

Constitutional Development in Pakistan since 1947 till 1956:

By

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Abstract:

A constitution is the prime and leading document, which governs a country in a well-established democratic way. Hence, the paper was an attempt to highlight constitutional development process just after the birth of Pakistan. The objectives of the study were to find out the difficulties in the process of constitution making in Pakistan during 1947-1956, to explore the causes which blocked the constitution making process and to know the role of politicians and other stakeholders in constitution making process. The research questions were what types of difficulties faced during constitution making process in the years 1947-1956? What factors obstructed the process of constitution making process in 1947-1956? And Pakistani Politian's and other stakeholder played what type of roles in the constitution making in year 1947-1956? This research was qualitative in nature. The information was collected through primary and secondary data. Primary data was collected from senior bureaucrat, these bureaucrat were from different departments. The primary data was also collected from professors of different colleges and public universities and constitution experts like lawyers of high courts and Supreme Court through interviews. The secondary data was collected from different books and articles available in library of Balochistan University and public library Quetta. The details of the frequency test showed that there were 9 contributors and among them 4 contributors they agreed with this question that yes they think politicians played a key role in development of constitution for country. Frequency test of the results explored that total participants agreed with this question they said yes they think unstable political situation and interference of law enforcement agencies were the basic Cause behind the blockage of constitution development. The constitutional process faced a lot of administrative difficulties, and problems of limited professional constitutional experts.

Keywords: Constitution, colonialism, constitutional agreement, communism fundamental principles, legislative body, linguistic unity

Introduction:

The first constitution was codified by Romans in 449 BC, called as 12 tables; these codes further became operational under a sequence related to bylaws that finally modernized comprised of a single code in 428 AD. The word constitution is a Latin word "*constituere*" which means institute together. The latest history of constitution begins from USA in the year 1787, when it was firstly written and thereafter ratified in the year 1789. In today's world, there are about 200 nations which are independent even few among them have still not acknowledged as autonomous states and they do not have their personal constitutions. There is a rich history of constitutional rule of law. According to Aristotle along with other philosophers the work in British as well as in France supported in the establishment of the western ideas of constitution like distribution of authority along with accountability related to rulers. Whereas the European lawful structures are divided into two main groups one is common or general law and the other is civil law.

Pakistan came into being in 1947 which was a introverted occasion in the current history related to the world. This was due to Pakistan has comprised of two divided localities with having different geographical aspects. The Eastern wing and the Western wing, The Eastern wing be not only a single cultural political unit but a complete majority towards the population of the country, whereas the western wing has had no linguistic unity. The western wing comprised of three complete federating entities. Based on Punjab, Sind and NWFP as well the ruler commissioner's territory, British Balochistan. Ten States administered by Princes that were: Bahawalpur state, Haripur state, Makran state, Lasbela state, Kalat state, Dir State, Amb State, Swat state and Chitral state, along with frontier ethnic areas that were affiliated among western wing, and so therefore the structure designers related to the constitution faced complicated conditions. The structure designers related to constitution developing had from the beginning attempted to acclimatize federal method but still this exploration have become more complicated.

During the period of establishment of Pakistan and temporary constitution became brought in but that was tailored version related to the act of India 1935. Thereafter the assignment of making/designing constitution was assigned to the Constitution Amendment of the country which started to commence from August 1947. The overall procedure related to constitution designing initiated by way of the passing purpose declaration. The purpose declaration was passed in month of March 1949 which sketched the fundamental principles as well as foundation related to the constitution.

After passing of the object decision through essential legislative body thereafter it was to formulate the constitution. The initial step after passing objective decision it was to set a Fundamental Principle committee. The committee comprised of 24 members included Muslims, Non-Muslims as well as women; a subcommittee was also formed to assist FPC.

The first FPC given more than a report so that it was assumed as the 1st and 2nd report to further recognize the different efforts that were done by FPC. The 1st statement/report that was presented in the 1950s constituent assemble delineated convinced broad as well as major principles, the role of that committee was not limited to frame the constitution but also to identify broader principles as well, as in future it was to provide as a fundamentals as well as foundations related to the constitution.

The first recommendation made by the committee in its report was the object decree would have to be incorporated inside the constitution such as the instructive doctrines related to the policy be assumed as guideline related to making of policy.

The other essential commendation stated so as to the state head to subsist the named such as president and he/she be elected through joint session related to parliament for the period of 5 years, that meant any person has to hold the presidential office at least for a period of 5 years. Besides this the president be assigned optional authorities along with certain additional classes related to authorization were suggested to be implicit in the jurisdiction of President, even though the power has to be worked out by Prime Minister.

As far as the legislation is apprehensive as recommended in the 1st report there would be upper as well as lower houses. The upper house would be authorized for the equality of provincial representation. While the lower house recommendations would be considered on the base of populace, which meant that the more populated province will be given the more representation such as Eastern Pakistan was having more population it would be given more representation as compare to Western Pakistan which is low in population. Whereas as far as the authorities are concerned it would be divided equally among both the houses, which means that both the house would be having same level of authorization.

The Cabinet as well as the Prime Minister is to be accountable/ answerable against both houses related to the parliament.

So therefore through this methodology it would to provide certain fundamental principles, where the report was like a silent platform

related to the problem of Nationwide language no any recommendation/suggestions was made on this particular subject related to language.

The report although faced criticism about why the representation is equal. As stated in the 1st report which said about equality in this case few were stating why equality is being created. Whereas the 2nd report have room for the problem as raised in the 1st report. The 2nd report was affirmed against the ideology related to federation. The Western Pakistan supported equality for the upper house only. During the discussion period of the report there arose a political instability in the country. As a result, and due to the crises, The Prime Minister of that time Mr. Nizam-ud-din was detached from his workplace/office and the new Prime Minister was selected named Ch. Mohammad Ali.

After joining of Mr. Mohammad Ali he along with his team premeditated all the problems and therefore re-prepared the report which later on called as the 3rd report. And commonly in the history of our country the report was named as Mohammad Ali formula as due to under his Prime Minister ship a modern set of suggestions were primed that were later on represented against the assembly. The formula was represented in the month of October 1953 which was a revised proposal keeping in view the comments as well as the criticism and therefore it was assumed as a fresh policy and procedure towards providing representation to various units of the country. It was agreed that upper house will be having equality of representation towards all the units of the country and for that reason the country was alienated into 5 units. One unit existed in the Eastern side of Pakistan whereas the remaining four units existed in the Western side of Pakistan and therefore each unit was provided with equality of representation.

Statement of the Problem:

The aim of the study was to explore the reasons that hindered the constitution making during 1947-56 in Pakistan. And to figure out the role of founder political party along with other political parties and the law enforcement agencies in constitution making during the time period of 1947-56.

Justification and likely Benefits:

A constitution is the prime and leading document, which governs a country in a well-established democratic way. Hence, the paper is an attempt to highlight constitutional development process just after the birth of Pakistan. This thesis un-covered all the possible causes which may have affected constitution making process in Pakistan along with the stability of Pakistan.

Objectives of the Study:

1. To find out the difficulties in the process of constitution making in Pakistan during 1947-1956.
2. To explore the causes this blocked the constitution making process.
3. To know the role of politicians in constitution making process.
4. To find the role of law enforcement agencies in constitution making process.
5. To find the role of founder political party of Pakistan in constitution making.

Research Questions of the Study:

1. What types of difficulties were faced during constitution making process in the years 1947-1956?
2. What factors obstructed the process of constitution making process in 1947-1956?
3. Pakistani Politian's played what type of roles in the constitution making in year 1947-1956?
4. Was there any role of law enforcement agencies in the constitution making process at that time?
5. What was the role of founder party in the constitution making process during 1947-1956?

Hypothesis of Study:

H#1 Constitution making process faced a lot of challenges.

H#2 Factors involved in the delay of constitution making in 1947-1956 were not ordinary in their nature.

H#3 Political parties had a major role in the constitution making process then law Enforcement agencies.

H#4 Founder party played a vital role in the constitution making process in years 1947-1956.

Significance of the Study:

This study aims at the exploration of the factors involved in the constitution making process just of the birth of our country and also the reasons of delay in constitution making process which resulted in the instability of the country in some form. So the study will help in two ways: one- it will develop an understanding of the constitution making process and Secondly- it will reveal the factors that had hindered the constitution making in Pakistan after its inception. Study will help

new generation leaders to evaluate their role under the light of this paper and it will also help young generation to understand, the how democracy is achieved through constitution of the country.

Literature Review:

Constitution is a basic law through which a government of any nation/state is structured, and the pleasantly through the associations of individuals or ethical persons of community are decisively influenced. It can be written utensil, a particular text or it can be sequential related to texts, endorsed by sovereign authority for a given period of time. It could be relatively specific consequence of a sequence related to legislative endorsements, ordinances, judiciary decisions, patterns as well as traditions of different origin that are related to disparate principles and significance. (Borgeaud C, 1892, pp. 613- 615)

A constitution is a set of rules governing the functioning of a country. To be more specific, a set of statements determining the way in which a country is established, ruled and its day to day running. Without a constitution, government, created to run a country, wouldn't be able to operate as each set of actions that the parties forming a nation state, be it the private sector, civil society and or communities, are governed by the very rules that make up a constitution.

Each country is different. The physical environment surrounding each country, geographically, first of all, determines the shape a country forms in terms of its language, the general physique and physical appearance of people in it and the threshold for people to be able to thrive as constantly growing individuals and communities. Second, the historical background of a country, especially at formation, such as the invasions, battles fought and lost, those won; the religious cultural impact of invaders results in the psyche of the people being affected and changed; as a result, the context within which each country operates in and the manner in which it operates differs from that of other nations. As it is only the individual people comprising the country that determines how it is; the people form the country, they not only determine the mechanisms by which the nation operates but also how the mechanisms run. The difference in peoples of a nation, not only forming it, but also running the state then ascertains the difference in the constitutions across the globe.

There is no easy way to compare constitutions, and there has been much academic debate as to whether comparison is even possible; this debate far exceeds the precincts of this paper. For our purposes, some examples of differing constitutions will be given to depict the richness

of constitutions across the globe.(Ginsberg T and Dickson, 2011, pp. 19-38)

The history of constitutions is not an easy task to count, while considering numeral of constitutions, articles related to various countries in all six constituencies such as: America, Asia, Africa, Middle East, Oceania and Europe, for several times the constitutions were made in emergency either interim but in the same period as well as everywhere. (Cordeiro J L, 2008, pp. 2, 3, 8, 9)

After passing nine years of struggling the framing of constitution of Pakistan became a success which was implemented on dated 23rd March 1956, along with all greater level of eagerness throughout the country. The making of constitution in Pakistan was like a nightmare due to worst kinds of prejudiced rivalry and threatening of unity along with generating a pervasive sense of annoyance as well as distress amid the people. The initial constituent congregation was suspended in the month of October 1954 on the basis that it lost the people's self-reliance and confidence. As a result, and after transiting 7 years of independency the country still remained inconsistent and without compact political institutions. Besides this the prestige of the country was at stake inside the country and abroad as well moreover, this showed the inability of the country in developing written constitution. The constitution as assumed in the 2nd legislative body on 29th February 1956 was prolonged, comprehensive as well as firm containing 234 number of articles that further divided into 13 branches and six schedules which might be likewise the constitution of India. Possibly it is the most detailed as well as largest in the international scenario. (Choudhury G W, 1956, pp. 243,244)

The state of affairs through which the Pakistan achieved her sovereignty were for the most part hostile and unfavorable, these included insufficient system of administration as well as tremendous problem of refugees, along with the country lacked with financial resources, insufficient communication as well as transportation system. The difficulties faced by Pakistan were more severe as compared to the difficulties faced by the government of India. (Gaho G M et al, 1980, pp. 1-3, 10)

Pakistan became an independent country following clause eight related to the independence act of India 1947 and ruled under Act of India 1935. M. Ali Jinnah became the first Governor General of the country; the voter legislative body was first comprised to draft the constitution of Pakistan. It 1st summoned on August 11, 1947 before British rule ended on 15th of August 1947. M. Ali Jinnah the founder of Pakistan became the first elected President of the Assembly, but unfortunately

very soon he died on September 11, 1948. Firstly the assembly constituted with sixty nine member thereafter ten members included so the total strength of members came to be seventy nine out of which forty four belonged from East Bengal, twenty two belonged from Punjab, five belonged from Sind and three member were from NWFP and one member from Balochistan, one from Khairpur and one from the tribal areas related to NWFP. The first constituent legislative body was failed to fabricate a constitution and behind the reason of which was the sudden death of the founder Mr. M. Ali Jinnah. Thereafter Mr. Liaquat Ali Khan take the oath as the first Prime Minister of the country who was murdered, then Mr. Khawaja Nizam-ud-din take the oath of Prime Minister, he attempted to structure the constitution but the Governor General Mr. Ghulam M. terminated him and appointed Mr. M Ali Bogra. Mr. M. Ali Bogra presented a formula for constitution on 17th of October 1953 which he was going to pronounce on 25th of December 1954; however Governor Gen. Ghulam M. suspended the assembly on 24th of October 1954. Keeping in view the above historical perspective to frame the constitution, it was realized that there were key reasons as well as two basic disparities for the failure in making of the constitution first was the function of religion Islam and the second main reason was the associations among provinces and federal government. Later on the legislative body was reconstituted on 28th of May 1955 and lasted till 23rd March 1956 as soon as the fresh constitution been accepted and the country develops into a Republic. (Barech N, 2000, pp. 1, 2)

Methodology:**Procedure:**

This research was qualitative in nature. The information was collected through primary and secondary data. Primary data was collected from senior bureaucrat, these bureaucrat were from different departments. The primary data was also collected from professors of different colleges and public universities and constitution experts like lawyers of high courts and Supreme Court through interviews. The secondary data was collected from different books and articles available in library of Balochistan University and public library Quetta.

Statistical Analysis:

The collected data was analyzed through SPSS software and the result was organized in tabular and graphic form.

Analysis and Results:

Table 4.1 shows administrative difficulties regarding the process of 1956 constitution development.

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		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	8	88.9	88.9	88.9
	No	1	11.1	11.1	100.0
	Total	9	100.0	100.0	

Analysis 4.1

Frequency test of the above table 4.3 displays that the total number of participants in this study were 9 in number and the results showed that among 9 participants 8 participants they said yes to this question that there are a lot of administrative difficulties regarding the process of 1956 constitution development. Whereas 1 participant disagreed and said no to this question that there were lot of administrative difficulties regarding the process of 1956 constitution development.

Table 4.2 shows constitution development since 1947 till 1956 face budgetary problems.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	9	100.0	100.0	100.0

Analysis 4.2

Frequency test of the above table 4.4 explores that all 9 participants they said no to this question that, the constitution development since 1947 till 1956 face budgetary problems.

Table 4.3 shows early constitutional process faced the problems of limited professional constitutional experts

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	6	66.7	66.7	66.7
	No	3	33.3	33.3	100.0
	Total	9	100.0	100.0	

Analysis 4.3

Frequency table of the above table 4.6 examines that among 9 participants 6 participants they disagreed with this question and said no early constitutional process faced the problems of limited professional constitutional experts. While rest of the participants those were 3 in number they agreed to this question that yes early constitutional process faced the problems of limited professional constitutional experts.

Table 4.4 shows resources available for constitutional development.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	3	33.3	33.3	33.3
Valid No	6	66.7	66.7	100.0
Total	9	100.0	100.0	

Analysis 4.4

Frequency table of the above table 4.6 explores that among 9 participants 6 participants they disagreed with this question and said no there were limited resources available for constitutional development. Whereas 5 participants they agreed and said that yes there were limited resources available for constitutional development.

Discussion:

This work was an attempt to give a critical explanation of the constitutional growth in Pakistan from 1947 to 1956. The key purpose of this research had been to study and examine the issue and chronic problems which made constitution process in Pakistan so hard, highly complex and complicated job. The first vital nine years of, Pakistan's constitutional history (1947-1956), the parliamentary and political system was not able to frame or draw constitution for newly established stat Pakistan.

The Constituent Assembly was made on July 26th, 1947, set to responsibility to draw the new constitution and serving as the sovereign, unicameral central parliamentary body, The Constituent Assembly established several team or committee and sub-committee to shape or outline the future constitution.

After facing tremendous problems of a political nature dealing with concerns of federalism as between the constituent units of the country, the constituent Assembly created at the time of independence was ready to promulgate the first constitution of Pakistan in September 1956 when it was dissolved by the Governor-General. (To be changed) The job of developing a constitutional process for such a shop as pregnant with an amount of essential difficulties and problems. In the early years, the linguistic dispute was also one of the most vital and significant problem which hampered the constitution-making endeavors. The Bengali representatives were aware of these particular and diverse geographical and social components, they lost no event to extend the differences. They stressed the ideas of separateness in their speeches in the central and provincial legislative council's or assemblies. For example, Abdul Mansur Ahmad, a dynamic and prominent member from East Pakistan, observed in the constituent Assembly. Mahmood S (1993, p. 2)

Pakistani Government began working under the changed Indian Government Act of 1935 after its establishment. The Central legislation assembly performed two jobs. It had started work as central constitute assembly and took endeavors to outline the constitution for the new nation.

The Bengali government officials were aware of these particular topographical and social components, and the lost no event to extend the distinctions. They highlighted the purposes of separateness in their talks in the constituent Assembly and commonplace gatherings. For example, Abdul Mansur Ahmad, a conspicuous part from East Pakistan, saw in the constituent Assembly.

Chaudhry (1955), Chaudhry has explored that, the first difficulty faced by constitution assembly was to define the state's characteristics as "Islamic state". As conflict had occurred between Ulama and intelligentsia of Pakistan. Second difficulty faced by the constitution assemble was to find a common parliament for the so divers East and West Pakistan. Third difficulty faced by constitution assembly was the distribution of powers between federal and provincial governments. Fourth and the last difficulty as mentioned by Chaudhry.(1955) constitutional assembly faced during the constitution making process was the difficulty of language differences, as in East of the country Bengali language was spoken and in the West different other languages like , Punjabi, Pashto, Sindhi and Balochi were used for communication. So to declare a single language as the official language of the newly born country was not easy and become a hurdle in constitution making process. As second by Bukhari, that The dearth of agreement among the east and west Pakistan in all matters going

from the connection between Islam and the state to the issue of electing the national language caused Pakistan to be without a constitution for nearly nine years and in a state of continuous political disorder and uncertainty. Ghao. M. G. et al. states that insufficient administrative structure, refugee problems, lack of financial resources, inadequate resources of communication and transportation, different languages, lack of skilled leadership and the missing of national agreement were major issues in the delaying of constitution making after Pakistan's birth.

Conclusion:

The constitution making in Pakistan was like a nightmare because of the worst types of prejudiced rivalry as well as threatening of unity along with generating a pervasive sense of annoyance as well as distress amid the people.

Since the inception of Pakistan the country faced various constitutional issues and hurdles, soon after the independence the initial eight years of the country were without having any constitution even though the occurrence of the country was unique in itself in the year 1947. The first eight years from 1947-1955 the country ruled under the Indian Government Act of 1935 after making few amendments and modifications in the Act. The first legislative body constituted by Mr. Jinnah to resolve the issue related to constitution could not continue due to the sudden demise of Mr. Jinnah who as the founder of the country and became the first Governor General of the Pakistan, he was very well-known about the situation and he knew very well how to handle these issues and hurdles towards making constitution and stabilizing the country as well as to tackle the issue of East Bengal, he had a strong background, he was elected as the first President of the constituent assembly but unfortunately he couldn't live enough to take-up the country on track and died in September 1948 just passing only one year of independence. Besides all this and during the initial stage of independence there existed vested interest of few people while making constitution. Another major issue that was faced by the country was the issue of East Bengal concerning its geographical situation, political instability and the demand of Bengali people to recognize the Bengali language as a state language, the situation of Bengal was very complex and Indian hostile attitude was also prevailed. the composition of inclusive constitution, arrival of too many refugees, lack of competent people/managerial staff to handle such worst situation and tackle the economic downfall. At that time the total members of constituent assembly was 79 out of which forty four belonged to East Bengal so the increase in the members from East Bengal enhanced the voting capacity as well as demands of East

Bengal to be accepted or motivated but in the presence of all these factors and consequently that resulted in the shape of separation of Bengal in the year 1971 which was like a defeat for the country and on the other hand due to the non-availability of constitution the gravity of problems continued to exist. The history of Pakistan is filled with many challenges, to meet these basic challenge related to constitution the objective resolution was passed in 1949 which was followed by the then Prime Minister Mr. Liaquat Ali Khan but rather to make it better this resolution makes the political situation as worse than it was before, the concerns related to the future of the country came into stake due to many problems such as:

- Linguistic issues
- Allocation of seats in legislative assembly
- Distribution of authorization among the federation and the federating units

Recommendations:

Same like the framing of the constitution of Pakistan was like a nightmare similarly to provide solid recommendations are also complex however and generally some of the recommendations might be supportive towards handling the issues related to constitution making and avoid anarchy are as such.

The main objective of a separated country was to build an Islamic state, as the making of constitution is significant so it was necessary that the clauses of Islamic laws has to be incorporated in the constitution but unfortunately no one noticed the seriousness towards introducing a religious state and all was unsuccessful to manage the incredible difficulties through which a proper system could be tackled. Moreover there existed no harmony towards the wisdom linked to the term as religious state. Although it was not precisely defined, verbally the sayings of intelligentsia of the country were to shape a vast degree of taking as well as eagerness. . It was necessary to tackle the developmental as well as political sustainability. It was crucial to stop the breakdown of constitution and strengthen political misfortune. It was also important to engage in the activities related to the development of socio-economic situation and divert additional doubts amid the masses. It was incredibly important to redirect this type of atmosphere related to economic as well as political anarchy and the military would not had to overcome and confine the reins related to government in 1956. Ulemas must not forcibly or by any means introduce Islam in the shape of a limited religion instead they might showed it through their own actions by doing right and they had to

make associations through convincing and motivation strategies, all that would be possible if there existed a firm unity.

The political system of Pakistan was like parliamentary and centralized just in a prescribed sense throughout the first 10 years after independence, but actually it was federal government structure by means of mainly influential executive, supported by army as well as bureaucracy.

It also became essential to incorporate some provisions on the basis of emergency. The ethnic problems minorities problems, the problem of Eastern Pakistan, intervention by military as well as a ill-considered behavior of politicians which resulted in the shape of more than one constitutions consecutively.

The continued imposing of martial law, death of Mr. M Ali Jinnah, assassination of Mr. Liaquat Ali Khan, political instability, Indian hostile attitude, issue of Jammu and Kashmir, Problems of Bengla Desh, non-availability of unity, the non-continuity of democratic government, issues of Ulemas, economic non-development, a large number of migrants and poor management all these factors either natural or man-made did not handled properly, the country remained and faced at the same time various issues and these could only be handled properly if there existed a united leader ship and a proper association among military as well as non-military units.

The compact political institutions stability must have been ensured. It could be summed after passing years and before the revolution of October in 1958, the unsteadiness, anarchy as well as disorder concluded to declare martial law by the then president Mr. Iskandar Mirza, he appointed Gen. M. Ayub Khan Chief administrator of martial law.

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