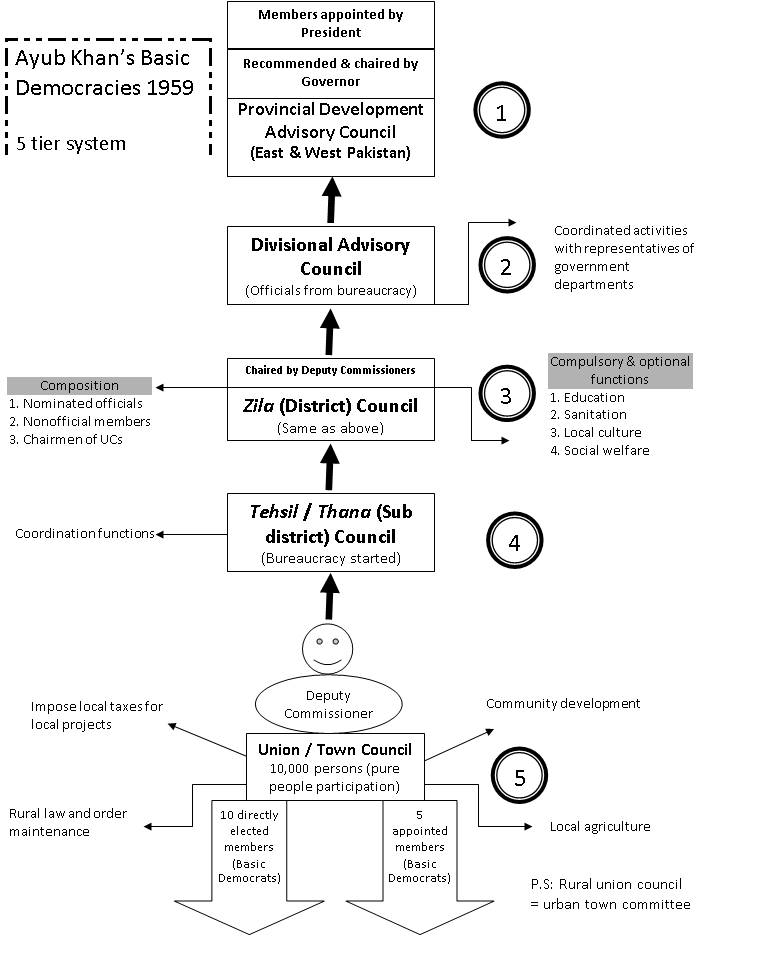
**Constitutional Development in Pakistan**

**FIRST MARTIAL LAW**

On October 07, 1958, President Iskander Mirza imposed Martial Law in the country and abrogated the Constitution. He appointed General Ayub Khan as the Chief Martial Law Administrator. Twenty days later on 27th October 1958, Ayub Khan overthrew Mirza and assumed the office of the President as well.

**BASIC DEMOCRACIES**

A year later on 26th October 1959 (date according to *Nigel Kelly*), Ayub Khan introduced the Basic Democracies Order creating 80,000 Basic Democracies member who had to serve as the Electoral College later. Through this Electoral College, Ayub got elected as President in a referendum on 14th February 1960.

*Courtesy: khalidriazblog, wordpress.com*

**CONSTITUTIONAL COMMISSION**

After taking over President Ayub Khan set up a constitutional commission under Justice Shahab-ud-Din to suggest recommendations for the new constitution of the country. The commission after through and lengthy discussion submitted its report on 6th March 1961. The report was examined by president. In its report the commission highlighted the reasons of the failure of parliamentary democracy in Pakistan:

* It fixed the responsibility for the debacle of democracy on the lack of dedicated leadership.
* Absence of well-organized political parties
* And the self-aggrandizement of the greedy politicians

In the view of the recommendation of the commission a new constitution was not framed by a constitutional body which was elected, nor did it enjoy popular support. The constitution was thrust upon the people in an undemocratic and authoritarian manner.

**CONSTITUTION OF 1962**

The new constitution was announced on 1st March 1962. Although Ayub described it as combining ‘democracy with discipline’, in reality it set up a presidential form of government. Salient Features of the Constitution were:

1. Title of the State will be Islamic Republic of Pakistan.
2. A Powerful President who was responsible for administration and affairs of the state. He should be a Muslim, no less than 40 years of age, should be capable to be a member of NA. He would be elected through not direct elections for a time of five years. If he has held office for more than 8 years, he could look for reelection with the support of the NA and the PAs.
3. National Assembly was given the power to charge the president, however it was difficult to achieve.
4. President could dissolve the NA but in that case he must seek re-election.
5. President was the central point of all the Executive, Legislative and Judicial powers. Cabinet was responsible to him. All key appointments were to be made by President. He could issue Ordinances. He could also announce State of Emergency in the country.
6. NA was consisted of one house on the basis of principle 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.
7. NA had all the powers of law making but law was to be finally ratified by the president. President could sign, reject or return the bill.
8. Financial Powers of NA were limited. Only new expenses could be voted. NA could not reject join Fund List and Recurring Expenditure.
9. 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.
10. Governors 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.

***PRINCIPLE POLICIES:***

1. National solidarity would be observed.
2. Interests of backward people would be looked after.
3. Opportunities for participation in national life
4. Education and well-being of people
5. Islam would be implemented in day to day life.
6. Fundamental Rights were provided in the constitution.
7. Originally Political Parties were not allowed. Political Parties Act was introduced in 1962.
8. Objectives Resolution was the Preamble of the Constitution. Other Islamic provisions were a part of Principles of Policy and not the constitution.
9. An Advisory Council for Islamic Ideology was made in the constitution having 5-12 members. It was a recommendatory body. It was designed for the Research and instructions in Islam for assisting the reconstruction of Muslim society on truly Islamic lines.

Ayub Khan provided a second Constitution to the country. Discarding the parliamentary system, the Constitution adopted the presidential form of government, but it was void of the system of checks and balances which is enshrined in democratic Presidential systems in other countries. Moreover, the Constitution gave overwhelming powers to the President, allowing him to dominate the entire constitutional system.

**THE DECADE OF DEVELOPMENT**

**AGRICULTURE REFORMS:**

Ayub’s advisors wanted to bring reforms in the field of agriculture and make it more productive. They said that many small, subsistence holdings could never be efficient. A law was passed saying that no farm could be smaller than 12.5 acres or larger than 500 acres (irrigated) or 1000 acres (not irrigated). This meant that many smaller farms found their land was redistributed. However, the resulting larger farms did produce a steady rise in food output. Big land owners were forced to find tenants for parts of their lands and this, too, raised productivity as the tenants and smaller farms were often more efficient than the larger, poorly run farms. Three major dams were built to help irrigation. Farmers were also loaned money to build wells to reduce the need for canal irrigation.

**INDUSTRIAL REFORMS:**

Ayub’s advisors pressed for more industrial development. This was carried out with the help of loans from more industrialized western countries, particularly the USA, Germany and the UK. In 1962, an oil refinery was established in Karachi and a Mineral Cooperation set up for the exploration of mineral deposits. In 1964, an economic union was formed with Iran and Turkey, the Regional Cooperation for Development in which three countries agreed to develop ties and trade, commerce and industry. An Export Bonus Scheme was set up offering incentives to industrialist who increased exports.

**SOCIAL AND EDUCATIONAL REFORMS:**

Ayub’s advisors drew up new curricula for schools and suggested that new textbooks should be published. The government began an extensive literacy program, building new schools and colleges. There was also an attempt to deal with shelter less people. In some cities, especially Karachi, refugees from the partition era had still not been able to find permanent homes.

Ayub’s government also tried to control population growth and set up the Family Planning Programme, funding largely by American loans. The government used radio, cinema, newspapers, posters and leaflets to persuade Pakistanis to limit the size of their families. The Programme, however, was not particularly successful.

Medical facilities were also improved. More medical and nursing training schools were set up to increase the number of doctors and nurses.

***A NEW CAPTIAL***

Since partition, the capital had been Karachi. Ayub’s government decided to build a new capital. In 1959, the site of Islamabad was chosen to replace Karachi as the new capital of Pakistan.

**AYUB KHAN STEPS DOWN**

Ayub's Constitution lasted as long as he survived in office. With his departure, his system was also folded. In fact, Ayub himself renounced the imposition of Martial Law on 25th March 1969 as he had realized that he had barely any support to sustain. But he did not call for new elections to choose another President. Instead he handed over power to the army and for the second time in its short history, Pakistan experienced a Martial Law.

**YAHYA KHAN**

New Chief Martial Law Administrator General Yahya Khan, soon after the taking-over announced that he would hold elections for the constituent assembly at an appropriate time. Before the elections that were held in December 1970, General Yahya dissolved One Unit and restored the former provinces along with the creation of the Province of Baluchistan in the western part of the country. He also announced the Legal Framework Order (LFO).

The LFO brought an end to parity between East and West Pakistan, accepting the numerical majority of the eastern wing. It also gave up the indirect elections as had been introduced by Ayub Khan. The 1970 elections, thus, were the first general elections in the country to be held on the basis of adult franchise.

However, the election results that brought Sheikh Mujib-ur -Rehman's provincial autonomist Awami League as the majority party in the National Assembly could not be reconciled by the military regime. The failure of dialogue between the regime, the Awami League and the Pakistan People's Party which had emerged as the majority party in two provinces of West Pakistan - the Punjab and Sindh- paved the way for a crisis which the military regime tried to resolve by force.

**OUTBREAK OF THE 1971 WAR**

There was first an outbreak of a civil war in Pakistan as a consequence of Yahya sending an army into East Pakistan to ‘*keep order’* and the Awami League was banned. Yahya claimed that Mujib (leader of Awami League) was claiming to declare independence, and although this was unlikely, fears increased when on 26th March (date according to *Nigel Kelly*), Sovereign People’s Republic of Bangladesh was announced in a secret radio broadcast from Dhaka.

Problems aroused when a war broke out with India as a result of a mistake. On 3rd December Pakistani Air Force launched attacks, not on East Pakistan, but on Northern India. Mrs. Gandhi, the Indian leader, reacted immediately. This led to the war between India and Pakistan in 1971. India assisted East Pakistan – or what, by this stage, was Bangladesh, in gaining independence. In this war, Pakistan army decided to surrender although it was positive to defeat India and punish East Pakistan for rebelling. It was due to the fact that East Pakistanis were determined to fight against West Pakistan to attain freedom and now had India’s support, while Pakistan could expect very little from its allies in arbitration and pacification of this outbreak.

The military regime's failure in crisis management led to its intensification and culminated in the separation of East Pakistan on December 16, 1971. On 21st December 1971, the Republic of Bangladesh was officially declared.

Defeat in the war brought disgrace for Yahya and for the army. On 20th December, Yahya resigned as President and was replaced by Z.A. Bhutto; hence, Bhutto uplifted the second Martial Law. He got the approval of the Opposition for his interim Constitution to govern the country as long as the permanent Constitution was not made. National Assembly approved a temporary Constitution, which was imposed on April 21, 1972.

**CONSTITUTION MAKING**

Constitutional Committee comprising National Assembly 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 commonly on April 10, 1973.

**1973 CONSTITUTION**

The new Constitution was adopted 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 *(Next Section)*

Following are the features of the 1973 constitution:

**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.

An important aspect of the Constitution of 1973 was the sustainability of the National Assembly, which was elected for the duration of five years and could be dissolved by the President only on the advice of the Prime Minister. This was a normal parliamentary practice that was incorporated in the Constitution.

In order to strengthen the parliament, it was laid down that a Prime Minister against whom a resolution for a vote of no-confidence had been moved in the National Assembly, but had not been yet voted upon, or against whom such a resolution had been passed, or who was continuing in office after his resignation, could not recommend the dissolution of the National Assembly to the President.

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 break up 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* is 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 to 100. Senate is elected indirectly. It’s a permanent House as half of its members are elected after three years.

*Lower House* is called the National Assembly. NA is elected on population basis. Its original strength was 210 but now it is 342. It is elected for five years through direct elections. Voting age for the franchise is lowered from 21 to 18. Parliament under 1973 constitution is a powerful legislative body that 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: Federal list and Concurrent list. Residuary powers belong to provinces.

Provincial Governors are appointed by the President on the advice of the PM. Elected Chief Minister exercises executive powers. Parliamentary system is there in the provinces. Size of the provincial assemblies varied but in 2002, Punjab had 371; Sindh had 168; NWFP (later renamed *as Khyber Pakhtunkhwa*) 124; Balochistan had 65. Enough provincial independence is guaranteed and the tradition of strong center continued. Centre has emergency powers. Governor’s rule can be forced if the government cannot function in the provinces. Provinces are dependent on center for Finances.

**Principles of Policy:** Islamic provisions are provided in Principles of Policy.

**Fundamental Rights:** Fundamental Rights are protected in the constitution and are implemented through the highest court.

**Islamic Provisions:** Title of the state is Islamic Republic of Pakistan. 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. Islam was declared the State Religion of Pakistan. Definition of Muslim was included by an amendment. Principles of Policy also carry some Islamic clauses. Council for Islamic Ideology is recognized under the constitution. Federal Shariat Court was added in 1981.

**National Language:** Urdu is declared National Language, however English may be used for official purposes until preparations would be made for its replacement by Urdu. Provincial Assembly may prescribe measures for teaching, promotion and use of a provincial language in addition to the national language.

**National Security Council:** National Security Council was added in 2002 in advisory capacity.

**Judiciary:** 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.

**LIST OF AMENDMENTS TO THE CONSTITUTION OF PAKISTAN**

|  |  |  |
| --- | --- | --- |
| 1. | Redefined the boundaries of [Pakistan](https://en.wikipedia.org/wiki/Pakistan) and removed references to [East Pakistan](https://en.wikipedia.org/wiki/East_Pakistan). | Passed on May 4, 1974 |
| 2. | Defined a Muslim and declared the status of [Ahmadis](https://en.wikipedia.org/wiki/Ahmadis) as [minority](https://en.wikipedia.org/wiki/Minority_group) and 'non-Muslim'. | Passed on September 7, 1974 |
| 3. | Extended the period of preventive detention. | Passed on February 18, 1975 |
| 4. | Decreed additional seats for minorities, it also deprived courts of the power to grant [bail](https://en.wikipedia.org/wiki/Bail) to any person detained under any [preventive detention](https://en.wikipedia.org/wiki/Preventive_detention). | Passed on  November 21, 1975 |
| 5. | Widened the scope of restriction on the [High Courts](https://en.wikipedia.org/wiki/High_Courts_of_Pakistan). | Passed on September 5, 1976 |
| 6. | Provided that Chief Justice of Supreme Court will be retired at the age of 65 and [High Court](https://en.wikipedia.org/wiki/High_Courts_of_Pakistan) judges at age 62. | Passed on December 22, 1976 |
| 7. | Enables the [Prime Minister](https://en.wikipedia.org/wiki/Prime_Minister) to obtain a [vote of confidence](https://en.wikipedia.org/wiki/Vote_of_confidence) of the people of Pakistan. | Passed on May 16, 1977 |
| 8. | Changed Pakistan's government from a [Parliamentary system](https://en.wikipedia.org/wiki/Parliamentary_system) to a [Semi-presidential system](https://en.wikipedia.org/wiki/Semi-presidential_system) by giving the President a number of additional powers. | Passed on November 11, 1985 |
| 9. | Bill to impose Shariah law as the supreme law of land. The bill was passed by Senate but could never be passed by National Assembly owing to the latter's dissolution. | Not Passed |
| 10. | Fixed the interval period between sessions of the National Assembly to not exceed 130 days. | Passed on March 29, 1987 |
| 11. | Revision of the reserved seats for women in the National and the provincial assemblies. The bill was withdrawn in 1992 | Not Passed |
| 12. | Created Speedy Trial Court for 3 years. | Passed in 1991 |
| 13. | Stripped the President of Pakistan of his reserve power to dissolve the [National Assembly of Pakistan](https://en.wikipedia.org/wiki/National_Assembly_of_Pakistan), and thereby triggering new elections and dismissing the Prime Minister. | Passed in 1997 |
| 14. | Allowed members of parliament to be dismissed if they defect. | Passed on July 3, 1997 |
| 15. | Bill to impose Shariah law as supreme law of land. Was never passed. | Not Passed |
| 16. | Increased the term appointed for [quota system](https://en.wikipedia.org/wiki/Quota_System_in_Pakistan) as per 1973 Constitution from 20 to 40 years. | Passed in 1999 |
| 17. | Made changes dealing with the office of the President and the reversal of the effects of the [Thirteenth Amendment](https://en.wikipedia.org/wiki/Thirteenth_Amendment_to_the_Constitution_of_Pakistan). | Passed in 2003 |
| 18. | Removed the power of President of Pakistan to dissolve the Parliament unilaterally. | Passed on April 8, 2010 |
| 19. | Provided for the appointment of the [Judges](https://en.wikipedia.org/wiki/Judge) of the [Supreme Court of Pakistan](https://en.wikipedia.org/wiki/Supreme_Court_of_Pakistan) and made amendments in the number of members of the parliamentary committee for the appointment of [Chief Electoral Officers](https://en.wikipedia.org/wiki/Chief_Electoral_Officer_(disambiguation)) at [Election Commission of Pakistan](https://en.wikipedia.org/wiki/Election_Commission_of_Pakistan). | Passed on  December 22, 2010 |
| 20. | For Free and Fair Elections. | Passed on  February 14, 2012 |
| 21. | For Speedy Trial Military Courts to deal with terrorism. | Passed on  January 7, 2015 |
| 22. | ECP powers deputed to Chief Election Commissioner. | Passed on June 8, 2016 |
| 23. | The 23rd Amendment was passed to re-establish the military courts for further two years till 6th January 2019. In 2015, National Assembly passed the 21st Amendment and created the military courts for the period of 2 years. The period of two years was expired on 6th January 2017 hence this 23rd Amendment was passed to re-establish the military courts for further two years till 6th January 2019. At the end of this period all the amendments will be expired/removed automatically. | Passed on January 7, 2017 |
| 24. | Reallocation of National Assembly seats among federating units and allowing election authorities to update boundaries of constituencies based on provisional results of [2017 Census of Pakistan](https://en.wikipedia.org/wiki/2017_Census_of_Pakistan). | Passed on December 22, 2017 |
| 25. | Merges [Federally Administered Tribal Areas](https://en.wikipedia.org/wiki/Federally_Administered_Tribal_Areas) with [Khyber Pakhtunkhwa](https://en.wikipedia.org/wiki/Khyber_Pakhtunkhwa) | Passed on May 31, 2018 |

**MOST IMPORTANT AMENDMENTS:**

**8TH AMENDMENT (58-2b):**

The Eighth Constitutional Amendment added a clause to the Article 58 giving to the President the power to dissolve the National Assembly in his discretion where, in his opinion, an appeal to the electorate was necessary. .

This clause had far reaching implications not only in making the assembly dependent and subservient to the President, but also drastically changing the parliamentary character of the Constitution, tilting it towards a presidential one.

After being inducted in the Constitution, this clause was invoked by the President on four occasions in a short span of nine years between 1988 and 1996. This clause was repealed in the Thirteenth Constitutional Amendment passed on April 04,1997 (Nawaz Sharif govt). The Eighth Amendment had given similar power to the governors with respect to the provincial assemblies.

**13TH AMENDMENT:**

The parliamentary character of the Constitution was restored as a result of the Thirteenth Amendment (1997) which also accompanied the restoration of the prime ministerial advice as being binding for the President with respect to the appointment of governors and taking away of the discretionary powers of the President to appoint the three chiefs of the armed forces.

**17TH AMENDMENT:**

However, the Seventeenth Amendment (was an amendment to the Constitution of Pakistan passed in December 2003, after over a year of political wrangling between supporters and opponents of Pakistani President Pervez Musharraf) once again shifted the pendulum to the side of the President. The President can now once again dissolve the National Assembly at his discretion.

**18TH AMENDMENT:**

It was passed by the National Assembly of Pakistan on April 8, 2010, removing the power of the President of Pakistan to dissolve the Parliament unilaterally, turning Pakistan from a semi-presidential to a parliamentary republic.

***Highlights of the 18th Constitutional Amendment:***

Amendment to Article 6 seeks to pre-empt military coups in future. Article 58(2b) to be repealed, substituted with ‘Dissolution of National Assembly’. President may dissolve NA in case no confidence vote passed against PM. Total strength of cabinet should not exceed 11% of total membership of parliament.

**Appointments of Governors**

Governor should be a resident and registered voter of his/her province, he/she would be appointed by president on prime minister’s advice. Provinces required by law to establish local government systems, devolve political, administrative and financial responsibility and authority to elected representatives. PM to be the chairperson of CCI; members to include CMs; 3 members from federal government. Amendment to Article 157 says federal government must consult provincial government before installing hydroelectric power stations in any province.

**Procedure for the appointment of the Judges of Supreme Court**

PM to forward three names for office of CEC, in consultation with opposition leader in National Assembly, to a parliamentary committee for confirmation. Committee proposes insertion of Article 175(a) to deal with appointment of judges to Supreme Court, high courts, Federal Shariah Court. Committee proposes substitution of Article 243, says federal government ‘shall have control and command of armed forces, supreme command of armed forces shall [rest with] … president.

**Presidents sphere of Power**

President to appoint Joint Chiefs of Staff Committee chairman, Chief of Army Staff, Chief of Naval Staff, Chief of Air Staff.. State will provide free, compulsory education to children aged between 5 and 16 years.

**Change in the names of Proviences**

Amendments to Clause 1 seek substitution of ‘Baluchistan’ with ‘Balochistan’, ‘Sind’ with ‘Sindh’. NWFP will be renamed ‘Khyber Pakhtunkhwah’.Insertion of clause sought to bar persons acquiring citizenship of foreign country from contesting elections to parliament. All elections will be held under constitution, other than those of PM and CM, to be by secret ballot.

**CONCLUSION**

The constitutional history of Pakistan reflects the social, economic and political dynamics of the state, exhibiting the clashes between the vital interests of the main social groups in Pakistan. The struggle over most constitutional issues (the state language, from of elections, division of powers between the Federation and the Provinces, etc.) went on for years altogether, often time to an extreme extent under adverse political exploitation.

The present Constitution of Pakistan is characterized by such fundamental principles as a parliamentary republican system, federal state structure, and proclamation of democracy, freedom, equality, tolerance and other bourgeois-democratic freedoms, and the attainment of social justice as the supreme aim of the state. After the huge turnout of 2018 elections, the society unanimously has taken democratic values of the state in their hands to make Pakistan as peaceful and tolerant of a society as the global arena today yearns for. Pakistan has and will continue to stand in the face of extremism, terrorism, intolerance and corruption, and now Pakistanis show a profound political sense to take responsibility of the state reputation and the sanctity of her constitution.