**Constitution-Making in Pakistan (1947-73) (Part III)**

[Dr Ghulam Nabi Kazi](https://dailytimes.com.pk/writer/dr-ghulam-nabi-kazi/)

April 10, 2023

After taking over both positions, Bhutto announced the retirement of several top generals including Yahya Khan, and senior naval and air force officers. He ordered the immediate transfer of Ghulam Ishaq Khan to Karachi as Governor State Bank but retained his predecessor’s Military Secretary and Director General ISI. Zulfikar Ali Bhutto was a constitutional lawyer, fully conscious of the precarious constitutional realities. At the time when Yahya Khan was relinquishing the Presidency, in the absence of Martial Law, there was no document to save it from reverting to the Government of India Act of 1935 read with the Indian Independence Act of 1947. Well into the 25th year of its existence, Pakistan had no legal umbrella to fall back on, making the country hang in a precarious balance. For him, constitution-making would be the foremost challenge and priority.

Bhutto’s constitutional team included his closest cabinet colleagues, Mahmood Ali Kasuri and Abdul Hafeez Pirzada, supported by Hayat Sherpao, Ghulam Mustafa Jatoi, Dr Mubashir Hasan and Rafi Raza. This group also negotiated with the opposition, which included certain formidable leaders. Around the first week of March 1972, a basic accord was reached with prominent leaders, including Khan Abdul Wali Khan, Khair Bux Marri, Ghaus Bux Bizenjo, Arbab Sikander Khan Khalil and Maulana Mufti Mehmood, Sherbaz Mazari, Ghulam Ghaus Hazarvi, Shah Ahmed Noorani, Prof Ghafoor Ahmed, and Sardar Shaukat Hayat. The Constituent Assembly had enough talent across both sides but was somewhat crippled by a lack of mutual understanding and tolerance. History will, nevertheless, record that an accord was reached between the two sides on thorny issues not only for the interim constitution in April 1972 but also for the permanent one, a year later.

Well into the 25th year of its existence, Pakistan had no legal umbrella to fall back on, making the country hang in a precarious balance.

On March 6, 1972, the government and opposition agreed on the fundamentals of the interim constitution and agreed to Martial Law till August 14, 1972. The opposition had erred here; very soon, stalwarts like Wali Khan and Bizenjo were under fire for agreeing to a somewhat prolonged Martial Law, mainly by the communist or ultra-left elements. Sensing the situation correctly, Bhutto made all his MNAs sign a resolution calling for Martial Law till the 14th of August 1972 to consolidate reforms. The stratagem worked! The first session of the National Assembly was held on April 14, 1972, at the State Bank Building, Islamabad, in which 144 members from West Pakistan and 2 loyalists from former East Pakistan, Vice President Nurul Amin and Minister Raja Tridiv Roy participated. The opposition was forced to approve the interim constitution to facilitate the lifting of Martial Law four months before the time they had somehow agreed. It was a win-win situation. Pakistan would go into its silver jubilee with a constitution approved by almost every member present. The Supreme Court, in its judgment, had declared Yahya Khan as a usurper and recognized the need for the Constituent Assembly to play its role proactively and also exerted pressure on both sides of the house to approve the constitution.

When the interim constitution was being passed on April 17, 1972, it was late at night. Bhutto spoke eloquently for over two hours without any interruption. Wali Khan had referred to Bhutto’s drinking habit and when more serious had said the opposition had the Hobson’s choice, either to accept the constitution or have martial law indefinitely. Bhutto responded, “Yes, we drink, but we are not drunkards nor do we drink the blood of the people!” The constitution was passed unanimously and was the first by an assembly elected based on direct adult franchise.

This was approximately the time when Law Minister Mian Mahmood Ali Kasuri’s honeymoon ended with Bhutto. The latter wanted to be appointed as Chief Minister of Punjab or Senior Federal Minister, but Bhutto told him he needed him in Islamabad to help with constitution-making and he could not bypass J A Rahim. While the debate between the presidential and parliamentary forms of government may have had something to do with this, it was essentially the distrust between the two men, which brought to an end their meaningful relationship. When the interim constitution was approved by the National Assembly, Kasuri was not even in the House.

Subsequently, the government made it known that they favoured a parliamentary type of constitution, which was appreciated by most parties. They also considered that East Pakistan could have remained in the federation if the 1956 constitution had not been abrogated. The constitution negotiating team, now spearheaded by the young Abdul Hafeez Pirzada, had a bumpy ride. One of the agreed constitutional proposals related to a Senate committee being empowered to impeach judges of the superior judiciary somewhat akin to the Indian Constitution. As news of this proposal hit the newspapers, Pakistan’s Chief Justice Hamoodur Rehman called Pirzada to tell him that they needed to meet urgently. Pirzada told him he was visiting Lahore soon and would call on him. Rehman stressed the urgency of the matter; mentioning that three provincial chief justices of Sindh-Balochistan, Punjab and NWFP were also with him. What followed was a stormy meeting of Pirzada with Justice Hamoodur Rehman, Justice Tufail Ali Abdul Rehman, Justice Sardar Mohammad Iqbal and Justice Ghulam Safdar Shah. Starting the discussion, Tufail Rehman said: “Mr Minister you want us to be humiliated by politicians and retain our conscience at the same time?” The three stalwarts and leading lights of our judiciary then handed in their resignations. The discomfiture of the young firebrand minister can only be imagined. He beseeched the Chief Justice of Pakistan to intervene who said he would do so only if Pirzada used his good offices to prevail upon other parties to shelve this proposal. Pirzada did so without even informing Zulfikar Ali Bhutto, saving the government from great embarrassment. The negotiating team soon reported to Finance Minister Mubashir Hasan that only an accord on financial aspects was pending.

Earlier capacity constraints in certain provinces had forced the central government to retain a long list of constitutional responsibilities or subjects in a Concurrent List meaning they were provincial responsibilities but would be supported by the Federal Government for 12 years until provincial capacity was built. Interestingly, the biggest hint at constitution-making came not in any legislative forum but in President Bhutto’s visit to the Chamber of Commerce and Industry in early 1972. He expressed that he was a firm believer in provincial autonomy, but he didn’t want the Federal Government to be a widow! He had said it all. As detail after detail of the proposed constitution was revealed, this position was vindicated further. The government presented the proposal for a Council of Common Interests, similar to the inter-provincial council in the 1956 Constitution and the National Finance Commission along with equal provincial representation in the Senate, to empower the smaller provinces, and facilitate inter-provincial coordination. This was the first time that Pakistan would have a bicameral legislature.

On examining the budgetary allocation in detail, Dr Mubashir Hasan was convinced that NWFP and Balochistan were underfunded and the next day while meeting with the NAP-JUI leaders, he was speaking their language, disarming them, and significantly agreed to give Balochistan the royalty for natural gas through a certain formula. By the time Zulfikar Ali Bhutto came to the meeting, the opposition was already convinced of the imperative to agree with the government side. The President then announced not only giving royalties for natural gas but for petroleum as well. The accord was virtually reached! The government was amazed at its success and wondered why the provincial governments were not more dogmatic in their approach to the provincial autonomy. The fact was that Ghulam Faruque had represented the Central government throughout his long career, as Chairman of PIDC, Commerce Minister and Governor of East Pakistan, and was the main spokesman of the NAP as Finance Minister of NWFP. If Bhutto did not want the Federal Government to be a widow, he could not have found a better advocate than Faruque.

The Jamaat-i-Islami had terrible animosity with the government but through intermediaries, a very long secret meeting of Bhutto was arranged with Maulana Maudoodi. Subsequently, several references to Islamic provisions in the constitution must have satisfied him. Then, there was a Maulvi from Balochistan who insisted on money for his vote. An annoyed Bhutto said that he would personally give him the money. He called the MNA and threw a bundle of notes in his direction forcing him to go down on his knees and collect the money at the cost of his self-respect. S M Zafar has narrated the poignant story of Justice (Retd), Abdul Hamid, a retired judge of the Peshawar High Court who discusses the article on equality and equity with him. In the morning, he was found dead from cardiac arrest, but the article was ready for incorporation into the Constitution.

When the constitutional accord was finally signed on April 12, 1973, the relationship between the government and the opposition was at its lowest ebb ever, yet they both took the step in the supreme national interest. It was a victory for professionalism and a classic example of how to develop a mutually shared vision and move along more concrete lines to develop the single most important document in the Republic. Although the constitution, given formal assent on August 14, 1973, has witnessed two full-fledged Martial Laws from 1977-1988 and 1999-2008, and several other extra-constitutional actions in the intervening 50 years, while undergoing more than a score of amendments, it has truly emerged as the binding force for all the people of the Federation of Pakistan. The Eighteenth Amendment was also a step in the right direction by enhancing the decision-making space for the provinces, though it may have been developed and implemented more imaginatively. Any tinkering with this document or reverting to previous failed constitutional models, without a unanimous consensus is likely to have very ghastly results for the country.

(Concluded)

*The writer is a senior public health specialist of Pakistan and can be reached at gnkaziumkc@gmail.com*