

THE PROCESS OF CONSTITUTION MAKING IN PAKISTAN FROM 1947-1954: HISTORICAL AND POLITICAL PERSPECTIVE

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Abstract

Ever since the establishment of Pakistan in 1947, it faced multiple challenges, the framing of the future constitution of Pakistan was the biggest of them. The India act of 1935 with certain modifications became the interim constitution and the country was continuously ruled till 1956 constitution of Pakistan. This research paper highlights the problems from inadequate administrative system, extreme refugee problems, lack of financial resources, insufficient means of communication and transportation, ethno-linguistic problems, lack of trained leadership and the missing of national consensus were major issues which the newly established independent sovereign state of Pakistan faced as its early problems.

Keywords: *Bogra Formula, Constituent Assembly, Interim Constitution, One Unit, Martial Law*

Introduction

Pakistani Government started functioning under the modified Indian Act of 1935 after its establishment. At the centre, the Constituent Assembly performed two functions. It had acted as a central legislature and took efforts to frame the constitution for the new country. (Symond: 1995, p.89)

The Assembly, by acting as the central legislature amended the Government of India Act of 1935 and the Indian Independence Act of 1947. The centralized structure was retained under the India Act of 1935. Previously, the Governor General had adequate discretionary powers and responsibilities which were not

given to him under the adopted or amended Act of 1935. He remained head of the State, and was to act, however, only as titular head, i.e., on the advice of the cabinet. The Governor General had also enjoyed certain emergency powers under Section 102 of the adopted Government of India Act of 1935. When emergency powers were in force, the federal nature of the country ceased to exist and its administration took the form of a unitary system of government (Choudhry: 1969, p.47).

The structure of government in the provinces was similar to that at the centre. The Governor was appointed by the Governor General and was titular head of province. He was to act on the advice of the cabinet, but in similar way had also enjoyed certain emergency powers like Governor General.

The Governor was the executive head of the province, but was not under the direct control of the province. This was one of the essential features of the Government of India Act 1935.

Pakistan's political system was parliamentary as well as federal only in a formal sense during the first decade of the independence but in a real sense it was unitary system of government with most powerful executive, aided and supported by army and bureaucracy (Yusuf: 1999, p.67).

The circumstances under which Pakistan began to achieve her independence were the most unfavorable (Myrdal: 1968, p.781) The problem faced by this newly independent country included an inadequate administrative system, an extreme refugee problem, the lack of financial resources, and inadequate means of communication and transportation (Braibanti: 1963, p.73) Pakistan's difficulties were even more colossal than those faced by India. Politically, it was engaged in preparing a constitution. It is established fact that soon after independence, Pakistan started her struggle to organize its national government and the administrative system. Many believed that Pakistan would not survive for long (Op.cit 1987). It is also necessary to point out that carnage and communal violence attended the dawn of independence. About seven million people, uprooted from their homes in India, trekked down to Pakistan to seek refuge and resettlement. The problems of reprisals and the safety of the Hindus and Sikhs moving eastward weighed down on a skeleton administration already strained to

breaking point in dealing with the vast influx of refugees (Ahmad & Amjad: 1984, p.84).

However, the partition line of the subcontinent cut across the two major provinces of Pakistan, namely, the Punjab in the west and Bengal in the east, which moved Jinnah to remark about a 'truncated' and a 'mouth-eaten' Pakistan. Unlike the case with India where these provinces lay on the periphery and the system of government was already established and functioning. This also needs to be mentioned that the consequences of Sir Cyril Radcliff award was the fatal demarcation of the Punjab boundary whereby overland access was allowed to India to the princely Muslim Majority State of Jammu and Kashmir. Its significance became apparent during the Pakistan India war in 1947, just two months after the independence. The determined hostility which the Indian Congress leadership showed towards Pakistan from the very beginning sprang not only from embittered memories of a conflict of interest and a sense of defeat arising from its failure to prevent the partition of the sub-Continent but also from the conviction that Pakistan was going to be short-lived and its collapse, in the perception of the Congress, could be hastened (Burke & Ziring: 1990, p.92).

The Cabinet Mission considered Pakistan as impracticable, a feeling that was also shared by Lord Mountbatten, Pakistan's unpaid share of cash balances was withheld by the Indian government, which showed itself equally determined to deprive Pakistan of its share of the large stocks of reserve arms, equipment, and stores belonging to the Indian army at the time of independence (Op.cit:1999). This research work also undertakes to examine the impacts and influence of civil bureaucracy on the parliamentary system in the early phase of the Pakistan. The edifice of the parliamentary system adopted at independence was based on a bureaucratic foundation. It has also been observed in the political tradition in Pakistan since beginning that the civil services were long established institutions, with a strong *esprit de corps*. They were, however, unaccustomed to any immediate parliamentary authority and worked almost independently. The military stood by the civil bureaucracy, who shared the ethos of the bureaucracy and was supported by a political tradition, where obedience to authority was based on the principle of elected representation was a new phenomenon. The politicians faced the challenges of building the institution of the political

democracy in essentially and administrative state. Soon after the independence, a strong feeling was developed among the politicians and people of the country to frame a constitution and initiate to institute an elected house to reflect the democratic will of the people.

It is also to be stated that the authoritarian feudal culture, which dominated political life in the west wing, was itself needed reform to accord with democratic values. A few discerning eyes might have visualized that if the politicians failed to establish their pre-eminence, the civil–military bureaucracy, in the resulting institutional imbalance, would appropriate political functions. For the time being, there was no ambiguity. The mantle of authority fell on the Muslim League, a movement, which now transformed itself into a political party and became responsible for shaping the destiny of the country.

Establishment of Government

The establishment of the government began with the swearing in of Quaid –e–Azam Muhammad Ali Jinnah as the first Governor General of Pakistan (Ibid: p.79). Muhammad Ali Jinnah appointed Liaquat Ali Khan as the Prime Minister of Pakistan. He was also given the charge of two other ministries, foreign Affairs and commonwealth relations and defense. The cabinet also included political stalwarts like Abdul Rab Nishtar from the North-West Frontier Province. He headed the ministry of communications, Fazal Rehman, a leading politician from East Bengal was given the ministry of interior and information; I.I. Chundrigar, a lawyer, was given commerce and industries; Ghazanfar Ali Khan, from the Punjab, agriculture and health and Ghulam Muhammad the ministry of finance.

Outside the cabinet, Sir Muhammad Zafarullah, later became the foreign minister, who had an outstanding record of judicial service, was deputed to represent Pakistan at the United Nations. Sir Faroz Khan Noon became an envoy in the Middle East. The cabinet and other appointment to such a high political office reflected a paucity of talent among the politicians.

The position of Muhammad Ali Jinnah as Governor General was unique and he could not obviously fit into the traditional pattern of a ceremonial head of the state. He was indeed above any office, which could be offered. As a leader who had successfully led the Muslims nationalist movement to achieve a homeland, he personified the new state and was a symbol of its identity (Ibid: p.87)

On June 9, 1947 he had remarked that he had done his job and appeared reluctant to assume any office (Op.cit:1969). The long struggle had apparently taken a toll of his fading health. The powers as envisaged in the Act of 1935, were supposed to be exercised by a cabinet through parliamentary convention the cabinet was answerable to the legislature, now the same powers to be exercised by Mr. Jinnah. Affected by the plight of the refugees he took the portfolio of the ministry of refugees under his own control. The Constituent Assembly elected him as its first President and also appointed its legal advisor.

However, under the parliamentary system of government, the Prime Minister, with his Council of Ministers, becomes the real executive. In the case of Pakistan, the Prime Minister and his Council of Ministers failed to play their appropriate role as they depended more on the father of the nation. It is also one of the reasons the “Mr. Jinnah ‘personified’ the new state of Pakistan and served in triple capacity as President of the Muslim League, Governor-General of Pakistan, and President of the Constituent Assembly” (Op.cit:1999). During his brief tenure, Jinnah’s decisions became obligatory of the new state of Pakistan. Muhammad Ali Jinnah exercised more influence and powers than those which were officially given his office. Cabinet rarely functioned without his directives. Following his death, Khawaja Nazimuddin became the Governor-General of the country. But it may be noted that the capability and authority of Khawaja Nazimuddin were not a match with the prestige and powers as exercised by Mr. Jinnah. Liaquat Ali Khan tried to improve his authority and prestige of his office and succeeded in establishing parliamentary conventions. The powers of the Governor-General still remained. The powers exercised by Mr. Jinnah were therefore dispersed among the Governor-General, President of the Constituent Assembly and the Prime Minister, (Callard: 1968 p.81) states that the dispersal of the power of the Quaid-e-Azam was to have important consequences in 1953 and 1954. The evidence suggests that Liaquat Ali Khan was at first able to control the government, the Muslim League and the constituent Assembly, but nevertheless failed to reach consensus on a constitution. Consequently, political opposition, however ineffective, began to grow as the provinces protested against the central government for its failure to solve the various problems faced by the country. With the assassination of Liaquat Ali Khan in 1952, Khawaja Nazimuddin left the

office of the Governor-General and assumed the responsibilities of Prime Ministership. He retained most of the members of the previous cabinet, but included Choudhury Mohammad Ali as finance Minister. Since Nazimuddin an old Muslim League was a Bengali, the new Governor-General Ghulam Mohammad, feared that Nazimuddin might triumph in an electoral contest and would eventually oust him from the office.

Though Nazimuddin was, a man of piety, and integrity he was incapable of imposing his will upon the members of the cabinet, who had long experience in administration and politics. Moreover, Nazimuddin failed to deal effectively with the language riots in East Pakistan in 1952 and the Ahmadiya riots in Punjab in 1953. Language riots took place when government of Pakistan declared Urdu as country's national language. The Governor-General dismissed Nazimuddin and his cabinet by accusing him of being incapable of solving Pakistan's numerous problems (Ibid: p.83). Thus after dismissing one Bengali, the Governor-General invited another Bengali, Mohammad Ali Bogra Pakistan's Ambassador to the United States, to become Prime Minister. Mohammad Ali assumed the office of the Prime Minister and retained six members of the outgoing ministry in his cabinet. Though not a leader of a party, he was the personal choice of the Governor-General. Such an action by the Governor-General indicated a fundamental lack of power and leadership in the Muslim League. From this period onwards, the Governor General, and later the President, emerged as the country's most powerful officer. It may be noted that the Muslim League did not challenge the action of the Governor-General despite its overwhelming majority in the Constituent Assembly. The House had two major parties, Muslim League, which held 60 seats, and the Congress, which held 11. Even the Constituent Assembly, consisting mainly of lawyers, landlords, business and the liberal professions, did not challenge the new government. Technically speaking, it was still a government of the Muslim League, which filled almost every Muslim seat in the central and provincial legislatures, but in reality this was not so. The Muslim League was split in many directions and could not act on future action. The defeat of the East Pakistan Muslim League in March 1954 elections showed that it had repudiated the leadership of the Muslim League.

In September 1954 the Constituent Assembly adopted legislation to ensure that the Governor-General would act with the advice of the cabinet only and the

cabinet must be selected from the members of the national legislature. Sensing that his powers would be reduced by this legislation, the Governor-General issued a proclamation dissolving the Constituent Assembly. The proclamation said that the government had failed to control political crisis which had been prevailing throughout country and causing constitutional break down. Governor-General declared a state of emergency throughout Pakistan. (Op.cit: 1999)

A new government was formed with Mohammad Ali Bogra as the Prime Minister. Maulvi Tamizuddin Khan challenged this act of the Governor General of dissolving the Constituent Assembly. He also filed petitions of mandamus and a quo warranto in the Sind Chief Court against the members of the cabinet who did not qualify to become Ministers under Section 10 (fourth Amendment) of India Act of 1935. The Sind Chief court decided in favour of Maulvi Tamizudin Khan. On appeal, however, the Federal Court of Pakistan upheld the decision of Governor-General. However, the court ordered the Governor –General to summon the Second Constituent Assembly which would be elected indirectly by members of the provincial legislatures. The members elected to the Assembly were divided into approximately 12 groups, of which the Muslims League was the largest, though it failed to command an absolute majority (see Table 2.1). It is also noted that the Second Constituent Assembly consisted mainly of lawyers, landlord, retired officials, industrials, and businessmen. Others who represented in the Assembly included newspapers proprietors, journalists, ulemas (religious leaders) teachers, trade unionists, tribal chiefs and rulers of Princely seats. The landlords were dominant force in West Pakistan because of the highly concentrated pattern of land ownership. By contrast members of the legal profession were dominant force in East Pakistan. The first session for the Second Constituent Assembly was held in Muree in July 1955. Since Ghulam Mohammad was ill, Iskander Mirza succeeded him in August 1955. Meanwhile the various groups who formed the Assembly were engaged in seeking alliances and a coalition with Muslim League and the United Front. This was formed with Chaudhri Mohammad Ali as a Prime Minister, replacing Mohammad Ali Bogra.

Table 2.1

PARTY ALIGNMENT IN THE SECOND CONSTITUENT ASSEMBLY		
POLITICAL PARTY	1955	1957
Republican Party	-----	21
Muslim League	33	15
United Front	16	-----
Awami League	13	13
Krishak Sramik	-----	06
National Awant Party	-----	04
Noon Group	03	-----
Nizam-e-Islam	-----	03
Congress	04	04
Scheduled Caste Federation	03	02
United Progressive Party	02	01
Independents	06	09
Vacant	00	02
TOTAL NO OF SEATS	80	80

Source: Mushtaque Ahmed, *Government and politics in Pakistan*. (Karachi: Pakistan Publishing House 1967), p.114

This new coalition government, now in power at the center was one in which East Pakistan was well represented, and it quickly sought to frame a constitution for Pakistan. During the period of this coalition government, the Constituent Assembly adopted a constitution and Iskander Mirza became the first President in March 1956. During the first two years of his presidency four Prime Minister held office and there were several coalition cabinets. Table 2.2, Table 2.3 and Table 2.4, show the persons who held the office of the Governor-General, President, and Prime Minister during 1947-88.

TABLE 2.2

LIST OF GOVERNOR GENERALS TILL 1956		
GOVERNOR GENERALS	TENURE	
M.A. Jinnah	August 1947	September 1948
Khawaja Nazimuddin	September 1948	October 1951
Ghulam Mohammad	October 1951	September 1955
Iskander Mirza	September 1955	March 1956

Source: Hamid Yusuf, 1999, *Pakistan: A Study of Political Development*, (Lahore: Sange Meel Publications)

Table 2.1 shows that the Muslims League, which was defeated in East Pakistan in elections of 1954, became a minority party in the constituent assembly when many of its members joined other parties. By September 1956, the Muslim League was ousted from the central cabinet and from two provincial cabinets. It was replaced by the Republican Party, which for several years controlled West Pakistan and became a major participant in the central cabinets. For about a year the Republican Party shared power with the Awami League (see Table 2.1). But a split between the Republican Party and the Awami League on the issue one unit led to a new short-lived coalition headed by the Muslim League. The cabinet fell when the Republican Party withdrew its support because it did not agree with the Muslim League on the separate electorate issue.

In December 1957, another government was formed with Republican Leader Malik Faroz Khan Noon as Prime Minister. He was supported by a coalition of Awami League, the Krishak Sramik Party (the party of peasants and laborers) and his own Republican Party. But the Awami League and the National Awami party did not join the cabinet. As the result of the transfer of allegiance from one party to another, the parliamentary government at the centre was on the verge of collapse, and the situation in the provinces was not much better. Thus, one would argue that from 1947 until the coup in October 1958, Pakistan experienced a high degree of political instability, which was caused by the shift of allegiance from one party to the other.

TABLE 2.3

LIST OF PRESIDENTS		
PRESIDENTS	TENURE	
Iskander Mirza	March 1956	October 1958
Mohammad Ayub Khan	October 1958	March 1969
General Yahya Khan	March 1969	December 1971
Zulfiqar Ali Bhutto	January 1972	August 1973
Ch. Fazal Ilhai	August 1973	July 1977
General Zia ul Haq	January 1985	August 1988

Source: Hamid Yusuf, 1999, *Pakistan: A Study of Political Development*, (Lahore: Sange Meel Publications).

Both politician and heads of state were thus responsible for the break-up of party solidarity. For one example, Ghulam Mohammed dismissed the Nazimuddin

cabinet in 1953 even though he held the confidence of the majority party in the legislature. Similarly, Iskander Mirza encouraged the formation of a dissident group under the name of the Republican Party the Muslim leaguers in 1956. In addition, the powers permeating central interference in provincial politics were undeniable. Finally, the cabinet used the emergency powers given to the head of the state for partisan purposes. For example, Prime Minister Suhrawardy imposed emergency rule in West Pakistan in 1957 with a view to preventing the Muslim League from forming the provincial government (1959. p31).

Conclusion

It can be summed that the years before the October Revolution of 1958 were years of instability, chaos and disorder, which culminated in the declaration of martial law by President Iskander Mirza. President Mirza appointed General Muhammad Ayub Khan as the Chief Martial Law Administrator. Within three days of the declaration, Ayub Khan was able to secure Mirza's resignation and became head of the State and government.

If the Constitution was framed early the true essence of Federalism be implemented but only because Pakistan was surrounded by multiple problems ever since it was born, ethnic issues, minorities, East Pakistan, military intervention and non-serious attitude of politicians gave Pakistan major setbacks and the country saw more Constitutions one after another.

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