP III scales on which retired civil and military bureaucrats are hired thus blocking the way for younger officers, or by passing rules such as the appointment of Lt. General Qadir as Governor of Baluchistan two days after his retirement thus violating the rule of two years gap after active service or the politicians asking the army to step in ... all these are manifestations of a twisted history of such an elite alliance. This practice dates as far back as Jinnah's life time when Muhammad Ali, a senior official with long experience in the finance department, persuaded Jinnah to create the office of Secretary General to the Government of Pakistan. Muhammad Ali was himself the first appointee to that office.

(d) Military as political player

The role of the military in the affairs of governance is now beyond dispute and every successive government has accepted it. Hence constitutional working has been largely subverted and the price being paid to appease the military by a disproportional high allocation in the budget has caused stagnation in all social sectors like education, health and housing.

According to Hamid Khan, "The military stands established as the true respiratory of power in the State structure. Even after the lifting of the martial law in 1985, it is the military that calls the shots. The concept of the troika (sharing of powers between the President, the Prime Minister and the military command) though clearly an extra-constitutional development became a fact of life in Pakistan after the death of Zia. The role of the military in the affairs of governance is now beyond dispute and every successive government has accepted it. Hence constitutional working has been largely subverted and the price being paid to appease the military by a disproportional high allocation in the budget has caused stagnation in all social sectors like education, health and

housing. "

All this resulted in the creation of the myth of homogeneity and not diversity and pluralism. This resulted in movements in Sindh, Balochistan squashed through military action.

As mentioned earlier, diversity , individual freedom , de-centralization and pluralism is the very core of liberal democracy. Attempts of de-politicization, curtailing civil liberties and imposing a unitary nationhood idea while ignoring diversity and pluralism by a government is not liberal democracy. The window of opportunity for Pakistanis now is that there is a growing awareness amongst the citizens of their freedoms. Whether or not that happens , remains a challenge for liberals.

De facto liberal democracies

Liberal democracy is sometimes the de facto form of government, while other forms are technically the case; for example, the Canadian monarchy is in fact ruled by a democratically elected Parliament, and the government's ability to create laws that would infringe on individual liberty is curtailed by a codified constitution. In the United Kingdom, the sovereign is the hereditary monarch, but the de facto (legislative) sovereign is the people, via their elected representatives in Parliament, hence a democracy.

Secularism: Time to Rethink and Re-evaluate the Concept

Dr. Huma Baqai*
*Associate Professor Social
Sciences at IBA*

The association between conflict and religion is now a global reality. The use of religion for political capital gains, for consolidation of power and perpetuation of structural violence is becoming part of our new global reality.

Prior to 1980 there was a tendency to downplay the force of religion in politics. It proved counter-productive especially because the sweeping political changes of 1980, witness most states of the world succumbing to calls of so far sub-merged identities. This consciousness is present in New Europe, Central Asian States the Middle East, Southeast Asia and now even on the continents of America and Australia. This also impacted South Asia with a new vigor, a greater upsurge of regional religions was seen. The number of religious organizations had increased, religious practices have become more pronounced, extremism and intolerance are on the rise and the use of religious card for political game a pronounced South Asian reality. The alternatives to state whether political, social or legal have religious under tones. The spread and growth of these alternatives is a source of conflict both at the state level and societal level.

The association between conflict and religion is now a global reality. The use of religion for political capital gains, for consolidation of power and perpetuation of structural violence is becoming part of our new global reality. In regions like South Asia its even more profound. It does not allow the region to progress towards

The term Secularism which is a 19th century import from Europe is under scrutiny. Although adopted by India it is under consistent threat and is flouted everyday with Muslims and Christians facing the wrath of Hindu extremists. In Pakistan and Afghanistan the task is even more difficult for here the term is translated as Without Religion (La-Deeniat).

integration or even modernization. The extremist tendencies and intolerance are actually threatening the existence of countries like Pakistan and Afghanistan and challenging the norms and values of democracy in countries like India and Sri Lanka.

What is the way forward?

The only way forward is to rethink and re-evaluate the role of religion in our lives and Politics. The selective use of religion by the power brokers of South Asia for vested interest and consolidation of power can only stop if the peoples of South Asia reject this. This will happen if out of the box thinking takes place. One dimension can be rethinking and reevaluate the concept of Secularism in South Asian context.

The term Secularism which is a 19th century import from Europe is under scrutiny. Although adopted by India it is under consistent threat and is flouted everyday with Muslims and Christians facing the wrath of Hindu extremists. In Pakistan and Afghanistan the task is even more difficult for here the term is translated as Without Religion (La-Deeniat). Which gives the extremist all the place in the world to exploit it to their advantage. Mere mention of the word is considered blasphemous by some and does not allow any discussion or debate on the subject thus preventing alternative thinking.

The non-western view of Secularism is what needs to be adopted in Pakistan which encompasses along with respect for the religion the concept of tolerance, co-existence and protection for religious minorities. This also coincides with the Jinnah's vision of Muslim majority secular state rather than theocratic state. Moreover the results of all the free elections held in Pakistan prove beyond doubt peoples' commitment to a moderate state which encourages tolerance, non-violence pluralism and inclusivism. The secular state here encourages tolerance, religious pluralism and religious co-existence not because of its neutrality on the matters of religious but rather because of assumed religious orientation towards truth, tolerance and reality.

The non western view of Secularism propagated

There are various movements towards Islamization especially in Pakistan with efforts directed towards introducing Shari'ah (Islamic Law) as the law of the land. The innocent people are often convinced of its utility after being abandoned by the state and its corrupt apparatus. The rightists and religious political parties also use the lure of implementing Shari'ah to gain political capital. The only problem here is that as a nation we have no consensus over the interpretation of Shari'ah and the people need to be educated about this. The promises of imposition of Islamic Laws actually get translated into selective use of religion to impose traditions and beliefs which are not necessarily derived from Islam. It becomes a tool in the hands of hate mongers who believe that followers of a sect of Islam other than their own are worthy of death, indulging in orgies of death and destruction. The aim is to impose their interpretation of Islam, their values and belief system. This in essence is fundamentalism, which assumes that my interpretation is the ultimate truth.

Fundamentalist ideas, religious or not, are dangerous because the people, who are in favor of them, do not want to submit themselves to human laws, because they think they only have to obey a higher force. The concept that people's behavior should be determined by a higher plan is a sort of slant towards transcendence, which is common to both the Vatican and the conservative Muslims, in spite of their enormous cultural and political differences. The focus is on surpassing people and making people submit to and thus subjugating the individual, and the primacy of humans and human laws.

The international events and globalization also contribute to religious extremism in South Asia. The naked aggression and unilateralism practiced by the only super power in the world, especially against the Muslims, has reinforced the concept of the clash of civilizations. There is a conceptual shift in the definition of sovereignty. The powerful are coercing sovereign states to tailor domestic policies to conform to their ideals of freedom, tolerance, and democracy. Those who do not comply, face the threats of sanctions, engineered

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regime change, social upheavals, and even naked aggression in the form of invasions and Drone attacks all in the name of the American neo cons doctrine of freedom and democracy, and the anticipated right to self-defense. This has further strengthened the hands of the rightist in South Asian societies where religious radicalism and Nationalism are becoming one, making it increasingly difficult for sitting governments to fight extremism. It also places the liberals on the back foot not being able to defend these acts of atrocities where killing women and children is called collateral damage. The West's lack of understanding of the ground realities and the trust and intellectual deficit that mars their relationship with these states and societies sabotage indigenous efforts towards curtailing extremist tendencies. This is applicable to the present situation in Pakistan, Afghanistan, Palestine and Syria. Development Modernization progress all are considered to be an agenda of the West. It has strengthened the stance of the Extremist Islamists and in the process and it has weakened the stance of the liberals.

It is nearly impossible for any political party or individual to be completely out of the influence of religion. However, a conscious effort has to be made to prevent the use of religion to further political ends. The real solution lies in the separation of state and religion.

South Asia is a region where people strongly believe in religion and it plays a defining role in their lives. It is nearly impossible for any political party or individual to be completely out of the influence of religion. However, a conscious effort has to be made to prevent the use of religion to further political ends. The real solution lies in the separation of state and religion. This would prevent the negative use of religion from controlling politics and religious sentiments from influencing relations between different communities. In order to maintain peace and cooperation in South Asia, it is desirable to rethink and reevaluate the concept of secularism.

However to bring objectivity to the discussion it must be understood that moderates and anti secularists who reject exclusivist religious-nationalist development, do not see the alternative as a modern, westernized secular state. In their view, political-religious conflict involving intolerance and violence are also perpetuated by the so called modern secular national state. To them, religion per se is not a source of conflict but its politicization that trigger conflict. In the South Asian context, this is proven beyond doubt for both secular and non secular state has

witnessed religion triggered conflicts and its politicization by the ruling elite. Therefore, the adoption of secular values alone will not resolve the religious chasm in the region. The approaches emphasized upon and applicable should include tolerance, non-violence, pluralism, and inclusivism.

Secularism in Pakistan in spite of this ground reality does offer a chance to political viability through secular sharing of Power. In state of religious, ethnic derivations the only viable option for Pakistan is a secular form of government. It may sound like a tall order but, Support for strict separation between religion and government has grown steadily over the past five years according to the U.S survey. Majorities in 47 countries surveyed by the Washington based PEW institute for public opinion agree to religion and politics not to mix. Pakistanis who believed that religion and government should remain separate were only 33 percent of the population in 2002.

Five years later the size grew to 48 per cent a 15 per cent increase. However it should be completely understood that when people of Pakistan call for separation of government and religion they are actually giving a negative sanction to politicization of religion and its use for power brokerage. Pakistan like rest of South Asia remains a emotionally religious state looking for options that does not divorce religion but live with it in peace.

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Free Press in Pakistan

From it's beginning to now

Saghir Ahmed
Naqash

Story of free press in Pakistan makes a sorry reading. Acts of Nov 03 2007 by a military dictator suspending transmission of private TV Channels speaks volumes of state tyranny in recent days it was latest but the most brutal example of how state had been dictating to the opinion makers.

In a developing country like Pakistan access to credible information has been a burning issue throughout its turbulent times of successive political eras. Years after years, since its inception concerted and conscious efforts were made at the state level to put general masses in utter oblivion about what was happening in the corridors of power. Though times with regard to media emancipation have changed in Pakistan now but the pattern of classifying information by the state still lurks in the present day of media hype and extolled view about the state of free press and free flow of information in Pakistan. Is it still an issue or the days of totalitarian control over information are over, needs to be gauged day after day while keeping an eye on its uninterrupted transparent flow to masses and its feedback?

Story of free press in Pakistan makes a sorry reading. Acts of Nov 03 2007 by a military dictator suspending transmission of private TV Channels speaks volumes of state tyranny in recent days it was latest but the most brutal example of how state had been dictating to the opinion makers. Has the mind set of the rulers changed is still a million dollars question? Analysts believe that successive Governments

that came into power since 1947 have kept a distance from the baffled masses of Pakistan by putting flow of information under state control. This is one reason that why people hate their respective Government. Promulgation of press and publication act 1961 during president Ayub era is generally considered the beginning of state apathy towards the free flow of information and masses access to it. Under this set up flow of information was the sole responsibility of the state. Since there was no independent source what so ever

It was a beginning of a new era, News papers that were little bit liberal in their outlook were taken over to carry messages according to the wishes and whims of the Government. With regard to development of print media in Pakistan stick and carrot policy had been the order of the bygone days.

state revealed made the headlines and got general acceptance at the grass route level. Later national press trust NPT was introduced to take financial and administrative control of leading English and Urdu News Papers. Daily Ammrooz, Daily Mashraq, and Pakistan Times were the noticeable inclusion in NPT garb.

It was a beginning of a new era, News papers that were little bit liberal in their outlook were taken over to carry messages according to the wishes and whims of the Government. With regard to development of print media in Pakistan stick and carrot policy had been the order of the bygone days. News papers who voiced Governments concerns with care were offered lucrative advertisement package and those who followed an independent lines were often coerced to submission by blocking ads, the financial vein of any media outfit.

This was the state of media in Pakistan in 60s and early 70s, where respective Governments were the biggest stake holder in the media development and that is why nobody escaped the institutionalized assault on the media. Freedom of press has always been a buzz words during the early days of Pakistan history, where state rhetoric was aplomb to sooth public resentment over these issues. On the other hand those who took courage to take the bull by the hones and call spade a spade were victims of state torture and solitary confinement without any cogent reason. Vulnerability of independent journalists had also been another issue. Dilettantism was on the rise and under fear of state harassment. Few dared to write what they deemed fit and true. Many left the profession and compromised their obsession of free media due to state coercion and uncalled for financial and economic constraints. There are many

untold stories of state despotism to snub voices of reactionary tone.

Voices of independent analysts were muffled and so rare that people of conscious and reason started looking outside of the country for creditable information.

BBC Urdu service, Voice of Germany and many other international sources became popular in Pakistan. Reasons for this are not unknown even today. Along with NPT incentives for print media, electronic media of 60s and 70s was also under state control. Pakistan radio in particular and later Pakistan Television strenuously followed state dictates and wishes and no food for thought was available for the disgruntled masses of the country.

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This was the state of print and electronic Media when late ZA Bhutto emerged on the political horizon of Pakistan and succeeded in achieving broad based national consensus for 1973 constitution. Through Article 19 of the constitution Freedom of Expression was guaranteed and legal cover were provided for public speeches and independent publications. These measures injected some life into the day by day sidelined industry of print media in general but acceptance and acknowledgement of free media still remained a far cry during those days. Development of independent media has been a consistent struggle over the years in Pakistan. It was the tiny group of vibrant journalists who were instrumental in dethroning president Ayub Khan, but the fruits of this legacy was not allowed to pass on to the next generation .

ZA Bhutto era, which is generally considered an era of democracy and human rights was also not an exception. Voices of dissent were seldom approved and dismissed from the public presence. Though NPT was disapproved during Bhutto era but the freakish attitude of the media groups to get more advertisement from government continued years after years and still lurks in the attitude of our media organizations operating today. Then Gen Zia came with all his farcical presentation of free media. These were the days when journalistic neutrality and impartiality was usually Tamed in torture cells across the jails in the country. Among them Shahi fort of Lahore was a formidable destination

for any one who offered resistance. State coercion was the order the day and manhandling of media persons and confiscation of printing press became a routine matter. Beside all these unwarranted tactics employed by the successive regime to curb media, the good work to break the shackles continued and many braved the stressful days.

After Gen Zia ten years of democratic rule deeply politicized the media. Pro-PPP and pro- Nawaz Media groups thrived during this period and favoritism corrupted the godly image of neutral media. One can describe this period with a media boom but what it accrued is not commonly approved by the journalists themselves.

Then Gen Musharraf came who pretended to be the champion of free press and freedom of expression. To extend his unconstitutional rule he flirted with the media and where ever he traveled to across the globe he took the media in a calculated way to have edge over his adversaries.

Then Gen Musharraf came who pretended to be the champion of free press and freedom of expression. To extend his unconstitutional rule he flirted with the media and where ever he traveled to across the globe he took the media in a calculated way to have edge over his adversaries. To be more popular among the masses and with particular reference to media he ushered upon process of institutionalized development of media in Pakistan.

Private “TV and Radio” licenses were issued to whom so ever aspired to. But this system was regulated by vaguely and hastily drafted PEMRA ordinance and did nothing to streamline dissemination of news and views across the country. These were the times when commercial interests of the mega media groups took over the institutional interest of the media.

Sensationalism is the by product of this era and nobody knows how far this trend will go without check. Anchor persons who appear on different TV channels these days are being presented as icons and even bigger than their talk shows. Few of them started behaving like an aggrieved party after events following the dismissal of Chief Justice Supreme Court Justice Iftikhar Mohammad Chaudhry on March 9 2007. Some TV Channels also struggled to broker a deal between Ghazi Brothers of Lal Mosque and the then

Government leaving many questions unanswered. Present state of media is certainly a new found state where media has emerged with unprecedented power unlike in the past. This new found freedom of present day is so vibrant and inviting that News and Current Affairs Channels are fast becoming centre of public attraction. Media rights have been acknowledged and after public rejection of November 3 acts nobody now can challenge its authority and vitality.

Presently it is good to know rights of independent media but the question is, are we ready to take on our obligations Vis a Vis percolation of creditable information.

Empowerment of media breeds powerful society and to empower people the present Government is doing all to ensure public access to all sorts of information but the question is, is the public becoming more and more powerful day after day or not? For this we will have to wait and see how this newly found freedom of media delivers to the masses.

Since media in Pakistan has started discovering a new zeal with tenacity of professional purpose, there are certain queries that haunt the mind of those who do not take it for granted. For instance “do we need a free media” or a Responsible one and how present political set up stands by it. In the face of weak political and social institutions amid high rate of corruption is Pakistani media strong and matured enough as an institution to survive test of all times? And is it an impartial media? Answers of these will take some time to come. According to Thomas Jefferson “Our liberty depends on freedom of the press and that cannot be limited without being lost.” Analysts including liberal elements believe that media has been a by-product of political dispensation of those who ruled. But now as the media has found a flamboyant touch to say no to any thing that violates any norm or law. This situation is fascinating for many including liberals and even those who always take reference of their past experiences. Some say present media must carry on whereas others voice concern with regard to its code of conduct. The cardinal point remains that

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how long it will carry on. Will our media be successful in finding consistency and much needed transparency? These thoughts only seem plausible when we look at things as they are and how do we take them. It is high time that media also regulates itself by working on a common “code of conduct” for itself. Failing to do so may result in some more limitations from the state or some other actors in the times to come.

The Judicial Crisis & the Rule of Law in Pakistan

Anees Jillani

A judicial crisis began in Pakistan in March 2007 with General Musharraf's suspension of the Chief Justice of the Supreme Court, Mr Iftikhar Chaudhry, on charges of nepotism and misconduct. The removal remains shrouded in mystery as both General Musharraf and Mr Chaudhry have refused to dwell upon the reasons for this drastic action. It is, however, generally believed that the action was an attempt by General Musharraf to remove a potential impediment to his continued roles as president and army chief, given the former Chief Justice's increasing inclination to give judgments contrary to government's expectations.

This was not the first time in Pakistan's history that a judge of a superior court, and even a chief justice, had been unceremoniously removed. The previous military ruler, General Ziaul Haq, who ruled the country with an iron-hand, routinely removed and changed judges to suit his convenience.

This was not the first time in Pakistan's history that a judge of a superior court, and even a chief justice, had been unceremoniously removed. The previous military ruler, General Ziaul Haq, who ruled the country with an iron-hand, routinely removed and changed judges to suit his convenience. He managed to get the former premier, Zulfikar Ali Bhutto, convicted on a dubious murder charge by manipulating the appointment of judges, first in the Lahore High Court, and later in the Supreme Court. Mr Bhutto was eventually hanged on this murder charge.

Why the Lawyers Agitated for the Chief Justice Restoration

Accordingly, Mr Chaudhry's removal and replacement appeared a routine affair, but only for a short while.

General Musharraf and his coterie may have expected that the public and the legal community would take this change of command in the Supreme Court in their stride, as in the past, and their disapproval would be restricted to condemnations in the drawing rooms. The lawyer community, this time, reacted differently. Within days, it had triggered unprecedented outrage in bar rooms across Pakistan.

There may be several explanations for this. Firstly, it may partly be attributable to a vibrant electronic media which was quite free, unlike on previous occasions when there was only one television channel, that too owned and run by the state. The television channels enabled the legal community to openly communicate with each other, and their open criticism of Gen. Musharraf's

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move, without yet attracting a clamp down, emboldened others to come out against the governmental move. The constant live coverage of the agitation against the dismissal further buoyed up the lawyers.

Secondly, the new Chief Justice, Mr Javed Iqbal, reacted strongly when the police in Islamabad tried to baton charge the lawyers in the initial days of the agitation. This assured the lawyers that they would be spared the rod even while using the harshest language against the government, and the new Chief Justice.

Third, Mr Chaudhry was well respected, and somewhat popular even prior to his suspension by General Musharraf. This was partly the result of the verdict given by a Supreme Court Bench headed by him in the Steel Mills case which was the first major challenge to the Musharraf regime by the Court that had taken over after the October 1999 military coup, and partly the consequence of Public Interest Litigation cases that were being entertained by mostly the Chief Justice himself. These cases had become so popular that the Chief Justice's office by the time he was removed was daily receiving hundreds

of applications which only showed the failure of the judicial and administrative system in the country.

Fourth, the President's failure, who was at that time also the Chief of Army Staff, along with that of the Prime Minister of Pakistan, the Chief of the ISI (Inter Services Intelligence), the Director Generals of the Military Intelligence, and the Intelligence Bureau, and the President's Chief of Staff, to jointly convince the Chief Justice to give up his position in return for another lucrative position, most likely as an ambassador. The Chief Justice unexpectedly refused to resign. This caught the imagination of the people, who suddenly saw a hero in their midst who could stand up against the military.

The move to detain the Chief Justice and his family at home in the Islamabad's Judge's colony was unprecedented. He was not only restrained from functioning as a judge, but was detained for all practical purposes along with his family members, including his seven-year-old child, from the evening of March 9.

Fifth was the government's harsh reaction to the Chief Justice's resistance. A dumbfounded nation watched on the television as he was initially detained at President's Camp Office in Rawalpindi while a new chief justice was administered oath of office by Mr Abdul Hameed Dogar. In record time, a reference came up for hearing the same evening before a constitutional body, namely the SJC (Supreme Judicial Council). Chief Justices of the Lahore and Karachi High Courts were specially flown to Islamabad to attend this SJC meeting. The indecent haste in convening the SJC meeting smacked of mala fide intentions.

Finally, the move to detain the Chief Justice and his family at home in the Islamabad's Judge's colony was unprecedented. He was not only restrained from functioning as a judge, but was detained for all practical purposes along with his family members, including his seven-year-old child, from the evening of March 9. His official residence in the Judges Colony was surrounded by a heavy contingent of police and personnel of intelligence agencies. The vehicles in his use were taken away by means of a forklift. His office staff were detained, and kept at an unknown place, presumably in order to pressurize them to fabricate evidence against their erstwhile employer. His Chamber was sealed, files removed, and some handed over to the ISI under the supervision of the newly appointed registrar. His children were not allowed to attend school; and

his facility of telephones, cable and DSL was discontinued. No one was allowed to meet him, including the serving justices of the Supreme Court. What to talk of Pakistan, this kind of restraint of a serving judge of the Supreme Court of any country, was unheard of before it happened to Mr. Chaudhary

The last straw was the way he was man-handled by a police official when he refused to sit in the official car to attend the SJC hearing, and insisted upon walking to the Supreme Court with his wife. He was seen by the public as a victim who had the courage to stand up to the military authorities and protest against the injustices perpetrated to him. Gen. Musharraf's unpopularity on account of his being seen as a "lap dog" of America in the hugely unpopular "war against terror" only increased Mr. Chaudhary's heroism, in the eyes of the legal community.

Undue Haste

The SJC in the first hearing restrained Mr Chaudhry to work as a Supreme Court judge and the Chief Justice of Pakistan until his case could be processed. The decision was legally not tenable as the SJC is almost exclusively governed by the provisions of article 209 of the Constitution under which it is a fact-finding inquiry commission/ council consisting of the senior most judges of Pakistan's courts, and has no powers to restrain a judge from working. This infuriated the legal community; and increased the public adulation of the Chief Justice. This is when General Musharraf started to lose control of events.

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The pressure had started to build. The immense opposition to the appointment of Mr Javed Iqbal as the acting Chief Justice, instead of Mr Rana Bhagwandas, who was the senior-most judge after the Chief Justice, forced the government to replace Mr Iqbal by Mr Bhagwandas. It later transpired that the latter was vehemently opposed to the removal of Mr Chaudhry and particularly the way he was treated since his suspension. After taking over, he gradually restored some of the perks that had previously been denied to Mr Chaudhry.

Challenge to the Suspension

On April 18, following Mr Bhagwandas'

appointment as the acting chief justice, Mr Chaudhry filed a constitutional petition in the Supreme Court challenging the President moving a reference against him. A full court was constituted, and the Supreme Court on May 7 stayed the SJC proceedings. Almost a day to day hearing commenced in the Supreme Court before a full court headed by Justice Khalil Ramday where Aitzaz Ahsan outshone all his opposing counsels and played to the gallery on a daily basis. He introduced a new element in the legal culture by talking daily to the media from the stairs to the entrance of the Court and did not mince any words in criticizing everybody opposed to the restoration of Mr Chaudhry.

The full court also started to aggressively criticize the government's lawyers for reasons, ranging from the presence of intelligence agents in the courtroom, to the presentation of certain objectionable materials, including photographs, presented by the governmental side in support of the President's case. It was quite obvious from the court proceedings that the game was gradually slipping away from the hands of the government, and there was nobody inside the courtroom or outside willing to defend President Musharraf's position, except for Malik M Qayyum and Raza Qasuri. The attorney general Makhdoom Ali Khan did not utter a word during the five month old crisis and ended up resigning when his side lost.

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In the meantime, Mr Chaudhry, chauffeured by Mr. Ahsan, embarked on his historic visits to various bars in the country. He started with Peshawar, and followed it with visits to Lahore, Faislabad and Abbottabad, and later Hyderabad and Sukkur. He was given a tumultuous reception wherever he went and he introduced a new trend in politics by holding rallies that went on all night peacefully. However, on May 12 that peace was shattered when more than 40 people died in violence led by activists of the MQM (Mutahedda Qaumi Movement), a major coalition partner in the Musharraf government, when it tried to stop Mr Chaudhry from entering Karachi to address the Sindh High Court Bar Association. The violence in Karachi further turned the public against the government, particularly General Musharraf, and the MQM was vehemently criticized in the whole country for its "fascist" attitude. ; the suicide

bombings which started around that time also deterred the organizers from going ahead with the remaining rallies.

In the face of relentless country-wide protests, the Supreme Court Bench, headed by Justice Ramday, cleared Mr Chaudhry of any wrongdoing, and restored him as the Chief Justice to office on July 20. The whole country was virtually elated, and everybody felt good that finally a major institution had

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succeeded in asserting itself against the military and the intelligence agencies. The lawyers, coupled with a section of the NGOs calling itself the civil society, took pride in their unparalleled struggle for the rule of law. The legal community started to feel dignified and proud of its profession and one could feel a change in gait in almost every young lawyer in the kutchery. The July verdict was a major political defeat for General Musharraf.

Post-Restoration

Mr Chaudhry, following his restoration, kept a low profile and avoided sitting in benches that heard cases against General Musharraf. The Supreme Court, however, was now being increasingly seen by all the opposition forces as an icon where anti-Musharraf sentiments could be coalesced. General Musharraf began to panic, and in August, he came close to declaring a state of emergency. However, the US Secretary of State, Condoleezza Rice, telephoned him, by some accounts in a successful effort to dissuade him. The Supreme Court ruling the same month, allowing former Prime Minister Nawaz Sharif to return to Pakistan after seven years in exile showed to all that the Court was no longer subservient to the military rule. When Nawaz Sharif finally returned, the government immediately arrested him and deported him. On October 24, Chief Justice stated that the former PM has an "inalienable right" to return to Pakistan, and he accused the then Prime Minister Shaukat Aziz of violating a Supreme Court order by arranging for Sharif's most recent deportation.

These remarks by the Chief Justice about the then PM were seen as a big rebuke to the government. Additionally, the pressure was building up as the eligibility of Musharraf as a presidential candidate, and the legality of his

subsequent presidential election, was under consideration in five identical petitions that were filed by different parties. On October 5, the Court through an interim order allowed the presidential elections to proceed with General Musharraf standing as a presidential candidate. However, the Court ordered the Election Commission of Pakistan not to announce its decision officially until such time that the court had given its final orders.

Imposition of Emergency & the PCO

The Court never got a chance to rule on this issue, because on November 3, 2007, General Musharraf issued a Proclamation of Emergency suspending the country's Constitution. The proclamation justified the suspension as necessary due to the country's rapidly deteriorating security circumstances that was "posing a grave threat to the life and property of the citizens of Pakistan", and to the allegedly negative role being played by the country's judiciary, which was claimed to be "working at cross purposes with the executive and legislature in the fight against terrorism and extremism thereby weakening the Government and the nation's resolve and diluting the efficacy of its actions to control this menace." According to the proclamation, the situation required "emergent and extraordinary measures."

Just prior to the imposition of emergency, some of the Supreme Court judges hours tried to block the move by urging government officials not to implement emergency orders; they also gave an injunction against the proclamation. However, their attempts were thwarted as they were summarily dismissed, and detained. The Chief Justice, Mr Chaudhry, this time was dismissed, instead of being suspended, and once again placed under house arrest along with his family

A PCO (Provisional Constitutional Order) was issued by General Musharraf, interestingly in his role as army chief, and not as the President of Pakistan. The PCO required, inter alia, that the country's judiciary take a new oath of office, and it barred the judiciary from making any orders against the PCO or from taking any action against the President, the Prime Minister, or anyone acting under their authority. It also suspended a

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The imposition of emergency was followed by an immediate and harsh crackdown on the media. Several private television stations were blacked out, and a new government order banned any media reports that "defame or bring ridicule" to the government or military. Violations of the order could bring a one-year prison sentence or a five million rupee fine.

number of Fundamental Rights listed in Chapter One of the Constitution. These included freedom from unlawful arrest and detention, and freedoms of movement, assembly, association, and speech.

Overall, 47 of the 95 superior court judges, including 13 of the Supreme Court, declined to accept emergency rule, and take new oath of office under the PCO. They thus ceased to function as judges, with many placed under house arrest; and were replaced by Musharraf's loyalists. On November 19, the Supreme Court quickly dismissed the legal challenges to Musharraf's re-election as president, thus removing a major constitutional impediment questioning the General's standing to contest elections.

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Moreover, about 2,000 opposition figures, human rights activists, and lawyers were rounded up and detained following the emergency proclamation. Thousands of lawyers protested in several Pakistani cities and were met with police beatings and mass arrests; and many of them continue to boycott the courts every Thursday till to date.

The intense opposition at the international level, coupled with the lawyers' agitation, however, forced General Musharraf to lift emergency within a short period. He nevertheless had succeeded in attaining his main objective during the short duration of the emergency by getting rid of the judges that he did not trust; and getting the impediment to contest elections removed. On December 15, 2007, Revocation of Proclamation Order was issued which revoked and repealed the Emergency and the PCO. Ironically however, the revived Constitution contained the amendments carried out during the Emergency through Constitution (Amendment) Orders.

Benazir Bhutto Assassinated

While all of this was going on, General Musharraf and Benazir Bhutto agreed to an accord on October 4 that apparently paved the way for a power-sharing deal. The NRO (National Reconciliation Ordinance) was promulgated which provided amnesty for all politicians who served in Pakistan between 1988 and 1999, thus essentially clearing Benazir Bhutto, and her husband Asif Ali Zardari, of pending and potential corruption charges.

Many Pakistanis were unhappy with news of the potential deal, viewing it as a politically unprincipled arrangement. On October 18, Benazir Bhutto returned to Pakistan after more than eight years of self-imposed exile and was welcomed in Karachi by hundreds of thousands of supporters. Only hours after her arrival, two blasts near her motorcade left some 140 people dead, but Bhutto was unharmed. To date, police have made no breakthroughs in the case.

PPP Refuses to Restore the Chief Justice

The country's next parliamentary and provincial elections were scheduled to take place by January 15, 2008 but were postponed, following the assassination of Benazir Bhutto on December 27 at the end of a public meeting in Rawalpindi. Benazir's husband, Asif Ali Zardari, assumed charge of her People's Party, and formed a coalition government after the PPP came out as a major party, although lacking a simple majority in the National Assembly. Initially, the PPP formed a coalition with former premier, Nawaz Sharif's PML-N (Pakistan Muslim League – Nawaz Group), and one of the major conditions of the coalition was restoration of the judiciary. A Declaration in this regard was signed in March at

Murree where both the parties agreed to restore the deposed judges, on the position as they were on November 2, 2007, within 30 days of the formation of the federal government through a parliamentary resolution. When that did not happen,; PML-N withdrew from the Coalition to become the main opposition party, albeit the friendliest one in Pakistan's history.

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Of the dismissed judges, several took the PPP government's offer of a "reappointment" that is they got their jobs back after they took a fresh oath of office. About 17 judges refused to take the oath, and adhered to the dictum that their removal was unconstitutional and illegal, and there is thus no necessity for them to take a new oath.

The restoration is still nowhere in sight. It is becoming quite clear now that the PPP Government has no plans to restore the deposed Chief Justice. A total of 47 judges from the superior courts refused to take new oath under the PCO in November 2007 (13 out of a total of 18 in the Supreme Court; 11 out of 31 in the Lahore High Court; 19 out of 28 in the Sindh High Court; and 4 out of 13 in the Peshawar High Court). Interestingly, all five judges from the Balochistan High Court took the oath under the PCO, despite the fact that the former Chief Justice, Mr Chaudhry, himself belongs to the Province of Balochistan, and remained the chief justice of this High Court for some time.

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Where is the Rule of Law?

Law is central to life in a civilized society. It is expected to shape and build, not bridges, but institutions, not towers, but civilizations. The ongoing struggle to restore the Chief Justice and the remaining judges who have refused to take fresh oath of office should not be seen as a personalized movement. It should not be regarded as an agitation to simply restore the deposed Chief Justice. His restoration, without the remaining judges, would again be defective. The movement mainly confined to a section of the lawyers now should be seen in a wider context to restore the Rule of Law in this country which has seen revocations of three Constitutions (1956, 1962 and 1973) and several military coups (1958, 1969, 1977 and 1999).

Each time a Chief of Army Staff topples a civilian government, he never leaves voluntarily, including General Musharraf. There has never been a military ruler in this country who did not fiddle with the Constitution; two of them, namely Ayub Khan and Yahya Khan, went to the extent of introducing totally new constitutions. The worst aspect has been the role of the judiciary which always upheld the take-over.

It is true that the legal community, particularly the judiciary, is more concerned with what is the law, rather than what it ought to be. The Supreme Court, and resultantly the High Courts, invariably justified the military coups on grounds of the law of necessity; and the fact that the take-over was a *fait accompli*. They subscribe to the proposition that after a successful revolution, which has been compared to a military take-over, all laws cease to be laws, and whatever law or authority exists afterwards comes under the new authority by virtue of the so-called “revolution.” This line of reasoning, based on Hans Kelson’s views on revolution, has played havoc with the legal fabric, and has removed one important dictum of law from our midst: prediction.

It is one of the salient jobs of a legal professional to predict the outcome based on the existing legal postulates. It is treason under the Constitution to abrogate it but what is one expected to predict, when one Supreme Court after another finds grounds to justify the military take-over. Both after the 1977 coup, and then after the 1999 coup, the Supreme Court not only upheld the military rule but went to the extent of specifically permitting the military dictator to amend the Constitution if so desired.

And both General Ziaul Haq and General Musharraf made ample use of this permission. They arbitrarily changed not only the Basic Law of the country but innumerable other laws at their whims. The very judges who had given them the *carte blanche* to change the laws were eventually shown the door and were replaced by more loyal ones. This is ironical in a system where sometimes, a simple modification in the law, or a notification is not issued, for decades, while constitutional amendments are carried out by a stroke of a dictator’s pen. It is nothing short of a sorry state of affairs that judges a lot of times refuse to hear

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cases or even rule on minor points on grounds of lack of time and load of work. But the same judges give a decision in a ruler's favor within hours, if so required. Predictability in such a state of affairs is impossible, unless one only desires to predict that the judges are likely to rule in favor of the rulers. Predictability is a product of order, based on justice, or at least based on an expression in some measure to strive for justice. And in the absence of some kind of order, or structure, prediction is not possible, and a proper system based on rule of law cannot be devised. The consequence is an insecure order which we see all around us.

The Significance of Popular Opinion

It is true that the military has never toppled a civilian government, until the popular opinion had turned against it, and the public desperately yearned for a change. It is a reflection of the failure of the political system in the country that a proper constitutional change has seldom taken place in the country, and the people end up looking to the military to save them from the clutches of a "civilian dictator." This goes to show the importance of public opinion, and the Supreme Courts while upholding imposition of martial laws have always alluded to the general popular support for the changeover from the civilians to the military.

Ironically however, the same courts never bother to refer to this popular opinion while considering the laws and changes made in the laws and even the Constitutions by the military dictators. The courts have repeatedly failed to take into account the acceptance of and obedience to law as an important factor not just morally but otherwise. The public not just in Pakistan but almost everywhere has an acute sense of right and wrong which is always heightened by witnessing arbitrariness on the part of the dictatorial rulers. It may still obey the laws, not because they believe in its legality, but perhaps out of sheer fear or lack of choice.

The extent and magnitude of the public opinion against a certain law may not be easy to quantify. However, it is about time that the courts in Pakistan start taking notice of the significance of public opinion while considering important cases; and while judging as to whether the public believe in the legality of the law in question, and the authority that introduced it. It might as well start by considering the issue of the restoration of the remaining deposed judges which continues to linger on, continuously hampering the functioning of the democratic government elected in the last general elections.

Globalization- Can Pakistan be a winner?

Aniq Zafar

For most the term globalization only evokes economics and hence many apprehend that the current economic recession may force the states to look more inwardly and these will turn more protectionists and financial and capital markets will not be able to function as freely as they have in the last few decades.

Globalization has been increasingly under question after the recession of economy that hit the world in the year 2008 and is predicted to continue in the year 2009. For most the term globalization only evokes economics and hence many apprehend that the current economic recession may force the states to look more inwardly and these will turn more protectionists and financial and capital markets will not be able to function as freely as they have in the last few decades. Others still argue that the world is so intertwined now that it may not be feasible for any state to look inward only and hope to get out of the economic recession. There are others who see globalization in a much wider context and believe that other aspects of globalisation like Information highways (internet), cultural influences and migrations will continue to play their role in making the world a global village.

To understand the globalization debate one needs to understand what is meant by Globalization. In simpler terms “Globalization in its literal sense is the process of transformation of local or regional phenomena into global ones. This process is a combination of economic, technological, sociocultural and political forces. (Wikipedia)

Globalization is off course often referred to as economic globalization, that is, integration of national economies into the international economy through trade, foreign direct investment, capital flows, migration, and the spread of technology.

Or in the words of World Trade Organization's Director-General Pascal Lamy "Globalization can be defined as a historical stage of accelerated expansion of market capitalism, like the one experienced in the 19th century with the industrial revolution."

Globalization is a centuries' long process that continued in its various forms with the expansion of human population and the development of the civilization. In the last few decades though this process has seen extraordinary expansion, and its impact is far more widespread than the earlier periods of globalization.

Borrowing yet another definition from Professor Erich Weede one can say Globalization refers to an increasing international division of labor and more trade between economies, to cross-border investment and rapid transfers of technology between nations, to global capital flows and to a lesser degree to increasing labor mobility.

The term "globalization" itself started being used by the economists in the 1980s although it was used in the social sciences in the 1960s, however, its concepts did not become popular until the latter half of the 1980s and 1990s.

Globalization is a centuries' long process that continued in its various forms with the expansion of human population and the development of the civilization. In the last few decades though this process has seen extraordinary expansion, and its impact is far more widespread than the earlier periods of globalization. Some sociologist and economists claim that the early forms of globalization existed during the Roman Empire, the Parsian empire, and the Han Dynasty, when the Silk Road started in China, reached the boundaries of the Parthian empire, and continued onwards towards Rome.

Despite this historical background the first part of the 19th century is recognized as "The First Era of Globalization." This was the period when European powers were colonizing in Asia, Africa and in Americas. The First World War however ended that era with all the states turning more protectionists for their markets.

Modern period of globalization in the post World War II is somewhat the result of the sustained efforts on part of economists, business interests, and politicians who understood that there were costs associated with protectionism and declining international economic integration. Hence the agreements like General Agreement on Tariffs and Trade (GATT), culminating into World Trade Organization (WTO). This process enabled promotion of free trade and reduced tariffs; creation of free trade zones with small or no tariffs, and containerization for ocean shipping, reduction or elimination of capital controls, reduction, elimination, or harmonization of subsidies, harmonization of intellectual property laws across the majority of states, supranational recognition of intellectual property restrictions. (Wikipedia).

Another important aspect of the globalization debate is the cultural aspect of this process. It was facilitated first with the advent of television and film and in the last decade of the 20th century it was further spurred on with the introduction of internet, computers and satellite television. Initial reactions were somewhat skeptical as most people thought that this would lead to development of a single culture in the world that will be predominantly American and ultimately the traditional diversity and indigenous cultures will suffer. But soon it became clear that the local uniqueness, individuality, and identity would survive and in fact many movements will be born to protect the same. Also the reverse process of influence on more developed societies was also evident.

In short there are number of aspects of the Globalization that affect the world in a host of several different ways. These are Industrial, Financial, Economic, Political, Informational, Competition, Cultural, Ecological- Social (International cultural exchange) Technical and Legal/Ethical.

Some of the benefits of globalization can be counted as

- Economies of countries that engage well with the international economy have consistently grown much faster than those countries that try to protect themselves. Well managed open economies have grown at rates that are on average 2 ½ percentage points higher than the rate of growth in economies closed to the forces of globalisation.
- Countries which have had faster economic growth have then been able to improve living standards and reduce poverty. India has cut its poverty rate in half in the past two decades. China has reduced the number of rural poor from 250 million in 1978 to 34 million in 1999. Cheaper imports also make

a wider range of products accessible to more people and, through competition, can help promote efficiency and productivity.

- Improved wealth through the economic gains of globalisation has led to improved access to health care and clean water which has increased life expectancy. More than 85 percent of the world's population can expect to live for at least sixty years (that's twice as long as the average life expectancy 100 years ago!)
- Increased global income and reduced investment barriers have led to an increase in foreign direct investment which has accelerated growth in many countries. In 1975, total foreign direct investment amounted to US\$23 billion while in 2007 it totalled US\$ 974 billion
- Improved environmental awareness and accountability has contributed to positive environmental outcomes by encouraging the use of more efficient, less-polluting technologies and facilitating economies' imports of renewable substitutes for use in place of scarce domestic natural resources.
- Increasing interdependence and global institutions like WTO and World Bank, that manage the settlement of government-to-government disputes, have enabled international political and economic tensions to be resolved on a "rules based" approach, rather than which country has the greatest economic or political power. Importantly it has bolstered peace as countries are unlikely to enter conflict with trading partners and poverty reduction helps reduce the breeding ground for terrorism.
- Improved technology has dramatically reduced costs and prices changing the way the world communicates, learns, does business and treats illnesses. Between 1990 and 1999, adult illiteracy rates in developing countries fell from 35 per cent to 29 per cent. Modern communications and the global spread of information have contributed to the toppling of undemocratic regimes and a growth in liberal democracies around the world.
- The voluntary adoption by global companies of workplace standards for their internationalised production facilities in developing countries has made an important contribution to respect for international labour standards. Wages paid by multinationals in middle- and low-income countries are on average 1.8 to 2.0 times the average wages in those countries.
- International migration has led to greater recognition of diversity and respect for cultural identities which is improving democracy and access to human rights.

While the critics of the globalization can argue

- There are social and economic costs to globalization. Trade liberalization

rewards competitive industries and penalizes uncompetitive ones, and it requires participating countries to undertake economic restructuring and reform. While this will bring benefits in the long term, there are dislocation costs to grapple with in the immediate term, and the social costs for those affected are high.

- Some countries have been unable to take advantage of globalization and their standards of living are dropping further behind the richest countries. The gap in incomes between the 20% of the richest and the poorest countries has grown from 30 to 1 in 1960, to 82 to 1 in 1995.
- Increased trade and travel have facilitated the spread of human, animal and plant diseases, like HIV/AIDS, SARS and bird flu, across borders. The AIDS crisis has reduced life expectancy in some parts of Africa to less than 33 years and delays in addressing the problems, caused by economic pressures, have exacerbated the situation.

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Globalisation has also enabled the introduction of cigarettes and tobacco to developing countries, with major adverse health and financial costs associated with that.

- The increasing interdependence of countries in a globalized world makes them more vulnerable to economic problems like the Asian financial crisis of the late 1990's.
- The environment has been harmed as agricultural, forest, mining and fishing industries exploit inadequate environmental codes and corrupt behaviour in developing countries. Agricultural seed companies are destroying the biodiversity of the planet, and depriving subsistence farmers of their livelihood.
- The major economic powers have a major influence in the institutions of globalization, like the WTO, and this can work against the interests of the developing world. The level of agricultural protection by rich countries has also been estimated to be around five times what they provide in aid to poor countries
- Trade liberalization and technological improvements change the economy of a country, destroying traditional agricultural communities and allowing cheap imports of manufactured goods. This can lead to unemployment if not

carefully managed, as work in the traditional sectors of the economy becomes scarce and people may not have the appropriate skills for the jobs which may be created.

- Modern communications have spread an awareness of the differences between countries, and increased the demand for migration to richer countries. Richer countries have tightened the barriers against migrant workers, xenophobic fears have increased and people smugglers have exploited vulnerable people.
- Globalised competition can force a 'race to the bottom' in wage rates and labour standards. It can also foster a 'brain drain' of skilled workers, where highly educated and qualified professionals, such as doctors, engineers and IT specialists, migrate to developed countries to benefit from the higher wages and greater career and lifestyle prospects. This creates severe skilled labour shortages in developing countries.
- Indigenous and national culture and languages can be eroded by the modern globalised culture

The globalists however discount most of the criticism and insist that globalization works. One of the very ardent globalist and Associate Editor of Financial Times, Martin Wolfe who has authored the book “Why Globalisation works”, believes that while some of the concerns regarding Globalization are legitimate, “but the most hysterical complaints of the critics of integration are nonsense”.

One of the very ardent globalist and Associate Editor of Financial Times, Martin Wolfe who has authored the book “Why Globalisation works”, believes that while some of the concerns regarding Globalization are legitimate, “but the most hysterical complaints of the critics of integration are nonsense”.

He argues that it is wrong to conclude that transnational companies rule the world in an economy that responds to the market dynamics. Also he is of the opinion that neither the WTO nor the IMF can force countries to do what they would very much prefer not to do.

Furthermore he argues that global economic integration does not render states helpless, nor has it created unprecedented poverty and inequality. This question has also been addressed by Prof Erich Weede and he has statistically proven his point.

Taking the example of India and China who are

believed to be the largest beneficiaries of the globalization in the last two decades he argues “Since Deng Xiaoping opened China in the late 1970s and introduced reforms which imply creeping capitalism, Chinese agricultural production grew rapidly. Later, China attracted a lot of foreign direct investment. Now, China is a major base for manufacturing. It already was the third largest exporter in 2005: still behind Germany and the US, but already ahead of Japan (The Economist 2005). By 2008 China is likely to become the biggest exporter of the world. In the 1980s even the disparity between urban and rural incomes in China decreased (Lin, Cai, and Li 2003: 145). Hundreds of millions of Chinese were taken out of abject poverty. In the first two decades of reform, per capita incomes grew fourfold (Bhalla 2002: 218). Later and less radical reforms in India led to nearly doubling per capita incomes in a similar period of time and pulled about two hundred of millions of Indians out of abject poverty (Das 2002: 360). Since China and India together account for nearly forty percent of mankind and about half of the population living in less developed countries, economic growth in China and India and other Asian countries contributed to the equalization of the global distribution of income between individuals and households.

“If we are interested in individuals rather than states, then the empirical facts are clear. Globalization or the global expansion of capitalism has contributed to, or at least been compatible with, an equalization of the size distribution of income between human beings.”

He goes on to argue “If we are interested in individuals rather than states, then the empirical facts are clear. Globalization or the global expansion of capitalism has contributed to, or at least been compatible with, an equalization of the size distribution of income between human beings. Since cross-national differences between average incomes are still a more important component of inequality between human beings than intra-national differences in income, it is possible – and currently true - to have growing inequality within many or even most countries and some movement towards equality among individuals on the globe at the same time (Bhalla 2002; Firebaugh 1999; Goesling 2001; Sala-i-Martin 2007; World Bank 2005)”.

In the local context, Pakistan perhaps failed to win from the peak of the globalisation on any sustainable basis. Poor infrastructure, inadequate human resources and a particular security and political environment can be blamed for

that. In pure economic terms Pakistan has to follow a number of policies that may be painful to begin with but can be helpful to sustain its economy in the longer run. First and foremost is to manage fiscal deficit. This can be managed by avoiding some of the policies like subsidising energy, using the civil service as employer of last resort; spending on infrastructure as a means to jump start the economy; providing open-ended protection to specific sectors; using price controls as a way to curb inflation; banning exports, to keep domestic prices low; underinvesting in urban infrastructure; underpaying public servants-- such as teachers; and allowing the exchange rate to appreciate too far, too quickly.

What Pakistan needs to do is to invest at least 25 per cent of gross domestic product, predominantly financed by domestic savings, including investment of some 5-7 per cent of GDP in infrastructure; and spending by private and public sectors of another 7-8 per cent of GDP on education, training and health.

On the other hand what Pakistan needs to do is to invest at least 25 per cent of gross domestic product, predominantly financed by domestic savings, including investment of some 5-7 per cent of GDP in infrastructure; and spending by private and public sectors of another 7-8 per cent of GDP on education, training and health. Also a focus on inward technology transfer, facilitated by exploitation of opportunities for trade and inward foreign direct investment; acceptance of competition, structural change and urbanisation; competitive labour markets, at least at the margin; and the need to bring environmental protection into development from the beginning; and equality of opportunity, particularly for women.

In political terms the need of an effective and efficient government cannot be overstressed. In the current scenario it appears that as long as the government and its institutions will have a duality of policy while dealing with the threat of extremists and terrorists, stability will remain elusive. The existence of this threat has multifaceted consequences for the state of Pakistan. Economic and political stability on the one hand and now even the external security seems directly related to the state's ability to counter that threat.

Private Property Rights: Reflections on Pakistan

Ali Salman

The most important deficit which Pakistan faces today is neither budget nor trade deficit, it is the institutional deficit. Testimony is provided by various indices measuring institutional environments. The International Property Rights Index (IPRI) places Pakistan at 95th position in 115 countries while India is ranked 37th in 2008 edition. Considering that India and Pakistan are comparable countries by virtue of human development and per capita income, the stark gap between the two countries on property rights indicate the institutional deficit of Pakistan, which is likely to further retard chances of both economic and social development. Pakistan's relative position on another pro-institutional index, Economic Freedom of the World Index, also confirms the hypothesis of institutional deficit.

	India	Pakistan
1 Human Development Index Ranking	128	136
2 Per Capita Income (PPP \$)	3540	2450
3 Economic Freedom of the World ¹ Ranking	77	104
4 International Property Rights ² Ranking	37	95

Pakistan and India Comparison

(Sources: Human Development Report 2008, Economic Freedom of the World 2008, International Property Rights Index 2008)

¹ It is a cross country comparison based on size of government, legal structure and property rights, access to sound money, freedom to trade internationally, and regulation of credit, labor and business.

² This cross-country comparison considers legal and political environment, physical property rights and intellectual property rights.

New Institutional Economics (NIE) has arguably become the mainstream of development agenda ever since the idea was introduced by Douglas North and later popularized by Hernando De Soto. The basic argument is very appealing: greater property rights, stronger rule of law, and an effective functioning of governance institutions including judiciary are pre-requisite for economic development. It has been argued by De Soto that the Western economic development is built on the bedrock of strong property rights, and simple transplantation of the Western economic models do not work in environments where property rights are considered alien.

While agreeing with this argument, the conventional positions on private property rights and rule of law are revisited in this article, divided into three sections. The first section argues that private property rights are indeed prerequisite for economic development though they are not enforceable in isolation and relationship is non-linear and even chaotic.

While agreeing with this argument, the conventional positions on private property rights and rule of law are revisited in this article, divided into three sections. The first section argues that private property rights are indeed prerequisite for economic development though they are not enforceable in isolation and relationship is non-linear and even chaotic. The second section argues that even ideas from NIE have been made part of development agenda in many developing countries, including Pakistan, without desirable results. This has occurred largely due to a simplistic and ahistorical conceptualization of property rights, which need a certain kind of enabling environment to be strictly enforced. The third, and the final, section argues that property rights are symptomatic of rule of law and hence any superficial reforms in private property rights are likely to be counter productive and that the future of rule of law in Pakistan depends on the outcomes of a power struggle among various elites.

1. Property Rights-pre-requisite for economic development

For a historical understanding of an enabling environment, which precedes even property rights, let us compare Russian and English history. Arguing in the favour of importance of private property rights, Richard Pipes (2001) has argued that the key difference between the two otherwise comparable countries has been the private property rights. In the case of England, feudal lords exerted considerable political and economic influence on the Crown as early as

1300s. These feudal lords, who enjoyed absolute ownership of their lands, had great incentive to gain maximum economic benefit from their own capital. The king could little to counter their influence and this grew later into emergence of a parliament, which became the source of real power. Thus a weak central state and a strong society emerged, which were to become the basis of renaissance and then industrial revolution.

In contrast, the Russian tsars, much like their Mughal cousins in the sub-continent, never gave private property rights. Instead they chose to appoint influential people to collect tributes to build a strong state. In time, Russian nobles had to serve the monarch: they held their land in conditional possession only as long as they served him to his satisfaction. Thus, “until late in its history, Russia knew only duties, not rights.” There was hardly any incentive for the tsar’s representatives to either take care of their properties or that of welfare of the people. Thus history fermented ground for a communist revolution, based on negation of the private individual and build-up of totalitarian and despotic regime.

The relationship between property rights and economic development is non-linear and even chaotic. No country has first instituted a structure of property rights and then began the journey of economic progress. The two have moved simultaneously without much conscious and over-arching agenda. In fact, as Chang (2002) has emphatically argued, countries have also curbed certain property rights, in particular intellectual property rights, during the course of technological advancements before fully implementing the laws.

Property rights are important for socio-economic development as long as they are properly contextualized. Government of Pakistan has transferred land to landless peasants several times during last decades. The motive is to give private property rights to landless poor farmers, who worked as share-croppers, known as *haris*. The percentage of the land transferred remains small, as total area transferred to the landless peasants during the agriculture reforms of 1959, 1972, and 1977 is 1.4 million hectares (about 8% of the country’s cultivated area) resumed from the large

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landowners, which benefited 288,000 farmers³. However, this could also be taken as an action against private property rights!

I have personally taken account of the aftermath of transfer of ownership during 1997 in the case of landless peasants in Sindh. According to local accounts revealed during the interviews I conducted, it transpired that most of the land distributed was on the 'kucha' area. The 'kucha' area in local parlance means the adjacent banks on each side of the river, in this case Indus. It was revealed that although this land is potentially cultivable and the title of the property was really transferred, this area is subject to control of local criminal gangs, infamous in the whole country. Thus soon after the land was transferred in the districts of Thatta, Khair Pur and Noshehro Feroze, most of the peasants were evicted by force and the criminal gangs took over possession as their bastion. This development also suggests that mere transfer of ownership with disregard of local realities can be counter productive.

Property rights are important for socio-economic development but they are not enforceable in isolation. The case of land transfer as well as title transfer in the case of haris from Sindh suggests that prevailing political and social realities must be taken into account before embarking upon a pro poor programme in the name of property rights. One wonders if the current Sindh government, which has ostensibly issued extensive advertisements in the newspapers to transfer more land has learnt any lessons from its predecessors.

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A fundamental dimension to the enforcement of property rights is informational- 'who owns what'- as De Soto puts it. The key problem lies in access to information. I interviewed an official of a world's leading consulting company⁴, which has been hired by the Government of Pakistan to

³ The land allotment to about 15,000 haris under Nawaz Sharif second regime in 1997 resulted in transfer of 64,000 hectares of government land, which is not counted here. This land was not taken from any landlord.

⁴ Name of the consulting company has been kept confidential.

develop sectoral strategies for various business clusters in the small and medium enterprises sector. The problem, according to the official, was that the responsible official agency and its executives were not willing to go out and make their hands dirty to find out information about the real players in the small enterprises sector located in tiny, filthy workshops or backyards of houses. Thus the agency outsourced its own job to a foreign company, which did a good job in the end by documenting real life experiences, as well as data, from the small enterprises sector.

Institutional reforms in the name of private property rights are packaged by the international development corporations and adopted by their counterparts in developing countries without a deep historical conceptualization about centuries old processes in the West.

The informational gaps lead to informality, which De Soto has recorded as ‘dead capital’-dead in the sense that this capital does not become a part of formal banking channels and remain economically non-productive. Although this notion of dead capital has been criticized for technical and political reasons, the informality does render planning ineffective. According to an internal document⁵ prepared by De Soto’s Institute of Liberty and Democracy team, which visited Pakistan in 2004, as much as 70% of rural and 75% of urban real estate property can be considered ‘dead capital.’ This is dead, as it does not have legal and clean title, and hence cannot be used as equity or collateral to contract a debt from a financing channel.

2. Piece-meal view of property rights

Having argued that property rights are indeed pre-requisite for socio-economic development, now consider what happens when property rights are viewed piece-meal i.e. disconnected from larger development context. Institutional reforms in the name of private property rights are packaged by the international development corporations and adopted by their counterparts in developing countries without a deep historical conceptualization about centuries old processes in the West. Taking a piece-meal view of the property rights agenda, the government embarks upon ambitious programs for land

⁵ A Spanish version of this internal document prepared by Institute of Liberty and Democracy, invited in Pakistan in 2004 by then President Musharraf, was provided to the author on special request.

records computerization and titling of properties. For example, the Government of Punjab has been carrying out 'Land Revenue Information Management Systems', a project supported by the World Bank with 45 million dollars to "improve land records service delivery, contributing to long-lasting tenure security and more efficient operation of land markets."

In the courts of Pakistan, most of the cases relate to property rights in one way or the other, which could easily consume about 10 years before any resolution. In some instances, disputes over property rights have even led to political struggle, the most notable being the case of military farms in Okara, a district in Central Punjab.

As De Soto would have us believed that computerization without structural reforms is a superficial exercise. Thus we have not observed any structural reforms in the Revenue department of Government of the Punjab, which should have been preceded computerization. Patwari-key official figure for land records-remain in power to manipulate with the data, now indeed with the support of some technicians. The basic problem: a great imbalance between the Patwari's power and his official monetary package remains there. Obviously, we should not expect the World Bank to give us money for this purpose, but this is where most investment is needed. It is clear that this problem cannot be resolved by technical assistance, trainings and evaluation exercises.

Land records computerization would not result into emergence of property rights.

In the courts of Pakistan, most of the cases relate to property rights in one way or the other, which could easily consume about 10 years before any resolution. In some instances, disputes over property rights have even led to political struggle, the most notable being the case of military farms in Okara, a district in Central Punjab. In 2000, on the military farms in Okara which happen to be the largest military managed farm in the country spanning over 6,800 hectares and tilled by thousands, the tenant farmers revolted. The democratic government had earlier announced that the ownership of these lands will be given to the occupancy tenants. However, when the military took over in 1999, it reversed the decision and instead forced the farmers to sign a new tenure contract, which raised insecurity amongst the farmers.

Human Rights Watch, which issued a 54 page report exclusively on this conflict, reported that the problems in the affected districts result from a

straightforward disagreement on property rights. Traditionally, farmers have been sharecroppers, handing over part of their produce as rent to the military, which acts as landlord through military-run farms. In 2000, the military unilaterally tried to change the rules, demanding that the farmers sign new rental contracts requiring them to pay rent in cash. The farmers refused, fearing that cash rents would, when times were lean, place them at risk of being evicted from land that their families have lived on for generations.

This incident suggested that the land tenure, especially for share-croppers, remains a contentious issue and more reforms are needed to protect the interests of tenants. This would mean that broader political and institutional strategies must be in place to ensure property rights for all the stakeholders concerned. The military, as well as the landlord regardless of decreasing land concentration, is a reality and must be taken on board while enacting any effective reforms.

Like the piece-meal attempts, another dangerous tendency is bad sequencing—i.e. start skirting the core problems and taking on the softer side of reforms. As the property rights is intractably linked with the functioning of judiciary at all levels, one can say that projects such as Access to Justice (AJP), this one supported by Asian Development Bank, should really help developing this system. However, results again are far from desirable.

The key development objective of the AJP—worth US\$350 million—is to assist the Government of Pakistan to improve access to justice so as to (i) provide security and ensure equal protection under the law to citizens, in particular the poor; (ii) secure and sustain entitlements and thereby reduce the poor's vulnerability; (iii) strengthen the legitimacy of state institutions; and (iv) create conditions conducive to pro-poor growth, especially by fostering investor's confidence.

To date, the programme has focused on the capacity building issues of the judiciary and on the physical infrastructure and computerisation of court records. But it has not made any impact on

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the level of tenure, salaries and benefits for the lower courts, where exactly the core problem of property rights resides. The programme targeted the peripherals rather than the core elements. This type of sequencing negatively impacts the overall ability of the courts to deliver the results.

Another dimension of a piece-meal view of property rights is the role of financing mechanisms. As assets can be brought to life by financing, the status of financing mechanisms and willingness of people to contract loans for productive purposes against their asset becomes very important. Thus the ownership is really a tip of the iceberg of property rights, as stressed by De Soto as well. The usefulness of a clean and clear asset hinges on the entrepreneurial characteristics of a society a great deal.

Development “packages” tend to be ahistorical in nature and often they are not properly sequenced and paced in relation to local priorities and local histories. Sometimes certain development reforms fail because they are pushed too fast or are dependent on something else that has not been developed sufficiently. Were it otherwise, Pakistan, the third largest recipient of foreign aid in last 60 years, should have done considerably well.

3. Rule of Law: Emergence of an economic order

The status of property rights in a country should reveal information about the status of rule of law. Therefore the importance of property rights is not just substantive, but also symbolic. As the IPRI compares the countries on the basis of physical property rights, political and legal environment and intellectual property right, the rule of law in each of these sectors can be ‘measured’ in the light of IPRI. In my opinion, human agency assumes a greater role than the structural realities at this stage.

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De Soto suggests that the Western model of private property rights, as discerned by NIE, did not emerge consciously or as a result of a system. As a matter of fact, the related institution of rule of law, emerged as a result of a power struggle between different elites, an argument elaborated

by Friedrich Hayek in his classic 'Constitution of Liberty.' Hayek basically argued that it was in the interest of the merchant class and feudal class of England to have a system run by rules instead of discretion by the Crown. Thus the balance of power emerged not as a part of any structural reforms, but as rational pursuit of self-interest by certain elites.

In case of Pakistan, we have recently witnessed emergence of a very strong civil society, which just like the English history, emerged in a political battle between the traditional establishment and various factions of the civil society, like media, NGOs and lawyers. In this case, the economic and political interests of media and lawyers happily coincided with the higher ethical positions. It resulted into a political reality in less than a year time, and the sudden rise of Pakistan Muslim League (N) to prominence and power on advocating the rule of law (aka restoration of judiciary) is a clear example of a major political transition. Thus viable institutions, based on rule of law and balance of power, can only emerge through a localized deterrence and diffusion of political power. Private property rights are best protected when private or civil society groups are stronger than the state, and mutually balanced as well.

This article has argued that property rights are pre-requisite for socio-economic development however their symbolic and symptomatic position is more important than their substantive character. The status of private property rights in a country does reveal valuable information about the quality of institution and governance structure. In turn, long run socio-economic development hinges upon the quality of institutions though this relationship is non-linear and even chaotic. Reforms in private property rights therefore must go beyond titles and possession. Incorporating local culture and local history in reforms about property rights-and rule of law-should take precedence over importation of development models. Linkages with other development components would be a key to effective property rights reforms. Ultimately, property rights are created in a unique political economy, which is never universal. Therefore, while the basic idea of property rights does remain universal, the physical shape it will take should be governed by interplay of local dynamics.

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The Liberal Dissertation

Munazza Batool

As the year 2008 reaches its twilight, the liberals come under great stress as the pressure on Pakistan mounts from elements inside and the outside its borders. During the succeeding years of 2007 and 2008, while Pakistan went through turbulent times in terms of the social, economic, political and above all the security threats, the handful of liberals did not miss a single happening that put on risk the liberties and rights of the citizens and made themselves heard in the din. Their contribution was minimized by the factor of the emergent distaste against the policies of the state in war against terror resulting in fortification of “Islamist Jihadi” elements with manifold interests.

During the succeeding years of 2007 and 2008, while Pakistan went through turbulent times in terms of the social, economic, political and above all the security threats, the handful of liberals did not miss a single happening that put on risk the liberties and rights of the citizens and made themselves heard in the din.

In the last two years, the country and countrymen had gone through multiple perplexing ordeals of economic blow, wheat shortage, judicial crises, lawlessness and terrorism. This amalgamation of problems terrorized the whole nation particularly business community when the industries in NWFP particularly in Swat were closed down or rather destroyed; prospects of tourism were brought to an end; medium enterprise was compelled to explore other horizons; and massive

displacement of people had taken place from the troubled areas to find work towards the not so dangerous parts of the country.

Liberals can definitely enact a significant role in this scenario.

The inland insurgency challenging the writ of the state, international pressures, and most importantly the public opinion have made our intellectuals, experts and policy makers to think upon the liberal approach of dealing with the current challenges.

The volatile situations have again taxed the intelligentsia especially liberals demanding to come up with the sustainable and agreeable solutions, to find out and debate upon the grass root causes that representatives of the tribal areas, experts and journalists have pointed out accentuating the need of a dialogue with them to look for an amicable solution to the problems. The urge for the ecumenism of the political and religious forces to cure the ailment before it gets chronic is the call of time. The spirit of religion is inseparable from the lives of the people in this region but the different misleading interpretations from the elements operating mainly for the political reasons have painted a very bleak portrait of Pakistan on the global canvas allowing every one to point a finger towards us. There are tremendous dangers posed due to the current situations that demand a national policy with political will to navigate through the storm of depression, extremism and insecurity on the rise in the country.

Liberals can definitely enact a significant role in this scenario. The inland insurgency challenging the writ of the state, international pressures, and most importantly the public opinion have made our intellectuals, experts and policy makers to think upon the liberal approach of dealing with the current challenges. On the electronic and media the opinion makers have began to advocate and emphasize the need to restore the confidence of people in the state institutions adopting a holistic policy rather than a piecemeal approach.

The history has proved that in the course of the developing democratic nations and countries, the public discourse and popular opinion can never be sidelined. In a country like Pakistan that has experienced the thick and thin since its coming into being, the military coups, the toppled governments all reflect the compass of the will of the people affecting the political moves. The will of the people always comes as an excuse, plea of the usurper or a judgement by the judiciary after an unlawful or manipulative transition of the power from one

ruler to another. The masses despite being the most vulnerable in terms of the political and economic experiments by the changing governments have a considerable weight- age in determining the directions of policies. This very fact breeds hope giving people a reason to think positive. The credit for this awareness and activism in public goes to the liberal minded civil society organizations, scholars and media that motivated the common man to play his very role and stand up for his rights asking the ruling elite for tangible signs of change and improvement in the policies.

Liberals today speak out the mind of every common man who wants peace at home; aspires for all the liberties and rights enshrined in the constitution; rule of law that ensures speedy justice; security of life and what he owns; and a level playing field that ensures competitive business friendly environment creating opportunities to prosper improving the quality of life. The dream can only materialize when the institutions become stronger than individuals rooting out possibilities of point-scoring and acquiring undue favours by exploitation of their positions, democratic norms are allowed to flourish and making acceptable policies after taking all the key actors into confidence. It is our obligation to devise ways of directing the public discourse towards demanding solutions that respect their will; denounce the terrorist linkages and exerting pressure on the state to tackle the inland terrorism issue through proper strategies. It is our responsibility to make people realize their rights, demand for the policies that ensure political and economic stability making those answerable sitting in the corridors of power. This is our contribution in strengthening the edifice of democracy.

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W h a t i s

FreedomGate Pakistan?

FreedomGate Pakistan (FGP) is a network of alumni of liberal International Academy for Leadership (IAF) in Germany that strives to provide the liberals an access to the liberal positions on multiple issues creating platforms to discuss and deliberate and find like minded friends.

The first step for attracting the liberal friends has been creating a virtual space, a website: www.freedomgatepakistan.org which literally means to be a gateway towards greater freedoms.

Serving as an umbrella website for links to different sites of liberal organizations, FreedomGate Pakistan aims to provide information on liberal initiatives in the country as well as provide a platform for liberals to come together and discuss liberal concerns. It is a virtual home to all those who believe in individual freedom, social responsibility, rule of law, pluralism, equality before the law, independent judiciary, democracy, secularism and free market economy.

Perhaps the essence of the thought behind FreedomGate Pakistan is best expressed in Butler Schaffer statement:

“A society will remain as free or as enslaved as the conscious dispositions of individuals determine it shall be. Just as the roots of oppression are found in passivity, the foundations of our liberty reside in highly energized and focused minds that insist upon their independence.”

FreedomGate Pakistan is the home of such people.



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