

OF SYSTEMS AND SITUATIONS

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With reference to the dismissal of Mian Nawaz Sharif's Government, it has been said that "this perhaps is the most curious system in which the Government falls; the head of the Government the President- is infallible. He dismisses his subordinates and gets himself a new team. His new team is in fact is the same old team. There is not a Captain in the world who would not fall in love with this system".

2. As the Dictionary would have it, the word "system" amongst other things, means a method of organization; a set of co-related principles; a connected and regularly arranged scheme of the whole of some subject or a society seen as a soulless and monolithic organization thwarting individual efforts.

3. In its political manifestation, system of Government is the expression of the collective will of a group of people, forming a homogeneous whole on account of similarity of conduct, having its roots in long practiced traditions and formed as a result of consistent, uniform behaviour extending over a period of time. It is suggestive of an aptitude or a habit which sits deep in the mind and controls the actions and behaviour of a body politic under given circumstances, so as to produce a particular result and no other, thus involving a total denial of individualism. By virtue of these considerations, no Dictator, howsoever benevolent and benign, the only purpose of whose governance is the perpetuation of autocratic rule and self aggrandizement, can give the people a system. If this be the sense it conveys, the question is whether we ever had a system at all which could be described as "curious".

4. Attempts to provide the country with a viable system of Government resulted first in the enforcement of the Constitution of 1956 and then that of 1973. However, they could not stand the test of time and perished; in all probability because they did not fall in line with the prevalent socio-political environment of the country. What followed their demise was, in either case, not a system but only situations, periodical in character and essence, and meant to serve and promote the vested interests of those who were thrown up into positions of prominence by sheer force of circumstances.

5. What happened to the Constitution of 1956, though remote in point of time, is nevertheless relevant because of this situation syndrome. It was done to death by the Martial Law of 1959 which brought in its wake Martial Law Regulations and Orders, all amounting to situations, meant to serve the exigencies of a particular time. Thereafter, the interim Constitution of 1962 also brought about a situation and there was hardly any thing which could, even by a stretch of imagination, be given the name of a system.

6. The Constitution of 1973 which sought to enforce a Parliamentary form of government on the basis of adult franchise also met the same fate. It was not made to work even though it was the result of a consensus. The Elections of 1977 resulted in a massive agitation and people rose to the challenge of what was intended to be brought in vogue by dint of an unfair contrivance. The country was again in the grip of yet another Martial Law and we had to go through the same kind of tribulations afresh which gave rise to innumerable situations during the years to follow with no sign of a system.

7. There being no system worth the name, sound or otherwise, exposed to the peril of a premature demise, all we have been left with are day-to-day situations. We might therefore spare ourselves of the anguish of lamenting on its being 'curious' or bewailing the death of something which in actual fact has never existed in so far as we are concerned.

8. Had they been allowed to remain in commission, the Constitutions of 1956 and 1973 would have given us a system, though different in character and salient features in each case. The Constitution of 1956 envisaged a Presidential form of Government whereas the one enforced in 1973 spelled out a parliamentary democracy. Anyway, in both the cases, the country would have remained a Republic, where the people set up at the helm got their mandate from adult franchise. However, both failed primarily because they were not allowed to function by those who had been put in charge of the affairs of the Federation. Conditions were created resulting in utter chaos where the politicians fell at one another, hammer and tongs; thus paving the way for the promulgation of another Martial Law. To me it seems that one main reason for their collapse was lack of viability; which had various factors as its cause. They may be examined with a view to avoid the same kind of situation.

9. In both the Constitutions, the country was declared a Federal Republic in acknowledgement of the fact that sovereignty over the entire universe belongs to Almighty Allah alone and that the Authority to be

exercised by the people was a sacred trust, which they had to discharge by managing the affairs of the country through their elected representatives. The enforcement of these Constitutions was, therefore, an expression of the will of the people to establish an order ensuring, amongst other things, full observance of the principles of democracy. Evidently, the basic idea was the enforcement of an efficacious system which could have guaranteed the people's association with the management of country's affairs. On paper, this declaration was obviously very attractive and there was nothing ostensibly wrong with the system sought to be put in practice. It pre-supposed the existence of a political environment where people could make free and proper exercise of the franchise. If viewed in the context of these considerations, successful working of the system could not be possible, in the first place primarily for want of mass literacy; which has not only impaired the quality and spirit of democracy visualized by the Constitution, but has also resulted in an abuse, even though unintentional, of the aforementioned sacred trust.

10. Secondly, the method of choosing representatives leaves so much to be desired. One of the defects is that people are made to vote for individuals and not for principles. The edifice of parliamentary democracy is based on party system, which explains the introduction of Article 17 guaranteeing the right to form association, along with the provisions that every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party. As we have it from the Political Parties Act 1962, "political party" inter alia, signifies a group or combination of persons which are operating for the purpose of propagating any political opinion or indulging in any other political activity. Then, the fact of holding a political opinion should be demonstrated by the publication of a formal manifesto, that is to say the Party's foundation document or constitution giving its aims and objects and providing for periodical election of its office bearer.

11. Judging from these standards, we hardly have a political party in the true sense of the expression. We do have political parties with manifestos on paper, but they are mostly in name alone. In most of the cases they do not have any distinct aims or objects differentiating them from one another. Much less are they recognized with reference to any such aims. Furthermore, there may be provisions in their constitutions for periodical elections of the office bearers, but in so far as my knowledge goes, they have seldom been held. So there are hardly any grass roots; and in the rural areas in particular, they are recognized not as much with reference to their manifestos as by their own names or by those of the leading personalities at the top. Out of two principal political parties, the Muslim League is known as a party of the yore with the reputation of having created a separate homeland for the Muslims, whereas the Peoples Party is now recognized more by the name of its Founder, late Zulfiqar Ali Bhutto. This being so in reality, they are just conglomeration of persons sans political consciousness and for the matter of that, without any political opinion for propagation. The emphasis being on the individuals and not on principles, this is a situation which may with impunity be called a country-wide factionalism.

12. The result of these apolitical conditions is that, by and large, people are obliged to vote for individuals and not for political parties. They owe allegiance to personalities rather than principles, which they do with the sole purpose of safeguarding and promoting their self interests. Then, more unfortunate is the fact that they have got their own standards for assessing the suitability or otherwise of a candidate. What they do take care about is that which of them can be better disposed to promote their cause; its unfairness notwithstanding. This attitude, has given rise to local politics of 'Thana' and Tehsil. Further, nothing can be more tragic than the fact that those who are eventually elected in turn, try to contrive the assumption of as much power and effectiveness as possible, to be able to serve and advance the interests of their supporters. They achieve this end on the strength of the prevalent position that the Prime Minister or the Chief Ministers, as the case may be, are in need of their support to stay at the helm. As the things go, he is obviously interested in making them effective, with teeth to cut, so that they may successfully manage their return to the Assembly in the next general elections. It might as well be incidentally mentioned as a relevant circumstance that only a few years ago, it could not possibly be conceived that a MPA or MNA will be that powerful as to be indispensable in the day-to-day running of the administration of a District. The factors pointed out before have brought about a culture where, for flourishing, things have to be vile, ugly and sordid as of necessity.

13. The electoral alliances are also in point on account of having a bearing on the viability of a democratic system. A few parties get together on a common platform and set up candidates for election to the Assembly. One obvious purpose is the survival of those parties which may not be otherwise possible. The

second is to defeat the other party at the hustings by collective efforts. They hardly have anything in common in respect of their aims and objects. Even if some of them be common, the fact remains that they are separate parties with different manifestos. And why should they set up separate shops if they have got nothing different to be offered for sale to the voters, is another important question for a separate discussion. Anyway, the damage done by these alliances to the process is the encouragement of a negative vote, for they ask the people not to vote for a particular party but against another whose defeat is the primary object. It should be realized that in the event of such alliances, canvassing for a positive vote cannot indeed be possible and they do not address the voters with reference to their manifestos. Its obvious result is that the people, with few exceptions, only go against a party and not in favour of another. The defect inherent, as I see, is that there is no clear mandate in favour of any particular programme. In this view of the matter, people are denied the opportunity of making a positive choice of their representatives for exercise of authority and the alliances thus involve an open abuse of the electoral process. Incidentally, the people's dedication to the preservations of democracy also goes by the board.

14. Another contributory factor becomes available from certain amendments which changed the character of the Constitution. Merits of what was brought about by those amendments apart, they had two important features. One that their import was with the purpose of promotion of vested interests. They were not placed on the Book because they were in the interests of the country or that the people wanted them to be there. They were not an expression of popular will, but evidently the result of caprice and autarchy of those atop, and by virtue of that circumstance alone, they were unjust, arbitrary, unacceptable and unworthy of the nation in search of a system. The second is that they took away the element of continuity and consistency, necessary for its maturity into a system. It hardly need be emphasized that uniform practice over a period of time is required for formulation of traditions to be handed down to the posterity. It must be confessed, and not without sadness, that the Constitution had been deprived of this opportunity.

15. As for merits or otherwise of the amendments, we may take notice of only one in respect of the judiciary to serve as an illustration of the point sought to be brought home. Article 200(1) empowered the President to transfer a Judge of a High Court to another High Court, but a limitation on the exercise of this power was that no Judge could be transferred except with his consent and after consultation with the Chief Justice of Pakistan and Chief Justices of both High Courts. Subsequently, however, a proviso was added to this clause by the Constitution (Fifth Amendment) Act 1976 which laid down that such consent or consultation with the Chief Justices of the High Courts shall not be necessary, if such transfer is for a period, not exceeding one year at a time. During the Martial Law regime, late President Zia-ul-Haq probably thought that this was not enough. He made an amendment in the proviso by President's Order No, 14 of 1985, thereby substituting the words 'two years' instead of 'one year'. The result was that no consent of the Judge concerned or consultation with the Chief Justices of the High Courts was necessary if the transfer was for a period of two years. As if even this too was insufficient to serve the purpose, clause (4) was added by the late President by Constitution (Third Amendment) Order 1985. It inter-alia provided that a Judge of a High Court who does not accept transfer to another High Court under clause (1), shall be deemed to have retired from his office. The obvious purpose of these amendments was to keep the Judges under subjugation. It hardly requires a stress that they offended against the people's will to establish an order wherein the independence of the judiciary was to be fully secured. It caused a serious damage to the promised independence, which is undoubtedly an ingredient of an independent democratic State based on the principles of social and political justice.

16. Finally, there is the question of manner of elections, which by far is the most important in a Republic with a parliamentary democracy. It goes without saying that we can never survive as a nation with a system unless elections are free and fair in the true sense of words. The suspension of Constitution in 1977 with imposition of Martial Law and the recent crisis of 1990 may safely be put to unfairness of elections and rigging. It has all along been the root cause of all other ills and misfortunes in the problem ridden history of our country. In a Republic where the people are given the right to run and manage the affairs of the State through chosen representatives, nothing can be more tragic than the use of unfair means in elections, which reduces them to a nonentity by making them say the things which they do not say in actual fact. Manipulated and engineered results are not only a curse, but also an outrage on the constitutional right of vote and a fraud against masses, which, if perpetuated, will force them to rise in revolt.

17. In the backdrops of these considerations, I venture to make a few proposals. First of all is that we must devise a fool-proof method of ensuring free and fair elections by making amendments in the Constitution, leaving absolutely no room for a complaint from any quarter. Second, the election alliances may be completely barred by making provisions in the relevant laws to get the nation rid of mushroom growth of groups which go in the name of political parties. Third, by modifications in the Political Parties Act 1962, floor-crossing must be made an impossibility, to spare the Prime Minister and the Chief Ministers of the funk that they will lose majority and that they have to do things to keep the members with them to avoid a resolution of no-confidence. Fourth, arbitrary and random amendments in the Constitution for promotion of vested interests must be avoided to allow its smooth and continuous functioning, so that it may have some time to mature into a binding system. Fifth, amendments be made in the Constitution to remove anomalies and avoid a basic change in the system visualized by it. Sixth, modifications may also be made in the election Laws for a change in the mode of elections, either by introduction of the method of proportionate representation or otherwise, in order that the emphasis is shifted from the individuals to the Parties, where people will be forced to vote for principles. This is essential to bring about a complete change in the nature and scope of elected representatives' responsibility to their electorate, where they will be able to tell their voters that they had voted for the party and not for them.