

Q3. Write short note on the following?

i) Imposition of Martial Law 1958

ii) Imposition of Martial Law 1977

answer :

i) Imposition of Martial Law 1958

On the night of 7th 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 27th October 1958 and the Chief Martial Law Administrator Mohammad Ayub Khan, became the President of the country. The Constitution Commission, appointed in 1960, recorded its considered opinion that the breakdown of the Constitution of 1956 was caused by the absence of organized political parties in the country and the want of probity among the politicians as a class.

The cabinet consisted of civilian as well as generals. The office of Prime Minister was abolished and Ayub Khan's cabinet began to function as a Presidential cabinet. In the courts set up by the new Government, military officers sat alongside of judges and magistrates to try anti-social offences. A rigorous system of price control was enforced. Hoarded stocks were brought out. Arrears of Government revenues and taxes flowed speedily into the treasury. National life was revitalized within a few days.

A general screening of all Government servants was ordered. This was necessary because the morale of public services had been destroyed by indiscriminate recruitment and rapid promotions. The administration was blamed for many sins of omission and commission, but inefficiency and corruption were the main charges. Services records of all state employed were examined carefully with the result that the name of 133 officers of class I, 221 officer of class II and I, 303 officials of class III were removed from the public payroll. None of the foregoing Governments could have taken such an unprecedented step to tone up the administrative bureaucracy.

The proclamation of martial law and the abrogation of the Constitution resulted in a complete void in the legal set-up. Therefore, three days after the imposition of martial law, on 10th October 1958 the Laws Order was promulgated with a view to bring about new legal order. The Laws Order 1958 seemed to have provided a legal framework to the state for the continuity of the legal system after the abrogation of Constitution. The legal vacuum and the crisis which country had faced after the dissolution of the first Constituent Assembly in 1954 were thereby avoided. The expression used in the order Republic shall be governed as nearly as may be in accordance with the late constitution.

On the imposition of martial law, state power came into the hands of President Mirza and General Ayub Khan who had been appointed as a Chief Martial Law Administrator. The logical result of this sharing of power had to be struggle between the two men, and it ensued soon thereafter. President Mirza tried to rationalize the power structure and state framework by appointing Ayub Prime Minister on 24th October 1958. He formed a new cabinet consisting of non-political personalities. This did not satisfy Ayub Khan who had a strong claim to power, being the Commander -in- Chief of the Army. President Mirza was nervous about his own future and he tried to enlist the support of the Air Force and Ayub's rivals within the army. He allegedly made an unsuccessful attempt to order Air Commodore Robb, the Chief of Staff of Pakistan Air Force to arrest four Generals close to Ayub including Major-General Yahya Khan. Ayub decided to rid himself of Mirza and assume complete control over the affairs of state. Mirza was arrested and sent to exile to Great Britain where he later died. Ayub quickly set about proving to skeptics that he was not merely the army's "front man" but the "absolute master" in Pakistan.

ii) Imposition of Martial Law 1977

Elections were held on March 7, 1977. The Pakistan Peoples Party won these elections, but was accused by their opponents, Pakistan National Alliance, of rigging the elections. On March 14, 1977, the Alliance started a series of nationwide protests. Talks between the Alliance and Bhutto government were held in June 1977 and an agreement was reached, but it could not be implemented.

Fresh elections were announced for October 15, 1977. But on July 5, 1977, the Chief of Army Staff, General Muhammad Zia-ul-Haq, imposed Martial Law and the elections were postponed. General Zia-ul-Haq announced holding of elections within 90 days.

A conference of political leaders was held in February 1978, but a year later, in 1979, General Zia-ul-Haq declared political parties to be defunct and certain political leaders were disqualified.

Under General Zia's Martial Law, there was steady economic growth favoring the private sector, and efforts were made to Islamize the political, legal and economic structures. Pakistan gained the status of Most Favored Nation from the United States following the Soviet invasion of Afghanistan in December 1979. Vast amounts of military equipment and aid were donated to Pakistan to help the four million Afghan refugees who crossed into Baluchistan and North West Frontier Province.

On February 6, 1981, Movement for Restoration of Democracy was established to return democracy to Pakistan. A provisional Constitution was enforced on March 23, 1981, as the Constitution of 1973 had been suspended with the imposition of Martial Law.

Finally, after the nomination of Muhammad Khan Junejo as Prime Minister of Pakistan on March 20, 1985, Junejo fulfilled his promise of lifting the Martial Law and the restoration of the fundamental rights, but at the price of enforcement of the Eighth Amendment and the validation of the Revival of the Constitutional Order.

Q4. Discuss the Government of India Act 1935. Was it adequate as a constitution for Pakistan after independence in August 1947?

Answer:

Government of India Act 1935

After the publication of Simon Commission report and its condemnation by the people of India the British government calls the first roundtable conference in London the conference met in November 1930 as the Congress leaders in jail due to civil disobedience movement to British government appointed persons belonging to other parties out of fear of failure to proceed with the work from final form of the future constitution of India in the absence of leaders of the Congress it was decided to call a second round table conference and in the meanwhile efforts were made to reconcile the difference between Congress and the government which at last became fruitful.

(a) Second round table conference :

At the second round table conference many problems were discussed but no solution was reached open upon hence the work was referred to various committees which were required to submit detailed reports.

(b) Third round table conference :

In 1932 the third round table conference was called by the British government albeit reluctantly this conference was also proved to be a failure as the Labour party did not cooperate in the deliberation and the Congress was unrepresented in it. Delegates to the conference were merely discussed the reports of the various committees appointed by the second round table conference.

Government of India Act 1935:

After the failure of the third round table conference the British government gave the Joint Select Committee the task for formulating the new act for India. The committee comprised 16 members each from the House of Lords and 20 representatives from British India and seven from the princely states. Lord Linlithgow was appointed as the president of the committee. After a year and a half of deliberation the committee finally came out with a draft bill on February 5, 1935. The bill was discussed in the House of Commons for 43 days and in the House of Lords for 13 days and finally after being signed by the King was enforced as the Government of India Act 1935 in July 1935.

Both the Indian National Congress and the Muslim League opposed the act but participated in the provincial election of the winter 1936-37 conducted under the stipulation of the act. At the time of independence the two dominions of India and Pakistan accepted the act of 1935 with the few amendments as their provincial constitution.

(a) Splitting the Government of India Act 1935:

The Government of India Act 1935 is said to have been the longest (British) act of Parliament enacted by that time. It was a comprehensive statute with 321 sections and two schedules because of its length the act was retroactively split by the Government of India (Reprinting) Act 1935 into two separate acts.

1. The Government of India Act 1935 and
2. The Government of Burma Act 1935

(b) Main features of the Act 1935:

1. The act turned India into a federation although the constitution of India was unitary.
2. Provinces were granted autonomy and representative government and in relation to the province a three-fold division of function was created by forming three lists i.e. federal, provincial and the concurrent. Federation and provinces enjoy law-making powers in respect of federal and provincial lists respectively. However, both federal and provincial law-makers were competent to promulgate laws relating to the matters mentioned in the concurrent list. In case of any conflict the law of federation would however prevail.
3. Partial responsibility in the form of diarchy at the centre was created.

4.the government general of india and the governors of the provinces were the granted almost unlimited power.

5.the area of federal jurisdiction extended to the whole of british india including the states that had acceded at the time .

6.under the act new institution like federal court the reserve bank of india federal railway authority and the public services commissions for the federation and provinces were established.

7.the act prescribed the method whereby a state could join the federation and also provided for the legal consequences which followed from such accession the crown accession had the authority to accept or reject such accession but once a state had acceded to the federation it could not secede from the declaration.

Q5. What in your opinion delayed the framing of the Constitution in Pakistan till the year 1956?

Answer

Delayed the framing of the Constitution 1956

he partition of the Indian subcontinent into Pakistan and India took place on 14-15th August 1947 as provided in the **Indian Independence Act 1947**. According to the act, the new states would adopt **the Government of India Act, 1935** as their interim constitution until they framed their own constitution. India managed to promulgate its own constitution within 3 years of its independence. On the contrary, Pakistan was faced with the problem of 9 years-long delay in the constitution-making in its initial years. it took nine long years for Pakistan for the same.

In this article, I will analyze the reasons that were responsible for this long delay in constitution-making in Pakistan.

Immediate problems

When Pakistan came into being it had to face more pressing issues that needed immediate redressal. With Partition, millions of Muslim refugees flooded into Pakistan to escape the ruthless persecution and massacre in different parts of India. Their accommodation, shelter, clothing, food, medication had to be ensured before long term measures were taken for their permanent settlement.

Similarly, on April 1, 1948, India blocked river water coming from Kashmir through Indian territory putting the very survival of Pakistan in Jeopardy. The new state was to be started from scratch as it faced a crippled economy and vulnerable security. To make things worse, India did not give the agreed share of

Pakistan's military and financial assets. These and similar other immediate problems left little time and energy to work on framing a new constitution for Pakistan.

Death of Quaid e Azam

The death of Quaid –i-Azam was one of the reasons for the delay in the constitution-making. Quaid had given an outline for the future constitution of the country while addressing the first constituent assembly of Pakistan on August 11, 1947. But he died on September 11, 1948, before he could give a constitution to his people. Had he lived longer, he would have resolved the constitutional dilemma by using his leadership and non-controversial status.

Disagreement over Parity of Representation

The first step was taken towards constitution-making in Pakistan with the passage of Objectives Resolution by the Constituent Assembly on 12 March 1949. The constituent Assembly had delegated a task of drawing basic principles to a committee in light of the set objectives of the resolution for future constitution-making.

The committee known as the Basic Principles Committee presented its first Report recommending parity of representation in the central Assembly. The proposal of equal membership at the center was resented by East Pakistani members of the constituent Assembly. They were of the view that their representation should be more as they were a majority in the new state. West Pakistani politicians did not want a dominant East Pakistan in the central Assembly. Consequently, no agreement was reached and the constitution-making process was delayed.

Language issue

The Basic Principles Committee had also proposed Urdu to be declared as the national language of Pakistan. Urdu as the national language was also opposed by East Pakistani members of the assembly. They demanded to make Bengali as the national language since it was the languages of the Majority of people – Bengalis formed 56% of the total population of the new country. So language controversy along with the issue of representation at the center caused a type of deadlock in constitution-making in the country.

Political Rivalry and Corruption

After the sad demise of the Quaid, Muslim League fell victim to intrigue and disunity. Intense internal strife and selfishness brought about disintegration in the party. Party fell into the hands of opportunists who resorted to undemocratic ways and means, indulging in political mischief and intrigue. Consequently, little attention was paid to constitution-making.

Increasing Influence of West Pakistan dominated Bureaucracy and military

With the death of Prime Minister Liaquat Ali Khan, bureaucrats made inroads to the power corridors. A bureaucrat, Ghulam Muhammad was made the Governor-General who did not hesitate to dismiss elected prime ministers, the constituent assembly itself and paved the way for retired and in-service military personnel in the politics. He made Sikandar Mirza, a retired General as Governor-General who appointed Ayub Khan, the Commandant in Chief of the Armed forces as Foreign Minister.

West Pakistani politicians, bureaucrats and generals did not want to give East Pakistan their due political and democratic rights. Hence, any proposals made with regard to the constitution seemed to go against the wishes and expectations of East Pakistan creating a tussle in the constituent assembly.

DISSOLUTION OF COSTITUENT ASSEMBLY:

IN SPITE OF ALL THE PROBLEMS AND HURDLES WHEN IN 1954 THE FIRST CONSITUENT ASSMBLY NEARLY FINALIZED IT IS TASK AND WAS ABOUT TO FRMAE THE DFIRST CONSTITUTION THE GOVERNOR GENERAL DISSOLVED THE CONSITUENT ASSEMBLY WHEN HE DID NOT AGREE TO THE PROPOSED CONSTITUTION THIS FIRST MAJOR SUBVERSION OF THE CONSITUTIONAL PROCESS WAS THE CHALLENGED BEFORE THE FEDERAL COURT WHICH VALIDATED THE DISSOLUTION OF THE ASSEMBLY IN THE MULVI TAMIZUDDIN CASE (1955 FEDERAL COURT 240) TR=THESE ARE THE MAJOR IMPEDIMENT IN FRAMING OF THE CONSTITUTION UNTIL DISSOLUTION OF THE FIRST CONSTITUTION ASSEMBVLY AND FRAMING THJE 1956 CONSITUTION BY THE SECOND CONSITUTIONAL ASSEMBLY.