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Reserved Domains and the Great Fear Decade, Article 58(2)(b) and the Recurring Dismissal of Elected Governments in Pakistan, 1988 to 1999

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ABSTRACT
Between 1988 and 1999 Pakistan produced and dismissed four elected governments, two headed by Benazir Bhutto and two by Nawaz Sharif, each removed or fatally undermined through the same constitutional instrument, the presidential power of dissolution contained in Article 58(2)(b) of the 1973 Constitution. This article treats the decade as a single institutional pattern rather than as four unrelated crises. Building on Samuel Valenzuela's concept of reserved domains and tutelary powers and extending the delegative democracy framework developed by Guillermo O'Donnell, the article argues that Article 58(2)(b) functioned as a standing reserved domain that allowed an unelected president, and behind him the military establishment, to discipline elected governments without ever needing to suspend the constitution outright. The article traces this pattern across the dismissal of Benazir Bhutto's first government in 1990, the dismissal and subsequent restoration and forced resignation of Nawaz Sharif's first government in 1993, the unelected caretaker administration of Moeen Qureshi, the dismissal of Benazir Bhutto's second government in 1996, and the eventual repeal of Article 58(2)(b) under Nawaz Sharif's second government in 1997. It closes by asking why the repeal of the reserved domain's most visible instrument failed to produce lasting democratic stability, a question the 1999 military coup answers with some force. The article situates this history within the wider argument, developed in a companion study of the Zia and Junejo period, that Pakistani democracy after 1985 was delegated rather than restored, and that the removal of one instrument of delegation does not by itself dissolve the underlying tutelary structure.

Keywords: *Pakistan, Article 58(2)(B), Reserved Domains, Tutelary Democracy, Benazir Bhutto, Nawaz Sharif, Ghulam Ishaq Khan, Farooq Leghari, Civil Military Relations.*

Introduction

Between the death of General Zia-ul-Haq in August 1988 and the military coup of October 1999, Pakistan held four general elections and produced four governments, none of which completed its constitutionally allotted term. Benazir Bhutto's first government fell in 1990. Nawaz Sharif's first government fell in 1993, was briefly restored by judicial order, and then negotiated its own resignation under military mediation. Benazir Bhutto's second government fell in 1996. Nawaz Sharif's second government survived the full decade's most direct

constitutional threats only to fall, in the end, not to a president but to his own army chief. Pakistani historians have long referred to this decade as the Great Fear, a label that captures its atmosphere of perpetual anticipation without fully explaining its mechanics.

This article argues that the mechanics are, in fact, straightforward, and that their straightforwardness is precisely what makes the decade analytically important. Three of the decade's four government failures were produced through a single constitutional provision, Article 58(2)(b), which empowered the president to dissolve the National Assembly and dismiss the prime minister at his own discretion. The fourth, the fall of Nawaz Sharif's second government in 1999, occurred after that provision had already been repealed, a fact that raises the central question this article seeks to answer. If Article 58(2)(b) supplied the decade's principal instrument of civilian government failure, why did its removal in 1997 not stabilize the system it had supposedly been distorting.

The answer proposed here draws on a distinction developed in the comparative literature on democratic transitions between an instrument of tutelage and the underlying tutelary structure that the instrument merely expresses. Samuel Valenzuela's account of reserved domains and tutelary powers, developed to explain the incomplete civilianization of several Latin American transitions, offers a vocabulary for this distinction that the existing Pakistani historiography has not yet fully exploited. A reserved domain, in Valenzuela's sense, is an area of policy or institutional life that unelected actors, most often the armed forces, succeed in placing beyond the reach of elected authority even after a formal transition to civilian rule has occurred. A tutelary power is the specific mechanism, constitutional or extra constitutional, through which that reservation is enforced. Article 58(2)(b) was a tutelary power. The reserved domain it protected, the military establishment's freedom from meaningful civilian oversight of security policy, army appointments and institutional budgets, survived the power's repeal because the domain and the instrument were never the same thing.

The article proceeds chronologically. It begins with a fuller statement of the reserved domains framework and its relationship to O'Donnell's delegative democracy, developed at greater length in a companion study of the Zia and Junejo period that immediately precedes the decade examined here. It then works through the four dismissals in turn, together with the unelected caretaker government of Moeen Qureshi that briefly interrupted the sequence in 1993. It closes with a discussion of the Thirteenth Amendment's repeal of Article 58(2)(b) in 1997 and what the subsequent 1999 coup suggests about the limits of removing a tutelary power while leaving its underlying reserved domain intact.

Theoretical Framework: Reserved Domains and the Institutionalized Veto

Valenzuela on Tutelary Powers and Reserved Domains

Valenzuela's account begins from an observation about incomplete democratic transitions more general than the Pakistani case. Outgoing authoritarian regimes, and the militaries that stand behind them, rarely surrender power without first attempting to secure certain outcomes against future reversal by an elected government. They do so in two distinct ways. First, they may negotiate or impose reserved domains, areas of governance that remain outside the ordinary reach of elected officials even after the transition, most commonly national security policy, senior military appointments and the military's own budget. Second, they may build tutelary powers into the new constitutional order itself, formal mechanisms that allow an unelected or semi elected actor to intervene against an elected government that oversteps the boundaries the reserved domain implies (Valenzuela, 1992, pp. 62 to 70).

Read against this framework, Article 58(2)(b) is a tutelary power in a fairly pure form. It did not itself specify which policy areas were reserved from civilian control. It instead supplied a

general-purpose instrument, formally available for use against any government the president judged to have failed, that in practice was invoked overwhelmingly in response to civilian attempts to assert authority over precisely the domains, army appointments, security policy and institutional privilege, that the military establishment regarded as its own. The reserved domain and the tutelary power are analytically separable, and this separability is the key to understanding why the decade did not end when the power was repealed.

Extending the Delegative Democracy Argument

A companion study of the years between 1977 and 1988 argues that the Eighth Amendment, which introduced Article 58(2)(b) in 1985, marked the codification of a Schmittian exception first declared through the 1977 coup, and that the resulting order corresponds closely to what O'Donnell termed tutelary democracy. The present article extends that argument forward through the decade in which the codified exception was actually put to use. Where the earlier study is concerned with the founding of the instrument, this article is concerned with its operation, and in particular with what repeated operation across four different governments and two different party leaderships reveals about the instrument's true target. If Article 58(2)(b) had been a neutral tool for removing genuinely failed governments, its use should have tracked variation in the quality of civilian governance. What the decade instead shows is a far more consistent pattern, in which dismissal or its serious threat followed specific and recurring attempts by elected prime ministers to assert authority over army appointments, security policy or institutional privilege, regardless of which party or which individual happened to hold office.

Huntington and the Praetorian Frame

A further and older concept usefully supplements Valenzuela and O'Donnell here. Samuel Huntington's account of praetorian society describes political systems in which social and political forces confront one another directly, without the mediation of stable institutions capable of absorbing and channeling conflict, and in which the military therefore becomes one political actor among others rather than an instrument subordinate to civilian authority (Huntington, 1968, pp. 192 to 196). The Great Fear decade displays this praetorian quality with unusual clarity. The presidency, the army leadership, the judiciary and the two dominant political parties, the Pakistan People’s Party and the Pakistan Muslim League, all behaved across the decade as competing power centers willing to use whichever institutional lever was available, Article 58(2)(b) foremost among them but not exclusively, to disable rivals rather than to out compete them through ordinary parliamentary politics. Article 58(2)(b) did not create this praetorian dynamic. It gave the dynamic an unusually efficient and unusually legal channel through which to operate.

Benazir Bhutto's First Government and Ghulam Ishaq Khan, 1988 to 1990

The 1988 elections that followed Zia's death produced a Pakistan People’s Party plurality, ninety three seats against fifty five for the Islami Jamhoori Ittehad, out of two hundred and seven National Assembly seats. Since no party held an absolute majority, President Ghulam Ishaq Khan was constitutionally obliged to invite Benazir Bhutto, as leader of the largest party, to form a government. He did so only after having attempted, in the months preceding the vote, to disadvantage her candidacy through Ordinance XIV, which imposed a national identity card requirement on voters under conditions that left many opposition supporters unable to obtain the necessary documentation in time. The Lahore High Court struck the ordinance down in Aitzaz Ahsan v. Pakistan, a ruling the government appealed, and on which the Supreme Court itself divided before ultimately allowing a stay that left large numbers of voters disenfranchised (Patel, 2000, p. 150).

Once in office, Bhutto faced a choice this article treats as diagnostic of the reserved domain already in place. She could attempt to govern with full autonomy from the military establishment, or she could accommodate its expectations in exchange for being permitted to govern at all. She chose accommodation, appointing figures favored by the establishment rather than party loyalists to sensitive positions, and she was in any event denied the ability to shape the provincial government of Punjab, where military and bureaucratic influence helped install Nawaz Sharif, a rival, as chief minister (Sahibzada Farooq Ali Khan, 2006, pp. 169 to 222). She was also unable to take her oath of office for close to six months, an irregularity that left Pakistan's parliamentary system functioning, for a period, closer to a presidential one, with Ghulam Ishaq Khan exercising dominant authority in the interim.

The government survived one no confidence motion, brought by Ghulam Mustafa Jatoi in 1989, before Jatoi announced a second attempt in July 1990. Rather than allow this second motion to proceed to a vote it appeared likely to lose, Ghulam Ishaq Khan invoked Article 58(2)(b) in August 1990, dissolved the National Assembly, and appointed Jatoi himself as caretaker prime minister. The reserved domain's guardian did not wait for a parliamentary defeat, which the government might plausibly have survived, but preempted it entirely through the tutelary instrument available to him. Tensions between Bhutto and the presidency over judicial appointments and constitutional authority had been building steadily in the preceding months, and it is these tensions over precisely the domains Valenzuela's framework identifies as reserved, rather than any parliamentary arithmetic, that the dismissal ultimately addressed.

Nawaz Sharif's First Government, Restoration and Resignation, 1990 to 1993

The elections that followed Bhutto's dismissal returned the Islami Jamhoori Ittehad with a comfortable majority, one hundred and fifty-three seats, and installed Nawaz Sharif as prime minister. His government's early legislative program included the Twelfth Amendment, passed in July 1991, which established special courts to handle serious crimes outside the ordinary judicial process, a measure that sits uneasily with any strict account of democratic constitutionalism even when it was passed by an elected legislature. In Punjab the situation more closely resembled a continuation of Governor's Rule in substance, as many decisions properly belonging to the chief minister were instead taken by the Ittehad appointed governor, Mian Azhar.

The decisive rupture came over the reserved domain Valenzuela's framework identifies as central, army appointments. Following the sudden death of Army Chief General Asif Nawaz Janjua in early 1993, Sharif sought to appoint a chief of his own choosing, a move Ghulam Ishaq Khan resisted as an encroachment on presidential and institutional prerogative. By April 1993 Sharif was publicly criticizing the president and threatening to govern without consulting him, language the president read as a direct challenge to his authority (Warraich, 2000, pp. 87 to 89). In July 1993 Ghulam Ishaq Khan dismissed Sharif's government under Article 58(2)(b) and appointed Balkh Sher Mazari, a member of Sharif's own faction, as caretaker prime minister (Dawn, 17 April 1993).

Unlike Bhutto's 1990 dismissal, this one did not stand unchallenged. The Supreme Court restored Sharif's government, a rare instance in the decade of the judiciary functioning as a genuine check on the tutelary power rather than as an instrument of it. The restoration did not, however, resolve the underlying conflict. Punjab meanwhile experienced its own parallel crisis, as Manzoor Wattoo displaced Ghulam Haider Wyne as chief minister, a removal contested in both the Lahore High Court and the Supreme Court, which reinstated Wyne, before Governor Altaf Hussain ultimately dissolved the Punjab Assembly on Wattoo's advice in May 1993 (Dawn, 26 April 1993). With both the federal and the largest provincial government locked in

overlapping constitutional stalemates, General Abdul Waheed Kakar intervened as mediator, not through the formal dismissal power but through direct pressure on both principals to resign. His intervention shows that even a restored, judicially vindicated civilian government could be dislodged through the informal exercise of the reserved domain's ultimate guarantor, the army chief, once the formal tutelary instrument had been exhausted.

Kakar then installed Moeen Qureshi, a retired World Bank official who did not, at the time of his appointment, hold a valid Pakistani passport, as a caretaker prime minister charged with overseeing fresh elections. Qureshi's caretaker administration undertook substantial financial and administrative reforms during its brief tenure (Dawn, 19 July 1993), decisions of exactly the kind ordinarily reserved for an elected government answerable to the electorate for its choices. That an unelected caretaker, installed through military mediation rather than through any electoral process, could undertake such reforms without significant institutional resistance illustrates how thoroughly the reserved domain had, by 1993, expanded beyond army appointments and security policy into economic governance more broadly.

Benazir Bhutto's Second Government and Farooq Leghari, 1993 to 1996

The 1993 elections returned the Pakistan People's Party to office and Bhutto to the prime minister ship for a second time. Her nomination of Farooq Leghari, first as foreign minister and then as president, drew significant internal criticism within her own party, whose senior figures objected that Leghari carried the backing of the military establishment and that his elevation was therefore itself a concession to the reserved domain rather than a free political choice (Dawn, 16 November 1993). Bhutto prioritized her government's stability over these objections and supported Leghari's election, a decision this article reads as a second instance, following her own accommodation strategy in 1988, of an elected leader attempting to purchase survival by staffing the tutelary office with a figure acceptable to its true constituency.

The strategy again failed to secure a full term. As had happened with Ghulam Ishaq Khan and Sharif three years earlier, tensions between Bhutto and Leghari escalated over judicial appointments and constitutional authority, and Bhutto again sought to curtail the president's Article 58(2)(b) powers, an effort that itself signals how clearly contemporary political actors understood the provision's function. In September 1996 Leghari dismissed her government, citing corruption and maladministration, charges widely regarded at the time as a pretext for what was, in substance, the same underlying conflict over reserved authority that had characterized the decade's two previous dismissals (Dawn, 7 November 1996). The pattern across three dismissals by this point had become difficult to attribute to coincidence. Each involved a president exercising Article 58(2)(b) at the point where an elected prime minister's assertions of authority, over judicial appointments, over army leadership, over presidential prerogative more generally, began to threaten a reserved domain the president existed institutionally to protect.

Nawaz Sharif's Second Government and the Repeal of Article 58(2)(b), 1997

The elections that followed Bhutto's second dismissal returned Nawaz Sharif to office with a commanding majority. His government moved quickly, and with rare cross-party consensus given the acrimony of the preceding decade, to pass the Thirteenth Amendment in April 1997, which repealed Article 58(2)(b) outright, stripping the presidency of its power to dissolve the National Assembly and dismiss the prime minister. On the surface this appears to confirm the reading offered throughout this article. If Article 58(2)(b) was the decade's principal tutelary instrument, its repeal should mark the closing of the reserved domain it had protected.

The subsequent two years suggest otherwise. Sharif's second government proceeded to a direct and escalating confrontation with the judiciary, centered on Chief Justice Sajjad Ali

Shah's insistence that special courts and judicial appointments remain under Supreme Court supervision. The confrontation culminated in an attack on the Supreme Court premises by Pakistan Muslim League party workers during a contempt proceeding, and in Sajjad Ali Shah's eventual removal from the office of Chief Justice through a parallel bench maneuver in the Quetta Court (Rizvi, 2000, pp. 208 to 218). Sharif's government would, within two years, be removed entirely by the military, not through any constitutional instrument but through direct action, in the coup of October 1999 (Rizvi, 2000, pp. 208 to 218).

The 1999 coup is not, strictly, part of the decade this article calls the Great Fear, since Article 58(2)(b) no longer existed by the time it occurred. It is, however, the strongest available evidence for the distinction this article has argued throughout between a tutelary power and the reserved domain that power protects. Removing Article 58(2)(b) eliminated one channel through which the reserved domain could be enforced. It did not eliminate the domain itself, nor the military establishment's institutional commitment to defending it, nor the willingness of that establishment to reach for whatever instrument, constitutional or otherwise, remained available once the preferred one had been taken away. A government that had spent two years asserting civilian authority over the judiciary and, by extension, threatening to do the same over the military's own reserved prerogatives, discovered that the removal of one tutelary power simply left the underlying tutelary relationship to be enforced by more direct means.

Discussion: Why Repealing the Instrument Did Not End the Domain

Valenzuela's own framework anticipates this outcome more directly than the Pakistani historiography has generally acknowledged. Reserved domains, in his account, are sustained by the underlying balance of institutional power between civilian and military actors, not by the specific legal instrument through which that balance happens to be expressed at any given moment. A tutelary power can be repealed by ordinary legislative majority, as Article 58(2)(b) was in 1997, precisely because it is, formally speaking, only a piece of statutory or constitutional text. A reserved domain cannot be repealed in the same way, because it consists not of a legal provision but of an institutional capacity, in this case the Pakistani military's capacity to act decisively against a civilian government it judges to have overstepped, a capacity that exists independently of whatever specific constitutional language happens to authorize or fail to authorize its exercise in a given year.

This distinction resolves the apparent puzzle with which this article began. The four government failures of the Great Fear decade look, on first inspection, like a story about a single defective constitutional clause, a story with a clean resolution once that clause was repealed in 1997. Read through Valenzuela's framework the four dismissals instead look like four separate applications of a single underlying reserved domain, of which Article 58(2)(b) supplied the most convenient but never the only available instrument. Once the convenient instrument was removed, the reserved domain simply migrated to a less convenient but ultimately more decisive one, direct military intervention, in October 1999.

Read alongside the companion study of the Zia and Junejo period, this account suggests a longer arc across more than two decades of Pakistani constitutional history. The 1985 Eighth Amendment codified an exception first declared in 1977 into a standing tutelary power. The Great Fear decade shows that power being exercised with remarkable consistency against successive elected governments regardless of party. The 1997 repeal of that power demonstrates that removing a tutelary instrument, however significant an achievement in its own right, does not by itself dissolve the reserved domain the instrument had been built to protect. The 1999 coup then demonstrates what happens when that domain, deprived of its preferred legal channel, reasserts itself directly.

Conclusion

The Great Fear decade is usually narrated as a story of institutional dysfunction, four governments, four failures, and eventually a repealed constitutional clause that came too late to save the system it had distorted. This article has argued for a more structural reading. Article 58(2)(b) was not itself the source of Pakistan's democratic instability between 1988 and 1999. It was the visible instrument of a reserved domain, the military establishment's protected authority over army appointments, security policy and judicial oversight, that predated the clause, survived its repeal, and ultimately expressed itself through direct military action once its preferred constitutional channel had been closed. Understanding the decade this way carries a sobering implication for the study of democratic consolidation in Pakistan more broadly. Institutional reform aimed at a specific tutelary power, however necessary, addresses only the symptom the power expresses. The underlying reserved domain requires a different and considerably harder kind of reform, one aimed at the balance of institutional capacity between civilian and military authority itself, a task the removal of Article 58(2)(b) in 1997 did not attempt and could not, on its own, have accomplished.

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