

# Constitutional Dilemma of Pakistan: 1947 -1956

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Abstract: Soon after its creation, Pakistan confronted many issues including refugee's problem, scarcity of able political leadership, absence of mutual consensus between both wings of the country and confusing nature of the relationship between Islam and state etc. took almost nine years to frame the permanent constitution for Pakistan. Constitution, the basic document of a state, determines the shape of its laws, structure of governance and system of rights and duties. The effectiveness of a constitution is judged by its practicability in the given area where it is enforced by the state machinery. Although, all civilized states of the world do possess a constitution, yet a good constitution is one which must protect the basic human rights by ensuring the independence of judiciary. Due to countless hurdles at the beginning of its journey, Pakistan's constitutional development in the right direction could not take place. The main objective of the present study is to provide deep insight into the events and factors causing a delay in the constitution-making for the newly created state of Pakistan. The various events which took place from 1947 to 1956 have been analyzed in a subtle way.

**Key Words:** Constitution, Federation, Judiciary, Human Rights, Legislature, Executive, Cabinet, Minority Rights, Democracy

#### Introduction

When Pakistan came into being, the interim constitution was enacted with the amalgamation of Indian Act of 1935 and the Indian Independence Act of 1947. The members of Central Legislative Assembly who won the election of 1945-46 from the areas of the newly independent state of Pakistan also took oath as members of the legislative assembly of the new country. The first and foremost task which was entrusted to the new constituent assembly of the country was to frame a new constitution of Pakistan. Unfortunately, the first constitution of Pakistan was carved in 1956 after the nine years of its creation till that date the country was run on an Adhoc basis for that period. Similarly, the early demise of Quaide-Azam Muhammad Ali Jinnah, the founder of Pakistan, in 1948 followed by the murder of Khan Liaqat Ali Khan the first Prime Minister of Pakistan created a leadership vacuum in the country. Along with other problems including immensity of coming refugee, lack of mutual trust between East and West Pakistan, misunderstanding about the role of Islam in the state affairs, the interference of bureaucracy became the main hurdle in the smooth functioning of the political system of Pakistan. In a span of about nine years, seven prime ministers were changed, and two Governor-General and two presidents were also changed. This time and again, frequent change in the governments and the polemics of politicians did not allow the system to work as envisaged by its forefathers.

# Objectives Resolution

After sustained discussions, the Constituent Assembly of Pakistan passed a resolution on 12 March 1949 known as Objectives Resolution that provided a firm foundation for the upcoming constitutions. It is the first-ever document which decided that what type of system of governance will be introduced in Pakistan. After independence, it became inevitable that immediate steps should be taken in the direction of constitution-making of the newly born state. The then Prime Minister Mr Liaqat Ali Khan presented a resolution in the Constituent Assembly; the assembly adopted it on 12th March 1949. The passing of Objective Resolution is considered as the most important occasion in the life of this country, next in importance only to the achievement of independence. The resolution proved to be an integral part of all

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the constitutions that followed it by providing:

In the state of Pakistan, sovereignty belongs to Allah Almighty. It means that the Muslims believe in the oneness of Allah Almighty, or *Tauheed*. They also believe that He (Allah) is all Sovereign and Omnipotent; there is none who can be called Allah. No one can interrupt in His Command as He is the one who created the entire universe. He ordered, and the things were completed as He wished or desired. Indeed, He is the only sovereign in the universe. Man is only the follower of His dictates and exercises only those powers which are delegated to him by Almighty Allah.

Islamic Democracy is the moving spirit of the resolution was the conviction that Islamic Democracy as stated and enunciated in Quran and Sunnah, if applied to current problems is the only means by which the salvation of mankind can be achieved.

The principles of freedom, social justice, tolerance and equality, a corner stone of the new state, as to be practised in this country as mentioned in the Holy Quran and Sunnah. All these principles are taught to the Muslims by the Divine Book, yet they will not compel other than Muslims to change their faith by treating them with honour and respect. Nobody will usurp the right of other even if he is powerful, in the eyes of Islam rich and poor enjoy the equal rights no distinctive treatment will be given to any on the basis of wealth or appointment. Only those are dear-ones to Allah who are pious, who do not indulge in vices. Vi

Minority rights are well protected in Islam; it believes in the freedom of religion. Pakistan has also been achieved on the basis of the freedom of religious act. It was highlighted in the resolution that all the minorities living in Pakistan will be given full rights so that they also can contribute their best in the development and prosperity of the country.

The resolution clearly points out that Islam is for democracy. The basic human rights are well protected in Quaran, and Holy Prophet also emphasized on rights of individuals irrespective of their casts, colour and creed. According to Objectives Resolution, fundamental rights for all citizens of Pakistan were also ensured in this resolution because of which the citizens of the country can take part effectively in public and private affairs of Pakistan. These rights provide life and infuse spirit to all activities in all spheres of life of the country.vii

During the course of resolution, it was also accepted that all federating units would form a federation of Pakistan which will uphold the provincial autonomy of the units. That was the reason the 1956 constitution devised a federal structure of government for the state of Pakistan, and even now we have the federal structure in the country where the provinces are also enjoying autonomous powers according to the constitution.

Independence of Judiciary was also one of the major salient features of the Objectives Resolution. It points out that if Judiciary is independent, then justice will be provided to all without any delay and without any interference. That is why Judiciary is to be an independent institution, having competent and qualified persons to administer Justice.

# Importance of Resolution

In point of fact, the Objectives Resolution is the most imperative manuscript in the constitutional history of Pakistan that paved the way for the implementation of the Islamic way of life in a democratic manner. By reflecting the ultimate aim of achieving this newly independent state, it provided basic principles and guidelines on the basis of which future constitution to be framed. This resolution made it easy for the politicians to carve an agreed upon a constitution for the people of Pakistan, who had suffered being a minority during the colonial rule. It is admitted that the resolution provides an apparatus for the achievement of laid down objectives of the Muslims of India. Being a fundamental and main document of all the constitutions of Pakistan, it establishes a relationship between Islamic religious and political principles. Although it believes in Islamic democracy yet, it maintains the principle that politics cannot be separated from religion. The craft of the resolution reflects the state of mind of Muslim League leadership who could win Pakistan in the name of Islam, but still, they were not orthodox. They believed in a subtle blend of Islamic values and modern democratic and liberal laws. The resolution is a fundamental manuscript of all the constitutions of Pakistan that guaranteed basic human rights of the people of Pakistan without any discrimination of caste, colour and creed. As it favoured the ideology of Pakistan, it served as the preamble of all the upcoming constitutions of the ideological state of Pakistan.

In spite of criticism, the resolution provided the framework for the future constitutions as it entails those features and characteristics which were the aims of creation of Pakistan. By ensuring the establishment of a society in which every individual is free to practice his own religion according to his faith, it leads to a enlighten society. The civic life of a man is sum total of his behaviours and attitudes

while living in society and maintaining the relationship with other individuals. It believes in establishing a nice framework blend in its temporal and spiritual aspects. Objectives Resolution is a document which creates the link of the man with social and political phenomenon to that of the religious.<sup>xi</sup>

Although the Objectives Resolution is a basic document and a constitutional landmark in the history of Pakistan, yet, it could not be a permanent constitution. It handed over the task of framing the constitution to the Basic Principles Committee. In the light of its recommendations, the second Constituent Assembly addressed itself to the task of framing the constitution with diligence and speed. On 8 January 1956, the government introduced the constitution bill in the assembly which was finally adopted by it with amendments, on 23 Feb 1956. The constitution came into effect on Pakistan Day, i.e. 23 March 1956, marking a historical landmark. The Government of India Act of 1947 seized to exist, and the new constitution of Pakistan was promulgated after a long wait.

# Stumbling Blocks in Constitution Making

An important problem after the creation of Pakistan was the drafting of a constitution which should be according to the ideological basis and needs of the current circumstances. This task could not be accomplished as long as 1956 due to multi factors on which there was acute polarization in society. Besides, certain problems were unnecessarily exploited and made complicated. The causes of delay in the constitution-making are briefly explained below;

#### Federal Issue

Federal basis of the future constitution was agreed upon in the form of "Objectives Resolution", but the pattern of division of powers between the central and provincial governments led to many controversies. Both the reports submitted by the Basic Principles Committees were contradictory; one offended the East Pakistan politicians, while the second was not acceptable to those of West Pakistan, especially Punjab. The Politicians from East Pakistan insisted upon securing maximum provincial autonomy, while the latter wanted a strong central government. This also involved the issue of parity of representation between the East and West wings of the country.<sup>xii</sup>

# Selecting the Form of Government

Under the 1935 Act of India, Pakistan was to adopt a parliamentary system of governance. Although it is regarded as a difficult form of government at the same time, it was the most suited form of government for a society like Pakistan. This system demanded a healthy democratic political culture on the part of the people of Pakistan, and that could not be achieved. Political parties and political institutions lacked the required political training themselves and hence could not impart the same to the public in general. Hence suspicions were cast regarding the viability of this system to cope with the requirements of political stability. A great number of political think-tanks regarded a strong presidential system, like that of the United States was the suitable replacement. This confusion and lack of clarity of mind was one more reason for the delay in the timely constitution-making in Pakistan. Although it

## Linguistic Issue

At the time of independence, it was categorically announced by the founding fathers of Pakistan that the official language of the newly born country wound be Urdu. They had enough far-sightedness to assess the importance of common language in the promotion of national integration. However, the linguistic riots in East Pakistan aggravated the political situation, and the Bengali population of East Pakistan demanded the adoption of Bengali as an official language. This matter was resolved by the adoption of both Urdu and Bengali as official languages during the latter stages of constitution-making.

## Role of Politicians

The negative role of certain politicians and autocratic trend on the part of the government also caused a delay in constitution-making. Mr Ghulam Muhammad, the Governor-General, blamed the first Constituent Assembly of Pakistan that I could not draft the Constitution in time, dissolved the House on 24th October 1954. The palace intrigues also created problems to this effect. At every juncture, the politicians raised a number of issues, including language problem, selection of the parliamentary or federal system, passage to secular or theocracy as a system of governance and issues of provincialism/regionalism making the matters more complex took nine years to prepare the draft constitution for the country.xiv

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# Differences on Islamic Way of Democracy

The Objectives Resolution had already resolved that the constitution would be based on Islamic teachings. But there appeared divergent point of views regarding the interpretation of Islamic ways and injunctions. The rightist religious elements had sharp differences with the modernist and secular elements who wanted a more modern state, following the prevailing contemporary trends. On the contrary, the religious-minded political leaders thought since the country had a religious-oriented ideology for its independence, so must be the ways of its governance. Thus, these differences that it took them all those years to come to a conclusion that, as a matter-of-fact Islam was to be a basic principle and guideline for regulating the outline of the political and legal system while the details were to be chalked out by the people according to their contemporary needs and environmental settings.

# The Issue of Quantitative Representation

Pakistan was physically divided into two separate parts with a distance of approximately one thousand miles in between. An intricate problem involved was the quantitative representation between both the wings of the country. The need was to secure representation to each unit according to its population and to secure proper safeguards at the same time for the protection of rights and interests of smaller provinces from the domination of big provinces. The method adopted in this connection in most of the federal systems lies in the introduction of a bicameral legislature in which the lower chamber is constituted on the basis of people's representation while the upper chamber represents the federating units on a parity basis. This was a difficult issue to be settled, but after the creation of One Unit of West Pakistan merger of all provinces, this problem was apparently resolved. Ultimately, parity of representation to East and West Pakistan was secured in the unicameral legislature.\*

#### Electoral Method

Introduction of separate electorates held a pivotal position in the package of demands of the Muslim League during the phase of the liberation struggle. Resultantly, it enjoyed the symbolic value as an institutional manifestation of the two-nation theory. It was mainly due to the acceptance of this demand that the Muslim League was able to establish its credibility of the representative party of the Muslims of the sub-continent. After the creation of Pakistan, certain secular elements demanded the joint electorate while the religious parties insisted upon the adoption of a separate electorate. This matter was resolve latter in the 1956 constitution, and joint electorate system was approved for the country. However, in 1978 again, this problem arose, and in view of the importance of this issue for the ideological polity, the separate electorate was reinforced.\*\*vi

# A Momentary Consensus: 1956 Constitution

Being a pre-condition of a federation, the constitution of 1956 is a written document which consisted of 234 Articles, arranged in 13 parts and 6 schedules. It had a short preamble in the beginning, a window to the whole constitution or introduction to a legal document. Objectives Resolution was kept as a preamble of the constitution according to which sovereignty of the state of Pakistan would belong to Allah alone because He is the Creator of this world and the state of Pakistan. The principles of social justice, equality, freedom and democracy as pronounced by Islamic ideology will also be implemented as per the resolution.<sup>xvii</sup>

The nature of the constitution of 1956 is partly rigid and partly flexible; it could be amended by 66 per cent, i.e., two-thirds of the members of the National Assembly. The procedure of the amendment was deliberately kept neither too rigid nor too flexible. After the approval of amendment from the parliament, the bill would be sent for the signatures of the president who was a titular head and after his signatures bill would become law. In case of refusal of the President to sign the bill, the same would be sent to the national assembly for a second-time approval. On the second approval of the assembly, the bill would automatically become the law even without the assent of President.\*\*

The constitution of 1956 adopted parliamentary form government. A government in which parliament is considered to be a supreme institution over all the other institutions of the state. Parliament of Pakistan was named as National Assembly. There were long and extensive debates over the selection of the form of government. Prime Minister under the constitution would act as head of the government and President as head of state. President would remain as a nominal head and work on the advice of Prime Minister. In order to guarantee the rule of law, the supremacy of legislature was ensured.xix

Pakistan being a diverse-cultural and multi-ethnic society, having a tremendous heterogeneity. People of Pakistan spoke many languages, belonging to various ethnic and linguistic groups. There were

sharp demographic inequalities in Pakistani society. The federal structure of government only could suit a country with such a huge amount of diversity. The unitary structure is only suitable in small and homogenous states such as Iran, United Kingdom etc. where there are no differences in caste colour, creed, language, religious sectarianism etc. In the said constitution, Pakistan was chosen to be a federal state that consisted of two provinces with different cultural and ethnic backgrounds. West Pakistan was converted into one province by merging all the four provinces so as to create parity between both wings of Pakistan. Division of power was done by creating three lists in the constitution; 1st list belonged to the powers of the federal government, 2nd list related to the power of provincial governments and the third list was concurrent list in which powers of both the government were mentioned. However, in case of a clash between the central and the provincial government, the supremacy of the central government would prevail, and the residuary powers were given to the federating units.<sup>xx</sup>

National Assembly was given the power to legislate on thirty issues contained in the federal list including financial affairs, defence, external matters, communication, citizenship, disputes between the provinces, industry, trade and commerce. The provincial list was extensive and consisted of ninety-four items. The provincial list included health, education, police, land agriculture, the judicial system, forestry, local government etc. The concurrent list included only nineteen matters and comparatively smaller to the other lists. The list dealt with such matters as civil and criminal law, economic planning, social planning, inter-provincial migration, trade unions and other matters of common interests between the central and provincial governments. The 1956 constitution contained in it all the essential and inherent elements of a federation. It aimed at strengthening the federation of Pakistan. It ensured the supremacy of parliament, independence of the judiciary, a comprehensive and equitable division of power between the center and federating units, provincial autonomy etc.

The constitution provided for the provision of a unicameral legislature. Generally, the bicameral legislature is adopted in federal forms of government in the world. Most, federations in the world consist of varying demographic structures that's why one House of parliament is represented on the basis of population and other on the basis of area. Here in the case of Pakistan although East Pakistan had slightly more population than that of West. However, it covered only one-seventh of the total area of the country. In order to create parity between both the provinces, the unicameral legislature was adopted, and equal representation was given to both the wings. Both East and West Pakistan sent their 150 representatives in the central legislative assembly. 10 sets were reserved for the women and minorities also divided on parity between both the wings. A citizen of Pakistan having an age of twenty-one year who has attained puberty and not declared mentally by a court was eligible to vote for the member of the national assembly on the basis of universal franchise. The national assembly was chosen for a period of five years. In turn, the national assembly chose its speaker for the same term and a leader of the house, which is called Prime Minister. Both Prime Minister and Speaker could be removed from their offices with a simple vote of no confidence. The President would summon the sessions or prorogue the sessions of the assembly on the advice of Prime Minister. The assembly could be dissolved by the President on the advice of Prime Minister. The term of President was rigidly fixed, and he cannot be removed from his office except for the process of impeachment.xxii The constitution defines the role of president as, an elected President who would play the role of a titular head, all the executive authority vested in his being. He used all the executive powers on behalf of the Prime Minister.

Representing the colonial legacy, the office of Governor-General was abolished, and the office of the President was created who would be elected by the members of National and provincial assemblies. Provisions for National Economic Council (NEC) and the institution of the National Finance Commission [NFC] were made in the constitution. Both federal and provincial governments were given representation in these institutions. According to Article 199, the National Economic Council was headed by the Prime Minister, and there were ten other members. Out of its membership, four ministers were from the federal government and 3 ministers were from each provincial government. According to Article 118 of the constitution, National Finance Commission was headed by the federal Finance Minister, the provincial Finance Ministers and such members as may be appointed by the President after consultation with the governors of provinces. Finance Commission was to decide how the to proceed of distributable taxes were to be distributed.xxiii Articles 197 and 198 laid down the Islamic Provisions reflecting the Objective Resolution criteria. According to which Pakistan was declared the Islamic Republic and the President of the country was to be a Muslim. An organization of Islamic Research was to be set up. No law repugnant to Quran and Sunnah would be passed, but this provision was not enforced in any court of law. However, language issue seemed unresolved as the 1956 constitution stated that the state languages of Pakistan would be Urdu and Bengali (Article 214).

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#### The Fiasco of Constitution of 1956

A decade is too brief a span in the history of a nation to judge the success or failure of a system. Although the constitution of 1956 successfully resolved three important problems of constitution-making, the extent of provincial autonomy, the Islamic Provisions and the separation of power between Prime Minister and President. However, in the absence of well-articulated Political parties, the period following the promulgation of the constitution did not lead to political stability. Governments rose and fell in rapid succession. The longest period of the office being that of Prime Minister of Pakistan, Hussain Shaheed Suharwardy, was for just over one year. On 7 October 1958, less than three years of its promulgation, the abrogation of the constitution of 1956 proclaimed by the martial Law of President Iskandar Mirza. The proclamation stated that the constitution was unworkable. Following may be the main causes of its failures:

## Undue Interference by President in Politics

1956 constitution established a parliamentary form of government. In the parliamentary system, the head of state enjoys nominal powers. But in Pakistan executive played a very active role in the making and unmaking of cabinets. He manipulated the election of Prime Minister and also backed the political parties of his own choice to undermine the role of head of government. Whereas as per the spirit of the parliamentary system, Queen in the United Kingdom plays the role of a titular head and acts only on the advice of Prime Minister.xxiv

## Parity between East and West Pakistan

The question of parity arose because of the difference in the population of two wings. 54 per cent of East Pakistan's population against 46 per cent of West Pakistan's reflected a scenario with a clumsy situation. People of East Pakistan demanded representation in respect of population not as on parity and equality in. administration, economic and financial affairs etc. The equal agreement distribution of seats in the central legislature appeased the East Pakistani and situation calmed down, but much more effort was required to satisfy the demand of parity in other fields.xxv

# Demand for Maximum Autonomy for Provinces

The representation problem was solved by giving equal representation to both the wings. As discussed earlier, East Pakistan demanded the autonomy of provinces rather a strong central government. The main reason for this demand was due to in the equitable composition of civil and military bureaucracy which was predominantly composed by West Pakistanis. The higher echelons of the government posts and military were occupied by the people from West Pakistan. Another cause of the demand for provincial autonomy was the distribution of financial resources. Federal budgetary expenditure was focused on the development of west Pakistan whereas East Pakistan provided for the most of foreign exchange. XXVI

# Absence of Majority Party

Interestingly, in the Constituent Assembly which passed 1956 constitution, there was not a single party which had a clear-cut majority in the legislature and in a position to form the government independently without the support of other political parties. Provincialism and personal advantages had such a stronghold on the politicians that they forgot their duty to the country resultantly party groups continued to exist. It is believed that the parliamentary system in Pakistan failed because of the diminished role of the Muslim League, since it could not enjoy the confidence to the Assembly and was disintegrating into groups. Hence the Assembly had no party that enjoyed the majority in the house to take bold decisions that were required at that time.xxxii

# Lack of Organization and Discipline

In the post-1956 scenario, there were hardly any comprehensive rules of conduct internally in the parties. All the parties were dominated by heavyweight personalities instead of democratic values. Members of the political parties were selfish. Members often crossed over from one side to the other in order to secure a ministerial position or some personal advantage. The membership of the cabinet was even given as a result of a political bargain. The politicians served only for their vested interests, and ruthlessly violated the national interest. Above all, the Muslim League had ceased to exist as an organization after the death of Liaqat Ali Khan. XXVIIII Above all, no direct elections of the National Legislature were held. The parties, especially the Muslim League, which was the largest political party of the country at that time, avoided elections because they were not ready to face the masses. XXIX This

situation created unbridgeable differences among the political stakeholder ended at the beginning of Martial Law in the country.

## Conclusion

At the end of this discussion, we may conclude that the political conditions of Pakistan in post-independent ear reflected a constitutional lacuna where a number of political stakeholders tried to impose their desired ends and ideologies on the others. This situation was further deteriorated by the ruling elites who wanted to justify their illegal actions to derail the political process. These steps certainly created an environment of political instability, economic deprivation and social unrest. Discontinuation of political process invited criticism from certain quarters, especially from East Pakistan. The principle of parity caused a great deal of resentment there, a majority of East Pakistanis believed that their numerical strength had been debilitated by the parity proposal. The uncompromising political behaviours from the ruling elites tremendously hindered the progress of political culture in Pakistan. Unfortunately, constitutionalism at this stage did not support the stakeholder and a vacuum of high calibre leadership to handle this situation resulted in an unprecedented wave of political and constitutional decline in Pakistan.

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