

## Constitutions

Q: What factors contribute to the delay of constitution making process in the early years of Pakistan? Discuss in detail.

### Introduction:

The Government of India Act (1935) was modified and promulgated in the newly state of Pakistan. The constituent Assembly (CA) was given the task of framing the constitution. The elected members in the 1946 elections made the first Constituent Assembly that faced grievous circumstances. The first meeting of the CA was held on August 11, 1947 at Karachi. The process began with the passing of the objective resolution on which Islamic and democratic values were adopted as grounds for the future constitution. The Basic Principles Committee (BPC) consisting of 24 members was made to work for the constitutional powers the various sub-committees on federal and provincial powers, franchise, Judiciary and fundamental rights started working.

The major issues, the first constituent assembly faced were about;

**Factors contribute to the delay of constitution making process:**

### 1) Refuge Problems:

The Government of India and Pakistan, having failed to stop the slaughter, decided at the end of August to assist the complete evacuation of Muslims from east Punjab and of non-Muslims from west Punjab.

To Pakistan Government estimated that

in the  
those fr  
refugees  
came  
States

from a

believe

their li

refug

ence

refug

rel

was

ma

2) Ka

The

a N

W

I

at

w

re

C

S

f

c

c

c

c

c

c

c

c

c

c

c

c

c

c

c

c

c

years  
official  
stn.  
sk  
mbers  
mes.

in the exchange of population, excluding those from Kashmir, approximately 6,50,000 refugees came into Pakistan. Of these 5,20,000 came from east Punjab and East Punjab States 360,000 from Delhi and remainder from other parts of northern India. It is believed that about 1,00,000 Muslims lost their lives or were abducted. The number of refugees West Punjab had to accommodate exceeded by some 1,700,000 the number of refugees who had left. The main burden of rehabilitating refugees was born by West Punjab created a. hurdles in constitution making process.

## 2) Kashmir Issue:

The state of Jammu and Kashmir posed a threat to the stability of the new nation with seemingly endless hostility between India and Pakistan. The state had about 80 percent Muslims, but its ruler was Hindu. In 1949, in pursuance of a resolution of the United Nations Security Council calling upon India and Pakistan to withdraw their forces from Kashmir. So that the United Nations could hold a free, fair and impartial plebiscite to determine the will of the people of Jammu and Kashmir, a ceasefire was secured by the UN commission. Contrary to its commitment India declined to abide by the UN resolutions. Kashmir issue diverted the attention of the government of Pakistan from constitution making.

3) Jinnah's Death:  
Jinnah had been suffering from consumption of the lungs and in the last three years of his life the disease became serious. A recurring question is: why did Jinnah not give a constitution to put to end to all the controversy that followed? He was a democrat in every sense of the word and did not show wish to pre-empt the constituent Assembly. Some of his remarks on the subject are worth nothing.

The constituent Assembly may take some time to accomplish its task of framing the final constitution of our state. It is a stupendous task and it may take 18 months or two years before it can come into full operation.

Qadeeruddin Ahmad, former Chief Justice of West Pakistan high court, says:

I personally do not believe that he thought in terms of permanently binding the coming generation to any specific constitutional pattern. This was, against his democratic temperament and inconsistent with his legal acumen.

#### 4) The Debate on Religious Minorities

Out of the long speeches made by non-muslim members of the constituent Assembly, the speech of Birat Chandra Mandal, made on 9 March 1949, was an eloquent and representative one for the minorities part of which are:

66 Sir, I hear that ulemas are insisting on this principle of Islam. Are there

not pandits in India who would not insist on political thinkers of India to adopt such constitution - Are there not Bishops in England nor its America - or in any other country which is dominated by Christians on the face of the globe, where these ulemas, I mean the Bishops, have voice. The constitution has all along been and everywhere on the face of the globe established on Democracy and specially on the economic thinking of the political people of individual countries. But Sir, I find a great deviation in our beloved Pakistan. It is newly built up dominion. The founder of this dominion most unequivocally said that Pakistan will be a secular state. The great leaders of ours never said that the principles of constitution will be based on Islam.

**Basic Principles Committee and its Interim Report:**  
After the passing of objective resolution in 1949, the constituent assembly set up a number of committees and sub-committees to work out the details of the constitution on the principles as laid down in the objective resolution. The reaction to the first draft constitution was most unfavorable in East Pakistan. The main points of criticism related to the quantum of representation in the proposed central legislature. All the units were given an equal number of seats in the upper house. East Pakistan, where the majority of population lived, had equal representation with each of the four provinces in West Pakistan thus reducing

the representation of majority of the population in Pakistan to one-fifth. It was the apprehension that the majority of the people might be converted into minority.

The controversy between Provincial Autonomy and strong centre:

The second issue in the controversy between East and West Pakistan was distributing powers between the federal and provincial governments. This problem was not peculiar to Pakistan; it is faced when framing any federal constitution. After prolonged discussions, the constituent assembly arrived at a compromise relating to the distribution of powers that was somewhat different from two generally accepted methods of the distribution of powers in a federal state.

The issue of National language:

The third issue in the controversy between East and West Pakistan was that of language. Pakistan is a multi-lingual state. There was a fundamental difference between East and West Pakistan regarding language. Bengali was spoken in the East, in the West there were a number of languages such as Punjabi, Sindhi, Pashto and Balochi. Urdu was not the mother tongue in any area of West Pakistan but it was accepted as common language of the whole region. The controversy was whether Pakistan should have a single language, Urdu, or two state languages, Urdu & Bengali.

## Elections in East Pakistan:

Before the adoption of the draft constitution on the report of basic Principles were held in East Bengal from 8 to 11 March 1954 resulting in an overwhelming victory for the united front (Jugto front), an alliance of parties opposed to the ruling Muslim League.

The defeat of the Muslim League in East Bengal which had 56 percent of the total population of Pakistan, led to demands for the resignation of the central government and dissolution of constituent assembly as unrepresentative. These demands, were rejected by Muhammad Ali who stated:

“The task of framing the constitution was not entrusted to the Muslim League, as such, but to all members, Muslims or non-Muslims, specifically chosen for this purpose. There is no government party and no opposition in the constituent Assembly. Elections to one or other of the provincial legislatures would be held practically every year, and if the character of central government changed whenever a new party came to power in one of the provinces, there would be no stability or continuity. Following the Prime Minister's statement, the working committee of the Muslim League ordered its members from East Bengal in the constituent assembly not to resign their seats.

of Dissolution of the Constituent Assembly and Proclamation of a State of Emergency. With the constitutional issues at least settled and the drafting entrusted to experts working under a deadline of 1 January 1955, the constituent assembly was adjourned sine die. The Governor-General (Ghulam Muhammad), stung by the Assembly's action in curtailing his powers, struck back. On 24 October 1954, he dissolved the Constituent Assembly and announced an end to what he described as parliamentary bickering. The dissolution of the constituent assembly threw the country into chaos and confusion by reviving old rivalries and reopening old controversies. It is true that the first constituent assembly had made undue delay in framing the constitution.

The impact of constitutional cases:

These constitutional cases left a major impact on the politics of the country. The entire constitutional and administrative setup was shaken to its very foundation. The mischief caused by finding justification for an arbitrary, malicious, and capricious act of a Governor General, who was neither mentally nor physically fit, had to be undone with enormous judicial jugglery and pedantic and abstract legal reasoning. These cases caused delay in constitution making process of Pakistan.