

ASSIGNMENT NO 1

LEGAL SYSTEM OF PAKISTAN

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Q - Critically analyze the Legal System of Pakistan in respect of 1956, 1962 and 1973 constitutions respectively. Which constitution would be effective in terms of providing justice and running smooth governance? What reforms would you like to suggest?

ANSWER

Constitution of 1956

Definition

“A body of fundamental principles or established or precedents according to which a state or other organization to be governed.”

Introduction:

The first constitution was introduced in Pakistan on 23rd March 1956 herein referred as the constitution of 1965⁽¹⁾

As we know the importance of the day in the history of Pakistan. You would recall that on 23rd March 1940 The Lahore Resolution was presented for approval in the annual session of Muslim League held at Lahore. So when this constitution was introduced it was decided that it should be introduced on such a day of historical importance. Therefore on 23rd March this constitution was introduced.

After nine years of efforts, Pakistan was successful in framing a constitution. The Constituent Assembly adopted it on 29th February 1956, and it was enforced on 23rd March 1956, proclaiming Pakistan to be an Islamic republic.

Details:

The 1956 Constitution of Pakistan had 234 articles and 6 schedules in which the whole constitutional framework and principles for governance and power management have been outlined. This Constitution describes Pakistan as Islamic Republic of Pakistan that is the official title of the Pakistani state. If we look at the provisions of the constitution we will find that there is an impact of Govt of India Act 1935 and the 1st Interim constitution of 1947 on this constitution. Some of the articles of the Indian Act of 1935 and the 1st Interim constitution have been incorporated in this constitution with some adjustments and modifications here and there and in certain cases language is very similar if not the same. So in a way there is some continuity from the previous document to this document. Although it is different from the previous one in most respects but there is some continuity.

Salient Features of Constitution of 1956

Following are Salient Features of Constitution of 1956

Written Constitution:

- Constitution of 1956 was a written and lengthy document. It had 234 Articles and 6 Schedules.

Rigid Constitution:

- The Constitution of 1956 was partly rigid and partly flexible. The method of Amendment was not difficult.

Objective Resolution:

- Objective Resolution was included as Preamble of Constitution of 1956.

Name of Country:

- Constitution of 1956 declared Pakistan as Republic of Pakistan.

National Language:

- Under constitution of 1956, Urdu and Bengali were made national Language.

State Religion:

- Islam was the state religion of Pakistan.

Islamic Provisions:

- Many Islamic Provisions were introduced in constitution of 1956 and decided that no law will be made which is against the injunction of Islam.

Fundamental Right:

- Fundamental Rights were given to the people of Pakistan according to constitution of 1956.

Rights of Minorities:

- Rights of minorities were provided in the constitution of Pakistan 1956. Minorities freely perform own religion festivals.

Uni-cameral Legislature:

- Constitution of 1956 was provided uni-cameral legislature which was based on just national assembly.

Federal System:

- Federal system was introduced in the country under the constitution of 1956.

Parliamentary Form of Government:

- Constitution of 1956 was introduced parliamentary form of Govt.

Freedom of Judiciary:

- Freedom of Judiciary was introduced in constitution of 1956. It was decided that Supreme Court would interpret the constitution.

Direct Election:

- In the Constitution of 1956 method of direct election was introduced.

Single Citizenship:

- There was only single citizenship in the constitution of 1956.

Directive Principles of the State Policy:

- The constitution laid down certain Directive principles of State policy for the Guidance of the Government. They would serve simply as ideals which the state should strive to achieve

Lengthy Constitution:

- The constitution of 1956 was a lengthy one. The reason for its being lengthy was that the framer not only framed the fundamental principles but administrative details were also given.

Causes of Failure of Parliamentary System under Constitution of 1956**Lack of Leadership:**

- Lack of Leadership played its role in the failure of the constitution of 1956. For Lack of Leadership, Pakistan never found its way to development of its parliamentary system. So, parliamentary system under first constitution of Pakistan failed.

Lack of Political Training:

- There was lack of political training in the country. Many political parties made without any political goal. Their fight against another for gain power. So, under these circumstances, development of parliamentary system under this constitution failed.

Unicameralism:

- The constitution of 1956 was introduced unicameral legislature. Through unicameral legislature create many problems for Pakistan and the result martial law was imposed in country.

Delay in Elections:

- Every political party try to gain power and no one was interested for elections. So, these circumstances, elections were delayed and such delay caused failure of parliamentary system under first constitution of Pakistan 1956.

Non Existence of Economic Equality:

- Nonexistence of economic equality in the country was a cause of failure of constitution. Constitution of 1956 described some principles for economic development of country, yet nepotism and feudalism checked the constitution from implementing those principles. Finally, parliamentary system under this constitution failed.

Drawbacks:

- The Bengalis were underrepresented in the National Assembly.
- The provisional autonomy was not given to provinces, and their demands were tried to be crushed by 'One Unit Scheme', while Dr Akhter Hamid Khan always said that the people should be given the right to solve their problems themselves.
- The first step towards institutionalizing army into politics was taken by giving the president the right to declare emergency at a time of so-called internal or external danger

ENFORCEMENT OF MARTIAL LAW:

On the night of 7 October 1958, the constitution was suspended by a Presidential proclamation. The ministers were dismissed; the legislatures dissolved and political parties were banned. The Commander in Chief of the Army, General Mohammad Ayub Khan, was appointed Chief Martial Law Administrator. The proclamation dwelt at length on the chaotic state of the country, lack of scruples on the part of parliamentary leaders, widespread corruption, irresponsible conduct of services and disorderly finances. Another announcement stated that the object of this 'take over' was to 'clear the messes' and prepare the country for more practicable form government. Three weeks experience of the new government showed, however, that Iskandar Mirza was still playing and trying to use the same weapons against his new colleagues that he had so successfully used

against the politicians. He was made to vacate office on 27 October 1958 and the Chief Martial Law Administrator, Mohammad Ayub Khan, became the President of the country.

Conclusion:

To conclude, it can be stated that constitution history of Pakistan reveals that there has been political conflict between head of state and head of government, and such political conflict has often led the country to political anarchy. And Constitution of Pakistan have been either abrogated or suspended in such political anarchy. As far as constitution of 1956 was concerned, it consisted of some positive characteristics, but such political anarchy caused its abrogation.

Constitution of 1956⁽¹⁾

https://www.researchgate.net/publication/344341529_Constitution_of_1956

Constitution of Pakistan of 1962

INTRODUCTION:

Pakistan became an independent state in 1947. The first document that served as a constitution for Pakistan was the Government of India Act, 1935. The first Pakistani Constituent Assembly was elected in 1947 and after nine years adopted the first indigenous constitution, the short-lived Constitution of 1956. In October 1958, President Iskander Mirza abrogated the constitution. Shortly afterwards General Ayub Khan deposed Iskandar and declared himself chief martial law administrator.

On 17 February 1960 Ayub Khan appointed a commission to report on the future political framework for the country. The Commission was headed by the former Chief Justice of Pakistan, Muhammad Shahabuddin, and had ten other members, five each from East Pakistan and West Pakistan, composed of retired judges, lawyers, industrialists and landlords. The report of the Constitution Commission was presented to President Ayub on 6 May 1961 (according to some writers report was presented on 29 April 1961) and thoroughly examined by the President and his Cabinet. In January 1962, the Cabinet finally approved the text of the new constitution. Herein referred as constitution of Pakistan 1962⁽²⁾, It was promulgated by President Ayub on 1 March 1962 and finally came into force on 8 June 1962. The Constitution contained 250 articles divided into twelve parts and three schedules. With the enforcement of this Constitution after 44 Months, Martial Law came to end.

Pakistan was named as **Republic of Pakistan**. The constitution provided for a federal system with the principle of parity between East Pakistan and West Pakistan. Both the provinces would run their separate provincial governments. The responsibilities and authority of the center and the provinces were clearly listed in the constitution. The central legislature had one house known as the National Assembly. There were 157 members of the National Assembly. The equality between the two wings were maintained in it.

The constitution provided for a presidential form of government, as opposed to the parliamentary form of government as under the constitution of 1956⁽¹⁾. The President, who had to be a Muslim not less than 35 years of age and qualified for election as a member of the National Assembly, was to be elected indirectly by an electoral college in accordance with the provisions outlined in the Constitution. The Electoral College formed by not less than 80,000 Basic Democrats, equally distributed between the two provinces. Under the Constitution of 1962, if the number of candidates for election to the office of President exceeded three, the Speaker of the National Assembly was to convene a joint session of the members of the National and Provincial

Assemblies to select only three candidates for election, the remaining candidates then would not be eligible. This screening was not applicable to a person who was holding the office of the president, so if the sitting president was also a candidate the number of candidates would be four.

The term of the President was five years to act as Head of State as well as Chief Executive, solely responsible for country's administration. Governors and ministers were appointed and removed by him. He was eligible to promulgate Ordinances and veto against legislated laws only override able by two-thirds of the National Assembly. However, the president was not empowered to dissolve the Assembly except at the cost of his office also. On a charge of violating the Constitution or gross misconduct, the President might be impeached by the National Assembly for which one-third of the total members of the National Assembly must give written notice to the Speaker for the removal of the President. The President was to be removed from office if the resolution for impeachment was passed by votes of not less than three-fourths of the Total members of the Assembly. A significant feature of the impeachment procedure was that if the resolution for removal of the President failed to obtain one-half of the total number of members of the National Assembly, the movers of the resolution would cease to be members of the Assembly.

There was no restriction of religion for a person holding the office of the Speaker of the National Assembly. Also, if the President resigned from his office or vote of no-confidence passes against him, according to the Constitution, the Speaker would act as the President of the State till the election of new President. Under these special circumstances, a non-Muslim might get the chance to be an acting President of Pakistan. The Constitution of 1962 provided for elections of the central and provincial legislatures for a term of five years. The members of the assemblies were elected by the Basic Democrats. The National Assembly was exclusively empowered to legislate for the central subjects. However, it could legislate on matters falling under provincial jurisdiction. The power to impose taxes was laid with the central legislature. The Assembly had to serve as a court in the cases of impeachment or conviction or to declare the President as incapacitated. It could amend the Constitution with a two-thirds majority. However, if the president's veto was overridden, he had the right to ask for the assent of the Electoral College. The procedure of the provincial assemblies was identical with that of the National Assembly. Urdu and Bengali were recognized as national languages.

Salient features of 1962 Constitution

Written Constitution:

- The Constitution of 1962 was a written document. It consisted of three schedules and 250 articles.

Rigid Constitution:

- A rigid constitution can only be amended through a particular process. If an amendment to the constitution is passed by at least two-third majority of the parliament then it becomes a part of law after authentication by the President.

Federal System:

- A federal system was introduced in the country. It consisted of a central government and two provincial government comprising East and West Pakistan.

Presidential form of Government:

- President was the head Executive of the nation. He was empowered to nominate the ministers of his cabinet.

Unicameral Legislature:

- It consist of single house.

Indirect Method of Election:

- The President was elected by an Electoral College comprising 80,000 Basic Democrats, equally distributed between the two provinces.

Provincial Governments:

- There were two provincial governments. Each of them was headed by a governor. He enjoyed powers in the province which the President enjoyed in the center. The Governor was empowered to appoint provincial ministers with the sanction of the President of Pakistan.

Provincial Legislature:

- Each province was provided with a legislature. It originally consisted of 150 members. However, later on this number was increased to 218.

Powers of President:

- According to the 1962 Constitution the President should be a Muslim with the term of 5 years. He was eligible to promulgate Ordinances and veto against legislated laws only override able by two-thirds of the National Assembly. However, the President was not empowered to dissolve the Assembly except the cost of his office also.

Restrictions to the President:

- The President was not allowed to hold any office of profit in the service of Pakistan but was not prevented from holding a managing private property.

Islamic Law:

- No Law would be passed against the teaching of Quran and Sunnah and the existing laws would be made Islamic in character.

Fundamental Rights:

- The constitution of 1962 laid down fundamental rights of speech and expression, freedom to choose profession and freedom to profess religion. With Regards to civil rights, familiar right such as the rights of life, livery and property were granted.

Role of Judiciary:

- The Judiciary was responsible for the interpretation of laws and executive orders in the light of the principles embodied in a written constitution.

Supreme Judicial Council:

- A supreme judicial council consisting of two judges of Supreme Court chief justice of Supreme Court and two judges of high courts was to be established.

Islamic provisions:

- The preamble of the Constitution of 1962 was based on the Objectives Resolution.
- The Constitution laid down simply that the state of Pakistan shall be an Islamic republic under the name of Islamic Republic of Pakistan'.
- According to the principles of policy, steps were to be taken to enable the Muslims of Pakistan individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam, and should be provided with facilities whereby they may be enabled to understand the meaning of life according to those principles and concepts.
- No law shall be enacted which is repugnant to the teachings and requirements of Islam as set out in the Qur'an and Sunnah and all existing laws shall be brought in conformity with the Qur'an and Sunnah.
- Only a Muslim could be qualified for the election as President.
- Teaching of the Quran and Islamic studies to the Muslims of Pakistan was made compulsory.
- Proper organization of Zakat, waqf, and mosques was ensured
- Practical steps were to be taken to eradicate what were seen as social evils by Islam, such as the use of alcohol, gambling, etc.
- A novel Islamic provision in the 1962 Constitution had introduced an 'Advisory Council of Islamic Ideology' to be appointed by the President. The functions of the Council was to make recommendations to the Government as to means which would enable and encourage the Muslims of Pakistan to order their lives in accordance with the principles and concepts of Islam and to examine all laws in force with a view to bring them into conformity with the teachings and requirements of Islam as set out in the Qur'an and Sunnah.

- There shall be an organization to be known as Islamic Research Institute, which shall be established by the President. The function of the Institute was to undertake Islamic Research and Instruction in Islam for the purpose of assisting in the reconstruction of Muslim society on a truly Islamic basis.
- The state should endeavor to strengthen the bonds of unity among Muslim countries.

Demise

The second martial law was imposed on 26 March 1969, when President Ayub Khan abrogated the Constitution of 1962 and handed over power to the Army Commander-in-Chief, General Agha Mohammad Yahya Khan. On assuming the presidency, General Yahya Khan acceded to popular demands by abolishing the one-unit system in West Pakistan and ordered general elections on the principle of one man one vote. This resulted in destruction of national unity (chiefly by politicians) and eventual the separation of East Pakistan.

CONSTITUTION OF PAKISTAN 1973

Shaheed Zulfikar Ali Bhutto's first achievement after coming into power was the preparation of a Constitution for the country. The most prominent characteristic of this Constitution was that it accommodated proposals from the opposition parties and hence almost all the major political parties of the country accepted it. The National Assembly approved the 1973 Constitution on April 10, 1973, and it came into effect on August 14 1973 and commonly known as constitution of Islamic republic of Pakistan 1973⁽³⁾. Shaheed Zulfikar Ali Bhutto took over as the Prime Minister of Pakistan from this date and Fazal Ilahi Chaudhry was appointed as the President of Pakistan.

The constitution of 1973 opens with a preamble. This is the preliminary part of the constitution in which broad features of the constitution have been explained. The first article of the constitution declares Pakistan as a federal republic to be known as the Islamic republic of Pakistan. Islam was declared as the state religion of Pakistan. Pakistan was to be a federation of four federating units, Punjab, Sindh, n. W. F. P. And Baluchistan.

The Constitution was parliamentary in nature. Article 41 of the Constitution lay down that the President was to be the Head of the State. The President was to be a Muslim above 45 years of age and was to be elected by a joint sitting of members of the Parliament for 5 years. He could be re-elected but could not hold office for more than two terms. The President was to act on the advice of the Prime Minister of Pakistan. The President could be removed on the grounds of physical or mental incapacity or impeached on charges of violating the Constitution or gross misconduct. The President was authorized to appoint the Attorney General, Judges of Supreme Court and High Courts, and the Chief Election Commissioners. In the Provincial Government, each province was to have a Governor appointed by the President. The appointment of Federal Ministers and Ministers of the State from amongst the members of the Parliament was at the Prime Minister's disposal.

The 1973 Constitution set up a bicameral legislature at the Center consisting of two Houses, the National Assembly and the Senate. The National Assembly consisted of 200 seats elected directly for duration of five years. The President on the advice of the Prime Minister could dissolve the National Assembly. The Senate was to consist of 63 members; each province was to elect 14 members. In the Provincial Government, each province will have a Governor appointed by the President. The Provincial Assembly for each province consisted of 240 seats for the Punjab, 100 seats for Sindh, 80 seats for N. W. F. P., and 40 seats for Baluchistan.

The 1973 Constitution provided a free and independent Judiciary. The Constitution guaranteed a right to the citizens; to be protected by law, and imposed two duties on them, loyalty to the Republic and obedience to the law. Any person who was found to abrogate or attempt or conspire to abrogate or subvert the Constitution was to be treated guilty of high treason. The Constitution conferred several kinds of fundamental rights to the people such as the right to life, liberty, equality and freedom of speech, trade and association. The Constitution also declared the laws inconsistent with or in derogatory to fundamental rights as null and void.

In light of the previous experience, the Constitution of 1973 was more Islamic in character than the previous ones. Emphasis was made to establish a real Islamic system in all aspects of social life. Keeping this objective in mind, more Islamic provisions were laid down in the Constitution of 1973. The Constitution recognized Islam as the religion of the country and enjoined upon the State to serve the cause of Islam and to bring all existing laws in conformity with Islam. The Islamic Advisory Council was set up to recommend ways and means to bring existing laws of the country in conformity with the Islamic principles.

The Constitution of 1973 remained in force for nearly four years. It was, however, suspended by General Muhammad Zia-ul-Haq, who imposed Martial Law in the country on July 5, 1979. However, General Muhammad Zia-ul-Haq who ran the country with Martial Law passed the Eighth Amendment in the Constitution in 1985. This Amendment empowered the President to dissolve the National Assembly under Article 58(2) b. This Article was later repealed by the Parliament during Nawaz Sharif's era through Thirteenth Amendment introduced on April 1, 1997. The Thirteenth Amendment was in turn repealed by the Legal Framework Order of 2002, which effectively restored the discretionary powers of the President enacted by the Eighth Amendment.

The constitution of Islamic republic of Pakistan 1973⁽³⁾

<https://bhutto.org/index.php/achievements/1973-constitution/>

COMPARATIVE ANALYSIS OF CONSTITUTIONS OF PAKISTAN

Pakistan has faced so many challenges in past years since independence. Pakistan lost the half territory referred as east Pakistan. Not because of any constitution but due to the intervention on nonpolitical forces such as army/ establishment. Since the independence Pakistan's founding fathers declare this a democratic state but as we all know that Pakistan was the colony of British India so after the partition the spy's worked to destabilize the Pakistan or to make pieces of this beloved country and this is still happening. Pakistan faced 1st upset when the founder/ 1st governor general of Pakistan Quaid E Azam Muhammad Ali Jinnah passed away due to lack of treatment of his disease, after that the 1st prime minister Liaqat Ali Khan embraced martyrdom in an assassination attempt and there are so many suspicious events like these are taken place and no agency can found the culprits, after that the wave started when Army generals start declaring the democratic leaders are traitors. They accused Mst Fatima Jinnah AKA Madre Millat and after her sheikh Mujeeb Ur Rehman and the Zulfuqar Ali Bhutto Shaheed and then Nawaz Sharif, Mst Benazir Bhutto and now Imran Khan. The nonpolitical intervention caused all the damage to this country. Establishment force political leader to take unconstitutional decisions and the accused them as money launderers and damage there credibility in public and then they manipulate them. However all the accountability institutions are in control of the military establishments and they let the politician to plunder the money or to do moral corruption such as given government contracts to incapable contractors who can give 50% of the total amount to the politicians who is in power. Military establishment is involved with all the contractors. However in the 1973's constitution the parliament has set the punishment under article 6 (high treason)

Even the judiciary cannot legalize the abrogation/ suspension of the constitutions. However this state is hijacked by the military establishment and no constitution can come in to effect as it should be, until the people of Pakistan enforce the constitution by their chosen representative, by legislating in the parliament. We have punishments defined for all the offences but the

incompatibility to prove the offence is shameful and no offenders will prove guilty that's why in our country there is no rule of law. There is no law for the powerful citizens of Pakistan. They can do any things, that's why land grabbing extortion rape murders and attempts to murders are so much common among people. Pakistan is blessed with the laws but the implementation of law by the executive are the main problem, this is not a new problem, bureaucracy has always disrupt the political process and accused the legislature for the destruction of this country. Indeed the 1973 constitution is better as compare to the other constitution but the executive and judiciary are still repeating their mistakes by not interpretation the constitution in the public interest.

The End