

Pakistan studies

Book 10th class

Chapter 3

Constitution of Pakistan

Topics covered:

Historical context of constitution development

The progress of the first constitutional assembly

Issues causing delay in constitution making

Objectives resolution

Second constitutional assembly of Pakistan

Constitution of 1956

Constitution of 1962

Constitution of 1973

SLO based questions

1. Historical Context of Constitutional Development

1. How did adopting the amended Government of India Act 1935 as an interim constitution ensure administrative continuity, yet simultaneously limit early democratic institutionalization in Pakistan?

- **Administrative Continuity:** It provided an already established, functional legal frame and administrative mechanism, preventing a total collapse of executive and judicial operations during the chaotic post-partition period.
- **Limitation on Democracy:** Because the 1935 Act was designed by colonial rulers to centralize executive authority, adopting it preserved a strong viceregal tradition. Power remained concentrated in the executive branch (Governor-General) rather than elected representatives, which hindered early democratic practices and delayed popular governance.

2. Analyze how the unequal allocation of assembly seats planted the seeds of early regional political friction.

- **Demographic vs. Legislative Disparity:** East Bengal contained more than half of Pakistan's total population, yet was allocated 44 seats, whereas the combined seats of the West Pakistan units totalled 35 seats.
- **Political Discontent:** East Bengal felt its demographic majority was diluted, leading to suspicions of dominance by West Pakistan. This planted deep regional mistrust, making subsequent consensus on representation, legislative parity, and federalism extremely difficult to achieve.

3. Assess the extent to which starting governance "from scratch" justified the delay in early constitution-making.

- **Severity of Immediate Crises:** The influx of millions of refugees, acute shortages of funds and equipment, water disputes, and the Kashmir war forced the leadership to prioritize physical survival and state-building over legislative debates.
- **Critical Assessment:** While these crises legitimately diverted immediate resources and attention, the administrative strain was often exploited by non-elected bureaucrats and politicians to stall democratic processes, delay general elections, and consolidate personal power.

2. Progress & Challenges of the First Constituent Assembly (1947–1954)

1. How did the political deadlock over language, regional representation, and Islamic provisions weaken the authority of the First Constituent Assembly?

- **Linguistic Division:** Declaring Urdu as the sole national language triggered severe protests and riots in East Bengal, alienating the majority population.
- **Representation & Ideology:** Disagreements between centralizers (favoring strong federal control) and autonomy-seekers (demanding provincial rights), combined with debates over how far to Islamicize the state, paralyzed legislative progress.
- **Erosion of Legitimacy:** The assembly met for only 116 days over seven years with low attendance, causing the public to view it as unresponsive and inept.

2. Examine how Governor-General Ghulam Muhammad's dissolution of the Constituent Assembly in 1954 set a lasting precedent for executive dominance over legislative bodies.

- **Undermining Sovereignty:** By arbitrarily dissolving the sovereign assembly just as it finalized the draft constitution, the executive demonstrated that administrative power superseded parliamentary authority.
- **Institutional Precedent:** This action established a dangerous trend in Pakistan's political history where executive heads frequently dissolved elected parliaments whenever legislative decisions challenged executive control.

3. Evaluate the effectiveness of Prime Minister Muhammad Ali Bogra's "Bogra Formula" as a compromise mechanism. Did bicameralism decision resolve the representation conflict?

- **Compromise Mechanism:** The Bogra Formula proposed a bicameral legislature where East Pakistan had population-based majority in the Lower House, while West Pakistan held equal provincial representation in the Upper House, creating equal total voting power in joint sittings.
- **Effectiveness:** Politically, it came closest to resolving the representational stalemate between both wings. However, before it could be formally enacted into a constitution, executive intervention dissolved the assembly, leaving its potential unfulfilled.

3. The Objectives Resolution (1949)

1. How does the Objectives Resolution harmonize the concept of Divine Sovereignty with the principles of popular democracy executed through elected representatives?

- **Delegated Authority:** It establishes that absolute sovereignty over the entire universe belongs to Almighty Allah alone.
- **Democratic Execution:** It explicitly outlines that the authority delegated by Allah to the state of Pakistan is to be exercised *through its people* via elected representatives as a sacred trust. This framed democratic governance as a religious duty rather than a secular contradiction.

2. How does incorporating the Objectives Resolution as a preamble—and later as an integral part—shape the fundamental legal philosophy of all subsequent Pakistani constitutions?

- **Philosophical Foundation:** It serves as the moral compass for state policy, ensuring that all constitutional provisions conform to Islamic principles, democracy, freedom, equality, and social justice.
- **Legal Impact:** By making it an active constitutional provision (in 1985), it allowed courts to test national laws against its basic principles, solidifying Pakistan as an ideological Islamic Republic.

3. Evaluate the balance struck in the Objectives Resolution between protecting minority rights and establishing an Islamic framework of governance.

- **Islamic Framework:** It set clear mandates that Muslims should be enabled to order their lives according to the Quran and Sunnah.
- **Minority Safeguards:** Simultaneously, it contained explicit guarantees for religious minorities to freely profess, practice, and develop their cultures and religions.
- **Critical Assessment:** While non-Muslim delegates feared it might create a state where minorities had secondary status, the text attempted to harmonize religious values with fundamental rights and judicial guarantees.

4. The Constitution of 1956 & Causes of Its Failure

1. Analyze why establishing a unicameral legislature and implementing the One Unit scheme failed to resolve political distrust between East and West Pakistan.

- **One Unit Scheme:** Merging the western provinces into a single administrative unit to force mathematical "parity" with East Bengal was viewed in the East as a political maneuver to curb their actual demographic majority.
- **Unicameral Failure:** A single legislative house provided no separate safeguard (like a Senate) for distinct regional identities, amplifying fears of domination and deepening provincial polarization.

2. How did political floor-crossing, frequent changes in government, and executive interference lead to the breakdown of the parliamentary system in 1958?

- **Political Instability:** Politicians frequently switched party loyalties for personal gain, preventing any cabinet from sustaining a stable majority.
- **Executive Overreach:** The President held powers to destabilize ministries, leading to rapid turns of Prime Ministers within brief periods. This political chaos destroyed public faith in democratic institutions and provided an excuse for Martial Law in 1958.

3. "A constitution on paper cannot survive without democratic consensus." Evaluate this statement in the light of why the 1956 Constitution was abrogated after only two years.

- **Lack of Genuine Consensus:** The 1956 constitution was pushed through amid walking out of key East Pakistani representatives due to unresolved autonomy and electoral issues.
- **Unfulfilled Promises:** General elections promised under the constitution were repeatedly delayed by the ruling elite who feared losing power. Without grassroots democratic backing and popular legitimacy, the constitutional structure was easily dismantled by Iskander Mirza and Ayub Khan.

5. The Constitution of 1962 & Causes of Its Failure

1. Analyze how concentrating executive, legislative, and emergency powers in the office of the President under the 1962 Constitution violated the principle of separation of powers.

- **Overwhelming Presidential Authority:** The President held absolute executive authority, appointed cabinet ministers independently of the legislature, held veto power over bills, and could issue emergency ordinances without parliamentary control.
- **Subjugation of Parliament:** The National Assembly was reduced to a rubber-stamp body, destroying checks and balances and creating an autocratic political environment disguised as a constitution.

2. Explain how the Basic Democracies system disenfranchised the general population and heightened provincial alienation.

- **Indirect Democracy:** Instead of direct adult suffrage, 80,000 "Basic Democrats" (local councilors) acted as an electoral college to elect the President and Parliament.
- **Disenfranchisement & Manipulation:** This system stripped millions of citizens of their direct vote, making the small electoral college easily susceptible to state patronage, manipulation, and political control by the military-bureaucratic regime.

3. Evaluate why a strong presidential structure under military guidance proved structurally incapable of managing political diversity and regional grievances.

- **Suppression over Negotiation:** Dictatorial presidential systems rely on centralized command rather than political accommodation.
- **Alienation of Minor Provinces:** By denying provincial autonomy, suppressing opposition parties, and denying direct representation, the regime blocked legitimate political outlets. This turned regional grievances into mass political uprisings, culminating in political instability and the collapse of the regime in 1969.

6. The Constitution of 1973

1. Analyze how creating a bicameral legislature resolved the decades-long provincial autonomy conflict.

- **National Assembly (Lower House):** Represents citizens on a population basis, ensuring democratic majority rule.
- **Senate (Upper House):** Grants equal, fixed representation to all federating units regardless of their population size or geographic area.
- **Resolution of Conflict:** This dual mechanism prevents populous provinces from dominating smaller provinces, securing provincial autonomy and equality in federal legislation.

2. How do institutions like the Council of Islamic Ideology and Federal Shariat Court ensure constitutional compliance with Islamic law while maintaining legislative supremacy?

- **Advisory & Review Functions:** The Council of Islamic Ideology advises Parliament on aligning laws with the Quran and Sunnah. The Federal Shariat Court reviews existing laws to ensure they do not contradict Islamic injunctions.

- **Preserving Supremacy:** They act within defined judicial and advisory limits, leaving the formal lawmaking responsibility to the elected Parliament, thus balancing Islamic principles with democratic lawmaking.

3. Assess the significance of declaring the abrogation or suspension of the constitution as "High Treason" (Article 6) in deterring future extra-constitutional interventions.

- **Legal Shield:** Article 6 was designed to penalize any attempt to suspend, subvert, or abrogate the constitution by force or unconstitutional means.
- **Deterrence Goal:** By defining extra-constitutional takeovers as a capital offense against the state, it aims to protect democratic continuity and deter civil or military actors from overriding the supreme law of the land.

7. Comparative Analysis of Constitutions

1. Comparing the 1956, 1962, and 1973 constitutions, synthesize three vital institutional safeguards necessary to ensure federal stability.

1. **Bicameral Federal Legislature:** Equal representation in an upper house (Senate) to safeguard smaller provinces from majoritarian dominance.
2. **Guaranteed Provincial Autonomy:** Clear division of legislative powers and local resource control to prevent central encroachment.
3. **Independent Judiciary:** A strong Supreme Court capable of neutrally adjudicating federal-provincial disputes and enforcing fundamental rights.

2. Based on evolutionary constitutional history from 1947 to 1973, formulate an argument on whether structural constitutional flaws or non-constitutional political interventions were the primary cause of instability.

- **Primary Cause — Non-Constitutional Interventions:** While structural flaws (such as One Unit and unicameralism) contributed to regional friction, premature abrogations of constitutions and dissolutions of assemblies by non-elected executives prevented democratic institutions from maturing. Whenever constitutional mechanisms were near consensus (e.g., Bogra Formula or 1956 elections), arbitrary intervention truncated the process, making non-constitutional overreach the ultimate driver of national instability.

Exercise based questions (From book)

1. What is the significance of the Objectives Resolution in shaping the constitution of Pakistan?

* **Foundation of Constitution Building:** It served as the primary guiding framework and blueprint on which the constitutions of 1956, 1962, and 1973 were built.

* **Preamble and Active Part:** It was adopted as the preamble in the 1956, 1962, and 1973 constitutions, and later became a substantive, integral part of the 1973 Constitution in 1985.

* **Ideological Baseline:** It defined Pakistan as a state balancing Islamic principles (such as Allah's sovereignty) with democratic norms, popular representation, and minority rights.

2. What is the role of the Islamic Ideology Council in Pakistan's legislative process under the 1973 Constitution?

* **Advisory Role:** The Council of Islamic Ideology was established to guide legislative bodies in framing laws in alignment with Islamic teachings.

* **Reviewing Existing Laws:** It is mandated to examine existing laws to ensure they contain no elements repugnant to the teachings of the Quran and Sunnah.

* **Recommendations:** It suggests practical ways to adapt current laws into an Islamic shape and facilitate Muslims living according to Islamic principles.

3. Why did Pakistan adopt the Government of India Act 1935 as an interim constitution after independence?

* **Immediate Administrative Necessity:** Due to the chaos, sudden partition, and severe early challenges, it was impractical to draft a new constitution immediately.

* **Ensuring Continuity:** Adopting the 1935 Act (with necessary amendments under the Indian Independence Act 1947) provided a legal, stable administrative framework to govern until the Constituent Assembly could legislate a original constitution.

4. How did the death of Quaid-e-Azam impact the progress of Pakistan's constitution-making process?

* **Loss of Unifying Leadership:** Quaid-e-Azam possessed the stature and vision needed to resolve tough constitutional issues and guide the assembly. His death on September 11, 1948, created a severe leadership vacuum, allowing regional disputes, political rivalries, and institutional inertia to stall the drafting process.

5. How did the Federal Court of Pakistan impact the fate of the First Constituent Assembly?

* **Overturning Sindh High Court:** After Governor-General Ghulam Muhammad dissolved the assembly in 1954, the decision was challenged and declared invalid by the Sindh Chief Court.

* **Upholding Executive Action:** The Federal Court overturned the Sindh Chief Court's decision, legally upholding the Governor-General's power to dissolve the assembly and ruling that a new assembly had to be formed.

6. Compare the parliamentary system established under the 1956 Constitution with the current governance structure in Pakistan.

The parliamentary system established under the 1956 Constitution and the current governance structure under the 1973 Constitution (as amended) share a parliamentary framework, but differ significantly in their institutional design, legislative balance, federal power distribution, and executive authority.

1. Executive Authority and Role of the President

* **1956 Parliamentary System:** The Prime Minister served as the head of government, but the President held excessive executive powers. The President possessed authority to override or destabilize legislative decisions, manipulate cabinet appointments, and declare emergencies, which weakened the office of the Prime Minister and triggered extreme political instability.

* **Current Governance Structure:** Executive power is concentrated in the elected Prime Minister as the head of government. The President serves primarily as a ceremonial head of state and must act on the advice of the Prime Minister, establishing clear executive accountability to Parliament.

2. Structure of the Legislature

* **1956 Parliamentary System:** Established a unicameral legislature consisting of a single house—the National Assembly—with 300 total seats.

* **Current Governance Structure:** Features a bicameral legislature (Majlis-e-Shoora) comprising two houses:

3. Federal Structure and Regional Representation

* **1956 Parliamentary System:** Relied on a forced mathematical “parity” concept via the One Unit scheme, where the National Assembly seats were divided equally (150 seats

each) between East Pakistan and West Pakistan. This setup bypassed proportional population representation and suppressed distinct provincial identities in West Pakistan.

- * **Current Governance Structure:** Implements a multi-province federal model with strong provincial autonomy (further enhanced by landmark reforms like the 18th Amendment). Legislative subjects are clearly demarcated, granting provinces primary responsibility over local administration, healthcare, and education.

4. Method of Elections and Democratic Franchise

- * **1956 Parliamentary System:** Maintained a system of direct elections based on adult franchise for the unicameral assembly, but general national elections under this framework were repeatedly delayed and never actually conducted before the constitution was abrogated in 1958.

- * **Current Governance Structure:** Direct general elections are regularly conducted for the National Assembly and Provincial Assemblies, while the Senate and the President are elected through indirect vote by members of the national and provincial legislatures.

5. Islamic Institutions and Constitutional Safeguards

- * **1956 Parliamentary System:** Incorporated basic Islamic provisions (such as naming the country the “Islamic Republic of Pakistan” and requiring the President to be a Muslim) and placed the Objectives Resolution as a non-binding preamble.

- * **Current Governance Structure:** Contains extensive institutional mechanisms to ensure constitutional alignment with Islamic principles, including the Council of Islamic Ideology and the Federal Shariat Court. Additionally, the Objectives Resolution is an active, substantive part of the text (Article 2A), and Article 6 explicitly defines any unconstitutional suspension or abrogation of the constitution as High Treason.

7. Describe the impact of the Basic Democracy system introduced under the 1962 Constitution on Pakistan’s political landscape.

- * **Deprivation of Direct Vote:** It stripped the general public of direct franchise, delegating voting power to 80,000 indirectly elected local representatives (“Basic Democrats”).

- * **Political Manipulation:** The small electoral college was easily controlled and influenced by the central government and state machinery.

- * **Public Unrest:** It alienated political parties, suppressed provincial representation, and triggered widespread public resentment that eventually led to mass protests and the fall of Ayub Khan’s regime.

8. List the major reasons behind the abrogation of the 1962 Constitution.

- * **One-Man Rule:** It was perceived as a authoritarian framework centered around a single executive without popular legitimacy.
- * **Suppression of Provincial Autonomy:** The forced merging under One Unit and concentration of power in the central government created severe resentment, particularly in East Pakistan.
- * **Lack of Checks and Balances:** Weak legislative and judicial autonomy left no outlet for resolving political grievances.
- * **Mass Public Protest:** Widespread violent uprisings and political unrest against indirect elections forced Ayub Khan to resign, leading General Yahya Khan to impose Martial Law and abrogate the constitution in March 1969.

9. Evaluate the role of regionalism and linguistic tension in delaying the drafting of Pakistan's constitution.

- * **Language Controversy:** Protests demanding Bengali as a national language alongside Urdu created immense friction between East and West Pakistan.
- * **Representation & Autonomy Disputes:** East Pakistan sought political representation matching its demographic majority, while West Pakistani politicians favored equal parity, paralyzing assembly discussions for years.
- * **Institutional Distrust:** Regional polarization stalled consensus on basic federal features, delaying constitution-making until 1956.

10. Assess the strengths and weaknesses of the presidential system introduced by the 1962 Constitution of Pakistan.

* **Strengths:**

- * **Centralized Stability:** Provided temporary administrative stability and rapid economic decision-making without legislative deadlock.
- * **Clear Executive Authority:** Allowed the President to implement long-term policy reforms efficiently.

* **Weaknesses:**

- * **Autocratic Centralization:** Power was disproportionately concentrated in the President, rendering parliament powerless.

* **Electoral Disenfranchisement:** Indirect elections through Basic Democrats detached citizens from national politics.

* **Regional Alienation:** Denied genuine autonomy to federating units, accelerating political instability and the eventual collapse of the regime.

11. Analyse the impact of the Objectives Resolution on Pakistan's constitutional history.

* **Constitutional Blueprint:** It established democratic rule, constitutionalism, federalism, and fundamental rights as core elements of state identity.

* **Balancing Ideology and Democracy:** It declared that divine authority delegated to the state is exercised by the people through elected representatives, harmonizing Islamic values with democratic governance.

* **Permanent Islamic Character:** It anchored Islamic principles into all national constitutions (1956, 1962, 1973), preventing any future government from straying into fully secular legislation.

12. Compare and contrast the 1962 and 1973 constitutions of Pakistan regarding federalism, representation, and Islamic principles.

The 1962 Constitution (promulgated under Field Marshal Ayub Khan) and the 1973 Constitution (enacted under Zulfikar Ali Bhutto) reflect fundamentally different approaches to governance in Pakistan. While the 1962 Constitution was built around a centralized presidential model designed under military rule, the 1973 Constitution established a consensus-based parliamentary democracy.

Here is a detailed comparative breakdown across the three key dimensions:

1. Federalism and Distribution of Power

1962 Constitution:

* **Centralized Federalism:** Although it formally recognized Pakistan as a federation, the system was highly centralized around the central government.

* **Control Over Provinces:** The President appointed provincial governors who held executive powers similar to the President within their respective provinces. However, because governors served at the pleasure of the President, provincial executive authority was effectively an extension of central power.

* **Intervention Rights:** The central government retained absolute authority to intervene in provincial affairs whenever it deemed necessary, leaving the federating units (East and West Pakistan) with minimal genuine autonomy.

1973 Constitution:

* **True Federal Framework:** It introduced a decentralized federal model that explicitly protected provincial autonomy.

* **Separation of Subjects:** Legislative authority was divided clearly between the center and the provinces to prevent central encroachment on local matters.

* **Provincial Executive Independence:** Provincial governments are headed by elected Chief Ministers who answer to their respective elected Provincial Assemblies, rather than being controlled directly by the President or central executive.

2. System of Representation and Governance Structure

1962 Constitution:

* **Indirect Democracy & Basic Democracies:** Representation was based on an indirect electoral system. The general public did not vote directly for the President or the Parliament; instead, they elected an electoral college of 80,000 local councilors called "Basic Democrats," who then voted for national leaders.

* **Unicameral Legislature:** It featured a single legislative house—the National Assembly—consisting initially of 150 members (later increased to 218). Seats were allocated equally between the East and West wings based on the principle of parity, rather than direct proportional population representation.

* **Presidential Dominance:** All executive, legislative veto, and emergency powers were concentrated in the President, rendering the legislature largely subservient.

1973 Constitution:

* **Direct Parliamentary Democracy:** It restored adult franchise, allowing citizens to vote directly in general national elections for both the National Assembly and Provincial Assemblies.

* **Bicameral Legislature:** To resolve decades of representation disputes, it established a two-house parliament (Majlis-e-Shoora):

* **National Assembly (Lower House):** Members are elected directly on the basis of population.

* **Senate (Upper House):** Grants equal, fixed representation to every province regardless of size or population, protecting smaller provinces from being outvoted.

* **Prime Minister as Executive:** Executive power rests with the Prime Minister (elected by the National Assembly), while the President serves as a constitutional head of state.

3. Incorporation of Islamic Principles

1962 Constitution:

* **Moderate/Initial Secular Tilt:** The constitution initially named the state simply as the “Republic of Pakistan” (the word “Islamic” was added later following strong public protest).

* **Basic Islamic Injunctions:** It included standard Islamic provisions, such as declaring Allah’s sovereignty in the preamble (Objectives Resolution) and stipulating that the President must be a Muslim. It also stated that no laws should contradict the Quran and Sunnah.

* **Advisory Institutions:** It created an Advisory Council of Islamic Ideology and the Islamic Research Institute to assist lawmakers, though their role was purely advisory and non-binding.

1973 Constitution:

* **Comprehensive Islamic Identity:** It significantly strengthened the Islamic framework of the state, formally declaring Islam as the State Religion of Pakistan for the first time.

* **Substantive Role of Objectives Resolution:** The Objectives Resolution was placed as the preamble (and later made an integral, enforceable part of the Constitution under Article 2A in 1985).

* **Strict Leadership Criteria:** Both the President and the Prime Minister must be Muslims, and a precise legal definition of a Muslim was formally added to the text.

* **Enforceable Judicial & Advisory Bodies:** It instituted dedicated mechanisms to ensure alignment with Islamic law, including:

* **Council of Islamic Ideology:** To systematically review laws and guide legislation.

* **Federal Shariat Court:** Granted judicial power to examine and invalidate any existing or proposed law found repugnant to the teachings of Islam.

Studybeesofficial