

POST INDEPENDENCE

In 1947, Pakistan adopted the **Government of India Act 1935** with some amendments as the interim constitution, with an assumption that the new country will function as a federation. But, the amendments in that constitution further strengthened the control of the central government over the provinces. The newly born country inherited weak democratic institutions. The only developed institutions after independence were the colonial bureaucracy and the military. Both these institutions were part of the central government. The supremacy of the central government was established from day one due to the absence of other representative institutions.

While looking at the historical underpinnings of political development, one can argue that political and constitutional development was impaired by one problem or the other. Sadly speaking Pakistan never derived any lesson from the bitter realities of the past. Political structures kept on overlapping in performing allocated roles. The political system remained in the state of disequilibrium resultantly brought structural decay. Pakistan needs rigorous efforts to evolve a political system by which institutions become capable of sustaining shocks and breakdowns.

Constitution making was assigned to Constituent Assembly but got delayed due to the following reasons:

- Influx of Refugees- An unprecedented Migration
- Administrative Vacuum
- Economic Collapse
- Political Unrest
- Indian-British Conspiracies
- Insecure Borders

In order to resolve growing constitutional issues, the **Objective Resolution** (1949) was passed by Liaquat Ali Khan (the Prime Minister) on 7th March 1949, and later adopted by the Constituent Assembly on **12th March 1949**. Out of 75 members of the assembly, 21 voted for it opposition participated in debate but all debates and the amendments proposed by minority members were rejected. On the same day, a **Basic Principles Committee** comprising of 24 Members was formed to prepare a draft Constitution on the basis of the Objectives Resolution.

OR further exacerbated ongoing political conditions. For the first time minorities were marginalized and forced to raise concerns over the futuristic outlook of Pakistan.

The key features of the **Objective Resolution** were as follows:

- || Islamic State
- || Federal Structure
- || Distribution of Powers
- || Equality before Law
- || Independence of Judiciary

PAST PAPER QUESTION 1:

The **“Objective Resolution”** (1949) satisfied both orthodox and modernists by combining the features of Western and Islamic democracy. Discuss critically. (2012)

1. The sovereignty of the entire Universe belongs to Allah alone
2. Authority should be delegated to the State through its people under the rules set by Allah
3. The Constitution of Pakistan should be framed by the Constituent Assembly
4. The state should exercise its powers through the chosen representatives
5. Principles of democracy, freedom, equality, tolerance, and social justice, as inshore by Islam should be followed
6. Muslims shall live their lives according to the teaching of the Quran and Sunnah
7. Minorities can freely profess and practice their religion.
8. There should be a federal form of government with the maximum autonomy for the Units
9. Fundamental rights including equality of status, of opportunity and before law, social, economic, and political justice, and freedom of thought, expression, belief, faith, worship, and association, subject to the law and public morality should be given to all the citizens of the state.
10. It would be the duty of the state to safeguard the interests of minorities, backward and depressed classes.
11. Independence of judiciary should be guaranteed
12. The integrity of the territory and sovereignty of the country was to be safeguarded
13. The people of Pakistan may prosper and attain their rightful and honored place amongst the nations of the world and make their full contribution towards international peace and progress and happiness of humanity.

Liaquat Ali Khan explained the context of the resolution in his speech delivered in the Constituent Assembly on March 7, 1949. He termed the passage of the Objectives Resolution as *“the most important occasion in the life of this country, next in importance only to the achievement of independence.”* He said that we as Muslims believed that authority is vested in Allah Almighty and should be exercised per the standards laid down in Islam. He added that this preamble had made it clear that the *authority would be exercised by the chosen persons; which is the essence of democracy and it eliminates the dangers of theocracy.* It emphasized the principles of democracy, freedom, equality, tolerance, and social justice and it says that these should be part of the future constitution.

1. But when it was debated in the session of the Constituent Assembly, it was opposed and criticized by minorities’ leaders.
2. A non-Muslim, Prem Hari proposed that the motion should be first circulated for evoking public opinion and should then be discussed in the house on April 30, 1949.
3. While discussing the rights of religious minorities, Chandra Mandal opposed the resolution by saying that *‘why ulemas are insisting on this principle of Islam whereas India has Pandits but they did not demand things like that. Individuals do have a religion but the state had not. So we think it a great deviation in our beloved Pakistan.’*
4. Kumar Datta opposed it by saying that ‘if this resolution came in the life of Jinnah it would not have come in its present form. Let us not do anything which leads our generation to blind destiny.’
5. Sris Chandra Chattopadyaya, a member of PNC from East Pakistan, expressed the same fears that: This part of the Resolution ought to be deleted. All powers rest with the people and they exercise their power through the agency of the state. The state is merely their spokesman. The Resolution makes the state the sole authority received from God

Almighty through the instrumentality of people. People have no power or authority. They are merely post-boxes according to this Resolution. *The State will exercise authority within the limits prescribed by Him. What are those limits, who will interpret them? In case of difference who will interpret? One day a Louis XIV may come and say, "I am the state, appointed by the Almighty" and thus paving the way for the advent of Divine Right of Kings afresh.* Instead of the state being the voice of the people, it has been made an adjunct of religion.

6. Other Hindu members also proposed some amendments in the resolution and recommended that some words like ‘...sacred trust’, “...within the limits prescribed by Him”, and “... as enunciated by Islam” should be omitted. Some new words should be inserted like “as prescribed by Islam and other religions”, and “National sovereignty belongs to the people of Pakistan”, etc.
7. **Mian Muhammad Iftikharuddin** was the only Muslim member in the house who opposed the resolution. To him the resolution was vague and many words used in it do not mean anything. He further suggested that such a resolution should not only be the product of Muslim League members sitting in the assembly alone. Rather it was supposed to be the voice of seventy million people of Pakistan.

On the other hand Objectives Resolution was strongly supported by Dr. Ishtiaq Hussain Qureshi, Maulana Shabbir Ahmad Usmani, Sardar Abdurrab Nishtar, Noor Ahmad, Begam Shaista, Muhammad Hussain, and others. To counter the allegations they argued that Islam governs not only our relations with God but also the activities of the believers in other spheres of life as Islam is a complete code of life.

After a great debate finally, the resolution was adopted by the Constituent Assembly on March 12, 1949. Liaquat Ali Khan assured the minorities that they will get all the fundamental rights in Pakistan once the constitution based on the Objectives Resolution will be enforced. However, *this resolution created a division on the communal lines as the Muslim members except for Mian Iftikharuddin voted in favor of it and the non-Muslim opposed it. It created a suspicion in the mind of minorities against the majority.* Since the Resolution has yet not been implemented in Pakistan in the true spirit, the doubts in the minds of the minorities still exist.

After the adoption of Resolution, **Hamid Khan** remarks that it was ‘**unfortunate that there was a division on the Resolution along communal lines. The Resolution had sown the seeds of suspicion, alienation and distrust among the minorities. He further asserts that it might have been ‘more prudent to accept some of the amendments proposed by the members representing the minorities’ in order to reach an understanding with them so that the Resolution could have been passed by consensus. Some of the proposed amendments were moderate and might have been adopted in the larger national interest’.**

Developments after Objective Resolution

Following issues paved the way for non-democratic political culture in Pakistan.

- The language issue, distribution of seats in the Legislative Assembly and the division of powers between the federation and the federating units germinated agitational politics in East Pakistan.
- Ahmedi Movement (1953) polluted the political environment and resulted in the imposition of limited Martial Law in Lahore.
- Later the dissolution of the Constituent Assembly in 1954 and re-constituting of the second Assembly also weakened the political system.
- The arbitrary use of *powers by the governor generals* seriously jeopardized the working of political system.
- The *growing influence of army and bureaucracy* in the politics also rang alarming bells for the politicians who looked incapacitated to counter such preponderance.

These developments negatively carved the process of political development.

On 16th October 1951, Prime Minister Nawabzada Liaquat Ali Khan, mover of the Objective Resolution, was assassinated and Khawaja Nazimuddin took over as the Prime Minister on 17th October 1951.

PAST PAPER QUESTION 2

Give a critical appraisal of the constitutional crisis/crises initiated by the controversial actions taken by Governor General Ghulam Muhammad and endorsed by the superior Court of Pakistan. Discuss and analyse its effects on the subsequent history of Pakistan. (2011)

When Khawaja Nazimuddin resigned as Governor General to become the Prime Minister, Cabinet elected Ghulam Muhammad as the third Governor General of Pakistan.

In 1950 a *planning Commission* was set up to oversee economic development in Pakistan. In 1951 it launched a *Six year plan* for Pakistan, covering agriculture, fuel and power, industry and mining, transport and communications and social uplift schemes. In 1953 a *planning Board* was set up to review the development that had taken place and this produced a Draft Five Year plan in 1956 to follow on from the Six Year plan. Both these schemes played a major part to help bring about economic development in Pakistan. For example, in 1952 a major jute processing plant was opened at Narayanganj (East Pakistan) and the exploration for oil/gas led to the discovery of vast reserves of Natural gas at Sui in Balouchistan.

However, these were not easy times for the people of Pakistan. From 1951 to 1953 there was a severe drought in Pakistan. This affected food production and in 1953 severe food shortages led to rioting in most cities throughout Pakistan. The government was not well placed to deal with these shortages. During the Korean war there had been increased demand for Pakistan's Jute and cotton, to supply the thousands of soldiers involved in the fighting but by 1953 demand had declined. This meant that Pakistan was making less money just when it needed to buy more foodstuffs. In April the USA agreed to donate a million tons of wheat to help Pakistan to overcome the food crisis. The rioting, however, had not been just about food shortages. It also

had religious element. Some Ulemas had begun a campaign against the Ahmedis. They demanded that all Ahmedis be dismissed from office, including Zafarullah Khan, the foreign Minister. It was only after martial law was imposed and numerous arrests were made that the rioting was brought under control.

Ghulam Muhammad and Nazimuddin

After assuming the charge as Governor General, Ghulam Muhammad started dominating the affairs of the country and Khawaja Nazimuddin merely became a powerless Prime Minister. Khawaja Nazimuddin and his Cabinet tried to challenge Ghulam Muhammad's authority.

The recommendations of the **Basic Principles Committee** presented to the Assembly on 28 September 1950 had proved so unpopular that they were withdrawn for further considerations. Two years later, on 22 December 1952 a **revised Report of the Basic Principle Committee** was presented by Nazimuddin. It altered the 1950 proposals by suggesting:

- The Head of the State must be Muslim.
- There should be a House of Units with 60 members from East Pakistan and 60 from West Pakistan.
- The House of People should have 400 members with 200 elected from each wing.
- Religious Minorities would have representatives at National and Provincial levels.
- The Cabinet was to be responsible to the National Assembly, not the Head of state.
- The Head of state would choose a committee of Islamic Specialist to ensure that all legislation confirmed to Islamic Law.
- The official Language should be settled by the Assembly.

On 17 April 1953 Ghulam Muhammad dismissed Khwaja Nazimuddin and three other members of the Cabinet, blaming them for not controlling the economy and the riots that resulted from food shortages in February. He did this despite the fact that they had received a vote of confidence from the Assembly Ghulam Muhammad said that

I have been driven to the conclusion that the Cabinet of Khwaja Nazimuddin had proved entirely inadequate to grapple with the difficulties facing the country.

He used his discretionary powers under the Provisional Constitution, which provided that the Prime Minister held office during the pleasure of Governor General, and dismissed Nazimuddin's Ministry.

Ghulam Muhammad and Bogra

The new Cabinet had eight old members and three new ones, including a new Prime Minister, Muhammad Ali Bogra, who had been the acting ambassador to the USA. Bogra wanted as much foreign aid as possible to boost Pakistan economy. In April 1953 the US, Canada and Australia agreed to send Pakistan a million tons of wheat, which helped to calm fears of famine that had sparked the riots. It was also Bogra who set up the Planning Board to produce a Five Year Plan that would, hopefully, avoid further food shortages. He also worked out a regional agreement, called the Central Treaty Organization (CENTO). Part of this involved Western aid for Pakistan, in terms of both money, supplies and the help of various industrial experts.

The social and economic problems that Pakistan faced, coupled with Ghulam Muhammad's desire to maintain the power of the position of Governor General, meant that there was little progress in getting on the new constitution. Instead, Ghulam Muhammad hoped to dominate Bogra to maintain his own power. But Bogra did not turn out to be quite as compliant as Ghulam Muhammad hoped. On 21 September 1954, while Ghulam Muhammad was out of the country, Bogra persuaded the Assembly to pass laws limiting the power of the Governor General by saying:

- That all his minister, including the Prime Minister, must be member of the Assembly.
- That the Assembly had to approve the Cabinet.
- That the Governor General had to take the advice of his ministers.

There was an attempt by the Assembly to weaken the powers of the Governor General and increase its own powers. After voting through the above measures in just 15 minutes, the Assembly repealed the *Public and Representative Disqualification Act* [PRODA], which said the Governor General could remove ministers from the National and provincial governments for up to five years if they abused Public office. Then the Assembly adjourned for a month to discuss a new draft constitution.

Dissolution of Constituent Assembly:

However, Ghulam Muhammad was not a man who took opposition lightly. He waited until Bogra was out of the country during the following week and then struck back. He declared a state emergency and then dissolved the Assembly. He made a statement saying:

The Governor General Ghulam Muhammad having considered the political crisis with which the country is faced, has decided a state emergency. The Constituent Assembly, as at present constituted, has lost the confidence of the people and can no longer function. Until such time as elections are held, the administration of the country will be carried out by a reconstituted Cabinet.

Maulvi Tamiz-ud-din, the President of the Constituent Assembly, challenged the decision in the Sindh High Court. The court gave verdict in favor of Maulvi Tamiz-ud-din, but the Supreme Court reversed the decision of Sindh High Court. **On 10 May 1955, this higher court ruled that Ghulam Muhammad had the authority to dismiss the Assembly if he was satisfied that the situation demanded it.**

NEW CONSTITUENT ASSEMBLY

On 21 June 1955, elections were held for a new Constitution Assembly. Ghulam Muhammad then chose a new cabinet. Having resisted his authority, he reappointed Bogra as Prime Minister, but selected five members of the cabinet who were not members of the Assembly, this included the Commander in Chief of the Army, General Ayub Khan. **The second Constituent Assembly of Pakistan was created on 28th May 1955 under Governor General's Order No.12 of 1955.** The Electoral College for this Assembly was the Provincial Assemblies of respective Provinces. The strength of this Assembly was 80 Members, half each from East Pakistan and West Pakistan. **One of the major decisions taken by this Assembly was the establishment of West Pakistan (One Unit),** with the aim to create parity between the two wings (East and West Pakistan).

In August, due to the attack of paralysis, Ghulam Muhammad went on a two month's leave, and was eventually removed by the acting Governor General Iskander Mirza. Ghulam Muhammad died in 1956.

This Assembly also achieved its target by giving the first Constitution to the nation i.e. the Constitution of Pakistan 1956. **Choudhary Muhammad Ali was the Prime Minister at that time.** The draft of this Constitution was introduced in the Assembly on 9th January 1956 and was passed by the Assembly on 29th February 1956. The assent was given on it by the Governor General on 2nd March 1956. **This Constitution was enforced with effect from 23rd March 1956.** Under this Constitution, Pakistan became an Islamic Republic, hence 23rd March became our Republic day. It was the same day in 1940 that the historic Pakistan Resolution was adopted at Minto Park, Lahore.

FIRST CONSTITUTION OF PAKISTAN

The salient features of **1956 Constitution** were:

1. Written Constitution (234 articles, divided into 13 parts and 6 schedules)
2. Islamic State
3. Federal System with unicameral Legislature: **Under 1956 Constitution, Parliament was unicameral.** Legislative powers vested in the Parliament, which consisted of the President and the National Assembly comprising 300 Members divided equally between East and West Pakistan. In addition to these 300 seats, five seats were reserved for women for each of the two wings, for a period of ten years: thus bringing the total membership of the House to 310.

4. Division of Powers: The distribution of legislative powers between the federation and the federating units were enumerated in three lists. The federal legislative list had **thirty items**, the provincial list **ninety** and the concurrent list only had **nineteen** items. Considerable powers were given to provincial legislatures.
5. Parliamentary Order
6. Independence of Judiciary
7. On 5th March 1956, Major General Sikandar Mirza became the first elected President of Pakistan.

CAUSE OF THE DISTURBANCES FOR THE FIRST MARTIAL LAW

The immediate cause of the disturbances in Lahore was the rejection by the then Prime Minister of Pakistan, Khwaja Nazimuddin, of a few demands made by the Majlis-i-Amal, a sort of Committee of Action constituted by the All-Pakistan Muslim Parties Convention. The Central Government at Karachi had not only refused to accept the demands served in the form of an ultimatum, but also ordered the arrest of the prominent leaders of the movement. This led to demonstrations and processions which in the end turned into disorders and outbreaks of violence. The controversy which led to the demands is popularly known as the "Ahrar-Ahmadiya" controversy which has continued for over half a century.

Iskander Mirza wanted to be the President but knew that his chances were very less in elections **scheduled for early 1959**. He maneuvered with 4 PMs. (M. Ali, Hussain Shaheed, Ibrahim Ismael, Feroz Khan). At last, he made a Republican Party after splitting from ML. When Mirza's last Prime Minister, Feroz Khan Noon, broke with him and attempted to bring about a revival of the Muslim League, the situation reached a crisis point. Seeking and securing the support of Gen. Ayub Khan in order to stage a coup d'état, Mirza abrogated the constitution on 7 October 1958. The masses were waiting for a messiah that could put the country on the right track.

The military was by this time tired of playing second fiddle to civilian and military bureaucrats-turned-politicians, and tensions between the President and his chief enforcer rose rapidly.

FIRST Martial LAW

On 27 October 1958, Mirza was overthrown by the army, General Muhammad Ayub Khan took over as a second President and Pakistan came under direct army rule and the equilibrium within the governing powers shifted in favour of its military component.

He introduced a highly centralized **Constitution in 1962**. This Constitution provided a Presidential form of government and a single legislative list **of forty nine** federal subjects including defense, external affairs, inter-provincial trade and commerce etc.

The salient features of **1962 Constitution** were:

- Written Constitution (250 Articles, divided into 12 Parts and 3 Schedules)
- Islamic State
- Federal System with unicameral Legislature
- Division of Powers
- Presidential System

- Basic Democracy
- Independence of Judiciary

One of the major achievements of this Assembly was the passage of Political Parties Act, 1962.

AYUB KHAN ERA:

- Ayub Khan emerged as a savior of a frustrated nation. He abrogated the Constitution of 1956 and attempted to re-structure political order.
- He blamed politicians for creating political turmoil. The activities of the politicians were brought under heavy restraint by the **Elective Bodies Disqualification Order (EBDO)** in 1959.
- Ayub Khan introduced the system of **Basic Democracies in 1959**. The idea behind this scheme was to ensure democracy at grass root level. This system provided for the election of 80,000 Basic Democrats, equally divided between East and West Pakistan. However to make it an electoral college for the election of the president was injudicious step.
- Ayub Khan unilaterally reversed the entire political order from parliamentary system to Presidential one in 1962 Constitution.
- During Presidential election (1965), Ayub Khan successively manipulated Basic Democracy System and defeated Fatima Jinnah. However the political opponents questioned the legality of this election.
- Later the outbreak of war between Pakistan-India enabled him to maneuver public sentiments in his favor but subsequent talks at Tashkent and signing of Tashkent Declaration (1966) proved to be a swan song for him.
- The massive agitational movement forced him to hand over power to another military general Yahya Khan in 1969.

The current constitution of Pakistan was adopted in 1973 by the federal government of Pakistan. Provincial autonomy and the recognition of the right of the self determination of the people were promised in the constitution of 1973 but this constitution was abrogated from time to time by the rule of different military regimes in the country.

The significant features of **1973 constitution** were;

- || Written Constitution (280 Articles, 12 Chapters and 6 schedules)
- || Islamic State
- || Federal System with Bi-Cameral Legislature
- || Division of Powers
- || Parliamentary Order
- || Independence of Judiciary

YAHYA KHAN ERA

Yahya Khan just like his predecessor also abrogated the Constitution of 1962 and gave LFO (Legal Frame Work Order) in 1969.

One of the significant features of LFO was to hold general election in the state. The general elections were held in 1970. This election instead of bringing political homogeneity resulted in providing unmitigated suffering to the political order.

It sabotaged the national integrity of Pakistan.

Yahya- Bhutto reluctance to hand over power to Majeed Ur- Rehman (the leader of Awami League) who was determined to materialize his six point's agenda in the new polity resulted in the breakup of this country.

In other words defective political strategies of military-bureaucratic elements led to sad episode.

ZULFIQAR ALI BHUTTO

After the drop scene of East Pakistan, Zulfiqar Ali Bhutto formed government in truncated Pakistan. He made efforts to stabilize politico-economic conditions.

He presented the Constitution of the Islamic Republic of Pakistan 1973 which was endorsed by the majority of the members sitting in the National Assembly.

Although this constitution provided legitimacy to the political structures but it could not contribute positively to the institutional development. It had to suffer from shocks and break downs. It was amended, suspended but not abrogated.

From 1977 until 1987, the country was under the leadership of **General Zia-ul-Haq**, a military ruler who restricted the political activities of all political parties.

ZIA UL HAQ REGIME

When Zulfiqar Ali Bhutto was replaced by Zia-ul-Haq, he too amended the constitution and incorporated **8th Amendment** to strike balance between the powers of the President and the Prime Minister.

In the decade of democratization from 1988-1998, democratic development jolted badly due to Article 58 II B of 1973 constitution which had empowered the President to dissolve the National Assembly whenever he felt so.

QUESTION NO 3

Was Islamization during Zia era a need of Pakistan or was it a political propaganda?

(2015)

The process of Islamization was firstly introduced in Pakistan by General Zia-ul-Haq who persistently focused on adopting and enforcing the Islam in every sector and walk of life in Pakistan. Zia Ul Haq took over charge as martial law administrator on July 5, 1977. Zia and his companions firstly decided that Islam was the chief uniting factor in the divided country of Pakistan (Shah, 2012). *The Nizam-e-Mustafa* means the Order of the Prophet and considered as Islamic system or Islamic Order. *Pakistan National Alliance* started a movement called the movement for a system followed by the Prophet Muhammad (Peace Be Upon Him), a system based on Islamic Principles (Hyman, Ghayur & Kaushik, 1989). In 1978 Zia announced that he would follow the Nizam-e-Mustafa Tehreek and Islam will prevail over the laws and constitution.

In the absence of a political or social foundation other than the army, Zia forged a constituency for himself through a policy of "Islamization" supported by the Saudis. This policy has instilled Islamic liberalism in the state and in society and has opted for religio-political parties, particularly *the Jamaat-e Islami*, the best organized religious party in Pakistan that historically confronted Jinnah and Pakistan. Moreover, the Soviet military intervention in Afghanistan in support of the Marxist regime of Kabul in 1979 helped consolidate the regime of General Zia and make Pakistan "America's most allied ally" as a front-line state of the Cold War

Zia was criticized by his opponents that he raised the issue of Islamization to decrease the influence of Bhutto and Peoples Party. In his early speeches, he said that Islam would be enforced in every walk of life, the political, legal and economic reforms would be implemented according to the values of Quran and Sunnah.

1. The Sharia courts were established with the benches of Sharia located in all provinces and in the Supreme Court of Islamabad.
2. Local level courts were established in 1983 presided by religious judge named Qazi, the Qazi courts rarely announce verdicts in most of the cases women were punished and men released (Lindholt & Muller, 2003).
3. The Islamization of Zia can be seen in four areas: Judicial reforms, Introduction of Islamic penal system, Introduction of economic reforms and the Education policy (Weiss, 1986).
4. Zia created a new judicial review in Islamic system of justice (Marvin, 2002). Non-Islamic practices were tried to be eradicated from the country.
5. Haddood ordinance was introduced; the system of Zakat and Usher was introduced.
6. Zia wanted to establish system of finance not based on 'interest' for this purpose recommendation for Islamic financing was collected.
7. The Zakat was collected from the first day of Ramzan from banks and the Usher was collected from the yield of agriculture.
8. Pakistan television was made more Islamic and Arabic news was introduced for the first time on Pakistan TV.
9. The Ramzan Ordinance 1981 was promulgated and Nizam-e-Salat was introduced by Zia Ul Haq.

During the movement of 1977, as a most popular slogan for the introduction of Nizam-e-Mustafa the whole movement acquired a significant public support. Considering the state of affairs, he maintained this famous slogan and announced to reshape the political, social and governmental framework of the state according to the Islamic values and principles which eventually became his foundation for enticing and obtaining popular support.

(Lubna Kanwal)

10. In the regime of Zia-Ul-Haq many Islamic laws were introduced, the law for the protection of women which was named to save the sanctity of Chaddar and Chaar Devari.
11. The women testimony was considered as half as compare to man and the number of witnesses was increased to four to prove a rape. Decreasing the women status by Zia is condemned by Civil Society, and the people stood against the so-called Sharia of General Zia.
12. Judiciary was in state of coercion in Zia's era. PCO dissolved the power of the judiciary, established the federal Shariat Court and called the judges of the High Court and

Supreme Court to take the oath for allegiance. He amended the Penal Code and used Martial Law regulations against his countrymen in the name of Islam (Kurreja, 2003). Zia ingratiated himself with Council of Islamic Ideology CII and introduced Islamic reforms in Judiciary, Education and Taxation (in form of Zakat and Usher) system of Pakistan which is evident in implementation of Sharia in accordance with Quran and Sunnah in Pakistan

Hadood Ordinance by Zia ul Haq

In Pakistan's legislative history many new Islamic laws were introduced and many Amendments were made according to Islamic laws, these are few examples

- Muslim family law ordinance of 1961,
- West Pakistan family courts act was amended with Islamic provisions,
- West Pakistan Muslim Personal Law Shariat application Act 1962,
- West Pakistan Family Courts Act 1964
- Enforcement of Hadood Ordinance 1979
- Law of Evidence is converted into Qanone Shahadat Ordinance 1984
- Dowry and Bridal Gifts (Restriction) Act 1976,
- Punishment of Whipping Ordinance,
- Qazaf and Hadood Ordinance was introduced in 1979

Hadood Ordinance was an effort towards Islamic System of Justice and it was the first time in Pakistan's history that such laws were implemented. Hadood Ordinance as it said was according to Quran and Sunnah and its punishments were according to Islamic teachings. It was implemented on drinking liquor, adultery, Theft and qazaf and if the Hadd imposed the punishment of lashes, death sentence by stoning could be given.

Slogan of Islamization

Zia was perhaps the only leader in Pakistan who considered that the founding fathers of this state like Iqbal, Sayyid Ahmad and Jinnah want to make this state Islamic. Zia drove this campaign of Islamic System more deliberative way than the previous leaders of Pakistan attempted. Zia wanted to move this campaign of Islamization of many reasons: *firstly*, Bhutto has used the slogan of Islamic Socialism and Zia wanted to revive the spirit again, *secondly*, Zia knew that by implementing and imposing Islamic Economic and Justice System he would gain the favour of religious groups in Pakistan. So, he supported the movement of Nizam-e-Mustafa. *Thirdly*, the Socialism of the Ayub has faced defeat. Zia considered Islamic System of justice as the way to solve the problems of inequality, injustice and corruption. The modern Islamic revolution was also the reason behind the Islamization by Zia. The intervention of USSR in the Afghanistan could be the reason because of depiction of Islamic Jihad against the Red-Socialists. General Zia was asking the help and support of whole Islamic world, as the Americans were in dire need of the people who could fight and give them support in the war against USSR. So, by American funded Jihad the strategic goals of America and Pakistan were achieved (Saha , 2001).

MIAN MUHAMMAD NAWAZ SHARIF

During the second tenure of **Mian Nawaz Sharif**, efforts were made to restore the dignity of the parliamentary system. *Consequently the 8th Amendment was replaced by 13th Amendment.*

Another military government took over the country in October 1999, when **General Pervez Musharraf** displaced Prime Minister Nawaz Sharif's civilian government and returned the country to military rule. Both regimes tempered the constitution of the country to serve their own power and interests and the promise of provincial autonomy was not fulfilled.

PERVEZ MUSHARRAF

These political measures proved to be all moon shine when **General Pervaiz Musssraf** ousted Mian Nawaz Sharif on 12th October 1999. He made structural changes in the political system. He was given a legal cover by the apex Court of Pakistan under the law of necessity. Alike his predecessor took various steps like, local government system, electoral reforms, increasing the seats of National Assembly and Senate, holding 2002 general election etc. However the most astonishing political step was the **17th Amendment** that gave more powers to the head of the state in comparison with the prime minister. The pendulum of powers swung back to the President who could dissolve the parliament under unfavorable circumstances.

Political parties in the country including the PPP and PMLN could not help people to restore democracy and the provincial autonomy of the provinces because of lack of effective internal organization and restrictions imposed by military regimes.

PAKISTAN PEOPLE'S PARTY

Democracy was restored again in 2008 after the establishment of a new civilian government.

After 2008 general elections the government of Pakistan People's Party repealed the constitutional changes with 18th Amendment. Over the year's chronic political and economic instability, border conflicts, ineffective internal and external policy mechanism, frequent changes in the constitution has badly weakened the political system.

President Zardari (2008-continue) signed a new law named "**18th Amendment** into Pakistan's Constitution" on April 19, 2010. It empowered provinces to raise loans at home and abroad. In an innovative measure, it provided for joint and equal ownership of the mineral wealth found in a province or its adjacent waters by the federation and the provinces. The Amendment abolished the concurrent list in principle and transferred forty of its forty seven subjects to provinces. In a nutshell, this amendment of law enhanced provincial autonomy and transferred residuary powers to the provinces.

1. Discuss the main features of Political culture of Pakistan. (2020)

Dynastic politics, aristocracy, institutional inequality, weak opposition, passive public participation, military role.

2. Describe the political system of Pakistan. Which form of government is suitable to make the country politically stable? (2018)

The political system of Pakistan portrayed the following features:

1. Federal Parliamentary Structure
2. Legitimacy of the Government

3. Mushroom Growth of Political Parties
4. Military-Bureaucratic Oligarchy
5. Absence of Accountability

Federal-Parliamentary Structure

Since the birth of Pakistan federal-Parliamentary structure has been in the state of practice. The formulation of Objective Resolution and the Constitution of the Islamic Republic of Pakistan 1956 crystallized it in clandestine manner. *The only exception was the period of Ayub Khan in which Presidential order was implemented.* Federal-Parliamentary structure was reinvigorated under 1973 constitution. However, conspicuous changes in the shape of 8th and 17th Amendments changed the nature of the original Constitution. President was supposed to be a ceremonial head of the state and all powers were to be exercised by the head of the government.

Another feature of federation is *distribution of powers*. After the sad debacle of Bangladesh a uniformed measure of distributing powers was adopted in the Constitution of 1973 and efforts were made to ensure provincial autonomy.

Federalism was always perceived to be the best system for Pakistan due to its peculiar circumstances, even the military rulers adopted it as rhetoric to appease the federating units; however, despite explicit constitutional provisions, and Pakistan mostly functioned as a unitary state.

Legitimacy of the Government with a few Successions

While viewing at history of Pakistan one can argue that more than three decades military rulers usurped powers. Ayub Khan, Zia ul Haq and Pervaiz Musharraf used electoral system and referendum as tools to perpetuate political ascendancy in Pakistan.

Since the inception of Pakistan, the people of Pakistan remained without general elections. The first general election was ever held in 1970 on the basis of popular will.

Political parties played significant role in mobilizing public. However when Zia-ul-Haq overthrew the government of Zulifqar Ali Bhutto, he screwed general elections and went for holding elections on non- party basis in 1985.

The democratic process was jolted by frequent changes in the government.

Most of the political governments failed to consolidate political power. They were either removed by military elites or president applying article 58-2 (B) to unseat them.

The concept of the troika (sharing power between the president, prime minister and the military command), though clearly an extra-constitutional development, became a fact of life in Pakistan after the death of Zia-ul-Haq.

Later Musharraf virtually militarized the entire state structure. The impact was, political system suffered heavily.

Unfortunately one of the most traumatic experiences was the losing parties always used agitational politics to destabilize political government.

Burgeon Growth of Political Parties

Holistically speaking the more the political parties a state have, the more would be the division of the population. In Pakistan the strength of the political parties is increasing day by day. Today, there are 282 political parties working in the political setup. Political parties seemed incapacitated to deliver democracy in Pakistan. In Pakistan, political parties failed to build up a coherent political ideology.

Parliamentary tradition had never taken roots and members of the legislature failed to perform their paramount duty of law making, thus reducing themselves to pawns of chessboard of power politics.

The democratic progression was adversely affected by the negative role of political parties. Moreover, the dilemma was that most of the political parties after losing elections resorted to agitational politics and worked for destabilizing political government.

Political parties forged alliances against civilian governments as well as against the establishment of military rule.

- In the decade of 1950s United Front (UF) was established against Muslim League.
- In 1960s Combined Opposition Parties (COP) was organized to challenge the might of Ayub Khan.
- After Presidential election of 1965, it converted into Pakistan Democratic Front (PDM) that aggressively worked against Ayub Khan.
- During the period of Zulfikar Ali Bhutto opposition parties formed Pakistan National Alliance (PNA) whose objective was to challenge the autocratic trends found in Pakistan People's Party government.
- In the decade of 1980s Movement for the Restoration of Democracy (MRD) was organized against the military ruler. The key objectives of MRD were the restoration of the 1973 Constitution, holding free and fair elections and handing over power to the civilians but military ruler used coercive, lethal and pugnacious means to suppress it.
- In order to undermine the popularity of PPP opposition parties formed Islamia Jamhoria Itihad (IJI).
- Later Pakistan Democratic Front (PDF) was setup to trouble PML (N).
- During the era of General Pervaiz Musharraf, the Charter of Democracy was signed in 2006 by Pakistan People Party and PML (N).

Thus from 1947-2014 politics of Pakistan has been revolving around coalitional agitation politics and it would continue to as long as more political parties persist to surface on the political soil of this country.

The Military-Bureaucratic Oligarchy

In Pakistan military and bureaucracy wielded enormous powers during the period of political instability.

After the demise of Quaid-e-Azam and with the brutal assassination of Liaqat Ali Khan the political system was dominated by the “gang of four” consisting of Ghulam Muhammad, Chaudhry Muhammad Ali, Iskander Mirza and Ayub Khan.

The dominance of the bureaucracy could be realized from the fact when Malik Ghulam Muhammad dismissed the government of Khawaja Nazimuddin even though the constituent assembly had given him a vote of confidence. Governor General not only appointed the new prime minister but also nominated ministers with their designated portfolios. Thus reducing the stature of the constituent assembly merely to a rubber stamp organization.

The intervention of army in 1958 further strengthened military-bureaucratic relationship. During the era of **Ayub Khan**, bureaucracy readily transformed itself into the position of a partner in autocracy.

During the period of **Yahya Khan** the role of bureaucracy was downgraded in the process of governance. The institution was also disjointed and dispirited by the dismissal of 303 civil servants.

In the subsequent era Z.A Bhutto also revamped its structural and functional mechanism

However **Zia-ul-Haq** gave greater confidence to bureaucracy by putting an end to the practice of screening which was prevalent in the previous regimes.

On the other hand military-bureaucratic alliance contributed stupendously to economic development but pushed back state politically.

The fact remains that whenever military meddled in the political system it never showed sympathies for political elites. In order to consolidate power military had to align itself with bureaucracy.

Lack of Accountability

It is universally acknowledged fact that democratic system can only be sustained if system of checks and balances is evolved on sound basis. In third world countries like Pakistan neither collective accountability nor checks and balances systems have been followed, in the environment of chronic illiteracy.

Without any exaggeration today Pakistan faces a *crisis of governance*. The essential elements of good governance, covering rule of law, accountability and transparency have been shattered by corrupt and incompetent Pakistani rulers.

Corruption remains a substantial obstacle for Pakistan and democratic system.

Transparency International (TI) has ranked Pakistan 34th most corrupt nation in the world. First government of PPP in 1988 was sacked because of charges of corruption, similarly elections held

in 1997 were accused of such charges, and the recent compromise on corruption in the form of NRO, has raised many questions in the minds of nation against the credibility of political elite.

While looking at the political history of Pakistan party in power always developed its own scheme of accountability drive.

1. Ayub Khan used EBDO (Elective Bodies Disqualification Order) to remove corrupt politicians from the political scene.
2. Bhutto applied his doctrine of accountability by removing bureaucrats and army officials.
3. Zia-ul-Haq victimized political opponents on the pretext of Ehtesab (Accountability).
4. From 1988-1999 no political government was able to complete its democratically elected tenure. Thus it developed a negative trend and destabilized parliamentary system.
5. In the second tenure of Mian Nawaz Sharif a selective weapon to victimize opposition was also introduced. An Ehtisab Act (1997) was promulgated and Ehtisab Cell was set up under Senator Saif-ur-Rehman, (a close confidant of Mian Nawaz).
6. Regrettably the accountability drive was confined to opponents only.
7. Later it was transformed into NAB (National Accountability Bureau) in 2002. NAB however remained as a vehicle for detaining former officials and party leaders and a deviation from the normal justice system.

Unfortunately in Pakistan accountability method for political, civil and military elites had never been developed properly.

Media's biasness has ignited a flame of political imbalance and disharmony which in turn, has been weakening the roots of democratic culture in Pakistan.

Timeline

March 1949	The Objective Resolution – the first document of constitutional nature – introduced and adopted by the first Constituent Assembly amid opposition from the Pakistan National Congress, the only opposition party consisting of Hindu minority from East Pakistan.
September 1950	Interim Report of the Basic Principle Committee introduced in the Constituent Assembly, but due to public opposition from Bengal and Punjab on the federal formula, debate on the report postponed.
December 1952	Basic Principle Committee Report is introduced in the assembly for discussion.
September 1954	Report of the Basic Principle Committee is adopted as the draft constitution.
October 1954	First Constituent Assembly is dissolved by the Governor-General Ghulam Muhammad.
June 1954	Indirect elections held / nominations made to the second Constituent Assembly.
September 1955	One-Unit constituted, combining the four provinces and ten princely states of West Pakistan.
February 1956	1956 Constitution promulgated.

- October 1958 1956 Constitution is abrogated and martial law imposed. General Ayub Khan takes over the reins of power.
- June 1962 General Ayub Khan promulgates the 1962 Constitution through an executive order.
- March 1969 General Ayub Khan steps down and hands over the reins of power to his successor General Muhammad Yahya Khan who imposes second martial law in the country.
- March 1970 One-Unit is dismantled and Legal Framework Order is issued to serve as the interim constitution.
- December 1970 First general elections on adult franchise were held in the country.
- December 1971 East Pakistan secedes after a brief and bloody civil war, General Yahya Khan steps down and Mr. Zulfikar Ali Bhutto takes over as the first civilian martial law administrator.
- March 1972 First Tripartite Accord between the Pakistan Peoples Party and the coalition of National Awami Party and Jamiat-ul-Ulema Pakistan.
- April 1973 1973 Constitution adopted.
- July 1977 1973 constitution suspended, central and provincial governments dismissed and legislative assemblies dissolved by General Ziaul Haq by staging a military coup.
- March 1985 1973 Constitution is restored in amended form by General Ziaul Haq through the 'Revival of the 1973 Constitution Order, 1985'. Elections on non-party basis held.
- November 1985 Parliament passed the 8th Amendment to 1973 Constitution giving legal and constitutional cover to the suspension of the constitution and all acts of General Ziaul Haq between the suspension and restoration of the constitution.
- April 1997 The civil government of Nawaz Sharif restored some powers of the Prime Minister under the 1973 constitution which were taken away by 8th Amendment and also took away power of the President to dissolve the National Assembly in his discretion.
- October 1999 General Musharraf launches the third military coup, suspends the constitution, dismisses the federal and provincial governments, assumes the office the Chief Executive, declares state of emergency and promulgates the Provincial Constitutional Order, 1999.
- June 2001 Musharraf assumes the office of the President of Pakistan.
- August 2002 Musharraf issued the Legal Framework Order, 2002, providing for the general elections of 2001, restoration of the 1973 constitution with numerous amendments.
- December 2003 Parliament passed the 17th Amendment in the 1973 constitution, incorporating the Legal Framework Order, 2002 into the constitution, reversing the 13th Amendment by bringing the Prime Minister and National Assembly, once again, under the thumb of the President, which office was occupied by General Musharraf.
- November 2007 Musharraf issued another Legal Framework Order No.1 of 2007, assuming to himself the power of amending the constitution, and suspending the fundamental rights. He steps down as the military chief and is sworn as the President for the third term.
- February 2008 General elections held in the country, in which General Musharraf's supported party was defeated.
- August 2008 Musharraf resigns from the office of President under intense pressure and ahead of impeachment charges.

April 2010 18th Amendment, removing discretionary powers of the President to dissolve the national assembly and restoring to the office of Prime Minister all powers under the constitution that were taken by the military dictators General Ziaul Haq and Musharraf, and turning Pakistan from a semi-presidential to parliamentary system.

Islamization' of Laws in Pakistan

The *Objectives Resolution of 1949*, adopted as the original preamble to the 1973 Constitution of Pakistan (and later incorporated as a substantive provision, Art. 2-A, during the Zia era) made explicit reference to the “principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam” as a foundational principle of the constitution.

The *1956 Constitution of Pakistan* provided a specific mechanism for the “Islamization” of laws. The powers of bringing the laws of the land into conformity with Islamic law were granted to the Parliament and an advisory body was created to provide suitable suggestions. The Constitution of 1973 preserved this approach to Islamisation. The project of Islamisation of laws did not gather impetus until the latter half of the 1970's, when *Zulfiqar Ali Bhutto*, under pressure from an opposition alliance that included the religious political parties, announced measures such as *prohibition on the consumption of alcohol and declaration of Ahmadis to be non-Muslims*.

Zia's Time period

With the advent of *General Zia ul Haq* on the political scene, the landscape changed dramatically and the enforcement of Shari'ah became the rallying cry of a military regime desperately in need of legitimacy and some level of popular support. Zia's Islamisation is most closely associated with the Hudood laws.

These are **five presidential ordinances** that introduced new sexual and property offenses,

- maintained the prohibition on the consumption of alcohol, and
- provided for exemplary Islamic punishments such as stoning to death (for adultery), whipping and amputation (for fornication and theft)

These laws caused immense controversy and were criticized for being misogynistic and discriminatory towards religious minorities. The real impetus for Islamisation came not through the above-mentioned legislative interventions but through the **Islamic courts**, which were created by an amendment to the constitution in exercise of the emergency powers. (9th Amendment 1985)

The Shariat Courts, including the **Federal Shariat Court (FSC) and the Shariat Appellate Bench of the Supreme Court (SAB)**, both of which are appellate ¹ courts, were empowered to review any law for conformity with “the injunctions of Islam” and declare any offending law, including parliamentary legislation, to be null and void. In reality, the court could exercise these powers in

¹ any court of law that is empowered to hear an appeal of a trial court or other lower tribunal. [Wikipedia](#) any court of law that is empowered to hear an appeal of a trial court or other lower tribunal. [Wikipedia](#)

such a manner as to dictate to the legislature what Islamic law provisions would replace the voided legal provisions.

The major decisions of the Shariat courts were delivered in the period immediately following Zia's demise and coincided with the first tenures of Prime Ministers Benazir Bhutto and Nawaz Sharif in the late 1980's and early 1990's. *The late 1990's have been an era of emerging Islamic critiques that have pointed out not only the human rights violations resulting from these laws but also focus on their divergences from classical Islamic law in several respects.*

The Musharraf regime has sought to amend many of these Islamized laws, which have become increasingly notorious internationally. While in the West the Islamisation of the laws of Pakistan is generally perceived to be a retrogressive movement characterized by the introduction of discriminatory and sexist laws, another vital aspect of this movement is generally overlooked. The bulk of Pakistan's laws, especially the criminal laws, date back to the colonial era and they embody the assumptions of that era. Historically, the state and its laws have been perceived by much of the citizenry to be of mostly alien origin and are followed only to the extent that the coercive power of the state compels such obedience.

With the Islamisation of laws a new discourse has begun to take shape questioning the legitimacy and moral authority of laws that govern citizens' conduct. This dimension is also beginning to be reflected in the jurisprudence of the superior courts, other than the Shariat courts, where references to Islamic principles are frequently made in justification of rulings concerning subjects as diverse as due process in administrative law, enforceability of contracts and environmental regulation, to refer to a few examples.

This shifting discourse on the Islamisation of the law forms, along with 10 the constitutional crises and frequent shifts in the locus of authority, provides the backdrop for the current state of the rule of law in Pakistan.

In Pakistan, the *independence of judiciary* is enshrined in the Constitution. Like the U.S. we have a written constitution based on the principle of separation of powers. A separate part (part 7) is allocated to the judiciary, and it was made independent of the Executive by a constitutional mandate that was given effect to by a judgment of the Sindh High Court and upheld by the Supreme Court (Government of Sindh v. Sharf Faridi, PLD 1994 SC 105) Besides being the last court of appeal both under the civil and criminal law, the Supreme Court under the Constitution has power to pass an appropriate order "on any question of public importance with reference to the enforcement of Fundamental Rights." (Constitution of Pakistan of 1973 Article 184)

To further buttress the authority and independence of the Supreme Court, the Constitution inter alia provides that the law or a principle of law declared by the Supreme Court shall be binding on all courts and all executive authorities in the country shall act in aid of the Supreme Court. (Article 190) The Judges of the constitutional courts have security of tenure, and they can, as per the Constitution, only be removed on proven charges of misconduct by the Supreme Judicial Council headed by the Chief Justice of Pakistan. It is under this constitutional dispensation that the Supreme Court and other courts function.

The Supreme Court in several judgments has given liberal interpretation to fundamental rights provisions of the Constitution and thereby promoted the Rule of Law and democratic norms.

1. In one case it interpreted the right to freedom of association to include the rights of a political party to keep functioning. (Abul Alamaudoodi v. the State, PLD 1964 SC 673).
2. It further expanded this right by holding that a political party, if in power, has the right to complete its term unless its Government is ousted under the Constitution. (Nawaz Sharif v. President of Pakistan, PLD 1993 SC 473).

In certain cases, the superior courts acted as “social engineers” and catalysts of change. Pakistan has been a male dominated society where instances are not lacking when women were deprived of their right to inherit property, despite the mandate of law, through involuntary surrender. There have been instances when they were denied the right to marry a person of their choice or when they were given in marriage without their consent. The court, when called upon to decide such matters, laid down law, which had the effect of changing the unjust customs and mores.

1. For instance, in cases of denial of right to inherit property, the Supreme Court held that this being a gross violation of fundamental right of a socially disadvantaged gender, claims could be filed even long after expiry of the prescribed period of limitation. (PLD 1970 SC 1).
2. In certain remote areas of Pakistan there is a custom of giving young and even minor girls in marriage as a settlement in blood feuds. The Supreme Court interfered in such cases, the state functionaries were reprimanded for apathy, and a direction was issued to the government to take preventive and punitive action in such cases. Because of the court interventions, the law was amended, and now it is a Penal offence to give a young girl in marriage as a settlement of a blood feud.

In terrorism related cases, the Supreme Court has been particularly strict. It upheld the Anti-Terrorism Act by holding that the legislature could pass a special law to cater for such heinous crimes. (Mehram Ali v. Federation of Pakistan (PLD 1998 SC 1445). It chided the High Court for being too liberal in cases under the Anti-Terrorist Laws. (Mirza Shaukat Baig v. Shahid Jamil (PLD 2005 SC 530).The court has always maintained, however, that while investigating such cases, cannons of due process should be duly observed. Because when the law enforcement agencies roughshod the law in the name of terror, it amounts to playing on the wicket of the terrorists who wreak violence in disregard to law.

One of the most onerous functions of the judiciary in a constitutional democracy is to protect the liberty, the due process and the Rule of Law. The brief overview of the powers and working of the Supreme Court would indicate that under the Constitution it has wide powers. But the magnitude of injustices it is confronted with is still wider both quantitatively and qualitatively. In absence of responsive and credible institutions of law enforcement, people tend to bring every cause, every grievance, and ever lie before the constitutional courts and in particular before the Supreme Court. The Supreme Court by and large has refrained from interfering in matters of public policy. We believe that it is not the function of the court to get embroiled in politics and passions of the day. Or perception on such matters has been, “the constitution does not constitute us as ‘Platonic Guardians’ nor does it vest in this court the authority to strike down laws because they do not meet its standards of ‘desirable social policy, wisdom, or commonsense’.

While dispensing justice, the Supreme Court has broadly kept three considerations in view. **First**, that Judiciary is one of the three organs of the state, and good governance is possible only if the three remain within their defined limits. **Second**, the law may not keep pace with the changing times and may not respond to every situation. The Court has a role to bridge the gap between the

law and the society. This consideration is particularly relevant to the powers of the Supreme Court under Article 184 of the Constitution. **Third**, the court has been conscious that as a member of the United Nations and being part of a global community, Pakistan has certain obligations under the international law. We live in an interdependent world. Any activity within the country that has or has a potential to have nexus with a crime committed outside the country, be it a financial crime or an act of terror, has to be brought to justice under the law. If laws are flouted, it breeds contempt. The society becomes prey to stagnation, resentment, and violence, which is then exported.

Dr. Martin Luther King was alluding to this chain reaction of injustice when he said, “***Injustice anywhere is a threat to justice everywhere.***”