**1962 Constitution of Pakistan: Features and Causes of Failure**

**Introduction**

Constitution-making in Pakistan has unfortunately a chequered history. After gaining independence in 1947, Pakistan adopted the 1935 Indian Constitution with slight modifications as an interim constitution and started earnestly to frame a consensus document to serve as its permanent constitution. However, due to peculiar circumstances, the complexity of issues involved, and the incompetency of the political elite, it took them more than seven years to accomplish the task.

The 1956 Constitution was never practically implemented, as no elections were held. It didn’t fail, just became irrelevant because there was no one to implement it. It was eventually abrogated after about two years on October 7, 1958, when assemblies were dissolved and Martial Law was declared by President Iskander Mirza. However, only after 20 days, he was removed by his Defence Minister/Commander in Chief, General Ayyub who himself became the Chief Martial Law Administrator on October 27, 1958

After consolidating his power, General Ayyub appointed a commission, headed by the former Chief Justice of Pakistan Muhammad Shahabuddin, and comprising ten other members, five each from East Pakistan and West Pakistan, for the preparation of a new Constitution. It presented its report on May 6, 1961, and was thoroughly examined by the President and his Cabinet. In January 1962, the Cabinet finally approved the text of the new constitution, which was promulgated by President Ayyub on March 1, 1962, and finally came into effect on June 8, 1962.

**Features of the 1962 Constitution**

Its salient features were as follows:

1. **Rigidity:** Consisting of thirteen schedules and 250 articles, it was a very rigid Constitution, amendable by at least a two-thirds majority of the parliament, and that too after authentication by the President.
2. **Name:** Deviating from the 1956 Constitution, it initially named Pakistan as the Republic of Pakistan and was forced to add Islam after strong agitation by the religious lobby. Urdu and Bengali were recognized as national languages.
3. **Federal Form of State:** The Constitution provided for a federal system with the principle of parity between East Pakistan and West Pakistan having their own separate provincial governments. The responsibilities and authority of the centre and the provinces were listed in the constitution.
4. **Presidential Form of Government:** It abolished the office of the prime minister and provided for a presidential form of government under which the President was to be elected indirectly from a panel of not more than three candidates by an electoral college consisting of 80,000 local councillors (Basic Democrats) equally distributed between the two provinces. The term of the President, who had to be a Muslim not less than 35 years of age and qualify for election as a member of the National Assembly, was five years to act as Head of State as well as Chief Executive. Solely responsible for the country’s administration, both the Governors and all the federal ministers were appointed and removed by him. He was eligible to promulgate Ordinances and veto legislated laws only overridable by two-thirds of the National Assembly. However, the president was not empowered to dissolve the Assembly except at the cost of his office.
5. **Unicameral Legislature:** The central legislature had one house known as the National Assembly with 157 members; equality between the two wings was maintained in it. The National Assembly was exclusively empowered to legislate for the central subjects. However, it could legislate on matters falling under provincial jurisdiction. The power to impose taxes was vested in the central legislature.
6. **Indirect Method of Election:** The President was elected by an Electoral College comprising 80,000 Basic Democrats, equally distributed between the two provinces.
7. **Provincial Governments:** There were two provincial governments. Each of them was headed by a governor. He enjoyed powers in the province that the President enjoyed in the centre. The Governor was empowered to appoint provincial ministers with the sanction of the President of Pakistan.
8. **Provincial Legislature:** Each province was provided with a legislature. It originally consisted of 150 members. However, later on, this number increased to 218.
9. **Fundamental Rights:** The Constitution of 1962 laid down the fundamental rights of speech and expression, freedom to choose a profession, and freedom to profess religion. Regarding civil rights, familiar rights such as the rights of life, liberty, and property were granted.
10. **Role of Judiciary:** The Judiciary was responsible for the interpretation of laws and executive orders in light of the principles embodied in a written constitution.
11. **Supreme Judicial Council:** A supreme judicial council consisting of two judges of the Supreme Court, the chief justice of the Supreme Court, and two judges of high courts was to be established.
12. **Islamic provisions**

a. The preamble of the Constitution of 1962 was based on the Objectives Resolution, which laid down simply that the state of Pakistan shall be an Islamic republic under the name of the Islamic Republic of Pakistan’.

b. According to the principles of policy, steps were to be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives under the fundamental principles and basic concepts of Islam, and they should be provided with facilities whereby they may be enabled to understand the meaning of life according to those principles and concepts.

c. No law shall be enacted that is repugnant to the teachings and requirements of Islam as set out in the Qur’an and Sunnah, and all existing laws shall be brought into conformity with the Qur’an and Sunnah.

d. Only a Muslim could be qualified for the election as President.

e. The teaching of the Quran and Islamiyat to the Muslims of Pakistan was made compulsory.

f. Proper organization of Zakat, waqf, and mosques was ensured.

g. Practical steps were to be taken to eradicate what was seen as social evils by Islam, such as the use of alcohol, gambling, etc.

h. A novel Islamic provision in the 1962 Constitution introduced an ‘Advisory Council of Islamic Ideology’ to be appointed by the President. The functions of the Council were to make recommendations to the Government as to means that would enable and encourage the Muslims of Pakistan to order their lives following the principles and concepts of Islam and to examine all laws in force to bring them into conformity with the teachings and requirements of Islam as set out in the Qur’an and Sunnah.

i. There shall be an organization to be known as the Islamic Research Institute, which shall be established by the President. The function of the Institute was to undertake Islamic Research and Instruction in Islam to assist in the reconstruction of Muslim society on a truly Islamic basis.

j. The state should endeavour to strengthen the bonds of unity among Muslim countries.

**Failures of the 1962 Constitution**

There were multiple reasons for the failure of the 1962 constitution to serve as a consensus document for the political governance of a multi-ethnic country. Some of these were the following:

**1. Lack of Political Legitimacy**

Initially, Ayyub Khan enjoyed huge sentimental legitimacy through his populist slogans against the backdrop of general public resentment against politicians on account of their alleged incompetence and corrupt practices. However, he always suffered from a lack of political legitimacy because he had usurped power through dubious means. He could not even convert this public goodwill to instrumental legitimacy for the new system he created. To create a façade of political legitimacy for his rule, he created a five-tiered system of Basic Democracies.

Consisting of 80,000 local councillors at rural and urban councils directly elected by the people, these Basic Democrats, firmly under the administrative control of the Deputy Commissioners, became the electoral college for the election of the President. Elections took place in January 1960, and the Basic Democrats were at once asked to endorse and thus legitimize Ayyub Khan’s presidency. Of the 80,000 Basic Democrats, 75,283 affirmed their support—the main purpose of creating this system. However, people did not accept this election as a legitimate one, although they tolerated him as a military dictator

**2. Flawed and Corrupt System**

With this constitutional framework in place, General Ayyub ruled the country with an iron hand. These 80,000 basic democrats not only became the Electoral College responsible for the indirect election of a President and the members of the Provincial and National Assemblies, but they were also given powers of local self-government. Being responsible for the administration of the affairs of local self-government, generous funds were placed at their disposal, with the result that they had a vested interest in supporting the government in power to enjoy the perks. As long as they supported the nominees of the ruling party, they enjoyed immunity, but as they began to flex their muscles, they were threatened with criminal misappropriation of money. There was widespread misuse of these funds, creating great resentment among the masses against the very system.

**3. Against the Democratic Norms**

The 1962 Constitution he foisted upon the public was a perfect document to govern a country against democratic norms. Not based on the universally accepted theory of the separation of powers, the executive, headed by an indirectly elected president, was the controlling authority of the Legislature and the Judiciary By abolishing the office of the prime minister and giving sole executive authority to the President, General Ayyub introduced a dictatorial Presidential system in the country, which had become used to the parliamentary form of government. The President headed the state as well as the Government. He had the authority to appoint Provincial Governors, Federal Ministers, the advocate general, the auditor general, Chairmen, and Members of various administrative commissions. As the Supreme Commander of the Armed Forces of Pakistan, the appointment of the chiefs of the forces was also within his powers. The President was also involved in the appointment of the Chief Justice and other judges of the Supreme Court.

**4. Authoritarian Rule**

More than anything, it was the way he ruled the country that was responsible for the mass agitation against him and the system he created under this constitutional framework. The military rulers issued orders to get immunity from any writs. No courts of law or persons were allowed to question the military action, the proclamation of martial law, the provincial Governors, or the military courts. While Ayyub Khan was re-elected in 1965 in an election whose fairness is doubtful, his authoritarian style of governance caused countrywide street agitation against him towards the end of 1968. All the major political parties demanded his resignation, the restoration of the parliamentary system, and the annulment of One Unit in West Pakistan.

Acting vengefully, he handed over the power to another Military dictator instead of following the very Constitution he had promulgated. On March 26, 1969, the Army Commander-in-Chief, General Agha Mohammad Yahya Khan, took over as the CMLA/President. Soon afterwards, he acceded to the popular demands, abolished the one-unit system in West Pakistan, and ordered general elections on the principle of one man, one vote.

**5. Stifled Political Development**

Being a military dictator, Ayyub Khan considered national-level politicians a threat to his regime and argued that Pakistan was not yet ready for a full-blown experiment in parliamentary democracy. He not only disqualified the old political elite that had created Pakistan but also tried to create a new crop of politicians. They were replaced by the pygmy politicians elected as local councillors but elevated to the provincial and central stages of governance. They had no national vision, as all their efforts and politics revolved around local politics.

As the basic emphasis of the new institution was on economic development and social welfare alone, it could not bring any fundamental structural changes to the country. It augmented the authority of the civil service, and the power of the landlords and the big industrialists in the West Wing went unchallenged.

**6. Breakup of Pakistan**

Although there were multiple historical and structural, of the breakup of Pakistan in 1971, in hindsight, we can say that the promulgation of the 1962 Constitution was the beginning of the last stage of a united country. The 1956 Constitution, however flawed it might be, was a written agreement endorsed by the majority of the elected representatives who had taken part in the freedom struggle of the country, for their resolve to live together. Its abrogation nullified all the efforts made by the political elite of both wings to do so, cutting the very roots of the country as a united nation-state.

Secondly, a heavy concentration of power at the centre struck at the very roots of a federation, creating feelings of marginalized helplessness among the Bengalis. Declaring the state to be federal, it was a unitary structure standing on the bedrock of One Unit in West Pakistan. It provided one legislative list wherein the authority of the Central government was specified and residuary powers were left to the provinces. Furthermore, the Central Government was empowered to step into any field outside that list. There was no provincial autonomy whatsoever because the Center repeatedly made inroads into Provincial and Residuary fields.

Because of the heavy concentration of powers in the office of the President, the 1962 Constitution has been rightly described as the Lyallpur Clock Tower, which stands at the crossroads of eight roads and is the biggest Union Jack on earth.