**Constitution Making (1947-56)**

Constitution is a basic document in the handling of domestic affairs. It sets out the

Framework for governance and exercise of power. It gives guiding lines of relationships among the federating units. Law making is always within its limits. The modified Government of India Act (1935) became the Interim Constitution of Pakistan in 1947. The Constituent Assembly (CA) was given the task of framing the Constitution. The first Meeting of the CA was held on August 11, 1947 at Karachi. The process began with the passing of the Objectives Resolution (previous Lecture) in which the Islamic and democratic values were adopted as grounds for the future constitution. The Basic Principles Committee (BPC) consisting of 24 members was made to work for the constitutional powers. The various sub-committees on Federal and provincial powers, Franchise, Judiciary, and Fundamental Rights started working. Board of Talimat-i-Islamia was also set up to seek advice on the religious matters.

**First BPC Report, 1950**

1: The Objectives Resolution to be included in the Constitution as the directive principles.

2: Legislature: Two houses of the parliament.

Upper :( House of Units) Equal representation for the units

Lower :( House of People) On the basis of Population. Both the Houses would enjoy the equal Powers.

3: The Head of State elected by joint session would be for five years (Two terms only). President had discretionary and emergency, appointment and other powers. President was not answerable to anyone, might be a Muslim or non-Muslim, would be assisted by the Prime Minister (PM) and Cabinet that would be answerable to the CA. Parliament may impeach him by 2/3 majority. He was given the power to abrogate the constitution.

4: Cabinet responsible to both the Houses.

5: No mention of national language

**Criticism:**

This report was severely criticized throughout the country. It could not satisfy both the wings, East and West. The religious group objected that the report contained nothing about Islamisation. On the question of representation, the East Pakistan (EP) protested that their majority had been denied by the Report. They remarked that they were thrown into a permanent minority. The population of EP was slightly larger than that of the West Pakistan (WP) but it was treated as the small provinces because both the Houses were given equal powers. So the domination of WP was intolerable for the East wing.

The language issue proved subversive to the national solidarity. The Eastern Pakistanis condemned the proposal that made Urdu as official language.

**Second BPC Report, 1952**

1. Head of State would be Muslim and no change in powers.

2. Equal representation to East and West wings:

UH (Upper House) 60, 60 LH 200, 200

3. More powers were given to Lower House. Cabinet was made responsible to Lower House.

4. It was promised that law making would be in accordance with ISLAM. No law would be made in violation of Islamic principles.

5. Advisory Board of five Islamic scholars was founded.

6. Silent on national language.

**Criticism:**

The politicians particularly from the Punjab deplored the Report because formation of the UH on the basis of representation was not acceptable. It was declared against the principle of federation.

The WP favoured equality only for Upper House. The political crisis removed Prime Minister

Nazimuddin and attention diverted from the core issue.

**Third Report: Muhammad Ali FormulaOctober 1953**

The proposals were revised in the light of the criticism and decided:

Upper House: Equal representation to all five units

Lower House: More representation to Eastern part

While in joint session, both wings had equal representation:

East Pak West Pak

Upper House 10 40

Lower House 165 135

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Joint Session 175 175

Decision by majority but it must include 30 percent members from each zone.

Criticism:

It suggested some difficult process but mostlyit was widely acceptable. Two languages,

Urdu and Bengali were approved as official languages that injured the national unity as Quaid-iAzam had wished Urdu as national language.

This is important that after the Formula, the work began on constitution drafting because the deadlock was over.

CA Dissolution

In October 1954, GG (Governor General) dissolved the CA that was challenged in the Sindh court by Maulvi Tamizuddin. The court declared the dissolution illegal but the Federal Court upheld the GG action but asked for setting up an elected CA.

2nd Constituent Assembly, June-July 1955

Ghulam Muhammad called a Convention on May 10, 1955. All its members were to be elected indirectly (by the provincial assemblies). In this way, the 2nd

CA came into existence.

**One Unit Scheme, October 1955**

The presence of different provinces in the WP had complicated the issue of the WP

Representation in the CA. It was handled by uniting all the WP units into ONE (One Unit, October

30, 1955). Now both the parts had become two units and could be addressed equally.

Constitution-making

One Unit scheme helped the task of constitution making to accomplish successfully. The previous committees report helped the new Assembly that completed its work and presented in the 2nd

CA on January 9, 1956. It, with certain amendments, was approved on January 29, 1956 and enforced on March 23. With this Pakistan had become an Islamic Republic.

**The 1956 Constitution**

The Constitution of 1956 was passed after long deliberations. It replaced the Interim Constitution. It has 234 Articles and 6 Schedules. It declared that the name of the country would be the Islamic Republic of Pakistan.

There was clear impact of the Government ofIndia Act, 1935 and the Interim Constitution.

Features

**1: Parliamentary System**

Executive Authority vested in the President who exercised it on the advice of the Prime Minister except in the matters he had discretion.President had ceremonial functions and exercised limited powers. The President would be of 45 years of age, Muslim and qualified to be a member of National Assembly. He was to be elected by National Assembly (NA) and Provincial Assemblies. Prime Minister would be appointed by President. President could not remove him unless he was sure that PM did not enjoythe support of majority in the National Assembly. The President would be its sole judge. He could ask PM to show his support. Cabinet was collectively responsible to NA. PM was the head of government assisted by cabinet.

One House Parliament:

National Assembly was the only house of the parliament having a membership of 300 plus10 women seats. Principle of parity was observed for representation. Method of direct elections was adopted for general seats. All legislative powers were rested with NA. President could return, reject or sign the bills. Regarding monetary bills of ordinary expenditure NA had all powers but they could not vote on Consolidated Fund List. Salaries of President, judges, federal service commission, etc. were to be paid through Consolidated Fund.

NA could control the Executive.

**2: Federal System**

The constitution provided three lists: Federal, Provincial and Concurrent. There were two Provinces in the federation of Pakistan.

**3: Provincial Structure**:

At the provincial level there was elected Assembly. The Parliamentary System under the nominal headship of Governor. The real powers were given to Chief Ministers and his cabinet. Centre had some overriding powers and some Emergency powers too. They were

Clause 191: Security or economic life was under threat for external or internal reasons.

Clause 193: Constitutional crisis in provinces.

**4: Independent Judiciary**

At centre level the highest court was Supreme Court, then High Courts in provinces and subordinate courts were established. Higher Courts have the power of Interpretation of the constitution. They could hear the disputes between governments. They were guardians of the Legal rights of the citizens.

**5: Fundamental Rights**

Civil and Political Rights were given to the people of Pakistan but they could be suspended in case of emergency.

**6: Directive Principlesof State Policy**

These principles provided guidelines for policy making.

Principles of Objectives Resolution were included as preamble. The other principles included surety about Islamic practices, Welfare of people, non-discrimination, and fulfillment of basic needs, etc.

**7: Islamic Character**

The name of the country was the Islamic Republic, Objectives Resolution was the Preamble.

Other Islamic clauses were part of Directive Principles.

No law can be made to violate Islamic principles and teachings.

Existing laws would be brought in conformity with Islamic teachings.

A Commission was to be appointed to examine the laws for bringing them in conformity. Whether a Law is Islamic or not, NA had to decide. The matter could be taken up with the Judiciary. Islam was not declared state religion. Islamic heritage and roots are combined with modern notions of governance and a moderate political system was adopted. Working of the ConstitutionNo elections were held after the enforcement of elections. It was finally abrogated on October 7, 1958.

It worked from March 23, 1956 to October 7, 1958.

**The 1962 Constitution**

1. Background

2. Constitution-making

3. Salient Features

**1: Background**

Military took over on 7 October 1958 and consequently Ayub Khan became Chief Martial Law Administrator. One major task was to frame a new Constitution. The administration was critical of Parliamentary system because it caused instability in the past. They sought stability of the nation in the gradual development of democracy.

**2: Constitution Making**

The government introduced Basic Democracies in October 1959. Under this system Forty Thousand basic democrats (local councilors) were to be elected in each province. They have to perform functions as local government and their role in developmental work. They also acted as an electoral college for the election of president and the national assembly. Elections for the Basic Democracies (BD) were held in December 1959 and January 1960. Then Presidential referendum was held by the elected BD members on February 17, 1960. A Constitutional Commission was established in February 1960 under the chairmanship of Justice Shahabuddin, former Chief Justice. The tasks assigned to the Commission were:

• To examine the causes of failure of Parliamentary system.

• Recommend a new system keeping in view the

 (a) Genius of people

(b) Standard of education

(c) Internal conditions of the country

(d) Need of development

Commission presented its report in May 1961 after then two committees reviewed it.

Under the report of these committeesthe new Constitution was drafted. Ayub announced the Constitution on March 1, 1962. Elections to the National Assembly (NA) and Provincial Assemblies (PAs) were held in April and May 1962 respectively. The new Constitution was enforced on June 8,1962. Martial Law was withdrawn. The new Constitution was consisted of 250 articles, 5 schedules.

**3: Salient Features of the Constitution**

**1: Title of the State**

Republic and Islamic Republic

**2: Presidential System**

A Powerful President who was responsible for administration and affairs of the state. He should be a Muslim, at least 40 years of age, should be qualified to be a member of NA. He would be elected through indirect elections for a period of five years.If he has held office for more than 8 years, he could seek reelection with the approval of the NA and the PAs. National Assembly was given the power to impeach the president, however it was difficult to achieve. President could dissolve the NA but in that case he must seek re-election.

**Powers of the President:**

President was the Focal point of all the Executive, Legislative and Judicial powers. Cabinet was responsible to him. All key appointments wereto be made by President. He could issue Ordinances. He could also declare State of Emergency in the country.

**3: National Assembly (NA)**

NA was consisted of one house on the basis ofprinciple of parity between two wings of the country. There were 150 seats plus 6 seats were reserved for women. All were elected indirectly. For the membership minimum age limit was 25 years. Legislative Powers:NA had all the powers of law making but law was tobe finally ratified by the president. President could sign, reject or return the bill.

Financial Powers

Financial Powers of NA were limited. Only new expenditure could be voted. NA could not reject

Consolidate Fund List and Recurring Expenditure.

**4: Federalism**

There were two provinces of the federation: East Pakistan and West Pakistan. Only one list of subjects, i.e. the Central list was given in the constitution. Provincial GovernmentsGovernors were head of the provinces and govern the province with his cabinet. Provincial governments were directly under the control of President. There was a strong center with a Powerful President. He had enough powers to manage Provincial affairs. In case of emergency powers Central government could take direct control of the province.

**5. Principles of Policy**

• National solidarity would be observed.

• Interests of backward people would be looked after.

• Opportunities for participation in national life.

• Education and wellbeing of people.

• Islam would be implemented in day to day life.

6: Fundamental Rights

Fundamental Rights were provided in the constitution.

**7: Political Parties**

Originally Political Parties were not allowed.

Political Parties Act was introduced in 1962.

Islamic Provisions

Objectives Resolution was the Preamble of the Constitution. Other Islamic provisions were a part of Principles of Policy and not the constitution. Advisory Council for Islamic IdeologyAn Advisory Council for Islamic Ideology was made in the constitution having 5-12 members. It was a recommendatory body. Islamic Research Institute It was designed for the Research and instructions in Islam for assisting the reconstruction of Muslim society on truly Islamic lines. Working of the ConstitutionConstitution remained enforced from June 8, 1962 to March 25, 1969.

**The 1973 Constitution**

1. Background

2. Constitution Making

3. Features

**1: Background**

Abrogation of the 1962 Constitution on March 25, 1969 led to second martial law in the country.

Yahya Khan handed over power to Zulfikar Ali Bhutto on December 20, 1971 after the first

General elections. But martial law continued and there was no constitution.

National Assembly approved an Interim Constitution, which was enforced on April 21, 1972.

**2: Constitution Making**

Constitutional Committee comprising National Assembly (NA) members from all parties was set up in April 1972. Law Minister was the Chairman of this Committee. All parties agreed on the future political system in October 1972. The Committee reported on December 31, 1972. After long deliberations and compromises final draft was approved unanimously on April 10, 1973. The new Constitution was enforced on August 14, 1973. The Constitution functioned since then with two gaps. It remained operational during following

Periods:

1973-77: Operational

1977-1985: Suspended

1985-1999: Operational after changes

1999-2002: Suspended

2002 onwards Operational after changes

**3: Features of the Constitution**

**1: Parliamentary System**

It was a parliamentary constitution having powerful Prime Minister (PM) as head of government with a very weak President. President must act on the advice of PM. All his orders were to be countersigned by PM. Prime Minister to be elected by the NA. PM exercised all executive authority. PM was answerable to the NA. In 1985, powers of the President were increased. He enjoyed some discretion in appointments of PM. He had power to dissolve the NA. He had the powers of appointment of caretaker PM. He gives his assent to bills passed by the parliament or returns these.

President:

Must be at least 45 years of age, Muslim, qualified to become member of the NA. He is elected by the Parliament and the Provincial Assemblies for 5 years.

Parliament with two houses:

• Upper House called Senate. In this house equal representation is given to Provinces.

Seats are reserved for the tribal areas, women and technocrats. Its original strength was 63, which was later raised to 87 and then 100. Senate is elected indirectly. It’s a permanent House as half of its members are elected after three years.

• Lower House: National Assembly is elected on population basis. Its Original strength was 210 but now it is 342. NA is elected for five years.

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• Senate: Indirect elections

• National Assembly: Direct elections

• Voting age for the franchise is lowered from 21 to 18.

• Parliament under 1973 constitution is a powerful legislative body. It enjoys all legislative powers. It has control of the executive through questions, resolutions, parliamentary

Committees etc.

• National Assembly is more powerful than the Senate. Budget is presented before NA.

Cabinet is answerable to National Assembly.

**Federal System**

Federation of Pakistan has four provinces and federally administered areas. Two lists are given in the constitution: Federallist and Concurrent list. Residuary powers belong to provinces.

**Provincial Structure:**

Provincial Governors are appointed by the President on the advice of the PM. Elected Chief Minister exercises executive powers. Parliamentary systemic there in the provinces. Size of the provincial assemblies varies:

In 2002:

 Punjab 371 Sindh 168

NWFP 124

Baluchistan 65

Enough provincial autonomy is guaranteed. Tradition of strong centre continues.

Centre has emergency powers. Governor’s rule can be imposed if the government cannot

Function in the provinces.

Provinces are dependent on centre for Finances.

**1. Principles of Policy:**

a. Islamic provisions are provided in Principles of Policy. Foreign policy principles

Are also given under this heading.

**2. Fundamental Rights:**

a. Fundamental Rights are secured in the constitution and are implemented through the highest court.

**3. Islamic Provisions:**

a. Title of the state is Islamic Republic of Pakistan.

b. The objectives resolution was the Preamble in the initial constitution but through

Article 2-A of 8th amendment it was inserted in the constitution in 1985.

c. Islam was declared the State Religion of Pakistan.

d. Definition of Muslim was included by an amendment.

e. Principles of Policy also carry some Islamic clauses.

f. Council for Islamic Ideology is established under the constitution.

g. Federal Shariat Court was added in 1981.

**4. National Language:**

a. Urdu is declared National Language; however English may be used for official

Purposes until arrangements would be made for its replacement by Urdu.

b. Provincial Assembly may prescribe measures for teaching, promotion and use of a provincial language in addition to the national language.

5. National Security Council:

a. National Security Council was added in 2002 in advisory capacity.

6. Judiciary:

a. An independent judiciary is given under the constitution. Supreme Court of

Pakistan is the highest court. One High Court is established in each province and

One in Azad Kashmir. A chain of lower courts is there under the high courts.