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Chief Editor: Prof. Dr. Ansar Zahid Khan



*(Thus do We relate to thee some stories of what happened before – Al-Qur'ān, XX:99)*



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# CONSTITUTIONAL DEVELOPMENT UNDER THE AYUB KHAN REGIME A CRITIQUE OF THE CONSTITUTION COMMISSION

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This paper explores a comprehensive account of the constitutional development in Pakistan during Ayub Khan Regime with special reference to the findings and recommendations of the Constitution Commission. It thoroughly describes the *modus operandi* of the Commission while eliciting public opinion regarding the future constitution in the country. What were the findings of the Commission? What kind of suggestions have been recommended by it and why? Why and how this fundamental change i.e. to opt for presidential form of government, occurred for the first time in the history of Pakistan? And finally how the ruling junta dealt with the proposals of the Commission?

**Keywords:** Pakistan, Ayub Khan, Constitution commission, Constitution, Democracy.

## Introduction

The political system of Pakistan evolved over a period of time in a series of constitutional reform packages introduced gradually by the British Imperial Rule in 1858, 1862, 1892, 1909, 1919 and 1935 in the sub-continent. With the passage of time, these constitutional reforms the British Colonial Masters familiarized the people of the subcontinent to self-rule and parliamentary traditions to a great extent. On the one hand,

they were institutionalizing certain democratic traditions, while on the other hand they maintained bureaucratic hierarchical structures fashioned to contain the rising democratic aspiration of the people. After the great divide in August, 1947 Pakistan started its political career with the British parliamentary system to administer the state affairs smoothly. Hence, it inherited a quasi-federal parliamentary system under the Indian Independence Act of 1947. Section 8 of that Act laid down that until a constitution was framed the interim settlement for the country's political affairs would be based on the Government of India Act 1935. The parliamentary system was then recommended in the first, second and third Basic Principles Committee reports which were prepared in 1951, 1952 and 1953 respectively as constitutional drafts. However, the first fundamental change in the constitutional and political history of Pakistan appeared when Ayub Khan opted for presidential form of government in the country.

The night of October 7, 1958 witnessed a bloodless *coup d'état* when parliamentary government in the country was tumbled.<sup>1</sup> The constitution of 1956 has been abrogated and Ayub Khan declared that "our ultimate aim is to restore democracy but of the type that people can understand and work".<sup>2</sup> Before framing the 1962 Constitution Ayub Khan appointed a Constitution Commission under the chairmanship of Justice Shahabuddin with an assigned duty.

### **Terms of Reference of the Constituions Commission**

After having secured a vote of confidence from the Basic Democrats, Ayub Khan appointed the Constitution Commission consisted of eleven members was headed by Mr. Mohammad Shahabuddin,<sup>3</sup> a former Chief Justice of the Federal Court. The principle of parity was maintained between the two wings of Pakistan by providing equal numbers from both the wings. Five members were taken from West Pakistan having expertise in their relevant fields.<sup>4</sup> In the like manner five members were selected from East Pakistan to take their active part in the overall activities of the Constitution Commission.<sup>5</sup>

President Ayub Khan declared the following terms of reference of the Commission.

To examine the progressive failure of the parliamentary governments in Pakistan leading to the abrogation of the Constitution of 1956 and to recommend how a recurrence of similar causes can be prevented.

To submit proposals for constitution, taking into consideration the



genius of the people, the general standard of education and political judgment in the country, the present state of nationhood, the need for sustained development and the effects of constitutional and administrative changes in the recent months.

The proposals should embody the recommendations as to how best the following objectives could be achieved:

- A democracy adaptable to the changing circumstances and based on the Islamic principle of justice, equity and tolerance;
- Consolidation of national unity;
- A firm and stable system of government.<sup>6</sup>

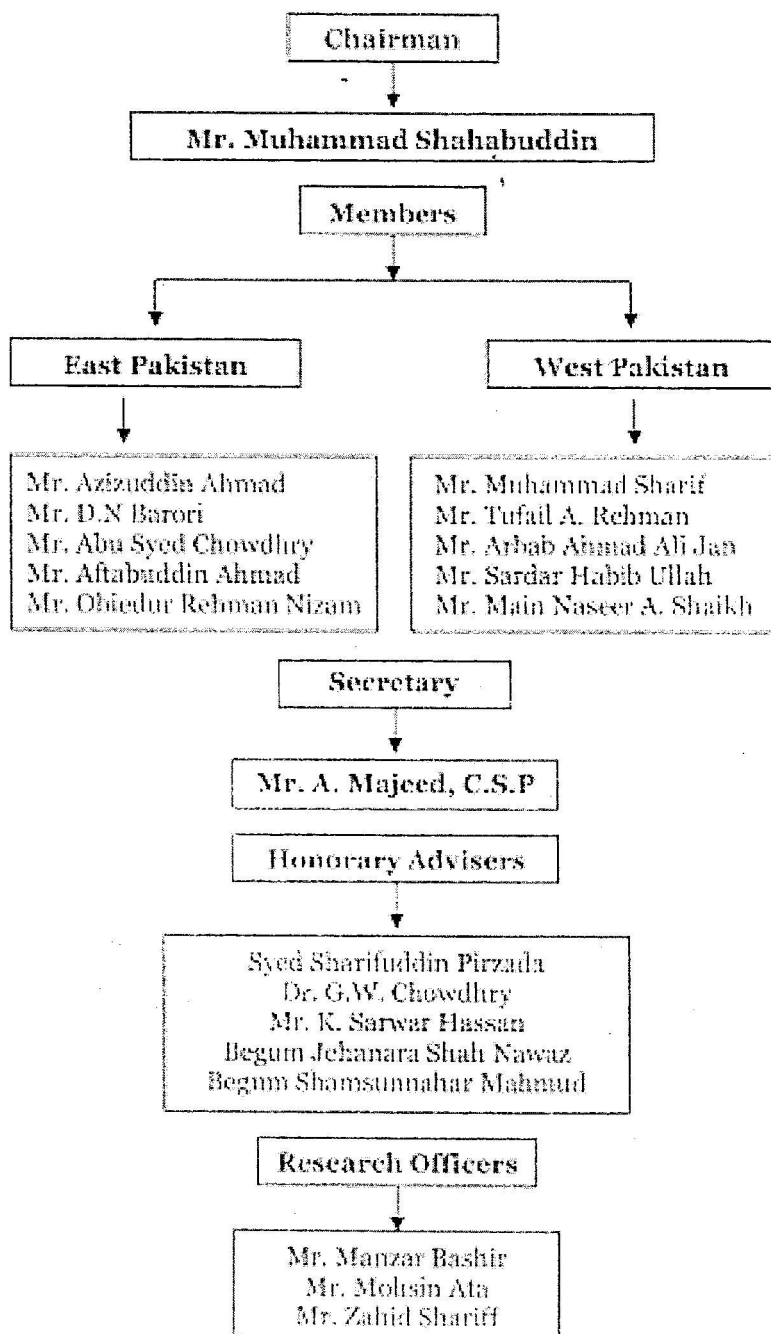
An additional term of reference was received by the Constitution Commission towards the end of June 1960. This additional term of reference was as under:

In the light of the social, economic, administrative and political reforms which are being carried out by the present regime, particularly the introduction of the Basic Democracies, what would be the most appropriate time table for the implementation of the proposals to be made by the Constitution Commission?<sup>7</sup>

Ayub Khan conveyed to them that no deadline had been fixed by virtue of the complexity of the task, but assured that no time would be unnecessarily lost by the Commission to complete its work. Further he said that the Commission would be supplied any data that might be required in the course of its task.<sup>8</sup>

The task of the Constitution Commission was a really hectic one in its nature and essence as the Commission had to conduct it with utmost impartiality and neutrality. The Commission devised its own *modus operandi* as it had no precedent to follow, although it could, and did benefit from the constitutional reports drafted since 1950 and the Constitution of 1956.<sup>9</sup> It issued a questionnaire in the form of a booklet, spread over 75 pages, in English, Urdu and Bengali.<sup>10</sup> A total of 28,000 copies of the questionnaire, 9,000 in Urdu and Bengali were sent to individuals and organizations all over Pakistan while 6269 replies were received.<sup>11</sup> Individuals were interviewed from different walks of life by the Constitution Commission during its tour both in East and West Pakistan. Opinion was elicited in East Pakistan from 9 June to the 25 August

## Organizational Chart of the Constitution Commission



and in West Pakistan from 1 of September to the 30 December, 1960. In all, 565 persons were interviewed. The Chairman of Commission also held informal discussions with several persons who hesitated to appear before the Commission at its formal sittings.<sup>12</sup>

The prime responsibility in the whole process of making a constitutional draft fell on the shoulders of Justice Shahabuddin as he was the leading figure of the Commission and was directly accountable to the government authority. The initial draft of the report was prepared by Justice Shahabuddin. On 6 May 1961 the report of the Commission was formally presented to Ayub Khan in a well-publicized ceremony. The report contained ideological assertions, theoretical arguments and a compilation of opinions of those persons who were interviewed. It covered many aspects of the history of Pakistan and the British legal traditions.

### **Findings and Recommendations of Shahbuddin Commission**

The Constitution Commission observed each and every aspect of its term of reference and after constant struggle ultimately reached its end. Regarding the first term of reference the Commission, after thorough deliberation, came to the conclusion that parliamentary form of government proved to be a failure in Pakistan by virtue of the following causes.

- 1) Lack of proper elections and defects in the late Constitution.
- 2) Undue interference by the heads of state with the ministries and political parties and by the central government with the functioning of the governments in the provinces.
- 3) Lack of leadership resulting in lack of well-organized and disciplined parties, the general lack of character in the politicians and their undue interference in the administration.<sup>13</sup>

While dealing with the future constitution, the Commission recommended that there would be only one person at the helm of affairs but with an effective restraint exercised on him by an independent legislature, members of which should not be in a position to interfere with administration by exercising political pressure for personal ends. The Commission concluded that such a system was available in the presidential form of government as found in the United States of America.<sup>14</sup> The Commission's preference for the presidential system was due to four

major reasons. Firstly, under the presidential system there was to be only one person (president) at helm of affairs and not two (president and prime minister) and the collision of personalities, that had marked Pakistan's politics since the death of Jinnah and Liaquat, would be averted; secondly, the opportunities and temptation open to an average member of the legislature to exploit his position to his advantage would be so restricted that persons who in the past had treated election to parliament as an investment would be discouraged from standing for election. Thirdly, there would be greater stability which was Pakistan's prime need. Fourthly, administrator could be selected from the ablest men available and not necessarily from among the members of the parliament.<sup>15</sup>

The report embodied federal form of government like that of India and not a unitary one prevailing in Great Britain. Distribution of power between centre and provinces was an issue of immense importance at that time. The Commission recommended three legislative lists i.e. federal, concurrent and provincial in order to distribute the legislative powers between the centre and the provinces.

The Commission proposed bi-cameral legislature consisting of a lower house to be known as the House of People and an upper house to be known as Senate. It emphasized the need of an upper chamber which would be able to check impetuosity of legislation by the lower house and which would also exercise a healthy influence through its utterances, both on the legislature and the public. It envisaged an upper house as a body of elder statesmen selected from categories of people rather than of members elected on a territorial basis as in the American Senate.<sup>16</sup> The upper house was to be consisted of forty-eight members, forty elected by an electoral college consisting of the lower house at the centre and the two provincial houses (East and West Pakistan assemblies) on the basis of parity, i.e. twenty from each province, among meritorious personalities aged fifty years and above, not being members of any of the said legislatures. The remaining eight were to be nominated by the president.<sup>17</sup> While in respect of lower house, it recommended that it should be elected on the principle of parity. The Commission, while dealing with the primary function of the central legislature, categorized a detailed sphere of power. It proposed that money bill was to be initiated only in the House of People and if the Senate failed to express its opinion within one month or agreed with the House of People, the bill would go to the president for his final approval. In case the Senate suggested alterations the bill would go back to the House of People, to be submitted to the president with those changes in case the lower house accepted

and without those changes when the lower house rejected.<sup>18</sup> As regards other legislation, bills might be introduced in either house. A bill introduced in the House of People, if accepted by the Senate should go up to the president for his final approval. The president could veto such a bill passed by the parliament but that veto could be removed only if that bill was again passed by a two-third majority of each of the house of parliament.

The Commission's scheme for the presidential system was greatly modelled on the American pattern and proposed a comprehensive system of checks and balances. While recommending this system of government, it however, stressed the importance and role of the legislature and stated "if we want to have a democratic form of government, the legislature should be in a sufficiently strong position to act as a check on the exercise by the executive of its extensive powers without at the same time affecting the firmness of the administration".<sup>19</sup> Consequently, the Commission proposed an elaborate criteria for the impeachment of president, vice-president, governors and ministers as well. All these dignitaries could be liable to impeachment on a charge of violating the constitution or for a gross misconduct. The resolution seeking impeachment could be signed by not less than one fourth of the total number of members of the lower house and fourteen-day notice thereof could be given before it was moved in the said house and if the resolution was passed by majority of the total number of the said house, the trial on the charges alleged in the resolution could be held by the Senate presided over by the Chief Justice of the Supreme Court in the case of the president, vice-president, governors and ministers (both central and provincial) and by the vice-president in all other cases. The person impeached was to vacate his office in case he was found guilty by two-third of the total number of the members of the Senate.<sup>20</sup>

It was recommended by the Commission that the president should have the power of a partial veto in respect of appropriation bills. He would also be able to give assent to such items as would be passed according to his demand or in substantial compliance with it. The legislature could cut down appropriations and if the reduction was not substantial or the item reduced even substantially was a fresh item i.e. introduced for the first time in the budget, the president should abide by the decision of the House of People, even if the Senate would think otherwise. In case the reduction was substantial, and the president should make a declaration to that effect giving the reason thereof, the matter should be considered

by the House of People and the Senate and should the House of People ultimately repeat their original decision, the president then should have the choice of either trying to carry on the administration by the parliament or of continuing by ordinance the current year's appropriations, in respect of the item concerned, for the next financial year. If he should take the latter step then he would have to pass such an ordinance which would have the force of an act of the legislature and would not require ratification. However, the Commission did not give this power of ratification for an indefinite period. It stated categorically that such a state of affairs would not be conducive to good government and a repetition of the certification of the budget for the next financial year should be avoided. It, therefore, suggested that the budget for the next financial year should be put before the House of People six months before the end of the year for which an ordinance had been passed so that the attitude of the House might be known. Should the attitude of the House remain the same and the appropriation bill again cut down substantially, the president either tries to manage the appropriation so sanctioned or declares not later than a month thereafter that it was impossible to carry on the administration in which case there should be a fresh election to the House of People, the president and vice-president. If no such declaration was made within the time fixed, the president would be bound by the appropriation bill as passed.<sup>21</sup>

The Commission recommended that the members of the president's cabinet should be given the right to attend the session of the legislature in order that they might answer questions and if necessary, explain their policy without having the right to vote. The Commission stated that this system of asking questions in the legislature would safeguard individual liberties and would be a great check on the arbitrary exercise of its power by the executive.

Keeping in view the large scale illiteracy in Pakistan, the Commission stated, "we would be taking a grave risk if, in the matter of the election of the President, Vice-President, the House of People and the Provincial Assemblies, we adopt universal franchise in our present state of widespread illiteracy amongst the people, whose passion can easily be inflamed".<sup>22</sup> So, the Commission observed that the right to vote was not an inherent one like the right to liberty but was an office or function, conferred only on those who were able to discharge its obligation. It was pointed out that in developed countries like England, the extension of franchise went hand in hand with education, with the result that universal franchise followed universal education.<sup>23</sup> It however, suggested that the

suffrage should be restricted to those citizens of Pakistan who had attained a standard of literacy which would enable them to read and understand what was published about the candidate, so that they might form their own judgment as to their respective merits; or possessed sufficient property or a stake in the country which would give rise to a keen desire in them to acquaint themselves with the antecedents and the qualification of various candidates, so that they might select the proper representatives.<sup>24</sup> The Commission favoured direct elections for the president and members of the central and provincial legislatures. In respect of joint vs. separate electorate, the Commission suggested the system of separate electorate for the country.

Political parties were deemed necessary for the uplift of any democratic system. Political organizations were far older than democracies and existed in nearly all countries and under all forms of government with some minor exception. Being an essential part of a democratic set up, political parties play their pivotal role in different political societies. The Commission, therefore, stated that endeavours would be made to create conditions in which a party based on principles could emerge.

The report of Shahabuddin Commission was almost unanimously accepted by all the members of the Commission with a minor exception as Sardar Habibullah Khan<sup>25</sup> dissented on certain points. He was in favour of a unitary form of government and indirect elections. He was also against the idea of an upper house of parliament and proposed a council of elders. Sardar sahib rejected the office of vice-president recommended by the Commission and supported joint electorate in place of separate electorate.<sup>26</sup> However, on 6 May 1961 the report of the Commission was formally presented to Ayub Khan by the Chairman of the Commission in a well-publicized ceremony which was held in Rawalpindi. During his speech at the presentation ceremony of the report, Ayub Khan said:

Gentlemen: we have gathered together to receive from the Chairman of the Constitution Commission Mr. Justice Shahabuddin, the report which he and his colleagues have produced after hard labour extending over a period of fourteen months. I thank Mr. Justice Shahabuddin for this and also through him his colleagues and the staff. This report is in the nature of advice to me as to what shape our constitution should take. I have every intention of giving its recommendations the greatest consideration they deserve and I have no doubt also that it will help me in discharging the supreme

obligation of giving my people a constitution that will bring solidarity, peace and happiness to them.<sup>27</sup>

On the one hand Ayub Khan was publicly declaring his gratitude to Justice Shahabuddin and his team for such a tremendous job they conducted while on the other hand he started his struggle to chip away those recommendations which were harmful for his rule in the coming days. The report of the Commission was examined by his cabinet under his leadership. Two committees, an Administrative Committee and a Cabinet Sub-Committee were appointed to review the report. The Administrative Committee chaired by the cabinet secretary N.A. Faruqi, considered the report from administrative point of view and understandably proposed no basic alterations. Whereas the majority members of the Cabinet Sub-Committee subscribed to Ayub Khan's views on constitutional issues and in fact received specific guidelines from him. Manzur Qadir,<sup>28</sup> who later on chaired the drafting committee, played the key role. It is generally believed that the Cabinet Sub-Committee was appointed and a report was obtained from it only in order to frustrate the report of the Commission. In this manner Ayub Khan could change the original shape of the Commission's recommendations.

The constitutional proposals were finally discussed at the Governors' Conference held in Rawalpindi from 24 to 31 October 1961. The Governors' Conference was attended by the provincial governors, central ministers, and senior officers. It was decided that the President would announce the outline of the constitution soon after Governors' Conference, but it was announced in its entirety in March 1962. While the Governors' Conference was under way, Ayub declared in his speech on the third anniversary of 'Revolution Day' that the constitution would be capable of producing a strong, and stable government, with an emphasis on a strong executive.<sup>29</sup>

However, the Governors' Conference had appointed a drafting committee with Manzur Qadir and Law Secretary, Abdul Hamid, as members. The committee was authorized to enlist, if necessary, the services of experts on constitutional law. It took about four months to finally draft the constitution which was announced in a broadcast to the nation by Ayub on 1 March 1962. In his speech Ayub referred to the pledge given on 8 October 1958 to restore democracy in Pakistan and claimed that the new constitution represented the fulfilment of the pledge.<sup>30</sup> Anyhow, the constitution was enforced on June 8, 1962 when Martial Law was lifted.



## **The 1962 Consitution Vs Report of the Constitutions Commission**

After promulgating the 1962 Constitution, it became crystal clear that there was a sharp divergence between the two documents i.e. the 1962 Constitution and Report of the Constitution Commission. The ruling junta did not pay proper heed to the proposals drafted by Justice Shahabuddin and his team. Ayub Khan incorporated his own will by any means in the future constitution of the country. The following lines will draw a comprehensive account of that sharp contradiction or divergence which existed between the constitution of 1962 and the report of the Commission.

The Constitution Commission did not favour Basic Democrats as an electoral college because it considered that they could be corrupted easily.<sup>31</sup> It was of the opinion that the President because of the extraordinary position he occupied under the presidential system should command the confidence of the people and that such confidence would be forthcoming only by a direct election.<sup>32</sup> While Ayub Khan favoured indirect elections through Basic Democrats. His argument in this regard was as under:

I could not see why Basic Democrats should not become an electoral college, here we had eighty thousand members elected directly by the people on the basis of adult franchise and, they, in fact formed the 'Grand Assembly of Pakistan'. Why should not they choose the President and members of legislature?<sup>33</sup>

Hence, the 1962 Constitution incorporated the method of indirect elections for the President and members of central as well as provincial legislature through Basic Democrats and thus neglected the recommendations of the Commission in this respect.

In view of the wide range of functions and responsibilities conferred on the President, the Commission recommended the office of Vice-President.<sup>34</sup> But Ayub Khan could not agree to the Commission recommendation for the creation of a post of Vice-President, to whom the President should delegate some of his functions.<sup>35</sup> Therefore, the office of Vice-President did not find place in the Constitution of 1962.

Though the Commission recommended a presidential form of government, it suggested effective checks and balance which were not incorporated in the new constitution.<sup>36</sup> The 1962 Constitution empowered the President to make all key appointments. He could appoint the Governors, central ministers, the Election Commissioner and the Auditor

General of Pakistan.<sup>37</sup> Whereas the Commission recommended the power of approval to be provided to the Senate in the course of the above appointments which were to be made by the President.<sup>38</sup>

The 1962 Constitution provided that the President could be removed from his office on a charge of violating the constitution or for gross misconduct. For that purpose a resolution was to be tabled by one-third of the members of the National Assembly. If the resolution was passed by the votes of not less than three quarters of the total members of the Assembly, the President should forthwith cease to hold office and should be disqualified from holding public office for a period of ten years. If the resolution for removal of the President failed to obtain one-half of the total numbers of the National Assembly, the movers of the resolution would cease to be members of the National Assembly.<sup>39</sup> Whereas the Constitution Commission recommended that the resolution for impeachment of the President should be signed by not less than one-fourth of the total number of the House of People and would not be deemed as passed unless two-third of the total number of the Senate voted in its favour.

According to the Constitution of 1962 the central legislature of Pakistan was consisted of the president and one house, known as the National Assembly.<sup>40</sup> It had 156 members which were to be elected on the basis of parity of representation between East and West Pakistan. Of these, three seats for each province were reserved for women.<sup>41</sup> In addition, women could contest from general seats if they wished. The general members of the National Assembly were to be elected by the elected members of Basic Democracies.<sup>42</sup> Whereas the Commission recommended a bicameral legislature consisting of a lower house to be known as the House of People and an upper house to be known as the Senate. The House of People was to consist of 200 members, out of which six seats were to be reserved for women, who could also contest from general seats. The House of People was to be elected directly by the people on the basis of parity of representation between East and West Pakistan. While the Senate was to be consisted of forty-eight seats, forty elected by an electoral college consisting of the House of People and Provincial Assemblies on the basis of parity, i.e. 20 from each province, from amongst meritorious personalities aged 50 years and above, not being members of any of the said legislatures. The remaining eight were to be nominated by the President. However, there was no reservation of seats for women in the Senate.

The 1962 Constitution was a rigid one as it provided a rather stiff process of amendment. According to Article 209, the Constitution could

be amended only when the proposed amendment was passed by an enhanced majority of at least two-third of the total number of the members of National Assembly and assented by the President. Two facts made it rigid. If the President refused to assent to an amendment passed by the two-third majority of the National Assembly, it could again pass it, but by three-fourth majority votes, even then it would not necessarily be adopted. If he liked, the President might still withhold his assent and refer the matter to the electoral college.<sup>43</sup> If the bill got support of majority members of electoral college, the President would be deemed to have assented the bill on the day, the result was declared.

However, a bill to amend the Constitution that would have the effect of altering the limits of a province could not be passed by the National Assembly unless it had been approved by a resolution of the Assembly of the province concerned by two-third of the total number of members of the Provincial Assembly.<sup>44</sup>

Unlike the Constitution of 1962 the Commission recommended that any amendment to the constitution would be subject to the assent of the President in the same manner as any other pieces of legislation, with the difference that the bill for amendment should be supported by a two-third majority of the total number of both the Houses sitting together. If the President withheld his assent and referred the bill back to the legislature, the effect of his veto could be nullified by a three-fourths majority of the two Houses sitting together.<sup>45</sup>

The Chief Justice of the Supreme Court was to be appointed by the President and the other judges by the President after consultation with the Chief Justice.<sup>46</sup> Whereas the Commission recommended different procedure from that of 1962 Constitution for the appointment of the Chief Justice of the Supreme Court. It proposed that a recommendation should be made by the retiring Chief Justice to appoint the next senior judge of the Court as the Chief Justice of the Supreme Court. In case the President should exercise his discretion when the retiring Chief Justice should not recommend the next judge.<sup>47</sup>

Regarding the appointment of other judges of the Supreme Court, the Commission favoured the procedure suggested by the Law Commission that recommendation for a judgeship should emanate from the Chief Justice after consultation with his colleagues and as a matter of convention, the President should accept that recommendation.<sup>48</sup>

According to the 1962 Constitution a Supreme Judicial Council was to be constituted by the President, consisting of the Chief Justice, the two senior judges of the Supreme Court and the Chief Justice of the two

High Courts. The President, on the receipt of information indicating that a judge of High Court or Supreme Court was no longer able to perform the duties of his office on account of physical or mental illness or that he had been guilty of gross misconduct, could direct the Council to conduct an inquiry and if the information was found correct, he could remove the judge.<sup>49</sup> Whereas the Commission proposed a method of impeachment with regard to the removal of the judges of the Supreme Court which was as follows:

The resolution for impeachment should be signed by not less than one-fourth of the total number of the House of People and fourteen days notice thereof should be given before it would be moved in the said House and, if the resolution was passed by a majority of the total number of the said House, the trial on the charges alleged in the resolution should be held by the Senate presided over by the Vice-President. The person impeached would have to vacate his office, in case he was found guilty by two-third of the total number of the members of the Senate.<sup>50</sup>

The 1962 Constitution did not contain any provision with regard to fundamental rights. They were, however, embodied in the constitution as "principle of law making" seeking to maintain and guarantee the fundamental rights, but were not justiciable.<sup>51</sup> These principles of law making were no more than pious declarations, since there was no remedy if a fundamental right was violated.<sup>52</sup> Whereas the Constitution Commission recommended that fundamental rights contained in the 1956 Constitution should be incorporated in the new constitution but without affecting the Land Reforms and the Frontier Crimes Regulation.<sup>53</sup> According to the 1956 Constitution no law inconsistent with these rights would be passed and any existing law inconsistent with them would be declared void to the extent of repugnancy.<sup>54</sup>

The 1962 Constitution introduced indirect elections not only for the President but also for the National as well as Provincial Assemblies.<sup>55</sup> Each province was to be divided into not less than forty thousand territorial units to be known as electoral units.<sup>56</sup> Any citizen who was at least twenty-one years of age, of sound mind and a resident of an electoral unit was entitled to be enrolled on the electoral roll for that electoral unit.<sup>57</sup> The person enrolled on the electoral roll for an electoral unit would elect from amongst themselves a person of at least twenty-five years age who would be an elector for that unit. The electors for all electoral

units in both provinces would constitute the electoral college of Pakistan and would be known as the members of the electoral college.<sup>58</sup>

However, the Commission examined the problem with reference to Basic Democracies and argued that in view of the wide responsibilities conferred on the President under the proposed constitution, it was desirable that he should be elected directly by the people. Similarly, rejecting Basic Democracies as an electoral college, the Commission recommended that the members of the legislatures, both central and provincial, should also be elected directly by the people.<sup>59</sup> It further suggested that the electoral college for the Senate would be consisted of the House of People and the Provincial Assemblies.<sup>60</sup> Beside it, the Constitution provided the principle of joint electorate for all elections.<sup>61</sup> While the Commission recommended separate electorate to be the mode of determining constituencies and elections.

Article 173 of the 1962 Constitution banned the formation of political parties until the legislature passed law for their existence.<sup>62</sup> While the Constitution Commission had already rejected in this regard the suggestion of the official delegation to disallow political parties. The existence of political parties was deemed as prerequisite of any kind of democracy. So, well organized political parties were considered more essential by the Commission for the smooth functioning of a democratic government.

Though the Constitution of 1962 was fundamentally different from the recommendations of the Constitution Commission yet Ayub Khan referred to the report as his working draft without pointing out the essential differences. He thanked the members of the Commission especially its Chairman, Shahabuddin for helping him to prepare the constitution. The immediate effect of the President's observation was that the people thought that the Constitution of 1962 was based on the Commission's report. When press representatives contacted Justice Shahabuddin, he told them that there were fundamental differences between the recommendations of the Commission and the new constitution. However, his statement to the press was suppressed by the Information Department under instructions from Ayub Khan and Manzur Qadir.<sup>63</sup>

## **Conclusion**

To sum up, the study reveals that Ayub Khan established the Constitution Commission to secure justification in favour of his decision to abrogate the 1956 Constitution. It seems that he wished to get legal and moral cover in favour of his unconstitutional and illegal measures.

He was also seeking to give sacred burial to the late Constitution under the impression of the failure of parliamentary democratic experience in Pakistan. The establishment and the recommendations of the Commission served the purpose of Ayub Khan's Government in two ways. On the one hand it carried the oft-repeated assertions of Ayub Khan's Government that parliamentary democracy was neither suitable nor workable in the Pakistani context. On the other hand it established an impression that Ayub Khan was eager to seek guidance in the process of evolution of the new constitution based on the principles of presidential democracy which was in fact a long cherished dream of Ayub Khan to arrogate all the executive authority to his own person. So far as the recommendations of the Commission were concerned, they were not binding on Ayub Khan anyway as he was free to selectively choose some recommendations and reject others as per his sweet choice and will. The exercise of the establishment of the Constitution Commission and its recommendations facilitated Ayub Khan in the process of scaffolding of the new constitution which represented his political ideals in letter and spirit. Though Ayub Khan didn't incorporate all the recommendations of the Commission in his final draft constitution yet he successfully established an impression that 1962 Constitution was a brain child of the Constitution Commission. Ayub Khan ignored the recommendations of the Commission and incorporated his own will in the future constitution which ultimately led to a general view that the 1962 constitution was one man show. It also demonstrated how the ruling junta influenced the constitutional making process by incorporating its own will in state's fundamental law and gibbeted the proposals of the Constitution Commission.

### Notes and References

1. Wayne Wilcox, "Pakistan: A Decade of Ayub" in *Asian Survey*, vol. IX, No. 2, *A Survey of Asia in 1968*, Part II, Feb., 1969, p. 87.
2. Lawrence Ziring, *The Ayub Khan Era: Politics in Pakistan 1958-1969*, Karachi, Paramount Publishing Enterprise, 1971, p. 10.
3. Justice Shahabuddin was born on 13th May 1895 at Ellore in Madras Presidency. He entered the Indian civil service in November 1921. He served in Madras Presidency as a Sub-collector, Joint Magistrate, District and Session Judge and a Judge of the High Court at Madras. After independence, he opted for Pakistan. He was appointed Judge of the High Court of Dacca and later became the Chief Justice of that Court. In 1952 he was elevated to the Federal Court of Pakistan.

He remained Governor of East Pakistan from December 1954 to June 1955. Later on he became the Chief Justice of Federal Court of Pakistan where from he retired in 1960. He died on April 2, 1971. See, Muhammad Shahabuddin, *Recollections and Reflection*, Lahore, P.L.D. Publishers, 1972, p. ii.

4. The members of the Commission from Western Wing of the country were, (i) Tufail Ali who served as member of the Commission was a leading lawyer of Karachi. In 1946 he was appointed as Assistant Public Prosecutor of Sind Government and later became Assistant Advocate General of Sind and held this office till 1954, (ii) Mian Naseer A. Sheikh was a well-known industrialist. He remained Director of Pakistan Industrial Development Corporation (PIDC) from 1953 to 1956 and led various delegates to international conferences on trade, commerce and industry, (iii) Sardar Habibullah Khan represented agricultural sector in the country, (iv) Arbab Ahmad Ali Jan was a retired judge. In 1949-50 he was appointed Commissioner and Secretary General of Azad Kashmir Government. He again came back to the Khyber Pukhtunkhwa Province (previously known as NWFP) and served as Secretary Local Self-Government and also served in Excise and Taxation Department, and (v) Mohammad Sharif, a retired judge of the Supreme Court was an expert on Islamic law. *Report of the Constitution Commission*, Karachi, Government of Pakistan Press, 1961, Dawn, Karachi, 20 February 1960, Altaf Ullah, "Shahabuddin's Commission Report" Unpublished M.A Thesis, Department of Pakistan Studies, Government Postgraduate College, Mansehra, 2003-2004, pp. 38-39.
5. The members of the Commission from Eastern Part of the country were, (i) Obeidur Rehman Nizam represented commerce who took keen interest in the development of education, health and social services of the country, associated with over fifty public organizations, (ii) Azizuddin Ahmad a staunch Muslim Leaguer who was elected member to the first Constituent Assembly of Pakistan in 1947 and member of Pakistan delegation to United Nation General Assembly and Commonwealth Conference in 1949. He remained the Minister of State for Minorities Affairs in 1951-53 and elected member of National Assembly of Pakistan in 1954, (iii) Abu Sayeed Choudhury was a well-known barrister. He was a senior advocate of the Supreme Court of Pakistan, (iv) D.N. Barori who represented the interest of minorities, was a member of the Scheduled Castes, and (v) Aftabuddin Ahmad was the last one from East Pakistan who represented agriculture. *Pakistan Times*, Lahore, 18 February 1960, Dawn, Karachi, 20 February 1960, *Report of the Constitution Commission*, Altaf, "Shahabuddin's Commission Report", p. 39.
6. Mohammad Ayub Khan. *Friends not Masters: A Political Autobiography*, Karachi, Oxford University Press, 1967, pp. 210-211.
7. *Report of the Constitution Commission*, Karachi, Government of Pakistan Press, 1961, p. 1.
8. *The Pakistan Times*, Lahore, 18 February 1960, *Nawa-i-Waqt*, Lahore, 18 February 1960.
9. M. Rafique Afzal, *Political Parties in Pakistan, 1958-1969*, vol. II, Islamabad, National Institute of Historical and Cultural Research, 1998, p. 38.
10. See *Constitution Commission Questionnaire*, Karachi, Government of Pakistan Press, 1960, *Annexures to the Questionnaire Issued by the Constitution Commission*,

- Karachi, Government of Pakistan Press, 1960, Altaf Gauhar, *Ayub Khan: Pakistan's First Military Ruler*, Lahore, Sang-e-Meel Publications, 1993, p. 170.
11. Afzal, vol. II, p. 38.
  12. *Report of the Constitution Commission*, p. 2.
  13. *Ibid.*, p. 6.
  14. Safder Mehmood, *Constitutional Foundation of Pakistan*, Lahore, Bookland Publishers, 1985, p. 420.
  15. Hamid Khan, *Constitutional and Political History of Pakistan*, Karachi, Oxford University Press, 2001, pp. 231-232.
  16. *Ibid.*, p. 232.
  17. *Report of the Constitution Commission*, pp. 46-47.
  18. *Ibid.*, p. 48.
  19. *Ibid.*, p. 28.
  20. *Ibid.*, p. 48.
  21. G.W. Choudhury, *Democracy in Pakistan*, Dacca, Green Book House, 1963, pp. 149-150.
  22. *Report of the Constitution Commission*, pp. 67-68.
  23. *Ibid.*, p. 65.
  24. *Ibid.*, p. 68.
  25. He was the President of West Pakistan Chamber of Agriculture, member of the Government Advisory Council on food and agriculture, and member of Pakistan Central Cotton Committee. He took keen interest in the advancement of agriculture in Pakistan since independence. *Dawn*, Karachi, 20 February 1960. Altaf, "Shahabuddin's Commission Report", p. 39.
  26. *Ibid.*, p. 109.
  27. *Speeches and Statements: Field Marshal Mohammad Ayub Khan*, vol. III, July 1960 to June 1961, Karachi, Pakistan Publications, n.d., p. 127.
  28. Manzur Qadir served as Minister for External Affairs in Ayub Khan's cabinet (1958-62). He chaired the Constitution Committee appointed by Ayub Khan in order to critically evaluate the proposals of the Constitution Commission. He was highly respected by President Ayub Khan particularly by virtue of his ability and similar views on the future constitution of Pakistan. That is why, Ayub Khan ignored even his Law Minister and appointed him as the head of the Committee. Lawrence Ziring, *The Ayub Khan Era: Politics in Pakistan 1958-1969*, pp. 23-25, S.A. Saeed, *President without Precedent*, Lahore, Lahore Book Depot, 1960, p. 7.
  29. Hamid Khan, p. 254.
  30. *Ibid.*, p. 255.
  31. *Report of the Constitution Commission*, p. 78.
  32. *Ibid.*, p. 64.
  33. Ayub, p. 214.
  34. *Ibid.*, p. 234.
  35. Ayub, p. 215.
  36. Shahabuddin, p. 130.
  37. *The Constitution of the Republic of Pakistan, 1962*. Article 33, 66, 147 and 199.
  38. *Report of the Constitution Commission*, p. 85.



39. *Ibid.*, Article 13.
40. J.S. Bains, "Some Thoughts on Pakistan's New Constitution" in Verinder Grover and Ranjana Arora, Ed. *Political System in Pakistan*, vol. II, New Delhi, Deep and Deep Publications, n.d., p. 180.
41. *The Constitution of the Republic of Pakistan, 1962*, Article 20.
42. *Speeches and Statements*, vol. IV, p. 173.
43. Mazhar-ul-Haq, *An Introduction to the Constitution of Pakistan*, Lahore, Noor Sons Publishers, 1968, pp. 17-18.
44. *The Constitution of the Republic of Pakistan, 1962*, Article 210.
45. *Report of the Constitution Commission*, p. 127.
46. *The Constitution of the Republic of Pakistan, 1962*, Article 50.
47. *Report of the Constitution Commission*, p. 93.
48. *Ibid.*
49. G.W. Choudhury, pp. 237-238.
50. *Report of the Constitution Commission*, p. 48.
51. Saeeda, "Political and Constitutional Development in Pakistan 1958-1972", Unpublished M.A. Thesis, Pakistan Studies Centre, University of Peshawar, 1994, pp. 58-59.
52. Afzal, vol. II, p. 53.
53. *Report of the Constitution Commission*, p. 103.
54. *The Constitution of the Islamic Republic of Pakistan, 1956*, Article 4.
55. Hamid Khan, p. 276.
56. *The Constitution of the Republic of Pakistan, 1962*, Article 155.
57. *Ibid.*, Article 157.
58. *Ibid.*, Article 158.
59. G.W. Choudhury, p. 165.
60. *Report of the Constitution Commission*, p. 77.
61. Saeeda, p. 55.
62. Syed Shabir Hussain, *Lengthening Shadows*, Rawalpindi, Mujahid Publications, 1970, p. 71.
63. Muhammad Shalabuddin, pp. 127-28.