

### CHAPTER III CONSTITUTIONAL PROCESS ES-(105)

Constitution is a set of fundamental principles according to which a state is governed.

#### Topic 1: Early efforts to make constitution, problems and issues: -

In accordance with the independence act of 1947, the central legislative assembly was split up into two parts. Provincial assemblies on the basis of separate electorates had elected this assembly in 1946. The first constituent assembly consisted of those members who represented those regions, which constituted Pakistan.

The process of constitution making did not start in the life of Quaid-e-Azam. He died on 11<sup>th</sup> September 1948. Nearly six months later, Liaquat Ali Khan took the task of constitution making and proposed the objectives resolution on 13<sup>th</sup> March 1949. The assembly approved it. It laid down certain fundamentals:

1. Sovereignty belongs to God Almighty and is to be exercised by elected representatives of the people.
2. Pakistan is to be a federal republic founded on Islamic principles of justice, tolerance and equality.
3. Its judiciary is to be independent.
4. Its minorities are to be protected.
5. Its Muslim population is to be enabled to live a life in accordance with the principles of Quran and Sunnat.

The constituent assembly had set up a committee known as Basic Principles Committee to frame a draft constitution. The committee's report presented at the end of September 1950, recommended a parliamentary form of government with a bicameral legislature and a cabinet responsible to the parliament. East Pakistan did not like the proposed powers of central government, therefore the report had to be shelved and the committee was instructed to explore the constitutional issue afresh.

On 16<sup>th</sup> October 1951, Liaquat Ali Khan was assassinated and Khawaja Nazimuddin became the next prime minister. He took the task of constitution making and constituted a board of Ulema to advise the government on constitutional question.

Only 16 out of 29 members signed the second report of basic principles committee. The only outcome was the recognition of Bengali as one of the two state languages of Pakistan. In April 1953, governor general Ghulam Muhammad dismissed Prime Minister Nazimuddin. Muhammad Ali Bogra was the next prime minister. Surprisingly, more than half of the cabinet members joined the new cabinet of talent formed by the new prime minister.

The working of the constituent assembly was not satisfactory. It was facing severe criticism mainly from East Pakistan. To check the growth of opposition, it was decided to merge all the West Pakistan's administrative units into one unit. But the constituents' assembly rejected the proposal. The assembly voted in favor of six provinces in West Pakistan. Simultaneously, the assembly passed a law to curtail the power of governor general but on 24<sup>th</sup> of October 1954, governor general Ghulam Muhammad dissolved the constituents' assembly and announced the emergency.

On 21<sup>st</sup> June 1955, elections were held for the 2<sup>nd</sup> constituent assembly. These elections were indirect i.e., the representatives were elected by local legislative bodies. The assembly had 80 representatives i.e., 40 from East Pakistan and 40 from West Pakistan.

The 2<sup>nd</sup> constituent assembly produced quicker results than its predecessors. It started working in July 1955 and on 8<sup>th</sup> January 1956, it presented a draft constitution to the country, which after certain amendments was finally approved on 29<sup>th</sup> February 1956. On 23<sup>rd</sup> March 1956, the first constitution of Pakistan was enforced and replaced the government of India act 1935.

## Topic 2: Constitution of 1956 and its abrogation: -

### SALIENT FEATURES OF THE CONSTITUTION: -

1. The constitution of 1956 was a written constitution.
2. Parliamentary form of government was adopted in the constitution.
3. According to the constitution, Pakistan was to be a federal republic named as Islamic Republic of Pakistan.
4. Fundamental rights were granted to the citizens and equality before law was guaranteed in the constitution.
5. Freedom of religion was granted.
6. Head of the state was president, elected for 5 years by members of national assembly (MNA) and members of provincial assemblies (MPA). President was to be a Muslim not younger than 40 years, could not hold office for more than 2 terms, and could be removed from office by impeachment on charges of violating the constitution.
7. Unicameral legislature was introduced in the country. The national parliament was to comprise of one house of 300 members equally representing East Pakistan and West Pakistan. The prime minister and cabinet were responsible to the parliament with provinces exercising only reserve powers.

### ABROGATION: -

Former premier of NWFP, Dr. Khan Sahib, was invited by Muslim league to become chief minister of the new one unit of West Pakistan. Soon after taking office, Khan Sahib was faced with a revolt against his leadership in Muslim league. But he adroitly controlled the situation. By forming a new group, the Republican Party, out of the dissident Muslim league assemblymen. In the national assembly

also, members adopted the republican's ticket and Prime Minister Chowdhry Muhammad Ali found himself without majority. He resigned in September 1956. Iskandar Mirza, the president, was compelled to accept Awami League government headed by Hussain Shaheed Suhrawardy, but dependent upon the republican support to retain office. For some time, the combination worked, but the flimsy consensus of Pakistani politics soon began to dissolve into factionalism, sectarianism and regionalism. Dr Khan Sahib found his hold slipping over West Pakistan's legislature, he advised the president to suspend the constitution. The East Pakistan's legislature voted unanimously for autonomy in all matters except defense, foreign affairs and currency. The country was to hold its first complete general elections in 1958, but a dispute over the basis of constituencies led to Suhrawardy's resignation. His successors proved ineffective and the legislative process came to a halt.

On 7<sup>th</sup> October 1958, a presidential proclamation announced that political parties were abolished, the constitution was abrogated and the country was placed under martial law with General Muhammad Ayub Khan as C.M.L.A (Chief martial law administrator). President Iskandar Mirza announced that martial law period would be brief and that the new constitution would be drafted. But he was removed from office within three weeks and the army chief General Ayub Khan became president and C.M.L.A.

### **Topic 3: Constitution of 1962 and its annulment: -**

#### **SALIENT FEATURES OF THE CONSTITUTION: -**

1. According to the constitution, the name of the state was Republic of Pakistan, which was later on changed to Islamic Republic of Pakistan.
2. According to the constitution, Pakistan was a federal republic consisting of two provinces East Pakistan and West Pakistan.
3. Powers between center and provinces were distributed in such a way that there was a list of powers of center and all the residuary powers were given to the provinces. Railway was a provincial subject.
4. Like the first constitution, it was also a rigid constitution.
5. Unlike the constitution of 1956, in the constitution of 1962, presidential form of government was introduced in the country.
6. Unicameral legislature was adopted in the country. In the national assembly there was equal distribution of seats between the provinces and in the provincial assemblies, the number of seats were based on the population of the province.
7. The elections of president and MNA's and MPA's were made indirect i.e., they were elected by B.D (basic democratic) members. The Electoral College numbered 80,000 members i.e., 40,000 from each province. In 1967, 8<sup>th</sup> amendment increased the number by 1,20,000.
8. According to the constitution president had vast executive, legislative and judicial powers.

#### **ABROGATION: -**

Although the ruling period of Ayub Khan was longer than his predecessors but his constitutional system did not represent people. In 1968 students, labourers and farmers started a movement against Ayub Khan's government, which spread all over the country. To meet the crisis, the president called a conference of 21 heads of political parties. Sheikh Mujeeb-Ur-Rehman, who was in jail in case of Agartala conspiracy, was also invited in the conference. In the conference, it was decided that next general elections would be held on the basis of one person, one vote. Sheikh Mujeeb-Ur-Rehman was insisting on his six points, which were rejected by the political parties of West Pakistan. As a result, law and order situation became worse and Ayub Khan handed over power to C-in-C (Commander in Chief) general Agha Muhammad Yahya Khan. On 25<sup>th</sup> March 1969, general Yahya Khan announced martial law and became Chief martial law administrator.

#### **Topic 4: Constitutional and Political Crisis of 1971: -**

During the political agitations of 1968-1969, one of the principal demands raised was the re-introduction of parliamentary form of government. During the election campaign of 1970, all the major political parties promised parliamentary form of government to the nation. In December 1970, general elections were held under legal framework order (L.F.O) of 1969, on the basis of parliamentary form of government. After the elections, which were accepted as fair and impartial, certain very unfortunate events followed resulting in breaking of Pakistan in December of 1971. General Yahya Khan resigned and handed over power to Zulfikar Ali Bhutto, whose political party had majority in the constituent assembly from West Pakistan. He continued Martial law till April 1972 when interim constitution was enforced and martial law was lifted. The interim constitution of 1972 was also presidential in nature and was replaced by the permanent constitution in August 1973.

#### **Topic 5: Constitution of 1973: -**

#### **SALIENT FEATURES OF THE CONSTITUTION: -**

1. Pakistan shall be a federal republic to be known as Islamic republic of Pakistan.
2. The constitution shall apply to the following territories:
3. The provinces of Balochistan and Khyber-Pakhtunkhwa, the Punjab and Sindh
  - a) The Islamabad capital territory
  - b) F.A.T.A (federal administered tribal areas)
  - c) Such states and territories as are included in Pakistan whether by accession or otherwise
4. Islam is declared as state religion and it is clearly mentioned that all the existing laws shall be brought in conformity with Islamic injunctions as described in Quran and Sunnat and no law shall be made which is against such injunctions.
5. The constitution of 1973 is a rigid constitution.

6. According to this constitution, Pakistan has a parliamentary form of government.
7. Every citizen has the right to have protection of law and at the same time loyalty to the state is made basic duty of every citizen. No person who is arrested shall be detained in custody without being informed of the grounds of such arrest as soon as may be nor the person shall be denied to the right to consult and be defended by a legal practitioner of his own choice.
8. Freedom of movement, freedom of speech, assembly and association and freedom of religion are granted in the constitution.
9. The constitution proclaims equality of all citizens before law and prohibits forced labor and employment of children under the age of 14 on hazardous jobs.
10. For the first time in Pakistan, bicameral legislature was adopted in the country.
11. In the present constitution, direct method of elections has been adopted. According to it, members of provincial assemblies shall be elected by direct and free vote in accordance with law.
12. National language of Pakistan is Urdu and arrangements will be made for the use of Urdu in place of English as official language within 15 years.
13. Head of the state will be president, a Muslim not younger than 45 years. The term of office of the president is 5 years. No person can hold the office for more than two consecutive terms. The president has the right to make many higher appointments, for example, provincial governors, chiefs of staffs of the three services, chief election commissioner and members of election commission. The president summons either house or both houses and may dissolve the lower house before the expiration of its term. All bills passed by the parliament required approval of the president. The president may also declare emergency. In performance of his functions, the president must act in accordance with the advice of prime minister and such advice was binding on him.
14. The senate shall consist of 104 members.
15. Any person who abrogates or attempts to abrogate the constitution by unconstitutional means shall be guilty of high treason.

#### **Topic 6: Recent Constitutional Developments: -**

The constitution of 1973 was amended repeatedly with the result that much of its original phase and structure has gone.

1. First amendment introduced three changes in constitution, which were necessary because of recognition of Bangladesh.
2. Second amendment declared Ahmadi's as non-Muslim.
3. Third amendment extended the period of detention from 1 month to 3 months at a time and also extended the period for communication of grounds of detention from 7 days to 15 days.
4. Fourth amendment reduced the power of high courts on exercise of writ jurisdiction in such a way that neither they could prohibit preventive detention nor could they grant bail to the detainee under preventive detention.
5. Fifth amendment was related to the judiciary. It allowed inter-provincial transfers of judges of high courts.
6. Under sixth amendment, a chief justice could continue his office and complete his term of office even after he had reached the age of superannuation.

7. Seventh amendment empowered the prime minister to submit any matter for referendum before the nation.
8. In eighth amendment, a number of articles were added, varied or omitted.

**Important points of 8<sup>th</sup> amendment: -**

- i) The president to be elected after expiration term shall be elected by members of an electoral college (voters) consisting of a) members of both houses b) members of provincial assemblies.
- ii) In exercise of his functions, the president shall act in accordance with the advice of cabinet, prime minister or appropriate minister.
- iii) The president shall act in his discretion in respect of any matter of which he is empowered by that constitution.
- iv) If any question arises, whether any matter is or is not a matter in respect of which the president is empowered by the constitution, the decision of the president shall be final.
- v) At any time, the president in his discretion or on the advice of prime minister, can refer any matter of national importance to referendum in form of a question capable of being answered either by yes or no.
- vii) For the removal of doubt, it is declared that there is no limitation on the powers of Majlis-e-Shoora (parliament) to amend by way of addition, modification or repeal (cancel) any of the provisions of this constitution.

9. Ninth amendment bill was introduced but it was not passed. It was about Islamic injunctions.

10. Tenth amendment dealt with the rules and regulations about summoning and prorogation of parliamentary sessions.

11. Eleventh amendment bill was about women's seat but it was not passed

12. Twelfth amendment was about special courts.

13. Thirteenth amendment has amended four articles of the constitution. Firstly, it has deleted article 58(ii) b, which had empowered the president to dissolve national assembly at his discretion. Secondly article 42(ii) b has also been dropped. It had empowered governors to dissolve provincial assemblies. Thirdly clause 1 of article 101 has also been amended to bind the president to appoint governors on the advice of prime minister. Fourthly president's powers to appoint chiefs of three forces under article 112(ii) b have also been curtailed. Now he would appoint them on the advice of prime minister instead of consulting with prime minister.

14. 14<sup>th</sup> amendment empowered a party chief to disqualify any of the dissenting party members.

15. 15<sup>th</sup> amendment was about shariat bill which was not passed.

16. 16<sup>th</sup> amendment extends quota system up to 2013.



17. The amendment endorses the LFO, inserted the article 58 (2)b which gives the president, powers to remove the prime minister & dissolve the National Assembly. It provides for one time vote of confidence to be taken by Gen. Musharraf from parliament and the 4 provincial assemblies. It also allows him to remain as army chief for one more year.

It provides that in case of dissolution of national assembly or of a provincial assembly, a reference will be made to the Supreme Court for a decision about the justification of the action.

#### 18<sup>th</sup> Amendment

The bill repeals the 17th Amendment, Legal Framework Order (LFO) and Article 58(2b) barring the president from dissolving the National Assembly on his/her own.

The bill also renames NWFP as Khyber-Pakhtunkhwa, provides for the reconstitution of the Council of Common Interests with the prime minister as its chairman and changes the procedure for the appointment of judges to superior courts.

#### 19th Amendment

The 19th Amendment Bill, while envisaging a new system for appointments in the superior courts, aims at neutralizing a probable source of conflict between the judiciary and the executive.

The amendment also raises the number of senior judges as members of the Judicial Commission from two to four.

Under the amendment, recommendations for the appointments of ad hoc judges in the superior courts will be made by the Chief Justice of Pakistan in consultation with the Judicial Commission.

Moreover, the bill proposes that in case of the National Assembly's dissolution, members of the parliamentary committee will be from the Senate only.

#### 20<sup>th</sup> Amendment

The amendment validated the election of 28 law makers through bye-polls during the past two years, whose membership was suspended by the Supreme Court, because of incomplete election commission.

The amendment also provided for constituting eight-member committee each at center and provinces to nominate the Prime Minister and Chief Ministers respectively along with their cabinets.