

Identification of Obstructions during the Constitution-Making in Pakistan: The First Report of Basic Principles Committee

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Abstract:

Constitutional history of Pakistan took almost nine laborious years to form the first constitution of the country in 1956. After the death of Quaid-i-Azam Muhammad Ali Jinnah, the founder of Pakistan, a competition of influence, power and prestige started between the office of Prime Minister and the Governor General. Similarly, problems regarding the nature of state, division of power, Centre province clash and the quantum of representation in the central parliament and on language adoption problem deteriorated the situation. However, formation of the Basic Principles Committee (BPC) with the promulgation of Objective Resolution provided a right direction to the formation of the Constitution on the permanent basis by identifying certain issues i.e., language issue, representation problem and the character of the constitution. Although the report was rejected by majority of the political elite of East Pakistan, yet it rightly pointed out the hindrances in the structure of the constitution for the newly independent state of Pakistan. The paper mainly deals with the question that how BPC tried to handle the existing situation where all stakeholder wanted to see the next coming constitution according to their aspirations even at the cost of others.

Keywords: Basic Principles Committee, Board of Talimat-i-Islamia, Constituent Assembly, Objective Resolution, question of representation, language issue

INTRODUCTION

After getting independence in 1947 from the British, like all other countries of the world, Pakistan sought to frame a constitution to run the affairs of the state accordingly. However, constitution making in Pakistan was unduly delayed by political complications and unnecessary power struggle. It took almost nine painstaking years to have an enduring constitution on which all stakeholders were agreed. Yet the constitution remained a tool in the hands of self-centered politicians and corrupt bureaucrats. They were engaged in palace plotting of making and dissolving the cabinets. Along with these hurdles, there were some fundamental issues faced by the makers of the constitution in Pakistan. The making of constitution, even in most amiable situation, was a very difficult and astounding task because of disagreement on ideological commitments, clash of interests and religious and linguistic issues. The Basic Principles Committee (BPC) was appointed on 12 March 1949, the day on which the Objectives Resolution was passed. It made three attempts to give a constitution to the country, but every time it was criticized by some reasons. An attempt has, however, been made in this study to analyze the work of BPC in respect to the constitution making in Pakistan, and to provide an unbiased story of those six years during which the BPC functioned. This is an attempt to analyze the role of BPC's first reports in the constitutional development of Pakistan (1949-1956).

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THE BASIC PRINCIPLES COMMITTEE AND ITS REPORT

The Objectives Resolution is not a Constitution laid down the fundamental principles for the future constitution making. Immediately after the implementation of the Objectives Resolution, in order to achieve the said objectives, the BPC was constituted under the chairmanship of Maulvi Tamizuddin Khan, President of the Constituent Assembly, was setup to report the basic principles of the Constitution (Afzal, 1976). While other members of committee included Liaqat Ali Khan the Prime Minister, Shaikh Karamat Ali, Mr. Nazir Ahmad Khan, Mr. Prem Hari Barma, Begum Shaista Shrawardy Ikramullah, Dr. Muhammad Hussain, Khan Sardar Bahadar Khan, Mian Muhammad Iftikhar-ud-Din, Molana Muhamamd Akaram Khan, Mian Mumtaz muhamamd Khan Daulana, Mr. Sirs Chandra Chattopadhyaya, Malik Muhammad Feroz Khan Noon, Sir Muhammad Zafrullah Khan, Mr. Ghulam Mohammad, Sardar Abdur Rab Khan Nishtar, Khawaja Shahabuddin, Pirzada Abdus Saattar, Mr. Fazl-ur-Rehman, Mr. Jogendra Nath Mandal, Dr. Omar Hayat Malik, Mulana Shabbir Ahmed Osmani, Dr. Ishtiaq Hussain Qureshi, Mr. Kamini Kamar Data and Begum Jahan Ara Shah Nawaz.

The committee, in the start of its procedure, appointed a navigational Sub-committee in order to report on the scope. These sub-committees were assigned to recommend the subjects directly related to the matter including sub-committees on federal issues, provincial matters, and about the distribution of powers etc. Similarly, the sub committees on the issues of franchise and the sub committees on judiciary were handed over important tasks to decide the faith of the nation (Ahmed, 1981). However, the assigned task for the Board of Talimat-e-Islamia attracted that attention of both schools of secular and orthodox for their self-gain.

Board of Talimat-e-Islamia

The body dealing with the nature of the future constitution of Pakistan was Board of Talimat-e-Islamia (Islamic Instructions). A few months after the passing of Objective Resolution, a five-member board was set up to advice the BPC and its sub committees on questions coming out of the Objectives Resolution and other concerned subjects (Salamat, 1992). The powers of the Board were, however, limited in the sense that its position was merely advisory and it could only give opinion on the matters referred to them by Principal Committee.

When the decision to frame this board was finalized, a committee including the Prime Minister of Pakistan, the Governors of East Bengal and Punjab, the Minister of Finance, Maulana Shabbir Ahmed Osmani, and the president of the Constituent Assembly Maulvi Tamizuddin Khan was formed to appoint the members of the Board. The creation of such a board had been suggested by Maulana Shabbir Osmani only few months earlier in the speech given at Dacca. Although the position of the Board was to be advisory, it appeared that the Ulema were generally satisfied with the decision to appoint the board. It was however, strange that the Ulema did not protest about its membership when it was announced. Apart from Maulana Osmani himself and two others, the Board was thoroughly secular in nature. It is believed that the board seemed a compromise where appointed members have been chosen for the purpose of dividing and weakening it. The members included Maulana Muhammad Shafi, Maulana Syed Suleman Nadvi, Prof. Abdul Khaiq, Mufti Jafar Hussain, Dr. Hamidullah and Maulana Zaffar Ahmed Ansari (Ahmad, 1976). The nomination of these

Ulema in the said body clearly indicated, that the ruling party wanted to retain the support of Ulema at any cost.

It is believed that by appointing such a body the westernized Muslim leadership of Pakistan tried to clutch the propositions of the notion of an Islamic state. On the other hand, the Orthodox agreed to accommodate the concept of contemporary state but should not be in conflicting with the injunctions of Quran, Hadith and juristic commandments (Ahmad A. , 1971). As it is mentioned earlier that the basic objective of the board was to provide guidelines regarding the matters coming out of the Objectives Resolution and on others, however, matters related to the other committees referred to it was also be discussed as agenda (Binder, 1961). In spite of difficulties and observations, the Board finally submitted its proposals on 1st July, 1951 (View of the Board of Talimaat-i-Islamia on Certain items referred to them by the Sub-Committee on Federal and Provincial Constitution and Distribution of Powers with Annotation, 1951). A comprehensive package of recommendations included three different sections; the first section was related to matters regarding the Head of the State, the second was about the Executive and the third related to the affairs regarding the Legislature (Shah, 1996).

In brief, the board recommended that the head of the state was to be wisest and most God fearing man, who would release from his duties and errands in discussion with wise member of Millat. He was to work for the consolidation and glory of Islam, maintain international peace, control and disburse public funds, and work for the protection and prosperity of masses. He would take his oath before the federal legislature where after the members would individually swear loyalty to him. It was suggested the he would be elected for life. The exact method of election was not defined, but he was not to be elected directly by the people but by their learned and pious representatives. He could be removed by the same body if he was no longer qualified, on grounds of wavering from Islamic injunctions (Salamt, 1992, p.51). As the head of the state would exercise his role in consultation with the legislative council yet the body would be different from the representative body that use to elect the Head of the state (Salamt, 1992).

As per suggestions, the Ulema were to constitute the committee of experts on Sharia, and were vested with the right to decide whether or not a particular law militated against the requirements of Islamic law. The power was only negative as they could not legislate but only veto un-Islamic legislation. In point of fact; the recommendations of Board of Talimat-i-Islamia were complex in nature. It is generally believed that majority of Ulema could not differentiate the function of a cleric and a Head of the state. They were allegedly seeking for a political system with their role in it. However, the board claimed to seek a system matching to the conventional outset of an Islamic state, with certain acceptance to rejuvenation (Ahmad A. , 1971).

In spite of criticism, majority of the people agreed that existence of board was a significant phenomenon. It provided a platform for a constructive debate between Orthodox and the moderate/westernized political elites on the subject of future constitution in Pakistan. Although majority of its recommendations were rejected yet few of its provisions were included in the upcoming constitutions of the 1956 and 1962 (Ahmad, A., 1971).

Submission of Report

In order to formulate a constitution according to the wishes of Pakistani people, the Constituent Assembly handed over the task to prepare a report on constitution to the Basic Principles Committee. The committee was to look into the matters causing delay in the constitution making process. Unlike India, where the constitution had already been in practice since January 1950, the Pakistani establishment could pave the way for a permanent constitution. The board in its interim report pointed out that along with other factors, the absence of advisory committee of Ulema caused the delay (Dawn, 1950). Brief review of the recommendations of the BPC is as under:

Directive Principles of Policy Formulation

First part of the BPC reports described the nature and function of the directive principles for the future policy formulation of the state. As expected, the members unanimously agreed to incorporate the whole text of Objectives Resolution in the upcoming constitutions of Pakistan. The body considered it as an important document reflecting the directive strategy for the newly created state of Pakistan. Along with other factors, to facilitate the Muslim citizens of the country to live according to the injunctions of Quran and Sunnah, the report obliged the governmental machinery would work for the organization of Wakfs and mosques etc.

Federation and its Territories

Second part of the interim report denoted the matters regarding name and territories of the federation. According to which the state of Pakistan would be a federation in nature. By adopting a dual government system, it would be a federation of the Governor's provinces, the Chief Commissioners provinces, the Centre and such states that have been acceded to the newly created country. However, the report at the same time, recommended that the central legislator may by law be increased or diminished (Interim Report of Basic principles committee, 1950).

The Head of the State

The part III of the interim report described the office of the Head of the State. According to it, the executive powers of federation would be vested to him; however, he would act on the guidance of the Premier, except of his optional authority. By describing the electoral process, the report said that the head would be designated by the combined meeting of the central legislature for a period of five years but not for more than two consecutive terms. In his absence the senior most provincial Governor would hold the office (Interim Report of Basic principles committee, 1950). Being the chief executive of the country he would appoint the commanders of all three armed forces, the Advocate General of Pakistan, the Head of the Provinces and the Prime Minister of the country. By exercising his legislative powers, he could legislate any subject to the ultimate control of the central parliament. He would summon a joint session of the legislature if a conflict arises between the two Houses, removal of the executive, for approval of budget and for considering the no confidence motion in the cabinet etc. He was also empowered to legislate by providing final assent. However, if the bill is sent back his assent must be given within three days instead of ninety days in normal routine. In case of emergency or if the assembly is not in session, the head of the state would be authorized to pass an ordinance to run the state affairs. The report suggested a process of conducting free and fair elections to elect the desired leadership on merit. But if the situation is

deteriorated in case of any calamity, external aggression or severe political unrest etc, he could declare the emergency. As far as the removal of the Head of State is concerned, no prescribed procedure is provided in the report. Although the impeachment process for the Head of the state is missing in the report but it was made clear that he would be removed by the central legislature with two-third majority votes for total strength of both the houses (Interim Report of Basic principles committee, 1950).

Council of Ministers

The interim report also proposed the Council of Ministers under the leadership of Prime Minister. Article 23 of the report dealt with the appointment of a Prime Minister, according to which the head of the state would appoint a person having the majority of both the houses of legislature. However, ministers of his cabinet would be appointed by him. Like the premier, the ministers were to be responsible to both the houses and would be required to take oath of loyalty to office. Although the Prime Minister and his cabinet would enjoy the confidence of majority yet they will have to inform the head of the state from all decisions taken by them.

Issues related to the Legislature

The first report of BPC recommended a bicameral legislature in the Centre, according to which the parliament would comprise of House of People and House of Units. As per true federal structure, the House of People was to be directly elected by the people while House of Units represented the provincial legislature (Khan, 2001, p.108). However, the report did not provide complete specifications of the composition and size of the house as the assigned task was not completed by the sub-committee in time. Yet it made clear that equal representation in upper house would be given to all existing provinces including Balochistan. However, the centrally administered areas would have no representation in the house of units because they were not given the status of province. The committee recommended that they must be represented in the house of people (lower house) on the same basis as other provinces.

The committee recommended that both the houses of the central legislature would enjoy equal powers. The central legislature can pass, amend, or repeal the bills. The interim report of BPC recommended that the central legislature may by law increase or diminish the area of any province and can alter the boundaries or name of any province. The central legislature was also empowered to make provisions of the discharge of functions of the Head of the state in certain contingencies. In addition to this, all ministers as well as prime minister would be collectively responsible to the legislature, however, the ordinances issued by the Head of the state would be laid before the legislature. The quorum for a session of both the houses would be one seventh of the total number of members of each house or of both houses as the case may be. In case of dissolution of the central legislature, the matter would be taken on the advice of the premier, however, no dissolution would be made on the advice of caretaker ministry which function between the date of dissolution and the formation of a new ministry (Interim Report of Basic principles committee, 1950).

Chairmen and Deputy Chairman

The report proposed that there would be a Chairman and Deputy Chairman for each of the House. In case, the office of chairman is vacant Deputy Chairman will perform his duties but if the office of

Deputy Chairman is also vacant, the duties will be performed by a member appointee by the Head of the State. If the chairman is absent, the Deputy Chairman would act as Chairman, in case he is also not present then a person as may be determined by the regulations of process of the house and if such a person is also not present then any person who was considered by the House.

Head of the Province

Another unique feature of the report was the provision of the Head for every province. According to which the executive powers of the province would be exercised by him, however, he would act on the advice of his ministry. The Head of the Province would be chosen by the Head of the State and hold office with his pleasure. He would appoint or dismiss the Chief Minister as well as other ministers and no one could challenge his decision of the appointment and dismissal of the ministers in any court. The head would have the power to summon the provincial legislature. He had the powers to dissolve the assembly if no member would have confidence of majority. A bill passed by provincial legislature would be presented to the Head of the province for his assent to validate the agenda of expenses. He would also have the powers to pardon or reprieve. In case of emergency, he would enjoy the same powers as the Head of the state, however, under the direction of state head.

Provincial Council of Ministers

As per report, the Head would appoint the Chief Minister of the province. Other members were to be appointed by the Head of the Provinces on the recommendation of Chief Minister. The ministers in the province would take oath of allegiance and secrecy. All ministers in the province would be responsible to provincial legislature. The report provided that the Head of the Province would be kept informed by the Council of Ministers from the decision take by them and the proposals made for legislation. The head of the province would also be kept informed from the administrative affairs of the province.

Provincial Legislatures

The report provided that there would be one House of parliament in each federating unit chosen by the populace for a period of five years. The provincial legislature would be summoned by the executive of the Province. The Provincial legislature would hold two meetings in a year. The duration between the two sessions would not be more than six months. The first session would be called after three months of holding office of the Chief Minister (Interim Report of Basic principles committee, 1950). Similarly, a person who is elected as a minister and he is not a member of provincial legislature then he is required to secure election to the house before six months. Ministers and Advocate General of the Province would have the rights to address to the Provincial legislature. Like Central Legislature, the provincial legislature could amend, repeal and pass bill pertaining the provincial list. The report provided that a bill passed by the provincial legislature would be kept before the Head of the Province. He had the right to assent the bill or withhold if for the consideration of the Head of the state. The Provincial legislature would be empowered to legislate about the privileges and immunities of its members.

Chairman and Deputy Chairman of Provincial Legislature

The report suggested that like the Central Legislature, the provincial legislature would also elect its Chairman and Deputy Chairman. It provided that the provincial legislature would appoint another

member to be a Chairman or Deputy Chairman as per requirement. If the office of the Chairman became vacant, the Deputy Chairman would act in his place. If the office of deputy chairman is also vacant then such a person appointed by the executive of the province would perform the duties. However, if the Chairman is absent from any session of the House, the duties would be performed by the Deputy Chairman. If he is also not present then by such a person as may be considered by the regulations of modus operandi of provincial legislature, if such an individual is also not there in the house then by such a person as may be determined by the provincial legislature.

Relation between Federation and its Units

The part (V) of the report discussed the relation between the federation and provinces. Powers were distributed between Centre and the federating units under three lists; i.e. federal list with 67 different subjects, provincial list with 35 subjects and concurrent list consisted of 37 subjects. The central legislature would have the power to legislate and co-ordinate in respect of matters in the provincial and concurrent list (Interim Report of Basic principles committee, 1950). However, the laws passed by the central legislature for the province would only be amended by the central legislature. If conflict arises between center and province, the central law would prevail over provincial law. The report empowered the center to delegate its powers to a province or some officers with the consent of that province. The center was also authorized to take legislative and executive action at the request of one or more than one province (Callard, 1957, p. 91).

ISSUES OF CONTROVERSY AND CRITISIM

The Objective Resolution assigned an important task of policy directives formulation to the BPC. The committee after a labourous work submitted its first report in September 1950. Although it provided a federal arrangement to the newly created state of Pakistan yet it was criticized by many political stakeholders. In fact, the presentation of the interim report was the first opportunity given to the public or majority of members of Assembly to examine the outline of the constitution that was taking shape (Anwar, 1967, p. 28).

The first reaction of the general public and political parties was about its configuration. They believed that the report was incomplete as no serious attempt was made to cover all aspects of the constitutional structure. As far as its nature is concerned, the report has been criticized by many individuals and groups both within and outside the Constituent Assembly. The minority opposition leader Mr. S. C. Chattopadhyaya, by criticizing the inclusion of the Objective Resolution, rejected the interim report. Similarly, the pro-Islamic elements of the Assembly seemed discontented with "insufficient" Islamic provisions (Mahmood, 1989). They mainly argued that although the Objective Resolution had been declared the part of the constitution yet it did not depict Islamic Character as prescribed by the Resolution. In the words of G.W Choudhury, "The interim report of the committee hardly talked about Islamic character of the proposed constitution except that the objectives resolution should be included in the future Constitution as directive principles of state strategy consequently, the report had a most unfavorable reception among the Ulema who wanted to have a full-fledged Islamic state" (Choudhry, 1959). This report provoked a storm of protest in West Pakistan as it was considered a fascist approach to solve the constitutional issue (Dawn, 1950).

However, the Bangalis showed their opposition for representational matter. Majority of the population and political parties of the eastern wing strongly believed that they are being converted

into legislative minority (Megrath, 1998, p. 75). Proposed rule of equivalent representation in the Upper House was opposed on the ground that it would bring East Pakistan, with more than half of the total population, at par with other provinces like Baluchistan (Ali, 1996). The issue of Urdu language as state language further aggravated the Punjabi-Bengli relationship (Ziring, 1980). Unlike many leaders including Quaid-i-Azam who declared Urdu as a state language, the Bengalis demanded Bengali along with Urdu should be declared as the state language of Pakistan (Ali, 1996, p. 70). The people of East Bengal vehemently protested against the report; students, political parties and the press of East Bengal started a campaign against the exploitation of "minority" against the "majority".

In fact, the first report of the Committee can be criticized in three groups, few criticized it on the basis of insufficient information provided by the first report, secondly some objections were intentionally planned to deceive the populace thus created confusion and lastly some criticized on real desire to improve the quality of proposal (Choudhry, 1959). The opposition from the East Pakistan lead the Constituent assembly to drop this draft and produce a new version of the report.

CONCLUSIOIN

An important event after independence was the passage of Objective Resolution on 12 March 1949 that constituted the BPC to report on the basic principles of the future constitution. The committee at the start of its proceedings, appointed three sub-committees to give assistance in handling the situation. By following the same lines, the Board of Talimt-i-Islamia was formulated to give advice to the BPC and sub committees on the maters arising out of the objectives Resolution. In the light of recommendations of the sub-committees, the BPC submitted its first report in September 1950 to the Constituent Assembly of Pakistan. The report suggested the inclusion of the Objectives Resolution in the future constitutions, the federal structure with equal representation on parity basis and the declaration of Urdu as the state language.

The report was criticized by general public and some politicians who believed that Islamic provisions of the report were inadequate; hence it was an un-democratic, un-Islamic and subversive of the ideology of Pakistan. However, severe reaction mainly came from East Pakistan. Majority of the Bengalis opposed the equal representation in the Upper House. According to them the eastern province had majority population and by giving equal representation it would get the same seats as the Balochistan, which was least populated. They were of the view that due to bicameral legislature, the East Pakistan would become a colony of the Western wing. However, they became more critical at the issue of state language and demanded that along Urdu, Bengali (the language of majority) would be declared as the language of state. They believed that this bilingual formula would strengthen the ties of unity among two wings.

Due to this wave of severe criticisms, the then Prime Minster Mr. Liaqat Ali Khan decided to postpone the consideration of the report and invited suggestions, recommendations and proposals from constitutionalists, jurists and other stake holders of the country. However, his assassination in October 1951 suspended the process of constitution formulation. Khawaja Nazimuddin, at this occasion, tried to hold the process but autocratic decisions of Governor General Ghulam Muhammad restricted him for his personal gain. Although the first report of the Basic Principal

Committee was remained unsuccessful to satisfy majority of the stake-holders but their criticism, one way or the other, provided a gateway to unanimously agreed constitution for Pakistan.

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