

Presidential Term Limits In The U.S.A Constitution: An Analogous Incorporation Imperitive For Pakistan

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ABSTRACT

True democracy is not conceivable until its' effect starts from top echelons in the government and this mandates limiting the terms for Chief Executive as is the case in U.S.A. The research in hand proposes term limits for prime minister in Pakistan following the American experience. The analysis adopts a doctrinal approach while critically analyzing the issues relating to democracy in Pakistan. The findings recommend term limits along-with reduction in tenure of prime minister from five years to four year in Pakistan. The research is confined to proposing a solution only for Pakistan in light of U.S 22nd amendment and does not consider models of other democracies with similar term limits due to their embryonic nature. Such a study precisely in the context of Islamic Republic of Pakistan hasn't been undertaken before.

KEY WORDS: democracy, Pakistan, 22nd amendment U.S.A, dictatorship, prime- minister

INTRODUCTION

Democracy is antagonistic to dictatorship, despotism and aristocracy and consequently implies deprecating such tendencies. This commands limiting term limits for prime minister to only two in Pakistan so that party heads and repeated hopeful's re-election to prime minister Office doesn't produce tyranny. The same will also discourage dynastic politics and aristocracy as road for new hopefuls from ordinary backgrounds will also open. Research in hand recommends term limits for chief executive in interest of democracy and for penetrating democratic trends within a society as

democracy is also a way of life which educates masses. This article proposes a solution for Pakistan's experimental democracy by indicating the solution in tried and tested model of U.S.A democracy. U.S.A can be credit with experiencing democracy while Pakistan has so far been experimenting democracy. The Pakistan's' experiment with democracy can be said as flawed due to lack of appropriate reforms that may bring democracy in essence. The objective of the study here is to propose one such reform that can have a significant impact for the budding democracy of Pakistan by discouraging dictatorship, despotism and aristocracy. The research doesn't focus on other comparable models then U.S for the reason aforesaid that U.S.A is the most influential democracy in this planet that has swayed the minds of masses and thinkers alike to replicate such a model elsewhere.

I. DEFINING DEMOCRACY

Democracy is arguably one of the most fashionable words of the last two centuries in constitutional law and political circles; however, an agreed meaning of same is still to come forth. From the times of Greek Philosopher Cleon to thinkers of the likes of Dicey have had their own take on democracy symbolizing mostly a government in which people at large have stakes ("Democracy," in Political Theory (Principles of Political Science), n.d., p. 719-720). Democracy was initially envisaged as a majority rule but later developed to visualize representative governments (Philosophical quest for political legitimacy). Democracy generally can be categorized by virtue of distinguished elements that manifest democracy e.g. repetitive elections through adult franchise, opposing parties etc (Bibliothek der Friedrich-Ebert-Stiftung, n.d.). Moreover, an independent judiciary and separation of powers are characteristic of a democracy and may vary in form depending on the form of government e.g. Presidential or parliamentary. Presidential system embodies a more strict separation of powers then parliamentary system where executive is more or less subservient to parliament (Philosophical quest for political legitimacy). A good democracy is based on repetitive elections of opposing parties with good responsiveness to infringements of human rights and rule of law while a not so well entrenched democracy may lack rule of law and effective responses to violation of human rights (What is a 'good' democracy?). Repetitive elections of opposing parties, plurality and plurality of views as such is at the heart of a democratic dispensation and can also be said to be the root of democracy from which the whole tree of democracy sprouts and grows forth. Tocqueville conceived accountability too as an essential element to a democracy (Philosophical quest for political legitimacy). Democracy can be understood in contradistinction to dictatorship and aristocracy. Dictatorship is a rule of a person or institution etc. with absolute authority (Garner, Black's Law Dictionary 2004). Dictatorship lacks the element of representative rule and decision flows from a single person or authority which pervades all institutions. Dictatorship is antagonistic to opposing views. Dictatorship can be paralleled with tyranny and monarchy where single person rule in derogation of any opposing view holds the roost. Dictatorship can often be characterized by complete absence of checks and balance. Aristocracy similarly is a government by a small group of people or few people only due to a special position that such a lot may be holding in a society (Aristocracy).

II. MEANING OF PRESIDENTIAL TERM LIMIT FOR U.S.A.

The model of U.S.A democracy has remained a superlative one for all budding democracies in the world and U.S. experience with democracy can be referred to as perfect until the Iraq invasion which was done unilaterally bypassing U.N mandate and war on terror etc. which cast a bad light on democratic dispensation of U.S as an ideal system. President is the chief executive in a presidential form of government while parliamentary executive is headed by prime minister. 22nd amendment to the Constitution of the U.S.A prescribes term limits for the President. The said 22nd second amendment got passed by Congress March 21, 1947 and ratified on February 27, 1951 (Twenty-Second Amendment). It endorsed the convention of two term limits set by Alexander Hamilton while serving as the first President to the U.S Confederation. This constitutional convention was only once flouted by President Roosevelt on grounds of world war (Twenty-Second Amendment). However, subsequently any such move has been sealed by virtue of the 22nd amendment to the U.S.A constitution. The reason proffered by the proponents of 22nd Amendment for endorsing term limit was deprecating executive monarchy (Beermann, A skeptical view of a skeptical view of presidential term limits 2010). Executive is the most powerful body in a democratic setup penetrating nearly all institutions through its policy frameworks and decision making. In a parliamentary system, executive is part of the parliament and answerable to same in all its functions while majority backed prime minister in such a dispensation usually dictates and controls matters of governmental nature. Presidential system follows a more strict separation of powers of different organs of government i.e. executive, legislature and judiciary; however, checks are maintained through a counterbalancing by the different organs. Besides judicial review is available in both presidential and parliamentary systems of democracy so that executive may not trespass constitutional boundaries. Article II of U.S.A constitution limits tenure of office of President to four years only before re-election compared to that to Britain which has five years term for prime minister (Garner, Black's Law Dictionary 2004). There are no limits to Prime Minister Office in U.K as long as the same enjoys the confidence of people and parliament (Archived petition: Ten Year maximum term limit for prime ministers). Materially there is not much of a difference between a presidential democracy and parliamentary democracy. Both are antagonistic to dictatorship.

III. PAKISTAN'S EXPERIMENT WITH DEMOCRACY DURING DIFFERENT TIME PERIODS

Islamic Republic Pakistan is the most recent inheritor to colonial traditions of democracy. Before that a system of absolute monarchy prevailed in the sub-continent (Khan, Pre-Partition Constitutional and Political History 2017). The Pakistan's' experiment with democracy starts from following Britain' parliamentary democracy introduced in the subcontinent therefore a brief introduction of same is appropriate here. Pakistan inherited the Act of 1935 as an interim constitution at partition in 1947. The 1935 act was a corollary of earlier acts that limited franchise to only a few based on certain qualifications mostly relating to financial standing (D.Rai, Government of india act, 1935 : Analysis and overview 2019). The British did bequeath

representatives institutions in the form of federal and provincial legislatures but in a form to suit ends for monarchy with overriding powers of veto residing in monarch representatives (Masood, Constitutional history of Pakistan). On 12th March, 1949, the constituent assembly of Pakistan framed objective resolution outlining principles of future constitution (Masood, Constitutional history of Pakistan). The objective resolution outlined democracy within the confines of Islam as the chosen mode of government for Pakistan (Khan, Pre-Partition Constitutional and Political History 2017). This outline of democracy was later replicated in all the three constitutions (1956, 1962 & 1973) for Pakistan with modifications (Khan, Pre-Partition Constitutional and Political History 2017). All the constitutions originally did not contain term limits for chief executive including Constitution of 1962 which was presidential in form. The Constitution of 1962 though mandated re-election through national and provincial assemblies too in case of a President competing beyond eight years for the said office (Amir & Ahmad, Constitutional development and political (in) stability of Pakistan: An analysis since inception of Pakistan till 2018, 2021). Term limit for chief executive was introduced by virtue of constitutional amendment in present Constitution for Islamic Republic of Pakistan through 17th amendment to the Constitution (Amir & Ahmad, Constitutional development and political (in) stability of Pakistan: An analysis since inception of Pakistan till 2018, 2021). This manifestly was done to hinder appointment of former chief executives not conducive to President Musharraf's rule. However, as postulated to advance democratic this amendment was deleted through the famous 18th amendment to the constitution that inter-alia beget provincial autonomy to provinces as a major reform of federal structure of Pakistan.

The manner of politics in Pakistan is also necessary to be set forth here before contending a case for term limits for prime minister in Pakistan on the format of American system. Pakistan was initially run and marred by the politics of Governor Generals and their Prime Ministers (Khan, Pre-Partition Constitutional and Political History 2017). This politics has continued ever since vying for share in power to run government. Military is also important factor in this power politics as Pakistan frequently countenances interventions by same in one form or other. Pakistan's recent democratic government by Imran Ahmad Khan Nyazee is often labeled by opposition parties as 'selected' by military establishment. The modern history of Pakistan like pre 1971 period when Pakistan was not dismembered is all about making it to the power corridors and repeated musical chair game between different individuals for Chief Executive Slot or as repository of all powers (Mohammed, Exploring power politics and constitutional subversions in Pakistan: A political and constitutional assessment of instability in Pakistan 2011). Military wants a say in a governmental matters contrary to democratic norms and constitutional postulates of founding fathers as envisaged in objective resolution and different resolutions etc.¹ Chief Executive recently have been disqualified at the hands of courts for not observing court orders to initiate proceedings against their party head and three times elected prime minister on the basis of money laundering verdict that he has been found guilty. Dynastic politics is the norm of the day in Pakistan with ostensible party heads and their creed at the helm always (Afzal, Democracy in Pakistan: Elections tell us why politicians behave badly 2017).

IV. WHAT LIMIT ON NUMBER OF CHIEF EXECUTIVES' TENURE IN PAKISTAN MAY BRING?

Controlled democracy may not be the answer for Pakistan problems due to various reasons e.g. exiting of military governments in Pakistan due to democratic movements on pretext of bad governance decisions etc. in different times against military despots resulting in ignominious removal as such. Further such a dispensation is theoretically inconsistent with concept of democracy. Islamic Republic of Pakistan is a difficult country in terms of governance with repeated failures in government and poor shows in economy. Reforms are a holistic subject and require a determined visionary leader who can mobilize & convince masses in this regard. However, Pakistan problems may be remedied to a large extent if term limit for Chief Executive is accepted as a perpetual norm in parliamentary democracy of Pakistan. Article 58(2) (b) was introduced by military dictator Zia-ul-Haq through 8th amendment to the Constitution of Pakistan for dismissing prime ministers but same was non differentially exercised resulting in non completion of tenure of each government after its introduction. The infamous 8th amendment passed in 1985 was repealed later by Prime Minister Nawaz Sharif government through thirteenth amendment in 1997 and revived later again by military despot Pervez Musharraf for burying through 18th amendment (Bahadur, Democracy in Pakistan: Crises and conflicts 1998). However, the perennial problem of dismissing of prime ministers before their continued term continued in one form or other. The non completion of respective tenures by prime ministers is partly owing to politicians who in this regard have not introduced relevant amendments to law in ensuring independence of office of prime minister.

Pakistan is a community of heterogeneous people and some of the groups have practically no say in power corridors. This previously resulted in dismemberment of Pakistan due to a prolonged dictator at the helm who was chosen by peoples vote under a constitutional dictatorship. Presently as discussed, Pakistani politics is about cult figures and dynastic politics which have completely eroded the strength of institutions. A system is recognized through its institutions which form the pillars of state over roof head of government rather than personalities which come and go and are only facilitators to the main pillars. Pakistan has seen a role reversal in this regard and made to depend on personalities which have been made to look as the ultimate guardian of failing government roof. Constitution of Islamic Republic of Pakistan provides the ultimate guidelines for government functioning except term limits for chief executive which has penetrated dictatorship, despotism and aristocratic tendencies in Pakistani politics. Besides, economy has also deteriorated considerably over time due to absence of novel ideas and leadership at the helm that could invigorate people and economy. Democracy in its true spirit demands term limits for persons at the helm of affairs otherwise, it would not be democracy rather dictatorship or any other such type. Multitudes of Pakistan problems also beckon such a constitutional convention. Just by looking at the profiles of ordinary party leaders of main stream parties vis a vis party heads coveting repeated stake over governmental affairs, importance of term limit surfaces. Shahid Khaqan Abbasi former

Prime Minister who ran government on disqualification of Prime Minister Nawaz Sharif is a foreign masters qualified from worlds' best universities and best school and colleges in Pakistan while Nawaz Sharif possesses a meager qualification and is again vying for power with his daughter Maryam Nawaz. Same can be said about Nawaz's daughter with no achievement academic or otherwise to her credit and possessing average intellectual abilities but vying for powers superseding many competent party leaders that have performed tirelessly for the countries system. Similarly Bilawal Bhutto inheriting party leadership from his parents (enjoying power multiple times) supersedes numerous party leaders of the likes of Senator Raza Rabbani that have tons of experience and accomplishments at their hands. Democracy will mean noting in absence of despotic rules and Americans got it right in this context by incorporating 22nd amendment. It is inter-alia also proposed that besides restricting terms, tenure for prime minister may be reduced to four years just like U.S.A so that inefficiency in a government if any does not penetrate for long. It is also averred that if such a dispensation is accepted in Pakistan then Chief Executives be facilitated at utmost in completing their tenures just as in the case of U.S.A. Pakistans' democracy will remain a case of 'demon-crazy'(phrase coined by Arundhati Roy) (Roy, Listening to grasshoppers: Field Notes on Democracy 2009), unless appropriate reforms are introduced that bring democracy in its essence to people. Politics in Pakistan has mostly been dominated by influential people & families (Hussain, Dynastic politics 2012), e.g. land lords and big businessmen who have repeatedly been able to secure their share in echelons of power exploiting their high-status. Consequently, upon election, Pakistan has been made to run by these elites as the head feudal or directors of company. This is obvious from their attitudes by election as life time party heads and increase in their personal assets many a times while the state economy has been facing down ward trend. Their companies mushroom while the economy of state collapses. Banks are utilized for floor crossing the factum of which was also endorsed by the superior most court in Pakistan through Asghar Khan Case (Editorial, Asghar Khan Case 2019). Awards and privileges' are offered to the most favorite hence, Pakistan has been made to run like a fiefdom. This attitude can only change if reforms are introduced at the top by introducing term limit for chief executive only two times at most, resultantly encouraging democratic norms and discouraging unhealthy hawkishness towards Islamic Republic of Pakistan by its supremos'.

CONCLUSION

Democracy is categorized by rule of law, human rights, accountability, and antagonism to despotism, dictatorship and aristocracy. People of Pakistan have strived hard for democracy and same cannot be achieved in essence if term limits are not introduced for chief executive. This is also imperative in light of Pakistans' failing experiment with democracy during different time periods. Successive governments have failed over time in Pakistan with cult following at its peak and condition of people at large becoming poorer with deteriorating of every institution. New leadership can only bring solace to Pakistan with invigorating ideas for ameliorating miseries of people. This only requires limiting terms for chief executive in Pakistan to bring new leadership at repeated intervals just like U.S.A where the democracy has performed to its fullest. Moreover,

restricting terms for chief executive is only a slight modification to the system in Pakistan and does not require drastic changes which often has horrendous consequences.

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ⁱ See e.g. Two Nation Theory or Lahore Resolution, 1940.

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