

Constitutional History of Pakistan

Steps Towards the Constitution of Pakistan

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A Brief Background of Constitutional History of Pakistan

By the end of World War II, British imperial government granted independence to its Indian colony and for that matter the British Parliament enacted the Indian Independence Act, 1947. Under the Act, the British Crown relinquished its sovereign powers over India and transferred those powers to the newly established dominions of India and Pakistan on 14 August 1947. The Government of India Act, 1935, hitherto the constitution of British India, was amended to bring it in consonance with the aims and objectives of independence as laid down in the 1947 Act. The combination of these two constitutional instruments served as an interim constitutional order for both countries until their respective constituent assemblies adopted their own constitutions.

The Viceroy of India Lord Mountbatten announced the Partition Plan on radio. Lord Mountbatten keenly desired to become the joint Governor General of both India and Pakistan. The Congress accepted this proposal while Quaid-e-Azam and the Muslim League rejected. Muslim League decided to appoint Quaid-e-Azam as a first Governor General of Pakistan. Quaid-e-Azam Muhammad Ali Jinnah reached Karachi on August 7, 1947. The last viceroy Lord Mountbatten announced the establishment of Pakistan on August 15, 1947 in the Assembly Building at Karachi. Quaid-e-Azam took oath as the first Governor General on August 15, 1947 in the last Friday of the Holy month of Ramadan. The National Flag with the Crescent and star was unfurled. Lord Mountbatten came to Karachi and handed over the power to the first Constituent Assembly. This Constituent Assembly came into being as a result of the general elections 1945-46. Lord Mountbatten addressed the Constituent Assembly and briefly highlighted the events which had led to the creation of Pakistan. Quaid-e-Azam Muhammad Ali Jinnah had already been elected as the first president of the first Constituent Assembly on August 11, 1947. Mr. Justice Muhammad Sharif was assigned the job of drafting the Constitution with Constituent Assembly after the transfer of Power. Quaid-e-Azam Muhammad Ali Jinnah had a stupendous task of building the structure of the newly born state Pakistan. A federal Constitution, in the light of recommendations made by Justice Muhammad Sharif was enforced in which the five provinces were the federating units. The cabinet was formed, Quaid-e-Azam Muhammad Ali Jinnah was elected as the Governor General and Liaquat Ali Khan became the first Prime Minister of Pakistan. Malik Ghulam Muhammad was elected as Finance Minister of Pakistan.

Following independence, it took three Governor Generals, four Prime Ministers, two constituent assemblies (1947-1954 & 1955-1956), and nine years of protracted constitution making process to produce the first constitution of Pakistan in 1956. It was rejected on the final day of its adoption 29 February 1956 by all Hindu minority parties and the largest Muslim political party the Awami League from East Pakistan – demographically the largest province. Due to lack of consensus among ethnonational groups, the 1956 constitution failed to arrest the political instability that engulfed the entire country following its promulgation, ultimately leading to its abrogation and imposition of the first martial law in the country on 7 October 1958. Between its promulgation and abrogation, four federal ministries changed. The military dictator General Ayub Khan, who had taken over the reins of power, enacted the 1962 constitution to the country through an executive order. The current constitution, enacted by the third constituent assembly in 1973, was twice suspended by military coups of General Zia-ul-Haq (1977-1985) and General Musharraf (1999-2002), and at the time of its ‘restoration’, both in 1985 and 2002, the military regimes amended it in ways that fundamentally changed its Islamic and federal character. One such amendment on both occasion was the grant of power to the president to dissolve the lower house of the federal legislature.

Adoption of the Current Constitution:

In the constitution making processes in the three constituent assemblies of Pakistan (1947-1954, 1955-1956, 1972-1973), producing the 1956 and (current) 1973 constitutions, the Islamic character of the state and federalism were the two vexatious questions that prevented the forging of consensus amongst ethnonational groups on constitutional design of the instruments that have governed the polity thus far.

Members of the constituent assembly (1972-1973) that drafted the current constitution were elected in 1970 when the country was still united. The secession of East Pakistan (present Bangladesh) in 1971 altered the political landscape of the country in fundamental ways. Nevertheless, no fresh elections were held and members elected from West Pakistan in the 1970 elections formed the constituent assembly for Pakistan. The 1973 constitution contains 280 articles and 7 schedules, and establishes a centralized federal system.

The Federal Executive:

The President is the head of state, represents the unity of the republic and is elected by a simple majority of an electoral college consisting of members of the two houses of federal legislature and of the four provincial legislatures. The President can be removed if he or she is found unfit to hold office due to physical incapacity or impeached in case of violation of the constitution in a joint sitting of the federal houses by votes of not less than two-thirds of its total membership.

The Prime Minister is elected by members of the lower house of the federal legislature after every general election, and other cabinet ministers are appointed by the President according to the advice of the Prime Ministers. The executive authority of the federal government is exercised by the Prime Minister, or through him, by the federal ministers. The President may not remove the Prime Minister unless the President is satisfied that he or she has lost the confidence of the majority in the lower house. For that purpose, the President has to summon a meeting of the lower house and require the Prime Minister to obtain a vote of confidence. The Prime Minister could also be removed on the initiative of the lower house when the house passes a vote of no-confidence against her or him. The federal cabinet is collectively responsible to both houses of parliament.

The Federal Legislature:

Parliament, the federal bicameral legislature, consists of the President, the lower house (National Assembly) and upper house (Senate). Seats in the National Assembly are apportioned on the basis of population with a total of 342 seats distributed amongst the four provinces, FATA (Federally Administered Tribal Areas) and the Federal Capital. The Assembly is elected for five years unless the President dissolves it sooner.

The Senate has a total of 104 seats with each of the four provinces having 23 seats (14 general, four women, four technocrats, and one non-Muslim minority seat in each province), thus giving equal representation to each province, eight seats for the FATA, and four seats for the Federal Capital, including two general, one woman and one technocrat seat. Elections to fill seats in the Senate allocated to each province are held in accordance with the system of

proportional representation by means of the single transferable vote by the provincial legislative assemblies. The Senate has a term of six years, and is not subject to dissolution.

The Judiciary:

The 1973 constitution provides for a hierarchy of the judicial branch with the Supreme Court of Pakistan on top and five High Courts subordinate to it, each working in the four provinces and the federal capital. Lower courts in each province are under the administrative control of their respective high courts. The constitution also provides for a Federal Shariat Court and vests it with the universal jurisdiction to examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam.

Constitutional Development of Pakistan

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Constitutional history started after 1857 (War of Independence). By the Government of India Act, 1858, the governance of India was transferred from East India Company to the British Crown. Later on, the Government of India Act, 1935, was enacted in response of growing demand for self-government. The British parliament enacted the Independence of India Act, 1947, which became law on July 18, 1947, but came into force on August 15, 1947. This Act was the base of creation of Pakistan. It was about the dealing of separation or independence and its allied matters. States were at liberty to choose either Pakistan or India, to live with. By the Government of India Act, 1935, supremacy was transferred to dominions of Britain. It was guaranteed that both India and Pakistan would be at liberty to make constitution and law separately. Legislature of both would be powerful in their sphere. It was complete succession of British rule, which ceased control of Britain over the sub-continent.

Objectives Resolution of 1949:

It was felt necessary that before the constitution was drafted, the principles and ideals on which it was to be based, and which were to guide its makers in their great task, must first be clearly defined. For this purpose, on March 12, 1949, the Constituent Assembly adopted a resolution, moved by Liaquat Ali Khan, Prime Minister of Pakistan, called the Objectives Resolution.

It proclaimed that the future Constitution of Pakistan would be modeled on the ideology and democratic faith of Islam, in as much as the Holy Quran is the only true guide to man, both in his private and public life, in social and political affairs. The principles and ideals proclaimed in it are as below:

1. **Sovereignty:** Sovereignty belongs to Allah Almighty alone; but He has delegated it to the State of Pakistan through its people, to be exercised as a sacred trust within the limits prescribed by the Quran and Sunnah.
2. **Representation:** The State shall exercise its powers and authority through the chosen representatives of the people.
3. **Social Justice:** The principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam, shall be fully observed.
4. **Lives of Muslims:** Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam, as set out in the Holy Quran and Sunnah.
5. **Minority Rights:** Adequate provision shall be made for the minorities to profess, propagate and practice their religions, develop their cultures, and safeguards their legitimate interests.

Importance of Objectives Resolution: The Objectives Resolution is one of the important and illuminating document in the constitutional history of Pakistan. At the time of moving it, Mr. Liaquat Ali Khan called it most important occasion in the life of this country, next in importance only to the achievement of independence.

The importance of this document lies in the fact that it combines the good features of the Western and Islamic democracy. It proclaims the Islamic constitutional principle of the sovereignty of Allah, and combines it with the

modern doctrine of popular sovereignty. In the democratic Islamic State of Pakistan, the Muslims will order their lives in accordance with Islamic teaching. Nevertheless, the non-Muslim minorities of Pakistan shall be guaranteed full rights of freedom of religion, worship and culture, especially because Islamic faith itself teaches a generous and just treatment of religious minorities. Lastly, the principle of the independence of judiciary is also asserted.

In view of its basic principles, the Objectives Resolution may be regarded as the beacon-light which guided the framers of our constitution in their supreme but arduous task. It proclaimed that in the present day world of warring ideologies, the Islamic State of Pakistan would be a heaven of peace, democracy and progress, and that Pakistan would be a democracy not only in political but also in social and economic sense.

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