

COMPARATIVE STUDY OF THE CONSTITUTION OF PAKISTAN AND INDIA (GAINS & LOSSES)ⁱ

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ABSTRACT: *Constitution is the code of conduct of people's state. It is the constitution which reflects the political culture of a state. Constitution bases on socio-cultural and geo-political factors of a state. It allocates the powers to the political authorities. Pakistan's and India's constitutions also represent the inner practices of the people. The Indian political, social, educational, cultural and military setup is much stronger than Pakistan. India made her institutions strong while Pakistan could not do so. It is due to her perfect implementation of the constitution. There is the least difference between theory and practice. Pakistan seems weaker in the implementation of her policies. The causes of her backwardness are needed to be highlighted. The research is based on the analysis of the authentic material in the form of literature in comparative studies of the constitutions of both the states. Through the conceptualization of the data, the researchers have developed their stance that if Pakistan acts upon the commands of constitution like India. She may promote much better. Pakistan and India got independence at the same time but India gradually strengthened herself because the masses of India considered the constitution superior while this drift remained weaker in Pakistan.*

Key words: Constitution's importance, People's behavior, Institution's intensification, Rule of law.

INTRODUCTION:

British India (Sub-Continent) was divided into two states with the name of Pakistan and India. Both the constituent assemblies modified the Act of 1935 and independence Act 1947 as an interim constitution till they were able to pass their own constitutions. India adopted her constitution in 1949-50: while on the other hand, Pakistan had to pass through a complicated constitutional history. India has been observing her single constitution since 1950 while Pakistan had to frame her constitutions i.e. four, 1956, 1962, 1972 (an interim) and 1973. Not only these four constitutions were adopted, Pakistan had to live without constitution and manage through Provisional Constitutional Order (PCO) of General Zia-ul-Haq from 1977-85 and 1999-2002 of General Pervez Musharraf. In this period constitution was suspended. Constitutions of both the states (Pakistan according to 1973) are parliamentary and federal form. Fundamental rights and directive principles are incorporated in both the forms of constitutions. India managed her issues in better way as compare to Pakistan. In this regard, seven critical areas of differentiation would be discussed in the present paper.

Federal form of government:

The trend of globalization and economic depressions motivated the people to think about strong center and strong federation. The constitution of USA is before the world. Initially, it gave very limited powers to the center; however, according to the situation center promoted itself. Multi-cultural, multi-lingual and multi-racial people kept them save in federal form of government. In defense, financially poor states can save themselves in federal form [1].

Pakistan and India adopted federal form by distributing powers between center and states (provinces). Pro-central approach was adopted. Article 246 of Indian constitution explained three lists of powers 1). Center, 2), States (Provinces) and 3), Concurrent list (both center and states can legislate in it: overall the supremacy of center is realized). On the other hand, constitution of Pakistan 1973 provides only

two lists of powers: one deals with central powers and other, residuary to the provinces. Concurrent list is abolished from constitution of Pakistan 1973 through 18th amendment. However, reservations of the provinces are present.

Bi-cameral legislature is adopted in both the states. Constitution of Pakistan 1973 provides equal opportunities in the upper house (Senate). While in India the principle of equality is absent in upper house (Rajya Sabha). Principle of parity is adopted on population basis. It is also a salient feature of the Indian constitution that central government can change the state's territorial boundaries to make a new state without the approval of the relevant states. While in Pakistan the ratification of such legislation is compulsory from respective provincial assemblies [2].

Central government of India and Pakistan intervened in provincial affairs. The detail of these interventions has been given below in table 1 and 2. Indian central government successfully completed these emergency operations. Whereas, Pakistan lost its eastern wing in 1971.

Administrative Relations:

Law and order is the responsibility of states (provinces) as well as the center. Constitution of both the states show tendency towards center. This intervention of center can only be in too much critical situation. In specific matters center can also instruct the provincial governments. Center has considerable control over the provincial administrative machinery through Indian Civil Services (ICS) and Pakistan Civil Superior Services (PCSS). Bureaucracy helps out the ministers in democratic forms. Governors of the provinces are appointed by the presidents. They are also answerable to him. The position of these governors is also ceremonial (like president). But the position of the governors, like president, in Pakistan remained different through 8th and 17th amendments. They could dissolve the central and provincial assemblies (with the approval of Supreme Court and High Courts according to 17th amendment)(constitution of Pakistan,1973).

Name of State (provinces)	Total number of Times Imposed	total Days Imposed
1 Punjab	9	3518
2 Pondicherry	6	2699
3 Jammu and Kashmir	3	2351
4 Manipur	10	1930
5 Uttar Pardesh	10	1705
6 Kerala	9	1694
7 Nagaland	3	1475
8 Gujrat	5	1239
9 Tamil Nadu	4	1137
10 Assam	4	1097
11 West Bengal	4	1064
12 Bihar	9	1009
13 Orissa	7	752
14 Mizoram	3	703
15 Karnataka	4	648
16 Rajasthan	4	561
17 Madhya Pradesh	3	524
18 Andhra Pradesh	2	459
19 Goa (incl. Daman and Diu)	4	445
20 Himachel Pradesh	2	406
21 Sikkim	2	347
22 Haryana	3	313
23 Tripura	3	149
24 Meghalaya	1	117
25 Meharashtra	1	113
26 Arunchal Pradesh	1	76
Total	116	26531

Table No:2 Central Governments intervention to federating units of Pakistanⁱⁱⁱ

Year	Description
1947	Congress ministry in NWFP had 'the support of 33 members out of 50'. But it was replaced by a Muslim League ministry.
1947	Sindh assembly opposed the decision of central government to take Karachi out of the control of Sindh and passed a resolution unanimously. The Chief Minister of Sindh had to pay for this resolution and he was dismissed soon.
1948	Inclusion of Kalat state into Pakistan
1955	One-unit Scheme (amalgamation of provinces and states into the province of West Pakistan.)
1962-69	Ayub's Presidential period (Federal system operated like British Vice regal system of 1930s.)
1970-71	Military action in East Pakistan and its separation
1972-73	End of tripartite accord and dissolution of Balochistan government. NWFP government resigned as protest.
1977-88	Constitutional amendments by Military Regime

	undermined the parliamentary and Federal nature of the constitution
1988-93	Dissolution of provincial assemblies (1988, 90, 93)
1994	Governor Rule in NWFP and installation of favourable government
1995	Governor rule in Punjab and installation of new government
1999	Removal of Nawaz Sharif government along provincial government
2002	17th Amendment has undermined the federal character of the state

President of India can establish an inter states council to investigate an issue among the states or between center and some states. The committee can also make some recommendations. Constitution of Pakistan 1973 proposed the establishment of council of common interests (CCI). It consists of provincial chief ministers and equal members from ruling party. The council's responsibility is to formulate the policies regarding issues like gas, oil, minerals, water sources of irrigation etc. the council may take the help of technocrats with the approval of president. President will deal the matter in the light of council's report [3].

Financial Co-operation:

In finance both Pakistan and India have same powers and functions. Provincial governments are heavily dependent on central governments in their projects of progress. No state can do function without the active support of center. Division of subjects is present in both the constitutions. Center is empowered to levy and to collect taxes in agriculture, exercise, stock exchange, income tax etc. In both the countries establishment of finance commissions are found. This commission allocates the funds and grants to the state's governments. A centralizing tendency is seen in both the countries constitutions [4].

A debate of provincial autonomy is present in Pakistan. It is a serious problem to its stability. An effort has been made to solve this issue (provincial autonomy) with removing the concurrent list through 17th amendment in the constitution of Pakistan. But authoritative attitude of center is barrier in the way to solve the problems. Council of Common Interests (CCI) and National Finance Commission (NFC) do not conduct their regular sessions as mentioned in the constitution [5].

Another factor of this adversity is 'dominancy of Punjabi'. Hegemony of Punjab over other provinces is seen in education, human sources, industry, and representation in civil and military services. The dominancy of civil and military bureaucracy causes sewer resentment in small provinces. This sense also promoted de-stability in economy of Pakistan. This de-stability became the main reason of military takeovers and these takeovers weakened the democratic institutions. While in India this trend is totally absent.

President and Cabinet:

Parliamentary form of government is led by Prime Minister. Great Brittan has strengthened the parliamentary form. Both

the states after gaining independence also adopted this form of government. In this form, Pakistan and India's presidents is the head of the state with just nominal role. He is constitutionally bound to follow the instructions of the Prime Minister. This position of president of India was made through the 42nd amendment in the constitution of India in 1975. Prime Minister and his cabinet were made strengthen. President working with his team with the name of Council Of Minister (COM). President can convene or adjourn the session of parliament; all bills are passed by the parliament to become laws. He can dissolve the lower house of congress. He also exercises certain executive, legislative, and judicial powers. He is empowered to suspend the central government. All these powers can be used with the consent of Prime Minister.

In Pakistan, President according to 1973 constitution had also just nominal role. He was allocated legislative, executive, and judicial powers. But all these powers were conditional with the consent of Prime Minister. A drastic change came in 1985 with the help of 8th amendment. Parliamentary form was eclipsed. President gained discretionary powers of executive, legislative, and judicial including dissolving the parliament with the subsection of 58(2)b. Pure parliamentary form was reintroduced with 13th amendment in constitution of Pakistan. Prime Minister again took the real powers of parliamentary form.

In 1999, in Pakistan Military took over and again president came in a position to dissolve the elected government with introducing the 17th amendment in the constitution. But a new suggestion was added that president could dissolve the assemblies with the consent of the Supreme Court of Pakistan. In 2010 civil government of Pakistan people's party (PPP) introduced 18th amendment and ceased the powers of president and pure parliamentary form was reintroduced.

Presidents of Pakistan used 58(2) b and dismissed various elected governments for nothing. But in India, neither a single example is found of such actions. Parliamentary form is functioning there smoothly.

Civil-Military Relations:

Military remained an important pillar of 3rd world states throughout the history. The background of military of Pakistan and India was same. But gradually the Indian military became neutral from political issues. Although British military of Sub-Continent proved a strong shield for the English. But it avoided itself from involvement in politics. Indian military carried on this tradition. On other hand the military of Pakistan could not vote for it. Military of Pakistan gained the formidable autonomous actor of politics due to various inner circumstances of Pakistan. General Zia-ul-Haq mentioned at various times that military's duty is not only defense of boundaries but also the ideology of Pakistan. He introduced the Turkish model of military. It gained the constitutional role in national affairs through establishing the National Security Council (NSC).

Revival of Constitutional Order (RCO) of General Zia-ul-Haq and the Legal Frame Work Order (LFO) of General Pervez Musharraf promoted military role in internal and external issues. The Indian Strategic Policy Group (SGP) and

National Security Advisory Board (NSAB) were established in 1998 with executive order but it could not be approved by the parliament. On other hand the situation of Pakistan army remained totally different. In military regimes it used the powers not only in independent manners but its policies could not be disturbed in civil governments also. While the policies of Indian military totally different. Parliament's committee with the name of 'Political Affairs Committee/ Sub Committee for Defense approve the entire defense policies for military. Military chiefs can only participate for suggestions; but mostly decisions are approved without their presence [6].

Constitutional Amendments:

Almost every modern state has its own written constitution. These constitutions are amended with mentioned procedures. Some states have flexible and some have rigid methods of amendments in the constitutions. The case of Pakistan and India is also presenting the examples. Both the constitutions have semi flexible and semi rigid constitutions. Parliament approves the bills with 2/3rd majority and president is bound to follow the instructions of parliament. Since 1950, 86 amendments have been approved in the constitution of India through proper channel [7]. The central government has the power to dismiss the provincial governments to secure the federation under the article 356 of the constitution of India. Constitution of India recognizes 22 national languages to accommodate the regional people. The procedure of amendments in the constitution of Pakistan is same. However, military men eclipsed its pure form with introducing the 8th (58 (2) b and 17th amendments in the constitution of Pakistan 1973 [8]. These two amendments were the ultra-constitutional tampering. Individual entitled was seen in this tampering. These amendments were made without the procedure which is described in the constitution. The spirit of the constitution was reshaped. Supreme Court of Pakistan always appreciated the decisions of these horsemen. Not a single example of such tampering and decisions is found in India (constitution of Pakistan'1973).

Local Government system:

Lord Myo (viceroy of sub-continent) and Lord Rippon (viceroy of sub-continent) promoted the local councils in Sub-Continent. They elected the non-official members to strengthen the local setup. A culture of local bodies' elections in sub-continent by these viceroys put the basis. Local setup of India is considered the Magna Carta of democracy of India. After gaining independence, Gandhiji (Mohandas Karam Chand Gandhi) named them (local setup) as an individual freedom. After gaining independence, constitution of India also made it compulsory for the individual rights of the people. It was given the name of 'Panchayats Raj' or Gram Sabha' (parliament of local government). In 1959, Gram Sabha Act was passed by all the states of India. According to record 96% people participate to elect their local representatives. People have highly satisfaction from local bodies with their working. Local bodies dominated over the upper castes, clumsiness and corruption from local bureaucracy. 64th, 73rd, and 74th amendment in the constitution of India also strengthened the powers of local

bodies. It was called the 3rd tier of governance of polity. A positive response from people of India came to facilitate or co-ordinate the local setup [9].

A ministry of local government was established to watch out the activities of local government in India. Election commission arranges the elections before expiring the duration of five years. If a political leadership creates problems in local setup or neglect the panchayats, it would be ready to pay a heavy price of its future. 33% to 50% representation of the women is allowed in local body's setup. Accountability of local bodies is very high. Audit of elected representatives is mentioned in the constitution. Devolution of powers strengthened the democracy of India at grassroots level. Today India's local setup has gained the

status of 'little Republics'. Powers and functions of local set up are given below in chart.

While in Pakistan the situation of local setup is totally different. Local bodies totally remained the part of provincial governments in all the constitutions of Pakistan. Local government was never given the status in central constitution of Pakistan [10]. Political leaders also not defended the local bodies. Civil governments discouraged the local bodies, but military always managed the local bodies elections in regular terms for securing themselves. Detail of this hide and seek would be given below in chart.

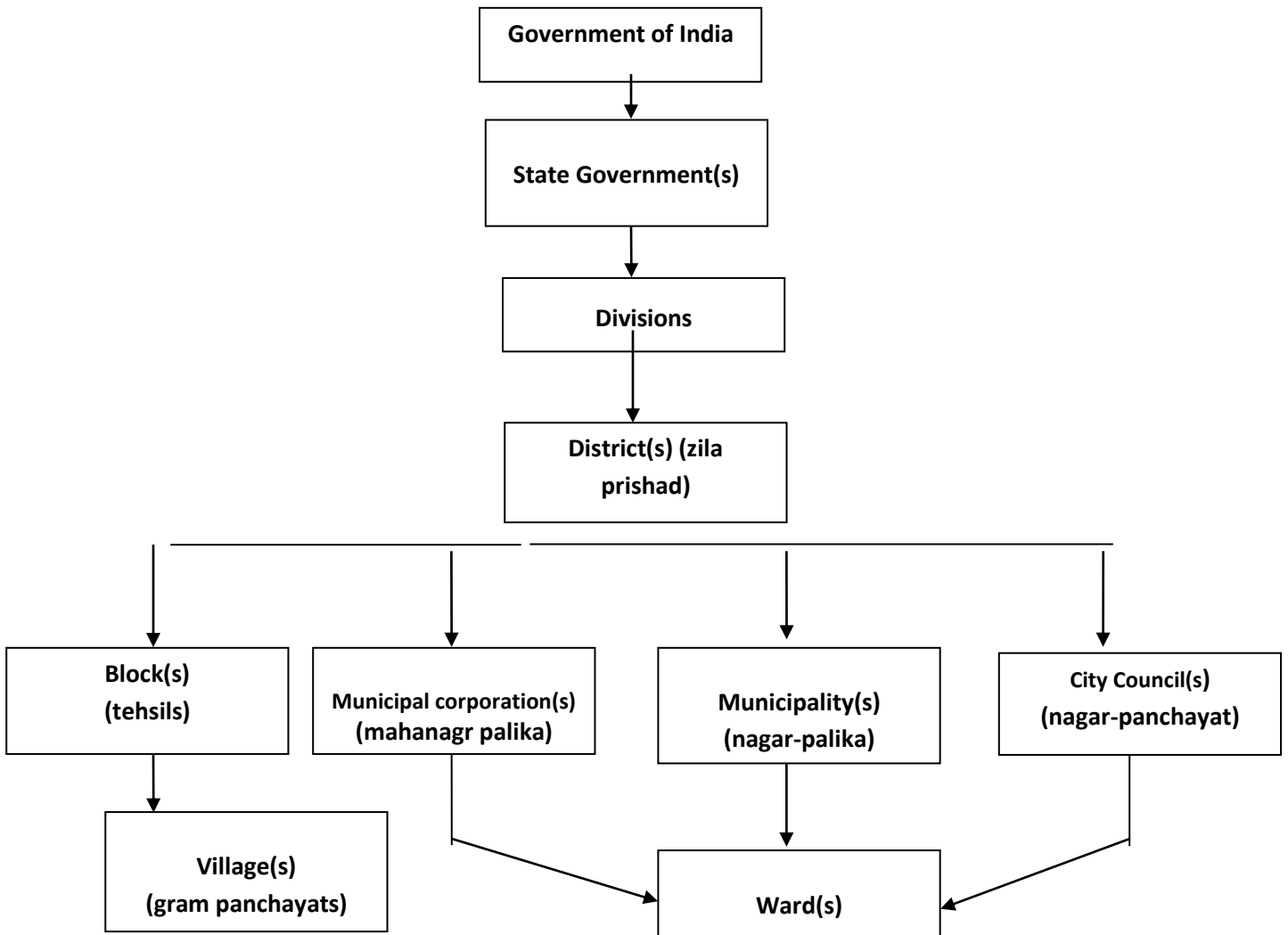


Table No:3: Administrative structure of India

Source: URBAN LOCAL BODIES IN INDIA: Quest for Making Them Self-Reliant P.K.CHAUBEY Indian Institute of Public Administration, New Delhi.

Table No.4: Local Government system of India

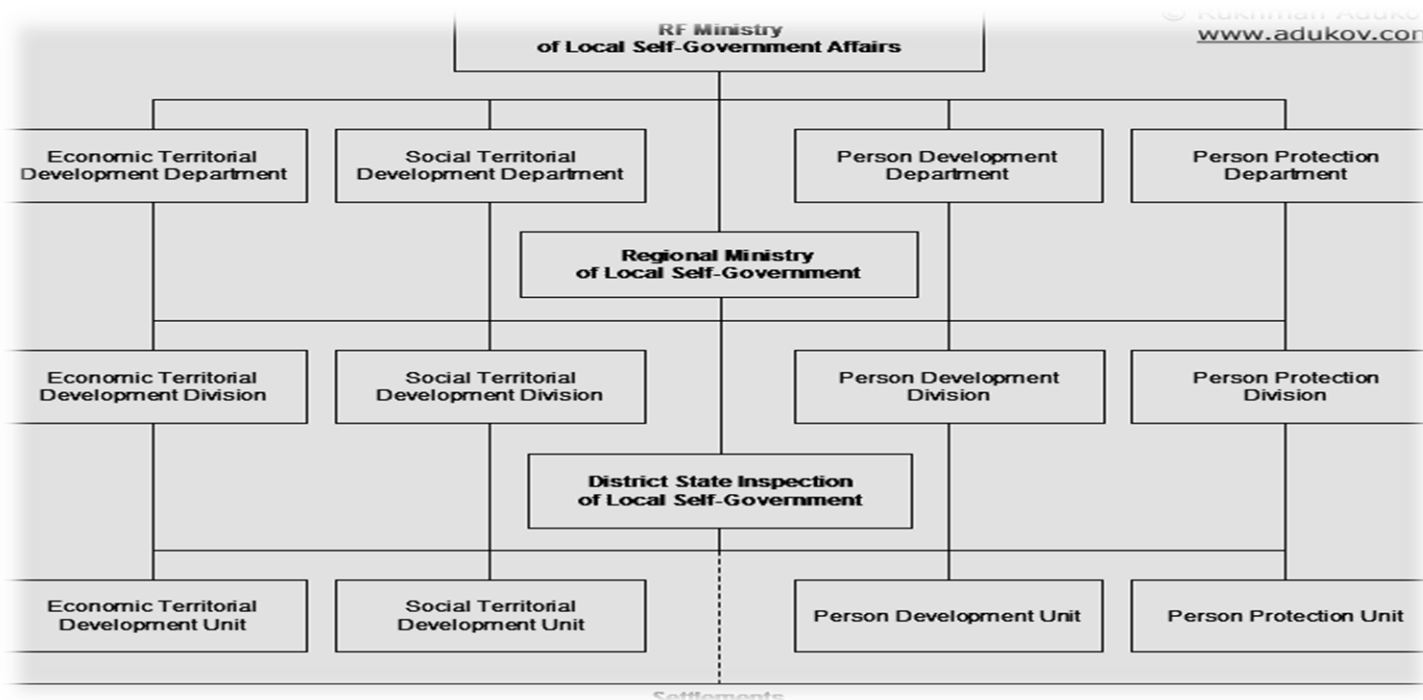


Table No. 5: Distinguishing features of three local governments.^{iv}

Leaders	Tenure	No. of years	Local government brand & structure	Distinguishing features
General Ayub Khan	1958-69	11	Basic democracies 5 tiers	Ward based elections. Only members of the union councils, town committees and union committees directly elected whereas half of members of local councils at higher tiers nominated by government. At higher tiers head of the councils (Chairmen) nominated by government. Functions of the councils controlled by bureaucracy. Basic Democrats served as electoral college for electing president as Well as MNAs/MPAs, Rural-urban divide maintained.
General Zia-ul-Haq	1977-1988	11	Local bodies 3 tiers	Tehsil/Taluka council (the middle tier of LG) existed nominally, Direct representation of Bureaucracy as members/Chairmen of the councils abolished, Considerable decrease in Provincial Govt. control over LGs functioning, Reservation of seats for religious minorities, peasants, workers and women, Introduction of formal and informal mechanisms for ensuring public participation in local councils' affairs, In some cases allocation of seats was not proportional to the respective Population of the area.
General Pervez Musharr af	1999-2008	09	3 tiers	Elections held at the union council level, Heads of the union councils (Union Nazim and Naib Union Nazim) directly elected as joint candidates, LGs established at three levels in both rural and urban areas, 33% seats reserved for women and 5% each for peasants/workers and religious minorities at all the three levels of LGs, Rural and urban areas integrated administratively and organizationally, Tehsil and District councils are headed by indirectly elected Tehsil/District Nazim and Naib Nazim instead of bureaucracy, Political and electoral integration of the lower tier (Union) into higher tiers of the LG, Devolution of Provincial function to the LGs, Establishment of CCBs for ensuing citizens' direct participation in Service delivery.

CONCLUSION:

Constitution is the second name of code and conduct. The affairs of the states are governed by these codes. States move forward with the help of perfect constitutions as well as perfect implementation. Both the states, started their independent affairs on the same day. Both Pakistan and India had their same political and social background. India

promoted herself in democracy and in civil manners. Today it has become the world largest democracy. Whereas Pakistan has experienced differently. Her military has been active player of political affairs. Four martial laws have been imposed on civilians. No doubt, role of civilians has also been questionable, but at the same time adventurism of generals has also contributed much. The ultimate of these

interventions was separation of eastern wing (1971) and consistency degradation of democratic institutions. It is the need of the hour to strengthen the institutions according to the

constitution. A vital example of India is before us to be followed.

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ⁱ In India & United States of America (USA) Provinces are called states which is not correct according to the terms of political Science. Because a state cannot have more states in it.

ⁱⁱ Data adapted from Lok Sabha Secretariat (1996), H. M. Rajashekara (1987,638--40), Rajya Sabha (1996; 1997; 1999a; 1999b; Dawn (2002), V. Venkatesan (2005) and Onkar Singh (2005).

ⁱⁱⁱ Source: Muhammad, Mushtaq. (2009). Managing Ethnic Diversity and Federalism in Pakistan. *European Journal of Scientific Research*. <http://www.eurojournals.com/ejsr.htm>.

^{iv} Source:Yaseen,Z. (2015). Working of Civilian Governments during the military regimes: A Case Study of Zia and Musharraf (unpublished Ph.D theses) university of the Punjab, Lahore, Pakistan.