

Constitutional History of Pakistan

What is a Constitution?

- A **constitution** is a set of rules for government—often codified as a written document—that enumerates the powers and functions of a political entity. In the case of countries, this term refers specifically to a national constitution defining the fundamental political principles, and establishing the structure, procedures, powers and duties, of a government. By limiting the government's own reach, most constitutions guarantee certain rights to the people. The term *constitution* can be applied to any overall law that defines the functioning of a government, including several historical constitutions that existed before the development of modern national constitutions.

Importance of a Constitution

- It lays down the basic structure of the government under which its people are to be governed. It establishes the main organs of the government – the executive, the legislature and the judiciary.
- The Constitution not only defines the powers of each organ, it demarcates the responsibilities of each. It regulates the relationship between the different organs and between the government and the people.
- A Constitution is superior to all the laws of the country. Every law enacted by the government has to be in conformity with the Constitution.
- It spells out the rights of the citizen

- The constitution puts limits on government. It is like a contract between the government and the people. The people who 'serve' in the government take an oath that they will support and defend the constitution.

Hopefully that means that they will obey the constitution and the spirit and intent of the constitution and will not do anything to a person that is prohibited by the constitution.

The supreme court rules on laws and behavior of office holders and determines if their actions are constitutional or not.

That is the importance of it. It is supposed to limit the behavior of those in office to do harm to the citizens, using the power of their office, while they serve in office. And if it works and if those in office are honest, then the importance to each individual is a high level of personal freedom.

- Mughal Raj
- British East India Company and trade
- Jahangir, Aurangzeb, Sirjauddaulah
- Sir Thomas Roe
- Robert Clive
- Warren Hastings
- Sir Charles Canning

Pre-Partition Constitutional Development

Govt. of India Act 1858

- First constitutional document for colonial India
- Formation of Councils
- Powers of Secretary of State
- Amendment in 1859 and Governor General
- Indian Councils Act, 1861 and 1892

Minto-Morely Reforms 1909-1919

- Simla Deputation and Political Awakening in India
- Lord Morely SoS and Lorn Minto Vcry Indian Councils Act, 1909
- Main factors
- Reaction by Indians

Montague-Chelmsford Reforms 1919

- Towards Responsible Government and its causes.
- Secretary of State was head and Governor General under his control.
- Bicameral Legislature
- Direct Elections
- Duration of Councils
- Power of Councils and Governor General
- Budget
- Diarchy

Other Developments (For Students)

- Simon Commission
- Round Table Conferences
- Nehru Report
- 14 points of Jinnah

Govt of India Act, 1935

- Main Features
- Federal Executive
- Federal Legislature
- Federal Court
- Provincial Governments
- Provincial Legislatures
- Formation of Ministries under this Act

PAST PAPERS ON CONSTITUTION

2012 - The "Objective Resolution"(1949) satisfied both orthodox and modernists by combining the features of Western and Islamic democracy. Discuss critically.

2011

Give a critical appraisal of the constitutional crises/crises initiated by the controversial actions taken by Governor General Ghulam Muhammad and endorsed by the superior Court of Pakistan. Discuss and analyze its effects on the subsequent history of Pakistan.

Federalism has been a continuing cause of political tension in our country. Will the 18th amendment made in the constitution by the present Government solve this issue for all? Take a position and support with your argument.

Given the problems that Pakistan is facing today, what is your vision of Pakistan in the year 2011? How, in your opinion, can be its internal and external problems solved?

PAST PAPERS ON CONSTITUTION

2010 - Why military of Pakistan intervened in Pakistan's politics? What is the role of the present leadership to de-politicize army? Give specific measures.

2009 - Referring to the evolution of Political System, identify the commonalities in among the martial law administrators of Pakistan?

2008 - The Constitution of Pakistan (1973) is the “mouth piece of Islam”. Discuss. (20)

PAST PAPERS ON CONSTITUTION

2007 "Pakistan is a federation in form and unitary in spirit." Discuss it keeping in view the strengths and weakness of Federation of Pakistan

2004 - Throw light on the steps taken under various Govts. for the promulgation of Islamic system in the country?

2003 - "'Muhammad Ali Formula was practicable compromise between the two wings of Pakistan on the questions of representation/' To what extent, it was acceptable to both the wings of Pakistan?

2001 - Write a comprehensive essay on the promulgation of Islamic system in Pakistan with special reference to the role played by the Ulema in the process

Interim Constitution

- Indian Independence Act 1947
 - Government of India Act, 1935 was the working constitution of Pakistan
 - Federal Legislative Assembly and Constituent Assembly
- Pakistan (Provisional Constitutional) Order 1947 established federation of Pakistan including
 - East Bengal, West Punjab, Sindh, NWFP, Balochistan Any other area with the consent of federation, Karachi, Indian states that might accede to Pakistan

INITIAL CONSTITUTIONAL PROBLEMS

- State and Religion
- Language
- Distribution of Seats between Provinces
- Federal or Unitary
- Parliamentary or Presidential
- Bicameral or Unicameral
- Federation Or Provinces
- Caliphate or Theocracy or Democracy

CONTD...

- Rights of Minorities
- Fundamental Human Rights
- Economic System (Capitalism Vs Socialism)
- Relations with Neighbors and the World
- Status of States

The Objectives Resolution 1949

- Liaquat Ali Khan moved and all participated in the debate

“Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;

And whereas it is the will of the people of Pakistan to establish an order :-

Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;”

- Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah;
- Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures;
- Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;
- Therein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;
- Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;
- Wherein the independence of the judiciary shall be fully secured;
- Wherein the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights on land, sea and air, shall be safeguarded;
- So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity :

- Now, therefore, we, the people of Pakistan,
Cognisant of our responsibility before Almighty Allah and men;
Cognisant of the sacrifices made by the people in the cause of
Pakistan;
Faithful to the declaration made by the Founder of Pakistan, Quaid-
i-Azam Mohammad Ali Jinnah], that Pakistan would be a
democratic State based on Islamic principles of social justice;
Dedicated to the preservation of democracy achieved by the
unremitting struggle of the people against oppression and
tyranny;
Inspired by the resolve to protect our national and political unity and
solidarity by creating an egalitarian society through a new order;
Do hereby, through our representatives in the National Assembly,
adopt, enact and give to ourselves, this Constitution.

Reaction by Non Muslims

- Prem Hari Barma proposed that the Motion be circulated for eliciting public opinion thereon
- Sris Chandra Chattopadhyaya vehemently supported it
- Liaquat Ali Khan opposed the motion which was put to vote and defeated

Proposed Amendments

- “Whereas sovereignty over the entire universe ...is a sacred trust” to be omitted
- “State of Pakistan through its people...people of Pakistan” be substituted
- “Wherein the national sovereignty belongs to the people of Pakistan; Wherein the principle of the state is government of the people, for the people, and by the people

Basic Principles and Other Committees

- Basic Principles Committee appointed on 12th March 1949 after Objectives Resolution and submitted report on December, 1952
- Fundamental Rights of the Citizens of Pakistan
- Matters Relating to Minorities

Further Constitutional Developments

- Muhammad Ali Bogra Formula
- Provincial Autonomy Vs Strong Centre
- Issue of National Language
- Dismissal of Governments
- Molvi Tameezuddin Khan Case
- Usif Patel Case
- Governor General's Reference
- Doctrine of Law of Necessity

The Constitution of 1956

- 23rd March 1956
- 234 Articles, 13 Parts and 6 Schedules
 - Islamic Principles
 - Federal Constitution but complex
 - Special Provisions for Tribal Areas
 - Federal Court
 - Emergency Provisions
 - Bill of Rights and Principles of State Policy

Further Developments

- First Martial Law
- The Dosso Case
- Action against Government Servants
- Action against Politicians
- Land Reforms
- Basic Democracies Order 1959
- Constitutional Commission and its report

WRIT JURISDICTION

- HABEAS CORPUS
- QUO WARRANTO
- PROHIBITIO
- MANDAMUS
- CERTIORARI

PLD 1955 Federal Court 240

FEDERATION OF PAKISTAN AND OTHERS
(APPELLANTS)

VERSUS

MOULVI TAMIZUDDIN KHAN
(RESPONDENT)

Sequence

- Brief Introduction
- Facts of the Case
- Appeal in Federal Court
- Submissions Of the respondent
- Contentions Of the Appellants
- Reasoning & Verdict Of the Court
- Gist of the Justice Cornellius's dissenting Judgement
- Conclusion

Introduction

- Dissolution of Constituent Assembly by Governor-General through proclamation on 24 October 1954.
- Declared The Emergency.
- Reconstituted Council of Ministers.

Contd-

- Maulvi Tamizuddin Khan invoked the writ jurisdiction of the Chief Court of Sind U/S 223-A, Government of India Act, 1935.
- The Government's reply *among other things* was that the Dissolution was valid.
- The Chief Court of Sindh issued the writs prayed for.

Definitions

- Writ of *mandamus*
- Writ of *quo warranto*

Law Points

- Whether Section 223-A of the Government of India Act, 1935 empowers the superior courts to issue writs.
- Whether Section 6 (3) requires Governor-General's assent for a bill or act to become law.

Appeal in Federal Court

- Arguments by respondent
- The proclamation of emergency and the appointment of the reconstituted Council of Ministers were:
 - a) Unconstitutional
 - b) Illegal,
 - c) Inoperative and
 - d) Void

Contd-

- There is no express provision for the dissolution of assembly
- Pakistan is “Independent Dominion” hence the Constituent Assembly is sovereign.
- The Legislature of the new Dominion have full power to make laws for that Dominion.

Contd-

- Governor-General is not part of Legislature.
- The assent of the Governor-General can only be required through creation of the statute.
- Sub-Section (3) of section 6 of the act of 1935, must be read with section 5 which says that the governor-general represents the crown only for the purposes of the Government.

Contd-

- Rule 62 of the “Rules of Procedure of the Constituent Assembly” published in the Official Gazette of Pakistan was passed on the 24th February, 1948, dispensed with the Governor-General’s assent.

“When a bill is passed by the Assembly a copy thereof shall be signed by the president.”

Arguments Advanced by the Appellants

- The grounds mentioned in the proclamation for the dissolution of assembly were true.
- Section 223-A, which empowered the High Courts to issue writs had not received the assent of the Governor-General.
- It was not Law, therefore the Courts had no jurisdiction to issue writs.
- The Governor-General was competent to dissolve the Constituent Assembly.

Conclusions arrived at by the Court and the Reasons

- Government is the responsibility of the executive, if there ensues a conflict between legislature and the executive, if the assembly does not support the executive, the Government must take it to mean that it had ceased to be the representative of the House.

Contd-

- The Crown is a constituent part of legislature.
- Governor-General represents the Crown hence he is also a part of legislature
- The Governor-General have full power to assent to a law U/S 6(3).
- The provisions relating to statutes do not create a new right but confirm an existing right.
- It provides the manner in which that right is to be exercised.

Contd-

- The administration of the constitutional laws being part of Government, hence it can be extended to the making of Laws.
- The rule 62 of the “Rules of Procedure of the Constituent Assembly” can become law so long as it is not in direct conflict with the constitutional provisions

Contd-

- A mere Rule can not amend the Constitutional Act any more than a resolution.
- “Section 223-A of the Government of India Act 1935, under which Chief Court assumed jurisdiction to issue the writs did not receive such assent, it is not yet law, and therefore, that court had no jurisdiction to issue writs”

Observations made by Justice Cornelius

- The Constituent Assembly was to be placed above the Governor-General for the reasons:
 - a) Constituent Assembly was a sovereign body and
 - b) The statutes under which the Governor-General was required to function, were within the competence of the constituent assembly to amend

Consequences of the decision

- 46 Acts on the statute book became invalid.
- The country was faced with a legal vacuum.

Conclusion

- The Judgement of the Federal Court in Tamizuddin Khan's case paved way for the future justifications by the judiciary of patently arbitrary and malicious acts of the executive on hyper technical grounds or self-serving theories or concepts

USIF PATEL AND TWO OTHERS

versus

THE CROWN

Background

- Appellants were proceeded against under Sind Control Of Goondas Act
- The appellants were declared to be Goondas
- They were directed to furnish heavy security

Contd:

- Appellants for their failure to give security were directed to be confined to the prison

Grounds of Appeal before the Chief Court of Sind:

- The appeal was made u/s 491 of CPC, 1898
- The appellants prayed that their detention was wrongful and they be set at liberty.
- This act was passed by the Governor as the Governor – General empowered the governor to pass such an act. This action of Governor-General was ultra-vires.

Decision of the Chief Court of Sind:

The contentions of the appellant were repelled by the Chief court.

Contention Before the Federal Court

The validity of section 92 – A was challenged. This was the natural corollary of Maulvi Tamizduddin Khan's Case.

Points of Law Involved

- 1) Whether the Governor – General could by an Ordinance validate the Indian Independence (Amendment) Act 1948
- 2) Whether the Governor – General can give assent to constitutional legislation by the Constituent Assembly with retrospective effect

Conclusion:

- ❖ A legislature cannot validate an invalid law if it does not possess the power to legislate on the subject to which the invalid law relates.
- ❖ The authority to legislate on constitutional matters is constituent assembly only.
- ❖ As constitution is not a procedural law therefore no amendment can be made to it with retrospective effect.

Reference By The Governor General

PLD 1955 FC 435

Sequence

- Background
- The Reference
- Questions raised in the Reference
- Opinion of the Court
- Dissenting Judgment
- Critical analysis

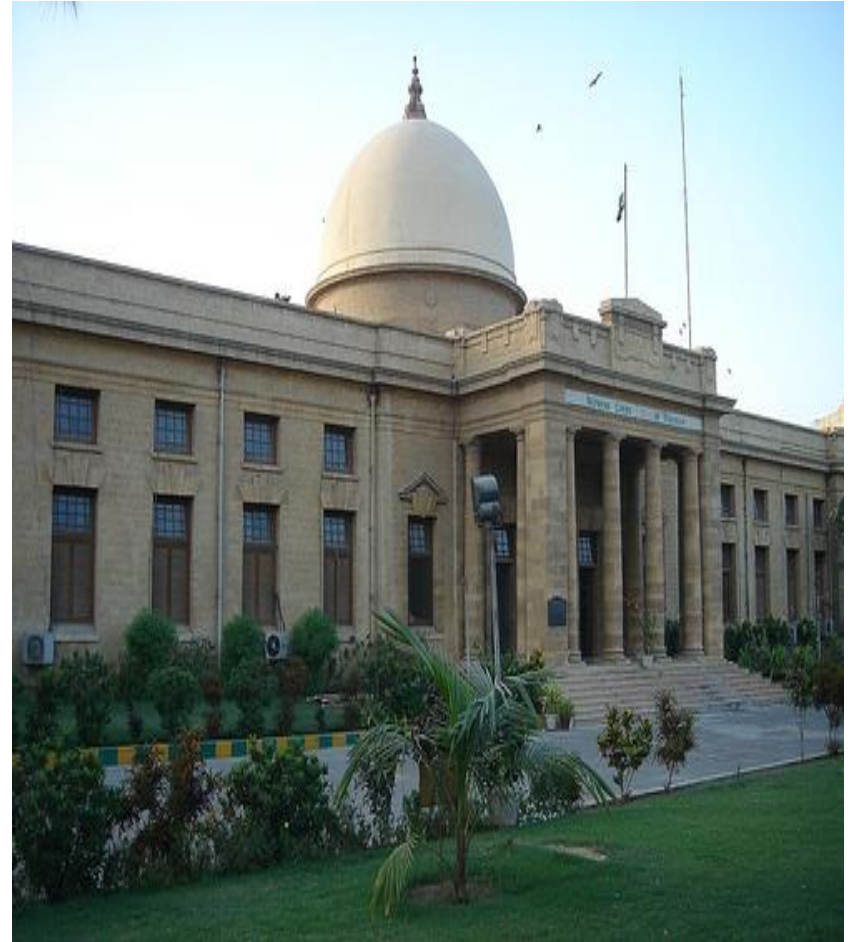


Background

- **Maulvi Tameez ud Din Khan's Case**

Held

The assent of Governor General was necessary for all laws passed by the Constituent Assembly.



Background

- **Emergency Powers Ordinance 1955**

Issued under Sec. 42 of Govt. of India Act 1935 by the Governor General to Validate 35 laws by giving assent to them retrospectively

- **Usif Patil Case**

Held :- Act given under schedule through Emergency Powers Ordinance 1955 can not be validated under Sec.42 of Govt. of India Act nor assent can be given retrospectively.

Situation in Hand

- **No competent legislature**
- **Threat** of Complete breakdown of constitutional machinery
- **Governor General's Reference** under Sec. 213 of the Govt. of India Act 1935

Governor General's Reference



Initial Reference –

whether there was any provision in the Constitution or any rule of Law applicable to the situation by which the G.G could by Order or otherwise declare that all orders made, decisions taken and other acts done under those laws should be valid and enforceable?

Scope of Reference enlarged

- The court suggested that term of Reference may be enhanced to determine whether the constituent assembly was rightly dissolved?
- Enlarged Reference



Questions raised & Opinion of the Court

- **Q.** whether G.G could by Order or otherwise declare that all orders made, decisions taken and other acts done under those laws should be valid and enforceable...?
- **Opinion:** Under the common law of civil or **state necessity** Emergency power Ordinance 1955 and all laws herein held valid and enforceable till question is decided by constituent assembly

Opinion of the Court

- **Q.** Whether the Assembly was rightly dissolved by the Governor General?
- **Opinion:** The assembly failed to perform its task...and “its omission to take any step or to provide a working constitution for the country” was held to be valid ground for dissolution.

Basis of the Decision

Necessity knows no law. (Chitty)

**Necessity makes lawful which otherwise is not
lawful.** (Bracton)



“Subject to the condition of absoluteness ,
extremeness and imminence and act
which would otherwise be illegal becomes
legal, if it is done bonafide under the
stress of necessity.”

Dissent by Cornelius J.

- Governor General had prerogative power to dissolve assembly
- The prerogative is not justiciable matter so the question of its being rightly performed does not arise.
- There is **no provision** in the constitution and no rule of law **by which the Governor General can..** In the light of Usif Patel..**validate the laws** whether temporarily or permanently.

Criticism



- A so-called doctrine, rather than the constitution, national or international law, became the basis for decision
- With one blow, Chief Justice Munir destroyed the foundations of constitutional rule in Pakistan.
- In one move, he opened wide the door for the army to walk into government any time it wanted.

Raised Suspicions & Distrust

If what is clear and obvious is so thrilling and full of intrigue, one can only imagine what would have gone on behind the scenes in this era of intrigues and conspiracies to bring all of this about.

(The Coup, The Constitution, and the Bureaucratic Musical Chairs
(1955-58))

The Reasoning

The SC thrice justified transitions to military rule – in 1958, 1977 and 1999 with the reasoning that the Court must stay open for business in order to avoid putting the country into deeper chaos.

“how do you expect five men alone, unsupported by anyone, to declare martial law unconstitutional?”

(Justice Dorab Patel)

The Questions

- How could all blame for future use of the Doctrine of Necessity can be put on Justice Munir J. alone?
- Wouldn't doing so amount to taking a very restrictive view of the intelligence and integrity of all future Justices of the Supreme Court?

The Questions

- Is legal theory so rigid and blind that anything that once becomes precedent must remain a precedent even though everyone knows that it is a wrong precedent?



The Answer??

Indeed, **the justices** of Pakistan's SC who have repeatedly resorted to the use of Doctrine of Necessity **weren't merely** **“pre-programmed computers”** who must do what they are programmed to do because of some fantastic lacuna in the legal theory

But...

But

are living, breathing, thinking, and feeling people—**supposedly, people of great integrity and judgment**—who hid behind the crooked logic of Doctrine of Necessity **not because it was hard-wired or written in stone but because, like Justice Munir, it served their short-term interests well.”**

(The Coup, The Constitution, and the Bureaucratic Musical Chairs (1955-58))

A Comment

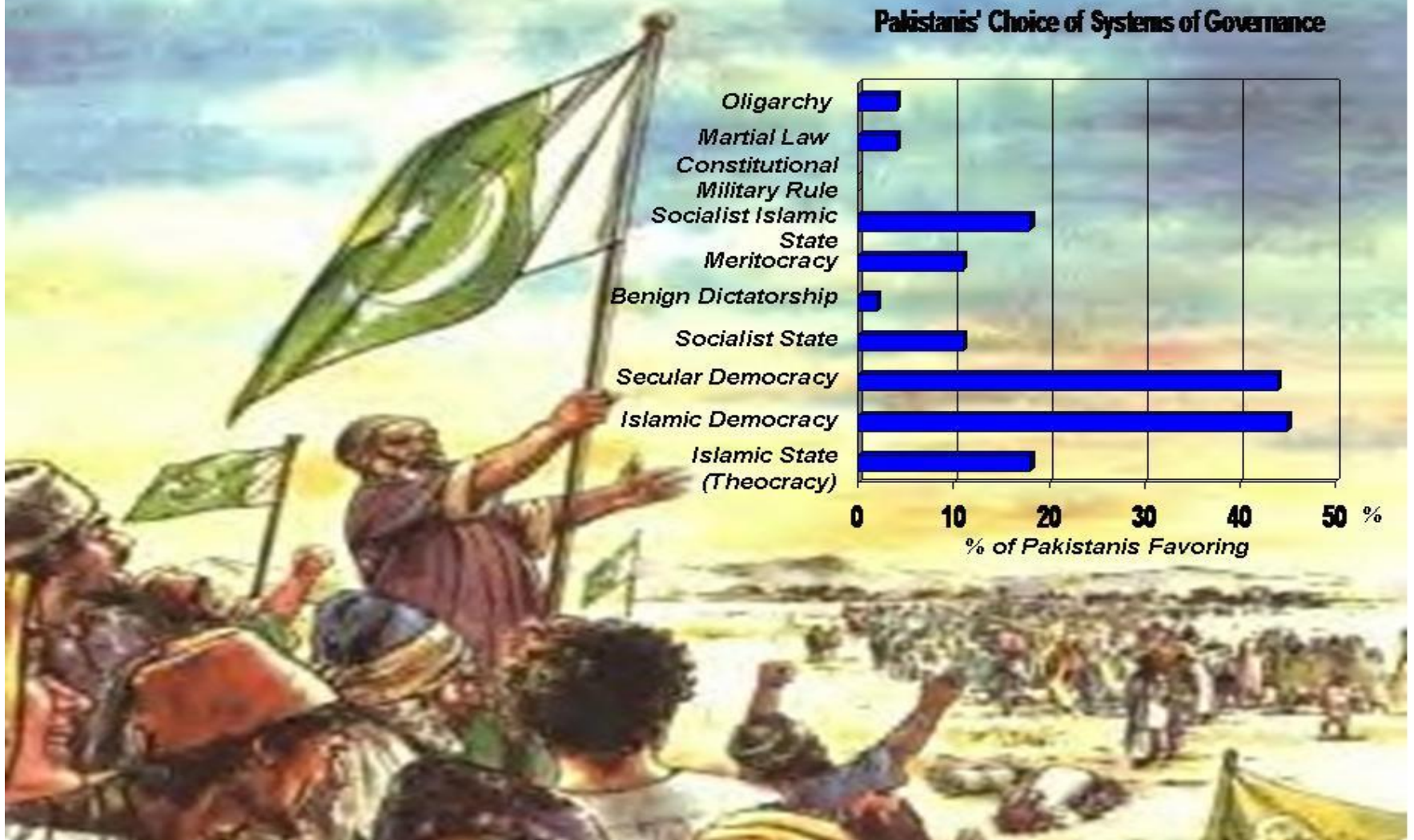
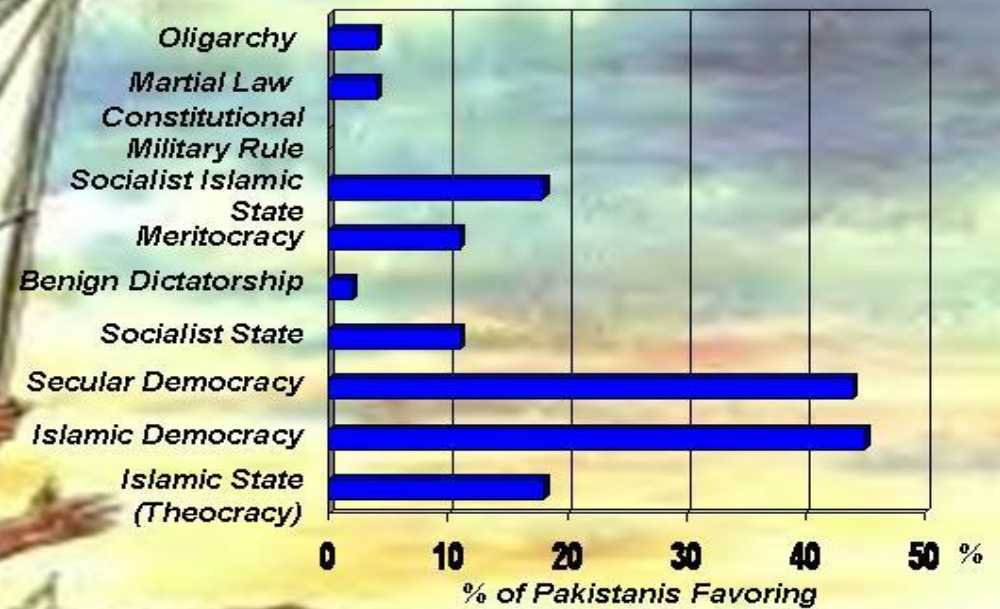
About a decade ago, following the installation of the last caretaker regime of the “democratic era” in Pakistan, I suggested to a prominent Pakistani politician that the doctrine of necessity was one of Pakistan’s core jurisprudential principles. To this he replied,

“yes, too much necessity and not enough doctrine!!”

(Erik Jensen *The Asia Foundation’s Senior Legal Advisor*)

60 Years of Independence: One Step Forward, Two Steps Backwards

Pakistanis' Choice of Systems of Governance



**The State --- Appellant
VS
Dosso and another ---
Respondents**

Sequence

- Brief Facts
- Law Points
- Reasons
- Judgement & Conclusion

Facts of The Case

- Proclamation of October 7, 1958.
- Annulment of The Constitution.
- Dismissal of The Assemblies.
- Dissolution of Cabinet.
- Declaration of Martial Law.
- Promulgation by The President ---The Laws Continuance in Force Order, 1958.

Contd--

- Effect of Presidential Order.
- Governance how to be carried on?

Writ In High Court

- Reference to a council of Elders.
- Convictions of section 11 FCR (III of 1901).
- Ground of attack.
- Contravention of Article 5 Of the Late Constitution.

Law Points

- Whether the writs issued by the H/C Were within the ambit of new Order?
- Whether the writ issued by the HC abates under clause(7) of article1 of the Laws Continuing in Force Order?

Relevant Provisions

- Art. II---I ,The Pakistan shall be governed as may be possible in accordance with the late Constitution
- The Sc and HCs shall have power to issue writs.
- All laws made immediately before the Proclamation with such necessary adaptations as the President deem fit Continue in force until altered , repealed or amended by the competent authority.
- No court shall call into question any adaptation made by the President.

- The laws that are in force, according to Article (iv) of The Presidential Order but from the list of such laws the constitution of 23rd March has been expressly excluded.
- Under clause(4) of Article ii of the order the writ can only be the infraction of any of the laws mentioned in Article iv, or any right recognized by that order and not the violation of a right created by the late constitution.

SC's reasons & Conclusions

- Under the new legal order any law may at any time be changed by the President therefore, there is no such thing as a fundamental rights.
- Article 4 of the late constitution laid a restriction on the power of the legislature to make laws involving breaches of FRS and invalidity attached to all existing laws , customs and usages if they were inconsistent with any of the FRS .

- This test to determine the validity of the laws and the fetters on the power of the legislature to make laws both disappeared under the new order
- Unless therefore, the President expressly enacts the provision relating to FRs, are not a part of the law of the land and no writs can be issued on their basis
- Article ii of the Presidential order provides that Pakistan shall be governed in accordance with the late constitution but this provision does not have the effect of restoring Frs.

- The position in regard to future writs is that they lie on the ground that anyone or more of the laws mentioned in Article iv or any other right reserved by the Presidential order has been contravened.
- Analyzing this provision means no writ or order made after the proclamation shall have any legal effect unless the writ was covered in Article iv or any other right kept alive by the new order had been contravened

- The FCR held by the HC to be invalid on the ground that it contravened Article 5 of the late constitution.
- SC held that Article 5 itself had now disappeared from the new legal order and all proceedings in these cases and validity of that regulation had been called in question have abated
- The conviction recorded and the references made to the council of elders are good.

Miss Asma Jilani
versus
The Government of the Punjab and Another
Criminal Appeal No. 19 of 1972
On appeal from the Judgment and Order of Lahore High Court

Background

- Malik Ghulam Jilani arrested on 20th Dec, 1971
- Under Defence of Pakistan Rules, 1971
- Necessary for security, public interest and defence of Pakistan
- On 31st Dec, 1971 Mr. Jilani was detained in his house under Martial Law Regulation No. 78 of 1971

- 15 Jan, 1972 *Writ of Habeas Corpus* in Lahore High Court
- *State v. Dosso and others*
- *Coup d'etat* of 25 March 1969 recognized as a revolution
- Jurisdiction of Courts barred by Jurisdiction of Courts (Removal of Doubts) Order 3 of 1969
- Courts having no authority to challenge Martial Law Regulations
- Appeal against High Court's decision

Questions

- Validity of doctrine of ‘revolution’ as enunciated in *State v. Dosso*
- Even if correct – is the *coup d’etat* of General Yahya Khan a revolution
- If not – whether the laws promulgated by General Yahya Khan’s regime are legal

Ayub Khan to Yahya Khan

“It is your *legal and constitutional responsibility* to defend the country not only against external aggression, but also to save it from internal disorder and chaos. The nation expects you to discharge this responsibility to preserve the security and integrity of the country and to restore normal social, economic and administrative life, let peace and happiness be brought back to this anguished land of 120 million people.”

Judgment

- Chief Justice Hamoodur Rehman
 - Legal Theory of Hans Kelsen misread and misapplied in *State vs. Dosso*
 - Kelsen never favored ‘totalitarianism’
 - The Commander-in-Chief is not in the ultimate resort the real master of the sovereignty
 - Yahya’s Martial Law neither a revolution nor a *Coup d’etat*
 - Martial Law only when
 - Civil Courts and other Civil Authorities fail to function

- Valid Martial Laws only when
 - Reasonable laws for ordinary running of state
 - Not against the rights of citizens
 - Must not run contrary to the policy of lawful sovereign
- Courts competent to hear and determine any matter, even though it may relate to its own jurisdiction
- Both the orders Jurisdiction of Courts (Removal of Doubts) Order 3 of 1969 & Martial Law Regulation 78 of 1971 illegitimate
- Justice Muhammad Yaqub Ali
 - *Tamizuddin Khan Case* and *The State vs. Dosso* made a ‘perfectly good country a laughing stock’

- Laws that deprive Courts of their legal functions are repugnant to the basic laws of Pakistan
- *“Martial Law is neither more nor less than the will of the General who commands the Army. In fact, Martial Law means no law at all.”* Duke of Wellington
- East Pakistan a classical example of a successful revolution which destroyed the National Legal Order and became a new Law creating entity
- **Justice Sajjad Ahmad**
 - Only those laws of Yahya’s regime valid that were absolutely necessary on the basis of doctrine of necessity within the limitations of that doctrine to be adjudged by the Courts

- Justice Waheeduddin Ahmad
- Justice Salahuddin Ahmad
 - Presidential Order No. 3 restricting the jurisdiction of Courts inconsistent with the Rule of Law as it reflects individual's dominant will and it sought to make Order of a Martial Authority immune from any attack
 - Existence of Revolution a question of fact, only to be decided upon evidence and cannot be assumed

Contention of Attorney General

- Regime had received legal recognition of the Supreme Court
- Based on the cases of *Muhammad Ismail vs. The State* and *Mian Fazal Ahmad vs. The State (2)*. Both the cases were decided by Justice Hamoodur Rehman

Begum Nusrat Bhutto - (Petitioner)

Vs.

**Chief of Army Staff
and**

Federation of Pakistan - (Respondents)

PLD 1977 SC 657

CONTENTION

- Proclamation of martial is without lawful authority and amounts to an act of treason
- Challenges the detention of Z.A Bhutto

SEQUENCE

- Brief background
- Constitutional Articles Hit
- Precedents related to case
- Issues of Jurisprudence Involved
- Contentions of the Appellants
- Submissions of the Respondents
- Reasoning and Judgment of the Court
- Conclusion emerging from discussions of case.

BRIEF BACKGROUND

- On night of 4-5 July, 1977, Gen. Zia took over and kept PPP leaders under `Protective Custody`
- Assemblies dissolved, M.Law imposed and political activities banned
- Constitution suspended and Laws (Continuance in Force) Order, 1977 promulgated
- Good relationship between Bhutto and Zia but `a meeting` in Murree marred the relationship

BRIEF BACKGROUND

- Bhutto further angered military junta in his hateful speeches and Mohammad Ahmed Khan (Ahmed Raza`s father) case added fuel to fire
- Bhutto carried away by people`s enthusiasm and response
- Bhutto arrested again on charges of murder

CONSTITUTIONAL ARTICLES HIT

- Article 184 (3):
Maintainability of petition
- Article 184 (3) read with Article 199:
Aggrieved person

PRECEDENT RELATED TO CASE

- Asma Jilani`s case : apprehension that SC decision rendered all successive governments illegal for this period.

ISSUES OF JURISPRUDENCE INVOLVED

- Kelson`s theory of revolutionary legality
- Kelson`s Pure theory of Law: not universally accepted nor is it based on basic doctrine of science.
- Kelson`s theory open to Criticism on sociological and moral grounds.
- Doctrine of Necessity (necessity makes prohibited things permissible)
- Usurpation of power does not always amount to usurpation of power.

CONTENTIONS OF THE APPELLANTS

- That COAS had no authority under 1973 constitution to impose M.Law
- That this intervention amounted to an act of treason under Article `6` of Constitution
- That as a consequence, M.Law was without any lawful authority
- That detention of Bhutto was illegal and highly discriminatory and malafide

SUBMISSIONS OF THE RESPONDENTS

- A.K Brohi raised question on maintainability of petition
- Sharifudin supported Brohi that change of July, 1977 did not amount to usurpation of power but `was rather intended to oust the usurper who had illegally assumed power as a result of massive rigging of election results on 7 March 1977`

REASONING OF THE COURT

- Widespread allegations of massive interference with the ballot papers
- These allegations generated national resentment
- Disturbances were beyond control of civil armed forces causing heavy loss of life and property
- That allegations established by judicial decisions
- The CEC publically confirmed the allegation by opposition

REASONING OF THE COURT

- That PPP-PNA dialogue, if fails, would cause terrible explosion
- In deadlock of PPP-PNA dialogue, the PPP Punjab issued fire-arm licenses to its party members
- As result of agitation ,all economic, social and educational activities stood seriously disrupted causing incalculable loss

JUDGMENT OF THE COURT

The **CJ Mr. S.Anwaar UI Haq**,
concluded that:

The extra-constitutional step taken by the armed forces of Pakistan was justified by requirements of State necessity and welfare of the people. As a result the present petition fails and is hereby dismissed.

JUDGMENT OF THE COURT

- Justices Waheedudin Ahmed, Dorab Patel, Muhammad Haleem and G.Safdar Shah concurred with the CJ, while, Mohammad Afzal Cheema, Muhammad Akram, Qaiser Khan and Nasim Hassan Shah agreed with CJ and wrote separate short judgments of their own.

CONCLUSION

- "Whenever a separation is made between liberty and justice, neither, in my opinion, is safe." (Edmund Burke)

CONCLUSION

Good judgment comes from experience; and experience, well, that comes from bad judgment.

FEDERATION OF PAKISTAN
and others Appellants

versus

Haji MUHAMMAD SAIFULLAH
KHAN
and others Respondents

Background:

- ❖ Dismissal of Junejo government in May 1988
- ❖ Subsequent dismissal of Provincial Assemblies
- ❖ Application for Writ of Mandamus in the Lahore High against the dissolution of the Assemblies

Contd:

❖ LHC's refusal to grant the writ
prayed for

Points of Law before the SC to decide:

- ✓ Is the power conferred on the President by the article 58(2)(b) is absolute or a qualified one

Does this discretionary power of the President ousts the jurisdiction of the Superior Courts of judicial Review

Contd:

- ✓ Can the date appointed for the holding of General Elections on the dissolution of Assemblies fall outside the contemplated period of 90 days
- ✓ Can a care-taker government be constituted without a Prime Minister

Contd:

- ✓ Can the word “Prime Minister” in the articles 92(2), 238, 239 and the oaths in the third schedule be substituted by the word “President” without amending the Constitution
- ✓ Was the dissolution of the Provincial Assembly by the Governor without the approval of the President sustainable in law

Contd.

- ✓ Is the Assembly constituted on the basis of Partyless elections, a departure from the constitution
- ✓ Grant of relief under Article 199 is a discretion of the court

Observations and judgment of the learned Court:

- The Article 48(2) read with the Article 58(2)(b) brings the discretionary powers of the President under the latter article within the power of the Judicial Review by the SC

Article 48(2)

Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the constitution to do so (*and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever*)

Article 58(2)

Notwithstanding anything contained in the clause(2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion-

(a)....

(b) a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to electorate is necessary

Contd:

- In order to dissolve the Assembly the President has to make an “opinion” as a precondition for his action as required by the Article 58(2)(b). Thus this discretionary power of the President is a qualified one.

This word “opinion” has been defined by the Superior courts in *Abul Ala Maudoodi vs. Government of West Pakistan*.

➤ It was admitted that sufficient justification exists to allow the Elections to be held beyond 90 days so that allocations of seats in the National Assembly can be made based on the census of 1981 and new constituencies be delineated.

➤ There must be a Prime Minister heading the Cabinet as demanded by the Article 91

“There shall be Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions”.

- The word “Prime Minister” can be a substituted by “President” in the Oaths only by an amendment

Contd.

- The act of Governor to dissolve the Provincial Assembly is not sustainable in law as the preconditions laid in the Article 112(2)(b) were not met but the said Assembly will not be restored in the larger interest of Pakistan

Contd.

- The Constitution lays down the scheme of a Parliamentary Government where political parties is essential. As the National and Provincial Assemblies were constituted on partyless basis hence cannot be restored.

Conclusion:

The SC upheld the decision of the LHC and observed that the petitioners made the petition only when the President Zia ul Haq disappeared from the scene to make political gains. As the time for the General Elections has been fixed so the Superior Courts cannot become an instrument of political gain thus the Petitioners are not given any relief.

The Constitution of 1962

- Presidential Form of Government
- Centralized Federal System
- Unicameral Central Legislature
- Governors and Provincial Legislatures
- Judiciary
- Islamic Character

The Interim Constitution of 1972

- Presidential Form of Government
- Office of the Vice President
- Unicameral Legislature
- Parliamentary form of Government in Provinces and also unicameral

The Constitution of 1973

- Fundamental Rights
- Directive Principles of State Policy
- Parliamentary form of Government
- President and the Cabinet
- Bicameral at Centre and Unicameral at Provinces
- Judiciary
- Islamic Provisions
- Emergency Provisions

Amendments

1. Recognition of Bangladesh
2. Ahmedis as Non Muslims
3. The PCO 1981
 1. Federal Shariat Court
 2. Office of the Mohtasib
4. Eighth Amendment
5. Twelfth Amendment

Amendments

- Thirteenth Amendment
- Fourteenth Amendment
- Fifteenth Amendment Bill

17th Amendment

- Legal Framework Order 2002
- Judicial Crisis
- Fall of
- Musharraf and Election of Zardari
- 18th Amendment

Constitutional and Political Issues of Pakistan

Constitutional and Political History
of Pakistan by Hamid Khan

Introduction

- Pakistan is a pluralistic society with different ethnic, linguistic, cultural, religious, sectarian and parochial segments of the population living together. All such groups have their own distinct demands and aspirations to which the constitutional and legal frame work must respond with clarity, sincerity and transparency. Political demands and issues cannot be pushed under the rug by assuming that diversity is of no consequence in view of the fact that 98 percent of the population is Muslims

Issues

- Weak Political Parties
- Debate over Form of Government
- Role of Legislature
 - Sovereign or Subordinate?
- Role of Judiciary
 - Independent or Subordinate?
- Role of the Military
 - Master or Servant of the State?

Issues

- Role of the Bureaucracy
 - Public Officers or Civil Servants
- The issue of political autonomy
- Religion and the state
- Joint or separate electorates?
- Partisan Conduct of Elections
- Minorities: Secure or Scared?

Issues

- Fundamental Rights and Civil Liberties
- Corruption and Coercion in the corridors of Power
- Pakistan at crossroads

Conclusion

The progressive political forces have in the past lost ground to retrogressive ones. This is a great betrayal of the people of Paksitan who have repeatedly rejected those who advocate an obscurantist, theocratic state. It is also a betrayal of the vision of the founder of the natio who wanted Pakistan to take an honoured place in the comity of nations as a developed and enlightened democratic state

Conclusion

It is a fact of history that Muslims progressed, prospered and enjoyed peace during times when religion was not imposed from above by the state. It is universally acknowledged that Muslims in the eras of Abbasids in Baghdad, the Moghals in India, and the Ottomans in Turkey were at the peak of their civilization while contemporary Europe was steeped in ignorance and prejudice.

Conclusion

Whatever the shortcomings of democracy, it has produced better results than any other system of governance in the course of human history. Seen in the light of historical experience and contemporary realities, it can be concluded that Pakistan can only progress and prosper as a modern progressive democratic state

Constitution making 1947 to 1956

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

Constituent Assembly

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

Objective Resolution

- The Objectives Resolution was a resolution adopted on March 12, 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.

Criticism

- Constituent Assembly for lavishing attention on this "piece of rhetoric" which was "of no practical benefit to anyone. (Ayyaz Amir)
- Even 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.

- 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.
- Board of Talimat-i-Islamia was also set to look for advice on the religious matters.

Basic Principles Committee (1st Draft)

28th September 1950

- The Objectives Resolution to be built-in in the Constitution as the order principles.
- Legislature: Bicameral Legislature.
- Upper: (House of Units) Equal representation for the units 100 members.

- Lower House (House of People) on the basis of Population-400 members.
 - Both Houses will enjoy Equal powers.

3: The Head of State elected by joint session would be for five years (Two times only).

- President had power of emergency proclamation.
- Appointment and other powers.
- was not responsible to give answer to anyone.
- can be a Muslim or non-Muslim.
- would be assisted by the Prime Minister (PM) and Cabinet .
- Parliament can charge him by 2/3 majority.
- He was given the power to break the constitution.

4: Cabinet was responsible to both the Houses.

5: Urdu will be national language.

Criticism:

- This report was severely criticized.
- The religious group objects that the report contained nothing about Islamisation.

- This report was criticized strongly by S.C. Chattopadhyaya 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 reduces the principle of majority and turned East Pakistan into a minority.
- Moreover, the interim report was preposterous for the East Pakistan since it Urdu as national language and Bengali was nowhere in the constitutional arena.

Basic Principle Committee Report, July 1952 (2nd Draft)

- Head of State would be Muslim and no change in powers.
- Equal representation to East and West wings:
- UH (Upper House-House of Units) 60, 60.
- LH (House of People) 200, 200.
- More powers were given to Lower House.
- Cabinet was made responsible to Lower House.

- It was promised that law making would be in accordance with ISLAM.
- No law would be made in disobedience of Islamic principles.
- Advisory Board of five Islamic scholars was founded.
- Quiet on national language again.

Criticism

- 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.

- The political crisis removed Prime Minister Nazimuddin (October 07, 1953), and attention unfocused from the main issue.

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 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 October 24.

Constituent Assembly Dissolution

- On 24th October 1954, GG (Governor General) dissolved the CA that was challenged in the Sindh court by Maulvi Tamizuddin.
- Sindh High court declared the dissolution illegal but the Federal Court upheld the GG action and asked for setting up an elected CA.

2nd Constituent Assembly, June-July 1955

- 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 CA came into Existence.

One Unit Scheme, October 1955

- The presence of different provinces in the WP had complicated the issue of the WP'S representation in the CA.
- It was handled by uniting all the WP units into ONE (One Unit, October 30, 1955).
- Now both the parts had become two units and could be addressed equally.

Constitution-making

- One Unit scheme helped the task of constitution making to achieve successfully.
- The previous committees work helped the new Assembly that completed its work and presented it in the 2nd CA on January 9, 1956.
- It, 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 become an Islamic Republic.

Constitution of 1956

- The main points of this constitution are as follows:
- Pakistan was to be federal republic based on Islamic Ideology.
- A detailed and comprehensive list of fundamental rights with an Independent Judiciary was provided in the constitution.
- The system of the parliamentary form of government was adopted both at the Centre and in the provinces.
- There was distribution of powers between the Centre and the provinces.
- The constitution provided for Pakistan, wherein equality between East and West wings had been maintained.

- For the distribution of subjects between the centre and the provinces, three lists of subject had been drawn up.
- 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.
- It had provided for two National languages Urdu for the West Pakistan and Bengali for the East Pakistan.

- Instead of double citizenship, one citizenship system was provided for the Federation of Pakistan.
- The constitution was silent as to be method of conducting elections both for the Central and the Provincial legislatures.
- And finally, there were the Islamic characters of the constitution.

Islamic provisions of the 1956 constitution:

- The name of the country will be Islamic republic of Pakistan.
- The preamble of the constitution embodied the sovereignty of God Almighty.
- The Head of the State shall be a Muslim.
- Islamic Advisory Council shall be set up.
- No Law detrimental to Islam shall be enacted.

Criticism

- 2nd CA passed the Constitution based on arbitrarily made compromises. Consequently 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 neutralise 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.

1st Martial Law ☹️

- On October 07, 1958, President Iskander Mirza imposed Martial Law in the country and abrogated the Constitution and appointed General Ayub Khan as the Chief Martial Law Administrator.
- Twenty days later on October 27, 1958, Ayub Khan overthrew Mirza and assumed the office of the President as well.

Basic Democracies

- A year later on October 27, 1959, Ayub Khan introduced the Basic Democracies Order creating 80,000 BD member who had to serve as the electoral college later Through this electoral college, Ayub got elected as President in a referendum on February 14 1960.

Constitutional commission

- After taking over President Ayub Khan set up a constitutional commission under justice Shahab-ud-Din to suggest recommendations for the new constitution of the country.
- The commission after through and lengthy discussion submitted its report on 6th March 1961.

- The report was examined by president.
- In its report the commission highlighted the reasons of the failure of parliamentary democracy in Pakistan:-
- It fixed the responsibility for the debacle of democracy on the lack of dedicated leadership.
- Absence of well organized political parties.
- And the self aggrandizement of the greedy politicians.

- In the view of the recommendation of the commission a new constitution was not framed by a constitutional body which was elected nor did it enjoy popular support.
- The constitution was thrust upon the people in an undemocratic and authoritarian manner.

Constitution of 1962

Salient Features of the Constitution;

- Title of the State will be Islamic Republic of Pakistan.
- A Powerful President who was responsible for administration and affairs of the state.
- He should be a Muslim, no less than 40 years of age, should be capable to be a member of NA.
- He would be elected through not direct elections for a time of five years.
- If he has held office for more than 8 years, he could look for reelection with the support of the NA and the PAs.
- National Assembly was given the power to charge the president, however it was difficult to achieve.
- President could dissolve the NA but in that case he must seek re-election.

- President was the central point of all the Executive, Legislative and Judicial powers. Cabinet was responsible to him. All key appointments were to be made by President. He could issue Ordinances. He could also announce State of Emergency in the country.
- NA was consisted of one house on the basis of principle of parity between two wings of the country. There were 150 seats plus 6 seats were reserved for women. All were elected indirectly. For the membership minimum age limit was 25 years.
- NA had all the powers of law making but law was to be finally ratified by the president. President could sign, reject or return the bill.

- Financial Powers of NA were limited. Only new expenses could be voted. NA could not reject joint Fund List and Recurring Expenditure.
- There were two provinces of the federation: East Pakistan and West Pakistan. Only one list of subjects, i.e. the Central list was given in the constitution.
- Governors were head of the provinces and govern the province with his cabinet. Provincial governments were directly under the control of President. There was a strong center with a Powerful President. He had enough powers to manage provincial affairs. In case of emergency powers Central government could take direct control of the province.

Principles of Policy

- • National solidarity would be observed.
- • Interests of backward people would be looked after.
- • Opportunities for participation in national life.
- • Education and well being of people.
- • Islam would be implemented in day to day life.

- Fundamental Rights were provided in the constitution.
- Originally Political Parties were not allowed. Political Parties Act was introduced in 1962.
- Objectives Resolution was the Preamble of the Constitution. Other Islamic provisions were a part of Principles of Policy and not the constitution.
- An Advisory Council for Islamic Ideology was made in the constitution having 5-12 members. It was a recommendatory body.
- It was designed for the Research and instructions in Islam for assisting the reconstruction of Muslim society on truly

Criticism

- Ayub Khan gave the second Constitution to the country Discarding the parliamentary system, the Constitution adopted the presidential form of government but without the system of checks and balances which is enshrined in democratic Presidential systems in other countries.

Ayub Steps Down

- Moreover the Constitution gave over
whelming powers to the President who
dominated the entire constitutional system.
- Ayub's Constitution lasted as long as he
survived in office.
- With his departure his system was also
folded.
- In fact Ayub himself announced the
imposition of Martial Law on March 25, 1969.
The

Yahya Khan

- New Chief Martial Law Administrator General Yahya Khan, soon after the taking-over announced that he would hold elections for the constituent assembly at an appropriate time.
- Before the elections that were held in December 1970, General Yahya dissolved One Unit and restored the former provinces along with the creation of the Province of Baluchistan in the western part of the country.
- He also announced the Legal Framework Order (LFO).

- The LFO brought an end to parity between East and West Pakistan, accepting the numerical majority of the eastern wing.
- It also gave up the indirect elections as had been introduced by Ayub Khan.
- The 1970 elections, thus, were the first general elections in the country to be held on the basis of adult franchise.

- However, the election results that brought Sheikh Mujib-ur -Rehman's provincial autonomist Awami League as the majority party in the National Assembly could not be reconciled by the military regime.
- The failure of dialogue between the regime, the Awami League and the Pakistan People's Party which had emerged as the majority party in two provinces of West Pakistan - the Punjab and Sindh- paved the way for a crisis which the military regime tried to resolve by force.
- East Pakistan was subjected to military action on March 25, 1971

- The military regime's failure in crisis management led to its intensification and culminated in the separation of East Pakistan on December 16, 1971.
- On December 20, 1971, General Yahya Khan resigned and handed power to the leader of the Pakistan People's Party, Zulfikar Ali Bhutto who took charge as President as well as Chief Martial Law Administrator.
- Bhutto lifted Martial Law in April 1972.

- He got the approval of the Opposition for his interim Constitution to govern the country as long as the permanent Constitution was not made.
- National Assembly approved a temporary Constitution, which was imposed on April 21, 1972.

▪

Constitution Making

- Constitutional Committee comprising National Assembly (NA) members from all parties was set up in April 1972.
- Law Minister was the Chairman of this Committee.
- All parties agreed on the future political system in October 1972.
- The Committee reported on December 31, 1972. After long deliberations and compromises final draft was approved commonly on April 10, 1973.
- The new Constitution was imposed on August 14, 1973.

- The Constitution functioned since then with two gaps. It remained operational during following periods:
 - 1973-77: Operational
 - 1977-1985: Suspended
 - 1985-1999: Operational after changes
 - 1999-2002: Suspended
 - 2002 onwards Operational after changes

Features of the Constitution

Parliamentary System

- It was a parliamentary constitution having powerful Prime Minister (PM) as head of government with a very weak President. President must act on the advice of PM. All his orders were to be countersigned by PM. Prime Minister to be elected by the NA. PM exercised all executive authority.

- An important aspect of the Constitution of 1973 was the sustainability of the National Assembly, which was elected for the duration of five years and could be dissolved by the President only on the advice of the Prime Minister.
- This was a normal parliamentary practice that was incorporated in the Constitution.

- In order to strengthen the parliament, it was laid down that a Prime Minister against whom a resolution for a vote of no-confidence had been moved in the National Assembly, but had not been yet voted upon, or against whom such a resolution had been passed, or who was continuing in office after his resignation, could not recommend the dissolution of the National Assembly to the President.

- PM was answerable to the NA. In 1985, powers of the President were increased. He enjoyed some discretion in appointments of
- PM. He had power to break up the NA. He had the powers of appointment of caretaker PM. He gives his assent to bills passed by the parliament or returns these.

President:

- Must be at least 45 years of age, Muslim, qualified to become member of the NA.
- He is elected by the Parliament and the Provincial Assemblies for 5 years.

Parliament with two houses:

- • Upper House called Senate. In this house equal representation is given to Provinces.
- Seats are reserved for the tribal areas, women and technocrats.
- Its original strength was 63, which was later raised to 87 and then to 100.
- Senate is elected indirectly. It's a permanent House as half of its members are elected after three years.

Lower House(National Assembly)

- National Assembly is elected on population basis.
- Its Original strength was 210 but now it is 342.It is elected for five years.
- Direct elections
- Voting age for the franchise is lowered from 21 to 18.
- Parliament under 1973 constitution is a powerful legislative body.
- It enjoys all legislative powers. It has control of the executive through questions, resolutions, parliamentary committees etc.
- National Assembly is more powerful than the Senate. Budget is presented before NA.
- Cabinet is answerable to National Assembly.

Federal System

- Federation of Pakistan has four provinces and federally administered areas. Two lists are given in the constitution: Federal list and Concurrent list.
- Residuary powers belong to provinces.

Provincial Structure:

- Provincial Governors are appointed by the President on the advice of the PM. Elected Chief Minister exercises executive powers. Parliamentary system is there in the provinces.
- Size of the provincial assemblies varies:
In 2002:
 - Punjab 371
 - Sindh 168
 - NWFP 124
 - Balochistan 65

- Enough provincial independence is guaranteed.
- Tradition of strong centre continues
- Centre has emergency powers.
- Governor's rule can be forced if the government cannot function in the provinces. Provinces are dependent on centre for Finances.

Principles of Policy:

- Islamic provisions are provided in Principles of Policy.

Fundamental Rights:

- Fundamental Rights are protected in the constitution and are implemented through the highest court.

Islamic Provisions:

- Title of the state is Islamic Republic of Pakistan.
- The objectives resolution was the Preamble in the initial constitution but through article 2-A of 8th amendment it was inserted in the constitution in 1985.
- Islam was declared the State Religion of Pakistan.

- Definition of Muslim was included by an amendment.
- Principles of Policy also carry some Islamic clauses.
- Council for Islamic Ideology is recognized under the constitution.
- Federal Shariat Court was added in 1981.

National Language:

- Urdu is declared National Language, however English may be used for official purposes until preparations would be made for its replacement by Urdu.
- Provincial Assembly may prescribe measures for teaching, promotion and use of a provincial language in addition to the national language.

National Security Council:

- National Security Council was added in 2002 in advisory capacity.

Judiciary:

- An independent judiciary is given under the constitution. Supreme Court of Pakistan is the highest court. One High Court is established in each province and one in Azad Kashmir. A chain of lower courts is there under the high courts.

Amendments in constitution of 1973

8th Amendment (58-2b)

- The Eighth Constitutional Amendment added a clause to the Article 58 giving to the President the power to dissolve the National Assembly in his discretion where, in his opinion, an appeal to the electorate was necessary.

▪

- This clause had far reaching implications not only in making the assembly dependent and subservient to the President, but also drastically changing the parliamentary character of the Constitution, tilting it towards a presidential one.

- After being inducted in the Constitution, this clause was invoked by the President on four occasions in a short span of nine years between 1988 and 1996. This clause was repealed in the Thirteenth Constitutional Amendment passed on April 04, 1997 (Nawaz Sharif govt).
- The Eighth Amendment had given similar power to the governors with respect to the provincial assemblies.

13th Amendment

- The parliamentary character of the Constitution was restored as a result of the Thirteenth Amendment (1997).
- Which also accompanied the restoration of the prime ministerial advice as being binding for the President with respect to the appointment of governors and taking away of the discretionary powers of the President to appoint the three chiefs of the armed forces.

17th Amendment

- However, the Seventeenth Amendment (was an amendment to the Constitution of Pakistan passed in December 2003, after over a year of political wrangling between supporters and opponents of Pakistani President Pervez Musharraf) once again shifted the pendulum to the side of the President.
- The President can now once again dissolve the National Assembly at his discretion.

18th Amendment

- Was passed by the National Assembly of Pakistan on April 8, 2010, removing the power of the President of Pakistan to dissolve the Parliament unilaterally, turning Pakistan from a semi-presidential to a parliamentary republic.

Highlights of the 18th Constitutional Amendment:

- Amendment to Article 6 seeks to pre-empt military coups in future.
 - Article 58(2b) to be repealed, substituted with 'Dissolution of National Assembly'
 - President may dissolve NA in case no-confidence vote passed against PM
 - Total strength of cabinet should not exceed 11% of total membership of parliament.

- Governor should be a resident and registered voter of his/her province, he/she would be appointed by president on prime minister's advice
 - Provinces required by law to establish local government systems, devolve political, administrative and financial responsibility and authority to elected representatives
 - PM to be chairperson of CCI, members to include CMs, 3 members from federal govt
 - Amendment to Article 157 says federal government must consult provincial government before installing hydroelectric power stations in any province.

- PM to forward three names for office of CEC, in consultation with opposition leader in National Assembly, to a parliamentary committee for confirmation
- Committee proposes insertion of Article 175(a) to deal with appointment of judges to Supreme Court, high courts, Federal Shariat Court
- Committee proposes substitution of Article 243, says federal government 'shall have control and command of armed forces, supreme command of armed forces shall [rest with] ... president

- President to appoint Joint Chiefs of Staff Committee chairman, chief of army staff, chief of naval staff, chief of air staff
 - NWFP will be renamed 'Khyber-Pakhtoonkhawah'
 - State will provide free, compulsory education to children aged between 5 and 16 years

- Amendments to Clause 1 seek substitution of 'Baluchistan' with 'Balochistan', 'Sind' with 'Sindh'
- Insertion of clause sought to bar persons acquiring citizenship of foreign country from contesting elections to parliament
- All elections under constitution, other than those of PM and CM, to be by secret ballot.

21st Amendment

- **(Does anyone know the 21st amendment to the US Constitution ?)**
- **Short title and commencement:**
- This Act may be called the Constitution (Twenty First Amendment) Act, 2015.
- It shall come into force at once.
- The provisions of this Amendment Act shall remain in force for a period of two years from the date of its commencement and shall cease to form part of the Constitution and shall stand repealed on the expiration of the said period.
- **Amendment of Article 175 of the Constitution:** In the Constitution of the Islamic Republic of Pakistan, hereinafter called the Constitution, in Article 175, in clause (3), for the full stop at the end a colon shall be substituted and thereafter, the following proviso shall be inserted, namely:-
- Provided that the provisions of this Article shall have no application to the trial of persons under any of the Acts mentioned at serial No. 6, 7, 8 and 9 of sub-part III or Part I of the First Schedule, who claims, or is known, to belong to any terrorist group or organization using the name of religion or a sect.
- *Explanation:- In this proviso, the expression 'sect' means a sect of religion and does not include any religious or political party regulated under the Political Parties Order, 2002.*

21st Amendment Contd...

- **Amendment of First Schedule of the Constitution:** In the Constitution, in the First Schedule, in sub-part III of Part I, after entry 5, the following new entries shall be added, namely:-
 - The Pakistan Army Act, 1952 (XXXXIX of 1952).
 - The Pakistan Air Force Act, 1953 (VI of 1953).
 - The Pakistan Navy Ordinance, 1961 (XXXV of 1961).
 - The Protection of Pakistan Act, 2014 (X of 2014).[\[5\]](#)

Analysis of 21st Amendments in the Constitution of Pakistan, 1973 & Pakistan Army Act, 1952 Etc.:

- These amendments have been made for two years:-
- Keeping in view the abnormal circumstances during this war against terrorism.
- To protect the State and the Nation.
- To give protection of the constitution to these amendments in the laws and other measures.
- To protect Pakistan from the terrorist groups or their members or aiding them in the name of religion or sect.
- To ensure the speedy trial and conclusion of the cases.
- Keeping in view the weaknesses of the Investigations.
- To protect the witnesses, investigating officers, prosecutors & judges by providing them a secured environment.

- To release the witnesses, investigating officers, prosecutors & judges from threats and influence
- To save the fundamental rights, powers of the Provinces from suspension during the war against terrorism under article 232 of the Constitution.
- To restrain to invoke the authorities under Article 145 of the Constitution regarding calling the Armed Forces.
- To constitutionalize & legalize these amendments through the Parliament to save it from challenging before the courts.
- To give effect laws through the 21st Amendment in the Constitution which would strengthen the National Action Plan.
- **Note:** - *The wrong application of these laws and or in-justice would be resulted against the State & the Nation.
- **Note:-** *The Bar Councils & Bar Associations have passed the Resolutions against it as well as the Petition against it have been filed before the August Supreme Court of Pakistan on the plea that it is against the independence of the Judiciary.

- **Note:** - *Two Parliamentary Parties have boycotted at the time of voting in the Parliament on the plea that it is against the madaris because of insertion of words "Region & Sect:"
- **Note:-** *The Bar Councils & Bar Associations have passed the Resolutions against it as well as the Petition against it have been filed before the August Supreme Court of Pakistan on the plea that it is against the independence of the Judiciary.
- **Note:** - *Two Parliamentary Parties have boycotted at the time of voting in the Parliament on the plea that it is against the madaris because of insertion of words "Region & Sect:"
- **(Annexure A)**
- Relevant Provisions of the Pakistan Army Act 1953
- Section 2: Person subject to this Act (i.e. Servicemen).
- Section 8: Definitions.
- Sections 24 to 59: Offences.
- Section 60: Punishment.

- Section 80: Kinds of Court Martial.
- General Court of Commander-in-Chief
- District Court Martial.
- Field general Court Martial.
- Summery Court Martial.
- **Note:** Head of Court Martial is called President.
- Section 112: Subject to the provisions of this Act; Rule of evidence like in Criminal Courts.
- Sentence: 1st step. Findings of Sentences
- 2nd step. Confirmation or Revise by the Higher Officer
- In case of Revise...then recording of additional evidence.
- Section 131: Remedy against Sentence:
- Aggrieved person may file petition to the Confirming Officer
- After Confirmation: Aggrieved person may file petition to the Federal

- Government or the Commander-in-Chief or Prescribed or High Rank Officer of the Confirming Officer
- Then Findings become Decision.
- Section 132: Annul Proceedings
- Section 133: Bar to Appeal: No appeal lie against Decision or proceedings of the Court Martial.
- Section 143: Pardon or Remissions.
- Section 144: Suspension of Sentence.
- Section 146: Release on suspension.
- Section 148: Release on set-aside.
- **(Annexure B)**
- Analysis of the Protection of Pakistan Act 2014 (POPA). (For Two Years)
- The Special Courts for Speedy Trial of the Scheduled Offences of Terrorism are established.
- POPA is very harsh law regarding:-
- Prevention Detention.
- Search without warrant.

- Use of armed forces and agency to prevent schedule offences.... Any police Officer BPS 15 may use force after warning and order firing (Conditions of stage and level of firing explained)..... In case of allegation of commission of excess the Internal Enquiry & in case of death then Judicial Enquiry would be conducted.
- Investigation by JIT of One Gazetted Police Officer and 2 Officers from the Armed Forces/Civil Armed Forces.
- Remand up to total 60 days while up to 15/15 days.
- Burdon of proof upon accused: Who charge (preparation facilitator or involved) Shall be presumed to be engaged in waging war against Pakistan unless he establishes his non-involvement in the offences. The cell phone/data would be admissible in evidence.
- Federal Government may amend the schedule.

NATIONAL ACTION PLAN

- The National Action Plan is an action plan that was established by the Government of Pakistan in January 2015 to crack down on terrorism and to supplement the ongoing anti-terrorist offensive in North-Western Pakistan. It is considered as a major coordinated state retaliation following the deadly Peshawar school attack. The plan received unprecedented levels of support and cooperation across the country's political spectrum, inclusive of the federal and provincial governments.
- It combines foreign and domestic policy initiatives aimed to crackdown and eventually eliminate proscribed organizations across the country. The plan was provided the framework for the Twenty-first Amendment to the Constitution of Pakistan which established speedy trial military courts for offences relating to terrorism. It has also led to the resumption of capital punishment and mandatory re-verification through fingerprint recognition of all subscribers on mobile telephony

- The National Action Plan authorizes the Foreign, Finance, and other ministerial departments to reach out to the friendly Muslim countries to clamp down on financiers of sectarian and terrorist networks operating against Pakistan.
- The Pakistan Tehreek-e-Insaaf (PTI) called off the protests and participated in the APC. However, it abstained from voting the bill and amendment. Jamiat e Ulema e Islam Fazal Rahman Group (JUI F) and Jamaat-e-Islami (JI) also abstained from voting. JI proposed that the word religion should be omitted from the text of the bill. JUI insisted that the word sect is objectionable. The Pakistan Peoples Party (PPP) and Awami National Party (ANP) voted in favour of the bill and amendment.[12] Chief military spokesman Major General Asim Bajwa said in a press conference that at least 130 people had been injured in the attack.[7]in the attack.

THE PLAN

- After the Peshawar incident, government decided to proceed with the execution of extremists convicted in terror related cases. The Government has already started implementation.
- Special courts, headed by the officers of the armed forces, will be established for the speedy trial of terrorists. These courts will be established for a term of two years.
- Formation of armed militia will not be allowed in the country.
- NACTA will be revived and made effective
- There will be a crackdown on hate-speech, and action will be taken against newspapers, magazines contributing to the spread of such speech.
- Financial sources of terrorists and terror organizations will be cut.
- Banned outfits will not be allowed to operate under different names.
- Special anti-terrorism force will be raised.
- Measures will be taken to stop religious extremism and to protect minorities.
- Madrassas will be regularized and reformed.
- Print and electronic media will not be allowed to give any space to terrorists.

- Print and electronic media will not be allowed to give any space to terrorists.
- Keeping the rehabilitation of IDPs as the top-most priority, administrative and development reforms in FATA will be expedited.
- Communication systems of terrorist organizations will be destroyed.
- Social media and the Internet will not be allowed to be used by terrorists to spread propaganda and hate speech, though exact process for that will be finalized.
- Like the rest of the country, no space will be given to extremism in any part of the Punjab.
- Operation against terrorists in Karachi will be taken to its logical conclusion.
- In the interest of political reconciliation, Baluchistan government will be given complete authority by all stakeholders.
- Elements spreading sectarian violence will be prosecuted.
- Comprehensive policy will be formed for registration of Afghan refugees.
- To give provincial intelligence agencies access to communication of terrorists and to strengthen anti-terror agencies through basic reforms in the criminal justice system. Constitutional amendments and legislation will be carried out for this purpose.

PROGRESS SO FAR

- Twenty-first Amendment to the Constitution of Pakistan passed on 7 January 2015.
- Over 50 cases of hardcore terrorists for prosecution in military courts send till 25 March 2015.
- 55,000 Afghan refugees expelled by between January and March 23, 2015.
- Lifted a seven-year-old moratorium on the executions of prisoners sentenced to death.
- Executions of almost 200 prisoners
- Civilian and intelligence agencies had arrested 500 people, half of them clerics, in violation of laws.
- On 25 March 2015, Pakistan froze a number of accounts used to funnel Rs 10.2 billion in cash to terror suspects.

- Boundary walls of all schools up to 8 feet (2.4 m) and topping them with 2 feet (0.61 m) high razor wire.
- By 15 March 2015, Pakistan Telecommunication Authority (PTA), has verified more than 70 million SIM's and 11 million were blocked due to not having re-verification.
- From 24 December 2014 to 25 March 2015, law enforcement agencies arrested 32,347 people on different charges in 28,826 operations.
- On April 3, 2015, At least 76 suspects including two Afghan nationals were arrested in Peshawar.

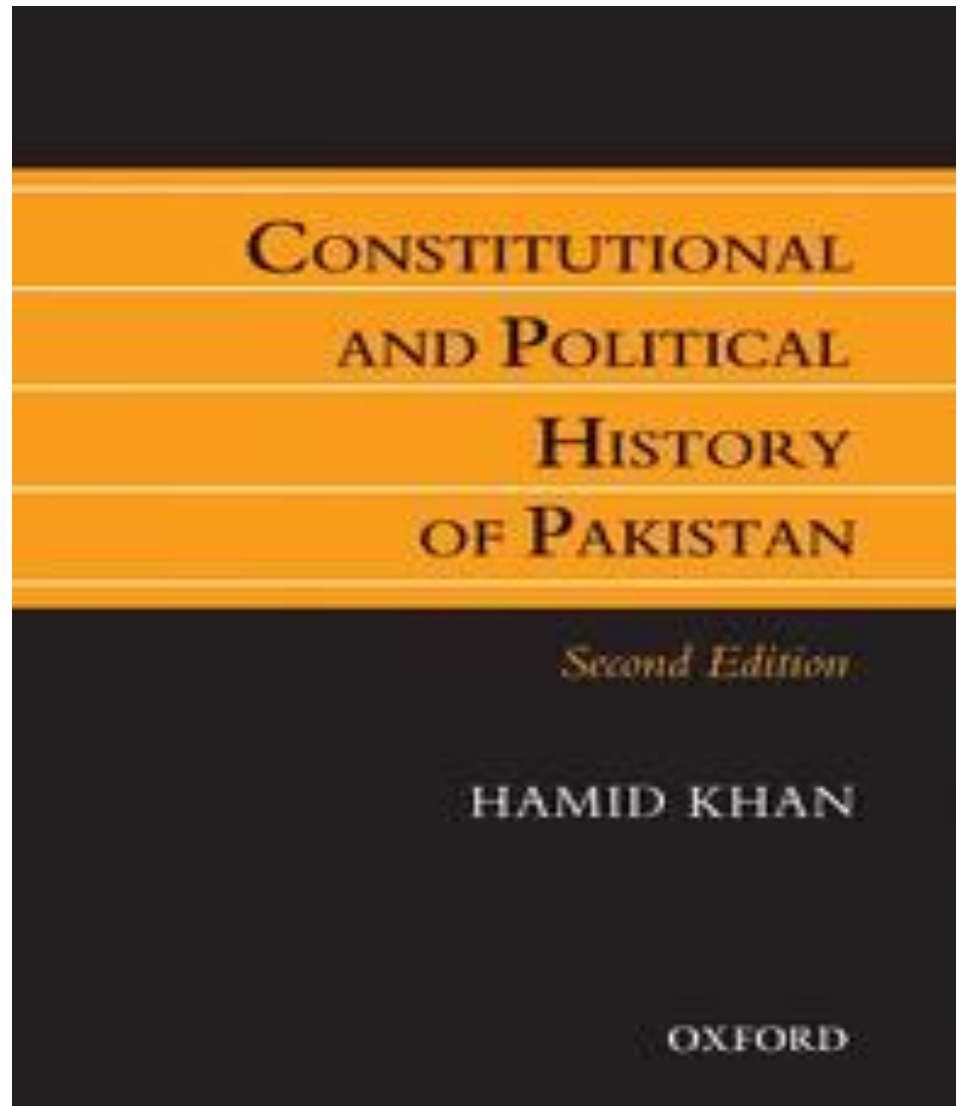
Conclusion

- The constitutional history of Pakistan is a reflection of all the peculiarities and contradictions of its social, economic and political development since independence for more than a quarter of the century.
- The struggle over particular formulations in various drafts of the Constitution which went on in the legislative bodies was often an expression of the clash between the vital interests of the main social groups in Pakistan.

- It is not surprising therefore that the struggle over many constitutional issues (the state language, form of elections, division of powers between the Federation and the Provinces, etc.) went on for years, leading to bloody clashes in which thousands of people were victims and often precipitating acute political crises.

- The constitution of 1973 was an expression of the balance of class forces established after the political crises of 1971 and the collapse of the military dictatorship.
- The present Constitution of Pakistan is characterized by such fundamental principles as a parliamentary republican system, federal state structure, and proclamation of democracy, freedom, equality, tolerance and other bourgeois-democratic freedoms, and the attainment of social justice as the supreme aim of the state.

Suggested Reading



Civil Military Relations

- Resource
 - Article
 - State Military and Democracy by Akbar Zaidi
 - Civil Military Relations by Lauren Greenwood and Gowthaman Balachandran
 - Books
 - Frontline Pakistan (Military and Mullah) by Zahid Hussain
 - Military Inc. by Ayesha Siddiqa

History

- Since independence in 1947, Pakistan has experienced 30 years of military rule (1958 to 1971, 1977 to 1988 and 1999 to 2008); even when not in government the military has constantly sought to centralise and consolidate political power, and the military (notably military intelligence, the Inter Services Intelligence (ISI)) exerts significant overt and covert control over the civilian authorities in both domestic and foreign affairs. Given Pakistan's volatile relationship with India, centred on the decades-long conflict for control of Kashmir, Pakistan has always been a 'security state', and the national military has historically been a key player in the geopolitical arena. However, information on Pakistan's armed forces is very limited, and interaction with Western civilian and military institutions is heavily controlled. The climate of secrecy within the Pakistan military and its associated security services directly and indirectly affects civil-military coordination and presents humanitarian actors with a highly complicated operational environment.

The military is one of the vital organs of the state. However, in some countries the military becomes deeply involved in the politics of the state, and dominates all other institutions. Why some militaries become key players in a country's power politics is an issue that has puzzled many. Numerous authors have used various methodologies and paradigms to understand the military's praetorianism. Besides looking at the imbalance between military and civilian institutions, or the character of the society, as causes for spurring the armed forces into politics, the existing literature has also analysed the political economy of the military's influence. Powerful militaries allocate greater resources to the defence budget and force civilian governments to follow suit. However, the defence budget is just one part of the political economy. Commercial or profit-making ventures conducted by the military, with the involvement of armed forces personnel or using the personal economic stakes of members of the defence establishment constitute a major part of the political economy that has not been analysed systematically. The present study aims at filling this gap. It looks at the political economy of the business activities or the personal economic stakes of military personnel as a driver of the armed forces' political ambitions. This is a peculiar kind of military capital, which is inherently different from the defence budget, and has been termed here *Milbus*.

The role of the military in Pakistani society

- Preparing for and responding to natural disasters
- Contributing military personnel to UN missions
- Under special circumstances maintaining law and order
- Defending Pakistan's borders and conducting security operations
- The armed forces consist of the Army (550,000), Navy (22,000) and Air Force (70,000), totalling 642,000 military personnel in active service. Paramilitary forces number 304,000, and there is a reserve force complement of 500,000.
- Structure of Army and Officers and NCO/JCO

The relationship between the military and Islam

- Praetorianism
- General Zia ul Haq's tenure
- Founded in 1948 by a British army officer, Major-General R. Cawthome, then Deputy Chief of Army Staff in Pakistan, the agency was initially charged with performing all intelligence tasks at home and abroad. Its scope of operation extended to all areas related to national security. Until the 1960s, the ISI largely remained an obscure organization that confined itself to playing its specified role. But in the mid 1970s its scope was expanded to domestic politics. Ironically, it was a civilian leader, Zulfikar Ali Bhutto who created the ISI's internal wing which played a critical role in the ousting of his government a few years later. It was to cast its heavy shadow over the country's politics in later years.
- For more than two decades the ISI had sponsored Islamic militancy to carry out its secret wars. It was a crucial partner in the CIA's biggest covert operation ever, one that forced the Soviet Union to pull out of Afghanistan and served as a catalyst to the disintegration of the communist superpower. In Afghanistan, as well as Kashmir, the agency discovered the effectiveness of covert warfare as a method of bleeding a stronger adversary, while maintaining the element of plausible deniability. The ISI falls directly within Pakistan's military chain of command and had also served as an instrument for promoting the military's domestic political agenda and the guardian of its self-professed 'ideological frontiers' of the country

Civil –military interventions

- Chile, Brazil, Egypt, Ghana, Nigeria, Turkey, Syria, Thailand, Indonesia, North Korea and Pakistan repeatedly experienced disruption of civilian rule and imposition of military regimes

Civil-Military Relations in Pakistan

- Vacuum of democratic leadership:
 - i. Demise of Jinnah 11th September 1948
 - ii. Demise of Liaqat 16th October 1951
 - iii. With the demise of Liaqat the facade of Parliamentary democracy started eroded
 - iv. Second line leadership could not translate the political vision into democratic reality
 - v. Bureaucratic intervention
 - vi. Governor rule in provinces, despite majority in house CMs were dismissed

Provincialism

Provincialism

- Geographic separation
- East & West wings
- Economic disparity
- Instead of political solutions bureaucratic-military solutions were explored
- Deprivation, alienation converted into separatist movement

Punjabi-Bengali controversy

- Constitution making delayed for 9 years
- East Pak demanded maximum provincial autonomy
- West Pak advocated strong center
- East Pak had 54 % population demanded adult franchise
- Military intervention

West & East Pakistan (*as on 1961*)

	Territory	Population
West Pakistan	310,403 sq mile	43 million
East Pakistan	55,126 sq mile	50.9 million

Source
<http://www.jstor.org>

Long military rule

- 33 years long military rule
- 4 military coups(1958,1969,1977,1999)
- Pakistan Army equipped with nuclear power
- After independence eruption of Cold war era
- After demise of Jinnah+ Liaqat office of Governor General became instrumental for creating hurdles for democratic process

Civil-military strife

- During 1951-58 two Governor Generals (Ghulam Mohd & Iskandar Mirza) but 7 Premieres were replaced
- Army primarily consists of martial races (Punjab+ KPK)
- Impression of military superiority over politicians
- Democracy via GHQ?
- Strong centralized internal command & control

Civil-Military Relations in Pakistan

- External threats
- Internal threats
- Situation strengthened military as a strong institution

Highly organized military

- Army entrenched itself into the state
- Suspended constitutions
- Imposed military rule
- Brought own constitutional recipes
- Into profit venture projects
- Established NSC -2004

PAKISTAN



Indian Factor

- India regarded as an existential threat to Pakistan
- Hindu-Muslim antagonism
- Kashmir dispute
- Wars 1947-65-71-99
- Cross border terrorism

Internal Factors

- Demise of Jinnah
- Assassination of Liaqat
- With demise of Liaqat the parliamentary era came to an end
- Bureaucratic interventions started
- Governors rule imposed, chief ministers dismissed
- Distance between 2 wings gave birth to number of administrative, political and constitutional problems

Internal threats

- East Pakistan
- Greater Pakhtunkhwa
- FATA
- Baluchistan
- Karachi
- Growing Extremism
- Increased influence of VNSAs
- Sectarian & ethnic divide
- Internal security duties

Civil-military divide

- Policies were primarily west –Pakistan centric
- Increased frustration & deprivation in East-Pak
- Delayed constitution making
- Increased gulf between Punjabi elite & Bengali egalitarian leadership
- East Pak demanded maximum provincial autonomy & West Pak desired strong center

East-West Pak –vested interests

- Quantum of representation: East Pak had 54 pc population hence demanded universal adult franchise but leadership of west Pak was reluctant

Bad era for Parliamentary democracy

- From 1951-58 , two Governor Generals , 1 Army chief and 7 Premiers were changed
- Emergence of Ghulam Mohammad followed by Iskandar Mirza paved the path for military interventions
- Stage was set for military who had been working in background
- Initially Ayub Khan was reluctant to come into limelight

Political vacuum

- In 1954 political forces wanted to reduce the powers of GG but GG dissolved the constituent assembly
- PML lost its public standing – a political party vacuum
- PML who provided a platform for the masses to attain a separate homeland failed to transform itself from a movement to a party

Role of Judiciary

- 1955 Maulvi Tamiz uddin case Justice Munir upheld the arbitrary decision of GG GM of the dissolution of first constituent assembly
- It was carried out in the light of “Doctrine of necessity”
- It opened doors for civil & military interventions
- Role of judiciary from 1950’s to 2007 (ouster of Ch Iftikhar remained under critical review

Failure of politicians

- PML failed to lead the nation for constitutionalism & economic development
- PML lost its democratic ideals ,had annual conventions but after independence in 9 years no convention
- Factional politics- inner infighting within PML
- Widespread impression regarding corruption & inefficiency of politicians

Civil & military intervention

- In the wake of weakening political culture country rapidly became dependent upon the civil & military bureaucratic support
- Such need created space for civil & military interventions
- Political parties failed to flourish as democratic entities
- Successors of Jinnah failed to translate the ideals of Jinnah

Absence of autonomous election commission

- 11 years no elections
- No independent election commission
- One part of COD – had focus on electoral reforms
- Ongoing strife between government & PTI primarily revolves around ‘reforms in ECP’

International factors

- Cold war
- Era of non aligned movement (NAM-1979)
- Pakistan became member of military pacts
 - I. South East Asia Treaty Organization (SEATO)
 - II. CENTO (central treaty Organization) 1955-79
 - III. In post USSR invasion in Afghanistan ,Pak became strong US ally
 - IV. In post 9/11 scenario Pakistan front line state in ongoing WOT

- Pro-US military establishment
- Conspiracy theories

Military courts

- Through a constitutional amendment military courts established
- Challenged in Apex Court
- 11-6 ruling
- Court validated military courts
- Verdict will help counter –terror efforts

Sindh

- Ongoing Rangers led operation in Karachi
- Extension to Rangers in Sindh gave birth to new controversy between Sindh & Center between civil & military relations
- Are hopes after 18th amendment evaporating ?
- Is Pakistan again heading towards another phase of hostilities between center-provinces

Poor capacity of civilian institutions

Disaster management

- Army was employed for relief and recovery operation during 1948, 1950, 1955, 1956, 1973, 1975, 1976, 1978, 1998, 1992, 1995, 1998, 2001, 2003, 2010 and 2011 & 2014 floods

Other areas

- Anti-terrorism operations
- Deployment during elections
- Policing functions
- Establishment of Special Security Division(10,000 persons)

Chronology

- Ayub Khan's rule 1958-69
- Yahya's rule 1969-71
- Zia's rule 1977-88
- Mushraf's rule 1999-08
- Wars
- Ousted Junejo, ZAB, NS, BB
- Political movements MRD, ARD
- Devolution 2001-02
- Akbar Bugti's death
- Lal Masjid Operation
- 17th amendment
- Judicial activism

WAYFORWARD

- National Security Council needs to be made operational & effective
- More transparent constitutionally defined roles
- Implementation of COD

NATIONAL INTEREST

- The **national interest**, often referred to by the French expression *raison d'État* ("reason of State"), is a country's goals and ambitions whether economic, military, or cultural. The concept is an important one in international relations where pursuit of the national interest is the foundation of the realist (*Realpolitik* is politics or diplomacy based primarily on considerations of given circumstances and factors, rather than explicit ideological notions or moral or ethical premises. In this respect, it shares aspects of its philosophical approach with those of realism and pragmatism. The term *Realpolitik* is sometimes used pejoratively to imply politics that are coercive, amoral, or Machiavellian.) school.