Dilemma of Constitution Making in Pakistan

Background

One of the uphill tasks for the newly created Pakistan was the framing of its comprehensive Constitution. Quaid-e-Azam with his vast and strong background of handling legal matters took up this problem with urgency, however; the gravity of other issues compelled him to pay his attention to other matters, which delayed this important process of constitution making. We have a parliamentary form of government in our country. The executive (lawmaker) should be more powerful than the head of the state. Governor should be the head of the state and prime minter was the head of the country. We borrowed our parliamentary system from the British parliament system. The Indian act of 1935 was adopted as an interim constitution with little amendments right from the independence of both countries (India and Pakistan) and it was adopted by both India and Pakistan at that time. In the original act, the governor general (The Viceroy) used to report to the queen of Great Britain. Now what were the shortcomings, India established its constitution very quickly, but Pakistan could not able to establish it. The shortcoming was creeping on from 1947. All India Muslim league was demanding for a separate homeland but at the same time, they did not perform their homework about the constitution of the country. The lawmakers who constituted the constitution assembly of Pakistan, they did not know much about the law-making process because most of the policymakers were living in East and West Pakistan. They were mainly involved in a kind of just getting out of clashes.

Definition of Constitution

The constitution is a basic document, which sets out the framework for governance and exercise of power. It defines the powers of the institutions and sets out the relationship that exists between different state institutions. It describes the powers within which these institutions have to work and what would be the nature of the relationship of the individual with the state. A constitution is a set of fundamental principles or established patterns according to which a state or other organization is ruled. The term constitution comes through French from the Latin word constitutio, used for regulations and orders. Culture, society, civilization, history, religion, traditions and political system are the sources of constitution making.

Constitution of Pakistan

Constitution of Pakistan is the supreme law of Pakistan. There have been several documents known as the Constitution of Pakistan. The Constitution of 1973 is the existing constitution, which provides for a parliamentary system with a President as head of state and popularly elected Prime Minister as head of government. Pakistan has a bicameral legislature that consists of the Senate (upper house) and the National Assembly(lower house). It was drafted by the government of Zulfikar Ali Bhutto and, following additions by the opposition parties, was approved by the legislative assembly on April 10, 1973. It was Pakistan's first ever constitution by consensus unlike two earlier constitutions, the constitution of 1956 and the constitution of 1962.

Reasons for Delay

It took almost nine years for the two constituent assemblies to make a constitution for the country. Following are the main reasons for the delay.

a) Two wings of Pakistan – East Pakistan and West Pakistan
b) Inexperienced Politicians
c) Clash of Interests between two Wings
d) Debate on 'State' and 'Islam'
e) Federal State System
f) Cultural and linguistic differences
g) Lack of Homogeneity between two Wings
h) Language Issue
i) Administrative Problems
j) Influx of refugees
k) Politicians personal clashes and differences
l) Lack of quality leadership
m) Illiteracy
n) Lack of mutual Understanding & Tolerance

History of Constitution Making

Pakistan became independent from British India in 1947, following its partition. The first document that served as a constitution for Pakistan was the Government of India Act, 1935 and 1945 with amendments.

1. Measures Taken by Jinnah

Mohammad Ali Jinnah appointed the first constituent assembly of Pakistan in August 1947. Total 69 members elected in the 1945-46 election and 10 members were included from princely states. Dual responsibility of acting as the federal legislature and constituent assembly.The members, however, lacked the essential requirements of high competence,

commitment, and political experience. Even though Jinnah wanted to improve this situation but his early demise in 1948 struck another shock to inexperienced Pakistan.

2. The Objectives Resolution (1949)

The first big step in the framing of a constitution for Pakistan was taken by the Constituent Assembly on 12 March 1949, when it passed a resolution on the 'Aims and Objectives of the Constitution', popularly known as the Objectives Resolution. It laid the foundation of the constitution and indicated the broad outline of its structure. Liaquat Ali Khan, the first Prime Minister of Pakistan, moved the resolution.

- **Main Features of Objective Resolution**

Following were the main features of objective Resolution.

- Sovereignty belongs to Almighty Allah alone
- Authority delegated by Him through the People to be exercised within the limits permitted
- Constitution is to be framed for Sovereign Independent Pakistan
- Power will be exercised through elected Representatives of People.
- Democracy, freedom, equality, tolerance and Social justice will be as dictated by Islam.
- Enabling Muslims to live in accordance with the teachings of Islam.
- Minorities will have total freedom to profess and practice their religion and develop their culture
- Safeguarding the legitimate interests of minorities, backward and depressed classes.
- Pakistan shall be a Federation with autonomous units. State's sovereignty and territorial integrity will be protected.
- People of Pakistan should prosper and attain their rightful place in the comity of nations and make contribution towards international peace and progress and happiness of humanity

- **Importance of Objective Resolution**

- Sovereignty of Allah was declared as distinctive political philosophy
- Unlike Western democracy where sovereignty lies with people
- The limits were provided to exercise powers are to be the ones given by God
- Minorities were given their due rights and respect in the benign society of Pakistan.
- Provided a framework for future constitutions of Pakistan
- It embraced the centrality of Islam in the constitutional framework
- It remained the preamble of all constitutions of Pakistan.

- **Objections Raised by Non-Muslims**

Following were the objections raised by non-Muslims at that time on objective resolution.

1. Government trying to mix religion with politics and was against the spirit of democracy
2. Sovereignty of Allah will promote inequality in the society
3. They viewed Sharia was not in conformity with modern time
4. Will encourage the establishment of a theocratic state

3. Constitutional Issues

Following were the main issues faced by Constitution Assembly at that time.

1. Federalism
2. Representation
3. Separate or Joint Electorate
4. National Language Issue
5. Parliamentary or Presidential system
6. Islamic or Secular State