

# ***Presidential Form of Government in Pakistan: As An Option***

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## **ABSTRACT**

*The article mainly revolves around the discussion as which system of government suits Pakistan; parliamentary or presidential? To find out the possible answer, it explores the history of parliamentary or presidential systems in the country and their failure. As far as the presidential form of government in the 1962 Constitution is concerned, it was not in its pure form rather was designed in consonance with whims and wishes of Ayub Khan and was not according to the standards adopted in USA Constitution, an illustration of presidential system. In addition, as none of the prime ministers of Pakistan enabled to complete his tenure, it discusses that Pakistan may opt for pure presidential form of government or may make some amendments to the existing parliamentary Constitution 1973. In case, adopting the presidential form of government, possible constitutional ways are pondered for any possible change either through a) amendment in the constitution in numerous provisions, b) new constitution or (c) referendum with amendment. First or third option may be utilized, but it is indispensable that the Supreme Court set aside Rawalpindi Bar Association Case*

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*verdict and declared contrary view to it that no salient features exist in Pakistan's Constitution and parliament may make any amendment to it without any limitation. As far as the second option is concerned, it is most suitable yet difficult as it requires unanimous decision. However, it is not an impossible step.*

### **Introduction**

The constitutional history of Pakistan ever since its creation faced many ups and downs which at times caused confusion as to which system - parliamentary or presidential forms of government - is more suitable for it. Its Constitution of 1956 and the current 1973 Constitution in its original or after the 18<sup>th</sup> Amendment upholds parliamentary form of government, but the constitutional history is not as simple rather cumbersome wherein pure parliamentary system was changed into semi-parliamentary system by introduction of Article 58(2)(b) empowering the president of Pakistan to single-handedly dissolve parliament on any flimsy grounds until 2010. In the 1962 Constitution, we experienced a form of government exemplifying more in tyrannical terms which cannot be termed as pure presidential system as adopted in the USA.

There has been a debate about the aptness of either parliamentary or presidential form of government in the country particularly after the ouster of former premier Imran Khan. The research at hand deals with the suitability of such systems for democracy or good governance in Pakistan. The debate is, if the presidential system is adopted, what *modus operandi* is to be more appropriate; either through new constitution, constitutional amendment or referendum, the suitability of each option will be deliberated in the following pages. However, before going into further discussion, we would discuss research questions, methodology of study and brief gist of constitutional history of Pakistan to comprehend the study better. Presently, two research questions are under consideration:

- i. Is presidential form of government more suitable

for Pakistan than parliamentary form of government?

- ii. If so, does the introduction of presidential form of government need new constitution, or constitutional amendment or referendum?

### **Research Methodology**

The instant study adopts doctrinal research, a desk-based study using textual analysis of various primary and secondary sources of data pertaining to parliamentary or presidential form of government and their suitability for Pakistan in critical or comparative style. The primary source of data is: Constitutions of Pakistan 1956, 1962, and 1973, judicial cases of Supreme Court, or Higher Courts of Pakistan. Meanwhile, we would also rely on secondary sources i.e., scholarly, or juristic opinions given in research articles or books or newspapers and other sources.

### **Parliamentary vs. Presidential Form of Government**

The political history of Pakistan reveals that it has implemented both systems i.e., 1956 and 1973: Constitutions with parliamentary form of government and 1962 Constitution with presidential form of government. However, none of the systems was used to be enforced in its pure form rather it remained in semi-parliamentary or presidential form apart from the period spanning after 13<sup>th</sup> and 18<sup>th</sup> Amendment in the 1973 Constitution which gave somehow true shape of parliamentary form of government in Pakistan. Let's have a close look at both the systems to analyse which system is more suitable for Pakistan while envisaging the advantages of parliamentary form of government and deliberating upon the irritating aspects of such system in Pakistan.

### **Advantages of Parliamentary Form of Government**

Firstly, in the parliamentary system, the executive authority is exercised by the ministers responsible to the National Assembly. Vesting this authority in a popularly elected president can significantly increase the risk of democracy

breaking down. Secondly, a parliamentary system helps to make the parties more coherent and firmer in the elected assembly. Thirdly, if any political crisis occurs, e.g. a senior political leader suffers a personal scandal or is convicted in a court of law, the presidential system can make such crises even more severe because it is constitutionally very difficult to replace a popularly elected president before the end of his term. Fourthly, in a parliamentary democracy, the president is supposed to serve as a nonpolitical head of state, above the process of parliamentary coalition-building.<sup>1</sup>

However, apart from benefits, the parliamentary form of government in Pakistan has remained under continuous shackles. At the nascent stage, the country has been run through bureaucratic governments. Later, there had been military interventions in 1958, when Ayub Khan imposed Martial Law and later became President till 1969. The same year Yahya Khan imposed Martial Law from 1969 to 1971. The third and fourth interventions were made by Zia ul Haq and Pervaiz Musharraf in 1977 and 1999 respectively. In total, around more than thirty years, military dictators ruled Pakistan. This reason is, we have not been able to implement the parliamentary form of government in true essence. Until the 18<sup>th</sup> Amendment whereby when Article 58 (2) (b) was removed, it has been tried to device pure parliamentary form of government. With this aspect in sight, it is pertinent to discuss some of the fundamentals of parliamentary democracy as well as take note of the fact as why and how it could not have durable footings in Pakistan.

### **Parliamentary Democracy in Pakistan**

The paramount facets of parliamentary democracy comprise; first, it is a system of governance wherein executive, and its legislative branches are interconnected, and citizens choose their legislative representatives who directly elect the prime minister and his cabinet members from legislature. There is

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1 Roger Myerson, "Constitutional Structures for a Strong Democracy: Considerations on the Government of Pakistan," *World Development* 53 (2014): 46-54.

fusion of governmental powers.<sup>2</sup> Secondly, the executive is accountable to the legislature. Thirdly, the prime minister is usually empowered to dissolve the house. Fourthly, such system requires strong political parties and their participation.<sup>3</sup>

There are a number of reasons that the parliamentary democracy could not establish its stronghold here in Pakistan as compared to other successful democracies like India. The nagging problem is lack of leadership. At the very outset, the country faced military interventions, and, on the other hand, legislators looked for their vested interests; thus, at both ends democracy crippled.

### **Irks of Parliamentary Democracy**

#### **i) Parliamentary Democracy Needs Strong Political Leadership**

In any parliamentary democratic system, strong political leadership is imperative. At the early stage, Pakistan suffered a huge setback with the demise of Quaid-i-Azam Muhammad Ali Jinnah and Liaquat Ali Khan. It caused an irreparable damage to the political stability and created political vacuum, while on the other hand, India kept marching with the likes of Jawaharlal Nehru, Sardar Vallabhbhai Patel, Zakir Hussain, Abdul Kalam Azad and others. Apart, Muslim League party structure was not strong enough in comparison to Indian National Congress; consequently, giving birth to opportunism and 'over-developed taste' for forming or dissolving successive governments in early days.<sup>4</sup> Initially, political immaturity and struggle for holding positions in power corridors of Pakistan

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2 Richard Albert, "Presidential Values in Parliamentary Democracies," *International Journal of Constitutional Law* 8, no. 2 (2010): 207-236.

3 Patil Amruta, "Differences between Parliamentary and Presidential form of Government," *Indian Polity Notes* (2022).

4 K. J. Newman, "The Constitutional Evolution of Pakistan," *International Affairs (Royal Institute of International Affairs 1944)*, 38, no. 3 (1962): 353-64.

set the tone for successors. It may be interconnected to military dictators' quest for power as well.

### **ii) Military Interventions**

Military interventions in Pakistan's political system remained a constant problem.<sup>5</sup> Military leaders imposed Martial Laws four times and turned the parliamentary way into semi presidential form of government. In 1958, Sikandar Mirza abrogated 1956 Constitution; later, Ayub Khan introduced 1962 Constitution and became the president till 1969. Likewise, Yahya Khan also tried to adopt presidential form of government which resulted into failure of authority while Indian intervention coupled with mutiny from the masses proved disastrous for the country. In 1973, third Constitution was approved; however, it was suspended or held in abeyance by military rulers, Zia ul Haq and Pervaiz Musharraf respectively; They altered the power structure in the political system of Pakistan to keep the power in their hands by introducing Article 58-2(b) in the 1973 Constitution.<sup>6</sup> The Article 58-2(b) operated as a control system to contain parliamentary form governance system.

### **iii) Dwindling 1973 Constitution Through Insertion of Article 58-2(b)**

The Article 58(a) (b) was added through the 8<sup>th</sup> Amendment by the CMLA and the then president of Pakistan General Zia ul Haq. In 1997, it was removed by Nawaz Shareef government through the 13<sup>th</sup> Constitutional Amendment. Later in 2003, Pervaiz Musharraf got it reintroduced through the 17<sup>th</sup> Amendment in 1973 Constitution of Pakistan. The provision remained vital for the "constitutional engineering". It landed a hand to the president of Pakistan to gain untamed or unleashed discretionary powers to dissolve

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5 Riffat Mahmood, "Theoretical Preliminaries of Military Intervention in Politics and its Implications on Pakistan," *Journal of Indian Studies* 2, no. 2 (2016): 90-105.

6 Nasreen Akhtar, "Pakistan's Undemocratic Political Culture," in *17th Biennial Conference of the Asian Studies Association of Australia in Melbourne* (2008).

democratically chosen regimes on mere subjective grounds; in consequences, many political or legal jurists called Pakistan's political structure as 'hybrid' of parliamentary or presidential systems or hybrid of democracy or tyranny.<sup>7</sup> It may be averred that it worked as a 'safety valve' against military intervention through direct Marital Laws and thus creating balance of power between the president and the prime minister; whereas it caused chronic political instability in the country.<sup>8</sup> It can be exemplified from the fact that four political governments were dislodged within a short span of eight years from 1988 to 1996.<sup>9</sup> Such provision and its misuse by the presidents were unparalleled; it remained intact until 2010 when 18<sup>th</sup> Amendment was passed by the parliament and Article 58-2(b) was finally removed from the Constitution. It may not be wrong to say that it was due to removal of such provision that two democratically elected governments completed their tenure of five years from 2008 to 2018. It is evident from the recent episode concerning whereby vote of no confidence resolution was passed against the former prime minister Imran Khan, despite the fact that an attempt was made to dissolve the national assembly by dismissal of such resolution by the then speaker under loyalty to state principle<sup>10</sup> which statuses paramount duty of citizens to be loyal with the state. The vote of no confidence was considered as result of foreign conspiracy; therefore, the speaker national assembly held it was dismissed. Consequently, the prime minister sent a summary for dissolution under Article 58(1) of the Constitution to the President who approved it.

Later, the Apex Court of Pakistan in *Suo Moto* Case disapproved such interpretation and declared the ruling of

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7 Osama Siddique, "The Jurisprudence of Dissolutions: Presidential Power to Dissolve Assemblies under the Pakistani Constitution and its Discontents," *Ariz. J. Int'l & Comp. L.* 23 (2005): 615.

8 Siddique, "The Jurisprudence of Dissolutions," 623.

9 Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2001), 863.

10 Article 5(a) of 1973 Constitution of Pakistan.

the speaker and the subsequent act of PM and the president of dissolution as *void-ab-initio*.<sup>11</sup> "*Fiat iustitiam ut cælum*", a Latin maxim which means "Let the justice be done though heavens may fall"; the Supreme Court's landmark judgment may reflect such saying as it represents untainted constitutional interpretation notwithstanding to the fact Pakistan's already dwindling economy has been facing severe economic downfall after the regime change. Meanwhile, had the Article 58-2(b) been intact during all above scenario, the president might not have taken a single moment to dissolve the assembly. Apart from the removal of Article 58-2(b), other factors including corruption have been remained a colossal challenging concern for the parliamentary system in Pakistan.

#### iv) Untrained or Inexperienced Politicians and Issue of Corruption

Ironically, many of the politicians, who were part of the Nawaz Shareef government, and supported the 13<sup>th</sup> Amendment for deletion of 58-2(b), they voted for the 17<sup>th</sup> Amendment during Musharraf era for re-insertion of Article 58-2(b) which again empowered the president to dissolve the parliament single-handedly. Changing loyalties and sticking to personal gains, the politicians have undermined the parliamentary system.<sup>12</sup> It would not be wrong to aver that Pakistan needs upright parliamentarians with strong and deep-rooted ideological basis.

There are certain other sources that create grouping among the political parties to create 'guided democracy' or to have their say in the political system. This along with four military take overs has been done to stay in the power corridors. In short, military rulers or their guided governments remained part of government for more than half of the Pakistan's

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11 Supreme Court of Pakistan, Sou Moto Case No. 1, 2022.

12 Akhtar, "Pakistan's Undemocratic Political Culture," 4.



existence.<sup>13</sup> Such chosen groups have never worked for the betterment of public rather these groups caused institutional decay in the political system.<sup>14</sup>

#### **v) Undemocratic Political Culture Within Political Parties**

In order to run the parliamentary system on strong footing, the political parties must adhere to democratic norms and cultivate a culture of tolerance and harmony in their ranks.<sup>15</sup> Unfortunately, the political parties have not developed such traits and attributes. Due to dynasty or family-based politics, the majority of their officeholders have been nominated. Pakistan Tehrek-e-Insaf (PTI), however, held intra-party elections, but on the dominant party positions, leaders were elected uncontested. Meanwhile, it is pertinent to mention that those elections were conducted only once and over a decade ago. Appointed by the PTI, the election commissioner Justice (r) Wajeeh Uddin conducted these elections and reported that several malpractices were observed and thus he rejected those elections. His stance later caused him to lose the confidence of chairman of the party and was forced to leave the party. Thus, the only party which showed some glimpses of democratic norms also stopped the practice.

Overall, the intrinsic pattern of leadership itself is an obstacle in the way of grooming or providing new political faces rather it supports traditional politicians or elites to influence power dynamics.<sup>16</sup>

#### **vi) Interplay of Judiciary and Parliamentary**

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13 Pooja Kapoor, "An Analytical Study on the Constitution of Islamic Republic of Pakistan," *PalArch's Journal of Archaeology of Egypt/Egyptology* 18(8). ISSN 1567-214x.

14 Akhtar, "Pakistan's Undemocratic Political Culture," 5.

15 NushadKhan and Syed Ali Shah, "Public Perception Regarding Weak Organizational Structure of Political Parties of Pakistan: A Case Study of ANP, PML (N) And PPPP," *Global Journal on Humanities & Social Sciences* (2020): 142-49.

16 Akhtar, "Pakistan's Undemocratic Political Culture," 6.

### System

The perception is that Pakistan's superior judiciary is identified as power broker; facilitating or giving legal cover to undemocratic steps.<sup>17</sup> Starting from the dissolution of first Constituent Assembly by Malik Ghulam Muhammad, Federal Court, contrary to the decision of Sindh High Court in favour of Molvi Tameez ud Din, accepted the appeal and allowed dismissal of the Constituent Assembly.<sup>18</sup> This was first major setback to the democratic traditions in Pakistan. Had the Federal Court termed the dissolution as unlawful and *void-ab-initio*, democracy in Pakistan would have been different from what it has been throughout the history.

Kelson's 'doctrine of necessity' had been used in various cases to extend legitimacy to various military *coups* and to dissolution of parliaments. Dosso case<sup>19</sup> decision proved to be the first jolt to the parliamentary system as it set the seal of legitimacy on action of Iskander Mirza, the then president of Pakistan abrogating the 1956 Constitution. Similarly, contrary to the decision in Asma Jillani Case which overruled the *Supra* Dosso case,<sup>20</sup> in Nusrat Bhutto Case<sup>21</sup> Supreme Court of Pakistan again legitimized the Martial Law of 1969 and dissolving parliament and provincial assemblies. Likewise, in Zafar Ali Shah Case<sup>22</sup>, Supreme Court gave protection to Martial Law imposed by General Pervaz Musharraf.

Thus, there remained an interplay between the judiciary and the military rulers for providing legitimacy to their *coups* and their established governments. However, after the lawyers' movement, such situation may have been changed to some

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17 Siddique, "The Jurisprudence of Dissolutions," 626.

18 Maulvi Tamzeedud Din Khan v. Governor General of Pakistan, PLD, F.C. (1955): 240.

19 The State v. Dosso and other, PLD S.C. (1958): 533.

20 Miss Asma Jillani v. The Government of Pakistan, PLD S.C. (1972): 139.

21 Begum Nusrat Bhutto v. Chief of Army Staff, PLD S.C. (1977): 657.

22 Zafar Ali Shah v. General Pervez Musharraf, PLD S.C. (2000): 869, & 1219-23.

extent during Chief Justice Supreme Court (CJ) Iftakhar Ch. era and its post period. Whenever judiciary refused to obey the rulers- both civilian and military - it has been suppressed. Judges have been sent on leave by force; they were retired before tenure or detained and dismissed as General Musharraf had done in 2007.

#### **2.4) 18<sup>th</sup> Amendment Restoring Parliamentary Democracy in Pakistan**

The 18<sup>th</sup> Amendment in the 1973 Constitution fortified democracy,<sup>23</sup> restoring the supremacy of the parliament. Through this Amendment, the president has become a ceremonial head who shall act upon the advice of the prime minister. It also abolished the unilateral power of the president to dissolve the parliament or the assemblies.<sup>24</sup> After this Amendment, the third democratic government has been elected without any Martial Law; and this could be considered as a partial success of democracy as it is taking roots.<sup>25</sup>

Despite the induction of 18<sup>th</sup> Amendment, the dream of good governance still remains in the doldrums. The successive governments have failed to put the country on the track of progress and wellbeing; the system has gone rusted and the quagmire is deepening. The people have been facing snowballing worst form of economic-socio and political hitches.

The ouster of Imran Khan through vote of no confidence resolution passed by the national assembly on April 10, 2022, again raised queries about the appropriateness

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23 Baber Ayaz, "18<sup>th</sup> Amendment—A Gain for Democracy," *The Daily Times*, November 12, 2018, <https://dailytimes.com.pk/320979/18th-amendment-a-gain-for-democracy/> (accessed May 28, 2022).

24 Zafarullah Khan, "Constitutional Reforms in Pakistan: Federalism After the 18th Amendment," *Federalism in Asia and Beyond the Wildbad Kreuth Federalism Days* (2012): 193

25 Shamaila Amir and Fayyaz Ahmad, "Constitutional Development and Political (in) stability of Pakistan: An Analysis Since Inception of Pakistan till 2018," *Journal of Social Science and Humanities*, vol. 1, no. 3, (2020).

ofparliamentary system. Although it was a constitutional step, yet country has been suffering due to political tension erupted between political parties and within state organs.

Though, the constitution empowers the members of parliament to bring vote of no confidence against the prime minister; requiring simple majority, yet, in a system where democratic norms have not fully rooted, such moves can prove counter-productive for the betterment of the country.

Realizing such factor, the constitution of Bangladesh does not endow its legislative body the authority to remove premier or his cabinet. In Pakistan, complete removal of such provision may not serve the purpose. It, however, may make some amendments in the provision; first, there must be an application of subjective or objective tests for removal of the prime minister and his cabinet. Subjective test may include that the no confidence procedure should be properly governed under the constitution. Meanwhile, an objective test for success of such resolution may include valid or sound grounds i.e., proven corruption, or misconduct, or any other grounds for removal of the premier or his cabinet.

Secondly, amendment may be introduced simultaneously in the Article 69 of the Constitution requiring 2/3 majority of the total members of the house for ousting the premier like such stringent requirement of two-third majority is indispensable in France.<sup>26</sup> Meanwhile, Pakistan should readopt “constructive vote of no confidence approach” as enshrined in the original 1973 Constitution.

In the wake of premier’s ouster, thedebate in favour of the presidential form of government has resurfaced<sup>27</sup> envisaging it as a sole solution tothe socio-eco-political challenges of Pakistan, while on the other hand, there have also been arguments against this kind of system.

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26 Article 49, Constitution of France, 1958.

27 Mosharraf Zaidi, “A Presidential System for Pakistan,” *The News*, February 01, 2022 <https://www.thenews.com.pk/print/929733-a-presidential-system-for-pakistan>

### 3. Advantages of Presidential Form of Government

- a) There is separation of power concept in presidential form of government along with check and balances. This allows democracy to flourish and rule of law to be strengthened.
- b) The president selects his cabinet from experts in different fields to run the government. This is why it can be said that he has a cabinet of experts and not of parliamentarians, legislators.
- c) There is political stability as the tenure of president is fixed and he needs not to bother about the end of his government except his own breach.
- d) There is less interference of political parties to remove the government.<sup>28</sup>

#### 4) Presidential Form of Government Under the 1962 Constitution

Then General Ayub Khan opted the presidential type of government for 1962 Constitution; framed according to his wishes and discarded the 1956 Constitution and its parliamentary form of government. As any dictator would like to have absolute powers, the 1962 Constitution vested in him extraordinary supremacy and dominance in the constitutional system. It basically may not be called merely a presidential form of government, rather it was "president centric one." The president's powers were immense and checks and balances on his powers were so negligible. The powers given to the president were considerable and the checks on his exercise of that power were minimal.<sup>29</sup>

However, the constitution could not survive for longer and it was abrogated around in the mid of year 1969.<sup>30</sup> The

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28 Naunihal Singh, *A System of Governance: Parliamentary or Presidential* (Anmol Publications PVT. LTD., 1998). Also see Jian Tan "Presidential, Parliamentary, or Combined System of Government: Comparison and Choice for China," *Colum. J. Asian L.* 11 (1997): 219.

29 Siddique, "The Jurisprudence of Dissolutions," 631.

30 Siddique, "The Jurisprudence of Dissolutions," 632.

following certain provisions were so different from other presidential form of governments;<sup>31</sup>

- i. Islamic provisions, and Pakistan was named as “Islamic Republic of Pakistan”
- ii. Instead, parliament to elect the president, he had to be elected indirectly by the 80000 Basic Democracies (BD) members who were locally elected by the public creating an indirect franchise;
- iii. Unicameral Legislature;
- iv. There was only central list of national importance, rest were left for the provinces to legislate;
- v. Impeachment process was so difficult and cumbersome; it was nearly impossible to remove the president as it required  $\frac{3}{4}$  of the votes of members of national assembly. Ironically, if the resolution failed to get votes more than  $\frac{1}{2}$  of the members of the house, the members who proposed such resolution would cease to hold the membership of the house;
- vi. Normally in the presidential system, the president cannot abolish or dissolve parliament, but the 1962 Constitution endowed the president with such power.
- vii. Power to appoint the cabinet member, chief justice and other judges of Supreme Court of Pakistan, commander in chiefs of armed forces, and other significant appointments;
- viii. Issue Ordinances.
- ix. Imposition of ‘emergency’ in case of external or internal security threats or severe economic threats;
- x. The president could dissolve the parliament, but there was restraint on his power that he could not do so if impeachment process was underway against him. Meanwhile, in case he dissolves the assembly, he

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31 Constitution of Pakistan, 1962.

would also cease to hold the office;

- xi. Legislative process was very difficult if the president wanted to veto any bill. Assent of the president to any bill was indispensable. In case, assent was not given to any such bill, such bill needed to be passed by 2/3<sup>rd</sup> majority of the parliament instead of simple majority. To make it further cumbersome, even a bill passed with 2/3<sup>rd</sup> majority could be given assent or might be sent to Basic Democracy members referendum to take a decision on such bill.<sup>32</sup>
- xii. The Supreme Judicial Council was for the very first instance introduced in the 1962 Constitution. It empowered the president to remove any judge due to misconduct and other specified grounds. Such council was the innovation of this constitution.<sup>33</sup>
- xiii. At provincial level, governors had to be appointed by the president. The governors were very powerful figures in juxtaposition to the president who was dominant in the center.

There are so many other features of 1962 Constitution, but here only such aspects have been discussed which reveal as how powerful the president was under the constitution. There was barely any checks and balances upon the powers of the president. As he held absolute powers, therefore, it can be termed as contrary to quintessence of the presidential form of government.

#### **4.1 1962 Constitution Contrasts to the Core Values of Presidential Form of System**

The reason that the 1962 Constitution was not pure presidential form of government lies in the fact that, it was not based on theory of “separation of powers” amongst the

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32 Yasmeen Yousif Pardesi, “An Analysis of the Constitutional Crisis in Pakistan (1958-1969),” *Dialogue (Pakistan)* 7, no. 4 (2012).

33 Pardesi, “An Analysis of the Constitutional Crisis in Pakistan (1958-1969),” 386.

organs of the state i.e., executive, judiciary, and legislature,<sup>34</sup> despite the fact that the Constitutional Commission recommended the presidential form of government for the new constitution based on the United States of America's presidential system. There should have been separation of powers between these organs; and simultaneously, checks and balances must hold each institution responsible if they exceed their powers provided by the constitution.

For instance, in the presidential system of 1962 Constitution, against the separation of power theory, the president was made integral part of the federal legislature consisting of national assembly and the president. Even the president could call upon or end the session of national assembly. Furthermore, he was empowered to dissolve the legislature. Such powers of the president were certainly inspired from the parliamentary form of government instead of presidential system. Likewise, the president, and his cabinet could address the national assembly. Certain bills to be tabled in national assembly required prior consent or sanction of the president e.g., bills pertaining to 'preventive detention'. Another most glaring or shocking aspect was his "absolute veto power". The procedure of legislation was made so cumbersome that if the president is not agreeing with any legislative bill, it will be turned down. Even the veto powers of the president of United States in comparison with 1962 Constitution has some checks and balances as Congress in the USA can get it passed by 2/3 majority. But, according to the 1962 Constitution, 3/4 majority of the house for passing any altered bill was required, still the president could send it for referendum to Basic Democracies (BD) members for avoiding such bill to be passed.<sup>35</sup>

The president was all in all who held all the powers. Ayub Khan selected the presidential form of government for two reasons; first, it offered advantages as to create social

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34 Pardesi, "An Analysis of the Constitutional Crisis in Pakistan (1958-1969)," 388.

35 Khan, *Constitutional and Political History of Pakistan* 148.



reforms in the newly born state while striving for economic development and political stability. Second, bestowing executive authority in one person could grow harmony in the state's units.<sup>36</sup>

This shows that even the presidential way of government enforced in Pakistan was rather a mixture of either parliamentary or presidential form of governments in order to control all the institutions. Another instance whereby the separation of power principle was hit and deleteriously affected was the proclamation of Removal of Doubts Order, 1969 whereby no court shall interfere into any decision made by the army through any writ or any other remedy. This was a glaring example which disturbed the separation of power as it affected the checks and balances intertwined principle.

Separation of power without checks and balances is a hollow concept.<sup>37</sup> Thus, taking back the power of judicial review by higher or superior judiciary of any illegal or unlawful act was meant to ignore any such democratic principles. *Prima Facie*, it was a civilian government; however, the whole system under 1962 Constitution was created to support Ayub Khan. It would not be wrong to aver that the entire system was revolving around it.<sup>38</sup> James Madison once said, "The accumulation of all powers, legislative, executive and judicial, in the same hands whether of one, a few, or many and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny."<sup>39</sup>

## 5. Pure Presidential Form of Government May Outfit Pakistan

The pure form of presidential system could be explained as; first, the president is directly elected; second, he cannot be removed by the parliament; third, he heads the government.

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36 Khan, *Constitutional and Political History of Pakistan* 145.

37 Lakshit Lashkar Bhadu, "Separation of Powers: A System of Checks and Balances," *Available at SSRN 3941187*(2021).

38 Khan, *Constitutional and Political History of Pakistan* 148.

39 James Madison, *Federalist Papers: Separation of Power* (Indianapolis: Liberty Funds, 2001)

However, most considerably, his powers should revolve around the rule of law, separation of power, judicial review and doctrine of checks and balances as enshrined in the Constitution of United States of America.

Pakistan may opt for such system, however, there is a strong need to have deliberations among the public, discussions in the parliament, and debates in the educational institutions before embarking on path to change. Any abrupt step in this regard may not benefit the cause rather it would be another failed attempt to implement it in true letter and spirit.

## **6. Options for Change**

There can be three ways whereby Pakistan may go the presidential form of government:

First, can the presidential system be introduced in the constitution of Pakistan through amendment? In 2010, through 18<sup>th</sup> Amendment more than one hundred amendments were introduced; almost half of the constitutional provisions were amended. It may be suggested to make amendments to the existing Constitution of 1973 to adopt the presidential system. However, such a suggestion is practically impossible as it will amount to amend one of the salient features i.e., the parliamentary system. In Mahmood Khan Achakzai Case,<sup>40</sup> Supreme Court decided that the Constitution of Pakistan contains basic structure i.e., parliamentary form of government, Islamic provisions, and independence of judiciary. Later, in 2000, Supreme Court in Zafar Ali Shah Case<sup>41</sup> relied on Mahmood Khan Achakzai's Case. Reliance can also be placed on Nadeem Ahmad Advocate Case,<sup>42</sup> also known as 18<sup>th</sup> Amendment Case. However, in Rawalpindi Bar

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40 Mahmood Khan Achakzai v. Federation of Pakistan, PLD, S.C, (1996): 426.

41 Zafar Ali Shah v. General Pervaiz Mushraf & others, PLD S.C, (2000): 869.

42 Nadeem Ahmed Advocate v. Federation of Pakistan, PLD S.C, (2010): 1165.

Associations landmark case,<sup>43</sup> full bench judgment of seventeen judges, whereby the majority of judges held that the 1973 Constitution contains salient features including parliamentary form of government. Such structure is set by the constituent assembly, the forefathers. It could not be amended by the parliament through constitutional amendment procedure<sup>44</sup> provided in the constitution. Thus, the parliament cannot amend the constitution in any way introducing the presidential system instead of parliamentary system until the Supreme Court of Pakistan dissent with the earlier decision.

Second, adoption of a new constitution may be another option; however, it will be most suitable yet a challenging way. Without consensus of all political parties and organs of the state executive, judiciary, or legislature, any unilateral decision from any single stakeholder would be disastrous; Pakistan may not endure repercussions of such step. In Particular, at this juncture, it seems to be most formidable as it is considered by almost all major parties that the presidential system may reduce the provincial autonomy already enjoyed by the provinces through the parliamentary system after the 18<sup>th</sup> Amendment. Thus, taking this option, the harmony in all the ranks is imperative.

Third, holding a referendum and seeking peoples' opinion regarding the matter may also be an option like it was done in Turkey<sup>45</sup> and Egypt, but referendum simultaneously involves amendment in the constitution which is said to be controversial.<sup>46</sup> Meanwhile, Pakistan's jurisprudence

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43 Rawalpindi Bar Association v. Federation of Pakistan, PLD S.C, (2015): 1165.

44 Article 238, & 239, Constitution of Pakistan, 1973.

45 Esen, Berk and Şebnem Gümüşçü, "A Small Yes for Presidentialism: The Turkish Constitutional Referendum of April 2017," *South European Society and Politics* 22, no. 3 (2017): 303-26.

46 Nathan J. Brown, Michele Durocher Dunne, and Amr Hamzawy, *Egypt's Controversial Constitutional Amendments*, Vol. 23. (Washington DC: Carnegie Endowment for International Peace, 2007).

especially set in the Rawalpindi Bar Association Case<sup>47</sup> does not allow any amendment altering the salient feature of the constitution which includes parliamentary system. Thus, such amendment cannot be taken except the Supreme Court takes contrary view to the Rawalpindi Bar Association Case in some other case. Thus, to avoid controversy there could be a referendum along with first or second option either. Keeping Pakistan's political dynamics or its political history in perspective, any change in the system or style of government should only be made with the complete harmony among all the stakeholders. Initially, there should be deliberations in masses, politicians, legal fraternity, and media for opting any of the preferences.

### **Conclusion**

What form of government suits Pakistan, may be a complex option to answer, as the political analysts have observed certain weaknesses in the parliamentary setup. Since inception, lack of strong leadership, corruption, misgovernance, military interventions, undemocratic culture in political parties, problem of law and order, the role of judiciary and lack of local body system have marred all the efforts to revive true democracy in the country. Experiencing the presidential form of government did not pay off either. It was never an easy option, but still with certain recommendations to policymakers, it can be opted for the betterment of the country:

- a) There should be in-depth deliberations among the masses as well as the debate in various law schools about the possible *modus operandi* for such an adoption.
- b) Parliament to hold thorough debates on such an option and its repercussions.
- c) Provinces must be taken in the loop as they may have reservations about their autonomy.

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47 Brown, Dunne, and Hamzawy, *Egypt's Controversial Constitutional Amendments*, 1.

- d) Till the adoption of the presidential system, an amendment be made in Article 69 of Constitution 1973 whereby any vote of no confidence against the premier shall require two third majority of the total members of the national assembly, instead of simple majority.

As far as the second question is concerned, the adoption of presidential form may be executed in three possible ways; a) amendment in the constitution in numerous provisions, b) forming new constitution or (c) referendum with amendment. First or third option may be considered, but it is prerequisite that the Rawalpindi Bar Association Case verdict should be responded by the parliament properly before making constitutional amendments. The second option is suitable but it requires unanimous decision of all the stakeholders.