

PAKISTAN: THE DANGEROUS PORTENTS

The radicalization of state and society in Pakistan is assuming precarious proportions. The rising tide of religious fundamentalism has grave implications for the state and society in that country. It needs to be recognized that the neighboring countries will not remain immune from this state of affairs and it would equally have ramifications for them. The state structures in Pakistan have already entered the phase of vulnerability at the hands of well armed and professionally trained religious fundamentalist groups and brigades. However, the façade of modern day systems are being utilized by them to implement the agenda; and that raises the concern.

The vicious portents of the present day situation have been portrayed by the noted commentator and journalist of Pakistan, Khaled Ahmed, in a revealing article 'Our doomed democracy' in *The Friday Times* (July 27- August 2, 2012); (See the Opinion pages of the current Issue of the Journal).

Ironically, in a survey, which is quoted by Khalid Ahmed, 52% people in Pakistan want to be governed under *Islamic Sharia* and aspire an increased role of religion in their lives. It is important to note that the younger generation is increasingly drawing inspiration from this environment which is shaping their mindset.

The insiders blame the failure of democratic institutions, the problems of misgoverning, the misplaced economic policies and priorities, the role and intrusions of an over-ambitious army and now the over active judiciary which have contributed in bringing Pakistan to this state of affairs. The cumulative effect of all these developments is the weakening of the state which does not augur well for the future of the country.

The recent confrontation between the judiciary and executive has raised a new debate on the constitutional provisions and the scope of their interpretation. It is being argued that many clauses which were inserted in the constitution of Pakistan have created ambiguities resulting in bringing about a face-off among the different organs of the state. Be that as it is, the crucial element of '*Objective Resolution*' which declared Pakistan an Islamic

state, contrary to the declaration made by the founder of Pakistan, Quaid-e-Azam Mohammad Ali Jinnah that Pakistan would be a modern democratic state in which the *citizens* irrespective of their religion and faith would have equal rights, was introduced. The *Objective Resolution* was adopted after the demise of Quaid-e-Azam Jinnah.

The peculiar, rather bizarre, contribution to the interpretation of constitutional provisions of Pakistan was made by Justice Munir in 1954 by introducing the '*doctrine of necessity*'. This doctrine was introduced in the Pakistan jurisprudence to justify the presidential ordinance of the dissolution of the Pakistan Constituent Assembly which was debating the future constitution of Pakistan. The ordinance had been declared void by the high court and the appeal was pending before the Supreme Court of Pakistan. This very doctrine came handy to the pliable judges in future to toe the line of the dictators and army generals to rule the Pakistan state on their terms. It would be interesting to research the origin of this doctrine. In fact, this doctrine provides a clue to the role which the theologians and clerics have played in Islamic history in defending the authoritarian kings and autocratic rulers by concocting the religious justifications in 12th century A.D. Some of the great interpreters and theologians based in Mesopotamia (Iraq), which was a significant seat of Islamic learning, had to face incarceration for their demur to provide justification for the actions of monarchs which were aimed at their self aggrandizement. Ironically, a section of religious clerics in cohorts with judiciary in Pakistan is playing the same role to strengthen the dictators.

In an analytical article 'Is Pakistan descending into dystopia'? (The *Daily Times*, 28th July, 2012), Saad Hafiz concludes that:

"There is also growing evidence that a minority has become enamored with the establishment of a totalitarian theocracy that seeks to replace a 'secular' and 'godless' government tainted with corruption and accused of selling out to foreign powers. Certainly there are pockets in the country like Swat before it was cleared, and FATA, where terror and propaganda play a role in maintaining a 'parallel' government, which in effect co-opts state power as people lose confidence in democracy. This anti state trend may have dangerous consequences if it spreads to other parts of the country. The use of Islam by the state as a convenient substitute for state-nation building and the failure of domestic economic and social policies have done much to

alienate the population and push them towards religion which has historically found fertile ground where oppressive circumstances are present.”

The Supreme Court of Pakistan disqualified the Prime Minister Mr. Yousuf Raza Gilani holding him guilty of not implementing the earlier order of the court directing him to open the case against President Asif Zardari and write to Swiss authorities regarding the case. The president had pleaded immunity which he is enjoying as long as he is in office under Article 248 of the Constitution. In an impulse of judicial (over) activism, the Chief Justice suggested that anyone claiming immunity should apply for it to the court. This perverse logic offered by the court, in presence of specific constitutional provision, is directly in contravention of the universally recognized principles of constitutionalism. The issue of the humiliation of a duly elected president, in the case of choosing this option, is another matter.

The current judicial (over) activism is related to the NRO (National Reconciliation Ordinance) issued in October, 2007 by the then President General Pervez Musharraf absolving the effected persons from corruption charges. The Ordinance was issued, per se, on the ground that the cases had been filed to settle the political scores or out of political vendetta. The Ordinance gave relief to 8,000 people out of which about 80 were the politicians. In January, 2010 a 17-member bench of the Supreme Court had quashed the NRO on the ground of being discriminatory and ordered that all the closed cases of corruption be reopened. However, subsequently, the entire attention was zeroed in on President Asif Ali Zardari who is pleading immunity under the constitution. The Supreme Court had directed the prime minister to implement the court decision in NRO case which he declined in view of the constitutional responsibilities. He was found guilty of contempt of court and disqualified as the prime minister. The court disregarded the ruling of the Speaker of the Pakistan National assembly that the prime minister was acting according to the provisions of the constitution. In the normal course, without going into merits of the judgment against the prime minister, the court had to send its order to the speaker who would pass it on, after recording his or her observation on the matter to the election commission for proper implementation. However, the court arrogated the prerogatives of the speaker and the election commission in

this particular case.

The NRO which triggered off the entire controversy has other angles also. The one NRO was struck down by the court as being discriminatory. The another NRO which declared that no cases would be registered or pursued against General Musharraf was not called in question. The third and the amazing NRO under which the judiciary was absolved of any wrong doing of abrogating the constitution and validating General Musharraf's martial law remains outside the pale of judicial review or purview. This much for the judicial activism currently showcased by the Supreme Court in Pakistan.

The ongoing debate in Pakistan on the limits of the jurisdiction of the parliament and judiciary has brought to the fore some interesting provisions of the constitution. For instance the Articles 62 and 63 of the Constitution provide the qualifications for the parliamentarians. The Article 62 provides 7 qualifications whose absence would render a person disqualified to be a parliamentarian. The Article 63 provides the 16 conditions which would render a person ineligible to be a parliamentarian. In sum there are 23 conditions which would render a person to be qualified or disqualified to be a parliamentarian. Be that as it is, in the long list, two significant qualifications are: observing Islamic injunctions and/or working against the ideology of Pakistan. These two qualifications have the potential to manipulate the system by the astute power players in the Pakistan state and society.

It is worthwhile to note the comment of an anguished Pakistani scholar, Dr. Mohammad Taqi, (The *Daily Times*, 21st June, 2012) that :

It is unlikely that a direct dictatorship will be able to dislodge democracy in Pakistan but regression to seventh century symbolism is the worst thing that can happen to a democracy in 21st Century. Replacing dogmas for reason is perhaps going to be the most lasting, and most ominous legacy of the present Supreme Court.

The democracy and human rights activists in South Asia should come out in the strong and vociferous support of the liberal opinions articulated by the concerned citizens in Pakistan.

Riyaz Punjabi