

DEMOCRACY AND JUDICIAL CONFLICT IN PAKISTAN

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ESSAY

Democratic tradition is rooted deep in history. Ancient Greeks of the times of Aristotle and Plato revolted against the prevalent autocratic rule of kings and modelled their city states of Rome, Athens, Sparta, and Carthage as islands of democracy. The United States of America, during its formative years, adopted democratic form of government. Abraham Lincoln (1809-1863), defined it as "Government of the people, by the people, for the people." But his democracy, in due course of time, was to work under powerful Presidents who sometimes violated people's mandate to take independent decisions. In recent history, George Bush, after the incident of 9/11, invaded Iraq and Afghanistan, against popular opinion. In Britain, the democratic setup worked under a constitutional monarchy. There too Prime Minister Tony Blair toed the line of US President against strong protests of his people. In other developed countries, the system has been adopted with minor variations. However, near — perfect democracy has come to stay in only 25 out of about 200 countries of the world. In underdeveloped countries, in particular, democracy exists by name only. There, the nexuses of feudal and elitist classes have taken the place of the kings, the dictators and the despots. People are only used as tools to help these influential people to come to power. Once in the saddle, they forget all about the people and indulge in their favourite game of corruption and pastime of looting, plundering the country in the name of democracy. This is what is happening in today's Pakistan.

Rule of Law

Democracy has taken differing forms from country to country. It was the work of 'rule of law' that ensured its evolution. The rule of law did not permit one man or one dynasty, such as

Kings and Houses, to govern the people by holding absolute powers over them. Similarly, it militated against the totalitarian regimes that came up in socialist countries of Russia and China, after World War I and II.

What particular force works behind the rule of law to make it such a powerful change agent? According to Aristotle, the rule of law is blessed with divine sanction. It is natural law as opposed to the man-made laws. Divine laws are flawless just as the laws governing gravity, movement of earth, the moon, the sun and the galaxies. They move with a precision true to infinite fraction of a second. Similarly, the rule of law is flawless which remains constantly at work for the ultimate betterment of human affairs.

Consider the case of democracy. It is the inherent functioning of the rule of law that has taken man along from the law of jungle of the primitive times to an era of kingship and now on to the democratic order. However, its job has not as yet come to an end. Modern democracy suffers from innumerable fault lines that must be removed before the system can attain perfection.

Demerits of Democracy

Merits of democracy are obvious and very many. It saves the nation from dangers of one man rule. It provides sense of participation to the whole nation in the affairs of the state. Decisions taken in state matters at the highest level are well-considered and based upon the opinion of the competent people. This is not possible in an autocratic rule. However, democracy too has not as yet become a perfect system. It suffers from a number of flaws. It constantly remains under the scrutiny of the rule of law. Democracy is a system and rule of law is its soul ever active to improve it. The areas where it needs corrective measures are as under:

One: 'Common man' is the kingpin of a genuine democracy and the system is a blend of morality, ethics, fair play and human rights. It is rational in structure and transparent in operation. Unfortunately, in Pakistan the system is incoherent in form as well as structure. In the absence of a strong moral fibre, it has become a plaything in the hands of politicians.

Two: In a democracy too, much depends upon the intentions of the man who comes to power. If he is already in position of authority, he concocts voters' lists, misuses the Election Commission and rigs the election to get the results of his liking. In general elections of 1979, President ZA Bhutto rigged the elections to gain two-third majority in the Parliament that triggered violent protests by the masses. This provided justification and opportunity to the Army Chief to take over the government and putting Bhutto in jail on way to the gallows.

Three: Candidates belonging to feudal and elitist classes win elections with the help of their wealth, influence, pressure tactics and other crafty means and consider themselves democratically elected. While in power they behave worse than dictators and establish dynastic rule. Father is followed by the son or daughter and after them their offspring, so on and so forth.

Four: Political parties, the integral part of the system, often tend to serve their narrow ambitions against the larger national interests. For example, Kalabagh Dam was a high priority national project which the PPP regime dumped just to enlist the support of another party that was opposing it on basis of provincial prejudice. To ensure their vote bank, these parties would not hesitate to betray the nation.

Precondition for Ushering in a Genuine Democracy

Three main conditions must be fulfilled before the country can really become a true democracy.

One: Population should be hundred percent educated. The fact is that even after decades, 50% of the people are still illiterate whereas only an educated voter can attend to the voice of his conscience and is not slavishly led by the false promises of a fake candidate. He is not likely to submit to political and official pressure nor would he accept money to sell his vote.

Two: Feudal and other elitist classes should be eliminated from the social structure of the country. This, however, is an impossible task which only an outright revolution can accomplish. Until then anti-feudal forces should manage to keep this tiny class out of the political process. They should not be allowed to take part in any election.

Three: Election Commission should be an absolutely independent and free setup, working under the overall supervision of a joint authority of the army, bureaucracy and judiciary. No member of the political government should have any hand in its working.

Imperfect Democracy and Judicial Conflict

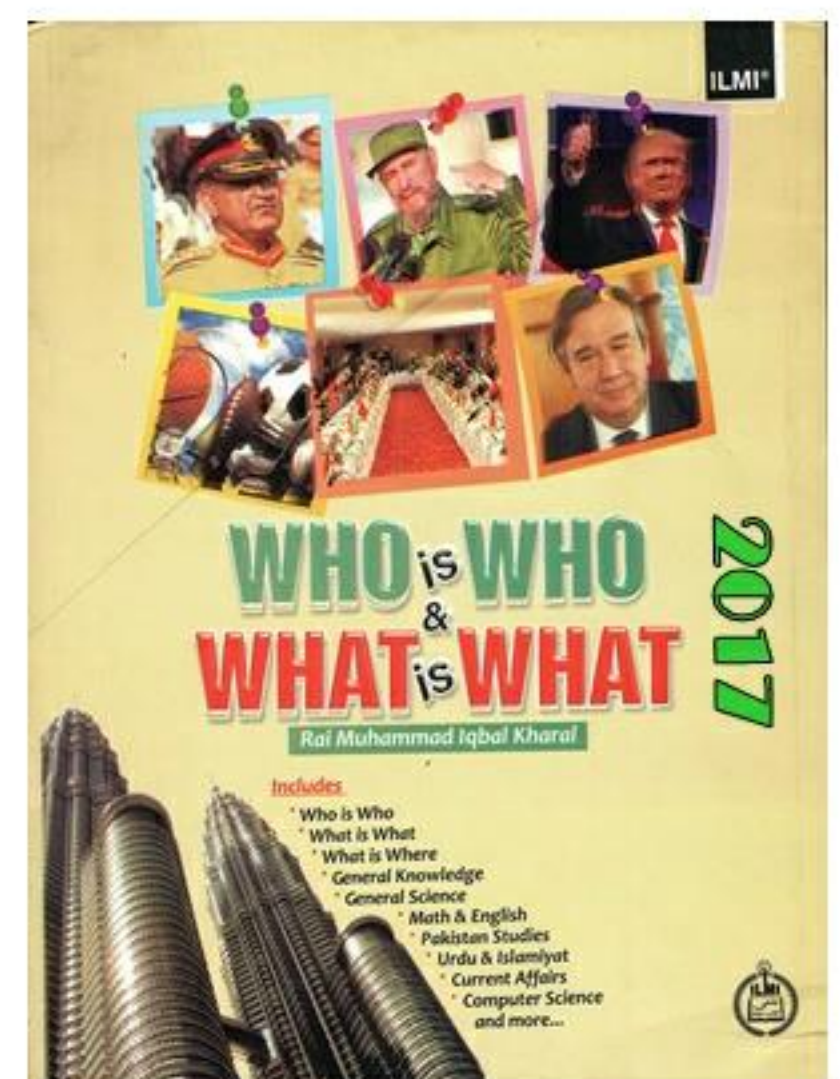
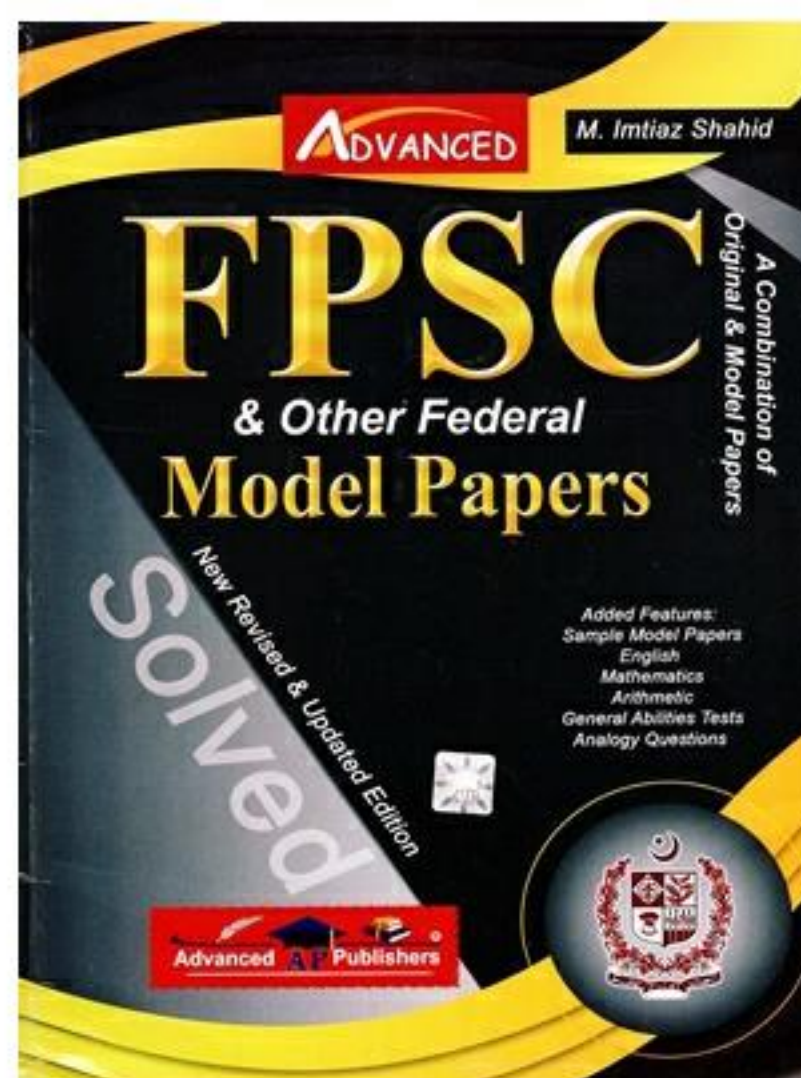
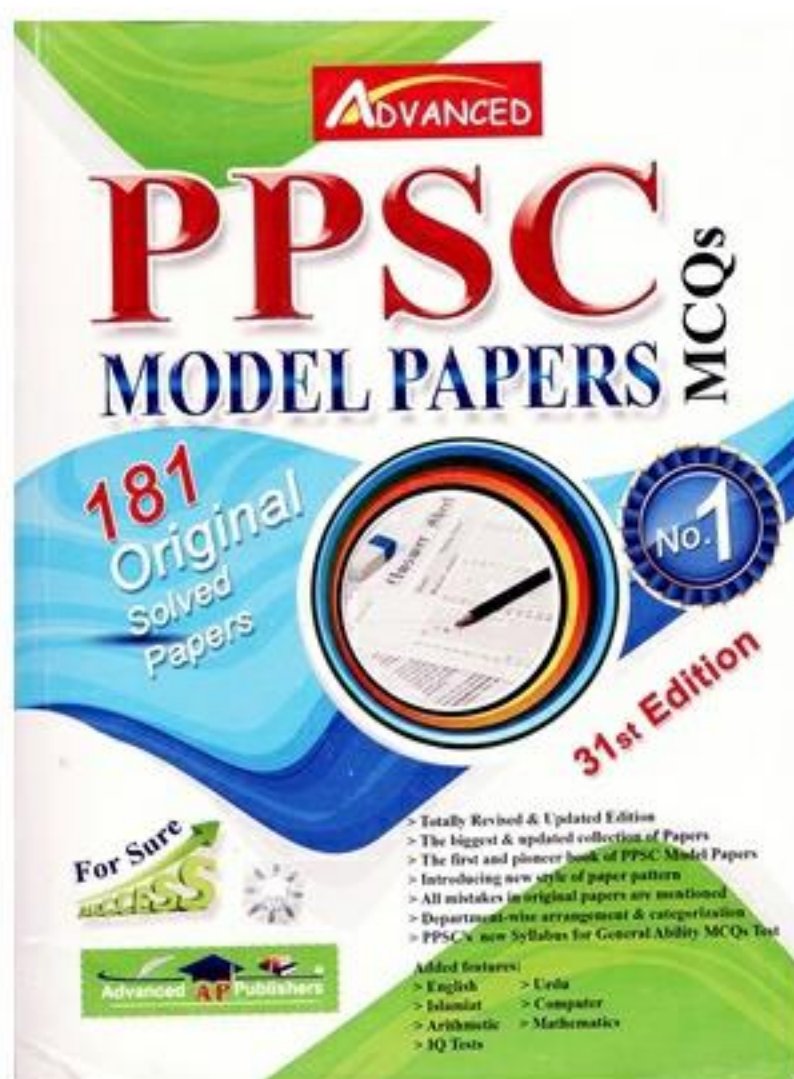
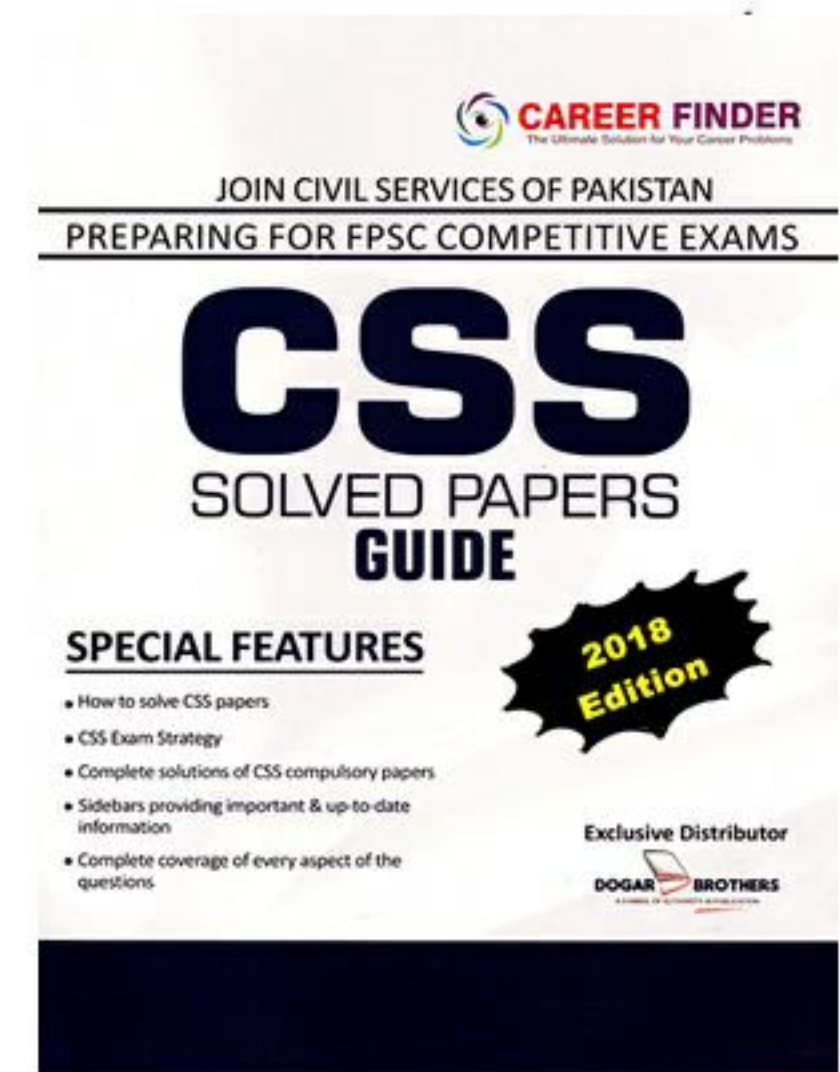
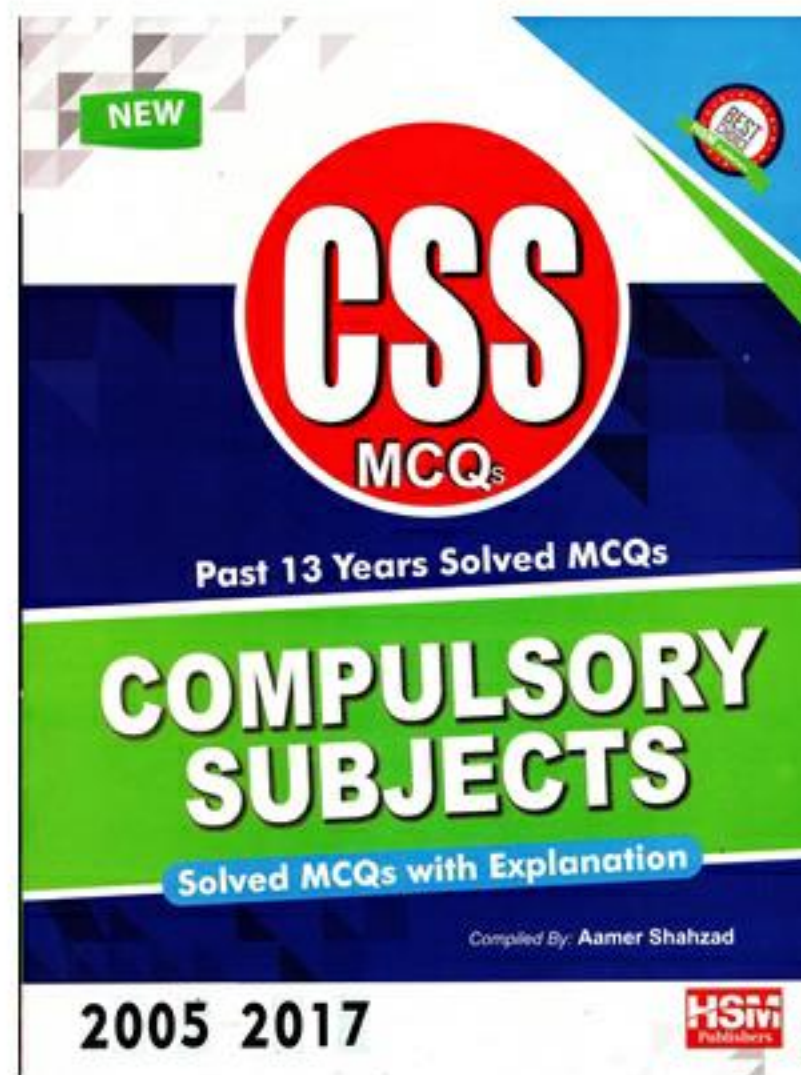
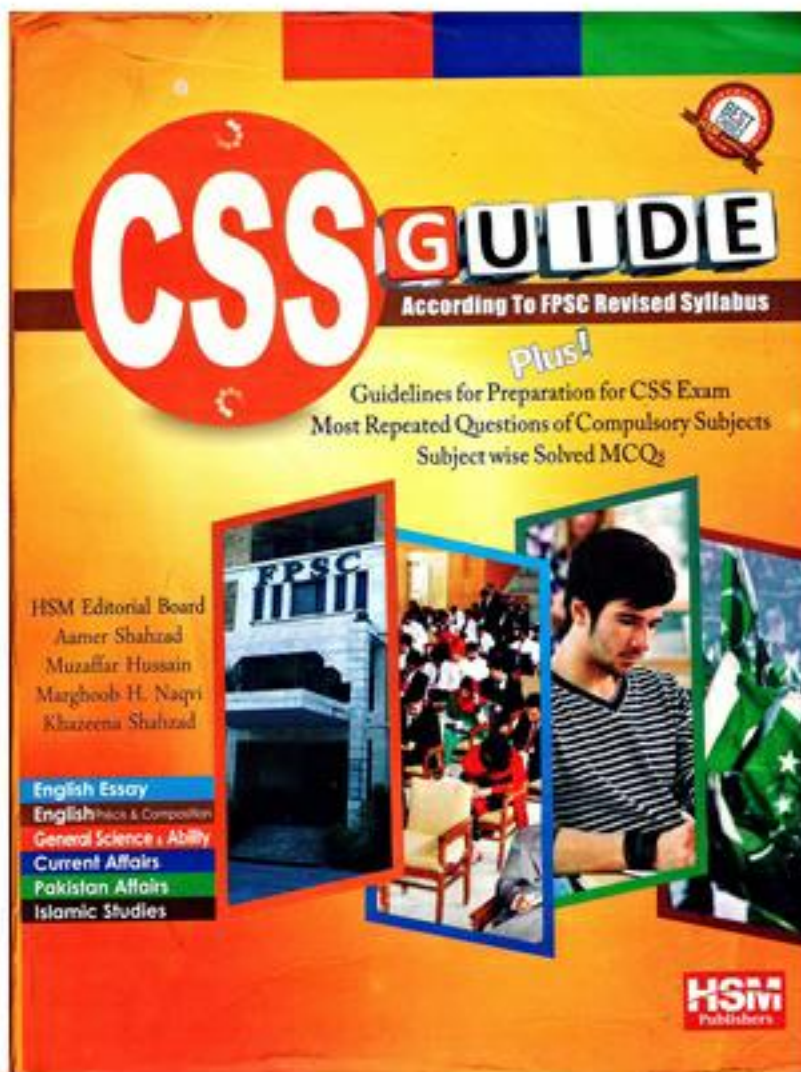
In an environment of imperfect democracy, every state institution including judiciary becomes imperfect. The primary judicial function is to settle disputes between citizens or between the citizens and the state. To meet the ends of the rule of law, independence of judiciary is a must. The judges should be able to decide cases promptly, without fear or favour or reprisals from the executive or other powerful groups of the country. The courts keep on postponing hearings without much justification delaying and thus denying justice. Cooked up evidence is permitted to spoil a genuine case. Efforts are made to turn genuine witnesses hostile. Loopholes are unearthed to justify benefit of doubt so as to let a culprit off the hook. Fake cases are entertained to demoralize the innocent citizen. Unsettled cases get piled up. Instead of serving as the mainspring of individual's peace of mind, tranquillity of soul and social contentment, the injustices done by the courts of law become source of misery for him.

Islamic Democracy

The rule of law led the humanity to the next and final phase of true democracy and genuine justice. The last of the law-givers blessed the mankind with a perfect code known as the Muhammadan Law. What kind of law is this? What kind of the system of democracy it promotes? Briefly, it envisions a state that functions on the basis of self-sustaining and automatic systems for providing its citizens the required means to lead lives full of spiritual and material satisfaction as per Quranic commandments and Sunnah injunctions. It is not a theocracy but a balanced blend of temporal and religious modes of living. It makes the moral and ethical values the guiding principles of a nation's economic behaviour. As a result of this, an environment of protection to life, honour and property is created. A contended, frictionless society comes into existence. It has built-in subsystems of individual and social justice that guard against concentration of power, influence and wealth in fewer hands thus promoting equitable distribution of wealth and social justice for all. It lets the individual to lead a life of self-respect with equal share of opportunities in the affairs of the state. It eliminates exploitation of every kind at all levels.

Conclusion

It was the 'rule of law' — the guiding divine light — that illuminated humanity's highway to get out of the age of barbarians and pass over to the semi-sophisticated era of dictators and kings and then on to the philosophical age of democracy. However, democracy could not take firm roots in less developed and illiterate nations. In course of time, it was to develop so many demerits that it made the life of man miserable. Judiciary suffered the main brunt of its imperfections. It failed to provide humanity access to justice so essential for the improvement of the quality of his life. However, the rule of law has eventually placed ready at hand a God-given Islamic democracy that if put to practice would make man's life blissful. Taken up faithfully, it guarantees a life full of spiritual satisfaction, social peace and economic prosperity. Unfortunately none of the Islamic countries of the world, 57 in all, has cared to adopt it so far. It's tragic.



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