



Charter
of
Liberty

Charter of Liberty

By

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Charter of Liberty

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This document
seeks to present a solution to
the myriad problems and unimaginable sufferings
faced by the ordinary people of Pakistan
without purporting any offence to
any individual or institution in any manner.

*"The Constitution is not an instrument
for government
to restrain the people;
it is an instrument
for the people
to restrain the government –
lest it come
to dominate our lives and our interests."*

[Patrick Henry, American revolutionary
leader and orator, 1736-1799]

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Charter of Liberty

This is in response to the Charter of Democracy* issued by Pakistan Muslim League (N) and Pakistan Peoples Party and signed by their respective leaders and former Prime Ministers of Pakistan Mian Nawaz Sharif and Benazir Bhutto. It presents not only a critique of this Charter but also an independent Charter of Liberty for Pakistan so that freedom and prosperity can be achieved for all its individual citizens. If you want to skip the critique of the Charter of Democracy, go directly to Section VI (preamble to the Charter of Liberty) and VII (Charter of Liberty).

* The Charter of Democracy can be downloaded from:
<http://www.pmln.org.pk/charter-demo.php>

I

The Charter of Democracy lists the following maladies that afflict Pakistan:

- Political crisis
- Threats to its survival
- Erosion of the federation's unity
- Military's subordination of all state institutions
- Marginalization of civil society
- Mockery of the Constitution and representative institutions
- Growing poverty, unemployment and inequality
- Brutalization of society
- Breakdown of rule of law
- Unprecedented hardships facing our people under a military dictatorship

The Charter asserts that these factors have pushed Pakistan 'to the brink of a total disaster.' No doubt, these and other factors also are responsible for the total disaster which only affects those people who are not in any way connected with the powerful influential elites. This disaster means nothing to these elites. All the political parties regardless of their size, program, history, are part and parcel of these elites. These parties are themselves responsible for this total disaster, and as

they have always been doing, now want to capitalize on it.

The charge-sheet against the political parties is not different from the one they are making against the military dictatorships. The difference lies only in degree and magnitude. Not only have they been independently contriving political crises, eroding the federation's unity, subordinating all of the state institutions, marginalizing civil society, making a mockery of the Constitution and its representative institutions, causing by their bad policies poverty, unemployment and inequality, brutalizing society, breaking down the rule of law, and by forming state monopolies creating unprecedented hardships for the people; but they also played the role of a partial or total accomplice to the military dictatorships. To say the least, they never opted for principled politics. They always avoided the real issues, misguiding and misleading people. Utterly immoral, they are guilty of politics of opportunism. Still, to this moment, they are seriously in the game of power politics. The greatest evidence to this is the total disaster they are talking about.

The Charter further asserts that 'military dictatorships played havoc with the nation's destiny and created conditions disallowing the progress of the people and the flowering of democracy. Even after removal from office they undermined the people's mandate and the sovereign will of the people.' Again, the military dictatorships are not alone in playing havoc with the nation's destiny, creating conditions disallowing the progress of the people and the flowering of democracy, undermining the people's mandate and sovereign will of the people. The political parties have been and are their

greatest collaborators. Did it ever happen in the history of Pakistan that military dictators failed in finding such political henchmen? Rather there was always an unending queue of such collaborators. Had it not been so, it would have been very difficult for the dictators to create the illusion of democracy.

The thrust of the argument is not to negate the role of political parties, or to demean political parties by judging their checkered history and conduct, but to demonstrate that even today they have not learned anything that would improve the conditions of the people in general. Also, in terms of misdeeds equating political parties with military dictatorships does not amount to saying that they are one and the same thing. Instead, implicit in the argument is the hypothesis that had the political parties not gone for the power politics and more importantly not been taken in tow by the military dictatorships, Pakistan could have totally avoided this disaster.

Then, the Charter resorts to history to draw a lesson that 'military dictatorship and the nation cannot co-exist – as military involvement adversely affect the economy and the democratic institutions as well as the defense capabilities, and the integrity of the country,' and declares that 'the nation needs a new direction different from a militaristic and regimental approach of the Bonapartist regimes, as the current one.' Praiseworthy! Finally, at least in letter they have come of age! We wish they would come of age in spirit too!

No doubt, military dictatorships adversely affect the economy and the democratic institutions. Didn't political parties also help promote an elitist economy and damage the democratic institutions as well? They would

argue that they were under the all-pervasive influence of the military establishment and could not make independent decisions whenever in the government. But, again, this shows their hunger for power and money-making opportunities for their cohorts. Or they would never join such a government.

It is because of this declaration that 'the nation needs a new direction different from a militaristic and regimental approach of the Bonapartist regimes, as the current one,' that the Charter of Democracy acquires its importance as a unique document in the history of Pakistan. How this would affect the future course of events depends on the course political parties, especially PML (N) and PPP, adopt. Present political developments show that the document may not be making any difference to the political scene in Pakistan.

Unfortunately, in defense of the political parties, the Charter 'takes serious exception to the vilification campaign against the representatives of the people, in particular, and the civilians, in general, the victimization of political leaders/workers and their media trials under a Draconian law in the name of accountability, in order to divide and eliminate the representative political parties, to Gerrymander a king's party and concoct legitimacy to prolong the military rule.' Apart from the truth of the statement, it must be asked whether the political parties themselves, whenever in power, didn't undertake vilification campaigns against the parties that happened to be in opposition, victimized their leaders/workers and pursued their media trials under various Draconian laws in the name of accountability in order to divide and eliminate the opposition, and rigged elections to prolong their rule?

After this, the Charter takes a 'note of the responsibility of the political parties (especially PML (N) and PPP being the signatory of the Charter) to the people to set an alternative direction for the country saving it from its present predicaments on an economically sustainable, socially progressive, politically democratic and pluralist, federally cooperative, ideologically tolerant, internationally respectable and regionally peaceful basis in the larger interests of the peoples of Pakistan to decide once and for all that only the people and no one else has the sovereign right to govern through their elected representatives, as conceived by the democrat par excellence, Father of the Nation Quaid-i-Azam Mohammed Ali Jinnah.' Very good wording! It's never too late to mend!

The proposed 'alternative direction' for the country is characterized by the following:

- Economically sustainable
- Socially progressive
- Politically democratic and pluralist
- Federally cooperative
- Ideologically tolerant
- Internationally respectable
- Regionally peaceful
- Resting of the sovereign right with the people to govern through their elected representatives

On the face of it, this suggests that up till now Pakistan lacks all these which once again highlights the fact that responsibility for the current situation lies mainly with the political parties and the political culture they evolved and nurtured. Under these circumstances, Pakistan

couldn't become 'economically sustainable, socially progressive, politically democratic and pluralist, federally cooperative, ideologically tolerant, internationally respectable, regionally peaceful, and finally regardful of the sovereign right of the people to govern through their elected representatives.'

- Political parties never pursued economic policies that benefited the interests of the larger number of people, but instead served the interests of a tiny minority of rentier groups and brazenly followed their economic agendas giving rise to an elitist state solely meant for the rent-seekers;

- They never encouraged and promoted the socially progressive ideas and the groups that espoused these ideas, but instead, with a missionary zeal and narrow-mindedly seeking their temporal political ends, patronized and strengthened the regressive and collectivist mindset and a tiny minority of the groups based upon it;

- They never believed, in a political culture both democratic and pluralist, as their practice proved time and time again, instead they tried to kill the opposition parties and groups, and punished the ideological and intellectual deviations and differences;

- They never conceded to the demands of the federating units' autonomy on the basis of which Pakistan itself came into being, and in denying their demands they waged nationalistic wars against them of which one resulted in the secession of a unit, and instead they always opted for a centralist version of Pakistan and tried to impose it on the federating units

creating widespread discontent among various sections of the units;

- They themselves never tolerated any opposition whatsoever, instead they tried to impose their own ideology on others and patronized parties and groups who in the absence of a state prepared to protect the rights and freedoms of its citizens eventually learned to be intolerant and started behaving like a state within state;

- They never accepted democratic principles and values in their parties and governments and in their own country, so were unable to earn international respect for Pakistan;

- They never behaved responsibly as regards regional politics and resorted to means (including force) that defy the spirit of neighborliness, and they either under the aegis of military dictatorships or independently acted as a mini-super power causing distrust among the neighboring states; and

- They always overstepped the mandate given to them by the people showing utter disregard for it by resorting to horse-trading, amending the Constitution in ways specific to their own interests, by manipulating and rigging elections, by protecting the political and economic interests of smaller sections of the society instead of the broader ones.

Thus, political parties were the active collaborators of military dictatorships in the power game, and are equally responsible in pushing it to the brink of a total disaster.

Then, the Charter 'reaffirms political parties' commitment to undiluted democracy and universally recognized fundamental rights, the rights of a vibrant opposition, internal party democracy, ideological/political tolerance, bipartisan working of the parliament through powerful committee system, a cooperative federation with no discrimination against federating units, the decentralization and devolution of power, maximum provincial autonomy, the empowerment of the people at the grassroots level, the emancipation of our people from poverty, ignorance, want and disease, the uplift of women and minorities, the elimination of Kalashnikov culture, a free and independent media, an independent judiciary, a neutral civil service, rule of law and merit, the settlement of disputes with the neighbors through peaceful means, honoring international contracts, laws/covenants and sovereign guarantees, so as to achieve a responsible and civilized status in the comity of nations through a foreign policy that suits our national interests.' This if followed in letter and spirit will atone for the sins and crimes of the political parties they committed earlier. But that's not enough, to emancipate the people from poverty, want and disease, more is needed than has been promised here, and will be discussed later. However, it must be emphasized that if the political parties in power establish only a limited government, an independent judiciary, rule of law and merit, protection of private property, free markets and a free and independent media; everything else will take care of itself.

At the end of this preamble, declaring the adoption of the "Charter of Democracy," the document 'calls upon the people of Pakistan to join hands to save Pakistan from the clutches of military dictatorship and to defend

their fundamental, social, political and economic rights and for a democratic, federal, modern and progressive Pakistan as dreamt by the Founder of the nation.'

The people of Pakistan are quite familiar with such 'calls and exhortations.' Now a call is made by a military dictator to save Pakistan from a corrupt government to establish true democracy; and then there is a call from an alliance of political parties, such as this one which issued this Charter, to save Pakistan from a military dictatorship to restore a democratic set-up. But, most unfortunately, the promises made during the struggles were never delivered. Every government set up in any way always stopped short of the larger interests of the larger number of the people of Pakistan. At best it proved to be a kleptocratic government protecting the interests of the influential elite groups.

II

The A part of the Charter of Democracy is concerned with the Constitution. It has 10 articles. All of these deal with various aspects of the Constitution and amendments made to it after October 12, 1999.

The article 1 states that "the 1973 Constitution as on 12th October 1999 before the military coup shall be restored with the provisions of joint electorates, minorities, and women reserved seats on closed party list in the Parliament, the lowering of the voting age, and the increase in seats in parliament and the Legal Framework Order, 2000 and the Seventeenth Constitutional Amendment shall be repealed accordingly." It may be asked: why not restore the 1973 Constitution in its original form to purge it not only of the Seventeenth but also of all the amendments made both by military or civil governments? That's like going Back to Basics.

This view is corroborated by article 2 itself: "The appointment of the governors, three services chiefs and the CJCS (Chairman of the Joint Chiefs of Staff Committee) shall be made by the chief executive who is the prime minister, as per the 1973 Constitution."

The article 3, its clauses and sub-clauses deal with the problems relating to the functioning of the judiciary and created by the amendments particularly inserted into the Constitution by various military governments or made under their influence with a purpose to keep the judiciary subservient to their interests. Have a look at these proposals that require further amendments in the Constitution:

“3. (a) The recommendations for appointment of judges to superior judiciary shall be formulated through a commission, which shall comprise of the following:

i. The chairman shall be a chief justice, who has never previously taken oath under the PCO.

ii. The members of the commission shall be the chief justices of the provincial high courts who have not taken oath under the PCO, failing which the senior most judge of that high court who has not taken oath shall be the member

iii. Vice-Chairmen of Pakistan and Vice-Chairmen of Provincial Bar Association with respect to the appointment of judges to their concerned province

iv. President of Supreme Court Bar Association

v. Presidents of High Court Bar Associations of Karachi, Lahore, Peshawar, and Quetta with respect to the appointment of judges to their concerned province

vi. Federal Minister for Law and Justice

vii. Attorney General of Pakistan

(a-i) The commission shall forward a panel of three names for each vacancy to the prime minister, who shall forward one name for confirmation to joint parliamentary committee for confirmation of the nomination through a transparent public hearing process.

(a-ii) The joint parliamentary committee shall comprise of 50 per cent members from the treasury benches and the remaining 50 per cent from opposition parties based on their strength in the parliament nominated by respective parliamentary leaders.

(b) No judge shall take oath under any Provisional Constitutional Order or any other oath that is contradictory to the exact language of the original oath prescribed in the Constitution of 1973.

(c) Administrative mechanism will be instituted for the prevention of misconduct, implementation of code of ethics, and removal of judges on such charges brought to its attention by any citizen through the proposed commission for appointment of Judges.

(d) All special courts including anti-terrorism and accountability courts shall be abolished and such cases be tried in ordinary courts. Further to create a set of rules and procedures whereby, the arbitrary powers of the chief justices over the assignment of cases to various judges and the transfer of judges to various benches such powers shall be exercised by the Chief Justice and two senior most judges sitting together.”

These proposals also aim at making new amendments in

the Constitution. So better first go back to the original 1773 Constitution, and then see what amendments are needed to deal with the problems that cropped up after 1773 or no amendment is needed altogether.

The article 4 seeks to constitute a new Federal Constitutional Court: "A Federal Constitutional Court will be set up to resolve constitutional issues, giving equal representation to each of the federating units, whose members may be judges or persons qualified to be judges of the Supreme Court, constituted for a six-year period. The Supreme and High Courts will hear regular civil and criminal cases. The appointment of judges shall be made in the same manner as for judges of higher judiciary."

The formation of such a court has already been a controversial issue, and requires amending the Constitution which itself provides for the same, i.e. it is the very Constitution that provides for the institution of Supreme Court as the custodian and interpreter of the Constitution. Why another court for the same purpose? And will it not degrade the Supreme Court to the level of an ordinary appeal court? Isn't it better to leave the issue to be discussed at all levels and decided by the Supreme Court itself?

All the other articles 5-10 also require amendments in the Constitution. Here are these articles:

"5. The Concurrent List in the Constitution will be abolished. A new NFC (National Finance Commission) award will be announced.

6. The reserved seats for women in the national and

provincial assemblies will be allocated to the parties on the basis of the number of votes polled in the general elections by each party.

7. The strength of the Senate of Pakistan shall be increased to give representation to minorities in the Senate.

8. FATA (Federally Administered Tribal Areas) shall be included in the NWFP (North West Frontier Province) province in consultation with them.

9. Northern Areas shall be developed by giving it a special status and further empowering the Northern Areas Legislative Council to provide people of Northern Areas access to justice and human rights.

10. Local bodies election will be held on party basis through provincial election commissions in respective provinces and constitutional protection will be given to the local bodies to make them autonomous and answerable to their respective assemblies as well as to the people through regular courts of law.”

Again, isn't it better to have the original Constitution first and then see what changes are required if any!

III

The Part B of the Charter of Democracy aims at devising a code of conduct for government and other institutions, and most of its articles require amending the Constitution to come into effect. For instance, article 11 says "National Security Council will be abolished. Defense Cabinet Committee will be headed by prime minister and will have a permanent secretariat. The prime minister may appoint a federal security adviser to process intelligence reports for the prime minister. The efficacy of the higher defense and security structure, created two decades ago, will be reviewed. The Joint Services Command structure will be strengthened and made more effective and headed in rotation among the three services by law."

Article 12 abolishes 'the ban on a 'prime minister not being eligible for a third term of office' put into the Constitution by an amendment.

The articles 13's four clauses seek to deal with the persecution of opposition parties, of course, by the civil government:

"(a) Truth and Reconciliation Commission be established to acknowledge victims of torture, imprisonment, state-

sponsored persecution, targeted legislation, and politically motivated accountability. The commission will also examine and report its findings on military coups and civil removals of governments from 1996.

(b) A commission shall also examine and identify the causes of and fix responsibility and make recommendations in the light thereof for incidences such as Kargil.

(c) Accountability of NAB (National Accountability Bureau) and other Ehtesab (the act of accountability) operators to identify and hold accountable abuse of office by NAB operators through purgery (perjury! Author) and perversion of justice and violation of human rights since its establishment.

(d) To replace politically motivated NAB with an independent accountability commission, whose chairman shall be nominated by the prime minister in consultation with the leader of opposition and confirmed by a joint parliamentary committee with 50 per cent members from treasury benches and remaining 50 per cent from opposition parties in same manner as appointment of judges through transparent public hearing. The confirmed nominee shall meet the standard of political impartiality, judicial propriety, moderate views expressed through his judgments . . ."

The last sentence of clause (a) is of special interest here: "The commission (Truth and Reconciliation Commission) will also examine and report its findings on military coups and civil removals of governments from 1996." Why should this or any such commission not examine and report its findings on military coups and

civil removals of governments from 1977? This is why the restoration of the original 1973 Constitution is proposed here; since it will, making the 1973 Constitution a point of reference, provide for a general review of anti-Constitutional, extra-Constitutional, ultra-Constitutional, un-Constitutional and non-Constitutional acts of both Civil and Military governments. Rather, and more than that, why not ask the Supreme Court to do the job in line with its duty, and review all of its own judgments justifying/validating the military takeovers strictly in accordance with the 1973 Constitution and award due punishment to the culprits. This task may be taken up, in the first instance, by the Supreme Court itself as the Custodian and Interpreter of the Constitution. This will restore the sanctity of the Constitution.

Some of the articles in this part require legislation and deliberation by the parliament, and political will on the part of parties either in government or outside it, and aim at formulating a code of conduct for all political parties on a larger scale if they subscribe to it:

“14. The press and electronic media will be allowed its independence. Access to information will become law after parliamentary debate and public scrutiny.

15. The chairmen of public accounts committee in the national and provincial assemblies will be appointed by the leaders of opposition in the concerned assemblies.

16. An effective Nuclear Command and Control system under the Defense Cabinet Committee will be put in place to avoid any possibility of leakage or proliferation.

17. Peaceful relations with India and Afghanistan will be pursued without prejudice to outstanding disputes.

18. Kashmir dispute should be settled in accordance with the UN Resolutions and the aspirations of the people of Jammu and Kashmir.

19. Governance will be improved to help the common citizen, by giving access to quality social services like education, health, job generation, curbing price hike, combating illegal redundancies, and curbing lavish spendings in civil and military establishments as ostentatious [sic] causes great resentment amongst the teeming millions. We pledge to promote and practice simplicity, at all levels.

20. Women, minorities, and the under privileged will be provided equal opportunities in all walks of life.

21. We will respect the electoral mandate of representative governments that accepts the due role of the opposition and declare neither shall undermine each other through extra constitutional ways.

22. We shall not join a military regime or any military sponsored government. No party shall solicit the support of military to come into power or to dislodge a democratic government.

23. To prevent corruption and floor crossing all votes for the Senate and indirect seats will be by open identifiable ballot. Those violating the party discipline in the poll shall stand disqualified by a letter from the parliamentary party leader to the concerned Speaker or the Chairman Senate with a copy to the Election

Commission for notification purposes within 14 days of receipt of letter failing which it will be deemed to have been notified on the expiry of that period.

24. All military and judicial officers will be required to file annual assets and income declarations like Parliamentarians to make them accountable to the public.

25. National Democracy Commission shall be established to promote and develop a democratic culture in the country and provide assistance to political parties for capacity building on the basis of their seats in parliament in a transparent manner.

26. Terrorism and militancy are by-products of military dictatorship, negation of democracy, are strongly condemned, and will be vigorously confronted.”

On the whole, these proposals look good in writing. How they will affect the conduct of political parties, especially the signatory ones, is indicated by their respective leaders' activities from the moment the Charter of Democracy was signed to this day. This sheds light also on how the Charter will affect their conduct in the days to come. As said earlier, the past character of political parties doesn't leave us with any hope, but there is no way but to pin our hope to these parties and their testaments such as this Charter of Democracy. If only one party sticks to the Charter in letter and spirit; that will make a good start!

Out of these articles, one needs serious consideration since it sounds more like a piece of electioneering. The article 19 words promises to the people. It pledges to

the common citizens:

- Improved governance
- By giving access to quality services like
 - Education
 - Health
 - Job generation
- By curbing price hike
- By combating illegal redundancies
- By curbing lavish spending in civil and military establishments as ostentatious
- By promoting and practicing simplicity, at all levels.

These are election slogans everybody in Pakistan is familiar with from day one. These are the things provision of which free of cost or with nominal cost or on a subsidized rate are promised almost by all the political parties amidst the heat of the election or on the eve of their crowning. All governments, civil or military, elected or unelected, in their agendas and/or election programs keep repeating these promises without any of them being implemented. They continue with their rule and efforts to fulfill these promises. The combined efforts of many political parties and governments spanned over half a century failed to meet these pledges and demonstrates that these promises by their very nature are incapable of being met in the way political parties and governments have been trying to fulfill them. Rather, in sharp contrast, they have been formulating and implementing policies utterly contradictory to the spirit of these promises.

For example, while they promise good governance, the leaders of the political parties themselves flout rules and laws brazenly. Not only the leaders' flagrant behavior,

but the behavior of an ordinary worker of the party in power is marked by arrogance towards rules and laws. This is what promoted lawlessness among the common people in Pakistan, and made a travesty of the rule of law. It is this culture of utter disregard for the Constitution and laws of the land by the powerful that made it acceptable for all people to violate rules and the laws.

As regards education, while they promise quality education, they use education to indoctrinate the people in a way that ultimately degraded education in the eyes of students as well as parents because indoctrination entrenches itself via rote-learning and memorization, and in this type of learning students lose all interest in educational activities. This kills the spirit of all learning in the students. They promise free education to all, but they themselves know it is practically beyond the means of any government. By promising quality education, they deprive education of any quality since the more they try to control education, the more they deprive people of choice in education. Lack of choice leaves people with but low quality educational services. In short, state control of education severs its links to parents and pupils making it irrelevant to the society. It is for this reason that our college or university graduates are of no use to the private sector and will not be until and unless they themselves again invest in their own training.

Likewise in health sector, they kept medical education under their control and consequently produced far fewer medical graduates than are needed to meet the health demands of the increasing population. In the same way, while they promised free health services to the masses, there were insufficient hospitals to provide health care

for the population and the services provided at those hospitals were of a very low quality. The medical graduates that 'honored' the public sector hospitals never cared for any moral or social values and most of them used their jobs in these hospitals as a launching pad for the promotion of their private benefit. In fact, the health services that public sector provided from the tax money extracted out of the peoples' pockets catered only to the influential powerful elites. Under such circumstances, it has been small private clinics run by both medical graduates and others with certified or uncertified medical education that have catered to the needs of the people at large.

The story of 'job generation' is steeped in corruption, favoritism and nepotism. The political parties in power, or governments used job creation as a tool to win supporters and to bribe and pacify their sympathizers. They set up number of useless organizations and started various projects to accommodate friends and family; and implanted such people in great numbers in the existing organizations incommensurate with their capacity, thus overburdening organizations' budget. Such organizations at best proved to be white elephants (someone aptly replaced white elephants with white dinosaurs), and devoured the public exchequer. The brunt of such policies has to be born by the hapless taxpayers of the country who paid an increasing number of taxes at increasingly high rates. In utter disregard of the facts, the governments took credit for creating millions of jobs for the people; whereas it was the private sector that took advantage of the limited half hearted liberalization, de-regulation and privatization allowed by the government, and created jobs. The jobs created by the governments were nothing but wastage of expropriated

private money.

Curbing the price hike is another gimmick of the political leaders and governments to fool the people. Whenever they resorted in any manner to curbing the price hike, prices rebounded and hiked beyond the previous levels. The economic gurus of these political parties and governments are so naïve to believe that prices can be controlled by administrative or judicial measures, but they are prepared to deny economic reality in order to save their political masters' faces. On the one hand, political parties and governments promised people that price hiking would be controlled or as one of the manifestos of an alliance of political parties stated that if they came to power prices would be brought back to a specific date and frozen at that level. It's more than a farce! On the other hand, and ironically, it was these same politicians who generally controlled prices and caused price hikes. Take the example of petroleum products' price where they created a spiral, hiking up the prices of almost all the products and services.

As to curbing the lavish spending both by civil and military establishments, and promoting and practicing simplicity, the fate of one such big attempt by a 'proxy' government is not easier to forget. When this austerity drive was reversed, it caused huge losses to the public exchequer impoverishing taxpayers of the country. Also, such saving drives or austerity drives or simplicity drives look like a political fashion. In pursuance of one such drive, once in public sector organizations' offices serving tea was banned and it was replaced with cold drinks which were costlier than tea. Another expense that such drives incur is their publicizing cost. Hence, all such drives come under the head of political costs. In clear

contradiction to such announced pledges, what is on record is that political parties when in power and governments go for ever bigger and ever larger cabinets and arbitrary increases in their emoluments. They are greedy, and try to make hay whether the sun shines or doesn't shine.

The purpose of this critique, as said earlier, is not to show that we can do without political parties and governments in absolute terms, but just to show what has been happening in the past. Of course, this should not stop anyone supporting political parties and governments but this should be done extremely cautiously. No free hands, please! More importantly, why give governments such powers when they have traditionally been misused. As the famous dictum of Lord Acton goes: 'All power tends to corrupt, absolute power corrupts absolutely.' Better governments must not be given such devastating powers and sure they must be contained in the sphere where they are supposed to function. In addition, rather first of all, the institutions such as judiciary and media that keep check on governments must be independent. A vibrant civil society is another *sine qua non*.

IV

The five articles in Part C, in a sense, after a merry-go-round, come to the point as these are concerned with free and fair elections. The first article in this part states: "There shall be an independent, autonomous, and impartial election commission. The prime minister shall in consultation with leader of opposition forward up to three names for each position of chief election commissioner, members of election commission, and secretary to joint parliamentary committee, constituted on the same pattern as for appointment of judges in superior judiciary, through transparent public hearing process. In case of no consensus, both prime minister and leader of opposition shall forward separate lists to the joint parliamentary committee for consideration. Provincial election commissioner shall be appointed on the same pattern by committees of respective provincial assemblies."

This differs from the 1973 Constitution and therefore requires its amendment. The other four articles deal with the conduct of elections by governments and do not require the Constitution to be amended. Have a look at these articles:

"28. All contesting political parties will be ensured a level

playing field in the elections by the release of all political prisoners and the unconditional return of all political exiles. Elections shall be open to all political parties and political personalities. The graduation requirement of eligibility which has led to corruption and fake degrees will be repealed.

29. Local bodies elections will be held within three months of the holding of general elections.

30. The concerned election authority shall suspend and appoint neutral administrators for all local bodies from the date of formation of a caretaker government for holding of general elections till the elections are held.

31. There shall be a neutral caretaker government to hold free, fair, and transparent elections. The members of the said government and their immediate relatives shall not contest elections.”

The conduct of free and fair elections in the final resort rests with the party in government, thus no matter how good a code of conduct be devised the whole issue depends on whether it is followed in letter and spirit or not. The past practice of all governments has been to manipulate elections by influencing pre-elections and post-elections conditions to obtain results of their liking. Even the election results are altered and concocted after and before elections. So much so that an air of mistrust always prevails among the political parties especially the one defending its government and the other one contesting elections to defeat it. That’s why results of elections are never accepted willingly by the parties outside the government. All such irritants need to be addressed before an independent election commission could hold free and fair elections.

V

The Part D of the Charter of Democracy deals with the core issue of Pakistani society: the issue of civil-military relations. The formulation of this issue as 'civil-military relations' is erroneous and misleading. It was already decided in the 1973 Constitution. Its first article states that "the ISI (Inter-Services Intelligence), MI (Military Intelligence) and other security agencies shall be accountable to the elected government through Prime Minister Sectt (Secretariat), Ministry of Defense, and Cabinet Division respectively. Their budgets will be approved by DCC (Defense Coordination Committee) after recommendations are prepared by the respective ministry. The political wings of all intelligence agencies will be disbanded. A committee will be formed to cut waste and bloat in the armed forces and security agencies in the interest of the defense and security of the country. All senior postings in these agencies shall be made with the approval of the government through respective ministry."

Once again this shows why restoring the 1973 Constitution is necessary. The Part-XII Miscellaneous Chapter 2 Armed Forces quite clearly delineates the role and status of the armed forces. But probably the changes made in this part of the constitution via Legal

Framework Order 2002 and Seventeenth Amendment 2003 and virtual encroachments on the powers of civil authorities that distorted it to the benefit of Armed Forces provided an occasion for laying extraordinary stress on the 'relations between civil and military establishment. It is in light of this that the articles under part D of the Charter of Democracy seeking a resetting of the algebra of the prevailing Civil-Military Relations may be understood.

The article 33 says that "all indemnities and savings introduced by military regimes in the constitution shall be reviewed." As argued above, the Supreme Court acting as the A team of the people of Pakistan as is being suggested these days, or taking suo moto notice, or taking a stock of its own role as the B team of Pakistan Army, or on the request of the Parliament, must have a review of its own judgments vis-à-vis constitutional petitions seeking relief against military takeovers and dictatorships. Not only the 'indemnities and savings' be declared null and void, due constitutional punishments be awarded to the culprits also.

In the same vein, the article 34 provides for the defense budget to be placed before the parliament for debate and approval. The next article once again seeks to contain the role of military establishment. It says that "military land allotment and cantonment jurisdictions will come under the purview of defense ministry. A commission shall be set up to review, scrutinize, and examine the legitimacy of all such land allotment rules, regulations, and policies, along with all cases of state land allotment including those of military urban and agricultural land allotments since 12th October, 1999 to

hold those accountable who have indulged in malpractices, profiteering, and favoritism.”

Why start this process of ‘reviewing, scrutinizing, and examining the legitimacy of all land allotment rules, regulations, and policies, along with all cases of state land allotment including those of military urban and agricultural land allotments’ from October 12, 1999? Why not start it when the first military coup befell Pakistan? Also, why keep this process limited to military and military governments, why not extend it to civil authorities and civil governments also? Did they not behave in the same manner regarding land allotment rules, regulations, and policies, and regarding state land allotment?

The last article of this part purports ‘to a review of rules of business of the federal and provincial governments to bring them in conformity with parliamentary form of government,’ not military or pro-military governments.

VI

This part is in lieu of a preamble to the Charter of Liberty.

The objective of this Preamble is to outline the fundamental principles on the basis of which a review of the 1973 Constitution may be done by the Supreme Court and/or Parliament to bring it in line with the will of the people.

Heretofore, political parties as well as civil and military governments in Pakistan have been misleading the people by telling them and making them believe that they got freedom on August 14, 1947, and are free now. But the question is what freedom have they either enjoyed? They say it is political freedom. In essence, this political freedom is nothing but freedom for the powerful elites of Pakistan: indeed now people of Pakistan have no foreign government to govern them, but the local one; no foreign leaders to rule them, but the local ones; no foreign bureaucracy to lord them, but the local one; no foreign armies to subdue them, but the local ones; no foreign police to police them, but the local one; no foreign monopolists to exploit them, but the local ones. It is this freedom to be governed, ruled, lorded, subdued, policed, and exploited by the local ones

instead of foreign ones that the people of Pakistan got. It is a form of localism, nationalism and patriotism that favored those who belonged to or joined the classes and elites of rulers, civil and military bureaucracy, and monopolists in Pakistan. This fact is demonstrated by the present debate on whether or not benefits of growth are trickling down to the lower classes.

Throughout the 60 years of Pakistan's history the ordinary majority of the citizens of Pakistan suffered a lack of political freedom; time and time again they were asked to make sacrifices, but every time only the powerful influential elites gained. So much so that Pakistan came to be known as an elitist state.

The story of this suffering of the ordinary people, in the final resort, revolves round a misconception that what is important is political freedom. Whereas philosophical and economic experience of the developed nations shows that what is important is individual freedom.

Another misconception related to individual freedom, and one of the most powerful in the armor of political collectivists, is that the individual is but only a unit of collective. He has no separate independent identity. He is not autonomous but all in all a dependent being. While in distance from the collective, he will wither away. He must at the cost of himself sacrifice for the collective. Thus the concept of individual freedom and independence suffered most at the hands of anti-individualists of a million types. This also hugely benefited the powerful influential elites.

This whole argument was fallacious since it focused only on the process of derivation of strength: who derives

strength from whom? Apparently, it is a vicious situation wherein one moves in circle to find the answer; but remains unanswered. Both draw strength from each other: individual from collective and collective from individual. But who in the final analysis needs strength and for what purpose is the pressing question. The collective is like a mirage; probe it and finally one reaches individual. There is no collective; if there is any collective, it is a two-ing or three-ing or a gather-ing of more than one individual. It is nothing like an organism; the only organisms are individuals. That is why the ultimate unit of every analysis is individual. Also, in both ways, it is the individual who finds strength in and from the collective; and also gives strength to it. It is in this context that a philosophical analysis of Pakistani society attests to the suppression, oppression and submission of the individual citizens of Pakistan; and tells of his repeated deaths on various altars of this or that collective purpose. This killed the sprit in him and destroyed his urge to life, happiness and creativity. The culture of sadism and masochism from top to bottom explains this state of individual-lessness.

The people of Pakistan became free in 1947, and in fact got all the freedoms, so to say. They were free economically, politically, socially, culturally, morally, spiritually, religiously, intellectually, aesthetically, so on. But the state of Pakistan that from the very start came to be dominated by powerful influential elites denied these freedoms to the people of Pakistan. These elites kept all these freedoms strictly in their control on this or that pretext.

Foremost among these pretexts was and is that the people of Pakistan are incapable of using these

freedoms responsibly. They should not be given economic freedom; they will waste the nation's wealth. This is how nationalization and over-whelming state control of the economy of Pakistan and its arbitrary regulation and taxation can be explained.

The people of Pakistan should not be given political freedom; they will destroy the political institutions and play into the hands of national and international enemies. This is how the military takeovers and both military and civil dictatorships and denials of civil and political liberties to them on the part of civil as well as military governments can be explained. The argument that the people of Pakistan are not fit for democracy derives its strength from the same political philosophy.

The people of Pakistan should not be given social and cultural freedom; they will distort their social and cultural values. This is how state control of electronic and print media and filtering and censoring of information such as books, journals, films, CDs, websites, radio and TV channels, etc., flowing into Pakistan from outside world can be explained. With the advent of a pervasive electronic media, they had to put up a watch-dog, PEMRA, to regulate the taste, attitude, character and behavior of people. The people of Pakistan are still facing the wrath of this argument in the form of a social 'iron curtain' against the West's and Indian Cultural Invasion.

The people of Pakistan should not be given moral freedom; they will indulge in immoral acts and immoralities, and destroy their morals. This is a permanent cry coming from the Moral Police: for example, when VCR came to Pakistan, it was argued

that it would destroy the morals of the young people; now it has been absorbed, and has turned out to be an outdated device with the spread of Computers and Internet. This is how the moral policing of ordinary people can be explained.

The people of Pakistan should not be given spiritual and religious freedom; they will go astray and drift away from the religion. The declaring of Pakistan as Islamic Republic and Islam as state religion proves well this absence of religious freedom. It is this lack that explains the religious and sectarian tensions and clashes deeply embedded in the society and politics of Pakistan. Moreover, it is because of this that under the Chapter Fundamental Rights the article 20, 21 and 22, when read in conjunction with the Preamble of the Constitution of 1973 and articles 1 and 2 of Part I Introductory, lose their essence.

The people of Pakistan should not be given intellectual and aesthetic freedom; they will forget or slight their ideology and past traditions. The control groups' untiring urge to shun music and various arts etc from the Pakistani society explains this opposition well. This also explains this dualistic ambivalent attitude of people towards music and arts: they want to enjoy it but at the same time they despise it. Hence the social status of those who find themselves attracted to and involved in these arts.

Under the circumstances, the citizens of Pakistan need to be reminded that it is 'the will of a people' that is considered supreme in the set-up of a state. The 1973 Constitution of Pakistan in its Preamble states:

(i) "Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the *people of Pakistan* (italics by author) within the limits prescribed by Him is a sacred trust;

(ii) "And whereas it is the *will of the people of Pakistan* (italics by author) to establish an order."

In both these 'declarations' the focus is on the ultimate supremacy of the people of Pakistan. The term *people of Pakistan* and *will of the people of Pakistan* may be taken as not meaning that a group or any collective form of people will be coercing the individual citizens or restricting their liberties. Most important is that any legislation made by the parliament, regardless of its size and votes in favor of the legislation, cannot usurp the individual rights. From this it follows that the people of Pakistan must never be controlled in the name and on the pretext of anything by the state or even by their own representatives or by any group or party or collective. This entails that no law be made repugnant to the rights inalienable to every individual citizen of the country. Logically, this ensures security of fundamental rights to every individual citizen of Pakistan.

The article 8 of Chapter 1 Fundamental Rights of Part II of the 1973 Constitution states that: "Law inconsistent with or in derogation of Fundamental Rights to be void - (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void."

The word 'confer' causes some confusion here. Can a constitution confer on its people what already rests in

and with them as inalienable? This reminds us of the memorable lines of the Declaration of American Independence.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

The Declaration further states: "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

"That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

So, can any constitution do the undoable? Rather it is the sole purpose of every constitution to provide for the protection of these inalienable rights.

Also, there are number of such anomalies in the Constitution of 1973. For instance, while there is 'freedom of speech etc' in the Constitution and it is fundamental, how can it be suspended in case of certain institutions, i.e. those institutions are beyond criticism. What is fundamental must be supreme to what is not fundamental! The logic is very simple: a constitution is made to provide for the people; no people, no constitution. That is why rights are declared as 'fundamental.' Thus the institutions that are established by virtue of the constitution cannot be considered

'fundamental.' The constitution itself and the institutions that it provides for are but for the people, and not beyond them and their rights.

The article 8 (2) confirms the same pledge made in (1): "The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void."

Under article 9 Security of Person, it is asserted: "No person shall be deprived of life or liberty save in accordance with law."

Then come the various exceptions to the rule that kill the spirit of these inalienable fundamental rights. In other words, it is like taking it back before it is given. This again reminds us of the American Bill of Rights (Amendments 1-10 of the American Constitution). Quoting some of the amendments is sufficient to our purpose here:

Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II: A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

It is only Amendment IV that makes exception to the rule but with due safeguards to the individuals' rights. But in case of Amendment I, there are no such exceptional provisions. It means that those freedoms are absolute to individuals. Even an important amendment like Amendment II does not provide for any exception shows that how paramount an individual's right to life is.

Hence, it is up to the Supreme Court to look into such anomalies in the Constitution and suggest proper legislation to remove them. It also ought to exercise its right, on the pattern of 'jury nullification,' as it was practiced in USA, to declare such laws null and void.

The same thing happens in the case of economic rights. The Constitution of 1973, in its Part II Chapter 1 Fundamental Rights, states:

"Freedom of trade, business or profession.- Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business: Provided that nothing in this Article shall prevent -

(a) the regulation of any trade or profession by a licensing system; or

(b) the regulation of trade, commerce or industry in the

interest of free, competition therein; or

(c) the carrying on, by the Federal Government or a provincial Government, or by a corporation controlled by any such Government, of any trade business, industry or service, to the exclusion, complete or partial, of other persons.”

This is obviously an example of giving and taking back at the same time; and is in clear contradiction to the above discussed fundamental rights. On the face of it, the ‘freedom of trade, business or profession’ is heavily anchored by multiple restrictions. Contrary to the spirit of the Constitution and Fundamental Rights, the governments have been given more powers to regulate the freedom ‘conferred’ in this important article. The freedom of an individual should not be curtailed or restricted by forcing him not to pursue the trade of this or that product and with this or that party, or not to do this or that business, or not to adopt this or that profession? Of course, only lawful trade or business or profession will be regulated!

The whole thesis at the back of this article, whether taken positively in favor of the people, or taken negatively in favor of the government, thwarts the basic tenet of the philosophy of individual liberty.

The concept of individual liberty is based on the concept of self-ownership. It states: that ‘we own our life; that no other person has a higher claim on our life than we do; that nor do we own the lives of others; that the product of our time, energy, and talent is our property; that it is that part of nature that we turn to valuable use; that it is the property of others that is given to us

by voluntary exchange and mutual consent; that two people who exchange property voluntarily are both better off or they wouldn't do it; that only they may rightfully make that decision for themselves; and, that since we own our life we are responsible for our life.'

Thus no other person or group or an organized entity such as local, or provincial, or federal government, can curtail the rights and restrict the liberties of individual people be it on any pretext or ground. But this calls for an exception: as the proper task of a government is to protect, life, liberties and property of its individual citizens, both from internal and external threats and dangers, the government needs resources to carry out these duties. This lets the government tax the people but of course without any discrimination; also, this lets the government regulate the business activities but of course not to hinder it in any way but to facilitate it in keeping with the norms of individual liberty, and sure without any discrimination.

Taxing the people should not be for the benefit of the government. In fact, what people contribute in the form of taxes should go back to them by way of protection of life, liberty and property provided by the government. It is for the performance of certain duties. Thus, the tax money that does not go back to the people is extortion. This comes to be manifested in the form of a big government. Such a big government taxes people exorbitantly to meet its ever-increasing expenditures. In contrast to this, a small or a limited government takes from people only that which it can return in the form of services. It taxes people equally and with a minimum ratio.

Likewise, regulating the business activities of the people is not to restrain individual citizens, or to benefit a limited section of society, or to benefit the ruling or influential elites, or like; but to protect all the people from such rentier groups, cartelizers, monopolists, etc. Also, more regulations mean more discrimination. That is why a government that resorts to more and more regulations ends in a big government benefiting only a few. The more the regulations the bigger is the size of the government. A small and limited government has minimum number of regulations since its intention is not to hinder but to provide a level playing field to all in the field.

VII

We the individual citizens of Pakistan hold

– That of all freedoms, individual freedom is of foremost importance;

– That without individual freedom, all freedoms, be they political, economic, religious, etc., are useless;

– That without individual freedom, Pakistan can never be transformed into a virtuous society since it is individual freedom that allows people to make choices on their own and thus to be responsible for their choices and their consequences also;

– That the constitution of Pakistan must ensure individual freedom, to all the citizens of Pakistan without any discrimination;

– That to ensure individual, economic, political, etc. freedoms to its citizens, the government of Pakistan must be limited both in physical and non-physical size; i.e. it must not indulge in any businesses and must not tax people and regulate their activities beyond minimum necessities;

- That the above amounts to saying that every individual citizen is endowed with certain inalienable rights such as right to life and liberty;
- That every individual citizen is free to pursue a life of his choice and liking until and unless he trespasses on such freedom of other individual citizen/s;
- That in the case of any trespassing, the trespasser, be it a citizen or an institution or government itself, is to be dealt in accordance with the law;
- That the inalienable rights include among other things the freedom of speech and writing, freedom of assembly and association, freedom of professing and practicing any philosophy, ideology, religion etc. and freedom of propagating it by peaceful means only;
- That the inalienable rights include freedom of movement, freedom of trade, freedom of business, freedom of profession, etc;
- That what a citizen earns in a fair manner belongs to him; it is his and only his income and property;
- That no individual or a group of individuals on behalf of government has any right to rob him of his income or property;
- That amounts to saying that the only justified function of government is to protect its citizens' life, their income and property, and their rights and freedoms from those who seek to usurp them be they local or foreign individuals, groups of individuals or institutions or governments;

- That, that is why government can demand from its citizens a fraction of their income to pay the personnel it hires for delivering the services it is supposed to provide to its citizens;
- That government's levying of tax/es must be limited to the lowest possible rate, because the more taxes the citizens pay, the less their purchasing power is. Likewise, the less taxes they pay, the more their purchasing power is. Or, the more the taxes, the poorer the citizens are;
- That in accordance with its just function, government must resort to minimum regulation that will not hurt the freedom of the citizens because the more regulations there are, the less free the people of that country;
- That doing any business is not the function of government;
- That the function of government is to facilitate economic activities of its individual citizens by providing them a level playing field and by discouraging monopolizations;
- That regardless of the form of government under which Pakistan is run, the inalienable rights of individual citizens cannot be curtailed by any legislation whatsoever;
- That what is important more than the form of government is the rule of law;
- That, if there is no rule of law, and no independent

judiciary, even a parliamentary government can never come up to the expectations of its citizens, i.e. cannot protect their life, liberty and property, as has been the case for the last sixty years with Pakistan,; and

- That without an independent judiciary, justice can never be accessible to each individual citizen, and a just society can never be created.

Therefore, we the individual citizens of Pakistan through this Charter of Liberty demand

- That the Constitution of Pakistan passed by the National Assembly on April 12, 1973, be reviewed by the parliament and/or Supreme Court of Pakistan and/or by law experts and/or by any individual citizen and institution in the light of this Charter of Liberty so that articles and clauses and such not in line with the Charter of Liberty be quashed;

- That the reviews of the Constitution of Pakistan taken by law experts and/or by any individual citizen and institution be reappraised by the parliament;

- That the reviews of the Constitution of Pakistan taken by the parliament and/or law experts and/or by any individual citizen and institution be finally reappraised by the Supreme Court;

- That the Constitution of Pakistan passed by the National Assembly on April 12, 1973, be amended by the parliament on its own or on the instance of Supreme Court;

- That the Constitution of Pakistan passed by the National Assembly on April 12, 1973, be amended by the parliament in such a manner that will bring it in harmony with this Charter of Liberty;
- That any amendment made by the parliament in the Constitution of 1973 be reviewed by the Supreme Court to see whether it is in harmony with the Charter of Liberty or not;
- That if the Supreme Court finds an amendment not in line with the demands of the Charter of Liberty, it may declare it null and void or may direct the parliament to review and reread/rewrite it by issuing proper guidelines; and
- That in the Constitution of 1973 be inserted a section on the pattern of American Bill of Rights to ensure that no legislation will be made by any government in any manner to expand its powers or to curtail the inalienable rights and freedoms of the people of Pakistan.

About the author

The author holds a Ph.D. in Philosophy from University of the Punjab. He has published many articles particularly on economic issues facing Pakistan. He wrote Introductions to the two Special Pakistan Editions of the Economic Freedom of the World 2004 and 2005 Reports, and translated Ken Schoolland's The Adventures of Jonathan Gullible: A Free Market Odyssey into Urdu. He regularly contributes articles to various local and foreign publications.

About Alternate Solutions Institute

Alternate Solutions Institute, Pakistan's first free market think tank, was set up in April 2003 in Lahore. It is an independent, registered, non-profit, non-governmental, educational, and research organization, established for the "welfare of the people by the people," based on mutual help and cooperation, free from any political and partisan influence.

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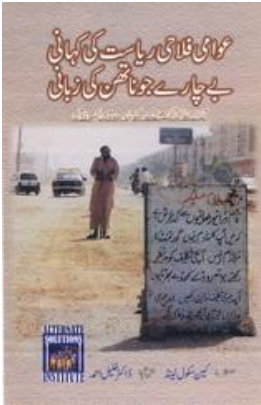
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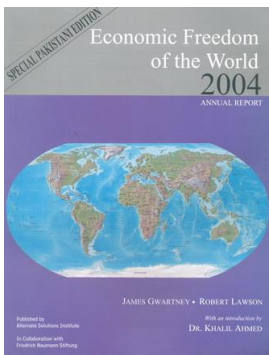
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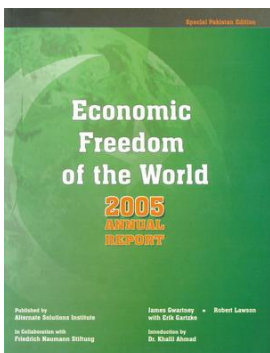
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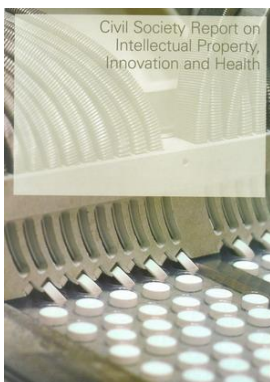
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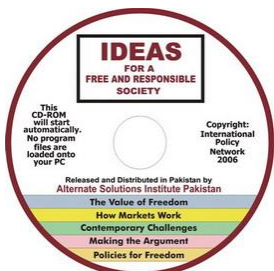
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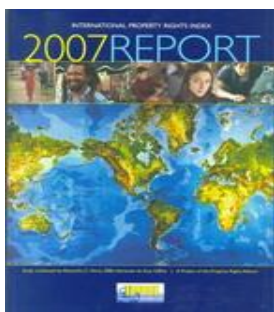
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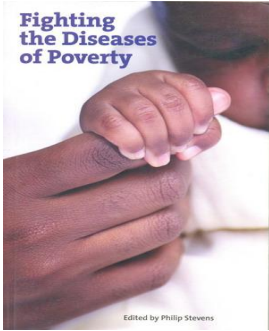
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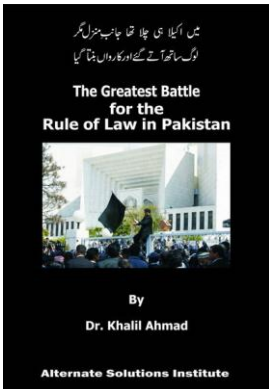
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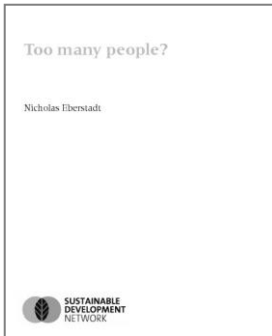
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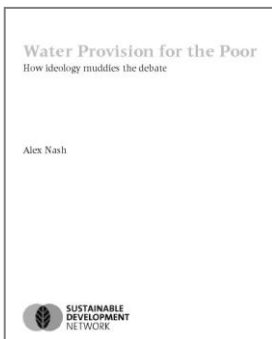
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"The Constitution is not an instrument
for government
to restrain the people;
it is an instrument
for the people
to restrain the government
lest it come
to dominate our lives and our interests."

[Patrick Henry, American revolutionary leader and orator, 1736-1799]



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