

HUM 117 PAKISTAN STUDIES

Lecture 05

Dilemma of Constitution Making in Pakistan
Constitution of 1956

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Federalism



There was consensus on federalism but yet there were many issues to be settled. Pakistan consisted of two parts

- Division of power was the most difficult part between two wings and also among the provinces
- Provinces were demanding more Autonomy and Provincial Rights
- Strong Centre tradition continued in 1956 as well.

Representation



- East Pakistan and West Pakistan were different in population and size and thus appropriate representation was an issue
- Not only wings but the provinces were differently, diversely filled.
- Everyone was sensitive to their representation and provincial autonomy

To have a standard formula Basic Principle Committee was formed on March 12, 1949.

Separate or Joint electorate



- The minorities did not favor separate electorate after independence. Religious elements supported this as a part of heritage. East: decided for Joint Electorate. West: Separate electorate.

The National Language Issue



- Pre-independence: Muslim elite all over India adopted Urdu. In 1948 Jinnah declared that Urdu would be the national language
- Opposition against Urdu was in East Pakistan
- It was more prominent after Jinnah's Death
- Language Movement started in East Pakistan **February, 1952**
- Two-language formula was adopted in 1954.

Parliamentary or Presidential



- There was a consensus for parliamentary system.
- There was limited demand for presidential system.

The Islamic or Secular State



- From the very beginning there was an agreement that the state will have close relationship with Islam.
- Muslims defined their national identity with reference to Islam and its heritage.
- Some opposition came from the Congress members of the Constituent Assembly, and a few secularists.
- The Constituent Assembly took time to define the precise relationship between the state and Islam.
- Objectives Resolution rejected theocracy in Pakistan and provided the basic objectives for the future constitution of Pakistan.

Issues to be addressed



- Scope of legislation for an elected Assembly?
- Who will decide about the Islamic nature of laws? Should a Board of Ulema be given this power?
- Position of women, vote and work?
- Religious minorities?
- Discussion in the Constituent Assembly and outside continued. An active demand by religious elements for Islamic political system.
- Leading Ulema of various sects presented famous **22 points** to provide a religious base to the future constitution.

First Basic Principle Committee

- This committee presented its first report on **28th September 1950**.
- Two **houses of the parliament** were proposed. The **lower house** was to be elected on the basis of **POPULATION** and the **upper house** was to be elected on the basis of **EQUAL representation** for all the provinces of Pakistan namely East Bengal, West Punjab, Sindh, NWFP and Baluchistan.
- Equal powers were proposed for the both Houses. No mention of National Language was made.
- **East Bengal opposed this report and Liaqat Ali Khan withdrew it.**

Criticism



- This report was severely criticized throughout the country. It could not satisfy both, East and West, wings.
- The religious group objected that the report contained nothing about Islamisation.
- East Pakistan protested that their majority had been denied by the Report. They remarked that they were thrown into a permanent minority.
- The language issue proved subversive to the national solidarity.
- The Eastern Pakistanis condemned the proposal that made Urdu as official language

Second BPC Report



- Presented its final report on 22nd December 1952.
- Two Houses of the Parliament will enjoy the equal status and powers.
It proposed equal representation to East and West wing .
- Both wings opposed it

Criticism



- The politicians particularly from the Punjab deplored the Report because formation of the Upper House on the basis of representation was not acceptable.
- It was declared against the principle of federation.
- The WP favored equality only for Upper House.
- The political crisis removed Prime Minister Nazimuddin and attention was diverted from the core issue.

Muhammad Ali Bogra Formula

- Prime Minister, Muhammad Ali Bogra declared that formulation of the Constitution was his primary target.
- Bogra Formula, was presented before the Constituent Assembly of Pakistan on October 7, 1953
- Bicameral Legislature with equal representation from all five provinces(East Pakistan Included)
- 50 seats for Upper House
- 300 seats for Lower house
- One hundred and sixty five seats were reserved for East Pakistan, 75 for Punjab, 19 for Sindh and Khairpur, 24 for N. W. F. P., tribal areas and the states located in N. W. F. P., and 17 for other regions and Cities.

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- To prevent Domination of any wing the provision was made that President was to be from West Pakistan and PM from East Pakistan or vice versa
- Instead of Ulema Board, Supreme Court was given power to decide whether any law was in accordance with the teachings of Islam or not.

Reaction to Bogra Formula



- It was appreciated by different sections of the society.
- It was discussed in Constituent assembly for 13 days.
- The Committee was set to draft it on 14th Nov 1953.
- Principle of parity and representation was appreciated
- Solved the National language problem, both Urdu and Bengali were declared national languages
- Ghulam Muhammad Intervened and Dissolved the Constitutional assembly

Dissolution of First Constitutional Assembly



- 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 Constitutional Assembly



- 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 of West Pakistan



One Unit of West Pakistan was established on 14th October 1955.

The provinces of Punjab, Sindh, NWFP and Baluchistan would be amalgamated in one unit to establish parity between the two parts of the country

Representation in the CA. It was handled by uniting all the WP units into ONE (One Unit, October 30, 1955).

Then both the parts had become two units and could be treated equally

1956 Constitution



- 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

Features



- **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.

Features



- **Prime Minister**
- PM would be appointed by President.
- President could not remove him unless he was sure that PM did not enjoy the 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.

Features



- **Unicameral Legislature:**
- National Assembly was the only house of the parliament having a membership of 300 plus 10 women seats.
- 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.

Features



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

Features



- **Independent Judiciary**
- At center, the highest court was Supreme Court, then High Courts in provinces and subordinate courts were established
- Higher Courts had the power of Interpretation of the constitution. They could hear the disputes between governments. They were guardians of the Legal rights of the citizens.
- **Fundamental Rights**
- Civil and Political Rights were given to the people of Pakistan but they could be suspended in case of emergency.

Features



- **Directive Principles of 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.

Features



- **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.

1956 Constitution



- **Working of the Constitution**
- No elections were held after the enforcement. It was finally abrogated on October 7, 1958.
- It worked from March 23, 1956 to October 7, 1958