

The Exercise of Discretionary Powers by Governor Generals and its Impact on Constitution Making in Pakistan (1947-55)

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ABSTRACT

After coming into being, Pakistan adopted the Government of India Act 1935, as an interim constitution which provided for parliamentary system on one hand, and on the other gave wide discretionary powers to the Governor General, which were not customary in the parliamentary form of government. Usually in the parliamentary system, the head of the state exercises powers on the advice of Prime Minister but in the period under discussion Pakistan's Governor Generals, except the second one, exercised the powers provided to them by the interim constitution in their own discretion, which affected the working of parliamentary system in the country and became one of the major causes of constitutional deadlock. The exercise of these discretionary powers also weakened the fragile democratic political environment and party politics. This paper analyzes as why and how the exercise of these discretionary powers by the Governor Generals affected the parliamentary system and delayed the constitution making and hampered the overall polity in Pakistan from 1947 to 1955.

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The Government of India Act 1935 and the Powers of Governor General

When Pakistan came into being on August 14, 1947, it had no constitution of its own to be put into operation. Under Section 8 of the Indian Independence Act of 1947, the Government of India Act 1935 with certain amendments was adopted as the interim constitution of the state.¹ The Constituent Assembly which was also acting as a federal legislature was immediately called to frame new constitution which should fulfil requirements of the newly independent state.² The interim constitution was provided for the British parliamentary system both at center and in provinces.³

In a parliamentary system, all executive authority in state is exercised by chief executive who is usually called Prime Minister and the Governor General, president or king has to act on the advice of chief executive or Prime Minister. It was due to the above spirit or essence of parliamentary system that compelled Mr. Atlee to point out on the floor of the House in British Parliament during the second-reading debate on the Indian Independence Bill on July 10, 1947 that, "unlike the Government of India Act 1935, which granted discretionary executive powers to the Governor General and the governors, but the provision in Section 8 of the new bill placed the exercise of the executive authorities in the same position as Dominion Governor Generals that is to say they would act on the advice of their ministers."⁴ But since Governor Generals were empowered to adopt the India Act 1935, as they deemed necessary according to section 9 of the Indian Independence Act, Atlee in the same debate had to admit that the powers given to Governor General to bring the act in to operation were extremely wide.⁵

1 The 1935 Act adopted in Pakistan as an Interim Constitution, Section 8.

2 *The 1935 Act* adopted in Pakistan as an Interim Constitution, Section 8.

3 *The 1935 Act* adopted in Pakistan as an Interim Constitution, Section 8.

4 Alan Campbell Johnson, *Mission with Mountbatten* (London: Robert Hale Ltd., 1951), 65.

5 Johnson, *Mission with Mountbatten*.

Under the new dispensation all the powers of Governor General listed in Section 9 to 17 of the Government of India Act 1935 were deleted. Moreover, the Schedule of Pakistan Provisional Constitutional Order, 1947 omitted the Ninth Schedule of the Government of India Act 1935. It was under the Ninth schedule that Governor General of undivided India had been exercising his powers. Under the Section 92 of the adopted Act, Governor General was empowered to exercise his authority over excluded areas and partially excluded areas.⁶

However, powers exercisable in his discretion and under his individual judgment were deleted as it was expected that he would act on the advice of his ministers according to the essence of Parliamentary system. But there was no specific provision which laid down that Governor General was to act on the advice of ministers. It was the main reason that under the Government of India Act 35, as adapted in Pakistan, the Governor General continued to exercise such wide discretionary powers.⁷

Under the Government of India Act 1935, Governor General was the executive head of the federation. All the key appointments were to be made by him. Governor General in his discretion was empowered to choose Prime Minister and his ministers and their dismissal was also his discretionary powers. In this regard, the Prime Minister's power of selection of his cabinet ministers was grossly restricted *vis-à-vis* Governor General. The Governor General could himself select the minister and also allocate portfolios to them.⁸ He had the power to appoint principal military officers in his own discretion. He had the power to summon and prorogue the central legislature and send back the bill passed by the legislature and for certain bills his prior sanction was necessary.⁹

6 *Indian Independence Act 1947*, Section 8.

7 G.W. Choudhry, *Constitutional Development in Pakistan* (Dacca: University of Dacca, 1967), 29.

8 Choudhry, *Constitutional Development in Pakistan*.

9 Choudhry, *Constitutional Development in Pakistan*, 29.

Similarly, the functions of Governor General with respect to defense, ecclesiastical and external affairs and those in relation to the Tribal Areas were to be exercised under his discretion. Those functions and powers which the Governor General was to exercise under his individual judgment were defined by the Act as his special responsibilities. Moreover, his discretionary powers were also out of the purview of ministerial advice.¹⁰

The 1935 Act had conferred upon Governor General wide emergency powers. The powers were retained in the adopted Act. Under Section 102 of the adopted Act the Governor General could declare grave emergency whereby the security or economic life of Pakistan or any part thereof was threatened by war or internal disturbance or circumstances arising out of any mass movement of population from or into Pakistan. The article had even empowered Governor General to make laws for any province or any part of it. Under Clause 5 of this section, he could declare a proclamation of emergency even before the security or economic life of Pakistan was threatened by the actual occurrence of war or disturbance or other circumstances, if the Governor General was satisfied that an imminent danger existed.¹¹

The Governor General also had the powers of legislation by ordinance. However, the ordinances had first to be laid before the federal legislature for its approval. If the legislature fails to take any action, they would continue to have the force of law.¹²

The Governor General not only enjoyed substantial powers to control central politics but also enjoyed wide discretionary powers to control provincial politics as well. The provincial governors were to be appointed by him and were constitutionally bound to act on the advice of Governor General.

10 *Government of India Act 1935.*

11 *Section 102, 1935 Act.*

12 *Choudhry, Constitutional Development in Pakistan,30.*

In the exercise of his powers with respect to choosing, summoning and dismissing the provincial ministers, a governor was under the general control of Governor General.¹³

According to parliamentary norms and traditions the Governor General was presumed to act on advice of the cabinet. But the real position in Pakistan was that the role of Governor General was unlike that of constitutional figurehead with the exception of Nazimuddin, the second Governor General of Pakistan, governors general usually exercised the above powers in his own discretion which affected the parliamentary system of government in the formative years of Pakistan and thus blocked the healthy parliamentary traditions to take roots in the most fragile and weak democratic environment. It is one of the major reasons due to which parliamentary system could not work according to its true spirit due to the exercise of extraordinary discretionary powers of Governor General.

Quaid-e-Azam Muhammad Ali Jinnah as Governor General and his Exercise of Discretionary Powers

Quaid-e-Azam Mohammad Ali Jinnah became the first Governor General of Pakistan. Though he was the Governor General, who is considered to be the nominal head with no real powers but unlike constitutional figurehead, Jinnah exercised real governmental powers. The cabinet rarely functioned without his instructions.¹⁴

Rather the first cabinet was the creation of him. It was he who picked Liaquat Ali Khan as Prime Minister. He regularly presided over the meetings of central cabinet and issued directives to Prime Minister, cabinet ministers and secretaries of different departments. He was kept informed about the important cabinet decisions and was also the chairman of cabinet emergency committee.¹⁵

13 *Government of India Act 1935*, Section 5, 51.

14 Allen McGrath, *The Destruction of Pakistan's Democracy* (Karachi: Oxford University Press, 1996), 33-35.

15 Choudhry, *Constitutional Development in Pakistan*, 31.

K.B. Sayeed has quoted Campbell Johnson book, *Mission with Mountbatten*, which states that Jinnah put forward his name for Governor Generalship for the reason that he would exercise powers under Ninth Schedule rather than part 11 of the 1935 Act which gave dictatorial powers, purely unknown to any constitutional figurehead. His concept of Governor Generalship was made plain enough when he at once invoked the special powers allowed under the Independence Act.¹⁶ Though Campbell Johnson's argument had been refuted by K.B. Sayeed, however, it is quite clear that throughout his Governor Generalship he exercised such executive powers which were unknown to any constitutional figurehead.¹⁷

It was Quaid-e-Azam who created separate Ministry of Evacuee and Refugees Rehabilitation to tackle properly the problem of refugees. He also created Ministry of State and Frontier Regions and took its control in his own hands. Here the Governor General had created a unique precedence in the sense that besides being Governor General he had a ministry under his own control.

Quaid-e-Azam equally interfered in the provincial administration which was the domain of provincial government. He also appointed Sir Archibald as his financial advisor.¹⁸ To establish capital for the federation and to provide seat for the central government, he separated Karachi from Sindh and appointed his own administrator responsible to him. Balochistan was constitutional anomaly, as one half of it was under the suzerainty of Khan of Kalat and the other under direct control of Governor General. Quaid-e-Azam controlled the administration of Balochistan through his nominee responsible to him and not to the cabinet.¹⁹ The princely states of Bahawalpur and Khairpur and four states of Kalat, Lasbela, Makran and Kharan were

16 K.B. Sayeed, *The Political System of Pakistan* (Boston: Houghton Mifflin Company, 1967), 62.

17 Johnson, *Mission with Mountbatten*, 65.

18 Choudhry, *Constitutional Development in Pakistan*, 31.

19 McGrath, *The Destruction of Pakistan's Democracy*, 45-46.

wholly surrounded by Pakistan territory. After the delay of few months they signed instrument of accession in favour of Pakistan.²⁰

Jinnah had a decisive voice in the sort of advice that provincial government tendered to Governor General. It seemed to be a routine matter of the Governor General to preside over meetings of provincial cabinet.²¹ In all the four provinces governors were appointed by him. Amongst the four governors, three were British Officers and not the sons of the soil. Sir George Cunningham, Sir Francis Mudie and Sir Frederick Bourne were appointed as governors in North West Frontier Province, West Punjab and East Bengal respectively.²² None of them were appointed on the advice of chief executive or Prime Minister.

Though it is quite clear that Prime Minister Liaquat Ali Khan had no objection over their appointments, rather he welcomed the step and publicly defended it. But the opposition particularly Abdul Ghaffar Khan severely criticized it on the ground that in India, Indian governors had been appointed but in Pakistan the Britishers against whom we had fought had become our governors, and he questioned the very bases of independence.²³

These governors enjoyed vast and crucial executive authority in the respective provinces and always exercised their powers on the advice of Governor General and considered themselves responsible only to the Governor General and not to the Prime Minister, Liaquat Ali Khan. They practically presided over the meeting of provincial cabinets. In Sindh, Governor Ghulam Hussain Hidayatullah was so powerful that he even reallocated the portfolio of provincial ministers against the wishes of chief

20 Masud Ahmad, *Pakistan: A Study of Its Constitutional History 1857 – 1975*, (Lahore: Research Society of Pakistan, 1983), 90.

21 McGrath, *The Destruction of Pakistan's Democracy*, 46-47.

22 McGrath, *The Destruction of Pakistan's Democracy*, 45.

23 Ayesha Jalal, *The State of Martial Rule* (Cambridge: Cambridge University Press, 1990), 91.

minister.²⁴The governors in N.W.F.P. and West Punjab, Sir George Cunningham and Sir Francis respectively were empowered to play an executive role beyond their constitutional duties.²⁵

One can easily imagine the powers of governor in the provinces from the fact that on the advice or instructions of the Governor General they even dismissed those provincial governments which enjoyed majority in the provincial legislature on the advice or instructions of Governor General. The first ministry which had to go in this respect was that of Dr. Khan Sahib in North West Frontier Province (now KP). Dr. Khan's Ministry was dismissed on August 22, 1947 by the governor on the charges that Dr. Khan Sahib, the Chief Minister, had refused to take the new oath of loyalty to Pakistan.

But later on it became quite clear that Khan Sahib was dismissed on the clear instructions of Governor General. The Ministry was dismissed under Sub-section (5) of Section 51, of the 1935 Act as adopted in Pakistan. Moreover, the governors kept close contacts with the provincial cabinet ministers as they had to keep inform the Governor General through fortnightly letters about the affairs of the province. This system was started during the period of Lord Linlithgow which was kept continue during Lord Wavel and was then reintroduced by Jinnah in 1947.²⁶

According to parliamentary tradition, the governor is considered to be the representative of the central government and if any upheaval triggers or problem arises he has to give information to the chief executive or Prime Minister because it is the Prime Minister who enjoys real powers in the state and is responsible to the nation or people if any untoward situation occurs in the country. But unfortunately in Pakistan it was the Governor General who enjoyed real powers in the state and the governors also kept

24 McGrath, *The Destruction of Pakistan's Democracy*, 47.

25 Jalal, *The State of Martial Rule*, 88

26 McGrath, *The Destruction of Pakistan's Democracy*, 46-48.

him informed about the affairs of the provinces. Jinnah was also aware of the repercussions to himself dismiss the ministry, therefore he advised the governor of the province Sir George Cunningham to dismiss the ministry. The dismissal of Khan's Ministry created a precedence which was later on used by successive central governments to use the 'reserve powers' against the provincial governments.²⁷

One thing is important to be mentioned here that Governor General did not direct the governor of the respective province to dismiss the Ministry on the advice of Prime Minister who was chief executive of the government and directly responsible to the Constituent Assembly or central legislature.

In true parliamentary system, it is an established norm that governor of any province used to be the representative of the central government in that province and exercised all his powers on the advice of chief executive or the Prime Minister. But in Pakistan, the governor on the instructions of Jinnah, the Governor General, invited Abdul Qayyum Khan to form the Muslim League Ministry in the province. Jinnah gave the instruction to governor under Section 51(5) of the government of India Act 1935 as adopted in Pakistan. The said section which stated that in the matters of 'choosing and summoning and the dismissal of ministers,' the governor had to obey the orders of Governor General. It must be clarified that the section was inserted in the 1935 Act by Lord Mountbatten on the advice of Jinnah.²⁸

Another provincial Ministry which was dismissed during Quaid-e-Azam's period as Governor General was that of M.A. Khuro, the premier of Sindh on April 26, 1948 by the governor of the province on the instructions of Governor General. The central government exploited the differences in the Ministry. The assembly and the provincial league advised the provincial Governor, Ghulam Hussain Hidayatullah, who himself was an intriguer and had also

27 Jalal, *The State of Martial Rule*, 88.

28 *Indian Independence Act*, Section 51(5)

created serious differences with Khuro on the issue of reallocation of cabinet portfolios without the consent or advice of chief minister, to dismiss the ministry.²⁹ After the dismissal of Mr. Khuro, Illahi Bakhsh was appointed as chief minister but only after he had promised to play the centre's game.³⁰ Here again it is worth mentioning that in the dismissal of Khuro Ministry of Sindh, the Governor General did not act on the advice of Prime Minister, the chief executive of the central government, rather he exercised the powers in his own discretion.

According to parliamentary system, the Governor General or president is considered to be the nominal or titular head of the state, enjoying no real powers and has to act on the advice of Prime Minister or chief executive of the government. But in Pakistan in very beginning, though the system of government, which was introduced through interim constitution was parliamentary one but the Governor General was empowered with some real executive discretionary powers which hampered the spirit of parliamentary system, which was parliamentary supremacy. From the very beginning the Governor General started to dismiss the provincial governments, which enjoyed the confidence of the majority in the respective provincial legislatures, which is very much against the spirit of parliamentary democracy — the supremacy of parliament.

From the above discussion, one can argue that elected or representative institutions in Pakistan have been at the receiving end since inception. The Governor General in the center enjoyed and exercised real authority *vis-à-vis* Prime Minister and in provinces the governors enjoyed real authority at the expense of chief ministers. The Governor General and his representatives, the governors, heavily relied and depended on military and bureaucracy, the two

29 McGrath, *The Destruction of Pakistan's Democracy*, 47.

30 McGrath, *The Destruction of Pakistan's Democracy*, 47.

disciplined, powerful and non-representative institutions of the state.³¹

The seven ministers of the first central cabinet who were picked by Jinnah had no independent political base which further shifted the balance of power in favour of administrative machinery or bureaucracy at the expense of cabinet or political executive. Moreover, the administrative bureaucracy was more organized, efficient and had its own structure of command, control and coordination inherited from colonial rulers. On the other hand the political institutions – the cabinet, constituent assembly and the party in government, the Muslim League were far less organized, weak and in no way could be compared to the administrative bureaucracy in this regard.

The 1935 Act had provided for a controlled parliamentary form of government. Under the Act, it was the viceroy who exercised real powers and ruled through a powerful bureaucracy which was free from parliamentary limitations.³² Hence, it was the executive which was supreme over the legislature. When Quaid-i-Azam became the first Governor General of Pakistan, the same precedent was kept continue. It was the Governor General, who enjoyed real power in the state and not the Prime Minister. Again like British viceroy, he also ruled through bureaucracy rather perpetuated the vice regal tradition of political rule in Pakistan. Bureaucracy even made certain crucial constitutional amendment in his name. Section 92 was included in the 1935 Act in July 1948 which empowered Governor General to suspend constitutional machinery in the province and direct the governor of the respective province to discharge the duties of provincial government. As a result, it was the bureaucracy which used the section to dismiss the provincial governments.³³

31 Jalal, *The State of Martial Rule*, 70.

32 Sayeed, *The Political System of Pakistan*, 61.

33 Jalal, *The State of Martial Rule*, 107-108.

Khawaja Nazimuddin as Governor General and his Exercise of Discretionary Powers

After the sad demise of Quaid-i-Azam, Khawaja Nazimuddin succeeded the office of Governor General but not the authority, status and powers, which were enjoyed by Jinnah. Nazimuddin an upright and honest person remained happy with the position of titular head of the state and the actual powers were left with the Prime Minister Liaquat Ali Khan.³⁴ Being well aware of the norms of parliamentary system, the tradition of neutrality and non-interference was set during his period of Governor Generalship. On the first day he made it quite clear that Liaquat Ali Khan was the most suitable person to lead the country on the path marked by Quaid-i-Azam, the founding father of the nation.³⁵ Liaquat Ali Khan took portfolio of State and Frontier Regions from Governor General. The authority previously exercised by Jinnah as Governor General was now transferred and was to be exercised by the Prime Minister. Liaquat Ali Khan became the key stone of cabinet arch, got the effective control over legislature and now had become the effective head of the government.

During Nazimuddin period of Governor Generalship which lasted for 25 months, the country got an excellent opportunity to develop and sustain the conventions necessary for a parliamentary democracy. Of course he was the man who really acted as a constitutional figurehead of the state. The official record of the period concerning high appointments and the state policy is evident from the fact that the Governor General was acting on the advice of cabinet and the practice of Governor General to preside over the meetings of cabinet had almost ceased.³⁶

34 Lawrence Ziring, *Pakistan: Enigma of Political Development* (Boulder: West View Press, 1980), 73.

35 Choudhry, *Constitutional Development in Pakistan*, 32.

36 Muzaffar A Chowdhury, *Government and Politics in Pakistan* (Dacca: Dacca University Press, 1976), 165.

Ghulam Muhammad as Governor General and his Exercise of Discretionary Powers

Liaquat Ali Khan's death caused an emergency situation in which the reserve powers of the Governor General might be expected to operate. Nazimuddin called upon the remaining members of the cabinet to resolve the problem of succession. As there was no apparent candidate, the decision was difficult. Nazimuddin had great political experience and had served as the chief minister of undivided Bengal. It was also considered proper that a Bengali should succeed to the position of real authority. Due to these reasons it was decided that he should become Prime Minister and that Ghulam Muhammad should be the new Governor General. The decision that Nazimuddin should be the chief executive did nothing to establish tradition that the Governor General, being head of the state, should hold himself aloof from every day politics.³⁷

Ghulam Muhammad's introduction to the Governor General's office was not a happy sign. He was a civil servant and had no regard for the customs and traditions of parliamentary system. Throughout his career after the creation of Pakistan, firstly as a civil servant and later on as a finance minister, his disrespect for politicians and representative institutions was well established. His elevation to the post of Governor General had a strong backing of civil and military bureaucracy and the pro-establishment ministers in the cabinet. He was not ready to remain mere a constitutional figurehead.³⁸

Weaknesses on part of Nazimuddin further facilitated his task, as he could not bring any major breakthrough in internal or external affairs. His prestige as a Muslim League leader declined.³⁹ Consequently, bureaucrats were running country in every way except in name and as a result the

37 McGrath, *The Destruction of Pakistan's Democracy*, 81.

38 Rashid Zaman, *Pakistan: A Study of Government and Politics* (Dacca: Munjanab Publications, 1967), 79.

39 Jalal, *The State of Martial Rule*, 177-179.

tussle between politicians and bureaucrats was bound to happen. Nazimuddin's Ministry was facing decline at every front. At the end of 1951, national economy was in bad condition as temporary relief provided by the Korean War had already been over. The Bengali Language crisis was a serious problem for a Prime Minister who belonged to Bengal.⁴⁰ The food crisis in 1952-53 gave an opportunity to land lords, who had political background, to use their force to further destabilize the weak parliamentary system so that it might not be able to pass tenancy laws or introduce land reforms. The Ahmadiya Movement provided an opportunity to the religious political leadership who had earlier strongly opposed the creation of Pakistan; amongst themselves some religious groups like the Ahrars had declared Quaid-i-Azam as *Kafir-e-Azam* [Urdu: leader of infidels] to show their street power and to find ways and means to make firm entry to the power structure of Pakistan. In March, the Ahmadiya riots took place in Lahore and resultantly, military Janta tried to convince the political leadership in Karachi to impose Martial Law in the city but they failed and then on March 6, 1953 the area Commander General Azam imposed Martial Law on his own and dismissed the Doulatana's Ministry. The passing of an unpopular budget further pushed the Prime Minister representing the parliament towards the fragile situation. In emergency meeting which had been convened to discuss the food crisis in Pakistan, the Governor General and senior civil servants joined the Commander-in-Chief, who levelled charges against Prime Minister.⁴¹

All these crises provided a reasonable excuse to Ghulam Muhammad to dismiss Nazimuddin Ministry. On April 17, 1953, Ghulam Muhammad summoned Nizamuddin along with his cabinet to tender resignation. Nazimuddin refused straightaway and consequently he was dismissed. The Governor General had acted under Section 10 of the

40 McGrath, *The Destruction of Pakistan's Democracy*, 84-92.

41 Jalal, *The State of Martial Rule*, 177-179.

1935 Act.⁴² It was without any doubt, a bureaucratic military *coup*.⁴³ On April 17, the Governor General issued a press communiqué, which said:

I have been driven to the conclusion that the cabinet of Khawaja Nazimuddin has proved entirely inadequate to grapple with the difficulties facing the country. In the emergency, which has arisen, I have felt it incumbent upon me to ask the cabinet to relinquish office so that a new cabinet better fitted to discharge its obligations toward Pakistan may be formed...⁴⁴

It was an unfortunate step in the constitutional history of Pakistan. The Governor General had taken an action which was clearly political and beyond the normal scope of constitutional head of the state. The Ministry commanded majority in the House and had just passed the budget.⁴⁵ The Governor General *coup* violated three principles of parliamentary system. Firstly, he had to be impartial and neutral but he took part in party politics and identified himself with particular group. Secondly, the convention of cabinet solidarity had been disregarded. Thirdly, the role of legislature was undermined.⁴⁶ Ghulam Muhammad was the nominee of the Queen while Nazimuddin was the representative of the people. According to the constitution, people's representative was competent to ask the Queen to change her nominee and Governor General was not empowered to dismiss the Prime Minister who commanded majority in the House. The constitution was flouted by Queen's nominee. Such precedents cannot be found in any democratic country.⁴⁷ The Governor General's action had the backing of several ministers. It was, therefore, possible for

42 Keith Callard, *Pakistan: A Political Study* (Karachi: Oxford University Press, n.d), 135.

43 Chaudhry, *Government and Politics in Pakistan*, 169.

44 McGrath, *The Destruction of Pakistan's Democracy*, 99.

45 Safdar Mahmood, *A Political Study of Pakistan* (Lahore: Educational Book Foundation, 1984), 221.

46 Callard, *Pakistan: A Political Study*, 135.

47 Hamid Yusuf, *Pakistan in Search of Democracy 1947-1977* (Lahore: Afrasia Publication, 1980), 43-44.

the cabinet to discuss those areas of policy in which the government's actions had been felt to be lacking in firmness.

Thus major cabinet crisis, which unless resolved by the Prime Minister would have given considerable justification for the intervention by the Governor General. But if such crisis had occurred, Nazimuddin would have appealed to the Muslim League Parliamentary Party or to the Constituent Assembly. In Constituent Assembly, he had the majority and had just passed the budget. Therefore, Governor General's action was as much against the assembly as against the Prime Minister.⁴⁸

The Governor General's *coup* also had the strong backing of military and enabled it to interfere in the power politics as a major force. The military and bureaucratic rule was now on its way to gain legitimacy. This was true of the West Wing but not so in the case of East Wing, where the dismissal of Nazimuddin caused the first major shock to the confidence of East Pakistan.⁴⁹

Governor General took another non-parliamentary step when he appointed Muhammad Ali Bogra as a new Prime Minister. According to parliamentary system, leader of the majority party is summoned to form the government but in Pakistan Prime Minister was appointed first and owned by the majority party afterwards.⁵⁰ Muhammad Ali found that his cabinet had already been chosen for him as six ministers came from the outgoing cabinet and three new ministers were invited by the Governor General rather than the Prime Minister. In certain cabinet decisions the stronger personalities of the cabinet had reached the agreement in advance. They considered themselves responsible to the Governor General rather than that of Prime Minister.⁵¹

Although, Bogra commanded a majority in the assembly, the memories of Khawaja Nazimuddin's fate were fresh in

48 Chaudhry, *Government and Politics in Pakistan*, 84.

49 Callard, *Pakistan: A Political Study*, 136-137.

50 McGrath, *The Destruction of Pakistan's Democracy*, 108-109.

51 Callard, *Pakistan: A Political Study*, 138-139.

minds of the members of the Constituent Assembly. Mohammad Ali Bogra was himself interested in the sovereign position of the assembly therefore, the PRODA Act was hanging as a sword over the politicians' heads and was considered to be a serious weapon in the hands of military bureaucratic establishment to book any member of parliament at any time, was repealed on September 20, 1954.⁵² On the next day a bill was passed which amended section 9, 10, 10A and 10B of the Act. Hence the powers of the Governor General were curtailed. Now the ministers would no longer hold office during the pleasure of Governor General rather they would be individually and collectively responsible to the parliament. The Governor General would no longer nominate Prime Minister and his ministers and dismiss the Prime Minister and his cabinet.⁵³ It was an important step towards the strengthening of parliamentary system of government. Of course it was a serious effort on the part of the members of the constituent assembly to ensure parliamentary supremacy through constitutional amendments.⁵⁴

But the step was totally unacceptable to Governor General Ghulam Muhammad and of course to his constituency – the military and bureaucratic establishment. On October 14, 1954 it was reported that the draft constitution was ready which was due to be adopted on December 25, 1954 with the Governor General's approval on the day of Quaid's birthday. But only after 10 days on December 24, 1954 the Constituent Assembly was dissolved and the Governor General issued a proclamation that:

The Governor General having considered the political crisis with which the country is faced, has with deep regret come to the conclusion that constitutional machinery has broken down. He therefore has decided to declare a state of emergency throughout

52 Choudhry, *Constitutional Development in Pakistan*, 85-86.

53 McGrath, *The Destruction of Pakistan's Democracy*, 85.

54 Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* (New Delhi: Oxford University Press, 1995), 23.

Pakistan. The Constituent Assembly as at present constituted has lost the confidence of the people and can no longer function.⁵⁵

Major General Iskandar Mirza and his Exercise of Discretionary Powers as Governor General

After the dissolution of Constituent Assembly, the Governor General Ghulam Muhammad created serious uncertainty in the country. However, at this critical juncture, the Federal Court interfered and through a verdict compelled the Governor General to create the constituent assembly. The second constituent assembly was the result of the verdict of the Federal Court. It was convened in 1955. Chaudhary Muhammad Ali was elected as the leader of the Muslim League parliamentary party which was the largest political party in the House but had no majority. However, it was successful in making coalition government with the United Front. Chaudhary Muhammad Ali became the Prime Minister. The main test before the new Prime Minister was to frame the constitution. He was successful to give the nation a constitution, although short lived but, solved the problem of constitution making.

Meanwhile, the ailing Governor General had become very weak and was replaced by a strong man Iskander Mirza.⁵⁶ Iskandar Mirza proved no more different from his predecessor. He indulged himself in party politics. The Republican Party was the result of his palace intrigues. Dr Khan Sahib was made its leader. The position in constituent assembly was such that whoever was supported by the Republican Party would get majority in the House. Iskandar Mirza fully exploited the weak party politics and the premier who disagreed with his policies was deprived of majority in the House as the control of Republican Party was in his hands.⁵⁷ Thus he made a musical chair from the office of Prime

55 Choudhry, *Constitutional Development in Pakistan*, 84.

56 Chowdhury, *Government and Politics in Pakistan*, 32.

57 Yusuf, *Pakistan in Search of Democracy 1947-1977*, 50.

Minister and four Prime Ministers were changed in less than two years. He brought both constitutional and political development to a halt. Mirza suspected perhaps with the justification, that Noon had been offered presidency by Suhrawardy and he was not the man to yield authority. Iskandar Mirza imposed Martial Law in the country and invited Commander-in-Chief General Ayub Khan to take the control of governmental affairs. But, he had to quit only after 20 days i.e. on October 27, 1958.⁵⁸

Conclusion

When Pakistan got its independence, it had no constitution of its own. Therefore, the Government of India Act, 1935 was adopted as an interim constitution which provided parliamentary system but unfortunately in the same Act, exclusive discretionary powers were given to the Governor General. It was against the norms and traditions of parliamentary system as in parliamentary system these powers were exercised by the head of government i.e. the Prime Minister. But in Pakistan all the Governor Generals except Nazimuddin exercised these powers in their own discretion and not on the advice of Prime Minister.⁵⁹ This situation grossly affected the working of parliamentary system, which also became one of the reasons to delay constitution making for seven long years.

This aptitude also undermined the party politics and democratic culture could not take its roots. The voice of opposition was crushed and parties were split in several factions to achieve personal or institutional goals instead of national or peoples' objectives. The general elections were not held and the people were not given the chance to elect their representatives democratically. The political institutions

58 Christopher Jafferlot, *The Pakistan Paradox: Instability and Resilience* (Haryana: Random House India, 2015), 215.

59 Golam W. Choudhury, *Pakistan: Transition from Military to Civilian Rule* (Essex: Scorpion publishing, 1988), 153.

i.e. constituent assembly, political parties and political leaderships were weakened.⁶⁰ All this paved the way for the imposition of the first Martial Law in the country. This situation could be averted to a great extent had the Governor General accepted the dignified role of nominal and titular role of the Head of the State and the constituent assembly was regarded as supreme institution in the state and allowed to make constitution without any external pressures.

60 Jafferlot, *The Pakistan Paradox: Instability and Resilience*, 202-204.