


Book Review: Sandeep Suresh on Sadaf Aziz's "The Constitution of Pakistan: A Contextual Analysis"

 iconnectblog.com/2018/09/book-review-sandeep-suresh-on-sadaf-azizs-the-constitution-of-pakistan-a-contextual-analysis/

Sandeep Suresh

[Editor's Note: In this installment of I•CONnect's Book Review Series, Sandeep Suresh reviews Sadaf Aziz's book [The Constitution of Pakistan: A Contextual Analysis](#) (Hart Publishing 2018).]

–Sandeep Suresh, Faculty Member, Jindal Global Law School

The aim of the Series 'Constitutional Systems of the World' by Hart Publishing is to provide introductions to various constitutional texts by portraying how the historical, cultural, and socio-political fabric of a nation influences the text. To Prof. Sadaf Aziz's credit, [her latest book](#) on the Constitution of Pakistan has done justice to the Series' intent.

In chapters 1 and 2, Prof. Aziz starts by tracing the historical evolution of the Pakistani State and development of the constitutional text in the initial years after independence in 1947. Importantly, these chapters give the reader a good sense about the development of Muslim nationalism alongside the Indian nationalist movement against the colonial rule. Prof. Aziz clearly indicates that if the initial tone of such religious nationalism was about having a more substantive representation electorally and in government posts, since the turn of 1940s, the sentiment transformed into an emotional call for a separate religious state. These chapters reveal the logic behind why constitutionalism has developed the way it has in today's Pakistan. Thereafter, like many other books in this Series, chapters 3, 4, and 5 undertake a concise institution-centric analysis of the Parliament, the Executive, and the Judiciary. These chapters study the major political oscillations in the nation's history and simultaneously portrays the impact those political events had on the constitutional system.

Throughout this book, the author has tried to display a broad overview of distinctive factors that have derailed Pakistan's path towards being a liberal democracy. The most noteworthy conclusion one can draw from Prof. Aziz's book is that main ailment which Pakistan's constitutional system had to suffer throughout its history has been the constant attempts to centralise power in the executive echelons of the government.

Chapter 4 tells us that right from the beginning in early 1950s, there has been strong centralisation of powers in the hands of the Executive and Army's role in decision making process was cemented. Prof. Aziz specifies that the tendency of centralising powers was not limited to those periods when the Army, through coups, gained power and ruled the country. The tainted authoritarian legacy left by military regimes of Ayub Khan (1958-

1969) and Zia-ul-Haq (1977-1988) has lived on in civilian political leaders like Zulfikar Ali Bhutto, Benazir Bhutto and Nawaz Sharif who were given democratic mandates by the people (pp 77 & 94).

The enactment of the 1973 Constitution and birth of the first democratically elected civilian government headed by Zulfikar Bhutto had the potential to be a 'constitutional moment' for Pakistan to rightfully change gears to a more democratic path. Yet in the absence of Pakistan's founding leader Muhammed Ali Jinnah, Bhutto did not do what Jawaharlal Nehru did for India's stable growth as a constitutional democracy.

In chapter 4 (pp 109-113) and chapter 5 (pp 126-127), the author describes various measures undertaken by Bhutto to create personalised rule with all powers vested in the Prime Minister and also to suppress political opposition.[1] Later, when Benazir Bhutto, the daughter of Zulfikar Bhutto, was given the democratic mandate after Zia's military rule in 1988, she never shied away from her father's footsteps. Thereafter, even when Nawaz Shariff came to power, citizens were left at bay without any hope for democratic governance.

Insightful discussions in chapters 3, 4 and 5 clearly indicate that Pakistan's evolution has occurred through a continuous political tug of war where each ruling regime convoluted the constitutional scheme to oppress political dissent by accumulating more powers.

This story of Pakistan displays the absence of basic fundamentals of political science as well. Plato said:

Ruin comes when the trader, whose heart is lifted up by wealth, becomes ruler'; or when the general uses his army to establish a military dictatorship. The producer is at his best in the economic field, the warrior is at his best in battle; they are both at their worst in public office; and in their crude hands politics submerges statesmanship. For statesmanship is a science and an art; one must have lived for it and been long prepared.[2]

Plato's principle is evident in a Pakistan that has been ruled by three Army Generals, the Bhuttos who were powerful landlords, and Nawaz Shariff who comes from a rich business family.

Further, the author considers the recognition of Islam as a State religion in the constitutional text as another factor which certainly affected the prospects for Pakistan as a secular liberal democracy. While the trend in India since the partition and independence in 1947 had moved towards adding the word 'secular' in its Constitution in the year 1976, Pakistan was on reverse gear by terming Pakistan an 'Islamic Republic'.

In the book, especially in chapter 8, Prof. Aziz takes us through the trajectory through which Islam got entrenched in an all-pervasive manner on the socio-political life of Pakistan. The 1973 Constitution specifies that only Muslims can become the President or Prime Minister of Pakistan.[3] The second amendment to the Constitution in 1974 by the Bhutto regime stated that people from the Ahmadi sect are non-Muslims as they did not

absolutely believe in the finality of Prophet Mohammed (p 219). Zia established the Federal Shariat Court to ensure that laws are in consonance with Quranic principles. Such changes have heavily curtailed religious freedom of minority communities. Specifically, the constitutionally-recognised ostracisation of Ahmadis has adverse impacts even today. Recently, the Imran Khan government removed Atif Mian from the Economic Advisory Council because he was an Ahmadi. This is a space which reveals the prominence of Muhammed Ali Jinnah's absence in Pakistan. Jinnah once said: "You may belong to any religion or caste or creed — that has nothing to do with the business of the State ... We are starting in the days where there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State".^[4] Due to his untimely death immediately after partition, his message could not guide Pakistan during its infancy. And in hindsight, it has certainly struck a blow to the spread of liberal democracy in Pakistan.

Another aspect of this book that deserves attention is the sole chapter on fundamental rights. On this point, Prof. Aziz does not do enough to serve the audience. In chapter 7, the author gives us a quick glimpse about certain principles evolved by courts to decide rights cases (pp 185-187). Further, the book also tells us about how the Supreme Court, after the Zia regime, went on a restorative path by constantly invoking Article 184(3) of the Constitution to hear public interest litigation to reinforce certain human rights (p 133). Beyond that, the author describes how Chief Justice Iftikhar Chaudhry had actively utilised the *suo moto* jurisdiction to entertain rights claims effectively (p 137). But it seems that due to lack of further discussions on how these principles or provisions were applied to different types of rights cases puts the reader in the dark wondering. Readers would have benefited from knowing how rights jurisprudence has evolved beyond the limited realm of gender equality and preventive detention cases in a country where executive authoritarianism is widespread.

Despite that reservation, my general impression is that this book has an exceptional place in the body of literature as it provides the broadest review of Pakistan's constitutional scheme by connecting its history to the present. In this book, Prof. Aziz does not try to categorise Pakistani constitutionalism as others have done.^[5] Nonetheless, she concedes that it lacks those usually recognised features of constitutionalism both in letter and spirit (p 249). However, in the last decade, there has been continuity in the democratic transition of power without any military coups because of the impact of the 18th constitutional amendment in 2010 and a strong check on executive excesses by a vigilant judiciary. These observations indicate a positive change in Pakistan's constitutional culture.

Suggested Citation: Sandeep Suresh, *Review of Sadaf Aziz's "The Constitution of Pakistan: A Contextual Analysis"*, Int'l J. Const. L. Blog, Sept. 28, 2018, at: <http://www.icconnectblog.com/2018/09/book-review-sandeep-suresh-on-sadaf-azizs-the-constitution-of-pakistan-a-contextual-analysis>

[1] Also see, Taimur-ul-Hassan, *Roots of Authoritarianism in Pakistan*, Journal of Political Science (Issue XV, 2009), pp 9-10.

[2] Cited in Will Durant, *The Story of Philosophy* (Simon and Schuster, 1953).

[3] Art. 41(2) & Art. 91(3) of the Constitution.

[4] Muhammad Ali Jinnah, *First Presidential Address to the Constituent Assembly of Pakistan* (August 11, 1947).

[5] Faisal Shahzad, *Pakistan, currently, is a competitive authoritarian regime and not a democratic one*, The Nation (March 2016)