

# **Parliamentary System and Framing of the 1973 Constitution: Contest between Government and Opposition inside the National Assembly**

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## **Abstract**

It is generally believed that the Constitution of 1973 was passed unanimously by the parliament of Pakistan and was equally acceptable for all the federating units. While studying the processes of the approval of the said constitution inside the assembly, it becomes evident that the reality was quite different. There exists an argument that most of the Opposition members were not allowed to join the parliament's session while the final approval of the constitution was processed. The present paper is an effort to analyse the developments that took place inside the National Assembly to pass this document which was to serve as the fundamental document of the state system in forthcoming years. In other words, the present article analyses the course of action through which the Constitution was framed. This is an analytical study primarily based on the National Assembly debates supported by the secondary sources, biographies, and autobiographies of the contemporary politicians to understand how far the amendments suggested by the then opposition were accommodated by the ruling party. Furthermore, this paper analyses the reasons for which each government has to amend the basic structure of the constitution to make it more practical and acceptable for its units. For instance the Eighteenth Amendment removed the concurrent list of the constitution but now the following governments are facing issues to implement the Amendment in detail.

**Keywords:** 1973 Constitution, Opposition Parties, National Assembly Debates, Federating Units, Eighteenth Amendment

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## **Introduction**

Pakistan inherited a parliamentary form of government in which there was a union of powers of Judiciary and the Executive, based on the British-built apparatus of the state, armed forces, and intelligence services along with the basic set of laws, which made the central government all-powerful. Establishing a positive working relationship

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based on mutual trust was a challenging task that the government of Pakistan had to perform. In such a scenario, twenty five years passed without general elections and a constitution approved by the elected representatives of the people of Pakistan. After the fall of Dacca in 1971, Pakistan Peoples' Party (PPP) formed the government in remaining Pakistan facing multiple challenges including the problems in the relationship of centre with the provinces and this uneasy relationship continued for the whole first tenure of PPP under the premiership of Zulfikar Ali Bhutto (Bhutto).<sup>1</sup> In such a political scenario, the then opposition was insistent upon a Westminster form of parliamentary government,<sup>2</sup> but the government was of the opinion that it would create more problems in a country like Pakistan where the democratic institutions are not strong enough. It was decided that the Assembly will work as a Constitution-making body and as a Legislature simultaneously, first to frame an Interim Constitution and then a permanent one. For the formation of a constitution, a session of the Assembly was held on 14 August 1972 under the Interim Constitution. The first meeting was held on 15 August 1972. During the National Assembly's session from 30 December 1972 to 1 February 1973 the Constitutional Committee prepared its report and tabled it on 31 December 1972. The task of framing the constitution was completed by 14 August 1973.

Promulgation of a permanent constitution was a real challenge faced by the government of Bhutto. It had to abide by its promises of adopting the socialist economic system and simultaneously it had to provide provincial autonomy to the federating units according to the demands of each province which might lead to create harmony among the provinces. To achieve this goal, Bhutto took many steps. Bhutto's Constitution was the fifth to be drafted, and the third to be adopted. It took only one year in drafting, and 125 members of the House of 133 cast their votes in its favour, but to reach that stage of approval, Bhutto adopted many overt and covert tactics. Debates to reach a viable solution of the constitutional problems were conducted inside, as well as outside the Assembly.

To perform the task of formulating the constitution, a parliamentary committee was also set up on 17 April 1972 with Mian

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<sup>1</sup> Mubashir Hassan, *The Mirage of Power: An Inquiry into Bhutto Years, 1971-1977* (Karachi: Oxford University Press, 2000), 144.

<sup>2</sup> Shahid Javed Burki, *Pakistan under Bhutto: 1971-1977* (London: The MacMillan Press, 1988), 95-98. See also Sher Baz Khan Mazari, *A Journey to Disillusionment* (Karachi: Oxford University Press, 2000), 280.

Mahmood Ali Kasuri as its chairman, and 24 others members<sup>3</sup> representing PPP, National Awami Party (NAP), Jamiatul Ulema-e-Islam (JUI) and Qayyum Muslim League (QML). The Committee was asked to submit a draft of the constitution for consideration in the latter half of June 1972. Mahmood Ali Kasuri, because of his differences with the government, resigned as chairman on 9 October 1972, and was replaced by Abdul Hafeez Pirzada.<sup>4</sup> Dr Mubashir Hassan, Ghulam Mustafa Khar, Meraj Khalid, Mumtaz Ali Bhutto, and Ghous Bakhsh Khan Bizenjo resigned from the Committee during its final session and were replaced by Malik Muhammad Jaffar, Chaudhari Jahangir Ali, Chaudhari Barkatullah, Malik Sikandar Khan, and Mrs. Jennifer Jananzeb Qazi Musa.<sup>5</sup> Rafi Raza, one of the founder members of the PPP, was the main spokesman for the Party and did the major part of the drafting of the constitution. Unfortunately, the Committee could not work at the desired pace and months passed by without any significant progress. Having failed to properly address issues like the powers of the prime minister and the quantum of provincial autonomy, Bhutto decided to call for a meeting of all the parliamentary leaders.<sup>6</sup> An agreement was signed on 20 October 1972 by the government and the opposition parties in which key issues were decided.<sup>7</sup> The Committee discussed the accord on 21 October and it was decided that the constitution would be framed on the lines of the accord.<sup>8</sup>

The Committee presented its report along with the draft of the constitution bill on 31 December 1972.<sup>9</sup> What is interesting regarding

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<sup>3</sup> Dr Mubashir Hassan, Ghulam Muhammad Mustafa Khar, Meraj Khalid, Mumtaz Ali Bhutto, Ghous Bakhsh Khan Bizenjo Ghulam Mustafa Khan Jatoi, Syed Qasim Ali Shah, Dr. Mrs. Ashraf Abbasi, Dr. Ghulam Hussain, Begum Nasim Jahan, Malik Muhammad Akhtar, Maulana Kousar Niazi, Khurshid Hassan Mir, Sheikh Muhammad Rashid, Maulvi Mufti Mahmood, Amirzada Khan, Abdul Qaiyum Khan, Muhammad Hanif Khan, Ghafoor Ahmad, Maulana Shah Ahmad Noorani Siddiqui, Niamatullah Khan Shinwari, Sardar Shaukat Hayat Khan and Mian Mumtaz Muhammad Khan Daultana were members of this Committee.

<sup>4</sup> *Basic Constitutional Documents* Vol.2. (Islamabad: National Assembly Secretariat), 515.

<sup>5</sup> *Ibid*, 523.

<sup>6</sup> Mazari, *A Journey to Disillusionment*, 280.

<sup>7</sup> *Pakistan Times* (Rawalpindi), 25 October 1972.

<sup>8</sup> Farzana Mujeeb Hashmi, *Constitutional Development in Pakistan* (M.Phil. Thesis, Islamabad: Department of History, Quaid-i-Azam University, 1987), 44. Also see text of agreement in *Pakistan Times* (Rawalpindi), 21 October 1972.

<sup>9</sup> *Basic Constitutional Documents*, 515-23.

this report is that it was presented to the government along with the notes of 'Dissent' of some committee members, named Sardar Shaukat Hayat Khan, Maulana Shah Ahmad Noorani Siddiqui, Maulvi Mufti Mahmood, Amirzada Khan, Ghafoor Ahmad, Niamatullah Khan Shinwari, Mrs. Jennifer Jahanzeb Qazi Musa, Mahmood Ali Kasuri, and Begum Nasim Jahan.<sup>10</sup> In these letters of dissent, most of the clauses of the Report were criticized by the members of the Constitution Committee, most belonging to the PPP.

Abdul Hafiz Pirzada (Minister for Law and Parliamentary Affairs and the Chairperson of the Constitution Committee) introduced the draft Constitution in the National Assembly.<sup>11</sup> The initial resistance came from within the PPP against the draft Constitution.<sup>12</sup> On February 2, 1973 the Assembly restarted its session, which continued its proceedings till mid-March.<sup>13</sup> Bhutto wanted a centralist constitution through which he could introduce the social and economic changes he had promised during the election campaign.<sup>14</sup> At the same time, he wanted to get the constitution approved with the least opposition on the floor of the House to make it acceptable for every stakeholder. To achieve this goal he adopted the policy of giving benefits to different members of the Assembly but also pressurized them through different means. Most of these developments did not take place inside the Assembly but had a direct impact on the process of constitution making. Some of these are mentioned below.

### **Pressure tactics against the Opposition for approval of the Constitution**

Bhutto kept claiming that it was his foresight, planning and sensible approach that finally brought all the parties together to adopt the Constitution. According to him, firmness and flexibility were combined to bring about the unanimous approval of the Constitution. If the classical attitude of the opposition is gauged, and the historical position of the NAP and the statements of its leaders are scrutinized, it would show that the consensus on the Constitution was a miracle. He added that: 'It was not a miracle; all it needed was clear thinking, steady nerves, correct strategy, a sense of anticipation and the collaboration of my

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<sup>10</sup> *Basic Constitutional Documents*, 523-44.

<sup>11</sup> *National Assembly of Pakistan Debates* (31 December 1972), 18.

<sup>12</sup> Mazari, *A Journey to Disillusionment*, 280.

<sup>13</sup> Hashmi, *Constitutional Development in Pakistan*, 44.

<sup>14</sup> Burki, *State and Society in Pakistan*, 94.

principle colleagues'.<sup>15</sup> Bhutto's first priority for framing the constitution was that it should get support from all the political parties.<sup>16</sup> How far this statement was correct can be assessed from the study of the circumstances which were created by the government to get the Constitution approved unanimously. Although it seems out of the purview of the present paper as these events occurred outside the Assembly but these are important to be mentioned because of their having a direct impact on the happenings inside the Assembly.

In February 1972, Bhutto created an official media by taking charge of the National Press Trust, and suspended its board of trustees, along with the board of directors.<sup>17</sup> There was no freedom of the press.<sup>18</sup> On 15 February 1973, Bhutto dismissed the governors of NWFP (presently named as Khyber Pakhtunkhwa) and Balochistan.<sup>19</sup> The non-PPP provincial government in Balochistan was dismissed because of the law and order conditions of the province. In reaction to this dismissal, the government of NWFP also resigned. Then the opposition boycotted the Assembly session on 10 April 1973 whereas with minimal and just cosmetic amendments, the Assembly adopted the Constitutional Bill without any dissent.<sup>20</sup> To ensure the approval of every clause without any opposition, the governors of the Punjab and Sindh were ordered by Bhutto to ensure the presence of all the members at the Assembly.<sup>21</sup> Mustafa Khar used all his connections and persuasive powers in the Punjab to bring around some opposition leaders, particularly from Jamaat-i-Islami, while Zulfikar Ali Bhutto and his agencies were also hard at work. Khar had a secret meeting with the leaders of the Jamaat and obliged them. A number of opposition politicians started crossing over to the PPP because they feared for their lives.<sup>22</sup> The state apparatus was often used to harass the Opposition leaders, and even a couple of them were killed by unknown gunmen.<sup>23</sup> Mukhtar Rana, a labour leader from Lyallpur (Faisalabad) had displeased his leader with his socialist ideas and was deposed as MNA and arrested under Martial Law Regulations.<sup>24</sup> Jamaat-i-Islami, backed by the intellectuals, and its

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<sup>15</sup> Hassan, *The Mirage of Power*, 213.

<sup>16</sup> Burki, *State and Society in Pakistan*, 85.

<sup>17</sup> Mazari, *A Journey to Disillusionment*, 236.

<sup>18</sup> Mahmood, *Pakistan*, 140.

<sup>19</sup> Mazari, *A Journey to Disillusionment*, 289.

<sup>20</sup> Hassan, *The Mirage of Power*, 211.

<sup>21</sup> Ibid., 213.

<sup>22</sup> Mazari, *A Journey to Disillusionment*, 323.

<sup>23</sup> Mahmood, *Pakistan*, 140.

<sup>24</sup> Mazari, *A Journey to Disillusionment*, 236.

powerful publicity machine, posed a serious challenge to the government from inside as well as outside the Assemblies. In return, its leaders were intimidated, threatened, and imprisoned by the government, and even one of its MNAs, Dr. Nazir Ahmad, was shot dead at his clinic at Dera Ghazi Khan.<sup>25</sup> The NAP public meeting at Liaquat Bagh, Rawalpindi in March 1973, was attacked and disrupted by the law-enforcing agencies and PPP supporters, which resulted in casualties. The sense of insecurity, created by the provocative acts of the Bhutto regime, led to the formation of an eight party alliance, the United Democratic Front (UDF consisting of the NAP, PML, JUP, JUI, Jamaat-i-Islami, PDP, the Khaksars and the independents).<sup>26</sup> On 14 April 1973, Shaukat Hayat, the official spokesman of the opposition parties was badly beaten up by a pack of PPP *goondas* just outside the chamber of the National Assembly.<sup>27</sup> The house of Asghar Khan, the leader of Tehrik-i-Istiqlal, was burnt down in a suspicious manner.<sup>28</sup>

Sahibzada Ahmad Raza Khan Qasuri said, 'We are here hammering out the constitution; an ill-drafted and super-imposed constitution will produce consequences which every one of us should avoid to reach or face'.<sup>29</sup> He further added that 'I know that one bright morning a proclamation might appear in the press that Mr. Ahmad Raza's house in Kasur has been taken because there are a lot of blind people in Kasur'.<sup>30</sup> As quoted by Sher Baz Khan Mazari, 'the PPP on attaining power soon equated opposition with anti-state behaviour, dissent on provincial rights with irredentism, and demands for due process with separatism. The prime minister responded to the opposition by bringing all power of the state to bear against it: first intelligence units and parliamentary forces, then civil and military courts, and finally, the army'.<sup>31</sup> As a result of these developments, NAP alone was left in opposition, and unable to carry the stigma of opposing the constitution. At the time of the endorsement of the Constitutional Bill, it had no option but to approve the draft constitution.<sup>32</sup> After having a clue of the developments that took place out of the National Assembly, it is

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<sup>25</sup> Mahmood, *Pakistan*, 155.

<sup>26</sup> *Ibid*, 149-50.

<sup>27</sup> Mazari, *A Journey to Disillusionment*, 254.

<sup>28</sup> *Ibid*, 272.

<sup>29</sup> *National Assembly of Pakistan (Constitution Making) Debates: Official Report* (22 February 1973), 595.

<sup>30</sup> *Ibid*, 20 February 1973, 146.

<sup>31</sup> Mazari, *A Journey to Disillusionment*, 170.

<sup>32</sup> Hassan, *The Mirage of Power*, 211.

important to take a glance at the developments that took place inside the assembly to get the constitution passed on the floor of the House.

### **Framing of the Constitution inside the National Assembly**

It is difficult to analyse the whole process of the approval of the Constitution inside the assembly in an article so the four primary tiers of the state system such as the judiciary, powers of the prime minister, powers of the president, and the issue of the provincial autonomy have been selected. The ways these issues were debated provide us clue of the whole process of approval of the Constitution.

#### **a. Judiciary**

Judiciary is one of the primary pillars of a democratic state which works as a guide to run the state system according to rules and regulations. Bestowing such important responsibilities, the constitution is the only document that can define duties and rights of the judiciary as the principle institution of any country. The constitution gave extensive powers to the superior judiciary. It could direct any authority, federal or provincial, to refrain from doing anything that was not permitted by law, or to declare any act illegal. The court could direct any person, in the custody of the government, to be brought before it, and could order the release of that person, if found to be held without lawful authority. Above all, the Constitution had a full chapter guaranteeing fundamental rights and it authorized the courts to order the enforcement of any of them.<sup>33</sup>

There were certain contradictions in the constitution which invited criticism of the opposition. Firstly, the PPP government showed its commitment to make the judiciary independent from the executive, but the Defence of Pakistan Laws and the Emergency clauses of the Constitution prohibited the judiciary from adjudicating on some of the cases.<sup>34</sup> Secondly, it was announced that the Judiciary will be free of all

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<sup>33</sup> *The Constitution of Islamic Republic of Pakistan, 1973* (Islamabad: The Printing Corporation of Pakistan, 1973), 85-90. See Also Hassan, *The Mirage of Power*, 215. Also see in Syed Abdul Quddus (ed.), *Zulfikar Ali Bhutto: Politics of Charisma* (Lahore: Progressive Publishers, 1994), 152-53. Also see in Khan, *Constitutional and Political History of Pakistan*, 490 and Philip E. Jones, 'Zulfikar Ali Bhutto: Triumph and Tragedy', in Roger D. Long (ed.), *A History of Pakistan* (Karachi: Oxford University Press, 2015), 583-84.

<sup>34</sup> *National Assembly of Pakistan Debates*, 802. About the issue of federalism see Syed Mujawar Hussain Shah, *Federalism in Theory and Practice*

kinds of pressures to provide justice to all,<sup>35</sup> but the appointment of judges was made obligatory to the recommendation of the prime minister and chief minister. By giving the power of the selection of Judges to the prime minister, the judiciary was, indirectly, made subordinate to the executive who could later create conflict between the executive and the judiciary and could create challenges for the judiciary to win the confidence of common people.<sup>36</sup> The Executive had the authority to transfer the judges which could restrain the Judges from making impartial decisions.<sup>37</sup> According to Sardar Mola Bakhsh Soomro (member National Assembly), through Article 269 and 270, the government could nullify the orders of the highest courts.<sup>38</sup> To manage the criticism, the government replaced the word 'recommendation' with 'consultation', regarding the appointment of the chief justice of the Supreme Court and high courts.<sup>39</sup> Another point of criticism was the 'Court's Fee' because, according to some of the members of the National Assembly, it was unfair for the people to pay to get justice.

It was demanded that a law be enacted under which institutional conflicts could be resolved in courts so that people should have the right to go to court against any decision of the government.<sup>40</sup> The members of the Parliament demanded to give the authority to High Court to nullify any enacted laws repugnant to the teachings of Islam but this demand could not get any positive response from the government.<sup>41</sup> The opposition wanted to take the constitutional clauses to the court for adjudication, over which there was a deadlock between the government and the Opposition. The government rejected this demand as well.<sup>42</sup> Most of the amendments suggested by the opposition could not get enough votes on the floor of the House and thus faced rejection.<sup>43</sup> It

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(Islamabad: Quaid-i-Azam Chair, NIPS, Quaid-i-Azam University, 1994), 88-96.

<sup>35</sup> Details of the Constitutional Provisions can be seen in *The Constitution of Islamic Republic of Pakistan, 1973*.

<sup>36</sup> *National Assembly of Pakistan Debates* (February 26, 1973), 332 and (7 March 1973), 802.

<sup>37</sup> *Ibid*, 27 February 1973, 398.

<sup>38</sup> *Ibid*, 6 March 1973, 668.

<sup>39</sup> *Ibid*, 7 March 1973, 837.

<sup>40</sup> *Ibid*, 26 February 1973, 312, & 28 February 1973, 467.

<sup>41</sup> *Ibid*, 26 February 1973, 306, and 6 March 1973, 702-710.

<sup>42</sup> *Ibid*, 26 February 1973, 300, 306.

<sup>43</sup> Members who spoke on the issue of the powers of the judiciary were; Abdul Hafeez Pirzada, Sahibzada Ahmad Raza Khan Kasuri, Sardar Inayatullah Rehman Khan Abbasi, Mahmood Azam Farooqi, Dr. Mubashir



seems that the opposition just had the right to speak, but it had no right to bring even inconsequential changes in the Constitution.

### **Powers of the Prime Minister**

The Prime Minister generally enjoys powers to influence almost every institution of a democratic state but with certain checks and balances. In the draft constitution of 1973, the Prime Minister of Pakistan was made all-powerful which received criticism of the Opposition Parties on the floor of the House. Powers of the prime minister were considered by some to be more suited for a colony rather than an independent country.<sup>44</sup> Some members equated the powers of the prime minister, under the new constitution, with that of a monarch.<sup>45</sup> The constitution, they argued, should provide such provisions through which the tendencies towards absolutism of the prime minister could be checked.<sup>46</sup> The prime minister's power to appoint the army chief was criticized, for it was feared that it would result in the politicization of the armed forces.<sup>47</sup> It was commented that although we are following the British model but the powers being enjoyed by the British prime minister would lead to dictatorship in the context of Pakistan. In the Constitution, the prime minister was made head of all institutions, the armed forces, bureaucracy, and even judiciary, and this was not acceptable to most of the opposition members.<sup>48</sup> Wali Khan criticized excessive powers of the prime minister as these would make him a dictator unless he was an angel who would use such powers in a rightful manner to run the government.<sup>49</sup> The powers of the prime minister under the Defence of Pakistan Rules (DPRs) were another point of criticism, as under these

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Hassan, Maulana Abdul Hakim, Abdul Khaliq Khan, Sahibzada Safiullah, Chaudari Zahur Ilahi, Maulana Abdul Haq, Maulvi Naimatullah Abdul Hayee Baluch, Sardar Mola Bakhsh Soomro, Professor Ghafoor Ahmad, Maulana Shah Ahmad Noorani Siddiqui, Maulana Ghulam Ghous, Chaudhari Muhammad Hanif Khan, Sardar Shaukat Hayat Khan, Malik Muhammed Jaffer, Khurshid Hassan Meer.

<sup>44</sup> Ibid., 7 March 1973, 837.

<sup>45</sup> Ibid., 28 February 1973, 480.

<sup>46</sup> Ibid., 27 February 1973, 439.

<sup>47</sup> Details of the Constitutional Provisions can be seen in *The Constitution of Islamic Republic of Pakistan, 1973*.

<sup>48</sup> *National Assembly of Pakistan Debates* (27 February 1973), 439 & (5 March 1973), 603.

<sup>49</sup> Ibid., 6 March 1973, 726-30.

rules none of the prime minister's orders could be challenged in any court of law.<sup>50</sup>

The process through which the prime minister could be removed from office was not acceptable to most of the opposition members. In the Constitution it was provided that to move no confidence motion against the prime minister, the mover had to nominate a substitute which was practically impossible for the opposition to agree upon.<sup>51</sup> It also provided that the motion could be passed with the two-third majority. The Constitution further defined that a no-confidence motion could not be moved within six months of the previously failed no-confidence motion<sup>52</sup> against the prime minister. The above mentioned clauses of the Constitution, specifically, were criticized by many members of the Opposition.<sup>53</sup>

According to the draft Constitution, a vote of no confidence could be passed only with a two-thirds majority, which was not acceptable to the Opposition.<sup>54</sup> It was said that if the Prime Minister is elected by a simple majority in the House, he should be dismissed by the same ratio. If the prime minister is given the same powers as are enjoyed by the British prime minister, then he should be dismissed on similar grounds.<sup>55</sup> Another suggestion was that if one-third of members of the party in power vote against the prime minister, he should resign, but it did not receive a positive response.<sup>56</sup> Furthermore, the Opposition demanded that the budget should be passed with a majority of two-thirds members, and if the government fails to get the budget passed, it should resign.<sup>57</sup> The attitude of Opposition on the clause of impeachment of prime minister was criticized by the government.<sup>58</sup> It was said that in the parliamentary form of government, the prime minister has all the authority as incorporated in the British parliamentary system.<sup>59</sup> The Opposition did not want the prime minister to have the right to dissolve the assembly; however, this right was taken as an integral part of the parliamentary system of democracy.<sup>60</sup> It was argued that the Prime

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<sup>50</sup> Ibid., 5 March 1973, 632.

<sup>51</sup> Burki, *State and Society in Pakistan*, 95.

<sup>52</sup> Ibid., 31 December 1972, 20.

<sup>53</sup> Ibid., 27 February 1973, 373.

<sup>54</sup> Ibid., 5 March 1973, 602.

<sup>55</sup> Ibid., 6 March 1973, 702-716.

<sup>56</sup> Ibid., 6 March 1973, 736.

<sup>57</sup> Ibid., 7 March 1973, 858, 862.

<sup>58</sup> Ibid., 6 March 1973, 702-716.

<sup>59</sup> Ibid., 6 March 1973, 750-52.

<sup>60</sup> Ibid., 6 March 1973, 692-96.

Minister could misuse the power to dissolve the Assembly. He may dissolve the Assembly at a time when it would not cooperate with him, and when he was sure of winning a majority in the forthcoming elections.<sup>61</sup> The opposition was concerned that such laws should be made which can prevent the National Assembly and the cabinet from becoming a tool in the hands of just one person.<sup>62</sup> The general demand of the Opposition was that when a prime minister dissolves the Assembly, he should also cease being the prime minister. This, they argued, will prove a check on the power of the prime minister to dissolve the Assembly.<sup>63</sup> This demand also failed to get the support of treasury benches.

The Opposition demanded a constitution with a balance between the powers of the prime minister and the president, to avoid experiences of the previous regime when one person could overwrite almost whole of the Constitution.<sup>64</sup> Treasury benches were against the distribution of powers between the prime minister and the president, as this would undermine the parliamentary form of government.<sup>65</sup> A demand to restrict the powers of the prime minister, through the Constitution, was forwarded by some members to prevent concentration of absolute power in the hands of one person,<sup>66</sup> but these demands of the Opposition could not get the support of the treasury benches and most of them were rejected.

### **Powers of the President**

Powers of the president proved to be a controversial issue and were debated comprehensively in the Assembly. Firstly, according to certain

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<sup>61</sup> Ibid., 7 March 1973, 813, 838.

<sup>62</sup> Ibid., 7 March 1973, 846.

<sup>63</sup> Ibid., 5 March 1973, 608.

<sup>64</sup> Ibid., 7 March 1973, 798, 26 February 1973, 314.

<sup>65</sup> Ibid, 7 March 1973, 793-94. Members who spoke about the powers of the prime minister were Abdul Hafeez Pirzada, Sahibzada Ahmad Raza Khan Kasuri, Sardar Inayatpur Rehman Khan Abbasi, Malik Muhammad Akhtar, Amirzada Khan, Mahmood Azam Farooqi, Maulana Abdul Hakim, Abdul Khaliq Khan, Sahibzada Safiullah, Muhammad Shafi, Muhammad Zafar Ahmad Ansari, Choudhary Zahur Ilahi, Abdul Hamid Khan Jatoti, Maulana Abdul Haq, Haji Ali Ahmad Khan, Abdul Hayee Baluch, Abdul Qaiyum Khan, Mian Mahmood Ali Kasuri, Abdul Wali Khan, Sardar Mola Bakhsh Soomro, Maulana Kausar Niazi, Professor Ghafoor Ahmad, Maulana Shah Ahmad Noorani Siddiqui, Maulana Ghulam Ghous, Choudhary Mumtaz Ahmed, Dr S. Mahmood Abbas Bokhari, Sardar Shaikat Hayat Khan, Raja Tridiv Roy, Khurshid Hassan Meer, Ms. Ashraf Khatoon Abbasi, Ms. Nargis Naeem Sindhu, Ali Hasan, Mir Ghous Bakhsh Khan Bizenjo.

<sup>66</sup> Ibid., 26 February 1973, 342 and 6 March 1973, 750-52.

provisions of the Constitution, President had to follow the advice of the Prime Minister which invited criticism of some of the parliamentarians.<sup>67</sup> It was argued that the President should be made answerable to the federal government or the cabinet, instead of being directly responsible to the Prime Minister. It was said that even if the president withholds decision about any law or an ordinance, it will automatically get approved within seven and four days respectively, which was an insult to the office of the president of a country.<sup>68</sup> The President, on the advice of Prime Minister, could declare a state of emergency. In such a case the authority of the Parliament remained intact during an emergency, but the provincial governments, including the High Courts, could be taken over by the central government which is against the norms of the federal democratic system and were criticized by the Opposition.

The President was given the power to reduce the punishment of criminals or pardon them. This was criticized on the grounds that on the one hand the president's orders would be implemented with countersignatures of the Prime Minister, and on the other hand, he was given the authority to reduce the punishments of criminals, which, according to Maulvi Naimatullah and Maulana Abdul Hakeem, was contrary to the basic principles of Islam. Secondly, it was considered a challenge to the powers of the judiciary. The clause requiring a countersignature of the Prime Minister on the orders of the President was criticized, as it was considered by some members like Maulana Abdul Hakim, that it would make the President only an office-holder who would never be able to play his role even in critical situations.<sup>69</sup>

There was a general opposition to create a balance of power in the governing structure of the country.<sup>70</sup> It was said that if the President had been made accountable to the Parliament, the same obligation should be levied on the prime minister otherwise it would work as a discriminatory provision against the President.<sup>71</sup> It was argued that the President should have the power to make at least some decisions when the national security is endangered.<sup>72</sup> Regarding the demand for sharing

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<sup>67</sup> *Ibid*, 26 February 1973, 312 and 27 February 1973, 387.

<sup>68</sup> *Ibid*, 5 March 1973, 603.

<sup>69</sup> *Ibid*, 6 March 1973, 675. See also Naumana Kiran Imran, *The Federal Cabinet of Pakistan: Formation and Working, 1947-77* (Karachi: Oxford University Press, 2016), 42.

<sup>70</sup> *Ibid*, 27 February 1973, 401.

<sup>71</sup> *Ibid*, 6 March 1973, 737-39.

<sup>72</sup> *Ibid*. Members who spoke on the issue of the powers of president were Abdul Hafeez Pirzada, Maulana Muhammad Zakir, Mahmood Azam Farooqi, Maulana Abdul Hakim, Sahibzada Safiullah, Muhammad Zafar

of powers between the President and the Prime Minister, it was argued that it will result in friction between the two.<sup>73</sup> Another argument given about the demand for sharing of power between the Prime Minister and the President was that in the parliamentary form of government the prime minister has always been made all-powerful, so if the opposition wants the parliamentary form of government work properly, it has to accept all of its features.

### **Provincial autonomy**

In the election's manifesto of the Pakistan Peoples' Party, Zulfikar Ali Bhutto (Bhutto) avowed for a strong centre based on a parliamentary system, which he reiterated soon after assuming power. Bhutto generally used to make statements according to space and occasion such as his policy statements and statements regarding the form of the future system of government at Lahore and Peshawar were contradictory to each other just to satisfy people living in those particular cities.<sup>74</sup> Similar contradictions were there in the constitution of Pakistan particularly with reference to the provincial autonomy.

The Constitution of 1973, on the one hand, restricted the scope of the Federal Legislative List, and gave wide powers of legislation to the provinces, on the other hand, it devised a large Concurrent Legislative List, with the proviso that law enacted by the federation shall prevail over the law passed by the provinces.<sup>75</sup> Bhutto generally argued for a highly centralized system, which was not acceptable even to the members of his own party, or the provincial autonomists within the parties that opposed him. The change in Bhutto's attitude was criticized by his party members, and consequently, Mahmood Ali Kasuri resigned not only from Bhutto's Cabinet but also from the Party.<sup>76</sup> According to Bhutto if the provinces were given the provincial autonomy, as being demanded, Punjab will become stronger as compared to other provinces because it is more developed in every sphere of life, for it has 52% of the total population, 62% of gross domestic output and 52% of the manpower. Keeping these facts in view, he differed with the NAP for its

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Ahmad Ansari, Choudary Zahur Ilahi, Abdul Hamid Khan Jatoti, Maulvi Naimatullah, Haji Ali Ahmad Khan, Mian Mahmood Ali Kasuri, Niamatullah Khan Shinwari, Maulana Ghulam Ghous, Khurshid Hassan Meer, Ms. Ashrarf Khatoon Abbasi.

<sup>73</sup> Ibid., 6 March 1973, 750.

<sup>74</sup> Ibid., 7 March 1973, 836.

<sup>75</sup> Mahmood, *Pakistan*, 140.

<sup>76</sup> Hassan, *The Mirage of Power*, 215. Also see, Quddus, *Zulfikar Ali Bhutto*, 154.

demand for provincial autonomy.<sup>77</sup> Due to the government's efforts to create a centralized system, the opposition particularly parliamentarians from the smaller provinces did not accept the quantum of provincial autonomy given in the Constitution.

Provincial autonomy remained a critical topic since the creation of Pakistan. No lasting working solution could be reached between the highly centralized and bureaucratized ruling elite, the Sardars, and feudals of different regions of Pakistan.<sup>78</sup> Political, economic, and social conditions in Balochistan were far worse than in the other parts of the country. Baloch *Sardars* had differences of opinion amongst themselves about the Baloch people.<sup>79</sup> Ghaus Bakhsh Bizenjo was a moderate, who believed that within the federation of Pakistan, Balochistan and other small provinces should have the maximum autonomy.<sup>80</sup> Bhutto was in favour of adopting the presidential form of government, but settled for a parliamentary form of government, in response to the demand of the Opposition parties. In return, NAP accepted a strong centre, which included the appointment of the governors by the central government.<sup>81</sup> There were demands for provincial autonomy, leaving only the subjects of currency and foreign policy with the centre. These demands, however, were viewed as unrealistic. About adopting provincial languages as national languages the treasury was of the opinion that none of the provinces have just one language and if any of the provincial languages would be adopted as official language it will add to the problems of the administration of the country and would lead to increasing the dissatisfaction among the people. Some of the members of the Treasury Benches were of the opinion that there should be one 'national language', as it would help to prevent provincial conflicts and would create national harmony. They argued that those members of the Assembly, like the leaders of NAP, and some of the members of religious parties, who were in favour of a united India in the pre-partition days, are now in Opposition. They (representatives of NAP) are showing their provincial prejudices through the demand for provincial autonomy and fighting for language and cultural identities of different areas.<sup>82</sup>

Furthermore, it was explained that development projects were not based on provincial consideration but rather on the availability of

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<sup>77</sup> Burki, *Pakistan State and Society*, 94.

<sup>78</sup> Ibid., 93. Also See Shah, *Federalism in Theory and Practice*, 62-69.

<sup>79</sup> Hassan, *The Mirage of Power*, 164.

<sup>80</sup> Ibid., 165.

<sup>81</sup> Ibid., 169.

<sup>82</sup> *National Assembly of Pakistan Debates*, March 6, 1973, 746.

natural resources.<sup>83</sup> The Opposition was suggested to consider the four provinces as administrative units of one state instead of counting them separate regions, as this would help resolve the issue of the distribution of powers and resources among the provinces.<sup>84</sup>

The Opposition demanded to take measures to gain the confidence of the people of the smaller provinces, by ensuring that their due rights would be protected in the Constitution.<sup>85</sup> The major point of concern was the distribution of powers between the centre and the provinces. Smaller provinces demanded the right to tax their own people according to the provincial conditions.<sup>86</sup> It should be kept in view that provinces can get autonomy to an extent that is compatible with the existence of the federation.<sup>87</sup> Some of the leaders considered the people of four provinces as four nations, but Maulana Shah Ahmad Noorani said the basis of nationhood is religion and nothing else.<sup>88</sup> He said that there are no four separate nations in Pakistan but instead four ethnic groups, for which the federal form of government is needed instead of a unitary form of Government.<sup>89</sup> Mir Ghous Bakhsh Khan Bizenjo said that certain politicians refer to different ethnic groups as nationalities (*qaumiyat*) but if you want to make a prosperous and peaceful country you have to take care of these nationalities (ethnic groups), for otherwise the problem will get so exacerbated that none will be able to solve it.<sup>90</sup> It was also said that people of all provinces are equal and they should have equal opportunity to live in any of the provinces. There should be no discrimination among the masses, as they are people of Pakistan and should be considered as such.<sup>91</sup> Muhammad Hanif Khan told the House that Pakistan was not created to fight for the rights of provinces, but to protect the rights of the people of Pakistan as a whole.<sup>92</sup> It was said that the government will allow provincial autonomy, but it cannot be extended to such an extent that quantum of the autonomy becomes the

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<sup>83</sup> Tahir Amin, *Ethno National Movements of Pakistan: Domestic and International Factors* (Islamabad: Institute of Policy Study, 1993), 124.

<sup>84</sup> Ibid., 6 March 1973, 337-38.

<sup>85</sup> Ibid., 26 February 1973, 346.

<sup>86</sup> Ibid., 324, and 7 March 1973, 781. See Also Vyacheslav Y. Belokrenitsky and Viladimir N. Moskalenko, *A Political History of Pakistan: 1947-2007* (Karachi; Oxford University Press, 2013), 227-30.

<sup>87</sup> Ibid., 27 February 1973, 413.

<sup>88</sup> Ibid., 7 March 1973, 819.

<sup>89</sup> Ibid., 6 March 1973, 720.

<sup>90</sup> Ibid., 1 March 1973, 568.

<sup>91</sup> Ibid., 569.

<sup>92</sup> Ibid., 6 March 1973, 653.

cause of separation of the provinces from the centre. He also criticized the people who were emphasizing the British design of the governance as these are the people who criticize it (Britain) at every forum.<sup>93</sup> Chaudhary Mumtaz Ahmad emphasized the identity of Islam and argued that if we put enough emphasis on this, then most of the provincial problems would automatically be solved.<sup>94</sup> It was also argued that nations are neither based on the territorial identity nor on ethnic identity, rather on their religious affiliation. Pakistan is a multicultural and multiethnic state and if we raise the question of nation on the basis of language or cultural values, then it is not correct to refer to just four prominent ethnicities. The rights of provinces should be protected, and they should get equal rights.<sup>95</sup> Another argument made on the floor of the House was that the provinces had ample autonomy and it was only a matter of chauvinism that some of the provincial leaders were not satisfied with the quantum of autonomy.<sup>96</sup> The main criticism was based on the dismissal of the democratic government of Balochistan by the central government. It was demanded by some members of the National Assembly that the provinces should have the right and freedom to work for their development, and it could only be achieved through maximum provincial autonomy. Government was also criticized for the termination of the NAP-JUI government. It was demanded by the parliamentarians that the Constitution should provide such safeguards to the provincial governments that they cannot be dissolved by the central authorities when it has support of a majority in the Provincial Assembly to avoid conflict between the centre and provinces.<sup>97</sup> Abdul Hamid Khan Jatoti and Ghous Bakhsh Khan Bizenjo demanded that governors of the provinces should be non-political figures so that they may fulfil their responsibilities impartially. They also demanded provincial autonomy with reference to the economic policies and plans.<sup>98</sup>

J. A. Raheem and Mahmood Ali Kasuri were of the opinion that there exist no hard and fast rules to measure the level of autonomy. Central government can delegate its powers to the provinces to such an extent which it considers appropriate for the country, but the Centre should not have the right to interfere in those matters which have been

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<sup>93</sup> Ibid., 659.

<sup>94</sup> Ibid., 7 March 1973, 810-12.

<sup>95</sup> Ibid., 6 March 1973, 752, 772.

<sup>96</sup> Ibid., 682.

<sup>97</sup> Ibid., 6 March 1973, 717.

<sup>98</sup> Ibid., 5 March 1973, 606.



allotted as provincial matters.<sup>99</sup> However, if the government gives complete provincial autonomy, each province will be working under its own system and this will prove to be harmful to the harmony of the country.<sup>100</sup> The suspicions and insecurities of the smaller provinces can be minimized through constitutional arrangements to prevent the federal government from undue interference in the provincial matters. According to Wali Khan, the political and economic exploitation of the provinces was the major point of concern.<sup>101</sup> At times, he said, the demand for provincial autonomy is called secessionist attitude, but it needs to be realized that if provincial governments in smaller provinces will be dismissed by the federal government unlawfully, what strategy should be adopted except for demanding provincial autonomy. He further said, provinces can solve their problems if allowed to work within their constitutional limits.<sup>102</sup> Provinces must get the right to cope with their problems independently, to avoid inter-provincial friction, and to take the country on the path of prosperity.<sup>103</sup> The federal system of sharing equal powers, among the unequal, was the answer to the constitutional dilemma. Division of assets and liabilities and that of income and expenditure on an agreed formula was demanded as the primary solution of centre-province problems.<sup>104</sup> One argument, which was presented, was that provinces should have the right to use their assets on their own, without the involvement of the Centre. Differences at the level of population and area should not be a hindrance in dividing power between the provinces. The Concurrent List was also criticized, as the final decision was with the Centre, and provincial autonomy was seen as an illusion created by the Centre.

Sardar Shaukat Hayat Khan (a member of treasury) said that if we want to keep Pakistan united we have to expunge the feeling of exploitation from the hearts of the people of each and every province.<sup>105</sup> It was said by Maulana Kausar Niazi that the Punjab always sacrifices for other provinces, so all the fears from it are without any reason. Some of the politicians shared their fears of the creation of similar situations as happened between East and West Pakistan if the provincial grievances were not handled appropriately.<sup>106</sup>

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<sup>99</sup> Ibid., 27 February 1973, 439 and 2 March 1973, 585, 588.

<sup>100</sup> Ibid., 1 March 1973, 591 and 5 March 1973, 612.

<sup>101</sup> Ibid., 6 March 1973, 736.

<sup>102</sup> Ibid., 5 March 1973, 620.

<sup>103</sup> Ibid., 1 March 1973 and 27 February 1973, 493-97.

<sup>104</sup> Ibid., 1 March 1973, 522.

<sup>105</sup> Ibid., 502-506.

<sup>106</sup> Ibid., 7 March 1973, 812.

Members who favoured limited autonomy were Abdul Hafeez Pirzada, Sardar Inayatullah Khan Abbasi, Malik Muhammad Akhtar, Maulana Abdul Hakim, Abdul Khaliq Khan, Muhammad Shafi, Muhammad Zafar Ahmad Ansari, Haji Ali Ahmad Khan, Muhammad Yousuf Khattak, Abdul Qaiyum Khan, Muhammad Hanif Khan, Maulana Kausar Niazi, Sahibzada Farooq Ali and Choudhary Mumtaz Ahmed. Those who demanded complete autonomy for the provinces were Sahibzada Ahmad Raza Khan Kasuri, Maulana Muhammad Zakir, Amirzada Khan, Choudary Zahur Ilahi, Abdul Hamid Khan Jatoti, Zahida Sultana, Maulvi Naimatullah, Ghulam Farooq, Abdul Hayee Baluch, Mir Ghous Bakhsh Khan Bizenjo, J.A. Rahim, Mian Mahmood Ali Kasuri, Abdul Wali Khan, Molvi Mufti Mahmood, Sardar Mola Bakhsh Soomro, Naimatullah Khan Shinwari, Professor Ghafoor Ahmad, Maulana Shah Ahmad Norani Siddiqui, Maulana Ghulam Ghous, Sardar Sher Baz Khan Mazari, Sardar Shaukat Hayat Khan, Choudhary Mumtaz Ahmed, Khurshid Hassan Meer, and Khurshid Ali Khan.

According to the rules of procedure, if a notice of a proposed amendment was not given two clear days before the day on which the Bill was to be considered, any member may object to the moving of the amendment, and such objection should prevail unless the President allowed the amendment to be moved.<sup>107</sup> Firstly, a general discussion was held on the draft constitution, then it was discussed clause by clause, and at the third stage, articles were brought under discussion. No technical objections on notices with regard to the moving of amendment were allowed. Almost two thousand amendments were registered, but 1188 amendments could not be moved in the House, 294 were accepted, 286 were rejected and 105 amendments were withdrawn.<sup>108</sup>

## **Conclusion**

Framing of a constitution was a challenging task for the Zulfikar Ali Bhutto's government in the very beginning of its tenure, particularly when the country had just lost its eastern wing. It was important to make the constitution acceptable for all federating units. The constitutional proposals which finally got approval of the majority suggested a combination of Parliamentary and the Presidential form of government. It was accepted only after Bhutto had agreed to temper the quasi-presidential system that he wanted to introduce. The job of constitution-making was managed by Abdul Hafeez Pirzada. Critical issues like redrawing the boundaries of the provinces, giving the status of national

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<sup>107</sup> Ibid., 7 March 1973, 696.

<sup>108</sup> Ibid.

languages to the provincial language and quantum of provincial autonomy were not taken to a conclusion. Although many of the politicians considered the Constitution a document that had been made with complete consensus, but some had reservations about this. The authoritarian and centralized approach to governance gave very little attention to the need for creating a sense of participation in a diversified country like Pakistan. The emphasis of the draft constitution was on control and management, rather than political participation and responsive governance. Some members criticized the government for ignoring the agreement signed in October 1972. During the sessions for constitution making, the opposition boycotted the proceedings because it could not get the approval of the amendments that it suggested. Passing the Constitutional Bill without the presence of the opposition could deprive it of the status of a legitimate constitution at large for which Bhutto brought the Opposition to join the National Assembly session. Powers of persuasion, both pleasant and unpleasant, worked to bring some of the United Democratic Front (UDF) members to participate in the National Assembly debates and finally approve the constitution of the Islamic Republic of Pakistan in 1973.