

# Constitutional Evolution Of Pakistan <sup>I</sup>

**Mr Altaf Ullah is a research scholar. In this article, which we are serializing, he spotlights the genesis of constitutional evolution of Pakistan.**

Parliament or legislature is one of the basic elements of a political society and plays a pivotal role in its constitutional evolution. In June 1947 when the partition of sub-continent was agreed, it became essential to set up a separate Constituent Assembly for Pakistan. The first Constituent Assembly of Pakistan was indirectly elected from amongst the members of provincial Assemblies. According to G.W. Choudry "the first Constituent Assembly originally consisted of 69 members. Subsequently the number of members was increased to 74. The states of Bahawalpur, Khairpur and Balochistan and Tribal Areas were given additional seats on their accession." In case of Balochistan, an electoral college consisting of Queta Municipality and Jirgas elected representatives due to the non-existence of legislature. The membership was further enlarged when the Assembly provided representation to the new population of Punjab and Sindh, five seats to the former and one to the latter. The strength of the Constituent Assembly was thus raised from 69 to 79 members.

The Indian Independence Act of 1947 empowered the Constituent Assembly of Pakistan to frame a constitution for the new state. Until such time that constitution was framed, the country was to be governed by the Government of India Act 1935, as demanded under the provisions of Independence Act and the Pakistan (Provisional Constitution) Order of 1947. Under this conditional arrangement the executive authority of the federation was to be exercised by the Governor-General whether directly or through his council of ministers led by the Prime Minister.

The Assembly started its functions in a dual capacity. Firstly, it was charged with the duty of framing a new constitution for the country and secondly, it had also to act as a federal legislature until the constitution was framed and a proper Assembly elected. The first meeting of the Constituent Assembly took place in Karachi from 10 to 14 August. The Assembly with full accord elected Mr. J.N. Mandal, a member of the minority community

from East Pakistan as a temporary chairman on the first day of the session. Quaid-i-Azam Mohammad Ali Jinnah, being the only candidate for the presidency, was subsequently elected as the president of the Constituent Assembly on 11th August.

Assembly may choose the head of state, approve the choice of the head of state or members of government and influence or control governmental behaviour, or seek to make government accountable to it. Law making is the significant and fundamental function of legislature. In a parliamentary form of government the executive is always accountable before the legislature for all its actions. This was also a step to the powers of the Constituent Assembly without whose assent the cabinet could neither raise revenues nor incur expenditure nor stay in office against its wishes. Undoubtedly, the Constituent Assembly was subject to all those limitations, which were imposed upon it by the Provisional Constitution. The legislative powers of the Assembly were clearly defined in the three lists incorporated in the seventh schedule of the Government of India Act, 1935. The first legislative list was consisted of fifty-nine subjects while the second and third legislative lists were consisted of fifty-four

nominated Liaquat Ali Khan, a prominent figure of Muslim League who commanded an over-whelming majority in the legislature.

The framers of the constitution in Pakistan had to face a number of complicated issues while dealing with this fragile task of preparing draft constitution for the country. One of the most crucial issues was to determine the character of the proposed constitution. The controversy over the ideological foundations of the state started a never lasting debate inside and outside the Constituent Assembly. The Quaid wanted a democratic constitution incorporating the essential principles of Islam but he expressed, "Pakistan should not be a theocratic state to be ruled by priests with a divine mission." However, it was generally agreed by the people of the state that Pakistan would be an Islamic state. The phrase "Islamic State" had been on the lips of almost all the intelligentsia of Pakistan and had produced an immense volume of talk and enthusiasm; yet the term had not been defined. The different groups of people held divergent views about the nature and concept of an Islamic state. On the term Islamic state a conflict arose between the Ulema who wanted to see Pakistan become a



**Liaquat Ali Khan**

dissimilar from that of a modern democratic state. It was very difficult for the framers of the constitution in Pakistan to produce an Islamic political system which would satisfy the different groups which held various opinion on the concept of an Islamic state.

Pakistan consisted of two parts, East and West Pakistan with most of its area in the West and rather more than half of its population in the East. The major constitutional conflict between the two wings was over the question of quantum of representation for each in the future federal legislature. The people of East Pakistan demanded representation on the population basis, while the people of West Pakistan demanded representation on parity basis. Besides it, the culture and linguistic differences were also very important. Although the people of western regions spoke different languages- Punjabi, Pushto, Sindi, Balochi, yet most of them looked upon Urdu as their common heritage. In East Pakistan Bengali was the cherished language. West Pakistan was predominantly Muslim. East Pakistan had important non-Muslim population. The people of East Pakistan wanted Bengali as one of the state languages whereas in West Pakistan Urdu was advocated as the only official language for the new Islamic state. From the beginning Pakistan was created constitutionally as a federation. A federation used to come into existence to overcome differences; it therefore had to work out a compromise between the desire for union and anxiety to safeguard the interests of the federating units. Regarding the distribution of powers between the provinces and federal government, the regionally oriented groups advocated maximum provincial autonomy with a weak centre whereas others favoured a strong federal government with limited provincial autonomy. The demand for provincial autonomy first came from East Pakistan which had legitimate grievances against central authorities and therefore wanted to ensure a full share in the future constitution.

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and thirty-six subjects respectively. The Assembly exercised exclusive control over the subjects enumerated in the list I and from the list II only the provincial legislatures could enact laws. However, the list III was consisted of such subjects over which the central and provincial Assemblies had concurrent jurisdiction but in case of contradiction the verdict of central Assembly was final. The foundation for a council of ministers was provided by the Government of India Act 1935 to be appointed by the Governor-General. The first cabinet of Pakistan was appointed by Quaid-i-Azam. He

full-fledge Islamic state and those elements who considered that "Back to Old Precedents Movements" was incompatible with Pakistan's ambition to find an important place for itself in the modern world and therefore chose to interpret Islamic principles in the terms of democratic constitutional practices of the twentieth century. The picture of Islamic state visualized by the Ulema was not acceptable to the people of Pakistan as the intelligentsia was elaborating a new interpretation of Islam and their picture of an Islamic state was altogether different from that of Ulema and it was not greatly



# Constitutional Evolution Of Pakistan

II

**Sikandar Mirza**

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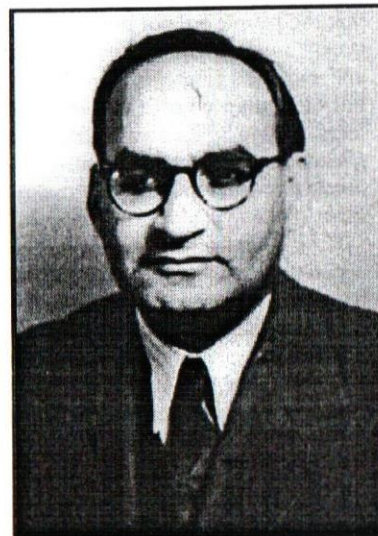
The death of Quaid cast a gloom all around, people were stunned and could not believe that such a catastrophe had happened. Now the people pinned their hopes on his successor, Liaquat Ali Khan, the prime Minister. The first biggest step in framing the constitution was taken by the Constituent Assembly in the form of Objectives Resolution which was presented by Liaquat Ali Khan in March 1949. The Prime Minister during his speech to the Constituent Assembly declared,

"Pakistan was founded because the Muslims of this sub-continent wanted to build up their lives in accordance with the teachings and traditions of Islam, because they wanted to demonstrate to the world that Islam provides a panacea to the many

of 24 members (21 Muslims and 3 Non-Muslims) to frame the constitution. Though this committee presented its first interim report on 28 September 1950 yet this report was subjected to an adverse criticism by the opposition members particularly by S.C Chattopadhyaya. No doubt there were critics from West Pakistan too, but the East Pakistan was more vocal. Their attack was mainly directed against the proposal for a strong centre with vast powers in financial matters. A belief had taken roots in East Pakistan that there were principles in the report which, if adopted would reduce the East Pakistan majority into a minority. The press led by the Pakistan Times of Lahore also attacked the over-centralization in the report and considered the bi-cameral principle as reactionary. The advocates of Islamic state also claimed that the scheme was not Islamic enough to impart a positive religious orientation to society so loudly proclaimed in the Objectives Resolution. The report which declared Urdu as the only national language also created great resentment in East Pakistan. An analysis of the facts indicated that the criticism against the report can be categorized into three parts. First: some of the objections were based on inadequate information given in the first report. Second: some of the criticism

exception of J.N. Mandal and Ch. Nazir Ahmad were retained in the new cabinet with some changes here and there in their portfolios. Such was the situation in the country when Government and intelligentsia were called upon to turn once more to the constitution making problem.

The Basic principles Committee had already on 13 April 1951 appointed a sub-committee to examine the enormous suggestions received from various circles. The sub-committee made its report to the Basic Principles Committee in July 1951 and it was presented as the second draft to the Assembly by the then Prime Minister Khwaja Nazimuddin on 22 December, 1952. The report envisaged for Pakistan a democratic federal structure. The Objectives Resolution was added as the preamble of the proposed constitution- a fact which underlined the adherence of the state to the Islamic and democratic principles. The Head of the State was required to be a Muslim and to be elected for a term of five years at a joint setting of both the Houses of federal legislature. This report brought the principle of parity between the East and West Pakistan as its most important contribution towards solving the problem of representation. It claimed to bring about a constitutional balance of power as well as a balance of responsibility between the

**Chaudhry Mohammad Ali**

spread through out the Punjab. This gave an opportunity to the Governor-General Gulam Mohammad to assume dictatorial powers. On 4th March 1953, on the recommendation of Defence Secretary, Major General Iskandar Mirza, the Governor-General proclaimed martial law in Lahore and installed army units in other towns of the Punjab. He then compelled Daulatana to resign from the Chief Ministership. In April he turned towards the central government and summarily dismissed Nazimuddin and his cabinet on the plea that he had failed to handle the riots. In the same month, he summoned Muhammad Ali Bogra, the then Pakistan's Ambassador to U.S.A and

on the third Basic Principles Committee Report ended on 21 September 1954 and the Assembly formally declared its approval by 29 votes to 11. With the successful handling of the problem of representation and language and distribution of powers between the federal and provincial governments, the framers of the constitution proceeded faster towards adopting a constitution and by September 1954 the Assembly was successful in adopting a draft constitution. The constitution bill was reported to have been ready and only the formality of enacting it into law remained. Prime Minister Mohammad Ali even announced the date of promulgation of the new constitution, viz. 25 December 1954. On the morning of 24 October 1954, Gulam Mohammad surprised every one. He dissolved the first Constituent Assembly of Pakistan and declared a state of emergency. His proclamation stated inter alia:

"The Governor-General having considered the political crisis with which the country is faced, as with deep regret come to the conclusion that the constitutional machinery has broken down. He therefore, has declared a state of emergency throughout Pakistan. This Constituent Assembly as at present constituted had lost the confidence of the people and can not longer function. The ultimate authority vests in the people who will decide all issues including constitutional issue through their representatives to be elected afresh. Election will be held as early as possible."

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The Objectives Resolution laid down the concept of government as a sacred trust to be exercised by the chosen representatives of the people. It laid down the objectives of democracy, freedom, equality, tolerance and social justice as enumerated by Islam. It also expressed the resolve to enable the Muslim to lead their lives in accordance with the teachings of Islam, while permitting full liberty to the minorities to profess their own religions and develop their cultures. The most outstanding feature of the Resolution was that, it sought to base the constitution of Pakistan on the ideals of Islam. The preamble of the Resolution made a frank and unequivocal recognition of the sovereignty of Allah and declared that all authority must be subservient to the Almighty Allah. It stipulated that the exercise of fundamental rights should be fully guaranteed. It also provided for the independence of judiciary and a federal system of government. The Resolution came for general discussion and became a subject of severe criticism by the Hindu members who moved a series of amendments and further claimed that the Resolution as framed did not embody all the elements of modern democracy. However, it was widely welcomed in the country as the corner stone of the new political system. The Assembly after passing the Objectives Resolution, appointed on the same day a committee (Basic Principles Committee) consisting

members of the Constituent Assembly. The report can be categorized into three parts. First: some of the objections were based on inadequate information given in the first report. Second: some of the criticism

was based on the criticism against the constitution towards solving the problem of representation. It claimed to bring about a constitutional balance of power as well as a balance of responsibility between the

Concurrently with the dissolution of the first Constituent Assembly, the Muslim League cabinet headed by Muhammad Ali Bogra was also dismissed. The Governor-General appointed a new cabinet, described by him as the 'cabinet of talents' and again Bogra was called to serve as Prime Minister.

The cabinet, among others, included General Mohammad Ayub Khan, Major General Iskandar Mirza, Ch. Mohammad Ali and Mr. M.A.H. Ispahani. They held the portfolios of Defence, Interior, Finance and Industries respectively.

was deliberately included to mislead the people and create confusion. Third: some of the suggestions were made with a genuine desire to improve the proposals. Keeping in view the above criticism, Liaquat Ali Khan postponed the considerations of the report in the Assembly and invited suggestions from various jurists, constitutionalists and as well as from general masses. Unfortunately, he was assassinated on 16th October, 1951 at Rawalpindi where he was to address a public meeting and the process of constitution making remained embryonic. He was succeeded as Prime Minister by Khwaja Nazimuddin, the Governor-General at that time. Gulam Mohammad, who had been finance Minister from the earliest days of Pakistan, was selected as Governor-General. On 19 October 1951 Gulam Mohammad and Nazimuddin took the oaths of their offices. All the members of Liaquat's team with the

two wings of Pakistan. The report was scheduled to be discussed in the Assembly on January 1, 1953 but on the demand of various political parties its consideration was postponed. An important factor delaying the consideration of the report was the anti-Qadiani movement. The Qadiani issue cropped up in the wake of an aggressive missionary programme of Ahmadia community, who wanted to convert Pakistan into Ahmadia doctrine. Such an aggressive programme was strongly resented by the orthodox opinion in the country and exploded ultimately in the riots of March-May 1953. One of their major demands was to declare Ahmadias, a religious sect in Pakistan who did not believe in the finality of Prophethood, a minority. They further pressurized the government to remove foreign Minister Zafrullah Khan and all other Ahmadiis from governmental position. The anti-Ahmadia riots

law in Lahore and installed army units in other towns of the Punjab. He then compelled Daulatana to resign from the Chief Ministership. In April he turned towards the central government and summarily dismissed Nazimuddin and his cabinet on the plea that he had failed to handle the riots. In the same month, he summoned Muhammad Ali Bogra, the then Pakistan's Ambassador to U.S.A and appointed him the Prime Minister in place of Khwaja Nazimuddin. On assuming as Prime Minister Bogra considered it one of the principal task to overcome the constitutional deadlock. He presented his parity formula to the Assembly on 7th October 1953 within less than six months of his appointment. The Muhammad Ali formula revolved mainly round two basic issues. First, it gave a new shape to the principle of parity, and secondly, it provided for the election of the Head of the State from the zone other than to which the Prime Minister belonged. Muhammad Ali claimed that his scheme would not only ensure parity between the two zones but would also make them inter-dependent. He emphasized that it would cripple any tendency towards provincialism and would thus integrate the various units. There was great enthusiasm when the formula was first published and it seemed to solve the problem as compared with the first and second draft of the Basic Principles Committee. But the enthusiasm soon cold down and a cloudy environment of mutual distrust, fear and suspicion was created by the problem of representation between the people of East and West Pakistan. However, in order to speed up the work of constitution making, the Assembly appointed a drafting committee on 14 November 1953 to do its work side by side with the discussions in the Constituent Assembly. The committee was required to prepare the draft constitution by 1 January 1955. The discussion

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