

Human Rights Violations during Military Rule of General Zia ul Haq

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Abstract

This paper studied the human rights violations during the dictatorial regime of Zia ul Haq in Pakistan. The paper examined the Zia government in historical perspective in order to scrutinize his process of Islamization and to know how and why he used the Islam as a political tool. He also used it for the introduction of laws based on the gender-discrimination which seriously weakened women rights. The paper also examined the Law of Evidence, Zina and Hudood ordinances and their inflexible and archaic rules that govern morality and sexual behaviour under Pakistani laws. It also brought to the lime lights the problems and difficulties faced by the female rape victims, in getting justice. The paper also explored the women's and feminist resistance in Pakistan against the gender discriminatory laws. The resistance strategies and techniques were adopted by organizations for women's rights in Pakistan.

Keywords: Pakistan legal system, human rights, hudood ordinances, qisas and diyat ordinances, qanoon-e-shahadat, zina-bil-jabr,

Introduction

From very inception Pakistan has been facing the issues of human rights violation. Soon after the partition of India, the year of 1947 witnessed the most horrible carnage during the process of migration. Thousands of people were killed, raped, made homeless and tortured while they were migrating to land of their choice. On both sides of the border the governments were helpless to prevent the masses from the worst massacre, they were only unspoken observers (Ashfaq, 2006: 121). The Universal Declaration of Human Rights was adapted in the United Nations in 1948 and Pakistan was one of the states that voted in favour of declaration. Thus, this declaration turned into be the essential part of all the three constitutions of Pakistan and till the day the present constitution of 1973 guarantees and safeguards the fundamental rights of citizens. But there have been a great deal of ups and downs in the political arena of Pakistan. When the constitution was abrogated for the first time by a military dictator in 1958, it witnessed the illegal seizures, many significant political leaders were forcefully exiled, and citizens faced illogical constraints.

Ayub Khan would say that he wanted democracy with discipline but there was no democracy, he just wanted the civilians to follow the military discipline.

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Eventuating the rule of Yahya Khan, the military committed several human rights violations in Bangladesh when they were struggling for independence. When Zulfikar Ali Bhutto was overthrown by another military General, Zia ul Haq, the people witness another unpleasant and worst period for the human rights. In the name of Islamization, the constitution was amended insanely to introduce new laws. The intention behind these new laws was to legitimize and prolong the government of Zia (Gupta, 1998: 115).

The rule of Zia ul Haq was permutation of religion and military. To legitimize and prolong his dictatorial rule, he used immensely religion. Internally, this amalgamation of military and religion was aimed to mollify the specific religio-political groups to remain in power for long time. Externally, it related to the presence of Soviet military in Afghanistan. It was a time when Mujahedeen were being encouraged to fight against the then Soviet Union. So due to policies of Zia ul Haq, in Pakistan, Islamization had strengthened its hold (Amin, 1985: 26).

The reign of Zia, 1977-1988, was period which was known for the political and military oppression. He is blamed for the oppression of journalists and press, under Hudood Ordinance the suppression of rape victims and repression and detention of demonstrators and protestors during Movement for Restoration of Democracy and after the death sentence of Zulfikar Ali Bhutto (Zafar, 1994: 79).

VIOLATION OF THE RIGHT TO DEMOCRACY

Suspension of Democratic Government

General Muhammad Zia Ul Haq, on July 5, 1977 overthrew the government of Zulfikar Ali Bhutto, Proclaimed Martial Law and announced himself as the Chief Martial Law administrator. The legislature, constitution, all procedures in the courts and fundamental rights were suspended. He endowed himself and his provincial governors with unlimited powers to issue ordinances and laws. It was followed by the legislations that outlawed all the political activities and political parties. These legislations also authorized General Zia ul Haq and his deputies to amend the constitution as they desired.

Institutionalization of Zia Regime

The 8th amendment of 11 November of 1985, the elections of 1985 and lifting of martial law on 30 December 1985 brought changes to the government. But even these changes could not allow the people to govern themselves and to express their will.

The 1984 Referendum

We cannot declare that the 1984 referendum was the reflection of the views of the people to govern themselves. It was devised and presented by the General Zia to legalize Islamization program and make way for the democratization and peaceful transfer of power to the representatives of people. The turnout of voter was extremely low as the people didn't like him anymore. The people were not allowed to boycott the elections and punitive measures were announced to be taken against that boycott the elections and raise their voice against the government of General Zia Ul Haq. After the referendum he declared himself as the elected president of Pakistan and said that he was give five years via this referendum.

The 1985 Election

For choosing the members for the federal and provincial assemblies the election of 1985 was held. But even in these elections freedom of expression was banned. Nobody could criticize the policies of the government or the process of election. The most evident blemish was the intention of the General Zia to keep the elected legislature less powerful. Even this electoral process could not curtail the authoritative and dictatorial powers of Gen. Zia ul Haq.

During these two elections the human rights were violated in many manners such as people were not allowed to go against the policies of the government. They were not permitted to boycott the elections or referendum. A huge number of people were sent to jail without any allegation and were not granted permission to run due the membership of a political party. Dozens of active political workers were kept in arrest during the elections. The members of the Movement for the Restoration of Democracy (MRD) were not allowed to announce their party affiliation as it was coalition of opposition parties.

The 8th amendment of the constitution

The 8th amendment to the constitution of 1973 was made on 11 November 1985 which immensely increased the powers of the president. In the very next month, on 30 December 1985 martial law was lift. But it could not fully restore the political and civil rights of the people which the pre-requisite of true democracy, rather the circumstances were deteriorated in many aspects. Many of the presidential ordinances issued by Zia Ul Haq between 5th July 1977 and 30th September 1985, abstained the people of Pakistan from their fundamental right of participating in various political and governmental activities. After lifting Martial Law on 31st December 1985, the civilian Prime Minister, Muhammad Khan

Junejo was responsible to the Parliament but was not free in his actions as he was appointed by Zia and could be removed by him as well. Though Martial Law was formally lifted but many verdicts of martial law remained in force.

Dearth of the Rule Law

For a long time, people were denied participating in government affairs, gave birth to a question that whether the rule of Zia had ever been legitimate and if yes then under what conditions. If there is any validation in law, that government could suspend fundamental human rights and popular participation. It is the constitution of 1973 that allows the president, during emergency, to suspend the fundamental rights for up to two months and for up to six months with the approval of parliament (Pakistan Constitution of 1973, art 232-33).

The only promise of Zia was to hold free and fair elections after the October of 1977, to transfer power to the people's representative. He emphasized that nothing would deviate him from his promise. But he failed to keep his promise which clearly invalidated his government according to the laws of Pakistan and international laws. The emergency powers were used to protect the interests and regime of Zia instead of the Pakistan. Subsequently Zia issued many ordinances and orders to consolidate his government, no gesture was found to transfer power to the civilian government. People were refrained from their fundamental right of participation in politics and right to democracy, which wiped out the rule of law.

NO RIGHT TO JUSTICE

Judiciary destroyed and Undermined

Fundamental human rights must be safeguarded by the Rule of Law, is the very basic obligation of the Universal Declaration of Human Rights. Every citizen has the rights to access a court or tribunal for the breach fundamental rights assured by the constitution of the land. The individual also has the right that his plea must be heard by a neutral and independent court of justice. (Article 8-9, UDHRs). The 1973 constitution of Pakistan also guarantees many fundamental human rights protected by international law. The constitution also guarantees that no law could be passed contradicted with the fundamental human rights.

Despite all these, General Zia, on 5th July 1977, suspended all fundamental rights guaranteed by the constitution of 1973. Executive orders were issued to bring the judiciary under control of the CMLA and to restrict its powers. The judges of the Supreme Court and high courts were removed. The powers of the courts to make decisions were removed. The military courts were established

under the auspices of the chief martial law administrator (General Zia). The decisions made by the military courts could not be challenged in the civilian courts. The shariat courts were established which were controlled by the executive itself. (Laws order, 5th July 1977, arts 3-4.)

Decay of Judiciary

Ordinances and orders issued by Zia Ul Haq were intended to invalidate the judicial authority. Its rights were curtailed to take decisions, even on the writs of habeas corpus. If a case was registered in police station, the courts were refrained from the issuance of release orders for them. (PCO, 1981, art 9a). When the martial law was lifted, the function of judiciary was rehabilitated a little. But many orders and ordinances issued by Zia, were made the part of the constitution with 8th amendment, due to which it could not be reviewed by the judiciary. In an interview General Zia said that the individuals could not challenge the acts of the governments in the courts of law.

Civilians Were Trailed in Military Courts

According to the justice of international standards, the civilians cannot be trailed by the military courts for the civilian offences, except in special cases i.e. great threat to the state. Therefore, all the cases of civilians, preceded in military courts, was the violation of human rights. The individuals, who were punishment by the military courts, at very first sight it was breach fundamental human rights and was an act of arbitrary detention (UDHRs, Art. 9). Citizens were arrested during political and religious activities, which was violation of fundamental human rights as the government of Pakistan didn't have any right to suspend human rights guaranteed by the constitution.

Shariat Courts

The shariat courts, established by Zia ul Haq, were responsible for the review of laws, that no law against the spirit of Islam may be passed, and to bring the existing laws under the domain of Islam. It had to call attention to the laws against the spirit of Islam that they may be declared null and void (Munir, 1980, 139). These courts were greatly controlled by the executive. The non-Muslim judges were not eligible for these courts and non-Muslim lawyers could not represent in these courts (Munir, 1980, 142).

The shariat courts-authorized by the government for command over the laws of the state which critically put in danger the right to freedom of speech, politics, democracy and religion. It is evident from the fact that the bench of shariat court did not represent all the sects and groups of Muslims. All sects were

not allowed to sit in the bench and might be subject to religious rules might not have been the part of faith which is the breach of the protection of the human rights (CMLA order No. 2, 1981).

LAWYERS AND JUDGES WERE OPPRESSED

During Zia regime, in the system of justice, the lawyers and judges were sternly oppressed. Many judges were either removed or they resigned from their services which included Fakhruddin Ibrahim, Dorab Patel Justices of Supreme Court. All the judges were asked to follow the provisional constitutional order promulgated by Zia. The one, who would refuse to follow the PCO, would lose his job as well as would be disallowed to practice law for two years, which may be called, controlled judicial power (PCO, 1981, art. 15).

The associations of lawyers and others demonstrated protests for many years against the destruction of judicial system in Pakistan. Many of the protestors and politicians were arrested for conviction of crimes under the laws and ordinance under martial law. Many of them were kept in prison for a long period of time. More than 400 lawyers and their leaders were arrested in 1983.

Status of Women Rights

The Hudood ordinance introduced by Zia ul Haq in 1979, replaced the Pakistan Penal Code of British era. This brought in new criminal offences i.e. infidelity and adultery and new penalties like stoning to death, whipping and abscise. Lawyers and women rights activists in Pakistan and human rights organization at national level contended that the ordinance had made it very difficult for a victim of rape to prove an accusation of rape. On the other hand, accusation and filing a case against a woman for the charges of adultery was very easy. The bail was very difficult for a woman in a pending trial under Zina ordinance (Gupta, 1998: 115). The weaknesses and loopholes in the Zina ordinance could give chance of escape to rapist and it could be manipulated in the favour of him which would have devastating consequences. Resultantly more than 15000 victims of rape were put behind the bars under this ordinance (Zafar, 2012: 5).

The Hudood ordinances were to punish the crimes of rape and adultery. These ordinances put into practice obligation of evidences that made it difficult for the criminals to be found guilty of rape. In order to prove a man guilty of rape, against the defenders there should be brought four Muslim witnesses in favour of victim or against the defender. The physical evidence i.e. contusion, cuts, torn clothes etc, was also demanded by the courts to prove that the victim had resisted

during the rape. As the result of these laws the numbers women increased in the prisons among which most of the women were jailed for their complaints that could not be proved (Human Rights Watch, 1992: 47-68).

Freedom of Press Curtailed

The dictatorship and free press are like water and oil; they don't mix. That's why Zia vigorously promulgated Press and Publication. This was an era when press in Pakistan experienced the worst censorship of the history. The editors of the newspapers were issued instructions and guidelines from government. They were not allowed to publish any news or stories which criticized government. Nobody could criticize the judiciary, military or any religious institution. Through the administrators, the provincial governments forcefully implemented pre-publication censorship. They had to decide what had to be published and what had not to be published. The Sindh government banned two newspapers i.e. daily Sadaqat and daily Musawat. To obey the directives of the government every newspaper adopted a mechanism. The newspaper would go to the information department before publication and the authorized officers would check each item to be published. The contents would be checked and signed if found appropriate and correct. If the officers would find anything against the government or criticizing the government, that part would be removed, and publishers be warned not to publish such things. The newspaper also needed a prior permission for the republication of an extract from an already published book or magazine etc. Many journalists who protested the government were arrested and trailed under the Martial Law. On May 13, 1978, eleven journalists were punished by the Military Courts. (Jahangir, 2014: 176).

Suppression of Movement for the Restoration of Democracy

A coalition of nine leftist political parties under the leadership of Pakistan Peoples Party was formed in February 1981 named as Movement for the Restoration of Democracy. The movement had a great say in the province of Sindh which was not good Zia. A massive massacre was carried out to crush the agitations and demonstration by Movement for the Restoration of Democracy in Nawabshah, Jacobabad, Haripur and Larkana. More than 2000 demonstrators were arrested, some 200 were killed and many were injured. The demonstrators claimed that the death toll was in thousands (Talbot, 1998: 253-4). The military helicopters were used in Nawabshah to shell the peasants who were protesting (Jafferlot, 2004: 81). In the Sukkur when the protestors refused to discontinue the remonstrance, the army officer order to bulldoze the demonstrators (Kaufman, 2014). General Zia ul Haq issued Martial Law regulation order No. 53 on

September 27, 1983, which allowed death sentence for any crime that cause fear, insecurity and misery among the people. This also included the crimes of damaging public property, hampering the smooth working of government. In Nawabshah, Sakkar, Larkana, Hyderabad and some parts of Karachi curfew was imposed. Thousands of people were arrested and put behind the bars in Sindh and Punjab. The display of flag of Pakistan People's Party and its symbol was banned (Ghazali, 2014:8).

Conclusion

After the takeover and establishing military rule, Zia promised to hold elections within next 90 days, but he did not realize his pledge. From the very beginning of his government he interdicted political parties and students' organizations and trade unions. The press was viciously controlled, and political parties were brutally oppressed all political leaders and parties that opposed him. Systematically, he undermined the rights of labours, peasants, women and religious minorities. Most of the resources were diverted to the military and the military officers were bestowed with properties and agriculture lands throughout the country.

In the legislative sphere Zia issued number of presidential orders and ordinances and made amendments to the constitution of 1973 to weaken and control the judiciary. The military authorities were empowered by the Provisional Constitutional Order to decide whether the definite case to be trailed by the civil courts or military courts as the military courts were under the full-fledged control of military authorities. Most of the political parties were banned by the military courts and the ones who delivered rebellious speeches, were punished. The judges who would not follow such orders were removed from services. The fundamental rights guaranteed by the constitution were also suspended.

General elections were held on non-party basis by Zia ul Haq in 1985 under pressure from local and international community to put back on track the democratic system. The same election was boycotted by the opposition. Muhammad Khan Junejo became prime minister who was a strong supporter of Zia. Immediately after becoming prime minister he passed the 8th amendment which legalized all the laws and ordinances issued by Zia and guaranteed that they would remain the part of the constitution. It also stated that any such law or ordinance could neither be questioned by the courts nor legislative bodies. After the martial law was lifted and Zia appointed himself president and the constitution was restored which guaranteed fundamental rights. But the eighth amendment had

empowered the president with autocratic and discretionary powers. Due to very that powers later he dismissed the government of Junejo.

After the inclusive study of executive and legislative measures taking by Zia were not only based on the violations of human rights, gender discriminations but it also harshly targeted the rights of women. Discriminatory executive orders and ordinances reduced the legal status of women in various ways and created an environment of fear and insecurity in society. It also caused the socio-cultural intolerance against the women. The policies of Zia had grave implications on the society in Pakistan. In daily life its eluded people about religion which led to anxiety in different in different Muslim sects which had extensive impact. It also provided an opportunity to the conservative religious elements to interpret Islamic laws in a bias way.

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