

# Constitutional development;

## Introduction;

After formation of Pak, constitution making process became a highly complicated & complex task. Because emergence of Pakistan was not a simple event. The newly born Pakistan was the largest muslim state in the world. This country faced numerous problems. One sided, there were anti muslim global conspiracies while on the other side, the state countenanced the problem like distribution of assets b/w Pak & India, water problem, migration of Indian muslims to Pakistan and their rehabilitation, establishment of new administrative structure especially to frame new constitution.

A country cannot be governed without such a constitution which is to reflect socio-economic political, cultural & religious needs of the governed and which is recognized by the majority of the concerned citizens.

In Pakistan, the framer of the new constitution faced severe problem for example, Pakistan was a multi-racial state and settlement of the racial and linguistic issues was not an easy task. This country was achieved in the name of Islam and to make Islamic constitution was also a challenge. There were some other obstacles in framing of constitution.

G.W. Chaudry says,

A constitution is not framed in a vacuum. It is produced in the light of the particular socio-political situations prevailing at a certain time. The same was in Pakistan.

It is obvious that a civilized state cannot be run without a valid political setup & Pak require a constitution.

## Background;

With the passage of time, Pakistan (needed) became a laboratory for constitutional experiments. As a sovereign state Pakistan needed a sovereign constitution.

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as well. By introducing some amendments, the govt of Indian Act 1935 was enforced for some span of time. However, the Crown of England remained a constitutional head of Pak till the promulgation of 1956 Constitution.

The govt. of Indian act, 1935 with some changes to meet the requirements of an independent state as the interim constitution > 1947:

### Interim Constitution, 1947:

It provided for a parliamentary system of govt. although the governor general enjoyed special powers & the federal govt. exercised some overriding powers over provinces.

(Pakistan's early rulers did not pay attention to democratization of the political system because their major concern was that how to ensure the survival of the state in view of internal & external challenges)

Pakistan faced serious administration and management problems caused by the partition process. These included the division of civil and military assets of British Indian govt. b/w India & Pakistan, troubled relations with India including first war on Kashmir > 1947-48.

As to the section 8 of the act of 1947, the Constitution assemblies of India & Pakistan would act as legislative body till the framing of a constitution.

History of Pakistan's constitution began with Lahore Resolution of 1940.

In the first twenty years, it had three Constitutions, Govt. of Indian act of 1935 adopted under the Indian independence act of 1947. Known as the Interim Constitution (1947 to 1956); the constitution of 1956

presented after nine years of effort of two constituent assemblies that was abrogated with the imposition of Marshall Law in 1958, the constitution of 1962 which started the constitution govt. & finally the constitution of 1973.

Pakistan had to set up a federal govt. Karachi and Provincial govt. in Dhaka at a time when it lacked experienced civil servants & military officers. While Pakistan was coping with initial administrative & humanitarian problems, Muhammad Ali Jinnah, (the father of the nation), died in Sep 1948, thirteen months after the establishment of Gov Pakistan.

This set in motion the political trends that undermined the already weak political institutions & fragmented the political process. The legislator had to play multiple roles like legislation, representation of the people, law-making & constitution making etc. But there were no. of reasons like Bengali's fear of oppression, absence of strong political party, Leo crisis of leadership, clash b/w traditionalists & modernists, controversy over federal structure of the constitution, linguistic problem > cleavages within the ruling elite etc. of which Pak took nearly a decade to make the first constitution.

(1) Formation of first constitution assembly, for making first

Constitution of Pak:- For making the constitution of Pak, the inaugural session of the first constituent assembly of Pak was held in Karachi from 10 to 14 August 1947. Jinnah being the only candidate proposed for the presidency & elected as President of the constituent assembly while M.A.J. N. Mandal (member of minority community of east Pakistan) appointed as its temporary chairman.

Under Indian Independence Act, the constituent assembly was given two functions

(1) TO prepare a constitution  
(2) And to act as a federal legislative assembly or parliament until the constitution came into effect.

(2) First constituent assembly of Pakistan took first step in 1949; The Objective Resolution, as the first constitutional document in Pakistan.

After inception of Pakistan, there was a need to make it an Islamic Republic. In this connection, 1st constituent assembly of Pakistan took first step in 1949 and objective resolution was moved by Liaquat Ali Khan and approved on March 12, 1949, which proved as the first constitutional document in Pakistan. It made the constitutional process easy task setting some particular objectives & provided parameters & sublime principles to the legislators.

Following are salient features of objective

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provide autonomy, due powers & territorial integrity. The passing of this resolution is considered success of Islamic elements in Pakistan.

In Pak, Supreme court used objective resolution in its judgments for insurance of dependance of judiciary in some cases like like al-jehad vs Federation of Pakistan.

(3) Following efforts were made for making first constitution of Pakistan after its independence;

(1) Formation of Basic principles committee (BPC); its basic task was to report in a/c with Objective Resolution; The most important among

those committees was the Basic principles committee (BPC) set up on March 12, 1949 by Khawaja Nazimuddin on the advice of PM Liaquat Ali Khan.

The basic principle committee set up three sub-committees;

- (1) sub committee on federal & provincial constitutions and distribution of power.
- (2) sub committee on franchise (that assist the BPC)
- (3) sub committee on the judiciary

After the objective resolution was passed in 1949, the constitution assembly set up a no. of committees to draw the future constitution on the basis of the principles given in objective resolution. The most imp. of those committees was the Basic principles committee (BPC);

The functions of BPC are as follow;

- (1) was to determined the basic principles of the future constitution of Pakistan.
- (2) The committee comprised 24 members; Maulvi Tamizuddin Khan headed it - Liaquat Ali Khan was its vice president.
- (3) The committee presented its interim report to the legislative assembly in 1950 - This was the short document presenting the guidelines & principles of the future constitution of Pakistan.

(4) Another imp. committee of first constituent assembly was on "Fundamental rights of citizens of Pakistan" & on matters relating to minorities.

These sub-committees were assigned some specific tasks to deal with some specific issues e.g. such as dealt with the issues of federalism or federalism.

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so the BPC and different subcommittees deliberated on different aspects of constitution making and then they prepared report that is called the BPC First Report.

(2) Publication of 1st basic principle committee's report; 1950 :-

The constituent assembly appointed basic principles committee for devising such federalism, in which satisfied representation of provinces would be given in Legislature -

The committee submitted its report on 7th sep, 1950; representing guidelines & principles of future const. of Pakistan. It was not framing the constitution, it was identifying certain broad principles. That was to serve as the basis & foundation of the constitution.

(1) First recommendation by BPC report was that the objective resolution would be included in the Const. of Pakistan as the directive principles of policy as guideline of policy making.

(2) Another imp. recommendation was that the head of the state was to be named as president was to be elected by joint session of parliament for five year.

(3) 1st report had recommended that there will be two houses the upper house & lower house - all the provincial units have equal representation in upper house & lower house + in case of the lower house recommendation was to be given on the basis of population; it means if province had more population, it will have more representations as in that case East Pakistan had more population than west Pakistan & it had more representations in the lower house.

(4) Cabinet and PM were to be answerable to both houses of parliament.

(5) In this way it provided certain basic principles, but this report was silent on the issue of National language & it didn't make any kind of recommendation.

Criticisms

When report was presented to the constitution Assembly there were criticisms in the house & outside the house.

(1) Basic criticism was on the issue of representation that was an important issue; that if you provide equal representation to all the units of the federation then the western part

had more representation because it had more units and there was only one unit in eastern part.

(2) Then there were couple of other issues that were raised in the constituent assembly with 1<sup>st</sup> report; As it didn't give any recommendation about national language; which was the biggest issue of the country.

(3) Issue of equal power to both houses; the general principle is that the lower house has more power & the upper house has less power that is the standard principle in the parliamentary system of govt.

But in this reports had Both houses had equal power that was highly ~~very~~ criticised.

Now keeping in view these criticisms it was decided that the BPC will review the report in the light of points & criticisms that were raised in constituent assembly.

### (3) Publication of 2<sup>nd</sup> BPC Report: 1952; (Revised version of 1<sup>st</sup> report);

The 2<sup>nd</sup> report or revised report generally followed the same principles but it tried to accommodate the criticism made on the 1<sup>st</sup> report;

(1) One issue was the representation; so the 2<sup>nd</sup> report followed the principle of equal representation to both wings of Pakistan.

- (1) (a) As 60 members from the eastern wing  
(b) & 60 members from the western wing  
(c) The 60 seats that would allocated to the western part were further divided among the different provinces of the western part.

- (2) Same principles applied to the lower house; E. part  
(a) 200 seats were given to the lower house  
(b) 200 seats were given to the western part.

Then again the western seats were further divided among various provinces & different administrative units of western Pakistan.

(2) more power were to be given to the lower house (because the house represents the people & had more responsibility).

(3) It also emphasized that in Pakistan law making would be in line with the principles of Islam - This would be reflection of O.K.

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(4) In order to facilitate that it was also decided that an advisory board comprised of 5 religious scholars was constituted who would advise on the matter of law making in accordance with the principles & teaching of Islam.

Khawaja Nazimuddin made these changes; & presented this report in National Assembly on Dec 22, 1952.

### Criticisms;

This report was also severely criticized & raised much bitterness b/w east & west Pakistan.

Although 2nd report accommodated the issues that were raised in the 1st report, still this report was declared against the principles of federation -

East Pakistan would easily dominate on west Pakistan. And west Pakistan favored equality only for upper house -

While the report was discussed, there was a political crisis in Pak.

PM Nazimuddin removed from his office due to this crisis & new PM, M. Ali became the New PM -

This report was also silent on the issue of national language -

### (4) Announcement of Bogra formula that was compromised formula b/w east and west Pakistan;

Muhammad Ali Bogra, the PM tried to overcome the constitutional deadlock. He & his team deliberated on all issues & presented the compromised formula b/w east & west Pakistan - "This formula is known as 'M. Ali formula' which was presented to constituent Assembly on 7 Oct 1953."

That formed the '3rd Report' but in Pak history it is called as M. Ali Bogra formula; because under M. Ali leadership, a new set of proposals was prepared which help in constitution making -

This formula revised the original proposals in the light of the criticisms & adopted a novel procedure for providing representations to different units of Pakistan.

(1) It decided that there in case of

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upper house, there will be equal representation to all the units of Pakistan. & for this purpose Pakistan was divided into five units<sup>22</sup>

One unit was east Pakistan & four units were in West Pakistan<sup>22</sup>

And each unit was given equal representation<sup>22</sup> means that in the upper house 40 members were from Eastern part & 40 members were to come from the four units of WP—

(2) In case of lower house more representation was given to eastern part because that had more population than the western part—

“A/c to this formula 165 seats were given to east Pakistan & 135 to west Pakistan<sup>22</sup>”

And this was the application of principle of representation on the basis of population<sup>22</sup> So in this case the standard principle of federalism was followed that is in the upper house the units of federation were given equal representation & in the lower house the units are represented on the basis of population<sup>22</sup>

(a) Whenever the parliament met in a joint session there was parity or equality b/w two wings of Pakistan<sup>22</sup>

	East Pakistan	West Pakistan
Upper house;	40	40 = 80
Lower house;	165	135 = 300
Joint session;	205	205

This is the principle of equality when parliament meet in a joint session—

(3) There was another provision provided in this formula; that decisions were made by majority of vote; But this decision could not be effective unless at least 30% of members from both zones vote in favour of this— So 30% members from both wings are required to have majority for any law making— In this way, in case of joint session both wings have equal representation.

A/c to Bogra formula; Legislative body was not to be changed. The plan proposed was Bicameral Legislature with equal representation for all provinces in upper house— The 300 seats for lower house were to be allocated



allocated to provinces, on the basis of propinate representation - In order to prevent permanent domination by any wing, the two offices of head of state & pm were allocated to two wings separately.

### Criticism

This proposal was received with greater welcome; there was some criticism;

(1) One issue was that it was providing an unreasonable complex process;

As it divide Western part into four units & eastern parts into one unit; then allocation of seats that is to be done parity at the joint session level; would become a complicated process -

(2) Another issue that attracted some criticism was the issue of equal representation, power to both houses;

(4) Another significant measure during this period which facilitated the constitution making was the settlement of language issue;

In 1954 the constituent assembly of pak decided the Bengali & urdu would be the National language of Pakistan.

This decision facilitated the constitution making process -

After all this, constitution assembly devoted itself toward the making of constitution & then drafting the constitution started. It was assumed that drafting constitution would be presented to the constituent assembly that would deliberate on it & make changes if required & ultimately the constitution would be approved - & it was expected that very soon pak would have its own constitution -

But a sudden development in the same month Oct 1954 created a situation that delayed the constitution making & implementation; and in 29 Oct 1954 Governor General Ghulam Muhammad decided to dissolve the consto assembly.

### (5) Results of the 1954 elections

The provincial elections were held in east pak in 1954 in which muslim league defeated badly - keeping only ten seats out of total 300 in its pocket -

### (6) Formation of Sec. Consti. assembly & dissolution of 1st consti. assembly

Governor general Ghulam Muhammad decided to dissolve constituent assembly of Pak; He argued that it had been dealing with the Constitution for the long time (as consto. assembly came into existence on August 1947 & it was Oct 1954) & he gave argument that this constituent assembly was not able to make the constitution - "it had made the constitution making process a perpetual process". Then he dissolved the assembly on 24th Oct 1954; in state of emergency that was declared throughout the country - This dissolution resulted in third consto. crisis in history of Pakistan.

This means whole efforts that was made for the constitution dev. came into standstill.

This delayed the constitution making process.

Govt Pakistan decided to hold new elections for second Constituent Assembly.

The elections were held in June - July 1955 & the second constituent assembly started its session in July 1955.

In case of 2nd constituent assembly two things were different from 1st constituent assembly.

- (1) In 1st consto. assembly the Muslim League was the majority party while in the 2nd consto. assembly no political party had an absolute majority party system.
- (2) In 2nd consto. assembly the membership was 80 out of which 40 from east & 40 from west Pakistan;

## (7) Announcement of one unit scheme

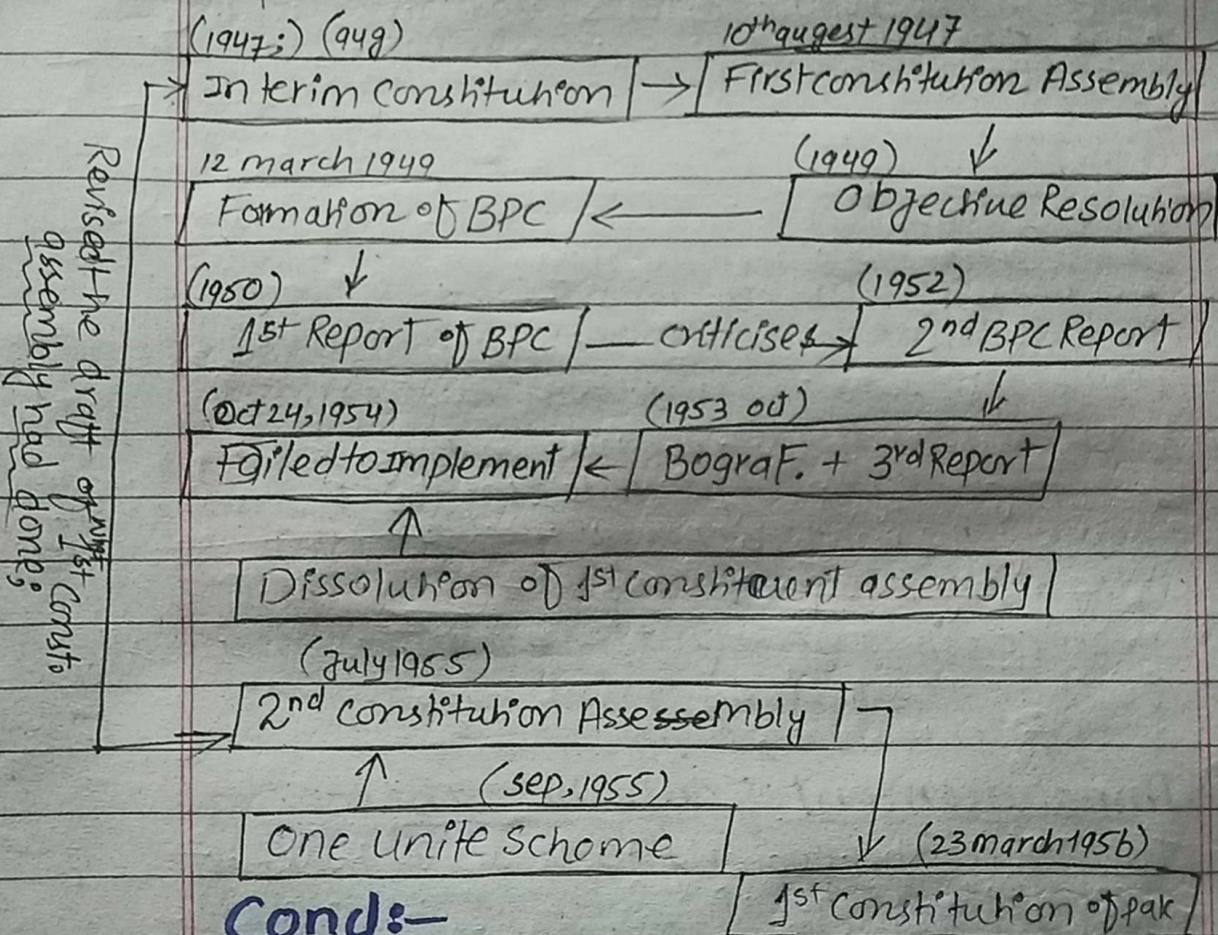
The 2nd consto. assembly took up its task of framing the consto. of Pakistan & in order to deal with this problem the 2nd consto. assembly did not start from beginning; it could make use of all the work done by first constituent assembly - It was building on what 1st constitution had done.

The important step taken by 2nd constituent assembly was the integration of the provinces of west Pakistan & it is also known as the One Unit Scheme for western Pakistan.

In 1955, all the administrative units in the WP were integrated into province of WP.

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By this step, both parts of Pakistan could be addressed equally -  
 One unit scheme helped the task of consti<sup>n</sup>. making to achieve successfully -  
 Because of this there were only two provinces in Pakistan; east Pakistan & west Pakistan and in this way, the issue of representation was resolved.  
 Then report was approved on Jan, 29, 1956 with amendments on March 23, 1956; it was promulgated as constitution of Pakistan with this Pakistan became Islamic Republic.



**Cond:-**

In the light of above development, first consti<sup>n</sup> of Pak was enforced on 23<sup>rd</sup> March 1956, it replaces the interim constitution of Pak that was introduced in Aug 1947.

Finally the long run efforts make the consti<sup>n</sup> of Pakistan was successful in giving this country a constitution of its own which became operative on 23<sup>rd</sup> March 1956 - controlled democracy would be introduced; Parliament form of govt. was adopted.