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**THE INDEPENDENCE ACT:**

On 15th July 1947 the Indian Independence Act was passed. The Act stated that from 15th August, British India would be partitioned into two dominion states – India and Pakistan. Each state would have complete freedom to pass any law it wished. The Government of India Act 1935 would be the provisional constitution until the states devised their own.

*On 14th August 1947, a new country came into being – PAKISTAN!*

# CONSTITUTIONAL DEVELOPMENT 1947 TO 1956

The modified Government of India Act (1935) became the Interim Constitution of Pakistan in 1947. The Constituent Assembly was given the task of framing the Constitution of Pakistan.

**THE CONSTITUENT ASSEMBLY:**

Pakistan's first Constituent Assembly came into being on 26th July 1947 and its inaugural session was held on 10th August 1947. On 12th March 1949, the Constituent Assembly assumed the future Constitution had to be formulated. The Assembly also appointed Objectives Resolution, enumerating the ideals on which the on the same date a *Basic Principle Committee* had to work out the principles on which the Constitution was to be drafted.

**OBJECTIVES RESOLUTION:**

The Objectives Resolution was a resolution adopted on 12th March 1949 by the Constituent Assembly of Pakistan. The resolution proposed by the Prime Minister Liaquat Ali Khan proclaimed that the future constitution of Pakistan would not be modeled entirely on a European pattern, but on the ideology and democratic faith of Islam.

It declared:

1. The constitution should observe the principle of democracy, freedom, equality, tolerance, and social justice as laid down by Islam.
2. Muslims would be able to lead their lives according to Islamic principles.
3. Other religious groups should be able to practice their religion freely.
4. Minorities and the poor would be legally protected from social injustice.
5. All fundamental human rights should be guaranteed.
6. The legal system should be independent of government.

It was targeted by much criticism:

* East Pakistan had a much larger population than West Pakistan and resented the idea of equal representation in the National Assembly. The East Pakistanis also resented having Urdu as the official language, at the expense of Bengali.
* Provincial politicians objected to the power being given to the Head of State and to the Federal Government.
* Religious groups complained that the constitution was not sufficiently Islamic. Religious Scholar Maulana Maududi was disappointed with the fact that it did not produce any positive results. According to him, it was such a rain which was neither preceded by a gathering of clouds, nor was it followed by vegetation. Prime Minister Liaquat Ali Khan decided that since there was so much criticism of the proposals they should be given further consideration. His untimely death meant that constitutional change had to wait until a new leader was found and had time to settle in.

**CONSTITUTIONAL MATTERS:**

The Basic Principles Committee (BPC) consisting of 24 members was made to work for the constitution. The various sub-committees on Federal and provincial duties, Franchise, Judiciary, and Fundamental Rights started working.

**BASIC PRINCIPLES COMMITTEE (FIRST DRAFT) – 28TH SEPTEMBER 1950:**

The Objectives Resolution was to be built-in in the Constitution as the order principles. Bicameral Legislature would be set up. The Upper House: (House of Units) would have equal representation for the units, consisting of 100 members. The Lower House: (House of People) will be on the basis of Population, consisting of 400 members. *Both Houses will enjoy equal powers.* The Head of State would be elected by joint session for five years (two times only). President had the powers of emergency proclamation, official appointments. The President was not responsible to give answers to anyone. He could be a Muslim or a Non-Muslim. He would be assisted by the Prime Minister (PM) and Cabinet. Parliament can change him by 2/3 majority. Nevertheless, he was given the power to break the constitution if need be. The Cabinet was answerable to both the Houses. Urdu would be the national language.

This report was severely criticized. The religious group objects that the report contained nothing related to Islam. This report was also criticized strongly by S.C. Chattopadyaya and East Pakistan: the crux of criticism was related to underrepresentation in the central legislature and the proposal for a strong center with vast powers on financial matters; East Pakistan was given equal number of seats in Upper House, the same as West Pakistan. Thus it reduced the principle of majority and turned East Pakistan into a minority. Moreover, the interim report was preposterous for the East Pakistan since it had Urdu as national language and Bengali was nowhere in the constitutional arena.

**BASIC PRINCIPLES COMMITTEE REPORT (SECOND DRAFT) – 22 DECEMBER 1952 (Date According to *Nigel Kelly*):**

This revised Report suggested:

1. The Head of State must be Muslim.
2. There should be a House of Units with 60 members from East Pakistan and 60 from West Pakistan. The House of People should have 400 members with 200 elected from each wing.
3. Religious minorities would have representatives at National and Provincial levels.
4. The Cabinet was to be responsible to the National Assembly, not the Head of State.
5. The Head of State would choose a committee of Islamic specialists to ensure that all legislation conformed to Islamic law.
6. The official language should be settled by the Assembly.

Like the first report this was also criticized, but this time criticism arose from Punjab which considered the federal formula to be defective. They demanded equal representation for various units in lower house and equal power for both Houses. The Punjab members in the Basic Principles Committee and the Federal Cabinet disliked the formula because they felt East Pakistan would easily dominate West Pakistan which had been divided into nine units. As yet, Pakistan had no official language, although Urdu had been suggested under the Quaid and had much government support.

Due to the political crisis, on 17th April 1953 (date according to *Nigel Kelly*) Ghulam Muhammad dismissed Khawaja Nazimuddin and three other members of the Cabinet. Ghulam Muhammad said that:

‘I have been driven to the conclusion that the Cabinet of Khawaja Nazimuddin has proved entirely inadequate to grapple with the difficulties facing the country.’

**BOGRA FORMULA:**

Mohammad Ali Bogra presented his package popularly known as the 'Bogra Formula'. The *Bogra Formula* was discussed in detail and was approved by the Assembly. On 21st September 1954, while Ghulam Muhammad was out of country, Bogra persuaded the Assembly to pass laws limiting the powers of the Governor-General by saying:

* That all his ministers, including the Prime Minister, must be member of the Assembly.
* That the Assembly had to approve the Cabinet,
* That the Governor-General had to take the advice of the ministers.

But before it could be written down in the form of constitution, the Constituent Assembly was dissolved by the then Governor-General, Ghulam Muhammad, on 24th October 1954.

**CONSTITUENT ASSEMBLY DISSOLUTION:**

On 24th October 1954, Governor-General dissolved the Constituent Assembly that was challenged in the Sindh High Court by Maulvi Tamizuddin. Sindh High court declared the dissolution illegal but the Federal Court upheld the Governor-General action and asked for setting up an elected Constituent Assembly. Quoting from a speech by Ghulam Muhammad on 24th October 1945 when he dissolved the Assembly, “The constitutional machinery has broken down… The Constituent Assembly has lost the confidence of the people and can no longer function.” Part of the decision made by the Sindh High Court in February 1955 was, “The Constituent Assembly is a sovereign body. The Governor-General has no power of any kind to dissolve it.”

**SECOND CONSTITUENT ASSEMBLY, JUNE-JULY 1955:**

Ghulam Muhammad called a Convention on 10th May 1955. All its members were to be elected indirectly (by the provincial assemblies). In this way, the 2nd Constituent Assembly came into existence during the months of June-July, 1955.

**ONE UNIT SCHEME, OCTOBER 1955:**

The presence of different provinces in the West Pakistan had complicated the issue of the West Pakistan’s representation in the Constituent Assembly. In November 1954, Bogra had proposed that the four provinces and 10 princely states within Pakistan should be joined together to form West Pakistan. On 5th October 1955 (date according to *Nigel Kelly*), Iskander Mirza passed an order unifying all of West Pakistan in what became known as the ‘One Unit Scheme’. Now both the parts had become two units and could be addressed equally.

**THE CONSTITUTION MAKING:**

One Unit scheme helped the task of constitution making to achieve successfully. The previous committee’s work helped the new Assembly that completed its work and presented it in the 2nd Constituent Assembly on 9th January 1956. With certain amendments, it was approved on January 29, 1956

On March 23, 1956, it was promulgated as Constitution of Pakistan. With this, Pakistan had finally become an Islamic Republic.

# CONSTITUTION OF 1956

The main points of this constitution are as follows:

1. Pakistan was to be federal republic based on Islamic Ideology.
2. A detailed and comprehensive list of fundamental rights with an Independent Judiciary was provided in the constitution.
3. The system of the parliamentary form of government was adopted both at the Centre and in the provinces.
4. There was distribution of powers between the Centre and the provinces.
5. The constitution provided for Pakistan, wherein equality between East and West wings had been maintained.
6. For the distribution of subjects between the centre and the provinces, three lists of subject had been drawn up.
7. There was a special procedure to be adopted for the amendment of the constitution, yet it was the least rigid constitution. It was reasonably flexible.
8. It had provided for two National languages Urdu for the West Pakistan and Bengali for the East Pakistan.
9. Instead of double citizenship, one citizenship system was provided for the Federation of Pakistan.
10. The constitution was silent as to be method of conducting elections both for the Central and the Provincial legislatures.
11. And finally, there were the Islamic characters of the constitution. The Islamic Provisions are as following:
12. The name of the country will be Islamic republic of Pakistan.
13. The preamble of the constitution embodied the sovereignty of God Almighty.
14. The Head of the State shall be a Muslim.
15. Islamic Advisory Council shall be set up.
16. No Law detrimental to Islam shall be enacted.

Second Constituent Assembly passed the Constitution based on arbitrarily made compromises. Hence, the Constitution could not ensure stability. The most adverse implication was its decision to vest extra-ordinary powers in the President despite the claim of the Constitution to be a parliamentary one. The Constitution also could not resolve the issue of the electorate.

Moreover, it created an artificial parity between East and West Pakistan by merging the provinces, states and others administrative units of the western wing of the country into One Unit, in order to neutralize the numerical majority of East Pakistan. These aspects of the Constitution paved the way for subsequent crises and swift changes in the governments with four prime ministers coming to office between 1956-1958.