

Chapter 03

CONSTITUTIONAL DEVELOPMENT IN ISLAMIC REPUBLIC OF PAKISTAN



1. The Need for a Constitution

Constitution means a set of basic laws, rules and regulations which are necessary for running the administration of a state with an objective that people may lead an independent, disciplined, peaceful and happy life.

If one looks at the history of mankind one would find that the primitive man lived in small family units. Each family unit has its own rules and a way of living. Later these family units merged themselves into big or small tribes to meet their economic, social and defence needs. As time passed and population increased they felt to organize themselves into much bigger units within a certain territory. This foundation of a territory was on the basis of language, culture and traditions. From here the different countries or states emerged. A number of institutions came into existence to run the administration of the state or country. Rules and laws were framed for each institution. The individuals were appointed to run these institutions. In this way a system of government came into being. In other words the individuals and institutions together formed the government. This government further became subject to a collection of rules, laws and regulations to determine the powers and authority of the government inter-relationship between government and the institutions and the rights of the citizens. All of these are provided in a framework called the Constitution. Hence, to run the affairs of the government, a constitution is required. So that, no one crosses the limits set in the constitution.

When Pakistan was established, its immediate need was to formulate a constitution for the country. It was decided that till the new constitution is framed, the Government of India Act, 1935 should be adopted as an interim constitution with necessary amendments to it.

2. The Objective Resolution 1949

In the history of constitution making in Pakistan, the Objective Resolution is an important document and a basic step to frame the constitution. It was

approved on March 12, 1949. In this Resolution Islam was declared as the foundation of the Constitution of Pakistan. It was also declared that all powers and sovereignty rests with Almighty Allah. The golden principles of freedom, equality, social justice and democracy enunciated by Islam will be enforced in order to enable the people to lead their lives according to the teachings of Islam. The emphasis on the enforcement of Islamic principles was laid because it was a clear objective of the Pakistan movement to achieve a separate state for the Muslims of the sub-continent where they could live according to the teachings of their religion. It was, therefore, necessary that Islam should form the basis of State Policy and the government:

Salient Features of Objective Resolution

- i. Sovereignty over the entire universe belongs to Almighty Allah. The political power is a sacred trust which shall be exercised by the representatives of the people within the limits prescribed by Islam.
- ii. The principles and concepts of democracy, equality and social justice enunciated by Islam shall be enforced within the country.
- iii. Muslims shall be enabled to lead their individual as well as collective life in accordance with the principles set in the Holy Qur'an and Sunnah.
- iv. The rights of the minorities shall be protected. They will have the freedom to follow their religion and promote their own culture.
- v. Pakistan shall be a Federal State. The provinces will enjoy autonomy within the prescribed limits mentioned in the Constitution.
- vi. The basic rights of the people and the independence of judiciary will be guaranteed.

After the Objective Resolution was passed the Constitution-making process was taken in hand by the First Constituent Assembly of Pakistan. A number of committees were constituted. These committees, after detailed study, submitted their reports to the Constituent Assembly. But, the recommendations could not be materialized and the Constituent Assembly was dissolved by the Governor General, Ghulam Muhammad on October 24, 1954. Hence, during the seven years of stay of the Constituent Assembly (1947-1954), constitution for the country could not be prepared due to the political crisis and the struggle for power among the political parties.

In 1955, the four provinces of West Pakistan were merged into one province known as One Unit. The members of the Second Constituent Assembly were elected through direct elections. This Assembly succeeded in preparing a constitution for the country.

3. Constitution of 1956

In June 1955, a new Constituent Assembly was elected and constitution-making started. The Constitution of the country was prepared in less than one year. It was enforced on March 23, 1956. It is, called the Constitution of 1956.

Salient features of the Constitution of 1956

- i. In the preamble of the constitution, it was stated that sovereignty rests with Almighty Allah and Pakistan was declared an Islamic Republic.
- ii. Federal Parliamentary System was introduced in the country.
- iii. Governor General was replaced by the President.
- iv. The powers were distributed between the Centre and the two provinces of Pakistan, namely, the then East Pakistan and West Pakistan under the Federal system of government.
- v. It was ensured to provide all opportunities to the Muslims to lead their lives according to the teachings of Islam.
- vi. Maintenance of close relations with the Muslim countries of the world was emphasised.
- vii. The Office of the Head of the State was restricted to Muslims.
- viii. Any existing law contrary to the principles of Islam was to be amended.
- ix. The rights of the non-Muslim minority were given due protection.
- x. Urdu and Bengali were declared as the national languages of Pakistan.

The Constitution of 1956 had remained in force for about two and half years when General Muhammad Ayub Khan, Commander-in-Chief of Pakistan Army took over the administration of the country by imposing Martial Law on 7th October, 1958. The Constitution of 1956 was abrogated. All the assemblies were

dissolved. Thus, the country once again became without a constitution for about 3 years and eight months.

4. Constitution of 1962

General Muhammad Ayub Khan got a new constitution prepared, which was promulgated in the country on June 8, 1962. Martial Law was lifted from the country. This constitution is known as the Constitution of 1962.

Salient features of the Constitution of 1962

- i. The Objective Resolution (1949) was included in the preamble of the Constitution.
- ii. The public representatives would use their powers within the limits prescribed by Holy Qur'an and Sunnah.
- iii. The Islamic Republic status of the state was upheld.
- iv. No law contrary to the principles of Islam was to be enforced. People were provided all possible opportunities to lead their lives according to the teachings of Qur'an and Sunnah.
- v. An Islamic Advisory Council was set up with the objectives to identify un-Islamic provisions in the existing laws and recommend amendments to make them in accordance with the Islamic principles.
- vi. The Presidential form of Government was introduced.
- vii. All the powers were concentrated in the office of the President.
- viii. The system of Basic Democracies was made part of the Constitution.
- ix. Indirect System of elections was introduced.

The Constitution of 1962 remained in force for about seven years when suddenly in late 1968 and early 1969 a mass movement was started against the government of President Ayub for the restoration of democracy in the country. On account of discontentment and serious riots, President Ayub resigned on 25th March 1969 and the government was taken over by the then Commander-in-Chief of the Army, General Yahya Khan. He abrogated the Constitution of 1962 and imposed Martial Law. However, he promised to frame a new Constitution for the country through an elected Constituent Assembly.

5. Constitution of 1973

At the time of imposing Martial Law in 1969, it was promised that a new Constitution would be prepared by the Constituent Assembly elected through the votes of adult people of Pakistan. For this purpose a Legal Framework Order (LFO) was issued in March 1970. It contained guiding principles regarding the electoral procedure and the future constitution.

General elections were held in the country in December 1970 so that elected representatives could prepare a constitution for the country. Unfortunately, soon after the elections there appeared political crisis which led to the separation of East Pakistan from the united Pakistan in December 1971. East Pakistan became a Separate independent country called Bangladesh.

After the separation of East Pakistan, the elected representatives of West Pakistan were called to frame a constitution. A 25-member committee comprising representatives of both government and opposition was entrusted to draft a permanent constitution. The draft prepared by the Committee was approved in April 1973. The Constitution was promulgated in the country on 14th August 1973.

Salient features of the Constitution of 1973

- i. The foundation of 1973 constitution was also laid on the Objective Resolution.
- ii. The country was declared as Islamic Republic of Pakistan and Islam was made the official religion of the state.
- iii. The definition of a Muslim was made part of the constitution and it was said that “a person who has an implicit faith in the Oneness of Allah and in the prophethood of Holy Last Prophet Hazrat Muhammad (رَسُولُ اللَّهِ خَاتَمُ النَّبِيِّينَ صَلَّى اللَّهُ عَلَيْهِ وَعَلَى آلِهِ وَأَصْحَابِهِ وَسَلَّمَ) as the last Prophet of Allah will be considered a Muslim (Musalman).
- iv. The offices of President and Prime Minister of Pakistan were restricted for the Muslims only.
- v. The Objective Resolution was included in the Constitution as its preamble.
- vi. Federal and parliamentary form of government was introduced. The Prime Minister was delegated wide powers and the authority of the President

was curtailed. Practically, the President could not pass important orders without the concurrence of the Prime Minister.

- vii. A Parliament consisting of two houses was established for the first time. The upper house was called the Senate and the lower house was called the National Assembly.
- viii. The provincial governments were granted autonomy.
- ix. In order to protect rights of the people necessary safeguards were provided to ensure independence of judiciary.
- x. Islamic Ideological Council was set up to guide the government in connection with Islamic principles. This is a consultative body to recommend such measures to Federal and Provincial governments enabling Muslims to lead their lives according to Islamic principles. The Council could give its opinion on laws which are contrary or prejudicial to Islam. The Council is entrusted with the right to make the recommendations to bring the existing laws in consonance with the Islamic teachings.

The Constitution of 1973 is still in force although certain amendments in the Constitution have been incorporated in it.



6. The Fall of East Pakistan

Pakistan came into being on 14th August 1947 into two parts East and West Pakistan. It remained one country till the separation of East Pakistan in 1971.

Causes of the fall of East Pakistan

i. Geographical location of East and West Pakistan

The distance between the two parts of Pakistan was more than sixteen hundred kilometers separated by India. The people of both the parts could not come closer to each other. This created misunderstanding among the people of East and West Pakistan. India had never accepted the division of sub-continent and the establishment of Pakistan. It took advantage of this misunderstanding and started vicious propaganda against the people of West Pakistan to misguide the people of East Pakistan. The propaganda did harm to the people of both the provinces and created atmosphere of mistrust.

ii. Difference in the social structure

The problems of the people of both the provinces were different. Hence, they could not develop understanding with each other. The officers belonging to East Pakistan were more friendly and closer to the people. They tried to solve the problems of their people. On the contrary the officers from West Pakistan, when posted in East Pakistan had a different attitude towards the people. They maintained a distance from the people. This created a sense of hatred against West Pakistan. The people of East Pakistan started feeling that they were not made real partners in the administration of the government.

iii. Martial Laws

Imposition of Martial Laws created a sense of deprivation among the people of East Pakistan. General Muhammad Ayub Khan accused the politicians that they were responsible for the failure of parliamentary system of government whereas the public leaders believed that Martial Laws were the real obstacle in the way of establishment of a parliamentary system of government. Thus democracy could not flourish in the country.

iv. Language Issue

The Federal government's policy on the issue of official language was opposed by the people of East Pakistan. Demonstrations were held against the government and a number of Bengali students lost their lives. This agitated the minds of Bengalis.

v. Provincial Autonomy

East Pakistan wanted complete provincial autonomy. This demand was not accepted till India had attacked East Pakistan in 1971. Had this demand been accepted earlier, East Pakistan would not have separated.

vi. Economic Deprivation and Propaganda

Sheikh Mujib-ur-Rehman, a leader of Awami League Party in Bengal propagated that Bengalis were economically deprived and demanded a separate economic system for East Pakistan. He presented a six-point manifesto of Awami League. Other parties in the countries turned down this proposal of Sheikh Mujib-ur-Rehman. He started developing secret relations with India. All India Radio through its programmes created hatred in the hearts of Bengalis against the people of West Pakistan.

vii. Role of Hindu Teachers

A large number of Hindu teachers were teaching in the educational institutions in the East Pakistan. They propagated against the people of West Pakistan.

viii. International Conspiracies

About 10 million Hindus were living in East Pakistan. India stood at the back of these Hindus to protect their interests. India wanted to separate East Pakistan to strengthen economic position of the Hindus. Many Hindus acted as spies for India. Russia was against Pakistan because Pakistan had allowed America to establish military bases in Pakistan. On the other hand America also wanted separation of East Pakistan. Under the circumstances Russia openly supported India's aggression against Pakistan.

ix. Sheikh Mujib's majority in the Elections of 1970

In the General elections of December 1970, the Awami League of Sheikh Mujib gained a vital majority and won 167 out of a total of 169 seats. On winning the majority in the elections. Sheikh Mujib-ur-Rehman started increasing his demands, which were ignored by the then military junta of Pakistan.

x. Military Action in East Pakistan

After the general elections of December 1970, the law and order situation in East Pakistan had gone from bad to worse. Instead of finding a political solution to the situation the then Military regime decided to suppress the Awami League. General Yahya Khan declared Awami League an illegal party and put an embargo on the political activities of Awami League. This fanned the flame. Army started military action against the separatist movement of Awami League. This created hatred among Bengalis and they also started-armed struggle.

xi. India's Attack

As a result of military action, leaders of Awami league and a large number of Bengalis escaped to India. India started interfering in the affairs

of Pakistan. India termed military action in East Pakistan as an attack on India. Sheikh Mujib had organized a semi-military organization, called "*Mukti Bahini*". It started guerrilla warfare against Pakistan Army. In its support, India also started attacks on Pakistan Army. On December 3, 1971 the war between Pakistan and India began. Due to the lack of support of the local populace and the poor arrangements of supply of men and material, Pakistani soldiers surrendered before the Indian army on December 16, 1971 whereas the cease-fire on West Pakistan front was declared without launching a significant attack. On December 16, 1971 East Pakistan became an independent and free state of Bangladesh.

7. Recognition of Bangladesh

A number of countries in the world immediately recognized Bangladesh as an independent sovereign country. But separation of East Pakistan and its establishment as Bangladesh was a great shock to the patriotic people of West Pakistan who thought it a great tragedy for the Muslims of Pakistan. It gave a setback to Pakistan's unity: Therefore, the people of Pakistan felt it painful to give immediate recognition to Bangladesh. However; Second Islamic Summit Conference was held in Lahore from February 22 to 24, 1974. About 40 delegates of Muslim States participated in the Conference. At that occasion it was thought appropriate to invite Bangladesh to the Conference and to show a sense of brotherhood for it. Pakistan recognized Bangladesh as an independent state. Sheikh Mujib-ur-Rehman was warmly welcomed at the Summit.

8. Our Role for the Progress and Prosperity of Pakistan

Pakistan is a gift of Almighty Allah. Its stability and prosperity is the joint responsibility of all Pakistanis. Anti-Pakistan elements are working to damage Pakistan as a country and harm Muslims as a nation. Under the circumstances our responsibilities are manifold. In order to keep Pakistan strong and prosperous we should:

- i. Work hard in all the spheres of national development to make the country prosperous and economically independent.
- ii. Think our self above ethnicity and regionalism.
- iii. Manifest our love and patriotism for Pakistan in word and deed.

- iv. Educate our younger generation and spread education in every nook and corner of the country.
- v. Try to become self-reliant and avoid seeking loans and aids from others. This would be possible through dedicated hard work.
- vi. Establish a system of government based on social justice and eradicate corruption in all its forms.
- vii. Feel proud as Pakistanis.



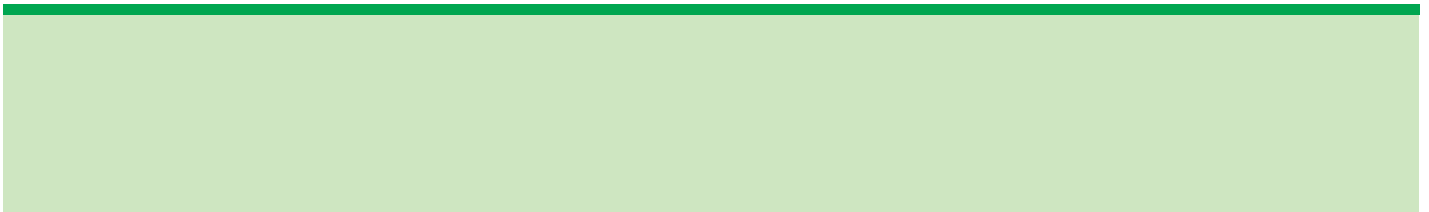
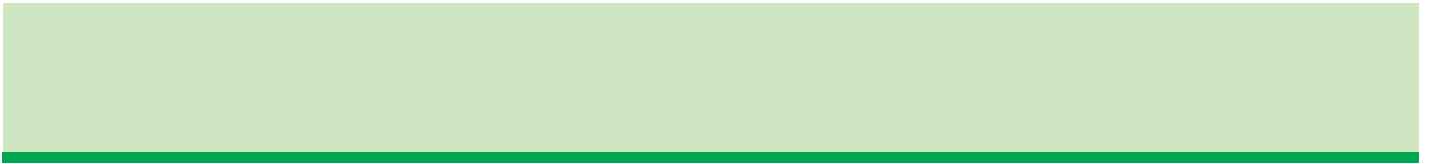
EXERCISE

A. Answer the following questions:

1. Why is a Constitution necessary for a country?
2. What are the salient features of the Objective Resolution?
3. Describe the salient features of the Constitution of 1956.
4. Why did East Pakistan separate from West Pakistan?
5. What role should Pakistanis play for the prosperity of the country?
6. Describe the salient features of the Constitution of 1973.

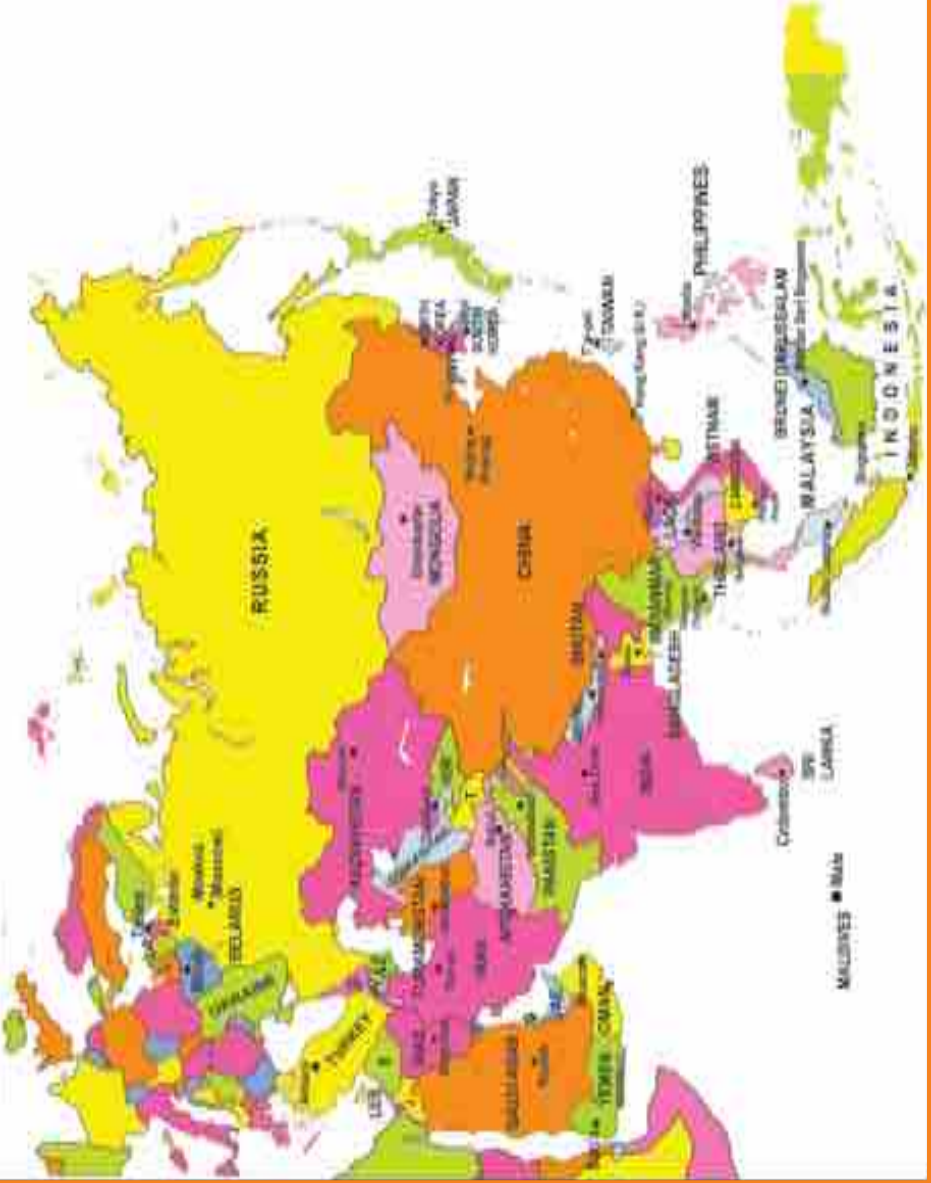
B. Fill in the blanks:

- i. Primitive man lived in small _____ units.
- ii. After it was established, Pakistan needed a _____.
- iii. In the preamble of 1956 Constitution, it was stated that _____ rests with Almighty Allah.
- iv. About _____ heads of Muslim States, participated in the Second Islamic Summit Conference.
- v. Bangladesh was recognized by Pakistan during the _____ Summit.
- vi. The foundation of the Constitution of 1973 was laid on the _____.
- vii. The First Constituent Assembly of Pakistan was dissolved by _____.
- viii. In all the three Constitutions of Pakistan, it has been said that the Sovereignty belongs to _____.



Asia Political

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Legend

- International Boundary
- Capital