

## Comparison between 1956 and 1962 Constitution of Pakistan

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### ABSTRACT

*When Pakistan came into being on 14<sup>th</sup> of August 1947, the existing India Act of 1935 was adopted by Pakistan with some amendments as interim constitution of Pakistan. The temporary arrangement was made to run the affairs of newly independent state which required a permanent constitution on emergent basis. The Muslim community had mainly trusted in the Muslim League, because of the reason that Muslim League was loyal to establishing an Islamic state based on the principle of Islam. But unfortunately, the members of Constituent Assembly were not in favour of this spiritual tendency. The founder of Pakistan Quaid-e-Azam Muhammad Ali Jinnah repeated many time that constitution of Pakistan shall be framed according to the Quran and Sunnah.<sup>1</sup>*

**Keyword:** Constituent Assembly, 1956 Constitution, Comparison.

### 1. INTRODUCTION

The prominent clusters of Ulema all over the country joined together and inspired the public opinion in favour of the formation of an Islamic Constitution. In this regard, the masses get together in large numbers and shaped a gigantic popular movement in favour of the Islamic state. The major objective of the association was that Constituent Assembly should follow the model of “Objectives Resolution” that was adopted on 12<sup>th</sup> March 1949. The decision was presented by Nawabzada Liaquat Ali Khan the first Prime Minister of Pakistan in the cabinet for considerations and approval.<sup>2</sup>

### 2. OBJECTIVES RESOLUTION

- 2.1 **Sovereignty of Allah:** The sovereignty over the entire universe only belonged to Allah Almighty alone and authority which He has delegated to the State of Pakistan, through its people.
- 2.2 **Democracy:** Power to rule in the country has been delegated by Allah Almighty to the people and they should exercise the power strictly in accordance with the divine injunctions. The authority to rule in the country will be exercised through the representatives of the people.
- 2.2 **Islamic Conduct of State:** Islamic principles of democracy, freedom, tolerance and social justice shall be observed.
- 2.3 **Promotion of Islamic way of Life:** The encouragement of Islamic way of life will be given to the Muslims in order to facilitate the lives of people in

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the light of teachings of Islam.

- 2.4 **Safeguard of Minority Rights:** The non-Muslims will be provided all fundamental human rights, particularly the rights of their religious and intellectual development.
- 2.5 **Independence of Judiciary:** The functions of Judiciary will be allowed independently in the light of teaching of Islam.
- 2.6 **Safeguarding Fundamental Human Rights:** To protect the fundamental rights of every citizen in Pakistan, in the shape of freedom, equality, and ownership of property, freedom of expression, faith worship and formation of associations shall be exercised for the promotion of their rights.

### **3. SIGNIFICANCE AND IMPACT**

The basic and leading problem for the Constituent Assembly was that to decide the nature of State, which has already been decided by the objectives resolution on the following pattern:

- 3.1 It was clearly mentioned in the constitution that Pakistan shall be an Islamic Republic.
- 3.2 For the first time, the government of Pakistan officially announced [Islamic social order in the country] in the light of objectives resolution and stated that [Islamic injunctions shall be served as the guiding principles to constitution of Pakistan].
- 3.3 The objectives resolution displayed national consensus and it was approved by the Ulema of all Schools of thought in Pakistan.
- 3.4 The decision was made a permanent part of the preface in all the successive constitutions of Pakistan.
- 3.5 The preamble is not just like an adjustable part of the constitutional documents; actually, it was the recommendations.

It was the result of Constituent Assembly to give the legal position of objectives resolution. The objectives resolution was to become a permanent part of Constitution of Pakistan under Article 2(A).<sup>3</sup>

### **4. 1956 CONSTITUTION OF PAKISTAN**

The Constitution of 1956 was based on India Act of 1935. The foundation of constitution was laid down by Constituent Assembly on 12<sup>th</sup> March, 1949. The Constituent Assembly passed a resolution on the “Aims and Objectives of the Constitution” commonly known as the Objectives Resolution. The resolution was presented by Liaquat Ali Khan on 07<sup>th</sup> March 1949. He announced that the future constitution of Pakistan would not be formulated entirely on European pattern, but on the basis of ideology and democratic faith of Islam. The resolution has been become the part of the Constitution of Pakistan under Article 2(A). After the nine (09) years of struggle, the Constituent Assembly passed the new Constitution of Pakistan on 29<sup>th</sup> February 1956.<sup>4</sup>

The 1956 Constitution of Pakistan was enforced in the country on 23<sup>rd</sup> March 1956. The Constitution was a written and flexible. It explained the fundamental rights of the individual. It included of 234 articles, which were divided into thirteen (13) parts and six (6) schedules. The Constitution proposed a parliamentary form of government.<sup>5</sup>The main composition of the government was similar to the One Unit in the Centre. The pattern of government was the same as adopted by the government of India. There were federal, provincial and concurrent lists of subjects. There were thirty (30) items in the federal list, 94 items in the provincial list and 19 items in the concurrent list. The federal legislation got preference over the provincial legislation regarding the concurrent list. The residuary powers were rested in the provinces. In case of conflict between the centre and provinces or between the two provinces, the Chief Justice of Supreme Court of Pakistan to worked as arbitrator.

The Constitution of 1956 provided a parliamentary form of government in the country, where executive power remained with cabinet that was collectively responsible to the legislature. The cabinet was presided over by the Prime Minister of Pakistan. The constitution declared that there would be only one house of parliament known as the National Assembly and equal opportunity will be given to the East and West Pakistan. The title of Governor General was replaced with the title of President. The President of Pakistan was to be elected by the Electoral College that composed of members of National and Provincial Assemblies.<sup>6</sup>

## 5. SALIENT FEATURES

- 5.1 **Written Constitution:** The constitution of Pakistan was a written and lengthy document.
- 5.2 **Rigid Constitution:** The constitution could only be amended through a proper system through at least a two third majority of the parliament.
- 5.3 **Islamic Republic of Pakistan:** The name of the country was adopted as “Islamic Republic of Pakistan”.
- 5.4 **Objectives Resolution:** The Objectives Resolution was included as introductory part of the constitution.
- 5.5 **Federal System:** The constitution provided for a federal system of government in the country and power divided between the centre and provinces.
- 5.6 **Unicameral Legislature:** The unicameral legislature would consist of a single house. The equal representation was given to East and West Pakistan in the National Assembly. The National Assembly consisted of 300 members and 150 members were chosen from each wing.
- 5.7 **Parliamentary System:** A parliamentary form of government was approved. In this form of government, the President of Pakistan was the head of the State and Prime Minister was the head of government.
- 5.8 **President:** The president was required to be a Muslim of at least forty five (45) years age. According to constitution, he could declare a State of

emergency in the country in case of internal or external threat. Constitutionally, he has authorized to appoint the Governors of provinces, the Judges of the Supreme Court, Auditor General and Advocate General of Pakistan.

- 5.9 **Prime Minister:** He was to be the leader of parliamentary party and indirectly elected for five years. He could choose his cabinet from the members of the National Assembly. The cabinet was answerable to the assembly.
- 5.10 **Provincial Autonomy:** Provincial autonomy was confirmed in the constitution on a large scale.
- 5.11 **Free Judiciary:** An independent judiciary would be established in the country. The Supreme Court of Pakistan shall interpret the constitution and advise the state whenever required.
- 5.12 **Fundamental Rights:** The fundamental rights included freedom of movement, freedom of speech and expression, freedom to choose profession and freedom to confess religion, right to life, liberty and property.
- 5.13 **Language:** Urdu and Bengali were declared as national languages.

## 6.SIGNIFICANCE AND IMPACT

The formation of 1956 constitution of Pakistan was based on India Act of 1935. The Constituent Assembly passed the constitution on 29<sup>th</sup> February 1956. The constitution allowed the parliamentary form of government and enforced in the country on 23<sup>rd</sup> March 1956. The constitution was written and flexible. The constitution could be changed at least two third majority of the parliament. The causes for the failure of constitution was that there were a political conflict between head of state and head of government and such type of political conflict has time and again led the country to political anarchy. The constitution of 1956 was abrogated on basis of political disorder. As far as constitution of 1956 was concerned, it consisted of some positive characteristics, but such political anarchism caused its abrogation.

## 7. ISLAMIC PROVISIONS

- 7.1 **Islamic Republic of Pakistan:** The name of the country was approved as “Islamic Republic of Pakistan”.
- 7.2 **Objectives Resolution:** Objectives Resolution was included as preamble part to the constitution.
- 7.3 **Islamic Law:** No law would be passed against the teachings of the Islam.
- 7.4 **Muslim President:** The President of Pakistan would be a Muslim.
- 7.5 **Religious Freedom:** Religious Freedom to allow, practice and propagate any religion and the right to establish, maintain and manage religious institution.
- 7.6 **Teaching of the Holy Quran:** The teaching of Holy Quran to be made compulsory for all Muslims.

- 7.7 **Slavery and Forced Labour:** The slavery and forced labour was prohibited in Islam.
- 7.8 **Special Taxes:** No person shall be forced to pay any special taxes whose proceeds were to be spent on the propagation of any religion.
- 7.9 **Unity among the Muslim Countries:** The unity among Muslim countries was required to strengthen the bonds of relations with other Muslims countries.
- 7.10 **Organization for Islamic Research:** The President of Pakistan was required to set up an organization for Islamic research and teaching in advanced studies and instructions to assist in reconstruction of Muslim society on truly Islamic basis.

## **8. SIGNIFICANCE AND IMPACT OF ISLAMIC PROVISION**

The Islamic provisions were become the essential part of State policies. According to these principles Pakistan will be declared an Islamic State and to be known Islamic Republic of Pakistan. However, Islam was not made State religion of Pakistan. The head of State was to be a Muslim. No law shall be passed against the teaching of Islam. The National and Provincial Assemblies were directed to check the legislative process with Islamic law. The riba will be abolished as early as possible. The State would be responsible for the socio-economic well being of the people. The head of State must be built friendly relations with other Muslims countries.

## **9. ABROGATION OF 1956 CONSTITUTION**

On 7<sup>th</sup> October 1958, President of Pakistan IskanderMirzaabrogated the 1956 constitution of Pakistan, and imposed martial law in the country. General Muhammad Ayub Khan was appointed as Chief Martial Law Administrator and Aziz Ahmad as Secretary General and Deputy Chief Martial Law Administrator. However, after the passage of three weeks General Ayub Khan overthrew the government of IskandarMirza in October 27, 1958. He assumed the charge of the President of Pakistan.Later on, 1962 Constitution of Pakistan was formulated under the government of General Muhammad Ayub Khan<sup>7</sup>.

## **10.1962 CONSTITUTION OF PAKISTAN**

On 17<sup>th</sup> February 1960, General Muhammad Ayub Khan appointed a commission to prepare the draft of new constitution. The commission was headed by the former Chief Justice of Pakistan, Muhammad Shahab-ud-Din and ten (10) other members. Five (05) members were equally chosen from each Wing of Pakistan. The member's belonged to different institutions including the retired judges, lawyers, Industrialists and landlords.On 6<sup>th</sup> May 1961, the commission presented its draft to General Muhammad Ayub Khan President of Pakistan.<sup>8</sup>

The draft of 1962 constitution was thoroughly assessment by General Muhammad AyubKhan.The cabinet has approved the new document of Pakistan. Subsequently the draft of constitution was passed by the President of Pakistan on

11<sup>th</sup> March 1962. On 08<sup>th</sup> June 1962, the new constitution of Pakistan was enforced in the country. The constitution comprised 250 articles, twelve (12) parts and three schedules.<sup>9</sup>

- 10.1 Pakistan was named as “Republic of Pakistan”.
- 10.2 1962 constitution of Pakistan provided for a federal system of government in the country. The procedure of parity between East and West Pakistan was employed.
- 10.3 The constitution provided the presidential form of government.
- 10.4 The responsibility of authority among the centre and provinces was clearly stated in the constitution. The central legislation was responsible of one house known as the “National Assembly”.
- 10.5 There were 156 members of the National Assembly. The equality between the two wings of Pakistan was upheld strictly.
- 10.6 The President must be Muslim and not less than 35 years old. He must be qualified to contest the election of National Assembly and to be elected indirectly by an Electoral College in accordance with the provisions as mentioned in the constitution.
- 10.7 The Electoral College fixed the limit of 80,000 Basic Democrats (B.D), which were equally distributed between two provinces.<sup>10</sup>
- 10.8 The term of President of Pakistan was fixed for five (05) years.
- 10.9 The appointment and removal of Governors and Ministers was to be made by the President of Pakistan.
- 10.10 The constitution of 1962 authorized the President of Pakistan fully to promulgate the ordinance.
- 10.11 A significant feature of impeachment of President of Pakistan was that if the resolution for removal of President fails to obtain one half of the total number of votes in the National Assembly then opposition would cease to keep the membership of the Assembly.
- 10.12 There was no restriction of religion for a person holding the office of the Speaker of National Assembly.
- 10.13 Urdu and Bengali were recognized as national languages.
- 10.14 If the president of Pakistan resigns from his position or vote of no-confidence passes against him then according to constitution the Speaker would act as the president of Pakistan till the selection of new president.
- 10.15 Under these special circumstances, a non-Muslim might get the chances to be act as an Acting President of Pakistan.
- 10.16 1962 constitution of Pakistan provided the mode of election for National and Provincial Assemblies for a term of five years.
- 10.17 The National Assembly was fully empowered to legislate for the central subjects.
- 10.18 The procedure of the Provincial Assembly was similar to the National Assembly.

## 11. SALIENT FEATURES

- 11.1 **Written Constitution:** The constitution of 1962 was a written document. It consisted of five schedules and 250 articles.
- 11.2 **Rigid Constitution:** It was a rigid constitution of the country. It can only be amended through a particular process. If an amendment to the constitution was passed by at least two third majorities of the parliament and after confirmation of the President, it would become a part of law.
- 11.3 **Federal System:** A federal system of government was introduced in the country. It consisted of central and provincial governments that comprising to East and West Pakistan.
- 11.4 **Presidential Form of Government:** In presidential form of government the President was the executive head of the country. He was empowered to nominate the Ministers of his cabinet.
- 11.5 **Unicameral Legislature:** The legislature would consist of a single house. Both the wings of the country were given equal representation in the National Assembly. The National Assembly consisted of 300 members. The 150 members were taken from each wing.
- 11.6 **Indirect Method of Election:** The President was elected by an Electoral College comprising 80,000 Basic Democrats that were equally distributed between the two provinces.
- 11.7 **Provincial Government:** There were two provincial governments. Each of them was headed by a Governor. The Governor enjoyed the veto powers in the province as president enjoyed the power in the centre. The Governor was empowered to appoint Provincial Ministers with the approval of President of Pakistan.
- 11.8 **Provincial Legislature:** Each Province has provided a legislature. Originally, it consisted of 150 members. However, later on the strength of members was increased to 218.
- 11.9 **Powers of President:** The 1962 Constitution of Pakistan delegated the powers to President for a five (05) year term. He was authorized to promulgate ordinances and use his veto power against legislated laws. The laws could only be enforced with two thirds majority of the National Assembly. However, the President was not empowered to dissolve the Assembly.
- 11.10 **Restrictions to the President:** The President was not permitted to hold any office of profit in the service of Pakistan but not prevented from holding and managing private property.
- 11.11 **Islamic Law:** No Law would be passed against the teachings of Quran and Sunnah.
- 11.12 **Fundamental Rights:** The Constitution of 1962 laid down fundamental rights of the citizen i.e. free speech and expression, freedom to choose profession and freedom to exercise religion.

- 11.13 **Role of Judiciary:** The judiciary was responsible for the interpretation of laws and executive orders in the light of principle embodied in a written constitution.
- 11.14 **Supreme Judicial Council:** A supreme judicial council consisted of two judges of Supreme Court; Chief Justice of Supreme Court and two judges of high courts.

## 12. ISLAMIC PROVISION

- 12.1 The introduction of 1962 Constitution of Pakistan was based on the Objectives Resolution.
- 12.2 The constitution defined the name of Pakistan as “Islamic Republic of Pakistan”.
- 12.3 No law shall be passed which is repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought in compliance with the Quran and Sunnah.
- 12.4 Only a Muslim could be qualified for the election of President.
- 12.5 Teaching of Quran and Islamic Study was made compulsory for the Muslims students of Pakistan.
- 12.6 Proper system of Zakat, Waqf and Mosques was adopted.
- 12.7 The Islamic provision introduced an Advisory Council of Islamic Ideology which was to be appointed by the President. The purpose of this Council was to make recommendations to the government which would allow and encourage the Muslims of Pakistan, to lead their lives in accordance with the doctrine and concepts of Islam and to examine all laws in force with a view to bring them into uniformity.
- 12.8 The state should attempt to strengthen the bonds of unity among the Muslims countries.
- 12.9 There shall be an Institute to be known as “Islamic Research Institute” and shall be established by the President of Pakistan. At present, the Institute is the constituent unit of International Islamic University, Islamabad.<sup>11</sup>
- 12.10 The function of the Islamic research Institute was that to carry out Islamic research and teaching of Islam for the transformation of Muslim society on a truly Islamic basis.

## 13. SIGNIFICANCE AND IMPACT

1962 constitution of Pakistan provided the presidential form of government. The constitution was enforced in the country in June 08, 1962. According to constitution president was become the head of state and head of the government. The president must be Muslim and not less than 35 years old. He must be qualified to contest the election of National Assembly and to be elected by an Electoral College. The Electoral College fixed the limit of 80,000 Basic Democrats, which were equally distributed between to provinces. The constitution authorized the president of Pakistan fully to promulgate the ordinance. A significance aspect of impeachment of president was that if the resolution for removal of president not succeeded to obtain one half of the total

number of votes in the National Assembly then opposition would cease to keep the membership of the assembly. The other demerit of 1962 constitution was that there was no restriction of religion for a person holding the office of the speaker of National Assembly. Under these exceptional situations a non-Muslim might get the chance to be an acting president of Pakistan till the completion of election procedure of new president.

#### 14. ABROGATION OF 1962 CONSTITUTION

1962 Constitution of Pakistan was abrogated by General Muhammad Ayub Khan, President of Pakistan and martial law was imposed in the country on 25<sup>th</sup> March 1969. The power was handed over to General Muhammad Yahya Khan, Army Commander-in-Chief. After assuming the charge of presidency, General Yahya Khan, agreed to popular demands by abolishing the one unit system in West Pakistan and planned for general elections in the country on the principle of one man one vote.

#### 15. COMPARISON BETWEEN 1956 AND 1962 CONSTITUTIONS OF PAKISTAN

The 1956 constitution of Pakistan was based on India Act of 1935 and allowed the parliamentary form of government<sup>12</sup> whereas 1962 constitution of Pakistan provided the presidential form of government<sup>13</sup>. The constitution of 1956 recognized the model of one Unit. The seats were equally divided between the two Wings of the country, whereas 1962 constitution provided the federal form of government with the principle of parity between East and West Pakistan. Both the provinces would run their separate provincial governments in the country. In this form of government, the president of Pakistan was the head of the State and head of the government.<sup>14</sup>

The structure of constitutions is as under:

| Category            | 1956  | 1962  |
|---------------------|---|---|
| Form of government  | Parliamentary form of government.                                     | Presidential form of government.  |
| Referendum          | Did not introduce any system of referendum in the country.            | Introduced the system of referendum in the country.   |
| Mode of Election    | The direct system of election was approved under the adult franchise. | The indirect system of election was allowed. According to this system only 80,000 Basic Democrats were given the right to cast their votes in the presidential election. Later on the Eighth amendment increased the number from 80,000 to 120,000. |
| Islamic Institution | No Islamic institution was founded.                                   | Originated the two Islamic institutions in the country. One is the Islamic Ideology Council and second is the   |

|                          |   |  |
|--------------------------|---|--|
|                          |   | Islamic Research Institute.                                    |
| Supreme Judicial Council | No supreme judicial council was established in the country.                 | Formed a separate judicial council in the country.             |
| Executive Powers         | Most of the executive powers rested with the Prime Minister.                | Most of the executive powers to be exercised by the President. |
| Lists of Subjects        | Three (03) lists of subject's i.e. federal, provincial and concurrent list. | Two (02) lists of subject's i.e. central and provincial list.  |
| Presidential powers      | The reasonable power provided to the president.                             | The much more powers allowed to the president.                 |
| Fundamental rights       | Provided the fundamental rights.  | Ignored the fundamental rights.                                |
| Islamic provisions       | The Islamic provision was included.   | The Islamic provision was included.                            |

## 16. CONCLUSION

Before 1956 the political system of Pakistan was remained under the great hold of feudal or landlords in centre and provinces. It is mentioned that most of the political parties were depended on feudal and they provided the money to voters for the fake of their own interest. These people were dominated in politics in Pakistan political history. Quaid-e-Azam Muhammad Ali Jinnah was also lawyer and great leader of sub-continent Muslims. But after the death of founder of Pakistan there was no young leadership in Pakistan, who had played the significant role in the political stability of Pakistan. According to 1956 constitution of Pakistan, the head of state had no role to play in politics. In Pakistan the democratic era that consisted from 1951-1956 is called the weak political period of Pakistan. Actually these heads of state violated the rule and regulation and also involve in the political activities. They also involved to makes unstable government at centre and in provinces. There are numerous causes for the failure of democratic system in Pakistan from 1947-1956 like weak political parties, dishonest leadership, political and religious conflicts and bureaucracy that created the problem for every government.

In 1956 constitution of Pakistan was laid down on the pattern of government of India Act of 1935. The first Constituent Assembly was elected in 1947 and passed the resolution on 12<sup>th</sup> March 1949, in the name of Objectives Resolution. The resolution was presented by Liaquat Ali Khan, the then Prime Minister of Pakistan. After the nine (09) years of struggle, the Assembly passed the new constitution of Pakistan on 29<sup>th</sup> February 1956. The new Constitution was enforced in the country on 23<sup>rd</sup> March 1956. The constitution of 1956 was a written and a flexible document. It contained of 234 articles, divided into thirteen (13) parts and six schedules. It advocated the fundamental rights of the

individual. However, the president had the power to suspend these rights in case of an emergency. The Constitution provided the parliamentary form of government with a unicameral legislature. The main component of the constitution was similar to the one unit in the centre. The constitution recognized the concept of One Unit and seats were equally distributed between the two wings of the country. For the first ten (10) years, five additional seats were reserved for women for each wing. The Constitution of 1956 was not lived long as on October 7, 1958, martial law was promulgated and constitution was abrogated. After the passage of three weeks General Muhammad Ayub Khan overthrows the government of Iskander Mirza in October 27, 1958. Soon after coming to the power, the new military government promised that they would carry out reforms in the entire government structure. He started land reform policy in the West Pakistan. The land reforms included the reduction of land ceiling to 1,000 acres for non-irrigated land and 500 acres for irrigated land and with ownership rights were granted to the tenants. In 1960, Ayub Khan appointed a Constitution Commission under the supervision of Justice Shah-ud-din. After a number of considerations, the Commission submitted its report on 6<sup>th</sup> May, 1961. The draft of 1962 Constitution of Pakistan was approved by General Muhammad Ayub Khan on March 1, 1962. The new constitution of Pakistan was implemented in the country on June 08, 1962. The Constitution consisted of 250 articles divided into twelve (12) parts and three schedules. The 1962 constitution of Pakistan introduced the Presidential form of government. The President should be a Muslim not less than 35 years age. The President is the head of state as well as the head of government. According to 1962 Constitution of Pakistan, the executive was not separated from the legislature. The President exercised the veto power in the legislative affairs and could even veto a bill passed by the National Assembly with a two third majority. General Ayub Khan suspended the Martial Law and proclaimed the 1962 Constitution of Pakistan. But unfortunately in 1969 Martial Law was again imposed by Ayub Khan and constitution was terminated on 25<sup>th</sup> March 1969 and power handed over to General Yahya Khan. It is stated that before 1962, the political system of Pakistan was remained under control of military personal. Both the constitutions were very different in nature. However, there are some similarities among both constitution of Pakistan.

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