DEMOCRACY AND GOVERNANCE IN
PAKISTAN'S FRAGMENTED SOCIETY

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ABSTRACT

This paper examines Pakistan's recent democratic experiment in the framework of governance defined as the process of exercising power in the pursuit of common goals. Legitimacy, institutions and performance constitute the process of governance. Legitimacy refers to the consent of the governed and the rule of law. Institutions include deliberately created legal frameworks, laws, legislatures, executives and judiciary as well as customs, values and norms that emerge through practice. Effective governance requires congruence between the formal and informal institutions. Performance refers to the accomplishment of common objectives and judicious use and allocation of public resources. Good governance assumes the existence of democratic institutions. Governance occurs in a context and environment that not only shapes the process but over time is shaped by governing practices. The civil society and the market institutions provide the large part of the environment.
INTRODUCTION

Pakistan has been dismissed as a "failed state." Democratic institutions, indeed, failed to function effectively and to take root in Pakistan. Recent re-imposition of the military regime solicited little protests from Pakistani citizens. This paper will examine Pakistan's democratic experiment in the framework of governance defined as the process of exercising power in the pursuit of common goals. Legitimacy, institutions and performance are the three major elements in the governance process. Legitimacy refers to the consent of the governed and the rule of law. Institutions include deliberately created legal frameworks, laws, legislatures, executives and judiciary. Informal institutions emerge through practice, including unwritten conventions, values, norms and ideologies. Effective governance requires congruence between the formal and informal institutions. Performance refers to the accomplishment of common objectives and judicious use and allocation of public resources. Good governance assumes the existence of democratic institutions. Governance occurs in a context and environment that not only shapes the process but over time it is shaped by it. The civil society and the market institutions provide the large part of the environment.

THE POLITICAL CONTEXT

Elections and Legitimacy

Despite frequent recourse to martial law, Pakistan is still regarded the elections as the primary source of legitimacy. Pakistan held four general elections between 1988 and 1999. The legitimacy they conferred on victorious governments is a function of peoples' participation in elections and their perception about the fairness of the electoral process.

Table 1 presents data on election turnouts in the five most recent elections for the provinces as well as Pakistan as a whole. The 1970 election attained the highest turnout (64%) in Pakistan's history. Since then the turnout has spiraled downward.

The decline is consistent in all the four provinces of Pakistan. The sharpest decline occurred in Punjab with 21 percentage points. Evidently people have become cynical about the validity and utility of elections. Elected governments have performed poorly and they have failed to live up to peoples' expectations. Popular perception is that the democratic governments are corrupt, wasteful, and inefficient. It is becoming clear that the people do not feel that the ballot box is a sufficient condition for legitimacy.
Successive elections tended to return many of the same discredited politicians time and again. Three of the four elections resulted in weak coalition governments at the Center. At the provincial level, elections resulted in either bickering coalitions or strong government of a rival faction, leading to bitter center–province rivalry. In Sindh, the 1988 elections formalized the ethnic polarization in political institutions, exacerbating ethnic conflict. Elections in Balochistan remained a tribal tussle among rival tribal leaders.

1993 elections were relatively more transparent. They were held under a neutral interim government and conducted by the army. The 1997 elections, despite the lowest turnout rate, provided a clear majority to the Pakistan Muslim League (PML) in the National Assembly. The elections in Punjab eroded the family and biradari (kinship) based politics. In smaller provinces, the election revealed a resurgence of the sub-nationalist forces.

There were serious allegations of bogus voter registration. In 1990 the President was accused of masterminding a massive electoral fraud. Out of seven federal elections held between 1970 and 1997, only one—in 1970—has been judged as “fair and free.” All political parties are suspected of tampering with voter registration. The candidates themselves have been accused of electoral malpractice. Violence and intimidation of voters and the polling staff are commonplace.

### Table 1. Election Turnout Rates 1985–1997 (in percentages)

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Source: The Herald, March 1997; 63

Executive: The Power Struggles

The country has never seen a smooth transfer of power. Only two out of the 11 heads of the state since 1947 managed to complete their constitutional terms. Out of Pakistan’s 16 Prime Ministers, only three were elected. Ironically, only Zulfiqar Ali Bhutto managed to complete his term. In Pakistan’s early history, under an adapted vice-regal system, the military
and senior bureaucracy established the tradition of supporting the Governor General or President. Prime Ministers were hired and fired at whim.\(^8\)

The 1973 Constitution postulated parliamentary form of government, in which the President was intended to be a figurehead.\(^9\) A rubber stamp Parliament under General Zia approved the Constitution (Eighth Amendment) Bill 1985, which gave the President the power to dissolve the legislatures and provided a safeguard for the army’s institutional interests. It not only created an ambiguity in executive powers, but also bound the hands of the Prime Minister.

The 1988 transfer of power to the newly elected Peoples Party of Pakistan (PPP) was conditional on a tacit agreement that the important decisions were to be taken jointly by the Prime Minister, the President and the Chief of the Army Staff (COAS).\(^10\) The basic parameters of foreign policy would remain intact. The Acting President, Ghulam Ishaque Khan, would be elected the President. He had successfully served two military regimes in the past.\(^11\) This unstable Troika and the 8th amendment set the stage for an insidious power struggle between the President, the Prime Minister and the COAS. The mistrust and personality factors reinforced the conflict, often centered on the appointments to the military high command. The Prime Ministers felt it necessary to have control over the appointments of the COAS, Chairman of the Joint Chiefs of Staff Committee (CJCSC) and the head of the Inter Services Intelligence Directorate (ISI) to govern effectively. They believed that as the elected representative of the people, they should be the appointing authority.\(^12\)

During her first term, Benazir Bhutto could hardly govern with a hostile presidency, an uncooperative bureaucracy and an overbearing military controlling Kashmir and Afghan policies.\(^13\) In the wake of continuously deteriorating relations, the President finally sacked the Bhutto government on charges of corruption and misuse of power. By the end of his first term, Nawaz Sharif also felt that his hands were tied, due to the President’s constant oversight.\(^14\) Sharif tried but could not muster the required two-thirds majority in the Parliament to amend the Constitution. The opposition leader Ms Bhutto made a deal with the President instead of supporting Sharif. Ironically, both parties when in power wanted to remove the 8th amendment but when in opposition they preferred to retain it as a check on their rivals. The President sacked Sharif and dissolved the National Assembly. A challenge in the Supreme Court briefly restored the Sharif government.

Both Ms. Bhutto and Sharif felt that they could not govern the country without control over the provincial governments. Their actions to gain control, often extra-constitutional, escalated the conflict with the President who chose to support the latter. In 1993, the conflict led to the
creation of two parallel governments in the Punjab. The province became ungovernable. Military stepped in and persuaded both the President and the PM to resign. A poll conducted by Newsline in four major Pakistani cities showed that almost 65 percent of the people polled did not approve of the President's dismissal of the Sharif government.\(^{(15)}\)

The 1973 Constitution of Pakistan copied the British system, where all executive power is vested in the Monarch. The exercise of this power, however, is subject to the advice of the Prime Minister, the political head of the elected government. The heads of the state in the Anglo Saxon countries of the Commonwealth never complain about being kept out of the political arena. This, however, is the result of the evolution of centuries of tradition. Not only such traditions failed to emerge in post-colonial Pakistan, but also the Pakistani leadership established the opposite tradition. The written Constitution compromised the parliamentary tradition by providing discretionary powers to the President. During the Zia regime, the presidency had acquired a pivotal position. The parliamentary and democratic norms had to be recreated. The administrative chaos and ethnic strife that accompanied the democratic change created an environment that was not conducive to creating such norms and institution building.\(^{(16)}\)

**Rubberstamp Legislatures**

The legislatures have traditionally played minimal role in the country's governance. During 1948–58, they were dismissed at the executives' whims. Ali Bhutto's government assigned a limited role to the legislature. He used extensive patronage and coercion to control and manipulate the legislators.\(^{(17)}\) The Zia regime created a dummy legislature to emasculate the 1973 Constitution and concentrate power in the office of the president.

During 1988–1999, the National Assembly was dissolved thrice by the President and a fourth time by a coup d'état. Repeated dissolution of elected legislatures eroded their prestige. It created cynicism about the significance and power of the institution. Parliament devoted little time to lawmaking. The governments ruled by ordinance rather than by laws.\(^{(18)}\) Governments abused their power to issue ordinances for a period of four months. Despite the Supreme Court ruling to the contrary, the ordinances were blatantly re-promulgated.\(^{(19)}\) The notion of executive accountability to the legislature, the corner stone of parliamentary government, was destroyed.

Given the low level of accountability and the poor quality of debate, the major expenditure items got through the Parliament by default. Parliament had little control over the budgetary process. The ministers
and legislators often used public funds to distribute patronage. The defense budget was presented as a line item and the Parliament refrained from any discussion.\(^{20}\) The members of the Provincial and National Assemblies (MPAs, MNAs) completely ignored the distinction between the legitimate service to their constituents and illegitimate favors for their cronies. "Horse trading," switching support in the legislatures in exchange for bribes, became a common practice, until it was banned by a constitutional amendment in 1997. The behavior of many members of various legislatures was brazenly opportunistic and undisciplined.\(^{21}\) The floor crossing amendment was so draconian that it transformed the party members into the handmaidens of the Prime Minister.\(^{22}\)

**Judiciary: The Creature of the Executive**

By and large, the judicial structure left by the British still remains intact. Its norms, values and ethos have undergone a radical change. In Pakistan's conflict-ridden polity, bitterly contentious issues between political actors have frequently resulted in judicial recourse. The failure of a weak political system to resolve these issues placed a heavy burden on the superior judiciary. It introduced partisan politics into the hallowed halls of the higher courts. The State's penchant to use military and Islam has led to the creation of parallel systems of judicial institutions. The latter have constantly posed a challenge to the legitimacy and authority of the courts. Judges have tried to match their constitutional ideals and legal language to the exigencies of the current politics. Their judgments have often been supported by the government of the day.\(^{23}\)

Early in its history, the Federal (later the Supreme Court) created the "doctrine of necessity" and "revolutionary legality" to justify the executive's illegal dissolution of the Constitutional Assembly, abrogation of the constitution and imposition of martial law.\(^{24}\) The same Court endorsed the martial law again in Nusrat Bhutto's case. It declared military intervention to be necessary and validated all actions pursuant to the military takeover, thus providing General Zia the legal basis to amend the constitution. Zia's amendments would continue to shape the model of governance for more than a decade after the lifting of the martial law. In overruling Bhutto's appeal to replace judges who tried him, the court further extended the scope of "necessity."\(^{25}\)

During the military regimes, politicians viewed the judiciary as the protector of their rights. During the democratic decade, the relations between the elected prime ministers and the superior judiciary were marked by constant conflict. Ms. Bhutto's relations with superior judiciary remained
severely strained, particularly in the second term. The superior judiciary endorsed the President’s decision to dismiss the Prime Minister. Appointment of judges, often on the basis of patronage and transfer of “uncooperative” judges were the root cause of the conflict.\(^{(26)}\)

The apex court’s landmark ruling popularly known as the judges case practically took away the Prime Minister’s power to appoint judges, thus ending the practice of appointing temporary judges, acting chief justices and transferring judges. The government publicly ridiculed the judiciary and even tried to intimidate the Chief Justice.\(^{(27)}\)

Ignoring the advice of the Chief Justice and the Law Commission, Sharif bulldozed his Anti Terrorism Act through the Parliament. He tried to block the Chief Justice’s elevation of five judges to the Supreme Court by reducing the total number of judges on the bench.\(^{(28)}\) The conflict resulted in a public rift in the bench for the first time in the country’s history. The Chief Justice went out of his way to entertain any petition against the government. The Prime Minister led an unprecedented campaign against the judiciary in the Parliament and the media. The Chief Justice retaliated with a writ against the Prime Minister for contempt of court. The ruling party mobbed the court chambers and interrupted the contempt proceeding.\(^{(29)}\) The conflict escalated to a level that there were virtually two governments under the President and the Prime Minister and two apex courts issuing notifications countering each other. The conflict ended with the resignation of the President and the Chief Justice. By now the President’s power to dissolve the legislature had been taken away by a constitutional amendment in 1997.

Many eminent lawyers and judges believe that the ordinary litigants have lost faith in the legal system and are clamoring for justice to be carried out in the streets rather than in the courts. Judiciary in Pakistan has rarely stood up to defend the constitution and the rule of law.\(^{(30)}\) The appointment of judges at all levels is tainted with nepotism and favoritism.\(^{(31)}\)

The provincial governments remained reluctant to separate the lower level judiciary from the executive because it gives the administration a great deal of power. The lack of separation seriously compromises the independence of lower courts and erodes the police accountability. Traditionally magistracy and police have enjoyed a close working relationship. This often works against the public interest. Magistrates tend to favor the demands of the police in matters of bail and remand. The provincial governments and politicians for their political ends have readily manipulated the magistracy. Successive governments have used the police for harassing opponents and winning elections.\(^{(32)}\) The 1973 Constitution had provided that the judiciary and executive at the lower level are separated within 5 years. The implementation of this directive was repeatedly
postponed despite a government decision in 1996 and separation remains incomplete.

Case disposal data indicate a better disposal rate in Pakistan than other South Asian countries. Many legal experts believe that the case disposal remains slow. In November 1997, the Lahore High court alone had 65,000 pending cases. The shortage of judges may be a reason for this inordinate delay. The judges' tendency to readily grant adjournments has more to do with it. Mauro assigns a score of 5 to the Pakistani judiciary for efficiency and corruption, on a scale of 0 (worst) to 10 (best). This is the lowest rating among the South Asian countries.

Political Culture

The institution of "Her Majesty's Loyal Opposition" remains unknown in Pakistan. Military regimes have destroyed the institution of democratic opposition. Jailing and torturing of political opponents was commonplace even under democratic regimes. The opposition did not recognize the legitimacy of the party in power to govern. Election victories were rarely conceded. The opposition would go to extremes to discredit the government and was too impatient to wait for the incumbents to complete their term of office. Instead of dialogues in parliament, the opposition often took its issues to the courts or the streets. The ruling parties traditionally dealt harshly with the street agitation.

Most political parties do not have grassroots organization. Neither do they hold regular elections to choose their officials. Even when elections are held, they are unopposed. Leadership tends to be dynastic. Factionalism often based on lineage and caste is commonplace. Horse trading and bargaining to switch support is a norm. The parties are volatile groups of factions. They often splinter into factional groups. The leadership style within the parties tends to be autocratic. In the absence of ideology or programs, the leadership faces a challenge to keep the party together and uses illegal incentives. The support base for most of the political parties remains narrow and regional. Major political parties tend to be associated with one dominating ethnic group. Some political parties are more like ethnic movements rather than political parties. Ascriptive divisions characterized the political process and inhibit political integration.

Collective responsibility of the Cabinet was unheard of in the past. The governments were run by the well-known kitchen cabinets—a coterie of non-elected and unaccountable sycophants. Nawaz Sharif's last Cabinet rarely met. Consultation with Cabinet colleagues was not a norm.
The Civil Society

The civil society is the network of ties and groups through which people connect and are drawn into community and political affairs. The number of nongovernmental organizations (NGO) is considered a good proxy for the degree of civic engagement and good governance.\(^{(39)}\) The estimated number of NGOs in Pakistan stands at about 10,000. Relative to its South Asian neighbors, Pakistan has the lowest number of NGOs.\(^{(40)}\)

Pakistan's civil society reflects its ethnic and religious fragmentation. It reflects the division between the traditional and modern segments of society. Ironically a large number of Pakistan's modern and traditional NGOs owe their emergence to the Afghan war during the 1980s. Foreign aid was easily available for relief work in Afghanistan and development activities in Pakistan. There was also a donor shift toward more funding of NGOs. The government used their favorite NGOs to absorb the abundant development funds. Some were genuine development organizations.\(^{(41)}\)

The modern Pakistani NGOs operate from a narrow support base. Their espousal of human rights and gender related issues pit them directly against Islamic laws, madrassahs (religious schools), local culture and traditions—the "other" civil society. Religious militants accuse them of being anti-Pakistan, anti-Islam, and agents of foreign powers. Foreign funding tends to strengthen these suspicions.

Some of the modern NGOs, particularly the Human Rights Commission, have defended the fundamental rights of the most oppressed people in Pakistan against all odds. Despite serious obstacles, many NGOs have persisted in their efforts to strengthen the civil society. Orangi Pilot Project, the AKRSP and Edhi Foundation are some of the most outstanding examples of NGOs in Pakistan. They have been successful in mobilizing cooperative human action and promoting civic engagement.

The "other" civil society in Pakistan works in the vernacular mode. Their leadership is indigenous and originate from the grassroots. They have no linkages with the Western foreign aid donors. They do appear to have a broader base of support and networks in the lower and lower-middle classes. Most of them are religious and based in mosques and madrassahs. Some of them are sectarian and violent militia-like organizations. The activities of the latter often verge on terrorism—in the name of religion. Some allegedly are fronts for criminal organizations.

The activities of the militant sectarian organizations pose a serious threat to the rule of law and justice in the country. They are a serious impediment in the development of a relatively cohesive civil society and a potent threat to the work of modern NGOs.\(^{(42)}\) They have a different worldview, a different agenda and a radically different image of Pakistan's
future development. They do not win elections. They have the street power. Governments and secular NGOs are reluctant to challenge the traditional and religious institutions.

**THE MILITARY AND ITS RELATIONS WITH CIVILIAN AUTHORITIES**

Weak political institutions. corruption and perennial political instability paved the way for military intervention. The exigencies of cold war politics facilitated military takeovers in the past. Pakistan's military became "state" within the State. Military debt remains officially unacknowledged. Despite the burgeoning defense expenditure limiting Pakistan's policy options, the military budget remains sacrosanct.\(^{43}\) The public opinion on military spending is divided. A *Herald* poll indicated 49 percent of the respondents for cutting military spending while 51 percent were against.\(^{44}\)

The military has benefited enormously from the State. All the three defense services—army, navy and air force—have created trusts and foundations with large investments in industry. The Army's Fauji Foundation, an industrial conglomerate, neither pays taxes nor is subject to any regulatory legislation.\(^{45}\) The army has become an "increasingly powerful vested interest in society through its institutionalized business activities."\(^{46}\) The military's intelligence agencies, particularly the Inter Services Intelligence Directorate (ISID) operates like a parallel government.

The army lost its overt role in governing the country when democracy was restored. Nonetheless, the military leadership believed that it must continue to have input in important political decisions and play a mediating role.\(^{47}\) The military chiefs participated in the governing Troika, courtesy of the notorious 8th amendment until it was removed. Throughout the democratic interlude, the prime ministers solicited the military's support in their quarrels with the President and the Judiciary. They called upon the army to restore law and order. The army conducted and supervised the elections. The army took over the Water and Power Development Authority because the civilian regimes failed to deal with its mismanagement and corruption. The Punjab government invited the army to supervise the matriculation examinations to curb cheating. The provincial government used the army to check out "ghost" schools and basic health units. This repeated resort for the army to deal with routine administrative problems not only strengthened its claim to intervene in civilian matters but also underscored the administrative incapacity of the civilian regimes.

During 1997–98 in the wake of the nuclear tests, Sharif's removal of the 8th Amendment and the looming fiscal crisis, the military sought a more
institutional role in the country's governance. They warned that in a nuclear South Asia the threat to national security is internal and not external. A well defined, institutionalized role for the military was necessary to counter these threats. The military proposed an apex governing body with civil and military representatives, the Council for Defense and National Security.\(^{48}\)

Ignoring the suggestion, Sharif continued to concentrate power in the office of Prime Minister through constitutional amendments. Conflict between Sharif and the Chief of Army Staff (COAS) simmered over senior appointments in the army high command—a perennial bone of contention. The Prime Minister's initiative to improve relations with India—"bus diplomacy"—did not sit well with the army brass. The authority over the control and command structures of the nuclear program was also at issue.\(^{49}\) Sharif's relationship with the COAS deteriorated further over his handling of the Kargil affair. Just before the coup, the Herald reported: "The level of mistrust that has developed between the prime minister and the army chief during the last few months may never allow the relationship to stabilize."\(^{50}\) Finally, the Prime Minister's clumsy attempt to replace the COAS ended, not surprisingly, in a coup.

Almost total lack of civilian control on the country's armed forces imposes a major constraint on civic, political and economic governance. The limits on initiating foreign policy, cutting the defense budget, control of the nuclear program and over covert intelligence activities are awesome constraints on civilian regimes. Pakistan's democratically elected prime ministers have repeatedly failed to live with this reality. Ironically, the same leaders, when in opposition, repeatedly appealed to the army to intervene and bring down an elected government before completing its term.

**THE ENTRENCHED BUREAUCRACY**

Pakistan's bureaucracy remains largely bound by the legacy of the vice-regal system. In this age of knowledge-based, learning organization the system is still dominated by generalist administrators. The generalist bias is partly responsible for the relative lack of policy capacity and policy analysis. Fifty two years after independence, the system still clings to the top down "Governing Corporation" model based on the artificial policy/administration dichotomy established in the 19th century.\(^{51}\)

During the last decade, the public service has become more politicized. Grand scale corruption required close collaboration between the politicians (ministers) and the senior bureaucrats. The use of district and local level administration during the elections eroded their neutrality. The bureaucracy was involved in the president-prime minister conflicts as well as the power
struggle between the provinces and the federal government. Finally, in Pakistan's traditional culture, kinship and religious ties tended to compromise the impartiality of the public service.

Bureaucracy remains bloated. The government employs 20 percent of the non-agricultural work force. The huge cost of maintaining such a large civil service draws resources away from the development sectors. During the last decade, governments filled thousands of positions in the lower ranks of strategic departments on the basis of patronage. On a scale of 0 (worse) to 10 (best) Mauro rates the efficiency of the Pakistani bureaucracy at 4.3, the lowest score among South Asian countries. The International Development Association (IDA) rates Pakistan's Public Sector Management and Institutions (PSMI) in the lower quintile, below 50 aid recipient countries of Asia and Africa. Pakistan is a tad better than Guinea-Bissau, Haiti, Liberia and Somalia.

**STRUCTURAL CONSTRAINTS ON GOOD GOVERNANCE**

The combination of poverty, rapidly growing population and scarce resources make a lethal combination against good governance. There are no examples of good governance in low income, heavily populated, resource scarce countries. Penury of resources and a very high demand for services imposes quasi-insurmountable constraints on allocative efficiency In addition to these fundamental constraints on good governance; Pakistan is burdened with awesome structural constraints. Pakistan is a deeply divided society. Its five major ethnic groups—Punjabis, Pushtoons, Balochis, Sindhis and Muhajirs—have defied national integration. They have significant cultural and linguistic differences. Islam, a unifying factor in pre-independence era is no more a sufficient condition for national integration. The Islamization of the last two decades has brought dormant sectarian differences to the surface. The emergence of militant sectarian organizations is threatening the very fabric of social life. These ethnic and religious divisions are reflected in the state and political institutions, thus creating a fragmented state with little institutional or social cohesion. The ethnic and religious fragmentation makes governance a formidable challenge.

**Ethnic Diversity**

The last four elections have consistently revealed the regional character of political parties and their ethnically based support. This ethnic
and political fragmentation often results into relatively fragile coalition governments, which spend most of their time devising survival strategies rather than constructive policy design and good governance. The demands from ethnic minorities constantly challenge the legitimacy of the State apparatus. During the democratic era, a Punjabi or Sindhi prime minister found it extremely difficult to govern the country if ethnically dominated regional parties controlled three out of four provincial governments. Competition for political power took the form of ethnic conflict leading to endemic violence. Sindh remained engulfed in ethnic violence for almost two decades. During the operation in Sindh (1992–95), the MQM party was practically engaged in a civil war against the army.\(^{56}\)

The “Not So Civil” Society

The generous United States financing (including weapons) during the Afghan war led to the rise of militant religious groups.\(^{57}\) Zia’s politically expedient alliances with religious groups and ban on secular political activity led to the resurgence of religious groups.\(^{58}\)

There are about 8,000 registered and about 25,000 unregistered such institutions in Karachi alone. Out of 2,512 religious educational institutions in Punjab, over 870 subscribe to violent sectarian philosophies.\(^{59}\) Madrassahs are producing a large number of committed cadres. Majority turns to militant religious organizations and political parties for work. Khan lists five major militias functioning out of sectarian belt in central Punjab.\(^{60}\) The sectarian organizations remain a defiant challenge to the rule of law. Their leaders have assumed the mantle of divine laws. Their followers believe they are carrying on a divine mission, a holy war. They break the law of the land and get away with murder. Despite the public support for banning the sectarian militias, governments remained reluctant to ban or disarm these organizations.\(^{61}\) They were afraid to be portrayed as anti-Islam. Weak coalition governments sometimes had to seek the support of the religious parties in legislature. These linkages explain the ambivalence of the elected governments in dealing with the religious parties. The street power of these groups can bring big cities like Karachi to a standstill through strikes and protests.

THE RULE OF LAW AND CORRUPTION

The rule of law remains an anathema to Pakistani culture. The inherent cultural propensity to take the law in one’s own hands has been
reinforced by feudalism, customs, sectarian creeds and religious traditions. Police brutality and lack of redress are also cited as reasons to circumvent the due process of law. A parallel system of traditional justice operates in defiance of the rule of law and judiciary in many regions of Pakistan, even though most of its verdicts may be diametrically opposed to the norms of justice and codes of human rights. The Special Courts dealing with heinous crimes and terrorism form yet another layer of legal institutions that pose a challenge to the rule of law. In these situations, illegal actions are justified by a “higher law” that bestows legitimacy on them. The overall effect, however, is a condition of endemic lawlessness and a total disrespect for the rule of law and judicial institutions. There seems to be no universal concept of law.

Islamic law on rape, adultery, fornication, theft and robbery is a challenge to the rule of law. Under this law testimony of a Muslim female is not allowed. A rape conviction requires the ocular evidence of four male Muslims. The burden of proof in rape lies entirely on the victim. If she cannot prove rape, then by her own admission she is subject to conviction for adultery. The entire system of justice is loaded against the rape victims. The existence of competing and sometime contradictory legal frameworks—secular, Islamic and military—is a challenging impediment to the rule of law.

Violation of rules is commonplace in everyday life. Traffic rules, customs and income declaration, school and university admissions, plane reservations and excess baggage rule are rarely respected. Recovery of bank loans, collection of taxes, telephone and utility bills remains problematic. The idea of universal rules and laws that treat everybody equally is an anathema. People, particularly the elite and middle classes, prefer to be treated as special cases. Those who cannot have their way through influence, family connections, sifarish (recommendation), would often resort to bribe. Normal services that should be provided as a matter of course are allocated on the basis of ascriptive criteria or bribes.

The public is totally alienated from the police and the judicial system. Use of police by politicians, fabrication of evidence and registration of false cases against opponents is a common practice. Police were accused of organizing fake encounters to kill criminals. During 1998–1999, some 50 people in Karachi and over 100 in the Punjab died in police custody. The police bitterly complain of shortage of personnel, weapons, transport, and forensic capacity and above all of political interference. Their working conditions are appalling and salaries are extremely low. The violation of the due process of law by the police appears to be a serious obstacle in establishing the rule of law in the country.
During the last decade, four democratic governments were dismissed on charges of corruption. Two prime ministers have been personally accused of corruption. Ms Bhutto has already been convicted for receiving kickbacks from SGS and Cotecna. Stories of their legendary corruption have been published in the national and international press. In a recent survey, 88 percent of the respondents felt that political leaders had become more corrupt during the last five years and 33 percent admitted to giving bribes. In another survey, over 95 percent believe that bureaucrats and politicians were corrupt and 76 percent thought that the generals were more corrupt now than 15 years ago.

Pakistan is considered to be one of the most corrupt countries in the world. Table 2 gives Pakistan’s rankings according to the now famous Transparency International Index.

The data presented in Table 2 is based on the perceptions of foreign businessmen. There are also some methodological weaknesses in sampling procedures. But combined with anecdotal evidence and published information about specific cases, it offers a fair proxy of the degree of corruption prevalent in the country. The figures show a little improvement since 1996. In that year, the Transparency International ranked Pakistan the second most corrupt among 53 countries examined, second only to Nigeria. This was during Ms Bhutto’s second term when her husband Mr. Zardari was promoted from “Mr. 10 percent” to “Mr. 20 percent” by the local press.

Corruption skews priorities, reduces allocative efficiency, compromises the quality of programs, undermines accountability and reduces transparency. Corruption in police and judiciary particularly leads to gross injustice and violation of human rights. A World Bank official points out that the Pakistan’s GDP per capita would be significantly higher if corruption had been reduced.

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Source: Compiled from the Transparency International Indices
ECONOMIC AND SOCIAL PERFORMANCE

Despite poor governance, the country has muddled through and attained steady incremental growth, as is evident from the data in Table 3. Pakistan’s GNP per capita of US$480 remains higher than the average for South Asia (US$390) as well as the low-income countries (US$350). Life Expectancy at birth in Pakistan is higher than the average for South Asia (62 years) and low-income countries (59 years).\(^{69}\)

In absolute terms, Pakistan’s performance in the social sector remains dismal. Pakistan’s infant mortality rate is the highest amongst the five major South Asian countries. Pakistan’s literacy level is one of the lowest in the world. The recent performance of the democratic governments appears to be poor in all sectors. According HDC, Pakistan ranks 52nd among 58 countries on humane governance. This is comparable to Bangladesh and Sri Lanka but a few notches below India.\(^{70}\) This is no solace because the overall performance in the entire region remains very poor. The governments under-invested in education and health. The defense expenditure as a percentage of GDP remained around six, while the allocation to health and education remained at about two to three percent each.

The International Development Association (IDA) evaluates annually the quality of each borrower’s policy and institutional framework. These assessments are the key consideration in IDA funding allocation process. In 1999, Country Policy and Institutional Assessment (CPIA) rated Pakistan in the middle quintile. This translates into an overall mediocre performance. On all four criteria, Pakistan rated consistently below its South Asian neighbors.\(^{71}\)

During 1990–98, the GDP per capita grew only at the rate of 1.7 percent. Pakistan’s external debt jumped from $9.9 billion in 1980 to $32.22 billion in 1998. Pakistan’s public debt as a percentage of GDP remains the

<table>
<thead>
<tr>
<th>Indicator</th>
<th>1991</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>HDI Score</td>
<td>.311</td>
<td>.522</td>
</tr>
<tr>
<td>Life Expectancy (years)</td>
<td>57.7</td>
<td>64.4</td>
</tr>
<tr>
<td>Literacy (% of the population)</td>
<td>31</td>
<td>44</td>
</tr>
<tr>
<td>GDP pc (ppp) $</td>
<td>570</td>
<td>1715</td>
</tr>
<tr>
<td>Access, Sanitation (% of the population)</td>
<td>20</td>
<td>56</td>
</tr>
<tr>
<td>Access to Potable Water (% population)</td>
<td>45</td>
<td>79</td>
</tr>
<tr>
<td>Access to Health Care (% population)</td>
<td>55</td>
<td>85</td>
</tr>
</tbody>
</table>

PAKISTAN'S FRAGMENTED SOCIETY

highest in South Asia at over 91 percent. Its domestic debt exceeds 40 percent of GDP. The combined increase in domestic and external debt has led to a burgeoning debt servicing burden.\(^{(72)}\)

CONCLUSIONS

Governance assumes a system of coherent institutions and laws. Pakistani state is an incoherent juxtaposition of religious, secular and military institutions vying for legitimacy through contradictory norms and values. Pakistan's ethnic and sectarian fragmentation and its culture impose awesome constraints on good governance. The ethnic and religious fragmentation inhibits the institutionalization of governing structures and integration of the civil society. The competition for power through elections further accentuated the ethnic fragmentation.

The antagonism between the presidents and the prime ministers proved to be a major source of political instability. The ambiguity created by the 8th amendment, the absence of unwritten conventions or traditions and personal factors were responsible for the continuous conflict. The army's claim to governance further complicated the situation. The supremacy of the civilian government has never been established. Neither was the office of prime minister institutionalized as the source of ultimate authority. The elected legislatures remained passive and creatures of the executive. Collective responsibility of the cabinet and accountability to parliament was non-existent. The political conduct of the parliamentarians was at best opportunistic, unprincipled and corrupt.

The superior judiciary lost the semblance of independence during the democratic interlude. The apex court failed to observe its traditional role of interpreting the Constitution and staying neutral and impartial. The credibility of the superior judiciary also suffered because of the patronage appointments and executive interference. The lower judiciary, in the absence of separation from executive, remained subject to political manipulation. Presidents, prime ministers, the COAS and the chief justices were constantly engaged in an on-going power struggle leading to an extremely unstable government. They would have little time for governance.

The economic growth slowed down and human development remained dismal. The increasing corruption and lackluster performance of democratic institutions eroded their legitimacy. The responsibility for this lays squarely with the governing elite—politicians, senior bureaucrats, army high command, feudal landlords, and big business and to a lesser extent the highly educated professionals.
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