

## Chapter 6

### Dissolution of Constituent Assembly and its Pragmatics

The decision of the dissolution of the first Constituent Assembly of Pakistan in October 1954 merits detailed comments, since it was a major decision made during the early years of Pakistan's history, which profoundly affected the future course of politics by setting a precedent. Moreover, from the perspective of the present study, the dissolution of the Constituent Assembly explains how political actors may try to break the existing rules of political conduct for the sake of pragmatic gains, and redefine the rules of political competition. Like the earlier chapter, it also sheds light on the public face and pragmatics, as well as the pragmatic gains of the dissolution.

On October 24, 1954, Governor General Ghulam Muhammad dissolved the Constituent Assembly through a Proclamation. Nevertheless, there was no explicit mention of the dissolution of the Constituent Assembly, since there was no such provision in the adapted Act of 1935. It is surprising to note that the proclamation nowhere indicated a specific legal provision under which the action was undertaken.<sup>1</sup> It is also surprising that day after the proclamation on October 25, 1954, the Constituent Assembly met and the final draft of the constitution was approved. Two days later, on October 27, the Assembly was

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<sup>1</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, Karachi: Oxford University Press, 2001, p. 131.

actually dissolved and its members were prevented by the police from entering the Assembly building.<sup>2</sup>

## Public Face of Dissolution

A number of pretexts provided public face to the dissolution of the Constituent Assembly. Apparently, he dissolved the Assembly to put an end to what he described as “parliamentary bickering.”<sup>3</sup> The explanations for the action include the following:

### 1. Unrepresentative Character of the Constituent Assembly

The Proclamation of Emergency issued by the Governor General on October 24, 1954 stated that the Constituent Assembly is no more a representative institution, and has failed to realize its objective of constitution-making. The Proclamation read:

The Governor General having considered the political crisis with which the country is faced has, with deep regret, come to the conclusion that the constitutional machinery has broken down. He, therefore, has decided to declare a State of Emergency throughout Pakistan. The Constituent Assembly as at present constituted has lost the confidence of the people and can no longer function.

The ultimate authority vests in the people who will decide all issues including constitutional issues through their representatives to be elected afresh. Elections will be held as early as possible.

Until such time as elections are held, the administration of the country will be carried on by a reconstituted Cabinet. He has called upon the Prime Minister to reform the Cabinet with a view to giving a vigorous and stable administration. The invitation has been accepted.

The security and stability of the country are of paramount importance. All personal, sectional and provincial interests must be subordinated to the supreme national interest.<sup>4</sup>

It had been argued that in the wake of 1954 elections, in which the United Front had a landslide victory and the Muslim League--the majority party at the center, had been

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<sup>2</sup> Yusuf, *Pakistan*, p. 58.

<sup>3</sup> Wayne Ayres Wilcox, *Pakistan: The Consolidation of a Nation*, New York: Columbia University Press, 1963, p. 179.

<sup>4</sup> *Gazette of Pakistan (Extraordinary)*, 24 October, 1954, p. 1919. Also see *Constitutional Documents (Pakistan)*, Vol. IV-B, p. 1837.

completely routed in East Pakistan, the resultant composition of the Assembly had become unrepresentative. If the Assembly had been dissolved immediately after the holding of elections, the action of the Governor General could be justified. But the Assembly had been dissolved after seven months indicating that the decision of its dissolution was not motivated by its unrepresentative character; rather it was due to the pragmatic considerations of politics.

The Assembly's unrepresentative character had been contested on the grounds that the Assembly had been elected with a limited franchise of almost 14% of the total population based on property and education.<sup>5</sup> Moreover, the Assembly had been indirectly elected from the provincial legislatures in 1945-46, when it was not entrusted with the task of constitution-making.

The Constituent Assembly had not gradually become unrepresentative. It had 'unrepresentative' character from its very inception, being indirectly elected on the basis of limited franchise.

## 2. Popular Demands to dissolve the Assembly

The public face of the decision to dissolve the Constituent Assembly was also provided by the popular demands. As far back as March 1949, General Secretary of Pakistan Socialist Party, Mohammad Yusuf had demanded the same.<sup>6</sup> Dacca University Students and Azad Pakistan Party had demanded the same in 1950.<sup>7</sup> Moreover, the same demand was being echoed in the press as well.

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<sup>5</sup> Maluka, The Myth of Constitutionalism in Pakistan, p. 119.

<sup>6</sup> See his statement in Nawa-i-Waqt, March 13, 1949.

<sup>7</sup> Rehman, Public Opinion and Political Development in Pakistan, p. 155n.

In February 1950, on the occasion of launching All-Pakistan Awami Muslim League, its President and Chief Organizer, Husain Shaheed Suhrawardy had demanded holding of fresh elections on adult franchise basis.<sup>8</sup> Later, towards the end of the year, Suhrawardy demanded to dissolve the Constituent Assembly.<sup>9</sup> In various press statements, Suhrawardy stated that if there was a desperate need for change and reform, and constitutional methods were barred, "the thoughts of people turn to unconstitutional methods", but he preferred a method that would cause less harm.<sup>10</sup>

In the wake of 1954 elections and the landslide victory of United Front in East Pakistan, Suhrawardy launched a campaign against the central government. He called upon the Prime Minister Bogra to resign,<sup>11</sup> who had refused to accept that PML's defeat had made the Assembly unrepresentative. Bogra argued that there was no theoretical or practical ground to do so. He referred to the examples of Australia, Canada and the USA where different parties were in power at the center and in the provinces.<sup>12</sup>

Suhrawardy also urged the Governor General Ghulam Muhammad to use his powers and dissolve the first Constituent Assembly of Pakistan. Suhrawardy, who was in Europe for treatment the time of dissolution issued a statement, which he sent through a prominent journalist, Z. A. Suleri to be published in press. The letter stated that the present Constituent Assembly had ceased to be a representative body. Democracy demanded that

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<sup>8</sup> Rana Arshad Mahmood Shamil, "Hussain Shaheed Suhrawardy in Pakistan's Politics 1948-1963," Unpublished M.Phil Thesis, Department of History, Quaid-i-Azam University, Islamabad, 1991, p. 35.

<sup>9</sup> *Pakistan Times* (Lahore), October 27, 1950.

<sup>10</sup> Rehman, *Public Opinion and Political Development in Pakistan*, p. 139. Pir Illahi Bakhsh and Maulana Asadul Qadiri (Nazim-i-Ala of JUI) too demanded the same in 1953.

<sup>11</sup> Shamil, "Hussain Shaheed Suhrawardy in Pakistan's Politics", p. 47.

<sup>12</sup> Rehman, *Public Opinion and Political Development in Pakistan*, p. 143.

it be dissolved and a new assembly elected.<sup>13</sup> The dissolution of the Constituent Assembly had been demanded since 1949, but it was a pragmatic strategy of the Governor General to transform a latent issue into a public issue at a critical time for his desired course of action keeping a public face.

Ghulam Muhammad got the pretext from the public demands of its dissolution, and dissolved the Assembly, and also promised to hold elections at the earliest. The action of the Governor General was welcomed by Suhrawardy. Nevertheless, before dissolving the Assembly, the Governor General wanted to secure the support of some of the important civilian elite. Therefore, he used legal resources and withdrew cases under PRODA as bait to win their support. On October 21, 1954, just three days before the dissolution of the Constituent Assembly, the Governor General withdrew the disqualification of Khuhro and others convicted under PRODA. Proceedings against Daultana were also withdrawn. In this way, Ghulam Muhammad struck a "bargain with the former chief ministers of Punjab and Sindh" before dissolving the Constituent Assembly.<sup>14</sup> Thus, an existing law served as a resource to muster support in order to prevail in a political competition.

After dissolution of Constituent Assembly and the Central Cabinet, Prime Minister Mohammad Ali Bogra was asked to reconstitute his Cabinet. It is significant to bring to forefront that Bogra was not dismissed along with the Constituent Assembly and the Cabinet. According to the rules of parliamentary democracy as enshrined in the British tradition, Prime Minister is considered the head of the treasury in a parliament, and he is jointly responsible for its actions and decisions along with his cabinet. However, in this case, the Prime Minister, who had been undemocratically nominated for his office, and

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<sup>13</sup> Ahmad, *From Martial Law to Martial Law*, p. 345.

<sup>14</sup> Hussain, *Ayub, Bhutto and Zia*, p. 37.

was unrepresentative, was retained. On the contrary, the Constituent Assembly, which was at least partially representative and democratically elected, was dissolved to establish a firm control over decision-making by the ruling clique. Moreover, the retention of three members of the previous cabinet in the new cabinet, which is another rule violation, signifies the concentration of decision-making power in the hands of bureaucratic-military elite.

The President of the Constituent Assembly, Maulvi Tamizuddin Khan filed a writ petition in the Chief Court of Sindh under section 223-A of the Government of India Act, 1935 challenging the decision of the Governor General, which ushered in an era of legal battles in the history of Pakistan.<sup>15</sup> The section 223-A had been included in the Constitution by the Government of India (Amendment) Act of 1954, which was passed by the Constituent Assembly on July 16, 1954. The three-member bench of the Chief Court in Sindh, presided over by the Chief Justice, George Constantine, gave the verdict in favour of Tamizuddin Khan declaring the Governor General's decision of dissolution of Constituent Assembly unconstitutional and illegal.<sup>16</sup> Thereupon, the Governor General filed a petition in the Federal Court. The Federal Court under the Chief Justice, Muhammad Munir, did not discuss the constitutionality of the decision; rather it remained preoccupied with the validity of Section 223-A, which was passed by the Constituent Assembly. Thus, it gave no ruling on the vital issue whether the Governor General could legally and constitutionally dissolve the Assembly.<sup>17</sup> Instead, it argued that Section 223-A, under which the Chief Court of Sindh had issued the writ, had not received the assent

<sup>15</sup> For a detailed discussion see Khan, *Constitutional and Political History of Pakistan*, pp. 136-65.

<sup>16</sup> *Maulvi Tamizuddin Khan v. Federation of Pakistan*, *All Pakistan Legal Decisions (PLD)*, 1955 Sind 96. For details see Ahmad, *Pakistan—A Study of its Constitutional History*, pp. 235-67. Also see Nasim Hasan Shah (Dr. Justice), *Memoirs and Reflections*, Islamabad: Alhamra, 2002, pp. 52-62.

<sup>17</sup> For details see Federal Court of Pakistan (special Reference No. 1 of 1955 in Jennings, *Constitutional Problems in Pakistan*, pp. 259-349.

of the Governor General. Thus, with dissenting notes of Justice J. Cornelius and Mohammad Sharif, Chief Justice Muhammad Munir validated the decision of the Governor General. The judgment was more political and pragmatic than legal or constitutional. It had a "taint of political colour."<sup>18</sup> Justice Munir remained defensive and apologetic about the verdict he gave in Tamizuddin Khan's case.<sup>19</sup> In Munir's own words: "The mental anguish caused to the judges by these cases is beyond description and I repeat that no judiciary anywhere in the world had to pass through what may be described as a judicial torture."<sup>20</sup>

Jalal writes: "Assured of support from the Punjabi chief justice of Pakistan, Muhammad Munir, the government took the matter to the supreme court. Backed by the civil bureaucracy and the government controlled media, the governor-general and his associates succeeded in getting a favourable hearing from the supreme court and winning popular compliance with the final verdict."<sup>21</sup> It has been pointed out that since Ghulam Muhammad and Muhammad Munir shared ethnic / tribal identity and were both friends,<sup>22</sup> their ascribed and achieved status played an important role in deciding the case in favour of the former by the latter. When Tamizuddin's appeal was pending in the court, Governor General Ghulam Muhammad not only exchanged coded messages with Justice Munir,<sup>23</sup> the former also went to see the latter at his residence.<sup>24</sup>

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<sup>18</sup> Justice Shameem Hussain Kadri, Judges and Politics: Ghulam Muhammad to Ghulam Ishaq, Lahore: Jang Publishers, 1990, p. 14.

<sup>19</sup> Khan, Constitutional and Political History of Pakistan, p. 141.

<sup>20</sup> Nazir Husain Chaudhri, Chief Justice Muhammad Munir: His Life, Writings and Judgments, Lahore: Research Society of Pakistan, University of the Punjab, 1973, p. 21.

<sup>21</sup> Jafal, Democracy and Authoritarianism in South Asia, p. 52.

<sup>22</sup> Both Ghulam Muhammad and Muhammad Munir were Kakkayzai Pathans, though 'Punjabized.' The Kakkayzai is a well-knit tribe, and its members have held important official positions in the country's history. Khan, Constitutional and Political History of Pakistan, pp. 140, 164 n8.

<sup>23</sup> Qudratullah Shahab, Shahabnama, Lahore: Sang-e-Meel Publications, 1992, p. 664.

It appears that some resources like trust, ethnicity and symbolic appeals were deployed in order to get the judicial decision in favour of the action taken by the bureaucratic-military elite. However, the role of the judiciary falls out of the scope of the present study.

## **Pragmatics of Dissolution**

Though a number of explanations were offered for dissolving the Assembly in order to provide a public face of politics, it was essentially a pragmatic decision made by the bureaucratic and military elite. The following pragmatic considerations may be discerned behind the dissolution.

### **1. Attempts to Curtail the Powers of the Governor General**

The dissolution of the Assembly when it had tried to curb the 'undemocratic and arbitrary' powers of Governor General indicates that the real motive in dissolving the House was "personal rather than from any regard for democratic principles or traditions."<sup>25</sup> In fact, as early as 1950, attempts were made to curtail the powers of the Governor General by the Constituent Assembly. One such attempt was made by the Assembly acting as the Federal Legislature on February 1, 1950.<sup>26</sup> According to Gledhill, by amending the Constitution, the Governor General's power to make Ordinances was brought within the control of the federal legislature.<sup>27</sup>

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<sup>24</sup> Allen McGrath, *The Destruction of Pakistan's Democracy*, Karachi: Oxford University Press, 1996, p. 196.

<sup>25</sup> Choudhury, *Constitutional Development in Pakistan*, p. 86.

<sup>26</sup> For details see: The Government of India (Second Amendment) Act, 1950. *Gazette of Pakistan*, 1949, (Extraordinary), p. 783. Also see *Constitutional Documents (Pakistan)*, Vol. II, pp. 462-6.

<sup>27</sup> Gledhill, *Pakistan: The Development of its Laws and Constitution*, p. 78.



The dismissal of Nazimuddin's Government in 1953 had brought home to many the growing arbitrary exercise of power by the Governor General Ghulam Muhammad. The civilian elite resisted to the ascendancy of the bureaucratic elite, and attempted to curtail the powers of the Governor General. Therefore, in order to mitigate the arbitrariness of the exercise of power by the Governor General, the Constituent Assembly decided to amend the Constitution. Prime Minister Muhammad Ali Bogra, who was hand-picked by Ghulam Muhammad, wanted to assert himself. So he backed the Bengali civilian elite such as Fazlur Rahman, (former Federal Minister), and Khwaja Nazimuddin (former Prime Minister). Bengalis elicited the support of others like Abdur Rab Nishtar, Yusuf Haroon, Abdul Qayyum Khan, Muhammad Hashim Gazder, member Constituent Assembly, and Abdus Sattar Pirzada, Chief Minister Sindh. The latter two, Gazder and Pirzada, were the heads of Sindhi group. In fact, it was primarily an alliance of the Bengalis and Sindhis against the Punjabis, who dominated the Centre.

### **1.1 Issuance of Prerogative Writs by High Courts**

In order to counter the maneuvers of the Governor General, the members of the Constituent Assembly planned to create a new legal resource. It was achieved by amending the Provisional Constitution, adopted after adapting the Government of India Act, 1935. For this purpose, a Bill tabled by A. K. Brohi was passed on July 16, 1954 in the Constituent Assembly. A new Section 223-A was inserted empowering every High Court to issue prerogative writs. It empowered individuals to challenge the state through the courts. Like earlier laws, the amendment was not sent to the Governor General for assent.<sup>28</sup>

The section 223-A read:

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<sup>28</sup> For details see Newberg, *Judging the State*, pp. 40-1.

Every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any government within those territories writs including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* or any of them.<sup>29</sup>

The Statement of Objects and Reasons of the constitutional amendment stated:

The High Courts in Pakistan do not possess at present any power to issue writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*. Numerous rights of the individuals and duties of the public authorities cannot be enforced expeditiously because these powers are not available with the High Courts... The present amendment seeks to give the same power to the High Courts in Pakistan which the High Court of Judicature in England enjoys under the English Common Law in respect of issuing the high prerogative writs.<sup>30</sup>

This amendment was aimed at curbing the coercive power of the state, which had been used time and again by the elite to further their own interests. By giving rights to individuals to approach the higher judiciary in case of excesses of the state authorities, or unlawful omissions and commissions, which were the instruments of control and coercion at the disposal of the bureaucratic-military elite, a new legal resource was created. This legal resource could be deployed by the civilian elite in a political competition in order to effectively outmaneuver their rival elite.

## 1.2 Power of Creating or Redistributing a Province's Territory

Another attempt to check the powers of the Governor General was made through the Third Amendment in the Government of India Act, 1935. Under its section 290, the Governor General was vested with the powers of creating a province, or redistribution of areas of a province. It put tremendous powers in the hand of the Governor General. M. H. Gazdar moved a bill in the Assembly on July 17, 1954 to amend the section in order to

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<sup>29</sup> The Government of India (Amendment) Act, 1954. Gazette of Pakistan, 1954, (Extraordinary), p. 2102. Also see *Constitutional Documents (Pakistan)*, Vol. II, pp. 528-9.

<sup>30</sup> *Ibid.*, p. 529.

check the powers of the Governor General. The public face given under the Statement of Objects and Reasons of the amendment appears quite interesting. It read:

This section gives powers to the Governor General to create by a mere order a new province, increase or diminish the area of any province, and alter the boundaries of any province. Further this section authorizes the Governor General to vary the representation in the Federal Legislature of any province or unit or vary the composition of the Provincial Legislatures and authorizes him to make apportionment and adjustment of assets and liabilities. These powers were given at the time of partition when an emergency existed and when everything had to be done hurriedly in setting up Pakistan. But now these fundamental powers in a democratic State should be exercised only by the Federal Legislature and not by the Governor-General.

We have already seen how the people of Baluchistan States are being handed over to one autocratic authority or another like sheep and goats without a referendum amongst the people concerned or sanction of the Federal legislature, and how the people of Karachi Federal area were handed over to a Chief Commissioner, who is not responsible to anyone, by a mere order of the Governor-General and without consulting the Federal Legislature when it was actually in session. The same treatment is meted out to the people of Baluchistan. This state of affairs should now cease.<sup>31</sup>

With this public face, section 290 was amended and the powers of the Governor General were transferred to the Federal Legislature. This legal combat signifies the competition between the civilian and bureaucratic-military elite, wherein the civilians effected a change in the legal resource, which was providing strength to the Governor General. Furthermore, it was an attempt to check the possible maneuvers and tactics of the bureaucratic-military elite in the political processes at the provincial level, which was a recruiting base for the civilian elite to enter into the federal legislature given the indirect mode of elections.

### 1.3 Repeal of PRODA

There was discontent among the civilian elite over the promulgation of PRODA. As early as 1951, Hashim Gazder from Karachi had tabled a bill in the Constituent Assembly in

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<sup>31</sup> The Government of India (Third Amendment) Act, 1954, Gazette of Pakistan, 1954, (Extraordinary), p. 921. *Constitutional Documents (Pakistan)*, Vol. II, pp. 532-3.

order to repeal it. Gazder—the mover of the Bill—did not pursue it any further for lack of support. Nevertheless, it remained on the agenda. Again the Bill was discussed on September 17, 1954 in a meeting of the Muslim League Assembly Party. Those who supported the bill included a Central Cabinet member,<sup>32</sup> who must have the support of the Prime Minister Bogra. Three Bengali civilian elite / politicians, Nurul Amin, Nazimuddin and Fazlur Rahman, had elicited the support of Bogra.

Eventually, on September 20, 1954, the Constituent Assembly discussed the repeal Bill of PRODA on the motion of M. H. Gazder, Deputy President of the Assembly, so that the Governor-General could not penalize and disqualify the politicians on political grounds. Initially, the Gazder's Bill had called for a retroactive repeal of PRODA, which meant that all cases and disqualifications previously awarded under the Act such as that of Khurho were to be removed. In the meanwhile, a Hindu member of Constituent Assembly, introduced an amendment to the repeal Bill in order to abrogate all previous penalties awarded under PRODA.<sup>33</sup> It indicated that the Assembly members thought that the punishments awarded under PRODA were essentially politically motivated, and hence, unjust. However, the Amendment Bill was defeated by 26 votes to 9.

In fact, at that time, a number of cases were pending including that of Daultana. The political opponents of Khurho and Daultana—Abdus Sattar Pirzada and Malik Firoz Khan Noon opposed the Bill.<sup>34</sup> At last, after debate it was decided that the repeal should not have retrospective effect. Therefore, Section 4 of the repeal Bill provided that the references pending before any court or tribunal on or before September 1, 1954 would not

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<sup>32</sup> Ahmad, *From Martial Law to Martial Law*, pp. 342-43.

<sup>33</sup> Aziz, *Party Politics in Pakistan*, p. 22 fn.

<sup>34</sup> Ahmad, *From Martial Law to Martial Law*, p. 343.

be affected.<sup>35</sup> As a result, the case against Mian Daultana, Chief Minister of Punjab 1951-53, continued. The dividing line of September 1 was cautiously drawn by the civilian elite, who wanted the case against Daultana to continue.

Muslim League had approved the bill on September 18, and on September 20, it was introduced in the Constituent Assembly. It is worthy of mention that the Bill of Repeal was introduced in the Assembly and passed by it the same day, September 20. The public face as reflected in the Statement of Objects and Reasons of the Repeal Act is as follows:

This Act was passed in 1949 and it was given a retrospective effect from the fifteenth day of August, 1947. This was done presumably to cover the case of Mr. M. A. Khurho, the then ex-Chief Minister of Sind.

So far only three cases have been proceeded with under this Act against three ex-Ministers, namely Mr. M. A. Khurho (Sind), Khan Iftikhar Hussain of Mamdot (Punjab) and Mr. Hamidul Haq Choudhry (East Bengal). In spite of expenditure of several lakhs of rupees in each case from the public treasury of each Province, the result in two cases has brought no good to anyone and the report of the Tribunal in the third case is now before the Governor-General pending orders under section 3 of the Act.

It is not only waste of public money but it involves criminal waste of much useful time of Judges of High Court and hundreds of witnesses many of whom are officers of Government. I understand in Mr. Hamidul Haq Choudhry's enquiry alone 1,500 witnesses were examined and the enquiry lasted over a year.

Further, all those officers who give evidence against a Minister in such an enquiry are put into very embarrassing position if the accused Minister again comes into power. Many of them have to seek premature retirement, thus depriving the State of their useful services.

It is understood that no such Act exists in the Statute Books of any democratic country. In every democratic country it is the public opinion which compels a Minister to resign his office and seek oblivion if he is accused of any act of misconduct as defined in sub-section (3) of section 3 of the Act.

In a democratic country where there is a Party Government, it is the duty of the party Executive or its Parliamentary Board to remove a Minister for misconduct without going through all the elaborate, expensive, useless and harmful procedure so essential under a Tribunal enquiry under the Act. After all, PRODA empowers the Governor-General only to disqualify a person. The worst is that the Tribunal's report cannot be disclosed to the public who remain completely ignorant about the

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<sup>35</sup> Section 4 read: "This repeal shall not affect any penalty, forfeiture, disqualification or punishment already incurred or awarded under the said Act or any reference pending before any Court or Tribunal on or before the 1<sup>st</sup> September, 1954." The Public and Representative Offices (Disqualification) (Repeal) Act, 1954. *Constitutional Documents (Pakistan)*, Vol. III, p. 89.

report and findings of the Tribunal, which are produced at so much expense of tax-payers' money, energy and time.

Further, under our present Constitutional Act, Governor and Governor-General can dismiss any Minister, if they are convinced of the undesirability of continuing him in office any further.<sup>36</sup>

It is worthy of mention that the Bill passed all the stages of legislation within 18 hours, and on the same day, at 9 pm copies of an extraordinary gazette containing the draft of the bill were distributed to the press.<sup>37</sup> PRODA was hastily repealed on September 20, as the Assembly debates reveal that there was a rumour that General Iskander Mirza, the Governor of East Pakistan, was preparing substantial charges against the former public office holders of the province.<sup>38</sup>

G. W. Choudhury comments that PRODA's "hasty repeal by the first Constituent Assembly was unfortunate and considerably lowered the prestige of the Assembly in the estimation of the people. There was suggestion in some quarters that the repeal had been effected in order to favour some members of the Constituent Assembly."<sup>39</sup> Whatever the reasons were, PRODA as a coercive resource at the disposal of the civilian as well as the bureaucratic elite was instituted and later repealed under political expediency.

#### 1.4 From Convention to Law: Revoking the Governor General's Prerogatives

Around September 1954, Bogra and his supporters in the Assembly were expecting that the Governor General would dismiss the Prime Minister, and institute a new Cabinet.<sup>40</sup> Governor General had invoked Section 10 of the Constitution, when Nazimuddin's Government was dissolved two years ago. Therefore, it was decided that Sections 9, 10,

<sup>36</sup> Ibid., pp. 89-90.

<sup>37</sup> Ahmad, *From Martial Law to Martial Law*, p. 343.

<sup>38</sup> These charges were prepared against some 22 people, which included those who were instrumental in moving the repeal Bill. McGrath, *The Destruction of Pakistan's Democracy*, p. 123.

<sup>39</sup> Choudhury, *Constitutional Development in Pakistan*, p. 85.

<sup>40</sup> Sayeed, *The Political System of Pakistan*, p. 87.

10-A, 10-B and 17 of the Constitution would be amended, so that the excessive and discretionary powers of Governor-General could be curtailed.

Encouraged by the successful repeal of PRODA, the civilian elite planned to introduce further Constitutional Amendments the next day. Ayub Khan records in his autobiography that the resolution, which was printed in the middle of the night (between 20/21 September), was placed in the pigeon-holes of the Members of the Constituent Assembly. Next morning, the Assembly met as a Constitution-making body, an hour before the scheduled time for revoking the above-stated sections.<sup>41</sup>

It is astonishing to note that the meeting of the Assembly on September 21 began at 9 am, one hour before the scheduled time, when the quorum was barely present. The Bill was moved by Gazder, who completed three readings of the Bill in mere half an hour, and the motions were passed by voice vote. Interestingly, the Bill was moved and passed within thirty minutes, and the three readings were too successfully completed. At 9:30 am, Maulvi Tamizuddin, the President of the Assembly, affixed his signature, and sent it to the press to be printed in the Gazette.<sup>42</sup> Interestingly, at that time, several Assembly members, who were still at home, did not know that an Amendment had been made in the Constitution. The hastily passed bill had the following provisions: (i) The Governor General shall appoint as Prime Minister from amongst the members of the Federal Legislature, a person who commands the confidence of the majority of the members, (ii) Ministers shall be appointed from amongst the Legislative members, (iii) The Cabinet

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<sup>41</sup> Khan, *Friends Not Masters*, p. 50.

<sup>42</sup> Ahmad, *From Martial Law to Martial Law*, p. 340.

shall be collectively responsible to the Assembly, and (iv) The Governor General would be bound by the advice of the Ministers.<sup>43</sup>

Its 'Statement of Objects and Reasons', which provided a public face of the amendment, read:

The Bill is designed with a view to give legislative sanction to certain accepted principles and conventions connected with the formation and working of Government in Parliamentary system of Government. Therefore, it is necessary to amend sections 9, 10, 10A, 10B and 17 of the Government of India Act, 1935, in certain respects. The principles underlying the Bill have already been accepted by the Constituent Assembly for being incorporated in future Constitution of Pakistan. Certain drafting changes have also been proposed in the Bill.<sup>44</sup>

It is worthy of mention that according to the procedures of law-making in the Assembly, a prior notice of three days to the Assembly President is required for moving a Bill. Throwing light on the pragmatics of the decision to introduce an amendment, Nur Ahmad writes:

Tamizuddin probably thought that as the governor general had imposed an autocracy under the garb of democracy by taking advantage of the constitution, it was fair for him to use his special powers in order to restore the honor and prestige of the assembly. He was the custodian of the rights of the assembly and if there was a tussle between the governor general and the assembly the correct thing for him was to use the rules and regulations of the assembly to the hilt to safeguard the rights of the assembly. In any event, it was not possible to make this surprise attack without his backing and approval.<sup>45</sup>

The Bill was passed without informing the Governor General, who was then in Abbottabad. Moreover, it was published in the Gazette on the same day. It was done in order to make it a law, since according to the rules of the Constituent Assembly, an enactment becomes a law as soon as it is published in the official Gazette.<sup>46</sup> G.W. Choudhury comments: "It could be described as an important step towards the growth of

<sup>43</sup> The Government of India (Fifth Amendment) Act, 1954. Gazette of Pakistan (Extraordinary), 1954, p. 1764. Also see Constitutional Documents (Pakistan), pp. 535-38.

<sup>44</sup> *Ibid.*, p. 538.

<sup>45</sup> Ahmad, From Martial Law to Martial Law, p. 344.

<sup>46</sup> Aziz, Party Politics in Pakistan, p. 23.



parliamentary democracy in Pakistan, but the amendment was made in such haste that ... it could be termed a 'constitutional coup'.<sup>47</sup> A newspaper alleged that it was Fazlur Rahman, a Bengali civilian elite, who was responsible for introducing these constitutional amendments. It commented that he "had indeed succeeded in compassing the entire sovereignty of the Constituent Assembly into the few votes of the coterie that he controls."<sup>48</sup>

J. D. Murray, the acting British High Commissioner, noted that 'one result' of the constitutional changes was to 'bring a step nearer the possibility that the Army and the higher Civil Service ... may one day come to the conclusion that the politicians have made such a mess that it is necessary for non-political forces to take over...'<sup>49</sup>

The Governor General's action was an "extreme measure to abrogate the Constituent Assembly was a nervous reaction to the attempt by its members to change the rules of the game in their own favour."<sup>50</sup> After a month of the passage of the constitutional amendments, the Governor-General Ghulam Muhammad dissolved the Constituent Assembly. In this way, the Governor-General preempted any move by the Assembly members to reduce or contain his powers.

It is interesting to note that Gazder, the vice president of the Assembly, who had played an instrumental role in repealing PRODA and making Constitutional Amendments, was immediately rewarded for his services. On September 21, the Assembly had begun its

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<sup>47</sup> Choudhury, *Constitutional Development in Pakistan*, p. 85.

<sup>48</sup> *The Times of Karachi*, September 27, 1954, as cited in Aziz, *Party Politics in Pakistan*, p. 23.

<sup>49</sup> J. D. Murray to A. F. Morley [CRO], 24 September, 1954, DO35/5153, PRO, as cited in Jalal, *The State of Marital Rule*, p. 192 fn.

<sup>50</sup> Waseem, *Politics and the State in Pakistan*, p. 135.

functions as Constituent Assembly, and repealed PRODA and amended the Constitution. After few hours, it converted itself into Parliament, and passed a bill of remuneration of Gazder, whereby he was entitled to get house allowance in addition to his salary. This Bill was placed by Ghiyasuddin Pathan of East Bengal. Later, two more amendments were passed proposing increase in the allowances of Gazder.<sup>51</sup> All these developments indicate that a particular political conduct, i.e. curtailing the powers of the Governor General through constitutional amendments, was rewarded through economic dispensation, which was also an expression of the exercise of power.

## 2. Aborting the Draft Constitution

Another pragmatic and plausible explanation for the dissolution of the Assembly could be that it was done when the draft of a constitution was about to be presented in the Assembly. It is pertinent to recall that the Objectives Resolution of March 1949, which was a statement of purpose set forth by the Constituent Assembly of Pakistan, was an attempt to accommodate conflicting demands of the political parties, social and religious groups, etc. In the view of S. M. Zafar: "The generality of its terminology was in reality an attempt to accommodate Islamic modernists and traditionalists alike."<sup>52</sup> Thus, it appealed the varied groups of civilian elite, including the religiously-oriented civilian elite and those having modernist orientation, including the Westernized military and bureaucratic elite, and a consensus was forged among them over constitution-making. Nonetheless, according to the critics, the Resolution deliberately left the role of Islam in the polity ambiguous, vague and undefined in legal terms. It had an emotional appeal, a powerful rhetoric, but least practicality and clarity. Thus, it "proved to be an effective

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<sup>51</sup> For details see Ahmad, *From Martial Law to Martial Law*, p. 345.

<sup>52</sup> S. M. Zafar, "Constitutional Development" in Malik, *Pakistan: Founders' Aspirations and Today's Realities*, p. 32.

weapon in the hands of the ruling elite to create rifts in the national polity to the effect of prolongation of their ignominious rule."<sup>53</sup> The Islamic idiom and symbols were used as a normative cover to the vested interests of the elite groups, keeping the public face of politics. The Resolution proved to be a pragmatic strategy to safeguard these interests.

In the wake of the passage of the Objectives Resolution, a Basic Principles Committee was formulated in 1949, in order to propose recommendations for the constitution.<sup>54</sup> Its interim report was presented to the Constituent Assembly by Liaquat Ali Khan in September 1950. However, it was rejected by the ulema for its inadequacy of Islamic provisions, and by the Bengalis because its recommendations for their political under-representation. In addition, the report was criticized on the ground that it had vested the emergency power in the head of the state, which included the power to suspend the Constitution in whole or in part.<sup>55</sup> Owing to the criticism, the Report was deferred. The recommendations put forward by the second Basic Principles Committee Report in 1952 were too rejected like the earlier report. In particular, its recommendations on issues of political representation, provincial autonomy and language were criticized by the Bengalis.

Another attempt was made to outline the constitution of the country. In September 1954, the recommendations of the Basic Principles Committee Report were approved by the Constituent Assembly as a prelude to a constitution. The proposed constitution had an Islamic character. Prime Minister Muhammad Ali Bogra declared that the constitution

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<sup>53</sup> Maluka, *The Myth of Constitutionalism in Pakistan*, p. 126.

<sup>54</sup> It consisted of 25 members, and was formulated under Maulvi Tamizuddin Khan, the President of the first Constituent Assembly.

<sup>55</sup> For details see Constituent Assembly of Pakistan, *Debates*, Vol. VII (1956), pp. 13-50.

would go into effect on December 25, 1954.<sup>56</sup> In a similar statement in response to opposition's demand for the dissolution of the Assembly, Bogra had stated that the Assembly had already finished three-fourths of its assigned task.<sup>57</sup> According to the Draft Constitution of 1954, the President could not dissolve the Assembly, and was bound by the advice of the Cabinet. In addition, the Constitution was declared to be the supreme law.<sup>58</sup> Nonetheless, when the Assembly was about to introduce its draft constitution, it was dissolved by the Governor General. The approved draft constitution was against the secular institutional character of bureaucracy and military. Moreover, it adversely affected the scope and range of powers of bureaucratic-military elite, as under the draft constitution, the powers of the President were drastically cut. In political competition, both the civilian elite and the bureaucratic-military elite had been countering each other's maneuvers through various instruments and strategies, such as constitutional amendments, making and repealing of laws, economic dispensation and persuasion, etc.

Since the bureaucratic-military elite had at their disposal the resources of the state, they had also been using coercive powers for their desired course of action. In this regard, they had dissolved various cabinets, dismissed a civilian Prime Minister, and effectively influencing the constitution-making process in their own favour. But when the civilian elite managed to approve a constitution curtailing their powers, putting in place new constitutional arrangements aimed at ensuring democratic norms, the Assembly was dissolved as a last resort, whereby the draft constitution was aborted. Therefore, the bureaucratic-military elite prevented the creation of a new legal and constitutional

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<sup>56</sup> Yusuf, *Pakistan*, p. 57.

<sup>57</sup> *Dawn* (Karachi), March 21, 1954.

<sup>58</sup> *Report of The Basic Principles Committee*, Karachi: Government of Pakistan Press, 1954. It was adopted on October 6, 1954.

resource envisaged to be at the disposal of the civilian elite, whereby the latter could effectively contain the rival elite from taking part in the political competition.

### 3. Postponement of Elections

Muslim League had been completely routed in the elections in East Pakistan in March 1954, and United Front had emerged victorious. Thereupon, the United Front demanded the resignation of the then sitting Bengali members of the Constituent Assembly. However, these members had the support of West Pakistan Muslim League. K.K. Aziz writes:

If the United Front demand was met and the East Pakistan legislature was asked to send fresh representatives to the Assembly, they might vote the Assembly's dissolution. This would entail elections in West Pakistan, and the Muslim League knew very well that such elections would most probably prove as deadly to them as had those in the eastern wing. In the face of this unpalatable prospect the Muslim League united with the defeated Bengali members in arguing in favour of the latter's right to continue as members of the Assembly.<sup>59</sup>

In addition, there were demands to hold elections for the Constituent Assembly as well. Though many civilian elite had advised the Governor General to dissolve the Constituent Assembly, as it had become totally unrepresentative, they also suggested holding fresh elections from amongst the existing legislatures. The Governor General selectively used the normative cover of popular demands and dissolved the Assembly, but never held elections.

In fact, delay in constitution-making was used as a pretext to delay the holding of general elections in the country till 1970. Thus, it took Pakistan twenty-four years to hold first general elections on the basis of universal adult franchise. One plausible explanation for this could be the fact that the ruling elite, most of whom were migrants and belonged to

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<sup>59</sup> Aziz, Party Politics in Pakistan, p. 24.

regions that were not included in Pakistan, had no constituencies of their own. Thus, the chances of their winning the elections were quite meager.

In Pakistan, the migrant civilian elite avoided elections, as they were not natives. Election is a test of the skills and maneuvering of traditional social allegiances by a political actor, wherein a candidate enjoys 'ascribed' support generally based on primordial identities and indigenous resources. To the voters, a preferred candidate is the one who is a native or a local person, since such a person is known, and is connected to his voters by ties of caste, *beradris*, loyalty, kinship, friendship, and possibly business.<sup>60</sup> To a candidate, these ties are resources, which he beneficially employs in time of need. A candidate uses these ties to win over voters.

In context of elections in Pakistan, there was no bar on the migrants to contest elections in principle. Having no local resource base, it was a pragmatic choice of the migrant elite not to hold elections, and thus keep their positions of influence secure and protected.

#### 4. Opposition to One Unit in West Pakistan

It can also be argued that in addition to the above, the Governor General wanted to materialize the One Unit Scheme, whereby one unified province of West Pakistan was to be established. However, when the scheme was presented in the Assembly, the members of Constituent Assembly rejected it. Those who particularly opposed it include Abdus Sattar Pirzada (Chief Minister, Sindh), Abdul Qayyum Khan (Chief Minister, NWFP), Khan Abdul Ghaffar Khan, Pir of Manki Sharif, Mian Muhammad Iftikharuddin and

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<sup>60</sup> For detailed discussion on voters' relationship with a candidate, see F. G. Bailey, "Politics and Society in Contemporary Orissa" in Philips, *Politics and Society in India*, pp. 102-4.

Sheikh Mujib-ur-Rahman.<sup>61</sup> Even Abdus Sattar Pirzada had obtained the signatures of 74 out of 110 members of the Sindh Assembly in opposition to it before the dissolution of the Constituent Assembly in 1954.<sup>62</sup> All these developments and opposition was resented by the Governor General and the bureaucratic-military elite, who were bent upon implementing the scheme.

At that time, there were rumours that PRODA might be used as a tool against those who disagree with the two schemes. Fearing this, PRODA was hastily repealed in September 1954. In addition, the Constituent Assembly had also stripped the Governor General of his powers to dissolve the Federal Ministry by amending the Provisional Constitution. It is important to recall that it was the same power under which Ghulam Muhammad had dismissed Prime Minister Nazimuddin. Therefore, the Assembly was dissolved and eventually replaced by a new Assembly, which approved the One Unit scheme. It was, in October 1955, that the Western wing of Pakistan was integrated and made one province by amalgamating the four provinces. It was a 'prelude' to the framing of constitution.

The One Unit Scheme was a desired course of action for the bureaucratic-military elite, occupying the role at the center. In order to pursue it, strategies such as threat or intimidation to use PRODA against the dissenting civilian elite was pragmatically deployed.

The idea of One Unit figured prominently among reform measures suggested by Ayub Khan. In 1954, he prepared a note titled "A Short Appreciation of Present and Future

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<sup>61</sup> For details of the opposition to the One Unit Scheme, see Rizwan Malik, Politics of One Unit 1955-1958, Lahore: Pakistan Study Centre, University of the Punjab, 1988, pp. 48-64.

<sup>62</sup> *Ibid.*, p. 53.

Problems of Pakistan".<sup>63</sup> He presented the note in October 1954 to Americans in a meeting, when he was on a tour to the States.<sup>64</sup> It envisaged amalgamation of the provinces and princely states of the West Pakistan in a single administrative unit. This was to be done by abolishing provincial ministries and legislatures in West Pakistan. The two Legislative Assemblies of East and West Pakistan were to be indirectly elected. In addition, the note envisaged Presidential form of government. The two provincial Governors were to be nominated by the President instead of the Legislatures.

### 5. Asserting Bureaucratic and Military Hegemony over Political Institutions

The dissolution of the Constituent Assembly in October 1954 has been termed as a 'civilian coup'.<sup>65</sup> It was evident that the Governor General had taken the action with the help of the bureaucratic elite, dominated by the Punjabis, and the military elite. Three years later, the Dawn aptly remarked on it:

There have indeed been times—such as that October night in 1954—when, with a General to the right of him and a General to the left of him, a half-mad Governor-General imposed upon a captured Prime Minister the dissolution of the Constituent Assembly and the virtual setting up of a semi-dictatorial Executive.<sup>66</sup>

Before dissolving the Assembly, Governor General Ghulam Muhammad had taken Iskander Mirza, Defense Secretary, into confidence in order to ensure the support of the Pakistan Army.<sup>67</sup> Ghulam Muhammad called Bogra, who was on a tour to the UK and USA, to come back. Jalal informs that on October 23, one day before the dissolution, when Bogra arrived at Karachi airport, he was hustled into a car by some generals, and taken to the Governor General's house. Bogra was also threatened with imposition of

<sup>63</sup> For the text of the Memorandum written by General Muhammad Ayub Khan, Defense Minister of Pakistan, October 4, 1954, "A Short Appreciation of Present and Future Problems of Pakistan", see Vorys, *Political Development in Pakistan*, pp. 299-306.

<sup>64</sup> Wayne A. Wilcox, "The Pakistan Coup d'etat of 1958", *Pacific Affairs*, Summer 1965, p. 147 as cited in Afzal, *Pakistan: History and Politics*, p. 144.

<sup>65</sup> Kukreja, *Military Intervention in Politics*, p. 73.

<sup>66</sup> Editorial, "Revolution", *Dawn* (Karachi), August 11, 1957.

<sup>67</sup> Kux, *The United States and Pakistan*, p. 75.



Martial Law.<sup>68</sup> The threat of Martial Law was a resource used by Ghulam Muhammad in order to get the consent of the Prime Minister for pursuing his desired course of action of dissolving the Assembly. It is important to recall that Nazimuddin was also threatened with imposition of Martial Law when he tried to take a legal recourse against his dismissal.

Moreover, before proclaiming the dissolution of the Assembly, the troops were moved from outside Karachi to the city in readiness for disorders 'beyond the power of the police to control.'<sup>69</sup> Thus, fearing a public reaction on the day of the dissolution, the government had deployed army in the then capital. Time magazine commented on the dissolution in the following words: "Bloodlessly, Pakistan changed from an unstable pro-Western democracy to a more stable pro-Western military dictatorship."<sup>70</sup> The dissolution of the Assembly clearly establishes that the bureaucratic elite were in league with the military elite to outmaneuver the civilian elite for pursuing their desired course of action in domestic affairs and foreign policy. From October 1954 onwards after the dissolution of the first Constituent Assembly, the role of military elite became more pronounced. In the post-October 1954 period, all succeeding governments were supported by the military.

### **Pragmatic Gains of Dissolution**

The dissolution of the Assembly brought the following pragmatic gains to the bureaucratic and military elite.

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<sup>68</sup> Jalal, *The State of Martial Rule*, p. 192.

<sup>69</sup> Murray to secretary of state [CRO], 10 December 1954, DO35/5406, PRO, as cited in Jalal, *The State of Martial Rule*, p. 192 fn.

<sup>70</sup> Time, November 8, 1954 in Kux, *The United States and Pakistan*, p. 75.

## 1. Reshuffling of Bogra's Cabinet and its Pragmatics

Despite the fact that the constitutional amendments were made in connivance with Bogra, he was retained as the Prime Minister as he enjoyed the trust of the Americans. It was on the advice of Iskander Mirza that Bogra was not fired, and retained as Prime Minister.<sup>71</sup> The new cabinet formed by Bogra was claimed to be a "Cabinet of Talents". It was the first non-party government that was formed in the country.<sup>72</sup> Like the earlier cabinet, the Prime Minister did not have any say in its selection. It is significant to recall that when Nazimuddin was dismissed, almost half of the members of his cabinet were retained in Bogra's first cabinet. Similarly, Bogra's second cabinet again retained half of the members of the previous cabinet.

Some of those who were dropped from the Cabinet were compensated by economic dispensation. These included the following: Sardar Bahadur Khan was the brother of Ayub Khan. In 1954, he was made agent to the Governor General in Baluchistan, where he served till 1955.<sup>73</sup> Zafarullah Khan had already been elected to the International Court of Justice. M. A. Gurnani was made Governor of the Punjab in 1954, and he remained so till 1955.<sup>74</sup> Shoaib Qureshi was again appointed on a diplomatic position. Tafazzal Ali was sent as Ambassador to Egypt in 1954. On the contrary, some of the members dropped from the previous cabinet were not compensated. These include I. H. Qureshi, A. K. Brohi and Khan Abdul Qayyum Khan.

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<sup>71</sup> Ibid.

<sup>72</sup> Zarina Salamat, *Pakistan 1947-1958: An Historical Review*, Islamabad: National Institute for Historical and Cultural Research, 1992, p. 39.

<sup>73</sup> From July-October 1955, he remained Chief Minister NWFP. From 1956 to 1958, he remained leader of the opposition, West Pakistan Legislative Assembly.

<sup>74</sup> Gurnani also served as Governor of West Pakistan, 1955-57, member Constituent Assembly, 1955-57. Later Gurnani later claimed that he was offered it but he refused to become Cabinet member. *Pakistan Times* (Lahore), February 21, 1961.

Those retained in the second cabinet included Chaudhri Muhammad, a bureaucratic-turned-civilian elite, who served as Finance Minister 1951-54, and had been quite influential; Dr. A. M. Malik, a Bengali civilian elite, who served as Minister Government of Pakistan from 1949 to 1955; and Ghiyasuddin Pathan, a civilian elite of East Bengal, who had been Deputy Minister in Nazimuddin's Cabinet, and served as Minister (1954-55).

It is worthy of mention that Chaudhri Muhammad Ali and A.M. Malik had been members of the Nazimuddin Cabinet, but they both, along with few other members, had been retained, and thus inducted in the first cabinet of Bogra. The two had survived their cabinet membership twice.

In addition, some new members were inducted in Bogra's second cabinet. These included the following: M. A. H. Ispahani, a Bengali businessman, and former Ambassador to the US and UK, Mir Ghulam Ali Talpur, a Sindhi civilian elite, Dr. Khan Sahib, the brother of Abdul Ghaffar Khan and a close friend of Iskander Mirza. He was inducted in the Cabinet to help implement the One Unit Scheme, as his influence was used to neutralize the opposition of his brother to the scheme.<sup>75</sup> Thus, kin also served as an important resource in politics. In addition, General Ayub Khan and Iskander Mirza were also included in the cabinet.

It is significant to note that the Army Chief, General Muhammad Ayub Khan, was included in the Cabinet as Defense Minister. On his demand, he retained the post of the commander-in-Chief as well. It was another violation of legal rules. However, the

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<sup>75</sup> Afzal, *Pakistan: History and Politics*, p. 137.

inclusion of Ayub Khan in Cabinet “formally inducted Ayub into national politics on his own terms.”<sup>76</sup> Hitherto, the military elite were playing a covert role in the political competition, but with this induction, their role as rival elite was further consolidated. Ayub Khan occupied a central position in decision-making in a formal sense, as he was consulted by the Central Government in every issue of vital import.<sup>77</sup> Ayub Khan himself stated that he had accepted the offer in order “to act as a buffer between the politicians and the armed forces”.<sup>78</sup> Appointing the Army Chief as defense minister was an unprecedented event. This role concentration of two important offices in a single individual was a blatant violation of legal-rational and democratic norms.

In addition, Iskander Mirza was offered Interior Ministry, who acted as a double-edged sword as he was the spokesman of the institutional interests of both the bureaucracy and the military. A few days after assuming the portfolio of Interior Minister, he stated: “You cannot have the old British System of administration [and] at the same time allow politicians to meddle with the civil service. In the British System the District Magistrate was the kingpin of administration. His authority was unquestioned. We have to restore that.”<sup>79</sup> Thus, including Mirza, who had an honorary rank of Major General, two military generals assumed political offices. Both Ayub and Mirza shared their contempt for the civilian elite. Moreover, both had secular orientation as well. Mirza declared that religion would be kept out of politics.<sup>80</sup>

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<sup>76</sup> Khalid Mahmud Arif, “The Role of the Military in Politics: Pakistan 1947-97” in Malik, *Pakistan: Founders’ Aspirations and Today’s Realities*, p. 96.

<sup>77</sup> Col. Mohammad Ahmed, *My Chief*, Lahore: Longmans Green, 1960, p. 50.

<sup>78</sup> Khan, *Friends not Masters*, p. 53.

<sup>79</sup> Dawn (Karachi), October 31, 1954.

<sup>80</sup> Cited in Salamat, *Pakistan 1947-1958*, p. 40.

These new entrants had never been elected to any public office, whereas the Constituent Assembly was dissolved on the pretext that it had become 'unrepresentative.' Their selection was in clear contradiction to the legal-rational norms, and disregardful of the democratic principles. These members were selected by the bureaucratic-military elite on the basis of personal trust and loyalty. This reflects the civilian and bureaucratic-military elite interlocking at the personal level, whereas their interests were conflicting at institutional and group level.

Wheeler opines that the government bore similarity to the pre-partition governance pattern, with the Governor General presiding over the council, the C-in-C as Defense Minister, and lacking in responsibility to the legislature.<sup>81</sup> This shows that the political conduct was not influenced by the constitutional norms or the essence of democracy, but the elite always tried to justify their actions using the public face of democracy and/or national interest without subjecting their actions to the democratic traditions. Without renouncing the democratic ideals at face value, they used all resources and strategies for pragmatic gains in political competition.

Later, the Bogra Cabinet was expanded to include five more ministers, which include the following: Suhrawardy, a Bengali civilian elite and the leader of Awami League, had demanded the dissolution of the Constituent Assembly and had urged Bogra to resign. Nevertheless, Bogra was retained as Prime Minister by the Governor General. Ghulam Muhammad offered Suhrawardy to join Bogra's Cabinet as the Federal Minister for Law and Parliamentary Affairs, which he accepted. It is important to note that previously, Suhrawardy was an opponent of one unit, but his inclusion in the central cabinet ensured

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<sup>81</sup> Richard S. Wheeler, "Governor General's Rule in Pakistan", *Far Eastern Survey*, January 1955, Vol. XXIV, No. 1, p. 5.

his support to the one unit.<sup>82</sup> It has been suggested by some writers that Ghulam Muhammad had assured Suhrawardy that he would be the next Prime Minister after Bogra.<sup>83</sup> Later, Bogra grew differences with the Governor General. Many people expected that Bogra would be replaced by Suhrawardy, but when the new PML President, Choudhary Muhammad Ali was taken as the new Prime Minister after Bogra's resignation, Suhrawardy resigned from the Cabinet on August 11, 1955.<sup>84</sup>

In addition to Suhrawardy, Abu Husain Sarkar of Krishak Sramik Party, who was Fazlul Haq's right-hand man as well as his nominee, was taken in Cabinet in order to counter the influence of Suhrawardy. Other new entrants in the cabinet included Habib Ibrahim Rahimtoola,<sup>85</sup> Col. (Hon.) Sayyid Abid Husain, and Sardar Mumtaz Ali Khan. These latter two members were Punjabi landlords.

## 2. Establishment of One Unit by the New Constituent Assembly

The second Constituent Assembly and the new Cabinet of Bogra took up the issue of One Unit. Almost a month after the dissolution of the Assembly, Prime Minister Muhammad Ali Bogra announced the One Unit Scheme on November 22, 1954. A few days after, he also called a meeting of the Central Cabinet, all the Chief Ministers of the provinces of West Pakistan on November 26, and the participants were urged to approve the scheme. The main opposition came from the three provinces of West Pakistan, but it was silenced by using all possible methods of power exertion ranging from persuasion and coercion to symbolic appeals and economic dispensation by the government.

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<sup>82</sup> Mazari, *A Journey to Disillusionment*, p. 66.

<sup>83</sup> Mohammad H. R. Talukdar (ed.), *Memoirs of Huseyn Shaheed Suhrawardy*, Dhakka: Dhakka University Press, 1987, p. 47.

<sup>84</sup> Shamil, "Hussain Shaheed Suhrawardy in Pakistan's Politics", p. 48.

<sup>85</sup> Rahimtoola, a lawyer and businessman, had served as Ambassador in France soon after the partition. In addition, he had also served as Governor of the Punjab in 1954.

Chief Minister Abdur Rashid Khan in NWFP had resigned under pressure to be replaced by Sardar Bahadur Khan in July 1955 as the former had opposed the One Unit scheme. Pir of Manki led the opposition to the scheme. In November 1954, Habib Ibrahim Rahimtoola, Governor of the Punjab, was replaced by Nawab Mushtaq Khan Gurmani, as the former was taken in Bogra's Cabinet. Gurmani was not only pro-One Unit, he persuaded others to approve it as well.<sup>86</sup> Similarly, Abdul Sattar Pirzada, Chief Minister Sindh, who opposed One Unit Scheme was dismissed by Governor General Ghulam Muhammad in November 1954. He was replaced by Khurho, who initially did not support the scheme, later managed to get the approval of One Unit from his ministers. On December 11, 1954, the Sindh Assembly passed a resolution in its favour with an overwhelming majority of 100 against 4 votes.<sup>87</sup> It is astonishing to note that on October 23, 1954, the same Assembly had produced a signed document rejecting the scheme, but the new Chief Minister forced a consensus on it.

On September 30, 1955, the second Constituent Assembly passed the Bill when 43 members voted for and 13 against the One-Unit Scheme.<sup>88</sup> Hence, the Western wing of the country was amalgamated and made one province. As a result of the establishment of One Unit in West Pakistan, the center's hold on both wings of the country was strengthened. Not only the civilian elite in the West Pakistan came under the direct control of the center, the arrangement also effectively neutralized the demands of the East Pakistani civilian elite for greater provincial autonomy.

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<sup>86</sup> Hamida Khuro, Muhammad Ayub Khuro: A Life of Courage in Politics, Lahore: Ferozsons, 1998, p. 413.

<sup>87</sup> Dawn (Karachi), December 12, 1954.

<sup>88</sup> Constituent Assembly of Pakistan, Debates, Vol. 1, Part 1, 1955, pp. 1471-72.

### 3. Constitution of 1956: Laying Down New Rules of the Political Competition

During the first decade of independence from the colonial rule, no consensus on rules of the political conduct and political competition could evolve among the civilian elite in particular, and among various elite groups in general. This lack of consensus was one of the reasons for delay in constitution-making. The country could have its own constitution nine years after independence. Amid political upheavals, the first Constitution was promulgated in 1956. The task was complicated and arduous.

Prime Minister Chaudhari Muhammad Ali is credited with giving the country its first Constitution of 1956. He had a bureaucratic background, and had replaced Muhammad Ali Bogra on August 11, 1955. Meanwhile, Iskander Mirza had replaced Ghulam Muhammad as Governor General on August 6, 1955, thus bringing to the job "the full bag of tricks."<sup>89</sup> Chaudhari Muhammad Ali brought about a consensus among the varied disparate groups of political actors and elite groups for the framing of the Constitution of 1956. The Constitution was passed by the Second Constituent Assembly, having heterogeneous composition. It had members of the United Front, Awami League, Congress, Scheduled Caste Federation, United Progressive Party and the Muslim League.

The Constitution of 1956 was enforced on March 25, 1956 and Pakistan was declared an Islamic Republic. It is significant to note that Governor General Iskander Mirza had given his assent to the Constitution on the condition that he would be elected as President under the new arrangement.<sup>90</sup> Moreover, General Ayub Khan also supported Mirza's efforts to

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<sup>89</sup> Kalim Siddiqui, *Conflict, Crisis and War in Pakistan*, London: Macmillan Press, 1972, p. 97.

<sup>90</sup> Yusuf, *Pakistan*, p. 64. The consent of Governor General was required following the Federal Court's verdict in Tamizuddin Khan's Case.



become the President.<sup>91</sup> Through this bargain, before allowing the creation of a legal and constitutional resource, he could secure a role for himself to play in the future decision making. It was promising for him as he was now provided with a public face and also had access to resources of bureaucracy and military for political competition.

The army also took keen interest in the formulation of the Constitution. It was informally approved by Ayub Khan as well.<sup>92</sup> It is worthy of mention that Ayub Khan was playing two roles—one as a Cabinet member and the other as the C-in-C. Therefore, his approval meant the consent of the army as an institution.

The Constitution of 1956 had heavily borrowed from the draft constitution of 1954, which had been rejected in October 1954 as coming from an Assembly 'unrepresentative of the people.'<sup>93</sup> It provided for a federal parliamentary system, with federation consisting of two provinces: East and West Pakistan. Retaining the scheme of parity of representation between the two provinces, the members of East and West Pakistan were equally represented in the unicameral legislature.<sup>94</sup>

According to the Constitution of 1956, the designation of Governor General was replaced by President (Head of the State), and he was given powers over the elected Prime Minister (Head of the Executive). The President could dismiss a Prime Minister in case the latter failed to command the confidence of the majority of the members of the National Assembly. Article 37(6) stated that the "Prime Minister shall hold office during

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<sup>91</sup> Mustafa Chowdhury, *Pakistan—Its Politics and Bureaucracy*, New Delhi: Associated Publishing House, 1988, p. 132.

<sup>92</sup> Jalal, *The State of Martial Rule*, p. 196.

<sup>93</sup> Choudhury, *Constitutional Development in Pakistan*, p. 96.

<sup>94</sup> The National Assembly was consisted of 300 members, 150 from each province. There were additional 10 seats for women, five from each province.

the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of the members of the National Assembly."<sup>95</sup> This Article epitomizes an effort to reconcile the British traditions of parliamentary democracy with the local practices of political competition. Such efforts also point to a gap between the normative legal positions and formal rules of political conduct, and the pragmatics of politics. This arrangement was meant to bridge this gap by putting formal limits on the discretionary powers of the President, which are otherwise to be used in good faith and keeping in view the political circumstances. However, in case of Pakistan, such conventions were frequently used as a resource for a pragmatic gain in a political competition violating the purport of such conventions.

Similarly, the powers of Provincial Governors were enhanced too, and they were vested with discretionary power to appoint the provincial chief ministers. This division of power was not necessarily detrimental to democratic norms in principle, but given the dominant role of the bureaucracy or the executive backed by the military establishment with emergency powers at its disposal, the arrangement could, and consequently did undermine the powers of the legislature. It subordinated parliament or the civilian elite to the military and bureaucratic elite. The Centre retained the control of the provincial executives. Under Article 192, the provisions for the declaration of emergency, which were enshrined in the Act of 1935, were retained in the Constitution of 1956.<sup>96</sup> Under Article 193, the President was empowered to dismiss the provincial government and

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<sup>95</sup> The Constitution of the Islamic Republic of Pakistan, 1956, p. 25.

<sup>96</sup> Ibid., p. 136.

impose direct rule in the province in case of failure of constitutional machinery in the province.<sup>97</sup>

Under the new Constitution, Iskander Mirza managed to get himself elected as the first President of Pakistan. He made full use of the formal-legal resources provided in the Constitution, and as we saw in the preceding chapter, he was able to coerce several Prime Ministers into resigning their posts. No general elections had been held since the inception of Pakistan, but now holding of such elections had become a pressing public demand. Some tentative dates were set for elections. As the elections drew closer, there seems to have emerged a consensus among the civilian elite to get rid of President Mirza. Owing to such threats to his position, he along with General Ayub Khan, who represented the military elite, abrogated the Constitution, the Constitution he himself had sworn to defend and protect. These pragmatic considerations along with the public face used by the bureaucratic-military elite are the focus of the next chapter.

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<sup>97</sup> Ibid., p. 136-9.