

Lecture 13

Constitutional Development in Pakistan: 1947-1956

Definition of Constitution

- ▶ The constitution is a basic document, which **sets out the framework for governance and exercise of power**. It **defines the powers of the institutions** and **sets out the relationship that exists between different state institutions**. It **describes the powers** within which these institutions must work and what would be the **nature of the relationship of the individual with the state**.
- ▶ A constitution is **a set of fundamental principles or established patterns** according to which a state or other organization is ruled.
- ▶ The term constitution comes through French from the Latin word constitution, used for regulations and orders.
- ▶ Culture, society, civilization, history, religion, traditions and political system are the sources of constitution making.

History of Constitution Making

- ▶ Pakistan became independent from British India in 1947, following its partition. The first document that served as a constitution for Pakistan was the Government of India Act, 1935 and 1945 with amendments.

Measures Taken by Jinnah

- ▶ Mohammad Ali Jinnah appointed the **first constituent assembly** of Pakistan in **August 1947**.
- ▶ Total **69 members** elected in the 1945-46 election and **10 members** were included **from princely states**.
- ▶ **Dual responsibility** of acting as the **federal legislature** and **constituent assembly**. The members, however, lacked the essential requirements of high competence, commitment, and political experience.
- ▶ Even though Jinnah wanted to improve this situation but his early death in 1948 struck another shock to inexperienced Pakistan.

The Objectives Resolution (1949)

- ▶ The first big step in the framing of a constitution for Pakistan was taken by the Constituent Assembly on **12 March 1949**, when it passed a resolution on the '**Aims and Objectives of the Constitution**', popularly known as the **Objectives Resolution**. It laid the foundation of the constitution and indicated the broad outline of its structure. **Liaquat Ali Khan**, the **first Prime Minister of Pakistan**, moved the resolution.

Main Features of Objective Resolution

- ▶ **Sovereignty belongs to Almighty Allah alone.** Authority delegated by Him through the People to be exercised within the limits permitted
- ▶ Constitution is to be framed for **Sovereign Independent Pakistan.** Power will be exercised through elected Representatives of People.
- ▶ Democracy, freedom, equality, tolerance and Social justice will be as dictated by Islam. Enabling Muslims to live in accordance with the teachings of Islam.
- ▶ **Minorities will have total freedom to profess and practice their religion and develop their culture.** Safeguarding the legitimate interests of minorities, backward and depressed classes.
- ▶ **Pakistan shall be a Federation with autonomous units.** State's sovereignty and territorial integrity will be protected.
- ▶ People of Pakistan should prosper and attain their rightful place in the comity of nations and make contribution towards international peace and progress and happiness of humanity

Importance of Objective Resolution

- ▶ Sovereignty of Allah was declared as distinctive political philosophy. Unlike Western democracy where sovereignty lies with people
- ▶ The limits were provided to exercise powers are to be the ones given by God
- ▶ Minorities were given their due rights and respect in the benign society of Pakistan.
- ▶ Provided a framework for future constitutions of Pakistan
- ▶ It embraced the centrality of Islam in the constitutional framework
- ▶ It remained the preamble of all constitutions of Pakistan.

Objections Raised by Non-Muslims

- ▶ Government trying to mix religion with politics and was against the spirit of democracy
- ▶ Sovereignty of Allah will promote inequality in the society
- ▶ They viewed Sharia was not in conformity with modern time and will encourage the establishment of a theocratic state

Constitutional Issues

- ▶ Federalism
- ▶ Representation
- ▶ Separate or Joint Electorate
- ▶ National Language Issue
- ▶ Parliamentary or Presidential system
- ▶ Islamic or Secular State

Federalism



- ▶ There was consensus on federalism but there were many issues to be settled. Pakistan consisted of two parts. Division of power was the most difficult part between two wings and among the provinces. Provinces were demanding more Autonomy and Provincial Rights. Strong Centre tradition continued in 1956 as well.

Representation

- ▶ East Pakistan and West Pakistan were different in population and size and thus appropriate representation was an issue. Not only wings but also the provinces were differently, diversely filled. Everyone was sensitive to their representation and provincial autonomy. To have a standard formula **Basic Principle Committee** was formed on March 12, 1949.

The National Language Issue

- ▶ Before independence, the Muslim elite all over India adopted Urdu. In 1948 Jinnah declared that Urdu would be the national language. Opposition against Urdu was in East Pakistan. It was more prominent after Jinnah's Death. Language Movement started in East Pakistan from February 1952. **Two-language formula was adopted in 1954.**

Parliamentary or Presidential System

- ▶ There was a consensus for parliamentary system. There was limited demand for presidential system. Debates were continued on this issue. These debates delayed the process of constitution making in Pakistan.

The Islamic or Secular State

- ▶ From the very beginning, there was an agreement that the state will have close relationship with Islam. Muslims defined their national identity with reference to Islam and its heritage. Some opposition came from the Congress members of the Constituent Assembly, and a few secularists. The Constituent Assembly took time to define the precise relationship between the state and Islam. Objectives Resolution rejected theocracy in Pakistan and provided the basic objectives for the future constitution of Pakistan.

Issues to be Addressed

- ▶ What would be the scope of legislation for an elected Assembly?
- ▶ Who will decide about the Islamic nature of laws? Should a Board of Ulema be given this power?
- ▶ Position of women, vote and work?
- ▶ What about religious minorities?
- ▶ Discussion in the Constituent Assembly and outside continued. An active demand by religious elements for Islamic political system. Leading Ulema of various sects presented famous 22 *points* to provide a religious base to the future constitution.

Basic Principle Committee Reports

- ▶ The **primary function** of this committee was **to determine the basic principles of the future Constitution of Pakistan**. The committee comprised **24 members**. **Maulvi Tamiz-ud-din Khan** headed it, and **Liaquat Ali Khan** was its Vice President. The committee presented its interim report to the Legislative Assembly in 1950. This was a short document presenting the guidelines and principles of the future Constitution of Pakistan.

Criticism

- Representatives of East Pakistan raised objections against the report. The **main criticism** was against the **quantum representation in the Central Legislature**. East Pakistan, with a majority of the population, was given an equal number of seats in the Upper House as West Pakistan, thus reducing the representation of most of the population in Pakistan by one-fifth. East Pakistan representatives also did not like Urdu being declared as the only national language of Pakistan.

Second BPC Report

- ▶ The **head of the state** was to be a **Muslim**, elected by a joint session with the majority vote of the Central Legislature for five years.
- ▶ The **Prime Minister** was to be **appointed by the head of the state**.
- ▶ The **Central Legislature** was to consist of **two houses**: the **House of Units** with 120 members and the **House of People** with 400 members.
- ▶ There were to be **three lists of subjects** for the division of power between the Federation and the Units.
- ▶ **Adult franchise** was introduced.

Cont.

- ▶ The judiciary was to be headed by the **Supreme Court of Pakistan** consisting of a Chief Justice and two to six other judges. The Chief Justice was to be appointed by the head of state.
- ▶ There was to be a **High Court** for each of the units of East Pakistan, Punjab, Sindh Baluchistan and the N. W. F. P.
- ▶ A **Board of Ulema** was to be set up by the head of state and provincial governors. The Board of Ulema was to examine the lawmaking process to ensure that no law was passed that went against the principles of the Quran and Sunnah.
- ▶ The **Objectives Resolution** was adopted as a preamble to the proposed Constitution.

Muhammad Ali Bogra Formula

- ▶ **Bicameral Legislature** with **equal representation for all the five provinces** of the country in the Upper House.
- ▶ A total of **50 seats** were reserved for the **Upper House**.
- ▶ The **300 seats** for the **Lower House** were to be allocated to the provinces based on **proportionate representation**. 165 seats were reserved for East Pakistan, 75 for Punjab, 19 for Sindh and Khairpur, 24 for N.W.F.P., tribal areas and the states located in N. W. F. P., and 17 for Baluchistan, Baluchistan States Union, Bahawalpur and Karachi.
- ▶ the **head of the state was from West Pakistan**, the **Prime Minister was to be from East**
- ▶ The **two houses** of the Legislative Assembly formed the **Electoral College for the presidential elections**, and the **President** was to be elected for **a term of 5 years**.
- ▶ In place of the **Board of Ulema**, the Supreme Court was given the power to decide if a law was in accordance with the basic teachings of the Holy Quran and Sunnah or not.

Dissolution of First Constitutional Assembly

- ▶ **October 1954**, Governor General dissolved the Constitutional Assembly that was challenged in the **Sindh court** by **Maulvi Tamizuddin**. The court declared the dissolution illegal, but the **Federal Court** upheld the Governor General action but asked for setting up an elected Constitutional Assembly.

2nd Constitutional Assembly

- ▶ **Ghulam Muhammad** called a Convention on **May 10, 1955**. All its members were to be elected indirectly (by the provincial assemblies). In this way, the **2nd Constitutional Assembly** came into existence.

One Unit Scheme, Oct 1955

- ▶ The One Unit was a geopolitical program launched by the government of Pakistan led by then-Prime Minister **Muhammad Ali Bogra** on **22 November 1954**. The program was believed to be enacted after the government faced difficulty of administering the two unequal polities of Pakistan separated from each other by more than a thousand miles to diminish the differences between the two regions, **the program merged the Four Provinces of West Pakistan into a single province as was the case with East Pakistan** (now Bangladesh).