**Constitutional Issues**

**Introduction:**

Constitution is a set of basic principles and framework for governance and exercise of political power and legal authority. It clarifies the scope of power, relationship among various institutions within the government and society. It has precedence over ordinary laws and cannot be changed like ordinary laws. The Government of India Act (1935) was modified and promulgated in the newly state of Pakistan. The elected members in the 1946 elections made the first Constituent Assembly that faced grievous circumstances.

The major issues, the first constituent assembly faced, were about:

1. **Federalism**

2. **Representation**

3. **Separate or Joint Electorate**

4. **The National Language Issue**

5. **Parliamentary or Presidential system**

6. **The Islamic or Secular State**

**1: Federalism**

There was consensus on federalism but yet there were many issues to be settled. The main was that Pakistan consisted of two territorial parts, East Pakistan (with more population, less territory but administratively one unit) and West Pakistan (administratively 4 units). Federalism is meant to accommodate such kind of diversity maintaining the unity of the state or country.

**2: Representation**

Representation at the federal level was another conflicting issue because East Pakistan and West Pakistan were different in population and size. On the other hand there was diversity in Western part of Pakistan. The provinces of West Pakistan were also different in population and size. All of them were sensitive to their representation and provincial autonomy. To have a Standard Formula for the representation of units and population the Constituent Assembly (CA) formed a Basic Principle Committee (BPC) on March 12, 1949. The primary task of this committee was to frame a set of basic principles for the future constitution of Pakistan.

**1st Basic Principal Committee report 1950**

* Equal power for both houses
* Cabinet responsible to both houses
* Lower house structure was not clear (East Pakistan resisted)
* No mention of the composition and size of the assembly

**2nd Basic Principal Committee report 1952**

* Lower house was empowered (West Pakistan) resisted.
* Cabinet responsible to lower house only
* Equal representation in both houses of East Pakistan vis-à-vis West Pakistan 120 upper house: 400 Lower house.

**Bogra Formula 1953**

Muhammad Ali Bogra immediately after assuming the office of the Prime Minister presented a formula to resolve the deadlock in constitution making. According to this formula Pakistan would have a bicameral legislature. In upper house there would be EQUAL representation to each of five units. In lower house population will be represented. In this way more representation was given to East Pakistan. Both wings would have equal strength in joint sessions of the two houses.

**3: Separate or Joint Electorate**

Separate electorate was adopted on the demand of Muslims in 1909 by the British Government. But the minorities did not favour this after independence. Religious elements supported this as a part of heritage. East: decided for Joint Electorate. West: Separate electorate. 1957: Joint Electorate was adopted for all Pakistan by the National Assembly.

**4: Language Issue:**

* Urdu was declared as the official language of Pakistan
* In 1953, Bangladeshi language movement emerged in East Pakistan
* The Pakistani government tried to introduce Persian-Arabic script for the Bengali Language.
* The Bangladeshi Language was recognized as the official language of Pakistan in 1956.

**5: Parliamentary or Presidential**

There was a consensus for parliamentary system. But there was a limited demand for presidential system. Supporters of Presidential system became dominant after the 1958 military takeover. The 1962 Constitution was a Presidential constitution.

**6: Secular vs. Islamic State**

* Objective Resolution 1949: Sovereignty belong to Allah Almighty
* Rights of minorities were recognized to follow their religion and culture (Ministry for minority affairs)
* Fundamental rights of the people were secured (everyone could appeal to Supreme Court
* No law shall be enacted against Quran and Sunnah

**Constitution of 1956**

**President**

* Chief executive and head of state
* Elected by national and provincial assembly members by majority vote
* Appointment of Provincial Governors, Judges of Supreme Court, Auditor General
* Summon, prorogue, and dissolve national assembly
* Veto power to reject or withhold his assent to the bills.

**Prime-Minister**

* Head of the majority party, and leader of the cabinet in the parliament.
* He could be removed by the President
* Cabinet Ministers are under his pleasure

**National Assembly**

* 300 members equally divided between the two wings of the country
* 10 seats for women, 5 each reserved for the women.
* National assembly complete control over the finances

**Governor**

* Governor works under the pleasure of the President who appoint him.
* He is responsible for appointing Chief minister who in his view command the majority in the provincial assembly.

**Provincial Assembly**

* Provincial legislature and Governor with 80 members elected and 10 seats for women

**Judicial Structure**

* Chief Justic appointed by President
* Original as well as appellate jurisdiction

**High Court**

* The chief Justice would be appointed by President in consultation with the President.

**Islamic Provisions**

* Pakistan was named as Islamic Republic of Pakistan
* Preamble consisted the Sovereignty of Allah
* Head of the state shall be a Muslim
* Islamic advisory council shall be set up
* No law against Islam shall be enacted.