Constitutional Reforms: Search for an Alternative Paradigm

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Abstract

People of Pakistan express reservations against working pattern of the government. Most of grievances are related to parliament and judiciary. After independence there emerged no political milieu for growth of democratic culture. Development of institutions took place in such manner that each had to model its dimensions as determined by that. Delay in constitution making alienated population from participating institutions building process. Consequently parliament representing public in democratic manner has yet to emerge. Institution of judiciary has inadequate account of guardianship of society. Administrative organ has occupied decisive position. Institutions are found in divergence entailing stagnancies. Parliamentary resolutions are losing force; judiciary seems inactive to enforce fundamental rights. State needs an institution for resolution of national issues as resolved in Charter of Democracy 2006. Study proposes constitutional court as national forum to furnish political and legal perception to streamline democratic institutions enabling them to perform as required by its population.

Keywords: Constitutional Court; Validation of Extra-constitutional Enactments; Amendments; Democratic Institutions; Parliament; Judicial Organ

I. Introduction

It is alleged that soon after independence Pakistan has to face a complex political situation partly introduced by irresponsible attitude of politicians in parliament and rest due to a partisan role played by the superior judiciary in deciding constitutional issues. The courts in such cases delivered confirmatory judgments that shaped the system critically lying face down attracting the adventurism of armed forces. Consequently half of life of Pakistan experienced several episodes of military rules and the other half passed under its extension. The rulers subverting the constitution introduced a variety of systems of governance under self-drafted constitutional documents (Khawaja Tariq Rahim v. Federation of Pakistan, 1993). When the issues came under judicial review, the superior courts indicated no direction for the political institutions to move for. The judgments mainly abridged the parliamentary supremacy and reduced energies of the representative institutions. Both the institutions i.e. parliament and judiciary lost public attention. The situation at the moment stands deteriorated enough. In order to identify strategies of restoration it appears pertinent to produce a concise survey of constitutional issues, which remained in the state of rising and falling within parliaments and the judiciary.
The conditions adversely affecting political system of Pakistan as stated above are repercussions of constitutional affairs illogically dealt by the parliaments and judiciary since 1947. Under the Independence Act, 1947 Pakistan, until the Constituent Assembly framed a constitution was to be governed by the Government of India Act, 1935. The Constituent Assembly, however, failed to frame a constitution even after a lapse of seven years. On 24th October 1954 Mr. Ghulam Muhammad, the then Governor-General, dismissed the Constituent Assembly on the ground that it had become un-representative. Maulvi Tameez-ud-Din Khan, the then speaker national assembly challenged the action of the Governor-General before the Chief Court of Sindh under Section 223-A of the Government of India Act 1935 (Moulvi Tameezuddin V. Federation, 1955, Sindh, 102.). He prayed for issuance of writs of mandamus and quo-warranto. The Federation of Pakistan raised the plea that section 223-A, under which the issuance of writ was prayed for, was not validly enacted for want of assent of the Governor-General. The Chief Court overruling the objection allowed the petition. In the appeal of federation Federal Court rendered the judgment inoperative on invalidity of the law under which Chief Court had allowed the petition. The two mutually connected incidence of dissolution of assembly and relief granted by the judiciary to the federation had for-reaching effects on political life of the country. The both diminished political development of the state and lessened the faith of people in legislature and the judiciary. The two most important institutions, for a long had nothing to offer to strengthen democratic culture in the society.

Political crises in the country have reached the stage that they are threatening to its survival. The deep-rooted problem of terrorism has trembled the country and its economy. There is found the erosion of the unity of federation, the marginalisation of civil society, the mockery of the constitution and representative institutions. This situation has produced extremism, growing poverty, unemployment, inequality and breakdown of rule of law in the society (Charter of Democracy, 2006).

As the long period of undemocratic rule has adversely affected the democratic institutions as well as the integrity of the country, the nation needs a new direction. The civil society needs a state, which is economically sustainable, socially progressive, politically democratic and pluralist. Federating units need federally cooperative, ideologically tolerant, internationally respectable and regionally peaceful federation in larger interests of the people. Political parties need commitment to undiluted democracy, internal party democracy, political tolerance and bipartisan working of the parliament through powerful committee system. There is need of decentralization of power, maximum provincial autonomy, empowerment of people at the grassroots level, the emancipation from poverty, ignorance, want and disease (Charter of Democracy, 2006). The state system needs functioning parliament and an independent judiciary supported by a supplementary constitutional forum for resolution of the fundamental issues. The composition of the forum must have capability to strengthen rule of law by democratic means. The fundamental issues that have damaged the state structure and need deliberations of the national forum are detailed below.
II. Critical issues

Constitutional Amendments

Constitution is premier mandate of the people and its basic structure is framed under national political compulsions, which is not changed in ordinary circumstances. It means that its foundation of principles, fundamentals and norms should remain unchanged. Any addition or change in the constitution shall have to be within the broad contours of the objectives principles and essential features provided in the Constitution (Muneer M., 1975). In this country the constitution had no smoothed operational life. Whenever the autocratic forces within or outside of state had to implement their agenda, it was the constitution that had to be changed. The Constitution was amended as much and as many times as required by the usurpers to alienate representative spirit from democratic institutions. This practice disaffected salient features of the constitution and broke the bond of federal and provincial co-ordination.

There are two types of amendments introduced in dictatorial styles in the constitution. The amendments of such nature were carried out in 1975, 1976, 1985, 1997, 1999, 20002 and 2004. Eighth Amendment Act 1985 and Seventeenth Amendment Act 2003 are its dazzling examples. Elected governments introduced some without constitutional exigency. The Amendments illegitimately made by the military regimes were described as authorized by the Supreme Court of Pakistan. Such authorization has remained subject of inquisitiveness due to conflicting interpretations by superior judiciary. The Chief Justice of Supreme Court had to eventually declare in 2005 that courts are creation of the constitution and are not empowered to amend the Constitution. Even a comma or a semi-colon could not be added or deleted in the constitution by any court in the country (“The Dawn” March 27, 2005). Amendments made against the basic features in the manner alien to its spirit and procedures have reduced its operational power. Some amendments deprived the people from constitutional remedies and other dispossessed the courts from jurisdiction itself. The need of each amendment arose under the peculiar circumstances designed or produced by the people in power.

The Amendments have produced confrontation in some sectors of state system (PLD1985, C.S.1.) Present parliament has although removed impurities in the constitution by passing the Eighteenth Amendment Act 2010, yet a large portion of implications are still in existence in legal system of the state. The latest amendment has created more controversies of crucial nature. That has brought parliament and judiciary face to face in the claim of supremacy over each other.

Validation of Extra Constitutional Enactments

In the constitutional history of Pakistan there is found a unique practice of either abrogating the constitution of the country (Proclamation of Martial Law Order, 1969) or holding the constitution in abeyance for the period as desired by the person in command (Proclamation of Martial Law Order, 1977). The persons performing such acts did that on the basis of using the armed forces of state. While the constitution remained so held in abeyance, the authority taking over power unconstitutionally performed acts in derogation of the constitution by issuing ‘proclamations’ ‘orders’ and ‘ordinances’. After having done so, the constitution each time was brought back to revive along with the package of alteration or deletion by another order of person in command (Revival of
Constitution Order, 1985). On revival of constitution the authority introduced a constitutional amendment bill in parliament to get all extra constitutional proclamations, orders, ordinances and laws adopted, validated and affirmed by two third majority of the elected parliament. The purpose to indulge in such an exercise was to get constitutional validation / protection of extra constitutional steps otherwise illegal and attracting the liability under (High Treason punishment Act 1973). In the Constitution there is no provision enabling anyone to perform extra constitutional acts and get them validated through amendment Bill from the Parliament brought into being out of such alterations. Validation of the extra-constitutional amendments was repeatedly obtained from parliaments in several years of the history of constitutional affairs. Article 269, 270, 270A and 270AA provide for such constitutional validations, indemnities and protections. It is a well-settled principle of law that the only way to amend the constitution is through amendment Bill introduced under (Article 239 of the Constitution) in the manner recognized under the law. The alterations were introduced defiantly in parliaments wherein all extra constitutional proclamations, orders, ordinances and laws were adopted, validated and affirmed by two third majority of Parliament.

In one of such exercise via the Proclamation of Emergency of the fourteenth day of October 1999, all orders, ordinance and laws introduced on the strength of such proclamation were validated and affirmed by two third majority of the Parliament elected in the year 2002. Such validations still stand incorporated in Articles 269, 270, 270AA of the Constitution of 1973. The opening example is found in Article 269 of the constitution. Reading of text of the Article evidently provides that the substance contains asymmetrical design and describes converse meanings of the amendment. The text reads as follows;

i. Article 269. Validation of laws, acts, etc. (1) All Proclamations, President's Orders, Martial Law Regulations, Martial Law Orders and all other laws made between the twentieth day of the December, one thousand nine hundred and seventy-one and the twentieth day of April, one thousand nine hundred and seventy-two (both days inclusive), are hereby declared, notwithstanding any judgment of any Court, to have been validly made by competent authority and shall not be called in question in any court on any ground whatsoever.

ii. All orders made, proceedings taken and acts done by any authority, or by any person which were made, taken or done, or purported to have been made, taken or done, between the twentieth day of December, one thousand nine hundred and seventy-one, and the twentieth day of April, one thousand nine hundred and seventy-two (both days inclusive), in exercise of the powers derived from any President's Orders, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, orders or bye-laws, or in execution of any orders made or sentences passed by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any court, be deemed to be and always to have been validity made, taken or done and shall not be called in question in any court on any ground whatsoever,

iii. No suit or other legal proceeding shall lie in any court against any authority or any person for or on account of or in respect of any order made,
proceedings taken or act done whether in the exercise of purported exercise of the powers referred to in clause (2) or in execution of or in compliance with orders made or sentences passed in exercise or purported exercise of such powers.

This Article not only provides blanket coverage to orders made, proceedings taken, and acts done in exercise of President's Orders, Martial Law Regulations, enactments, notifications, rules, orders or bye-laws, but even those purported to have been so made taken or done and all laws made in exercise of such powers or in purported exercise of such powers were taken to have been validly made. Mohammad Ameen v. Islamic Republic of Pakistan 1981)

Another instance of aggravated nature of validating the imposition of Military rule in the country is found in Article 270-A.

i. Article 270-A. Affirmation of President's Orders, etc. (1) The Proclamation of the fifth day of July, 1977, all President's Orders, Ordinances, Martial Law Regulations, Martial Law Orders, including the Referendum Order, 1984 (P.O. No. 11 of 1984), under which, General Zia-ul-Haq became the President on the day of the first meeting of the Parliament in joint sitting, the Revival of the Constitution of 1973 Order, 1985 (P.O. No. 14 of 1985), the Constitution (Second Amendment) Orders, 1985 (P.O. No. 24 of 1985), and all other laws made between the fifth day of July, 1977, and the date on which this Article comes into force are hereby affirmed, adopted and declared, notwithstanding any judgment of any court, to have been validly made by competent authority and, notwithstanding anything contained in the Constitution, shall not be called in question in any court on any ground whatsoever.

ii. All orders made, proceedings taken and acts done by any authority or by any person, which were made, taken or done, or purported to have been made, taken or done, between the fifth day of July, 1977, and the date on which this Article comes into force, in exercise of the powers derived from any Proclamation, President's Orders, Ordinances, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, Orders or bye-laws, or in execution of or in compliance with any order made or sentence passed by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any Court, be deemed to be and always to have been validly made, taken or done and shall not be called in question in any court on any ground whatsoever.

iii. All presidents' Orders, Ordinances, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, orders bye-laws in force immediately before the date on which this Article comes into force shall continue in force until altered repealed or amended by competent authority.

Constitutional validity given by parliaments under the above quoted Articles was retroactive and was of a pattern of a curative or validating statute. The purpose of validation was to cure defects in the existing laws. The validating statute cured past errors,
omissions, and neglects, and made valid what before the enactment was invalid. The validation proceedings attracted controversies in the judgments of the courts. Superior courts passed varying judgments under the laws validated by parliaments. Supreme Court held that mala fide act couldn't be validated under Art. 270-A of the Constitution. Sindh High Court held that Art. 270-A has been competently enacted. It would provide protective cover to constitutional amendments including 'Eighth Amendment' made between 5th July 1977 and 30th December 1985 (Mujeeb Pirzada v. Federation 1990). Lahore High Court held that there is no constraint on parliament to give validity to any legislative instrument whatever might have been the defect. Vires of Art. 270-A, Constitution of Pakistan 1973 therefore cannot be questioned under Article 199 even on the assumption that the Parliament was not sovereign (Ghulam Mustafa Khar v. Pakistan 1988). On another occasion the Supreme Court said that it was under the principle of ratification, which was adopted, and such validity and competency was proclaimed (Miss Benazir Bhutto v. Federation 1988).

Sub-clause (1) of Article 270-A, provided a blanket cover in respect of all the laws, Martial Law Orders, Martial Law Regulations, Enactments, etc, made or issued between 5.7.1977 and 30.12.1985 and these laws were affirmed to have been validly made in spite of any judgment of any court to the contrary or in spite of anything contained in the Constitution and it was provided that they shall not be called in question on any ground whatsoever (Mohammad Bachal Memon v. Government of Sindh 1987).

All of the acts introduced and validated in the constitution in the manner alien to the principles of constitutional law were ruinous for coherent body of the constitution as well as ordinary law of the country. As a general rule it is unthinkable that any legislature comprising of civilized persons would seek to perpetrate injustice by validating acts done in excess of jurisdiction or in abuse of jurisdiction or clearly in bad faith. It is for this reason that the courts, out of respect for the legislature, start with presumption that the Legislature has to be imputed a just intention (State v. Zia –ur-Rehman, 1973).

Amendments / validations in contravention of spirit of constitution have de-shaped the Constitution of 1973. Political organization of the state has lost its direction. Consequently state has been made to function regardless of the constitution. Constitution may now be amended without the act of parliament. It is required that the Constitution of 1973 should be restored to its original position. Irregular constitutional amendment / validations should be repealed. All indemnities and savings introduced by military regimes in the constitution should be reviewed.

**Transgression of Judicial Organ**

Under the constitutional law each constitution creates three major instruments of power, namely, the legislature, executive and the judiciary. It demarcates their jurisdiction and expects them to exercise their respective powers without stepping their limits. No authority created under the constitution is supreme; the constitution is supreme and all the authorities function under the supreme law of the land (Golak Nath v. State of Punjab and others, 1967). Judiciary is one of the three principal organs of state system with distinguish function of ascertaining legitimacy of the prescribed functions performed by the other two state organs. Judiciary has to act where that has been required to operate. Parliaments not only validated and accepted irregular enactments; it allowed unnecessarily exclusion of jurisdiction of courts. The courts also had no desire to act in
response under the rules of constitutional interpretation. Exclusion of jurisdiction of the courts necessarily means barring the law to scrutinize the functioning of state organization. The consistent rule on the subject is that provisions seeking to oust jurisdiction of superior court even by a constitutional provision are to be construed strictly with pronounced leaning against the ouster (Federation v. Saeed Ahmad khan, 1974). Provisions specially inserted and validated through irregular process marred working capacity of the judicial organ and the judiciary accepted all that without taking chance of judicial analysis.

Constitution in its original design sporadically do provides for non-interference of courts in the affairs specified therein. Nevertheless, non-interference wherever provided does not have the wisdom that judiciary has been ousted on account of having nothing to do with the affairs performed by the legislature or the executive. Such clauses have been provided for certain legal constraints. Ouster clause must have juristic wisdom and must not simply be used to keep the courts away from the inherent function; the judiciary has been woven to perform. If the statute blankly provides ouster of jurisdiction of courts, the provision in fact carries the purpose to suppress rule of law in the society. Such type of articles and provisions were mainly inserted in the Constitution through irregular process of amendments, therefore not corresponding with basic scheme of supremacy of the constitution.

Sub-Article (4) Article 270-A furnishes one of the examples relating to such irregular ouster of jurisdiction of superior Courts. It provides that no suit, prosecution or other legal proceedings shall lie in any court against any authority or any person, for or on account of or in respect of any order, made, proceedings taken or act done whether in the exercise or purported exercise of the powers referred to in clause (2) or in execution of or in compliance with orders made or sentences passed in exercise or purported exercise of powers under martial law authorities.

The Supreme Court presided over by Justice A.Hameed Dogar overlooking essential limits of judicial code also tried to provide validation to extra constitutional enactments through a judgment of the Supreme Court (Tikka Iqbal Mohammad Khan V. General Pervez Musharuf, 2008). It was done so to provide validity to extra constitutional “Proclamation of Emergency” of 3rd November 2007. The Court also readily admitted ouster of its jurisdiction in the matters adjudicated in relation to unconstitutional proclamation. The question is whether such a validation processed through the judicial organ should be construed to be a constitutional validation. Supreme Court has no jurisdiction to grant constitutional validation to extra constitutional proclamation of emergency. Supreme Court itself being an organ of the state created under the Constitution has to work according to the constitution.

Promulgation of ordinance is purely a constitutional subject and its main characteristic is its provisional status. A division Bench of Lahore high Court enlarged the life of Ordinances contrary to the provision of the constitution saying that Article 270-A has validated all Ordinances made between 5.7.1977 and 30.12.1985, which are affirmed, adopted and declared to have been validly made by competent authority. All ordinances, which were in force on 30, 12.1985, were to continue in force until altered, repealed or amended by competent authority (Mohammad Rafiq Meer v Govt of Punjab 1989). Federal Shariat court ruled that effect of
these laws couldn’t travel beyond the points of time indicated therein as Art. 270-A (l) does not ensure the continuity of those legal instruments beyond the date when the law making organs were restored and had started functioning in due course (Sajjad Hussain v. The State, 1989) The discrepancy persists in the judgments of Superior Courts and dictums of the courts are interpreted as found suitable for the contemporary proposition.

Amidst assorted legal notions there is a guideline for resolving some of the complex legal issues. Article 4 has juristic essence for determining future course of action. The Article furnishes inviolable guarantee to the citizens that no action detrimental to the life, liberty, body reputation or property of any person would be taken except in accordance with law. Extra constitutional regimes performed actions or proceedings that suffered from excess or lack of jurisdiction or coram non judice or mala fide, be it malice in fact or in law. These could hardly be treated in accordance with law. Supreme Court held that they were thus bad even under the system, which was validated by Parliament under Article 270-A on account of violation of the assurance given by Article 4. The Court further ruled that it is difficult to concede that by enacting clauses (2) and (5) of Art. 270-A, the Parliament had intended to validate such acts, actions or proceedings or to put them beyond the reach of the courts or to deprive the citizens who had suffered there under of any remedy or relief whatsoever. There is a presumption that legislature does not perpetuate inequity or injustice and there is no reason why such a presumption should not be invoked while interpreting clauses (2) and (5) of Article 270-A (Federation of Pakistan v. Malik Ghulam Mustafa Khar, 1989).

Federal Co-ordination
Another issue relates to working of federation with federating units. Federation of Pakistan is undergoing severe political as well structural crises. Provincial autonomy is a lifelong issue of the country. Extra constitutional ruling inflicted crucial loss to state’s federal status. State lost its integrity after it had experienced two rounds of military rule prevailing over the period of twelve years. Constitution of Pakistan contains patent provisions violating the principles of federal administration. Grievances pleaded by the units are mainly of constitutional nature. Main issues relate to division of legislative powers between federation and provinces. To resolve federal issues and to strengthen unity between federation and federating units the (Charter of Democracy 2006) proposed that the ‘Concurrent List’ in the Constitution should be abolished.

Presently the circumstances have gone so serious that the leaders of political parties from provinces of Sindh and Balochistan are expressing reservations on democratic working capacity of the Constitution. They are of the view that validity of 1973 Constitution has come to an end due to continuous undemocratic interventions, extra-constitutional amendments and its inherent flaws. They have said that current Constitution could not resolve the intra-state political and economic conflicts.

The South Asia Partnership Pakistan (SAP-PK), Center for Peace and Civil Society (CPCS) organized a consultative workshop. A large number of intellectuals, civil society workers took part in the discussion. People representing sections of society introduced a draft of demands to develop consensus on outstanding political issues. It was agreed that it was a proper time to form a list of national demands acceptable to political parties, civil society groups and other segments of society. The participants were of the view that after the separation of Eastern wing, Pakistan has become a structurally imbalanced
federation. One province dominates all the state institutions and enjoyed an absolute majority in parliament over the other three provinces. There was no equal distribution of resources. The participants agreed that in order to create provincial harmony it was needed to initiate a new social contract. Therefore there should be specific demand for provincial autonomy guaranteed under the constitution. (“The Dawn” 2009).

III. Analysis

The institutions of Parliament and judiciary have performed acts like validations of laws and grant of legitimacy via judgments passed under constitutional petitions. These extra constitutional actions passed by parliament and endorsed by judiciary are forming a considerable portion of legal system side-by-side regular system of the country. Certain aspects of fundamental law are in mutual contradiction and affecting structural stability of the country. This position is abstracting growth of legal system, which parliament and judiciary cannot appropriately transact. The condition has mixed up general conception on working order of state organs. Criticism is coming up on reduced function of parliament and purportedly extended functions of the judiciary as pointed-out below:

"Should there not be a balance of power between the parliament, the executive and the judiciary? Should the judiciary try to paralyze the executive? Should the judiciary take populist decisions, which are ultimately to the great detriment of the people, and create chaos in the land? Would not a dictatorship of the judiciary also be a dictatorship? Should political parties spend immense amounts to support particular judges, and then expect, and get several quid pro quos? Shouldn't there be a mechanism for redress from those creating chaos through judicial activism? (Editorial Letter, The Dawn, 2009).

The natures of above speculations are partly true and partly based on rumors. But there has arisen the need of appraisal of working capacity of state institutions. The efforts of the regime to obtain consensus of political parties on (Constitutional Eighteenth Amendment 2010) (www.the news.com/2010/) is a move on the right direction. All legal systems have certain preconditions in which they work. Their growth depends upon validity of the norms conceiving social system of the society. Intermingling of inequitable norms mess up the balance. Severity of political crises caused by irregularities in legal system of state pursued mainstream political parties of the country to hold dialogue in 2006. The leaders of the parties formulated and adopted a document famously known as “Charter of Democracy 2006”. It was resolved that a Federal Constitutional Court will be set up to resolve constitutional issues, giving equal representation to each federating unit, whose members may be judges or persons qualified to be judges of the Supreme Court. The court was to be constituted for a six-year period. It was proposed that the Supreme and High Courts will hear regular civil and criminal cases and the jurisdiction of the constitutional court shall extend to constitutional issues. The appointment of judges shall be made in the same manner as for judges of higher judiciary. It was further agreed that the recommendations for appointment of judges to superior judiciary should be formulated through a commission.

Constituting the Court

In the circumstances where first priority is to treat structural disproportions, a constitutional court may prove more appropriate forum than the conventional Supreme Court system. The judges of such system keep within the confines of constitutional
obligations regardless of ground realities. In interpreting the constitution judges look the
text and go by the generally understood meaning of the words used in the text. They
hardly tend to explore intent of the lawmakers and largely rely on relevant precedents.
This mode of disposition is important pattern of doctrine of judicial restraint.
Nevertheless their practice to stick with conventional pattern is the common failure to
develop the rule of law that lends supports to grooming democratic institutions of state.
This trend prevents democratic enlargement of legal culture in the society. (Donald L.
Horowitz 2006).

Constitutional courts around the world have contributed for establishment and
maintenance of democratic institutions. A constitutional court comprising of members
that have proper relationship with the other branches may facilitate exercise of
political power in democratic manners. In this manner court can contribute a state
governed by law and respectful of its citizens. This forum supports the transition to
consolidate a stable democratic regime. States like Germany, Italy, South Korea, the
states of Eastern Europe and South Africa have created a separate constitutional court.
The court has been developed as supplementary political performer rather than a neutral
servant of constitutional norms. (Donald L. Horowitz 2006) It functions to assure that
the state is not just a democracy but also a constitutional democracy that respects the
rights of its citizens. Since the court has to perform a broad based function, members
of the court must be judges, professors, or lawyers who have experience in practice and
must be learned in the field of law. Qualifications of the judges of constitutional court
should be evidenced by judicial experience or scholarly accomplishments. The
appointment process may be coordinated among parliament, the executive and the
judiciary.

IV. Models of Constitutional Courts

In composing the constitutional court states have invented different models.
Following are some of the examples.

Austria
The Constitutional Court in Austria comprises a President, Vice-President, twelve
additional members and six alternate members. Alternate members are appointed from
among the judges, administrative officials and professors of the faculties of Law and
Political Science of the universities. The remaining members six additional and three
alternate are appointed by the Federal President from a list submitted by the National
Council the popularly-elected house of the legislature and the Federal Council, the
provically-elected federal house. This court determines the constitutionality of federal and
state statutes and conflicts between courts and administrative authorities (Constitution of
1920, Art.140).

Hungary
The system of government in Hungary creates a fifteen member constitutional court
elected by legislature to review the constitutionality of law and statutes and other tasks
assigned under the law. Proceedings in the court, which exercises its powers vigorously,
may be initiated by anyone; laws found to be unconstitutional are to be annulled by the
court (Constitution of 1949, Chapter IV).
Ecuador
The Constitution of Ecuador Republic creates the tribunal of Constitutional Guarantees. The National Congress in Ecuador elects the Tribunal of Constitutional Guarantees for four-year terms. The purpose includes ensuring observance of the constitution; making comments on enactments in violation of constitutional and taking cognizance of violation of the constitution and notifying the appropriate authorities. It is empowered to demand dismissal of office holders found to have violated the constitution. (Constitution, 1979)

France
The Constitutional Council in France comprises of nine members. Members are appointed for a non-renewable term of nine-years. Three members are appointed by the President, three by the President of the National Assembly, and three by the President of the Senate. Former Presidents of the Republic are ex officio members of the Council. The Council ensures the regularity of elections for president and rules on disputes in parliamentary elections and on the constitutionality of laws before they are promulgated. It can nullify the law after it is enacted by the legislature (Constitution 1958 Ch.7.).

German Federal Republic
In German Federal Republic the Lower House (Bundestag) and the Upper House (Bundesrat) each elect half of the Federal Constitutional Court. The Court comprises a President, Deputy President and twelve Judges. Its jurisdiction includes interpreting the basic law in disputes by parties with rights vested under it; compatibility of both federal and state laws; rights and duties of both governments are determined. Infringements of the rights of self-government have specially been guaranteed under (Constitution 1949 Art.28.).

Greece
In Greece the Special Supreme Tribunal has final jurisdiction in matters of constitutionality. Cases involving electoral violations referendum returns and disqualification of members of parliament etc. fall in its jurisdiction It comprises the President of the Council of State and the President of the Supreme Court, the more senior of the two acting as presiding officer; the President of the Comptrollers Council; four Councilors of State; and four Justices of the Supreme Court drawn by lot for terms of two years (Constitution of 1822, Art.100).

South Korea
The Republic of South Korea has established a constitutional court that adjudicates issues including the constitutionality of laws on request of the courts; impeachment; dissolution of a political party; disputes between jurisdiction of state agencies and local governments, and between local governments; and petitions relating to the constitution as prescribed by law (Constitution 1948, Art. 111).

South Africa
The constitutional court has final jurisdiction in matters relating to interpretation, protection and enforcement of provisions of the constitution including alleged violation of fundamental rights entrenched in chapter111. Dispute over the constitutionality,
executive and administrative acts, any inquiry into the constitutionality of any law and
dispute over the constitutionality of any bill before the national or provincial legislature
are placed for determination of the court (Constitution 1961, Chapter 3).

**Italy**

The Constitutional Court, has the jurisdiction to review the constitutionality of regional
and national laws and acts having the force of law; conflicts among the branches of
government between the national and regional governments; the impeachment charges
against the president, at which time the court is augmented by sixteen members drawn from a
list prepared by the legislature of citizens eligible to be senators. (Constitution 1948 Article
6).

**V. Conclusion**

The society, which aspires to be governed by the rule of law, there is no room for
constitutional deviation. The Parliament and judiciary is under obligation to resist
constitutional subversion and act firmly to protect the constitution and rule of law. Had
judiciary, while deciding the cases from Maulvi Tameezuddin to Tikka Iqbal, stood by
law, the situation as enslaves to day could not have occurred. The acquiescence of courts
for military dictators to amend the constitution has reduced working capacity of judiciary.
(Editorial The Dawn 2009) Judiciary for a lot of time has been without judicious
determination for various reasons. But now courts claim to have obtained required
independence. Nevertheless courts are still facing criticism for not presenting the aptitude
to resolve national issues. It may be an unfair to speculate resolution of all political
problems from the judiciary. Parliament also has a role to make essential legislation to
strengthen democratic culture of state.

Complex situation of federation demands energies of institutions be assigned to a
forum comprising of experts in constitutional affairs enjoying confidence of all sections
of society for resolution of fundamental problems. Issues the nation is facing are of
challenging nature and complex. Representative institutions are not grown enough to seize
and manage their gravity. Judiciary similarly has no jurisdiction to treat irregularities that
has been acquiesced in the last sixty years. This is required that energies of the institutions
be centralized for concurrent findings of outstanding issues. Constitutional court as
proposed in the document “Charter of Democracy” is a forum, which may assist the
political organizations to resolve national issues by consensus.

Constitutional Court can have confidence of political leadership by proposing
democratic solution as visualized by authors of the (Charter of Democracy 2006). The
court can propose dispassionate resolution of issues employing democratic means to
bridge the gaps the institutions of parliament and judiciary are unable to link in structural
organization of state.
References


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