

**HISTORICAL DEVELOPMENT OF FEDERALISM IN
PAKISTAN: AN ANALYSIS OF THE PARLIAMENTARY
CONSTITUTIONAL DEBATES**

BY

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MASTER OF PHILOSOPHY IN HISTORY

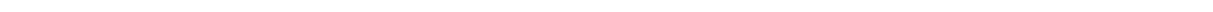
DEPARTMENT OF HISTORY & PAK STUDIES



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**HISTORICAL DEVELOPMENT OF FEDERALISM IN
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**A Thesis Submitted in Partial Fulfilment of the Requirement for the
Award of Degree of**

**MPHIL
IN
HISTORY
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(Tanzila Parveen)

DEDICATION

To my source of inspiration, my loving Mother

(Tanzila Parveen)

DECLARATION

I, Tanzila Parveen, roll no # 17081703-002, MPhil History Scholar, Department of History & Pakistan Studies, Faculty of Social Sciences, University of Gujrat, hereby solemnly declare that this thesis titled “Historical Development of Federalism in Pakistan: An Analysis of The Parliamentary Constitutional Debates” is based on genuine work and not yet had been submitted or published elsewhere. Furthermore, I shall not use this for obtaining any other degree from this University or any other institution.

I also understand that if evidence of plagiarism found in this thesis at any stage, even after the award of the degree, the degree may be cancelled and revoked by the University.

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It is certified that Mis Tanzila Parveen, roll no # 17081703-002, MPhil History Scholar, Department of History & Pakistan Studies, Faculty of Social Sciences, University of Gujrat, Pakistan worked under my supervision and the above stated declaration is true to the best of my knowledge.

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THESIS COMPLETION CERTIFICATE

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ABSTRACT

This research seeks to analyze historical development of federal demand in Pakistan's constitutional history. Pakistan was established on 14th August 1947 after hard struggle of freedom movement. Pakistan faced territorial distance between its two wings and both wings had different federal perspective, East Pakistan demanded for the provincial autonomy while West Pakistan favored strong center. From the creation of Pakistan towards separation of East Pakistan, there had been tussle between the two parts. The three interim reports of BPC had been rejected by all political parties even some PML members also criticized its un-federal features. The East Pakistan denied all three reports for not accepting provincial autonomy and language demand. The constitution of 1956 and 1962 did not satisfied the federal political demand of East Pakistan during this phase Pakistan also faced two Martial Laws and unfortunately East Pakistan separated from West Pakistan. After missing half part now the west Pakistan seriously decided to draw a federal constitution which had provincial autonomy, equal share of provinces on population base, free judiciary etc. This was the constitution of 1973, this constitution also had been suspended twice Military Dictators twice through amendments and turned the constitution from democratic to presidential. In 2006 political leadership sought to revise the constitution in its real federal democratic shape. All leading political parties signed the historic Charter of Democracy to revise federal constitution. The Eighteenth Constitutional Amendment erased all undemocratic and un-federal features, reorganized the NFC, CCI and abolished the Concurrent legislative list. Subjects were divided between the center and provinces on equal basis to ensure province's autonomy.

INTRODUCTION

1.1 Description of the research work

Federalism designs a particular political system that incorporates and accommodates diversity in plural states. This system provides self-rule to the regional groups at local level and enables them to play meaningful role at federal level. Federalism is an agreed constitutional system of government that divides the power between central government and its units. Historically, The All India Muslim League had demanded this constitutional set-up for British India. Jinnah proposed an inclusive federal political system in his famous fourteen points in 1929. The Constituent Assembly of Pakistan held its first meeting at Karachi in the Assembly Chamber, on 10th August 1947, in which Honorable Mr. Jogendra Nath Mandal addressed that the free independent State of Pakistan will bring to one and all of its citizens prosperity, peace and happiness. After the partition, the first constituent assembly of Pakistan decided to adopt this political system in the Objectives Resolution which passed on March 12, 1949. On 12th March “Basic Principal Committee” was formed consisting of 24 Members from all communities, to prepare a draft Constitution for the newborn country on the basis of the Objectives Resolution.

Before the first constituent Assembly started its work on constituent, there were many constitutional crises amongst the different parts of the country over the issues of religion, languages, provincial autonomy and minorities. The 1935 Act was a designed formula to protect British government was continued as an interim constitution for the new country’s political system till the formation of new constitution. The Basic Principles Committee had recommendations the principles of federalism in the favor of provinces, they were mainly ignored.

The second Constituent Assembly of Pakistan had debates on merging of West Pakistan to one unit while East Pakistan has demands for provincial autonomy and Bengali as national language of Pakistan. Somehow, there was adopted a new constitution by committee in 1956, nine years after independence but unable to meet the demands of provinces on various issues. This constitution adopted parliamentary governmental system with Prime Minister as its head of the state with all executive powers in his hand. This constitution had centralized system of government while provincial autonomy was not ensured. Again, there crisis developed between center and provinces, situation was not under the control, the Military and bureaucratic authority of the state conspired to seize power in 1958, abrogated the constitution of 1954 and they appointed a commission to draft another constitution for Pakistan. From 1958 to 1962, there was no constitution.

Again a new Constitution was presented with federal governmental form, this time President was the head of state. It also presented Uni-Cameral system. The Bengal province had 54% population of Pakistan while 46% population was from west provinces. This constitution was not able to meet the local people's demands, right on population basis so there was suggested a solution in the name of "parity formula" (that is merging west provinces into one unit or mega province). This step further increased the situation, the East Wing was under the influence of Awami League while West Wing was under Muslim League. General elections were held in the country, in this election Awami league had majority position in East Pakistan on the basis of Shaikh Mujeeb's six point formula(federal form of government, demand of provincial autonomy to generate revenue, separate currency for both wings, separate accounts for both wings, foreign affairs and defense in the central command, separate army for East Wing) .There again raised state of conflict between two wings on center province relation and on language issue that delay the process of formation of the central government. This time situation was worse East Wing now permanently separated from West wing and became Bangladesh. This was a great loss for Pakistan now situation was changed now only West Wing remained, so a serious effort was made this time to prepare draft constitution for Pakistan. This constitution was more in the favor of federal system with parliamentary governmental form and first-time bicameral system was adopted for Pakistan, two houses at center (National Assembly and Senate), and Provincial Assemblies at provinces level was proposed. The provincial autonomy and the independence of the judiciary were ensured in the constitution of 1973.

The important feature of this constitution is that it can't be abrogated as previous two constitutions have been abrogated. But there had been many conflicts between center and provinces over power sharing, language, territorial and ethnic problems. This time too constitution was not able to fully meet the demands of provinces, later in 2010 there passed 18th amendment in the Constitution which ensured provinces their rights and settled down power sharing issues between center and provinces. My focus in this research will be upon historical development of federalism in Pakistan by studying and analyzing National Assembly debates. How federalism evolved in Pakistan? In the light of National Assembly debates on federal issue I will try to find my answers. There will be detailed discuss on Bogra formula, 1973 constitution and how this constitution was suspended through amendments rather than previous two were abrogated, and how again by 18th amendment provincial issues were settled down, how these steps led Pakistan towards federalism. What were the main problems that caused a long journey from federal system to adoption of federalism in true form in 2010?

1.2 Need and significance of the research

Constitution provides laws and rules for administration of every country and federalism is a best form of system which distributes power equally between center and provinces. Pakistan has four provinces with different languages and diverse societies. Federalism is the best Constitutional solution for Pakistan. After nine years the first constitution was promulgated with many deficiencies. In 1962 another constitution was promulgated proposed presidential form of government, never suits to Pakistan it was also dismissed. Finally, in 1973 final draft of constitution was formed and promulgated federal in form but parliamentary in practice. Later it also had many amendments so there need to study that why the process of constitution making had been slow in Pakistan? What problems Pakistan faced which delayed the procedure of constitution making? Constitution provides rights to every individual so everyone should have to know which rights Constitution of Pakistan provides to him. Why it takes 63 years to transform Pakistan from federal unit to federalism which suits countries like Pakistan. How power had been distributed between center and provinces.

A) Objectives of the Research

By analyzing the House debates over the constitutional design in Pakistan, this study aims:

- A. To find out federal development in Sub-Continent.
- B. To analyze the National Assembly debates to determine how federal political system evolved in Pakistan.
- C. To examine Bengal's perspective on federal provisions of the constitution.
- D. To examine the divergent perspectives on federal provisions.
- E. To find out relation between center and provinces in every sphere.
- F. To examines Pakistan's federal political system in comparison to other countries.

B) Research questions

- A. How federalism evolved in Pakistan?
- B. How federalism was debated in the parliament?
- C. How the Bengal's perspective on federal provisions was different from the Punjab's perspective?
- D. How the federal perspective of regional parties was dissimilar to the major parties?

1.3 Review of Literature

All that resources that I had used in my research are in the National Assembly debates, constitutional amendments, official reports and Accords as my primary source. I also used some Published material relevant to my topic to understand the federal features and different scholars view over federal and historical formation of constitution, these are in the form of

journals, articles and books as secondary source for my research. Literature review helps the researcher to find out the vacuum in existing studies and narrow down this study. It provides the theoretical framework to the scholar. It is a road map for researchers. Literature informs us about previous work and existing gap between them. The purpose of the literature review is to highlight project objectives and the need for improved accountability.

Khan U, Saima, Saqib and Shahzad K. (2016). History of Federalism in Pakistan (1947 to 2010): From Centralization towards Provincial Autonomy. *the discourse*, Volume 02 N. 2, July – December, 63-73. This is a research paper produced by scholars of Abdul Wali Khan University Mardan. This research paper helped me to analyze the federalism in Pakistan as prescribed by Uzma, Saima and Saqib in their research. They had discussed federal events from 1947 to 2010, Military involvement in politics and all these dictators came to power by curtailing constitution for four times in the history of Pakistan. It also helped me to understand the 1973 Constitution a historical federal constitution of Pakistan and under this constitution how two military rulers suspended the constitution and amended constitution twice later there signed by all parties most important federal element of constitution, “the eighteenth amendment” as a remedy to further avoid the suspension. As all these refer to my research work too.

Akbar, M. (2002). Federalism in Pakistan: Problems and Prospects. *Asian and African studies*, 1. November 37-48. This is a research journal by faculty person of Istanbul University. This research had guided me to understand the constitutional development as my focus was upon Assembly debates but this journal also guided me a lot. It helped me to understand the relations between the center and provinces over power sharing as Punjab having huge recruitment in military and bureaucracy dominated the country’s politics. Rest of the provinces had been in state of struggle even after independence for their autonomy. Later three long military rules locked the provincial autonomy and power at center, this will also a source of information to me in my research for federalism in Pakistan. This journal has detailed information about federalism problems of Pakistan in connection to federal-province relation from the creation of Pakistan to 1973 constitution and later Eighteenth amendment in 2010. This journal helped me in my research to describe center-province relation as described in Constitution and as it had been practiced.

Waseem, M. (2010). Federalism in Pakistan. *The Forum of Federations project in Pakistan, LUMS*, August, 1-26. This research is an interesting study to understand all federal problems that Pakistan had since its birth. This research highlighted all major issues relating to center-province relations, linguistic problems of Pakistan, ethnic problems, charter of democracy, fiscal relations from 1st NFC Award to 7th and most important feature is 18th constitutional

amendment. After 18th amendment how provinces were granted their autonomy, how Baluchistan, Sindh and Khyber Pakhtunkhwa were renamed on local demand. This paper is a rich source of information to me during my research.

Akhtar, N. (2012). *The Upper Hand on Pakistani Politics: An Analysis of Seasonal Politics. Virginia review of Asian Studies*, 1-20. This paper tells how military intervened in Pakistani politics since Pakistan's creation four Chief of the army staff (COAS) have ruled the country for a long term directly but there had been military presence in politics indirectly too. They had been more authoritarian than political leadership, controlled the country under their strict rule, twice abrogated the constitution and twice suspended the constitution. Under their strong dictatorship democracy was in his end later they developed democracy under dictator's shadow and divided political forces. There was reward for those who joined their rule and punishment and oppression for those who refused to render their political services for them. A dared effort by Akhtar Nasreen will help me to understand differences between dictatorship and democracy.

Javaid, A. & Amir, L. (2017). *Historical Analysis of Successive Governments in Pakistan: A History of First Six Decades, 1947-2007. Pakistan Vision* Vol. 18 No. 1, 214-228. This paper will give me an analytical report of democracy, this will help me to know about successive governments of Pakistan. This research will help me to understand all major ups and downs in Pakistani politics, power of gaming in political parties and how parties became stronger and country's authority as weaker as compared to political leadership. This research will also help me to analyses the democracy and democracy under dictatorship, which in the favor of country and who's in favor of federalism.

Adeney, K. (2007). *Democracy and federalism in Pakistan*. Edward Elgar Publishing Limited, 101-124. It is a part of book federalism in Asia. It tells how after independence Pakistan and India had to build their state institutions in addition to writing a new constitution. Both the countries had gained independence from British rule at same time, but India didn't have any 1000 miles separated part as Pakistan had. It was easy for them to draft their constitution but in the case of Pakistan it took nine years to frame first constitution. It is vitally important to understand the debates over federal issues of Pakistan's demographic structure of federalism. This is a profile of Pakistan's constitutional history and discussed all the factors which caused the delay in constitution making. From creation of Pakistan to the Musharraf's regime it gave me detailed information of many historic federal events.

Kokab, R. (2011). *Constitution Making in Pakistan and East Bengal's demand for Provincial Autonomy (1947-58). Pakistan Vision* Vol. 12 No. 2. This paper helped me to check out historical development in constitution making of Pakistan in first phase, how Bengal had

demanding since independence provincial autonomy at first, Bengali language and population base rule for majority province, later in 2010 other smaller provinces voiced for their autonomy. They had demanded Bengali as national language because it was the language of 54% population of Pakistan, while West provinces were in the favor of Urdu. Bengal had many Hindu population and minorities, so they demanded for minorities rights contrary to Islamization. Bengali were the first people to raise the voice for federal constitution for Pakistan.

Baxter, C. (2011). *Constitution Making: The Development of Federalism in Pakistan*. University of California Press, California, 1074-1085. It is a research paper on Pakistan's constitution making, it had discussed from the starting of Muslims federal demand to British to the constitution of 1973. How federalism was used in Pakistan as a tool only to get position in elections campaigns and in a constitution making later, how demand of provincial autonomy had been limited in constitutions of Pakistan. It has discussed the Pakistani constitution in forms too either presidential or parliamentary, and which is the best suited constitution for Pakistan which is diverse country with many religion and communities.

Ronald, L. (1996). *Comparing Federal System in the 1990s: Overview of Federation*. Queen's University and the McGill-Queen's University Press, Kingston Ont. This is a book I used its one part in my research 'Overview of Federation' as L. Watts is expert in federalism and had a broad knowledge of world's federalism from its starting to adoption in different countries in different phases, first adopted in USA than in Australia, Canada and later almost all countries adopted it as a solution for their constitutional proposals. Later after independence Pakistan and India both adopted federalism in their constitutions.

Abbasi, Z. (2010). *Federalism, Provincial Autonomy, and Conflicts*. Center for Peace and Development Initiatives, Islamabad, December. This is a published book on federalism and evolution of federalism in Pakistan first he had discussed the federal feature than evolution of federalism in Pakistan. He has discussed the federal demand in India and Pakistan. India adopted within three years but Pakistan after nine years first in 1956's constitution but later in 1973 and 2010.

Asif, M. Sabir, Shabbir, A & Madiha, S. (2018). *Strengthening Fiscal Federalism in Pakistan: The Way Forward*. Social Policy and Development Center, Karachi. In this published document there is rich source of information about all type of fiscal management in Pakistan from federal province relations to the local level. How finance are generated and distributed in Pakistan.

Adeney, K. (2007). *Federalism and Ethnic Conflict Regulation in India and Pakistan*. Palgrave Macmillan, New York. In this published book the writer had expressed her keen

interest in Pakistani politics not only Pakistani but she had brief knowledge on Indian Sub-Continent's politics and federalism. This research helped me to examine the federal demand in India from British period. She had discussed league's perspective of federal system and Congress's demand for unitary system in combined India.

Mushtaq, M. (2008). *Consociationalism and Multi-Ethnic States: Post-1971 Pakistan—A Case Study*. (Unpublished doctoral dissertation) Department of Political Science & International Relations Baha Uddin Zakariya University Multan. This is a research work of my supervisor for his PhD degree research, his research helped me to understand the federalism and ethnic demands in Pakistan.

U. & Ms. Renuga. (2018). Government of India Acts and its adoption and impacts in the constitution and post-independence. *International Journal of Pure and Applied Mathematics*, Volume 120 No. 5, 331-346. This research helped me in realizing the historical federal demands by the people of Indian Sub-Continent and approval of that demands in the shape of Acts. This research had information about all Acts announced during British rule in India started from British Government Act 1909 to Government of India Act 1935.

Hayat, S. (2016). *Aspects of Pakistan Movement*. National Institute of Historical and Cultural Research Center of Excellence, Quaid-i-Azam University (New Campus) Islamabad. This book covers historical movements of Muslims from Hindu-Muslim communal tangle to the movement and demands of Muslims from provincial autonomy by the great leader in his famous fourteen points and then in historic Lahore Resolution for Federal demand to the separate Muslims homeland.

Chaudhary, M. & Irshad, N. (2005). The Role of Ulema and Mashaikh in the Pakistan Movement. *Pakistan Journals for Life and Social Sciences*, 33-36. This is a research paper, it helped me in analyzing the role of Ulema and religious political parties in politics specially during the campaign of 1946 elections and after the creation of Pakistan during referendum of NWFP to support the Pakistan. Ulema played important role in development of Constitution concerning to Islamic laws.

Hussain, A. (2011). Communitarian Response to the Lahore Resolution of 1940 in British Punjab: An Analytical Discourse. *Al-Hikmet Volume*, 31, 21-39. This is a research paper of Dr. Akhtar, in this paper he has discussed in details preparation, discussion and demands by the Lahore Resolution. This resolution was a land mark in the history of Indian Sub-Continent, in this resolution Muslims first time demanded for separate country because Hindus and Muslims are two separate nations that are living at one place without merging to each other. This paper helped me to understand the Muslims demands and their basis during my research.

Farooq, A. D. (2015). Jinnah and Lahore Resolution, *JRSP*, Vol. 52, No. 1, January-June, 127-154. Dr. Farooq is an associate professor at Quaid-i-Azam University Islamabad, he had done many literary works on Jinnah's personality, and in this paper he described the reason and incident of Lahore Resolution. When all efforts of Muslims to settle down communal problems were failed in round table conferences and Gandhi Jinnah talks then Muslims were forced to think for alternative way for their survival. In 27th annual session of AIML a historic Resolution was passed to demand for a separate country with Muslim Majority territorial parts, this paper had been a source of information for me while compiling third chapter of my research work.

Fazal-Ur-Rahman, PhD. (2008). The Significance of 1945-46 Elections in The Creation of Pakistan. *Pakistan Journals for History & Culture*, Vol. XXIX, No.2, 167-181. This is a research paper on 1945-46's elections, these elections were fateful in freedom movement. These elections decided that all Muslims are one nation, all parties contested in these elections with one manifesto, Muslim League fought for a separate homeland, Congress contested for joint country. There was a political change in all contested parties, many prominent Muslim leaders left Congress and joined League for separate country. There were Ulema, students and many religious leaders to support League, vote for League is vote for Pakistan. this paper helped me in determining the political parties role in elections of 1946.

Hussain, A. & Amna, M. (2013). Revisiting the Elections 1946 and the Punjab Politics. *Pakistan Vision*, vol. 14 No. 2. 207-231. This was a research on Punjab's politics during general elections of 1946. This helped me to know which parties contested in these elections, while there were strong and powerful opponents like Congress, Akalis Dal and Unionist Ministerial Party, how Muslim League won these elections? Later this party formed first Constituent Assembly of Pakistan.

Ahmad, W. (2001). The General Elections of 1945-1946: Quaid-i-Azam's Springboard to Pakistan. *Pakistan Journal of History & Culture*, Vol. XXII/2, (Quaid-i-Azam Number) 127-139. This research paper of Dr. Waheed helped me to understand the Quid's vision in Election campaign, how Quaid organized League, generated funds for league's campaign and Khan Abdul Qayum and Mian Iftikhar Uddin joined League to left Congress. These were significant elections when Congress was targeting British rule League and Quaid demanded for division of Indian Sub-Continent and making of Pakistan.

Hussain, M. (2011). Institution of Parliament in Pakistan: Evolution and Building Process (1947-1970). *Journal of Political Studies*, Vol. 18, February, 77-99. This research paper helped me to understand the structure and formation of Parliament in Pakistan. Pakistan inherited parliamentary system from British government by adopting Government of India

Act 1935. This paper is a source of information how seats were distributed in first constituent Assembly between the provinces and states?

Kathrine, A. (2007). Federalism in Asia. *Democracy and Federalism in Pakistan*. Edward Elgar Publishing Limited, Cheltenham, 101-123. This is a book written by renowned scholars from top universities to describe the feature and forms of federalism in the world. I used its one part related to Pakistan's adoption of federalism and democracy written by Kathrine. This research helped me to draw conclusion what was happening in national Assembly debates and what actually happened in Pakistan when first constituent Assembly was framing the draft constitution.

Hussain, E. (2012). Civil-Military Relations in a Post-Colonial State. *Research Gate, PCD Journals* vol. IV No 1, 113-146. The era of Military rule had no record in Assembly debates as it was under Martial Law administration. This research paper of Dr. Ejaz helped me to understand the praetorian structure of colonial administration of British government strongly rooted in Pakistan. Pakistan adopted the state structure which British lagged behind in Pakistan after partition, this followed civil-military bureaucracy for four times in Pakistan.

1.4 Research methodology

This research will be based on the qualitative analysis of The National Assembly debates concerning federal provisions of the state. From 10th August 1947 to 2010 there had been countless session of Constitutional Assembly to form the constitution of Pakistan. I will use these Assembly debates as primary source of my research as well there may be secondary sources too in the form of published books and articles. Researchers gather facts and transform them into meaningful order for general awareness of common people. Pakistan suffered a long constitutional history to draft final constitution of Pakistan from 1947 to 1973. Later on, this 1973 constitution also had many amendments with the passage of time. Using quantitative methodology, I will write down on historical development from federal system towards federalism political system in Pakistan.

1.5 Scheme of Research:

This research work consist on five main chapters, as I divided my all research under federal perspective during different phase of constitution making from the creation of Pakistan to the adoption of federal constitution and later historic federal constitutional amendment.

Introduction; this part of research has complete information of my research work. The methods and materials which I'm going to use in my research either as primary source or as

secondary sources are there discussed in detail. This material helped me and guided me as a map of my research.

Review of the literature: this part has details discussion about all published and unpublished materials which I have used in my research. My main area of study during all y research was to study the constituent Assembly debates and national Assembly debates. I also used other researchers materials where it was necessary or where constitutional debates are silent. Kathrine Adeney, Ronald L. Watts, Dr. M. Waseem, Akbar Masoor Kundi and many other researcher's work helped me a lot to understand the federal provision in constitution making process.

Chapter Three; Historical background of federal demand in Sub-Continent, from formation of Muslim League to the creation of Pakistan. In this chapter I started my research after the war of independence, struggle movement of Muslims from their empowerment by Sir Syed Ahmed Khan. This movement later organized under All India Muslim League for Muslims political awareness. When Quaid-i-Azam joined the League, he changed league's perspective first worked for Hindu-Muslim unity than turned his attentions towards the Muslims only. He demanded for federal system in India for the survival of Muslims as minority community when this demand was not accepted he demanded for a separate country with Muslim Majority areas to constitute that area under federal laws.

Chapter Four; First Phase of Constitution Making in Pakistan: Objective Resolution to Bogra Formula 1947-1954; this part has all the discussions about constitution making process in the light of National Assembly debates. This part has the views of those persons who struggled for Pakistan. Having all sincere efforts to adopt exclusive federal formula why there never produced a constitutional agreed formula? I used parliamentary debates to clarify the facts what were the causes for the delay of constitution making. That time Bengal had demand of provincial autonomy and adoption of Bengali language while West Pakistan was not willing so. In this phase constitution was not finalized.

Chapter Five; Second Phase of Constitution making from 1956-1962's Constitution: this part has discussion about adoption of first constitution with loose federal formula, this draft was prepared by a team of 25 members but never accepted Bengal's demands so rejected by Bengali people later it was abrogated my Military man with the imposition of Martial-Law from 1958 to 1962. Country was running without any constitution, President Ayoub appointed a commission of eleven members to draw a draft constitution but ignored all those proposals and promulgated his own presidential constitution.

Chapter Six; Constitutional Development from 1973-2010; this part will discuss in detail the malignancy of 1962 constitution, factors caused of East Pakistan separation and final draft of

Constitution of Islamic Republic of Pakistan. How in debates different political parties presented their views for the adoption of federal formula. Mr. Bhutto signed an Accord with political parties for the adoption of federal constitution in Pakistan in 1972. I will examine constitutional amendments in various occasion to fulfill different interests. Following her father mis Benazir also signed another Charter of Democracy for the revival of federalism and Democracy in Pakistan. Special focus will be on Charter of democracy, 8th amendment and 18th amendment which discuss article 58(2) b.

Conclusion; this part will have analysis of all my research, my findings, what was Quaid's vision of Pakistan and how it is now today. If there was adopted federal constitution in early phase than East Bengal (Bangla Dash) will have been a part of Pakistan today.

HISTORICAL DEVELOPMENT OF FEDERALISM IN BRITISH INDIA

From 12th century to 1857 Muslims, Hindus and Sikhs lived with coexistence in a huge territory of Sub-Continent there were Punjabi, Sindhi, Baluchi, Pakhtoon, Gujrati, Saraiki, Marathi, Rajasthani, Bengali, Kashmiri etc. But people were living in peace environment. In this situation there was no need for a proper Federal institution in the Indian sub-continent. In 1857 after the war of independence British East India Company's government was converted under direct control British Government, who appointed their Governor Generals as Viceroy of India. British Government started its divide and rule policy in many ways, although they introduced many reforms in India from 1858 to 1947 but in a way to divide Indian nation into Hindu-Muslim Community. First Act was promulgated in India by British Government in 1858, second in 1861, then a series of reforms started in India, the Indian Council Act 1892, Minto Morley Reforms 1909, Montague Chelmsford Reforms 1919, Simon Commission Report 1927, Communal Award 1932 and finally a change from manual reforms to a proper written constitution in the name of Government of India Act 1935. This Act also served as Interim Act of Pakistan for nine years.

With the introduction of these reforms and empowerment of Muslims by the great leaders for their revival as a nation, Muslims started their struggle first in the field of education than in political sphere. Sir Syed Ahmed Khan empowered Muslims by his farsighted thoughts to seek education first then come to politics. Congress was established in 1885, when in 1905 Bengal was divided for administrative reasons, Hindus opposed this partition and Muslims thought first time that Hindus are not willing to give them any chance of progress. In 1906 first deputation of Muslim leaders met to Viceroy for their demands, this success encouraged them to form a political party in 1906. All India Muslim League was formed in 1906, from 1906 to 1947 Muslims struggled under the banner of The Muslim League and achieved their homeland after a hard struggle. Quaid-i-Azam joined The Muslim League in 1913 he was a strong supporter of Hindu Muslim unity; he signed a Lucknow Pact in 1916 to unite Hindus and Muslims. In 1929 he presented his famous exclusive federal fourteen points as a solution to Indian political problems. This was first adoption of Muslim leaders a federal solution for united India. The second time Muslim leaders proposed a separate state, in historic Lahore Resolution in 1940, provincial autonomy and federal constitution in India for the Muslim majority provinces/regions. After the failure of Diarchy System under Government of India Act 1919, approval of Lahore Resolution and bad treatment of Congress ministries with the Muslims in combined India, Muslims started hard struggle for their separate homeland "Pakistan". After realizing the situation and by the end of

Second World War British Government decided to leave India with two separate Dominion States Pakistan and India. 3rd June 1947 plan announced officially the separation of India into two Dominion states, an Award was established to separate the boundary lines between the two countries. On 14th August 1947 Pakistan was established as separate independent state on the world map. From the very first day it was decided by the first constituent assembly that Pakistan's constitution will be federal with provincial autonomy.

2.1 Federalism

Federalism is connection between the two tiers of government, the federal government and the provincial government. In this connection power is distributed after agreement between the two, (federal and provinces) and within provinces. In a federal constitution power must be divided (Baxter, 2011). Federalism is a suitable form of government for any country which has different communities with different languages, which has ethnically diverse communities and which has territorial based diversity within. In federalist constitution federal government's authority is limited with three columns, legislative, executive and judiciary, while units granted full or limited autonomy. First it was adopted in USA in 1789 (Watts, 1996). This was a type of Dual federalism to adopt this concept of federation a long campaign was launched by Alexander Hamilton and James Madison by issuing research papers to aware common people about new constitution and its significances. Adopted decentralized federation in which jurisdiction was assigned to 50 states in symmetrically. Watts defines, "Originally united states comprised of 13 states evolved into 50 states and 2 federations, 3 associated states, 3 local home-rule territories, 3 union corporated territories and over 130 Native domestic dependent nations" (Ibid).

Switzerland converted into federation in 1848, a small country of some seven million population converted into 26 constituent units, had linguistic and religious diversity (Ibid, 20). Canada adopted federation in 1867, to overcome political problems splinted into two new provinces Ontario (English speaking) and Quebec (French speaking). Basically, the Canadian constitution of 1867 has strong central powers over provinces also had three legislative columns of government (exclusively federal, exclusively provincial and concurrent (Ibid). Australian constitution of 1901 was federal comprises six states, had relatively homogeneous society. Australia adopted American style federalism with limited power of central authority while Canada had exclusively strong central power (Ibid, 22). Austria in 1920, Germany in 1949, India in 1951, Malaysia in 1963, Spain in 1978 and Belgium in 1993 adopted federal constitutions. Now there are 29 countries in the world who adopted federalism as their constitution (Ibid, 23-29).

Pakistan adopted federalism in 1956 in its first constitution, nine years after independence because Pakistan is a multi-ethnic and multi religious state having multiethnic communities such as Punjabi, Sindhi, Baluchi, Pashtun, Saraiki and Bengali. Pakistan was demanded by great leaders (Quaid-i-Azam and many others) to adopt exclusively federal system with provincial autonomy. Although it took many years to adopt provincial autonomy, Pakistan suffered a long journey from Dual Federalism towards Cooperate Federalism. The federal history of Pakistan is a case of 'two steps forward, one step backwards' (Waseem, 2013). Pakistan has experienced three constitutions since its birth, that is the constitution of 1956, 1962 and 1973. For half a century Pakistan experienced a constitution, federal in form but unitary in practice from 1947 to 2010. However, the 18th Amendment was a landmark by amending 100 clauses and restoring federal nature of the constitution by granting greater power to the provinces and reducing the central authority. The long-lasting demand for provincial autonomy and expanding institutional pluralism was adopted in 2010 (Ibid, 5-7).

2.1.1 Origin of Federalism

Federalism which is defined in written constitution is of two types originally, dual federalism and cooperative federalism. In dual federalism power is divided between state and its units in defined terms. Where center has more power than units (example is Canadian federation). While in cooperative federalism federation and its units collaborate on policy jointly (Abbasi, 2010). The first was adopted by America in 1789 in a written constitution, second Canada adopted it (Watts, 1996).

There is a fiscal federalism too which defines economy distribution between federal government and its federating units and between units in a written constitution. It is related to collect taxes and generate revenue then distribute it among federal and its federating units (Asif, 2018). In linguistic federalism federating units are divided according to language base. In ethnic federalism units can be divided on religious bases. Territorial federalism split units on geographical bases. (Adeney, 2003)

2.1.2 Growth of federalism

Federalism is suitable form of government having four features in common;

- 1) Territorial diversity: federal government had different territory under his command.
- 2) Linguistic diversity: under one federal government different territorial parts had diverse languages.
- 3) Administrative diversity: has a diverse unit under central government for administration.

4) Federal and regional diversity: having two tiers of government in written constitution to perform their duties.

5) Independent judiciary: Most important feature of federalism is existence of independent judicial system (Adeney, 2007).

2.1.3 Characteristics of Federalism

The present author has opinion that in a federalist constitution power is distributed between central governing authority and administrative units. Central government had power over legislature, executive and fiscal while federating units had autonomy or self-rule. Federal Constitution must be a written document with bicameral legislature (upper house and lower house). Upper house (house of elected people) had population base rule from federating units but the lower house had equal sharing from all units. Federal Constitution had two level of government in defined written form. Judiciary in any federal Constitution must be free from executive (Adeney, 2007). (Ali, 1995)

2.2 The Evolution of Federalism in Sub-continent

India had been invaded by Muslims many times, first in 712 A.D by Muhammad Bin Qasim, then second time from 1101 to 1126 Mahmud Ghazni¹ invaded 17 times India. His first attack was near Peshawar in 1101 and last one is famous for his victory at Somnath Temple in 1126 with so many wealth with 50000 death casualties. (biography/Mahmud-King-of-Ghazna, 2019) Thirdly, in 1192 Shahab-Ud-Din Ghori attacked India, who appointed his lieutenant Qutab-Ud-Din Aibak for Indian administration. This was the start of Muslim rule in India. Fourthly, Muslims entered in India from Farghana (Uzbekistan) in 1526 by defeating Ibrahim Lodhi in the Battle of Pani Patt, Zahir-Ud-Din Babar established Mughal kingdom with Islamic administrative system. The Mughal adopted a different system of organization than previous dynasties with replicating four central departments to provinces (financial, military, judiciary and supply of products) in this way provinces became integral part of Mughal administration (Ali, 1995). Mughals established a strong administrative system to divide diverse territory into provinces called *Subahs*, these *Subhas* were under the control of *subah Dars*. All ruler adopted same policy, but Akbar's administrative system was entirely based on provincial administration. This administration was strong during greater Mughals, but it started decline after mid eighteenth century. On the other hand, British East India Company

¹Mahmud Ghazni was a king at Farghana (Afghanistan), he was the son of slave King Sbuktagin who established his Dynasty at the name of Ghaznavid Dynasty in 977 AD after his death his son was succeeded to the Thorn, from 998 to 1127 Mahmud Ghazni ruled the Ghaznavid Dynasty with 20 successful expeditions he expanded his empire from Afghanistan to India and Kashmir.

(BEIC) penetrated India as trading company in 1600 AD by establishing three trading posts (Adeney, 2007). These trading posts were in Mumbai, Malabar and Calcutta. It was established for trade with limited army for garrison's protection soon it started its expansion. Mughals used war or pay tribute tactics to control India but BEIC used local zamindars to help in control the territory and established alliances and treaties with princes. They used these treaties for military, political and economic reason according to prince's powers (Ibid). In 1757 the battle of Plassey provided BEIC the authority over Bengal to collect revenue for a fixed amount of attribution to King. This was the start of BEICs power in India. BEIC expanded its rule within a century from Bengal to whole India. The last Mughal King was not more than a puppet in the hands of British traders. This rule was ended in 1858 after the war of independence when British government had complete control of India (Muhammad, 2008).

In 1857, after the war of Independence Sub-continent fell into the hands of British government. The British Crown sought to control India by his representative 'British Governor General of India' as Indian Viceroy of the Monarch.² This started a system of British monarchy in India. To legitimate this monarchy British government introduced a series of Acts from minimal representation to some extent.

"In 1858 an Act of Parliament relieved the BEIC of its role in the governance of India after the uprising of 1857, for which London held the BEIC responsible. Westminster then assumed direct control. As under the Mughals, central control was based on conceding greater executive power to the provinces" (Adeney, 2007).

This Act introduced some federal features in India but with limitation. Divide and rule policy was adopted in India. The Indian council had 15 members (eight appointed by the crown and seven elected by the Court of Directors) without universal franchise introduction. Only high class of citizens was qualified for voting with introduction of communal representation to divide Hindu-Muslim community by making them weaker (Shankalia, 2018). Now administrative strategy changed from Mughals under the British government. Mughals rule was based on decentralization while British system was centralized. The British used a strategy to maintain "real power at the center", was an essential part of British concession of provincial autonomy (Ibid). The second Act introduced by British was Indian Council Act 1861 which increased the legislative members to number five but not permitted to participate in budget, their power was also limited. The Muslims as a minority started to defend their interests through demands on constitutional amendments and were granted reserved seats in parliament for (Ahmad, 1982) Muslims by Muslim voters (Muhammad, 2008).

Sir Syed Ahmad Khan was first Muslim leader who felt about Muslim community and struggled for their awareness to teach them modern language as well true Islamic knowledge, he convinced British government about loyalty of Muslims and also convinced Muslims by writing “Tabyein-ul-Kalam” in which he wrote similarity between Islam and Christianity. Sir Syed struggled long for empowerment of Muslims through education to get ride from British slavery and know their rights. Sir Syed advised Muslims to keep away from Congress politics considering Muslim’s current situation before British government. He wanted Muslim community to know their own political interest as a separate nation. He was first who refused Congress’s claim as political party for whole India and India is comprised on one nation (Sikandar, 2016). He was the pioneer of “Two Nation” theory by separating Hindus and Muslims as a different nation, in a meeting with Shakespeare³ in 1872 Sir Syed used to talk about two nations of Sub-continent. Hindus are four time in majority than Muslims.

“The Hindus would obtain four times as many votes as the Muslims because their population was four times as large. It would be like a game of dice”, he contended, “in which one man had four dice and the other only one” (Ahmad, 1982).

He argued Muslims for their empowerment in modern languages than in politics. Later events proved his efforts into freedom movement to demand for their right by producing an intellectual class. After Sir Sayyad, Nawab brothers (Mohsin-ul-Mulk and Waqar-ul-Mulk) joined Aligarh movement more effectively with doctrines of their mentor Sir Syed. Syed Salman Nadvi established his Nadwa-tul-Ulma. All the Ulema belong to different religious sects with their followers actively sided with the two-nation theory which led to Pakistan Resolution (Chaudhary, 2005).

2.2.1 Demands for the Recognition of Diversity

The Bengal province was divided in 1905 because of its expansion over a large area. The British partitioned the unwieldy province Dacca (now Dhaka).⁴In a new province Muslims were in majority status (Sikandar, 2016). This partition was carried out on territory, religion and on language basis. This was the divide and rule policy between the two communities started a set of discussion first Muslim nationalism and then Muslim separatism towards the demand of Pakistan (Ibid). The Hindus were not happy with this partition and called it a vivisection of mother province. The Congress was not in the favor to accept any difference on

³That time Shakespeare was the Divisional Commissioner of Banaras under the British Administration of India.

⁴ Raj Shahi and Chittagong Divisions (excluding the Darjeeling district) and the district of Malda was separated from it, and Assam was constituted into a new province of Eastern Bengal.

religious basis in India (Adeney, 2007). Now Muslims became prosperous had their right in commerce and civil jobs, Hindus never accepted this and called this partition a split in two. In combine province Muslims were in minority and deprived from their rights, after this partition they got a chance of self-empowerment. This was the first step of federalism to divide a province on religious bases, this partition gave the Muslims an idea that they became progressed if their rights were granted to them, but then the British Government had its own plans. At the arrival of King George V in India the government contrived to annul the partition, On 12 December 1911 this partition was abolished (Ibid).

The Indian council announced another proposed package of reforms 'after Government of India Act 1892' for India by British government's secretary of Indian state Mr. John Morley, to increase the seats of Indians in legislative council. If these seats of legislative council covered by Congress⁵ than Muslims will be suppress by Hindu majority. That time Muslims had no political platform for them so prominent leaders of that time like Nawab brothers and sir Agha Khan with collaboration of other Muslims from Peshawar to Bihar took the responsibility to meet with Viceroy Minto on October 1906 (Sikandar, 2016). They presented Muslims demands first time to realize British government that India has diversity in view and outlook, and Muslims are separate nation who had their different identity than Hindus. They demanded for Muslims substantial representation in the Councils, Legislative, municipalities and District boards at all level of government. Moreover, they demanded for separate electorate for Muslims representatives and Muslims contribution to the Empire's defense, (Mati-ur-Rehman, 1970) and more significance they got approval of all demands.

That time India was a British colony, no specific right had given to Muslim community prior to this deputation. First time Muslims presented their demands with federal spirit collectively and was accepted by British government in 1909 Minto Morley Reforms.

Acceptance of Simla deputation made Muslims to think for a proper political platform of the Muslim intellectuals to present their demands on authentic way. Syed Ahmad Khan's successor's first successive attempt at Simla deputation encouraged them for another, Secondly, they founded a political representation party for Muslims in December of that year 'All India The Muslim League' (AIML) (Sikandar, 2016). Congress's attitude towards partition of Bengal prohibited the Muslims to join congress. Now a new political party proposal to safeguard the Muslims was presented by Nawab Salim Ullah Khan "The All India Muslim League". The changed conditions of India, particularly in the context of

⁵That time Congress was only political party established in 1985.

constitutional advance under the Act of 1909, and growing Hindu-Muslim tussle, forced Muslims to get involved and to find the All-India Muslim League on 30 December 1906”.

The All India Muslim League was established with the objectives to promote among the Muslims of the India feeling of loyalty towards the British Government, to get maximum support of the Muslims from India rather than claiming for all communities representative party as Congress claims. To protect and advance the political rights and interests of Muslims of India and respectfully to represent their needs and aspirations to government and to prevent the rise among Muslims of India of any feelings of hostility towards other communities (Adeney, 2007).

Quaid-i-Azam joined The Muslim League in 1913 when he had a break with Congress leader Mohan Das Gandhi, but he was still in the favor of Hindu-Muslim unity and changed League’s objectives.

The Great Britain and announced a constitutional reform package for British India in 1909 on the demands of Muslim leaders of Simla Deputation. More political condition in India was demanding for a federal system which suits Indian condition with diversity on religious, linguistic and territorial level. Lord Minto (the British viceroy of India) and John Morley (secretary of state for India) introduced these reforms in the name on “Indian Council Act of 1909”. There were two Indian members in this Council from both communities, Sayyad Hassan Bilgrami as Muslim envoy and Krishna G Gupta Indian civil servant as Hindu envoy. The Muslim demand for separate electorates and some seats were reserved in each council, except the Punjab, to be filled exclusively by Muslim voters was granted in the Act of 1909 by British government. This Act provided relief not only to Muslims but all Indian minorities too. However, under this Act a rule was made to grant special representation to other minority communities of India as well, Anglo-Indians, Indian Christians, Sikhs, Europeans, the depressed classes, landlords, and university graduates, commercial and industrial classes. This was to acknowledge the wishes of all the Indian people to the extent possible (Ibid). This act first time accepted separate electorate for Muslims, but this was not enough for Muslims survival in India but a recognition and acceptance of the Muslims as a community in India.

2.2.2 Lucknow pact (1916) and Federal Political Institution in India

Hindus were not happy with the “Indian Council Act 1909”, this act provides separate electorate for Muslims, but on other side Muslims were happy with this Act. Now it was the time to sort out political issues first between Indian communities than with British

Government. The congress leader Bal Gangadhar Tilak and The Muslim League leader Quaid-e-Azam agreed upon an agreement. The Lucknow Pact was signed between two parties in November 1916 the president of the session Jinnah moved the League and Congress to draft a radical constitutional setup acceptable to both parties (Ibid), marked in History as “Lucknow Pact of 1916” (a symbol of Hindu Muslim unity). In this pact Congress accepted Muslims demand for separate electorate, Congress also recognized The Muslim League as Muslims political party, prior to this Congress consider herself a single representative party for whole India. There were other rights also given to Muslims as a community in this Pact. First, the Congress accepted the separate electorate system granted by the British in the Act of 1909 in those provinces where they did not exist previously such as the Punjab and the Central Provinces (CP). Second and most important, the Muslims were given ‘weightage’ in Hindu-majority provinces. For his keen efforts in making this settlement possible, Jinnah was awarded as the “Ambassador of Unity” (Sarojini, 1918) because it was the first political settlement after 1857’s war under British divide and rule policy. It was settled between Congress and League on the issues of, one third seats for Muslims in Imperial Legislative Council, expansion of Provincial Legislative Councils for common rights from British government. Lucknow pact proved a landmark in Sub-continent’s history, British adopted divide and rule policy in India but this agreement between two major communities had significance impact.

2.2.3 Montague-Chelmsford reforms 1919 (Federal Provisions)

Government of India Act 1909 accepted many Muslims demands but that was the start of demands by Indians and reforms by the Government. That Act was for ten years tenure, in 1919 there announced another reform in India which called Montague Chelmsford reforms (Montague the secretary of state and Lord Chelmsford was then Viceroy of India). This was also a ten-year constitutional reform package from governing authority to local people. End of benevolent despotism” was its main feature this Act which introduced the responsible government in India. This Act also covered a period of 10 years from 1919-1929.⁶ This Act had two subjects of lists that is Federal (47) and Provincial (56), further provincial subjects are of two types [reserved (36) and provisional (20)]. In this Act a new system of Dyarchy was introduced in India by the local bodies demand of representation and provincial autonomy. It was a decentralized unitary governmental form. The provincial government was granted Dyarchy System, the provincial subjects were divided into two categories i.e. reserved and transferred subjects for Governors and Ministers (Shankalia, 2018). This was a failure but a pathway from provincial autonomy demand to separate homeland. The subjects

of national importance and income generating such as foreign affairs, defense, etc. are included in the central list while money consuming or those subjects which need fiscal support to run were added to provincial list (Ibid). In this Act women were given right to vote in India first time, to pass any bill governor's assent was compulsory, governor had power to issue ordinance and veto any bill, bi cameral system was adopted for India. This Act increased Indian's participation in their country's administration.

2.2.4 Nehru Report (1928) and Fourteen Points of Jinnah (1929)

Hindu-Muslim unity which was created in Lucknow Pact ended in 1922 with congress's withdrawal from Khilafat movement. The Hindus started many riots to convert Muslims by force towards Hinduism, movements of Shuddhi and Sangthan to convert Muslims into Hinduism by force (Sikandar, 2016). These incidents proved Hindu dominance over Muslims, it was compulsory for Muslim's survival to draft a suitable constitutional plan for Indian Muslims. Jinnah called a meeting of representative Muslim leaders on 20 March 1927 to suggest a way out of the present difficulties. The Muslim leaders agreed to renounce separate electorates on behalf of the Muslims after a lengthy discussion it was decided on Muslims behalf, to separate Sind from Bombay Presidency, political reforms in North West Frontier Province (NWFP now Khyber Pakhtunkhwa), and Baluchistan (now Balochistan) to bring them at par with other provinces in India (under the Act of 1919), representation in the Punjab and Bengal in accordance with Muslim population, and one-third representation in the central legislature (Ibid). All Parties Conference rejected this proposal and appointed a Commission under Jawahar Lal Nehru to present his report on Constitution of India. Kathrine's has a view; The Congress presented his Nehru Report in 1928 with the idea of central power by opposing the Muslims demand of provincial autonomy. It advocated unitary state structure with parliamentary powers to amend the constitution without provinces consent. It proposed central form of government with all residuary power in the hand of center. This report accepted separation of Sindh on religious basis, and accepted Baluchistan and NWFP as provinces. Although, Congress accepted federal form of government for India (Adeney, 2007). To answer this report Quaid-e-Azam presented his most popular fourteen points with exclusive federal features. In these points he demanded exclusively federal system in British India with the abolition of so called Dyarchy and maximum autonomy for provinces in India (Mansoor, 2002) These were not only a proposed points but a suitable federal solution to all Indian problems, he demanded not only provincial autonomy along with federal system but separation of Sindh from Bombay presidency, one third Muslim representation in Central Legislative Assembly, separate electorate for minorities, minorities representation in legislature, demand for reforms in NWFP and Balochistan, Muslims share in services and protection of Muslims religion and language. All these demands were not only in the favor of

Muslims but all minorities. These demands were against Hindu dominance and majoritarian role of Congress.

2.2.5 Government of India Act 1935

Both Nehru Report and Quaid's fourteen point failed to produce a suitable Constitutional solution for India, Congress was in the favor of unitary system in contrast League demanded for provincial autonomy. It was provided in the 1919 Act, the appointment for another Constituent Commission for India. That was announced in November 1927, headed by Sir John Simon, to examine the pace of constitutional advance in India (Sikandar, 2016). This Commission was a seven white members body had no Indian representation, failed to satisfy both political parties on federal issues. This Commission had three lists of subjects, (Federal 59, Provincial 54, and Concurrent 36) where center had exclusive power over federation. "The Simon Commission Report, was published in two volumes in 1930, with recommendation of the abolition of 'dyarchy' system and setting up of a federal system of government in India with maximum provincial autonomy, and the principle of separate electorates as continuous (Ibid). This Commission refused Congress's demand for unitary system by accepting provincial autonomy but also disappointed League by refusing NWFP's status as full fledged province and separated Sindh from Bombay presidency. Although Sir Stafford Cripps by giving right to Province as a whole and not to any community tried to defend his position, according to Adeney. To find out proper solution of Indian Communal rites Viceroy arranged a series of Round Table Conferences (RTC) from 1930-1932 (Adeney, 2007).

Three RTC did not produce a suitable negotiate result which suits to Indian federation. To sort out these problems British Government came forward with their own solution to the situation in the name of Communal Award On 16 August 1932 by the British Prime Minister, Ramsay MacDonald. The Communal Award conceded the Muslims demand for separate electorate but failed in delivering other issues, it turned down the demand of Muslims statutory majority demand in Punjab and Bengal, also failed to measuring distribution of power between center and provinces on genuine federal line, Muslims demand for residuary powers allocation to provinces was not accepted and the resultant Communal Award failed to carry Muslim support and approval (Sikandar, 2016). This Award was a proposed solution which later became a part of 'Government of India Act 1935.

The Government of India Act 1935 was a first federal written Constitution for India with three parts of subjects, federal, concurrent and residuary powers. "The Government of India act was the production of four main key sources they are 1)Simon Commission report, 2)discussions at the third round table conference, 3)the white paper of 1933 and the 4)reports

of the joint select committees” (Shankalia, 2018). This Act was promulgated in 2nd August 1935 by the King’s Most Excellent Majesty, this was a long published Act with 321 Articles and 341 pages. The original text of Act had fourteen parts, thirty-two sections and ten schedules. “The 1935 Act, this was a promotion of federation under strong unitary system empowered the center to legislate the ‘Federal’ list of subjects along with ‘Concurrent’ list, if it so desired. In addition, the Act failed to protect the autonomy of the federating units. Ministerial functions were still restricted in the hands of the executive. This Act had fewer federal features as demanded by Muslims (Sikandar, 2016). This act ended Dyarchy system and granted limited provincial autonomy, introduced bicameral system, independent judiciary to sort disputes between federal government and its federating units, abolished Council of India and established Secretary of State for India. To increase the size of legislature this Act extended the supremacy of British Parliament and enlarged the franchise. This Act separated Burma from India. The British still dominated the federal legislature over the provincial legislation. Indians did not have a control over the defense part of administration though they contributed men and materials for the war efforts (Shankalia, 2018). This was a federal system in theory but unitary in practice, it was centralized federal Constitution. Quaid did not accept this.

“Therefore, Jinnah did not hesitate to claim that the Act was “devoid of all the basic and essential elements and fundamental requirements which are necessary to form any federation”. (Ahmad, 1982)

This act was not enough to fulfill neither the Indians expectations nor a complete solution to Indian federal problems. After this Act in 1937 elections Congress ministries developed in India, congress’s majoritarian role compelled the Muslims to think for a separate homeland if they live in combined India, they will become permanent minority under Hindus dominance.

2.2.6 The Lahore Resolution 1940

Highly centralized Constitution and Congress ministries attitude forced Muslims to change their thinking for a separate homeland. All attempts of British government to sort disputes between congress and League resulted in change from provincial autonomy to complete independence. In 1940 at Lahore in 27th annual session of All India Muslim League from 22-24 March had been a landmark in Pakistan’s history. “Quaid-e-Azam had declared that the Lahore session would be a landmark in the future of the Muslims of the Subcontinent” (Akhtar, 2011). On that day momentum resolution was passed by The Muslim League to transform Muslims from minority status to a majority nation. In this resolution five federal demands were made by Muslim leaders:

- 1) It rejected federal system of 1935’s British Act.

- 2) Muslims did not accept any constitutional plan which will be framed without Muslims consent.
- 3) North-west and eastern adjacent areas with Muslim Majority should be formed as independent state.
- 4) Effective and mandatory safeguard for minorities with similar rights as compare to Muslims.
- 5) The Muslim League working committee had the responsibility to formulate a constitutional scheme based on these demands” (Dawn News, 2019), (Akhtar, 2011).

It was a turning point in Indian politics which determined the goal of Muslims in the form of separate homeland. To pass this resolution there was a clear message to the world that, All India Muslim League never accepts the scheme of Federation embodied in the Government of India Act 1935, and unworkable in the conditions that were prevailing in India under that Act and were ‘altogether unacceptable to Muslims of India (Ahmad, 2015). Now Muslims had to work under Quaid’s appeal to spread his message to every Indian for mass mobilization to freedom movement.

2.2.7 Independence of Pakistan

Gandhi Jinnah talks was actually a series of letters between two leaders, in these letters both leaders had talked about that time political problems but ended in vain, no specific result was found as both leaders had their own federal perspective regarding their communities, in the end these letters were published. These were total seven letters from which five were from Rajagopalachari to Jinnah and only two were from Jinnah to him.

When all the attempts to unite India were failed after Cabinet Mission Plan than British government decided to leave India after Second World War with two separate independent states (Pakistan and India). The then Viceroy announced in his broadcasting address, both parties have demanded independence for India so Punjab, Bengal and a part of Assam will be divided on their demand. A boundary commission was appointed to draw a line to separate two countries. This line was on religious bases but unfortunately Pakistan had two parallel parts with one thousand miles distance. Muslim majority areas formed the Pakistan and Hindu majority areas formed independent India. This was free hand independence with all subjects including defense, foreign affairs and communication. Congress used tactics to abolish princely states of Hyderabad and Junagarh etc. princely states in Pakistan joined Pakistan, but Kashmir had been a disputed territory between the two newly formed countries since today. Indian independence Act was announced on 8th July 1947 with rules and procedure for Dominion states (Pakistan and India)

“An Act to make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for, other matters consequential on or connected with the setting up of those Dominions” (Indian Independence Act, 1947).

In this Act two Dominions were formed, territory of those Dominions was defined, legislation and legislative heads was decided as Governor General and armed forces of Dominions were decided under twenty sections and three schedules. After this independence a large number migration was formed between the two countries with heavy death loss.

Conclusion

When the world was launching a campaign to adopt federalism as a solution of political problems, Sub-continent was suffering to fight for independence struggle. From 1857 to 1947 (90 years of struggle) with British and Congress, started from Muslim's empowerment by Sir Sayyad, efforts of Aligarh Foundation, formation of The Muslim League in 1906 joined Muslim leaders at one platform to struggle for their rights. Muslims presented their demands and got approval in Constitutional reforms step by step from 1909 to 1935 but still lacking in true federal spirit as Muslims demanded for provincial autonomy. Then in Lahore resolution in 1940 turned Muslims intention from provincial autonomy towards independent state, on other side Congress was willing for united India but elimination of British rule. While British wanted to control over India in three subjects (defense, foreign affairs and legislation). It was vital for Muslims to have struggle for a separate country (Pakistan). Muslims struggled hard for their right as a nation and finally on 14th August 1947 Pakistan formed on the world map.

Sub-continent had diversity in many ways, it is a combination of different religion (Islam, Hinduism, Christianity, Sikh mat), land of different languages (Urdu, Hindi, Bengali, Punjabi, Sanskrit, Brahmi, Sindhi, Balochi, Bengali, Kashmiri and Pashtu) and territorially divided areas. Under the Mughal Empire there was a peace and harmony, but the British adopted the poly of divide and rule. In this way conditions in united India changed and friends of past became enemy forever, Congress defended only Hindus interests and Hindus started to press Muslims from every field of life. The Muslim League was formed to defend the Muslims interest from 1906 to 1913 it was a purely Muslim represented body but with the participation of Quaid-I-Azam its policy was changed to unite Hindus and Muslims. This unity soon disappeared by Gandhi's decisions, again Muslims started for a federal solution in fourteen points of Quaid. From 1935 to 1940 situation was worse to live in united India. In this changing condition separation was the best solution for this area but to adopt exclusively federal system, is most suited to sort out all communal and constitutional problems. From 1940 to 1947 Muslims struggled for their separate country and Pakistan was created as a

solution of those problems which Muslims had been facing in British administered India after 1857.

THE CONSTITUTIONAL MAKING PROCESS AND FEDERAL DEBATES IN PAKISTAN (1947-1954)

His Majesty sent a message to the Pakistani Assembly and its president,

“I send you my greetings and warmest wishes on this great occasion when the new Dominion of Pakistan is about to take its place in the British Commonwealth of Nations. In thus achieving your independence by agreement, you have set an example to all freedom-loving people throughout the world”.

14th August 1947 is the day when Pakistan got its independence from British government under “Indian Independence Act 1947”. Under this Act if Pakistan is a Dominion state, will adopt Government of India Act 1935 with few modifications and amendments by the Pakistani parliament. But this was a temporary Act to fulfill basic requirement for a newborn country, Pakistan had to draft its own constitution as soon as it possible. Same case was with India, but Indian Constitution was framed and adopted within three years in contrary Pakistan adopted its first constitution after nine years. The first Constitution of Pakistan was adopted in 1956 but what happened in constitution making procedure during this time phase? Is my question and I will find my answer in the light and guidance of national Assembly Debates on various federal issues between the leaders of both parts of Pakistan?

The sessions of debates started from 10th August 1947 (4 days prior independence declaration) on that day Mr. Jogendra Nath Mandal had described about the future of Pakistan

“I hope you will agree with me when I say that the free independent State at Pakistan will bring to one and all of her citizens prosperity, happiness and peace”. (Constituent Assembly of Pakistan, 1947)

Further he said that Pakistan has been created for the entire minority committees, minority community will have all their rights with total elimination of hater and distrust among them. Then he told the Assembly the most important duty of Constituent Assembly is to form a future constitution of Pakistan and the next duty of this Assembly will be to draw a legislative constitution till a Central Legislative Assembly will be constituted under the new Act (Ibid). It was decided from very first day that future constitution will be with the consent of all provinces to make it the best constitution in the world. Muhammad Ali Jinnah was given the title of “architecture of Pakistan” in another session (Ibid). There were several issues upon religion adoption, either Pakistan is a secular state which is built for all minorities irrespective to any religion, caste and creed or it is only for Muslims. Muslim community wanted Pakistan to be an Islamic democratic state, but Hindu minority had different opinion regarding to this. In the words of Mr. Kiran Sankar Roy;

“if the Pakistan which you have in your mind means a secular democratic State, a State which will make no difference between a citizen and a citizen, which will deal fairly with all irrespective of caste, creed or community, I assure you that you shall have our utmost co-operation” (Constituent Assembly of Pakistan, 1947).

That time Pakistan had eight million scheduled cast in it. It was a deliberate effort of these depressed classes along with Muslims to struggle for Pakistan. Quaid-I-Azam advocated for provincial autonomy during freedom movement to British Government, on his 11th August speech to National Assembly he said,

I sincerely hope that with your support and your co-operation we shall make this Constituent Assembly an example to the world. The Constituent Assembly has got two main functions to perform. The first is the very onerous and responsible task of framing our future constitution of Pakistan and the second of functioning as a full and complete Sovereign body as the Federal Legislature of Pakistan (Ibid.).

Further he said that maintenance of law and order is necessary for Pakistan having many serious problems of bribery, corruption, black marketing and nepotism. The language of the house will be English decided by the president on that day (Ibid).

The Government of India Act was decided as interim Constitution of Pakistan on 2nd March 1948 to the adoption of first constitution of Pakistan in 1956. An Amendment was moved to amend chapter VI-A of that constitution by Khawaja Shahab-Ud-Din on 2nd March, in this motion criteria for publication of any bill was decided.

3.1.1 The First Constituent Assembly of Pakistan (1945-46's Elections)

The British government announced for general elections on 21st August 1945 elections in India to decide the future representation of India. All political parties have one-point manifesto in these elections. All India Muslim League's (AIML) manifesto aimed at creation of Pakistan and Muslims are one nation, Indian National Congress (INC) aimed for united India (Rahman, 2008). The Unionist Party favored for United India, there were Central Akalis Dal (CAD), Ahrars, Militant Khaksar (MK), to contest the elections. All India Muslim League and Congress were major political parties, Unionist, Congress and Akalis had common manifesto while Muslim League had to fight these for Pakistan (Hussain, 2011). Congress had many Muslim leaders to gather Muslims support, Abdul Kalam Azad was its president, Khan Abdul Qayum Khan 'member of central Assembly' and Feroz Khan Noon left Congress and Joined Muslim League 'both member gather mass support for Muslim League and Pakistan cause' by appealing "to vote Non-Muslim league members will be against Islam and Muslims (Rahman, 2008). Mian Iftikhar-Ud-Din and Begum Shah Nawaz Joined the Muslim League, Members from Khaksar party also joined AIML and welcomed by

the Quaid. Khawaja Nazim-Ud-Din and Hussain Shaheed Suhervardi also sided with the cause of Muslim League to form the Pakistan (Ahmad W. , 2001). Muslim Student Federation (MSF) launched campaign for AIML, 1500 Aligarh Students sided with AIML. Journalists and intellectuals spread their views by publishing articles, journals and news reports the aims and objectives of Pakistan. three prominent leaders left Darul-Uloom Deoband for Pakistan and formed their own party Jammiat-e-Ulmah Islam ‘Maulana Anwar Shah Kashmiri, Mufti Aziz-Ur-Rehman and Molana Shabbir Ahmad Usmani’ to support AIML (Ibid).

The Muslim League won the elections with majority, league won 440 or 446 seats out of 495 in these elections 31 from Assam, 113 Bengal, 79 Punjab, 34 Behar, 54 from U.P, 17 from NWFP and 28 from Sindh, Bombay 30, Madras 29, C.P 13 and Orissa 4 (Rahman, 2008). The first Constituent Assembly of Pakistan (CAP) was established on 10th August 1947 with Muslim league members and Quaid-i-Azam was selected its President, Liaqat Ali Khan its Prime Minister and Mr. Jogendra Nath Mandal (member from East Bengal’s Minority) temporary chairman (Constituent Assembly of Pakistan, 1947). The first CAP had only two political parties representation that is Muslim League and INC, ML had 59 seats with only two Non-Muslim Members while INC had all Hindu Members. Total seventy members this Assembly has, with ML’s majority position but divergence views of members (Hussain M. , 2011).

3.1.2 Objective Resolution

12th March 1947, is a remembering day in the constituent history of Pakistan, on that day aims and objectives of Pakistan was decided in a resolution presented by Prime Minister Liaqat Ali Khan, this resolution had main principals of constitution of Pakistan, later it served as integral part of three constitutions of Pakistan (Constituent Assembly of Pakistan , 1949).

This was a first federal step towards constitution framing after eighteen month of Pakistan’s creation, it is clearly described by the presenter of resolution that main object to build Pakistan is to live according to Quran and Sunnah, it had clearly defined the relation between center and provinces as autonomous part of a federation of Pakistan. This was a federal formula because Pakistan has two parts separated by one thousand miles away from each other, but the Constituent Assembly will integrate them and grant them autonomy. Assembly will think best methods for distribution of Subjects between center and provinces. In this resolution judiciary had its independent character, law entertains everyone equally. Democracy should be exercised by chosen representative (Ibid). At once it faced many criticisms by Hindu leaders from Congress Party for its Islamic provisions, Mr. Saris Chandra Chattopadhyay opposed this motion for mixing religion with politics, having provision only for Muslims but not for other religious minorities, but this resolution had clearly defined in

fifth clause about minorities culture and religion (Ibid). Another amendment was raised by Mr. Prem Hari Barma also a Hindu INC member, for the circulation of resolution for public opinion by 30th March 1949 to make it publicly known and foundation stone for Pakistani Constitution. It never addressed on language of the state as Pakistan had many languages Urdu and English as state languages and Bengali, Punjabi, Sindhi, Pushto, Saraiki and Baluchi as regional languages (Ibid).

3.1.3 The Language Controversy

Mr. Dharendra Nath Dutta from East Bengal presented a motion,

“That in sub-rule (1) or rule 29, after the word " English" in line 2, the words" or Bengali", be inserted”.

Because on 11th August debate Quaid had declared English as state language now this was a motion by Bengali people that “Bengali” should be state language. Pakistan had a six million population from which four million and forty lakh belong to Bengal, Bengali is a language of Bengal province but having a language of large population it should be granted as “Lingua Franca” of Pakistan. In India total population is thirty crores but Bengali speaking are in minority with two and half crore only, so sister country had majority population language that is Urdu, Hindi and English. In Pakistan Bengali are in majority so there will be Bengali as state language (Constituent Assembly of Pakistan, 1948). In Pakistan there are 54% Bengali speaker, 28% Punjabi speaker, Pashtun speaker are 6%, Sindhi speaking people are 5%, Urdu speaking are 3% only while Baluchi speaking are 1% to the total population of Pakistan at the emergence of Pakistan (Adeney K. , Federalism in Asia, 2007). Mr. Prem Hari Barma from East Bengal sided with Mr. Datta and Bhupendra Kumar Datta said, that Bengali is the richest language in Sub-continent, but Mr. Liaqat Ali Khan opposed this motion as there is a common language Urdu to communicate with all parts of Pakistan. “Urdu should be the state language” (Constituent Assembly of Pakistan, 1948). Mr. Ghazanfar Ali Khan (Minister for Refugees, "Relief & Rehabilitation) also opposed the motion by saying “one language for one state that is Urdu” Khawaja Nazim-Ud-Din from east Bengal sided with Urdu but favored Bengali as “medium of instruction and educational institutions and administration of province”. It was a contrary issue between the two parts of Pakistan, one was supporting Bengali while other was supporting Urdu, on contrary opinions this motion was negative "That in sub-rule (1) of rule 29, after the word 'English' in line 2 the word ' Bengali, be inserted" (Ibid).

3.2 Basic Principle Committees Reports (Federal Provisions)

Basic Principle Committee (BPC) was established on 12 March 1949 with the passage of Objectives resolution to suggest basic principle for the Constitution of Pakistan. This

committee had 24 members '21 Muslims and 3 Non-Muslim members' along with ten non-Constituent Assembly members. Maulvi Tameez-Ud-Din Khan (Jammiat-e-Ulma-e-Islam) as Head along with Liaqat Ali Khan (prime minister from AIML), and Chief Minister of provinces (East Bengal, Sindh, N.W.F.P and Mr. Justice Abdul Rashid as members of this committee. all were not members of CA. This committee had three sub-committees to assist it in drafting future constitution that was,

- 1) Sub-Committee on federal and provincial constitution for distribution of power
- 2) Sub-Committee on franchise
- 3) Sub-Committee for judiciary. (Constituent Assembly of Pakistan, 28th September, 1950).

These committees had a task to present their suggestions to collaborate with Basic Principle Committee for the adoption of future constitution for Pakistan. Another five member's board "*Talimat-e-Islamia*" was established in September 1949 to assist BPC the matters relating to Objectives resolution. "Sub-committee on federal and provincial constitution for distribution of power" held a meeting and discussion with *Talimat-e-Islamia* Board and presented its report on 11th July 1950 to the Committee. This report was discussed in BPC meetings of 9, 10, 11 August in 1950. But other two Sub-Committees had not yet presented their reports to BPC and matters related to finance, franchise and judiciary had not been decided and final report was delayed (Ibid). There was a debate in Assembly relating to sub-committee reports of Fundamental Rights to Minorities on 4th October just three days before (BPCs) first report, this report consist of three parts (part one deals with citizenship part two deals with fundamental rights and part three wit directive principal of state policy) (Constituent Assembly of Pakistan, 1950). The BPC presented three reports, Prime Minister Liaqat Ali Khan presented its first report, second was presented by Khawaja Nazim-Ud-Din, and third by Muhammad Ali Bogra, all these reports were rejected by East Bengal's members in CA.

3.2.1 First Report of BPC (Federal Provisions)

This committee had to present its recommendations in the form of interim report on 6th October but had not sent its copies to Assembly members, delayed for one day and presented on 7th October 1950 after nineteen months of its formation. Prime Minister Liaqat Ali Khan presented this report by the rule 72 (1) of the Constituent assembly regarding federal and provincial power distribution (Constituent Assembly of Pakistan, 1950). Committee presented to the assembly its recommendations in Annexure two and three, while annexure one is all about the formation of BPC. Annexure two deals with matters relating to;

- 1) Types of federation
- 2) General features of the federal constitution
- 3) Legislative functions and powers
- 4) The Head of the State, his power and functions
- 5) Provision of residuary powers
- 6) Provisions in case of conflict of legislation and
- 7) Division of administrative financial powers (Ibid).

In this report there were three types of powers 1) central legislative power list with 67 subjects, 2) provincial legislative power list with 35 subjects, 3) concurrent list with 37 subjects, (both center and province had power to legislate) (Ibid). Governor of The State Bank of Pakistan Mr. Zahid Hussain was also appointed as financial expert to examine the distribution of finance between center and province. Another special committee was formed to examine its report on issues relating to appropriate nomenclature by BPC. Annexure three deals with the power distribution within center and provinces. This was a first interim report of BPC discussed on many important matters but left many important too (Ibid). This report had three parts;

First part deals with the Islamic provisions of Objective Resolution, it was decided that Objective resolution will be a part of future constitutions as part of directive Principle of State policy.⁷ Pakistan should be a federal state, consist of federations of Governors general's provinces, capital and those territories in the area of Pakistan. Federal had the authority over provinces to increase its area, diminish its area or alters any province's boundaries, names and can establish a new province by law (BPC Report, 1950). Committee preferred Bi-Cameral legislation for Pakistan, lower house and upper house, both houses had a chairman and deputy chairman. At least two session of Legislative Assembly (LA) will be held in every year. Joint session should be presided by the Head of the State, over the conflict between two houses, on the Head of the State's elections, on the eve of budget Bill and raising any motion related to Cabinet (BPC Report, 1950). The chairman of both houses should be chairman of finance ministers. Baluchistan had representation in Parliament but Federal Administered Tribal Area (FATA) had not given any share in the Parliament but in the house of elected people. The house of people should be for five years term, with two legislation session in every year with in three months after the appointment of Prime Minister (Ibid). Both houses had equal powers if there is any dispute among them. Both houses should define rules for joint sessions in a joint session and rules for transacting business. The Head of the State should not recommend any financial statement, but the legislature assembly can (Ibid).

⁷Objective resolution served as integral part of three constitutions 1956,1962 and 1973.

There should be Head in every province to legislate the province along with provincial ministers. The provincial Head should be appointed by President and will perform his duty according to constitution and law. In the case of emergency, the power of the provincials Heads should be same as the power of the State's Head at center (BPC Report, 1950). The head of the province had power to organize free elections in his province and can appoint Election tribunals. He is not answerable in any court, nor he is sentenced for any crime, nor is he arrested during his tenure. His appointment will be for five years, he will be elected by the people. He can summon two provincial legislature sessions in a year, within three months after his appointment. Provincial legislature also had independent legislature with a finance committee, there should not any proper financial statement presented by the finance committee under the provincial legislature (Ibid).

To describe power-sharing rules between center and provinces there were three lists of subjects 1) exclusively central legislature, 2) exclusively federal legislature and 3) concurrent list of subjects both center and province can legislate, and residuary powers will be reserved for center, will be operated by the Centre (BPC Report, 1950). Central legislature can plan and co-ordinate provincial and concurrent list of subjects, if any matter not described in provincial list than center had the authority to legislate that by law. If any federal law goes against any province than that province can repeal for amend that Act. In the case of conflict central legislature had prevailing authority over provincial legislature. Center had power to delegate its powers to any province or can take powers from any province regarding to provincial list or federal list (Ibid). Central legislature can confer its powers to any province or officer for imposition of duties on any matter, a sum will be paid by the federal authority to province or officer but as a matter of default agreement Chief Justice will appoint an arbitrator to fix an amount within. Provincial legislature should be exercised to compliance the federal legislature, and not to prejudice the federal law, provinces had to construct means of communications under federal directions for military importance, provinces will protect railway under federal direction (Ibid). All disputes within federation and federating units should be under the Federal Court for decisions, in the case of general disputes a Tribunal should be set-up under Chief Justice upon the request of any one partner. It was the central authority to borrow money for itself or for its provinces, but provinces had no such authority (Ibid).

On 4th October 1950 a report of "The Committee on Fundamental Rights and Matter Relating to Minorities" presented to the Assembly, this committee had two main tasks to do, 1) to define general rights of citizenship, 2) define rights of minorities. Fundamental Rights and Objectives Resolution are the two pillars of constitution making, both suggests Muslims and Non-Muslims are brothers. This report had three parts, first deals with citizenship, second

related to fundamental rights and third related to directive principle of state policy (BPC Report, 1950). The citizenship part provided all rights to Pakistani people in legislature. The second part deals with dignity of the men, equality and freedom to minority community. The third part, directive principle of state policy deals with untouchability of unfortunate people within Pakistan. This report faced criticism from minority community on large scale with 400 amendments (Ibid), Mr. Dharendra Nath Datta, Mr. Bhabesh Chandra Nandy, and Mr. M. A. Khuhro opposed to delay the report for the reason did not present its copies to the Assembly members. Mr. Dharendra argued that committee was appointed on 12th March 1947, but its first meeting held a year later on 26th June 1948, in this meeting it was decided that two sub-committees will be appointed, these committees presented its reports within a month, but its consideration was postponed. This sub-committee again had to submit its second report a year later 17th June 1949 but again delayed, why? (Ibid).

3.2.2 Federal perspective of the parliamentary Parties on Report

When the first report of BPC was published it faced criticism on large scale, some called it undemocratic, some had a view of dictatorship in Pakistan, un-Islamic and reactionary report, a report turning majority of East Bengal into a minority community, it also tried to turn Bengal into a Pakistan's colony and abolished provincial autonomy to create unitary system in Pakistan. Urdu as a national language of Pakistan was not acceptable by Bengali people they want Bengali as Lingua Franca of Pakistan (Kokab, 2011). These were wide views among common people spread by the newspaper's reports so the house was opened for recommendations and constructive suggestions to prepare a second report suitable to existing constitutional problems to draw world's best federal constitution. A Central Committee for Democratic Federation (CCDF) was established in East Bengal to criticize BPC and Liaquat Ali Khan, "will the Liaquat Ali Khan answer the following question" a leaflet was published clearly indicating the autonomy for East Pakistan. There were protests all over the Bengal on the publication of BPC's first report (Ibid).

On 21 November 1950, a motion was moved by the Prime Minister of Pakistan,

That with a view to give full opportunity to those who may be interested in offering suggestions regarding the basic principles of the constitution, the Constituent Assembly resolves not to take consideration during this session the Interim Report of the Basic Principles Committee, in order to enable the Committee to consider any concrete and definite proposals that are in conformity with the Assembly Objectives Resolution, which may be received by the office of the Constituent by the 31st of January, 1951, to make such further recommendations which was found necessary (Constituent Assembly of Pakistan, 1950).

People were asked to suggest recommendations to relate BPC report with Objective Resolution. The house was remaining open till 31st January 1951 for recommendations, these recommendations were examined by Constitutionalists, Jurists and *Ulmah* to make definite proposal of BPC which relate it to the Objectives Resolution (Ibid). Mr. Noor Ahamed from ML also a member of Constituent Committee talked about the first interim report, that the report has faced agitation and hostile comment against Pakistani leaders, the unitary central government will abolish the province's autonomy, the majority status of East Bengal will be turned to minority and a colony of Pakistan, all these wrong impressions had been spread by the newspapers and articles but had no reality in original constitutional draft (Ibid). Mr. Dharendra Nath Datta a member from ML called the subject distribution scheme a second Diarchical system which transferred some subjects to Ministers and made them responsible to the government (Constituent Assembly of Pakistan, 1950). Les Bella ML Party presented its report against the arrest of politicians from Les Bella in *Kath*- a wooden instrument to make them motionless, by the Jam Sahib. It is not a democratic step to step down political representatives. Mian Iftikhar Uddin from ML also objected the constitution making before elected representation of State (Ibid). On another day he criticized the democracy, the representation in states are not selected by people but ruler's representations, further he criticized the constitution is not a new formula but British made laws (Constituent Assembly of Pakistan, 1950).

3.2.3 Second Report of BPC (Federal Provisions)

Prime Minister Liaqat Ali Khan was assassinated on 16th October 1951, Khawaja nazim-Ud-Din was appointed second Prime Minister of Pakistan. He wants to present second interim report of BPC on 22nd December 1952 but Assembly members moved a motion to delay this report as its copies had not been sent to them prior to present the report and report was long to consist on 80 pages not possible to read that on spot. Mian Muhammad Iftikhar-Ud-Din, Dr. Mahmud Husain, sardar Shaukat Hayat Khan, Mr. Abdullah Al-Mahmood, Pirzada Abdul Sattar Abdul Rahman had objected that the report should not presented as it was given to them few second ago and proper procedure had not been followed (Constituent Assembly of Pakistan, 1950).

Khawaja Nazim-Ud-Din presented second interim report on 22nd December with the help of Sub-committee reports presented on 8th July 1952, judiciary sub-committee presented its report on 24th April 1952, franchise sub-committee submitted its report on 17th May 1952 all these reports considered in meetings from 1st to 9th September meetings to make second report with the aspirations of the people (Ibid). The preamble had Objectives Resolution.

Judiciary will be separated from executive within three years, and justice will be free of cost in law courts. Non-Muslim community rights will be protected, scheduled cast and backward section will be promoted with special education and care. No any law should be enacted against the teachings of *Quran* and *Sunnah* (Ibid). Pakistan is a federation of provinces including Baluchistan, with the capital of federation and the areas formed a part of Pakistan. The federal can increase, decrease, alter and diminish the area of its unit any time by law (Constituent Assembly of Pakistan. December, 1950). There should be a head of the state who exercise his powers in accordance to constitution. There will be a Minister's Council to advise the head in his performance. The head of the state will appoint Prime Minister, advocate general, head of three armed forces and chief election commission and election tribunal (Ibid).

The federal legislature will be of two houses, 1) the house of units, and 2) the house of elected people. The house of units will have 120 seats, the East Bengal will have 60 members elected by single transferable vote, and the composition of West Pakistan will be:

Table 01

Punjab	Sindh	NWFP	Tribal Areas	Bahawalpur	Baluchistan/ State	Khairpur state	Capital Federation	total
27	8	6	5	4	2/2	2	4	60

Source: BPC 2nd interim report 22nd December 1950 (National Assembly Debates)

It was a parity formula to manage both parts on equal basis, principal of weightage was adopted to balance between smaller province and larger, but reallocation of seats can be done on increase or decrease of population (Ibid). The house of the people will have 400 seats 200 from East Bengal directly elected and 200 from West Pakistan on population basis.

Table 02

Punjab	Sindh	NWP	Tribal Areas	Bahawalpur	Baluchistan / State	Khairpur State	Capital Federation	Total
90	30	25	17	13	5/5	4	11	200

Source: BPC 2nd interim report 22nd December 1950 (National Assembly Debates)

In the case of merging any area re allocation of seats will be managed so the parity between two wings will not be disturbed. Every citizen entitled to vote if he or she is above 22 years and a permanent resident of that constituency. The life of the legislature of federal house should be for five years. There will be not less than two sessions in a year of federal legislature and within three months after the appointment of Prime Minister. There will be

joint sessions of houses when there is conflict between them, when the State's Head removed or appointed, framing of joint sitting rules and provisions in the constitution. Each house had a Chairman and Deputy Chairman, secretariat and finance committee. The Head of the State can prorogue the legislature (Ibid).

Every province will have a head who exercise his duty according to law and constitution and will be appointed for five years by the State's Head. The Head of the Unit also had a Minister's Council to assist him like the Head of the State. There will be Deputy Ministers and Parliamentary secretaries who are not members of Minister's council (Ibid). Every unit had advocate general, every unit had unicameral legislature, not less than 75 and more than 350 members elected by direct election. Every citizen is entitled to vote if he/she is above 21 years old and a permanent residence of that constituency. Every unit had not less than two legislative sessions in a year within three month the appointment of the Unit's Head. The Unit's Head can prorogue the unit's legislature. The unit's legislature also had Chairman and Deputy Chairman, independent secretariat of legislature and finance committee to frame rules. Excluded areas and partially excluded areas are beyond federal or provincial legislature but by the order of provincial Head by public notification. In the tribal areas the Head of the State may make provisions regarding administration and representation in the constitution (Constituent Assembly of Pakistan. December, 1950).

There should be three types of subjects, 1) exclusively federal, 2) exclusively provincial and 3) concurrent and residuary powers will rest upon federal government. Federal government will make planning and co-ordination relating to provincial and concurrent list of subjects, while federal has authority over residuary powers. The Federal legislature had power to constitute laws for whole of Pakistan, treaties and agreements with other countries and decisions to arrange international conferences. In the case of conflict between federal and unit, federal law will prevail. The federal will made agreements to enforcement laws in acceding states. Federal government had the authority to delegate its powers to any unit or issue its executive instruction to any unit. Executive powers of units should be exercised as compliance the federal authority over units, units will not prejudice or impede federal laws. Federal can extend its power to a unit for maintenance of communication of military importance and protection of railways to a unit (Ibid).

All disputes between federal and units or within units regarding the issues of water, gas and expenditure will be referred to Chief justice's tribunal which will submit its report to Chief Justice who will send this report to Head of the State after checking it. If a land belongs to a unit necessary for federation will be transferred to federation on default agreement (Ibid).

A supreme court should be established in Pakistan with Chief Justice and not less than two and not more than six judges, this number can exceed from six by a resolution. The State's Head will appoint the Chief Justice unless he had performed for five years as High Court and for twelve years he had practiced as barrister in any court. He will retire from his office at the age of sixty-five. Removal and retirement of Chief Justice may debar pleading and acting of all courts. The Chief Justice with the consent of the Head of The State may appoint from judges of Supreme Court or Federal Court as a Chief Justice temporarily. The office of Supreme Court will be in Karachi, will have original jurisdiction over disputes between center and province, between provinces over the issue of law and effects or legal rights or interpretation of constitution thereof. In article 179 it is mentioned that The Supreme Court's decision should be final (Ibid).

There will be high courts in all units of East Bengal, Sindh and N.W.F.P (Dacca, Karachi, Lahore and Peshawar), Sindh High Court should extend to Capital of Federation and Baluchistan by law. Judges of the High Court will be appointed by the orders of both Chief Justice and Head of The State. To qualify for the High Court Judge he must had been a barrister for ten years, for ten years an advocate in respective High Court, for ten years a member in Indian Civil Service served as district Judge for three years, or had served as subordinate judge, small cause court judge and distinguished judge. He will retire from his office at the age of sixty and can resign from his post in written. High court's judicial conduct shall not be questioned in any legislation, high court judges may be transferred within Pakistan by the both high authorities (Chief Justice and Head of the State). There will be Sub-ordinate Courts too (Ibid).

The procedure to amend the constitution was also defined in the constitution. If one-third members of Federal legislature give notice for motion to amendment in the constitution, if such motion is passed than a copy of bill send to the Chairman of the Federal legislature, if the majority of the legislature of the units support such bill, if any bill passed be the second house than its Chairman will sent copy of that bill or motion to the Chairman and if the majority of total members pass a bill. That bill will be sent by the Chairman of Federal assembly to the Chairman of Units for further consideration until one month has collapsed after its dispatch, so on that constitution should be amended by the consent of the Head of the State (Ibid).

There were three lists of subjects in the second interim report too but exceeded in numbers from the first interim report. The federal list had 73 subjects now including defense, foreign affairs, trade, etc. The units list had 42 subjects, the concurrent list had 39 subjects

federal should prevail over units regarding concurrent list. There will be residuary powers reserved for federal legislature (Ibid).

3.2.4 Federal perspective of the parliamentary Parties on Report

After the publication of second interim report it was circulated for public opinion, the first demand was from the students on 21st January 1953 for a free compulsory education. In East Bengal Dacca was not happy with the upper house settings. Hindu also rejected for having separate electorate for a minority community of East Bengal with reserve seats. East Bengal had demand of provincial autonomy based on Lahore resolution so rejected BPC's report. East Pakistan demanded a confederation of Pakistan comprising on two wings, revenue collection will be unit's responsibility with fix amount for center to run only three subjects, 1) defense, 2) foreign affairs and 3) currency. East Pakistan also demanded unicameral system on population basis with the collaboration of Awami Muslim League (AML), Khilafat-e-Rabbani Party (KRP) and United Islamic Front (UIF) to left only three subjects for center. (Rizwan, 2011) Professor Raj Kumar Chakravarty made a motion for adoption of Bengali language to support his view he the history of other countries like Switzerland, Canada and Russia with multi languages and successive federal constitutions while MR. Nur Ahmad mentioned Urdu should be State language 'one language for one country', both members were from East Bengal but had contrary views upon same topic (Constituent Assembly of Pakistan. April, 1952). Sardar Shaukat Hayat Khan a member from opposition party but a Punjabi Muslim also supported the views of Mr. Raj because Bengali is the Language of 41900000 people of East Bengal 9Ibid). Peer Zada Abdur Rehman Abdul Sattar presented a motion to for the Continuance of East Bengal's Legislative Assembly for another year, 'were elected in 1947 for the term of five years, it had to end in 1952 but extended to 1953 and now again for another year', Mr. Bhabesh Chandra Nandy a member from East Bengal's General criticized this motion that this is not a federal provision nor democratic, among 170 seats 30 seats are vacant in East Bengal, these 30 constituencies had no representation so these seats will be covered by elected representation nor by the government 9Constituent Assembly of Pakistan. March, 1953). Mr. Shri Sirs Chandra Chattopadhyay called the Legislative Assembly a dead horse as it had completed its five years tenure, it did not have seats in some important districts for minority member from all over the East Bengal, and some important Muslims seats are also vacant on important (Ibid).

3.3 The Bogra formula Federal Features

On 7th October 1953 Muhammad Ali Bogra than prime minister of Pakistan from East Bengal presented a historic federal constitutional formula for Pakistan's both wings. This is also called Bogra Formula rather than third report of BPC; this was a population basis formula

planned in accordance to the population of East Wing and West Wing because East Wing was than dominating the whole population of West wing's all units. In universally recognize federal principle all units have equal share in governance of the country in written constitution. For four years BPC grappled a problem of constitution making with many proposals but not satisfied the common people, now this formula was a last attempt to satisfy people on suitable federal solution for constitution making. During this period a sense of frustration spread among people Constituent Assembly of Pakistan. October, 1953). Now this formula proposed the federal Legislature should be of two houses with 50 seats equally distributed among five provinces, and the Lower House will have population base representation in number of 300, will be as ;

Table 03

Units	Upper House	Lower House	Total
Bengal	10	165	175
Punjab	10	75	85
N.W.F.P frontier states & tribal area	10	24	34
Sindh & Khairpur	10	19	29
Baluchistan & Baluch states, Bahawalpur & Karachi	10	17	27
Total	50	300	350

Source: Bogra formula Report presented on 7th October 1953 (National Assembly Debates)

Pakistan will have two zones East Zone (including East Bengal) and West Zone (including Punjab, Sindh and Khairpur, N.W.F.P, Frontier States and Tribal Areas, Baluchistan, Baluchistan States union, Bahawalpur and Karachi). Both houses will have equal power, in a joint sitting of both houses including 30 % members from both zones elect the Head of the State and vote for confidence and non-confidence will be passed. If there is conflict between the two houses there will be voting from both Zones required 30% votes in a joint session for decision on that issue. The vote for the Head of the State will be held in opposite zone (if the Head is going to be elected from East Zone than voting will be from West Zone and f the Head is going to be select from West Zone than voting will be in East Zone) (BPC Third Report, 1953).

This formula is famous for its federal features, it adopted a federal pattern which most of the progressive countries had. It adopted bicameral central legislature with equal powers to both houses. The upper house (house of units) will enjoy equal share irrespective the unit is

smaller or greater, the lower house (the house of elected people) from units on population basis, ensures the federal form of government. For equal representation state was divided into five units, further these units form two Zones for balancing representation, East Zone consist of East Bengal and West Zone consist remaining four units (Punjab, Sindh and Khairpur, N.W.F.P, Frontier States, Tribal Area, Baluchistan and Baluchistan States Union, Bahawalpur and Karachi). This parity formula of two Zones balanced the population extension of one part. The upper house's members will be elected from people representatives of the units, will represent the units. Equal powers to both houses, equal measures passed and introduced for both houses, if Lower House passes any bill it must be passed by the Upper House too. If the two houses had different opinions than in a joint session of both houses' decision will be on majority vote from both houses more than 30% votes should be concluded for that matter. Similarly, The State's Head will be elected by 30% members from each Zone and voting for Head will be from opposite Zone (Ibid).

For check and balance of administration the Head was responsible to the both houses, motion for confidence and non-confidence will be moved in joint sitting of both houses. If the two houses disagreed over any matter it will be discussed in joint session. Units are arranged into Zones for equal representation in both houses, this is not only a parity formula but inter-dependence of two parts, will make Pakistan a strong country. Each Zone has equal obligation and equal assurance to each other that without one's approval government is not able to pass any motion (Ibid).

3.3.1 Federal perspective of the parliamentary Parties on Report

In the words of Muhammad Ali Bogra;

“the formula has been unanimously accepted by my colleagues, by the Chief Ministers of East Bengal, the Punjab, Sind, the N.-W.F.P. and Bahawalpur and by all members of the Muslim League Parliamentary Party” (Ibid).

This formula was rejected by all political parties of that time except PML, Fazal-Ul-Haqq held a public meeting in collaboration of Jinnah Awami Muslim League (JAML), Krishan Sramic Party (KSP), Khilafat-e-Rabbani Party (KRP), the Gantantari Dal (GD) and EPCP in Dacca to pass a resolution for provincial autonomy (Rizwan, 2011). Mr. A.K Brohi criticized that what will be the judicial system of Pakistan? Mian Iftikhar-Ud-Din raised a question in Assembly that the formula had not sectarian or provincial viewpoint. Mr. Bhupendra Kumar Datta and Mr. P. D. Bhandhara both from PNC criticized for separate electorate for minority community, Mr. P. D. Bhandhara also rejected the provision of The State's Head as a Muslim and there should be a minority seat in Western Zone reserved in Upper House in Punjab legislature. Shiri Dhirendra Nath Datta called it a fraud for being in *parda* not having

suggestion from other members, not defined finance allocation between center and provinces and mixed subjects between central list and provincial list (Constituent Assembly of Pakistan. October, 1953). The house was opened for recommendations and views of political representations in the Assembly. Shri Dharendra Nath Datta suggested to transfer all taxes from List Two to provincial List to raise funds for administrative duties, he also criticized the Directive Principles of State Policy regarding to the interest of minorities are not according to the provisions of the Objectives Resolution, it denied the Human Rights, it is against the federal spirit of the constitution, there are more than 91 lakh minority community in East Pakistan, 1 and half lakh in Sind, less than a lakh in Punjab but all had been deprived from their right of representation, we want Joint electorates. Free and compulsory education will be provided in written constitution within next ten years not excluded that period, and justice will also be free of cost for everyone, he called the legislation a *Mullah* Board (Constituent Assembly of Pakistan. October,1953). By criticizing the executive of the federation he over the paragraph 13 that head of the State will be Muslim is not a federal provision it depriving nearly one crore minority community from their federal right, as Khawaja Nazim-Ud-Din had explained in other countries in a federal constitution there is also restriction for Minorities even in America no a Negro can be appointed as Head, but we are not following American pattern but pattern of England and England had unitary form of government nor federal (Ibid). Professor Raj Kumar Chakravarty from East Bengal General, called the Bogra formula a failed to satisfy all the minority communities and both wings, deprived the provinces from their proposed autonomy as suggested in Lahore Resolution, pointed another federal features if President is from one wing than Prime Minister will be from other zone either he is component or not, never addressed the competency of the State's Head or the Executive Head, it is the amalgamation of federal and unitary system in Pakistan (CAP. 9th, October, 1953). Prof R.K and Shri D.N. PNC member has expressed his view over the relations between center and provinces that center curtailed the provincial powers in the case of conflict as the final decision will be the Head of the State, this formula never talked about the languages of the state 'Urdu and Bengali', the Muslim League Parliamentary Party (MLPP) of East Bengal has demanded for full provincial autonomy as proposed by the Lahore Resolution with only three subjects for center 'defense, foreign affairs and currency' but the report curtailed many provinces powers in the favor of center (Ibid). He also expressed that the constitution is disintegrated with autocracy at center and vested highest authority to the Cabinet. Chaudhry Nazir Ahmad Khan also objected that the constitution never answered the national language(Ibid). Sardar Abdullah Jan Khan a member from NWFP objected the preamble, that the BPC cannot alter or amend it, it is an arch that cannot be touched, according to the British Constitution it is not a part of law, the BPC overridden all boundaries of legitimate, Scientific and linguistic, it is a hybrid report neither fish nor flesh, it is a book

of fraud and tyranny (CAP. 8th October, 1953). After a long debates on criticism there was a question in the house either the formula take into consideration or not? Shri K.K. Datta also a member of BPC told the Assembly that the presented legislative formula is agreed formula between the two wings is not an original report. In this formula the house of units does not stand on merits, because East Unit is larger in population, so East Bengal had the right to power, the provinces are not autonomous body with enlarged functions and power of taxation, nor it independent in home affairs, but center prevails over the units in all matters goes against the agreed formula of provincial autonomy (CAP. 10th October, 1953).

After the presentation of Bogra Formula in the constituent Assembly on 7th October 1953 there had been made many amendments in it, on 19th august 1954 a report of “Committee on Fundamental Rights Relating to Minorities” was introduced in The Assembly and adopted. This report had two pages and three parts (part one deals with Minorities rights, part two related to Fundamental rights and third part had Directive Principle of State policy) (CAP. 7th October,1953). Again Hindus denied separate electorate, Shri Dharendra Nath Datta and Khan Abdul Ghaffar Khan demanded for joint electorate for Hindus, Buddhist and Christens on single electoral, and common electoral in East Bengal with Muslim community (Ibid). In September 1954 there was a long debate among constituent Assembly members relating to subject division between center and provinces. There was presented many amendments to change the division of subjects from one list to another which were presented in BPC’s report. Mr. A. K. Brohi from PNC demanded the transfer of waterways, navigation on inland, shipping and carriage of passenger to be transferred from Federal Legislature to Concurrent List. He also demanded the transfer of item no. 27 to the Concurrent list.⁸ *Zakat* was also transferred from Federal List to Concurrent List on his demand, and provincial legislature to deal with High Courts. Provinces will have the authority of natural Gases and salt mines. Federal legislature will be responsible for unemployment in Pakistan. Item No 42 and 52 were also transferred from Federal to Concurrent list on his demand.⁹ Shiri Dharendra Nath Datta demanded the custody of opium to be transferred from List one to List three, which was rejected for national interest. He demanded for fisheries to be in provincial custody because East Bengal’s main source of income is fisheries and all kind of taxes collection should be provincial subject not of Federal. Mr. Abdul Hameed presented the detail of powers over concurrent list that it will not be only federal authority but president can transfer powers to provinces in certain cases, when legislature is not in session(CAP. 16th September, 1954). On 21st September 1954 after a year of considering the report and amending that, the BPC

⁸ “Museum and Libraries not to be financed by units”, Federal Subject.

⁹ 42 deals with migration from one unit to another unit, migration between countries was excluded from it, 52 deals with migration of refugees from outside of Pakistan.

has completed its task of constitution making. Again this report faced criticism before its final publication, in November Congress members called it an un-democratic and un-fair constitution and walked out from Assembly (CAP. 21st September, 1954). Prof. Raj Kumar Chakravarty called it a constitution of majority party for a minority who cannot even change a comma in it, an undemocratic constitution which denies equal rights to all its citizens. He stated that it is against the agreement of 1950 between Mr. Nehru and Liaqat Ali Khan that right of citizenship will be guaranteed to all including minorities. He called constitution making a mischievous of two-nation theory, formation of a such Islamic state where non-Muslims had not given equal rights as to the Muslims, discrimination to minorities by announcing The State's Head as a Muslim on this way the BPC's reports on equality of law has become a myth. The BPC's report had flouted the Lahore resolution's spirit of provincial autonomy for Pakistan (Ibid). East Bengal had claimed more autonomy to provinces but faced disappointment on all three reports, he stated Quaid's speech on 10th October 1945 at Baluchistan when he said;

The theory of Pakistan guarantees that Federated Units would have all the autonomy that we find in the constituents of the U.S.A., Canada, and Australia. But certain vital powers will remain vested in the Central Government, such as the monetary system, national defense and other federal responsibilities (Ibid).

On 17th March 1946 at New Delhi Quaid-e-Azam had stated that;

There shall be a separate Constitution-making body for the six Muslim provinces named above which will frame Constitution for the group and the provinces in the group and will determine the list of subjects that shall be provincial and Central with residuary sovereign powers vesting in the provinces (Ibid).

The BPC's reports are in opposite to Quaid's vision of Pakistan so not acceptable to all Pakistanis. To him acceptance of Objective Resolution and BPC's reports are reducing non-Muslims to drawers of water and hewers of wood and Maulanas as hoax. Shiri Dhirendra Nath Datta reminded the Assembly the demand of people from Bengal during election was the autonomy of provinces and all residuary powers will rest for provinces with only three subjects for center (defense, foreign affairs and currency), and fair elections are not possible under Governor rule (Ibid).

Sardar Abdur Rab Nishtar presented final reports of BPC sub-committees relating to fundamental rights, safeguards for minorities, report of basic principles and unfinalized allocation of revenue between center and provinces for the final draft of constitution. This was a final report prepared by a committee comprised more than 24 members from all communities (modern and ultra-modern Hindus, Muslims *ulema and molvis*, all contributed

sincerely and presented a compromised formula. This report of BPC was accepted by all ulemas and Molana Shabir Ahmad Usmani. According to the constitution of BPC's report the center had much power and provinces had powers like that, according to this constitution Muslims and Non-Muslims have equal rights. Pakistan should be an Islamic Republic which means citizens are free to freedom of speech, freedom of expression, freedom to profess and practice any religion and wealth should not be confined in few hands (Ibid).

Conclusion

From the creation of Pakistan to the presentation of Bogra Formula six years passed but no definite conclusion had been reached. The Objective resolution was passed on 12th March 1949 by the Prime Minister Liaqat Ali Khan, on the same day BPC was formed with 24 members to present his recommendations to the legislative Assembly about the future constitution of Pakistan. The BPC presented its first report on 7th October 1950 after nineteenth month of its formation. The First interim report suggested Bi-cameral legislature, federal form of government and Urdu as a national language. It faced many criticisms from all over the Pakistan but more from East Pakistan, with the opinion to converting a majority community into a minority community, making Bengal a colony of Pakistan and never considering Bengali as a lingua franca of Pakistan. the first report was failed to satisfy all communities, than second interim report was presented under Khawaja Nazim-Ud-Din on 22nd December 1952, this report presented many features which were not presented in first report it formed proper judiciary system, Federal Public service Commission and defined criteria for amendment in constitution with one-third representation in the legislature. There was again rejection from public to never fulfill their demands of free education, minority community never liked separate electorate for them, East Bengal demanded provincial autonomy on Lahore Resolution pattern with three subjects reserved for center defense, currency and foreign affairs only.

The first two reports were failed to satisfy public than there came third report by the Prime Minister Muhammad Ali Bogra called "Bogra Formula" this was a federal formula presented on East Pakistan's demand for making Pakistan a federation of two Wings. Bogra formula presented a concept of two Zones (east zone and west zone) with two houses, House of Units with equal representation and House of Units with the representation on population basis. This was also rejected by majority community for not defining relation between center and provinces, from minority community for separate electorate and not defined provinces full autonomy. There needs another phase for constitution making process in Pakistan.

CHAPTER-04

FEDERAL DEBATE OVER THE DRAFT CONSTITUTION OF 1956 AND 1962

The BPC presented its three reports (first interim report under the leadership of Liaquat Ali Khan, second under the Prime Minister Khawaja Nazim-Ud-Din and third under the leadership of than Prime Minister Muhammad Ali Bogra). All these reports faced criticism from all over the Pakistan but most intensive from East Bengal where minority community was living, raised questions for their rights equal to majority community, on other side India was constantly creating troubles for Pakistan. First refugee problem than Kashmir conflict and last one canal water problem, with all these problems Pakistan struggled long for constitutional solution. In 1954 after seven years of hard struggle to frame a suitable constitution the BPC announced for the final constitutional plan, but before it was announced and promulgated there created a tussle between opposition leaders and government, the Governor General (GG) announced emergency in Pakistan on 24th October 1954, for the reason that constitution machinery had lost its confidence to satisfy all the people so again a new constitutional body will be set-up.

The new constitutional committee was given seven months to frame a constitution for the nation. Committee was consisting sixteen members with Speaker and Deputy Speaker presented its draft constitution in the Assembly, after presentation almost all clauses of constitution were amended by the opposition leaders. Somehow a first constitution after the long struggle of nine years was promulgated on 23rd March 1956 with the consensus of all parties. This constitution lasted only for two years, in 1958 this was abrogated by Governor General Sikandar Mirza on 7th October with the consent of General Ayoub Khan. Emergency was declared in Pakistan and imposed the Martial Law, for two years there were no constitution in Pakistan. Than on 1st March 1962 a new presidential form of constitution was promulgated and came on effect on 8th June 1962, it was too not enough to sort all political problems of Pakistan, it was a rigid constitution with presidential form of government. This was highly centralized formula with abolishing provincial autonomy and federal structure of constitution.

4.1 The Second Constituent Assembly

The emergency power ordinance was issued on 27th March 1955, this ordinance validated 33 out of 44 Acts which still had not received assent from Constituent Assembly. On two grounds this Ordinance can be challenged; 1) if Federal Legislature had no powers to legislate such matter because under “the Legislature of Dominion of Indian Independence Act no.6 the power of Governor General is same to Federal Legislature. 2) If governor General’s laws goes

against the safety of people than it is unlawful, such an Act was passed by Sindh Governor under section 92-A “the goonda Act”.¹⁰ On 15th April a Constitution Convention was promulgated which acted as Assembly not as a Convention, and it is valid and enforceable. Now this Assembly will only pass the indemnity Act and all those Acts which passed during last seven years will refer to a Select Committee, this Committee will now take them into consideration (CAP. 21st September, 1954).

"That the Bill be referred to a Select Committee consisting of the Honorable Mr. H. S. Suhrawardy (Chairman), the Honorable Mr. M. A. Khuhro, Mr. Ata-Ur-Rahman Khan, Mr. Abul Mansur Ahmad, Mr. Hamid-ul-Huq Choudhry, Chaudhry Muhammad Hussain Chatha, Mr. Kamini Kumar Dutta, Mr. Nurul Huq Choudhry, and the Honorable Sardar Amir Azam Khan. With instructions to present a report by the 15th August 1955" (Ibid).

A committee was formed on 8th August 1955 for the rule of procedure, draft and business of the constituent Assembly. This committee had sixteen members with Speaker and Chairman and seven members from the Quorum who were expert in constituent making. Committee was given task to finish its work within two months. It was a hard task to make a constitution within two months which last committee drafted in seven and half year.¹¹ This constitution did not adopt the multinational mode of federalism, it was a centralized federation, the center's right prevails over the provinces on Concurrent list. Parity formula was designed for the members of national assembly (Adeney K. , Federalism in Asia, 2007).

4.2 The Politics of One Unit Scheme

After rejecting federal system presentation of the Bogra Formula West Zone now proposed to form ‘One Unit’, the Bill to form West Zone in One Unit was proposed to present in Assembly on 8th August 1955 with the consent of Assembly members and its constituents as well, but unfortunately not presented (CAP. 8th August 1955). Then on 24th August's session again the Bill was presented for “The Establishment of West Pakistan into One Unit” by Sardar Amir Azam Khan to the Assembly. The Bill refers to merge provinces of West Zone into One Unit and empowers the Governor General re naming of East Bengal into East Pakistan and single province of West Pakistan by merging all provinces into one larger Unit. For one year the bill had been discussed in press for public opinion (CAP. 24 August, 1955). He called the unitary form of government a best suitable form for Pakistan and geographically ideal form of government because West Pakistan is a single compact of a land, this unitary form will give regional autonomy and self-rule at all levels. It was the British Imperialist

¹⁰Constituent Assembly of Pakistan. (11th July 1955). *The Validation of Laws bill*. 69.

¹¹Constituent Assembly of Pakistan. (8th August 1955). *Resolution Reappointment of a Committee to Draft Rules of Procedure and Business*. 190.

“Divide and Rule” policy which created various administrative units for colonial era of British dominating policy. Economically this One Unit formula will stimulate the flow of trade and commerce to the country, will eliminate the shortage and will stable the price. Capital of Federation will be any area near Karachi, the Tribal Areas of states (Amb, Chitral, Deer, Swat and in N.W.F.P) will be called special areas. There will be single High Court for West Pakistan by abolishing all provincial High Courts, the new High Court will establish its branches in different cities of province. West Pakistan’s two functioning Public Service Commissions will be merged into one Commission. A new Legislative Assembly will be established for West Pakistan with 310, members elected by indirect method, 10 seats for Muslim women, 2 for Pakistani Christians and 8 as general seats for the period of 10 years (Ibid).

This Bill was presented to manage the differences occurring between West Pakistan and East Pakistan since last seven years over federal issues, it was the proposal to balance the population difference between the two provinces. It changed provincial boundaries, judiciary set-up, distribution of Subjects between units and completely administrative formula. This Bill will facilitate the smooth framing of Constitution and provide larger provincial autonomy with equal partnership to Federal government. This Bill was taken into consideration same day and proposed to circulate for public opinion by Mr. Fazal-Ur-Rehman, Mian Jaffar Shah and Shaikh Mujeeb-Ur-Rehman by the 30th November 1955 (Ibid).

“That the Bill be circulated for the purpose of eliciting opinion thereon by means of referendums to be held province wise and state wise. By the 30th November 1955, based on adult franchise were ever possible and in accordance with the rules to be framed by the Constituent Assembly” (Ibid).

Mr. Shaikh Mujeeb rise the point that East Bengal’s name never to be changed as East Pakistan but suggested to make it Bengal Pakistan on peoples demand. Bengal had a long history behind its name which the Bengali people not to be changed. Bengal did not have any issue with One-Unit scheme, but its people want Bengali too as a state language, they want provincial autonomy, they demanded for joint electorate. He said that people of West Pakistan are also against One-Unit, if referendum will be held in West Pakistan (CAP. 25th August, 1955). M. A. Khuro had a point that out of 108 members 100 of National Assembly gave their consent in the favor of One-Unit.

4.3 Political Parties Response towards the Draft Constitution of 1956

The second CA was given the task to frame the constitution in Murree meeting by the GG Ghulam Muhammad to draw a best acceptable constitution for the nation (CAP.

9th July, 1955). Mr. Zahiruddin appealed the Assembly that the constitution before its enactment must be circulated, debated and argued discussed and thought over and then passed, because it is not a temporary constitution so it must be discussed on various aspects. It will serve for good will of current generation and to the coming generations (CAP. 16th January 1956). Mr. Abdul Mansoor Ahmad criticized the words of I.I Chandigarh that he had produced the best constitution, he replied that the constitution neither Islamic nor Federal, this bill counter all pledges of Lahore resolution and 21 points manifesto of Awami League (Ibid).

4.3.1 Debate Over Language Issue

On 13th July 1955 again in Constituent Assembly there raised a point by Shaikh Mujeeb-Ur-Rehman from East Bengal the reminder of language problem faced by Bengali people even in Constituent Assembly while delivering address in Urdu or English. Bengali people are not comfort with these two languages as they are in Bengali. He reminded the House when second PM of Pakistan Khawaja Nazim-Ud-Din announced Urdu as state language of Pakistan in 1952 than Bengali people want both (Urdu and Bengali) as languages of the country, on 21 February 1952 East Bengal demanded in Assembly for Bengali also be a state language along with Urdu, but innocent people were fired for their demand and those who opposed the firing in Assembly were arrested because of their support. The people who had thrown away from their post had Divine right to govern and they must be backed to their posts as it concern the language than Bengali also a state language along with Urdu. House may allow members of East Bengal to present in their own language as it appears in U.N. O's sessions where delegations expresses their views in their respective language, even in Canadian parliament English and French languages are used, Swiss Parliament had three languages. Bengali members are not frequent with English language so they may have privilege to speak in House in their mother tongue, Mr. A. H. Deldar Ahmad also supported him in this issue (CAP. 13th July 1955).

Again, on 8TH August 1955 there was a point that Bengali should be the language of the house along with English and Urdu, every report must be printed in Bengali language for Bengali members because they are in majority in the House. There was also a suggestion to amend the rule 29 which had restricted the members to speak only in two languages. Mr. Zahir-Ud-Din made a recommendation to the committee a provision to record the debates of Bengali members in Bengali language (CAP. 8th August, 1955).

In a draft constitution Bengali had been given the status of national language along with Urdu, Maulana Abdur Rashid Tarkabagish objected to the proposal of languages because it

was also stated that English will remain official language for next twenty years. For last eight years Urdu and English had been imposed upon East Pakistan not only in schools but everywhere, even in broadcasting there is no place for Bengali. All efforts had been made to promote Urdu as state language and ignore Bengali for eight years, though Bengali is the language of majority population. According to democratic method majority population's language should be a state language (CAP. 21st January 1956). Shaikh Mujeeb-Ur-Rehman raised a question on what should be an Islamic language, Urdu is not an Islamic language, every Islamic country had its own language, it may be Urdu, Arabic, Persian and Bengali. He referred Article 31 of the proposed constitution which urges to promote and growth of national language, as West Pakistan is not against the adoption of Bengali language as soon as its possible Bengali should be adopted along with Urdu. Bengali people had been deprived from defense services because all the services and training are in Urdu or English, this discrimination should be ended by adopting Bengali language (Ibid).

4.3.2 Debate over Subjects Distribution

When the constitution was framed by the committee, it was circulated for public opinion. The first criticism it faced from Bengal, *Molana* Abdur Rashid criticized the Item No 47 in provincial list the legitimation of money lending and Item No 37 and 38 which permits the production and manufacture of wine in Pakistan as it was against Quran and Sunnah (Ibid). Mr. Abdur Rehman Khan criticized the excessive use of wealth generated by provinces especially from West Pakistan's Jute's production, this income should be spent on departments for their development (Ibid).

4.3.3 Debates over Finance Distribution

Shaikh Mujeeb wants the income generated by East Bengal's railway must be spent on railway's management and maintains (Ibid). On 29th November Governor General assented the 8 Bills including West Pakistan Establishment Bill. The Awami League party in elections had raised 21 points, one of them was the abolition of *Zamindari* system but this system cannot be abolished without compensation to *zamindars* if you visit Sindh and Punjab Frontier you will find the lands of one man that is Talpur, Daultana or Iftikhar-UD-Din the day long journey, this property should be belong to those people who work upon it, because Islam believes proper distribution of wealth (Ibid). Shaikh Mujeeb also criticized between the two wings of Pakistan un-equal wealth's distribution. To answer the questions of East Bengal's demand of finances will be under the provinces control specially income generated by the jute production from East Pakistan, Mr. Mushtaq Ahmad Gurmani a member of Muslim League made a speech in the Assembly. He said all the income generated by the provinces will be distributed by the center equally if East wing produce jute then west

produces cotton both in raw material and need factories to finalize them. The provinces are autonomous but subordinate of center (CAP. 31st January, 1956).

4.3.4 Debate Over Provincial Autonomy

MR. Abdul Mansur Ahmad also dislike the constitution arrangement and raised a point against Mr. Chandigarh's statement that this constitution is the only solution to Pakistani problems, but in fact this Bill counters Lahore Resolution and 21 point program of Awami League for provincial autonomy, except Mr. Muhammad Ali pledged this to the people of East Pakistan. they had pledged if they came in power will produce a constitution with only three subjects to the center while this Bill gave 51 subjects to the center, again this Bill is against nor Islamic, nor Federal, nor Republic. Pakistan is a one state of two countries, both are differing from each other in language, custom, tradition, climate, geography and calendar but had two common factors, common religion and common struggled for independence. The constitution framing for the country will have two aspects, Federal form of Government or unitary form of the government. A federal type of government which have a different structure without one language and parity between wings with equal distribution of wealth from unitary type which had one franchise, one language, one standard time, one calendar, and one capital. He said the Basic Principle Committee report and the Constituent Bill are same (CAP. 16th January, 1956).

Mr. Zahir-Ud-Din Khan presented the constituent Assembly that with all their best and genuine efforts "The Constituent Bill" was referred to amend almost all its clauses one by one. All are opened and amended the entire Bill (CAP. 28th February, 1956). The Constitution proposal was improved and presented to the house by the consent of Western Muslim League (WML) party and Eastern United Front (EUF) party. The opposition helped to improve all the Clauses of constitution and now acceptable by both the Wings. This Constitution will be a road map for the progress of Pakistan (CAP. 29th February, 1956).

4.4 Constitution of 1956 Federal Provisions:

A motion was moved by the Mir Azam Khan to the Assembly for the Constitution's signing and depositing to the National Museum,

"That this Assembly resolves that steps be taken to enable the Members of the Constituent Assembly to sign the Constitution of the Islamic Republic of Pakistan for the purpose of its being deposited in the National Museum" (CAP. 22nd March, 1956).

The Constitution Assembly has been in session from 7th July to mid-February and presented the historic first Constitution of Pakistan within seven months. It countered two different views of both Wings, the West provinces demanded the formation of One-Unit and

centralization while East Pakistan demanded for full provincial autonomy by United Front and Awami League parties. East Pakistan helped to form West provinces into a One-Unit and West Pakistan conceded provincial autonomy as much as possible for the integrity and solidarity of the country (Ibid). The Assembly decided by a resolution the 23rd March 1956 a “Constitution Day” as this day had historic importance for Lahore Resolution and celebrated as Republic day. The Constitution will be a gift for the people of Pakistan, it will make Pakistan the great and foremost state in the world. Pakistan will be an independent republic sovereign state after this new Constitution (CAP. 2nd March, 1956). Than on 23rd March 1956 after a nine years long struggle the first constitution of Pakistan presented to the nation. Objectives Resolution was integral part of this Constitution.

The Islamic Republic of Pakistan shall be a federal state with two provinces “East Pakistan and West Pakistan”¹² along with territories accede to Pakistan and territories under federation administration. The state of Pakistan shall have a federal government and a parliament, and there shall be a president elected by both Assemblies (National Assembly and Provincial Assembly) through electoral college. The President may have his cabinet of ministers including Prime Minister who will assist him in exercising his function. From the Members of National Assembly (MNA)s a PM will be appointed by the President whom he considers may have confidence of majority MNAs. The President will appoint and remove the Ministers among MNAs. The cabinet of Ministers shall advise the President to perform his duty well. He is the executive head of the federation, supreme head of the Armed forces, all executive actions be taken by his name (The Constitution of Pakistan, 1956).

The elected Prime Minister shall have the duty to communicate with cabinet all the decisions of the President related to administrative affairs and legislative proposals. The Parliament of Pakistan will have one house (National Assembly) with President as its executive head. The arrangement of its members will be as;

Table 04

Provinces	Male members	Fe-Male members	Total
East Pakistan	150	5	160
West Pakistan	150	5	160
Total	300	10	320

Source: from the Constitution of Islamic Republic of Pakistan 1956.

¹²East Pakistan means East Bengal and West Pakistan means all provinces of West Pakistan set-up by the Establishment of West Pakistan Act 1955.

Members of National Assembly may alter by Act of Parliament, The National Assembly will have two sessions in a year from its first day and minimum gap of six month between the two Sessions. President may address the NA and all ministers and Attorney General have given right to speak in Assembly. Every passed Bill of national Assembly will be presented to the President for his assent within ninety days, than President will send this Bill to NA, if NA passed the Bill with majority than again this Bill was presented to the President for his final assent and pass (The Constitution of Pakistan, 1956).

The President will appoint Governor General for each province that will hold his office during President's office. He will hold his office for the term of five years, and not to be a member of NA or PA. A Governor may resign from his post with a written resignation to the President. Governor will perform the same duties at provincial level as the President will perform at central level (Ibid). The Chief Minister of a province is a communicator between Governor and His Cabinet. Provincial legislature will consist of Governor and One House (provincial Parliament), three hundred members will be in each PA for the period of ten years and ten seats will be reserved for women in each province. NA had the power to alter the members of Provincial Assembly but both Provinces had equal numbers. Governor may summon, address and dissolve the Provincial Assembly. There will be two sessions in a year of Provincial Assembly within the gap of six month. Every Bill of Provincial assembly after passing from Assembly will be sent to Governor for his assent or to discuss with President within ninety days than again will be discussed in Assembly before passing (The Constitution of Pakistan, 1956).

The Parliament had the authority to make laws for the whole of country, but the Provincial Legislature had the authority to make laws only for that Province. Any matter presented in the Federal List grants exclusive power to the Parliament to make laws for it while any matter presented in Provincial List grants exclusive power to Province to make laws for that province or any part of that province. Enumerated matters in the Concurrent List both Parliament and Provincial Legislature had powers to make laws for that, the Parliament had the authority to make laws for any Province with the consent of that Province's Governor. The Parliament had a power to make laws for the whole of country, to make treaty, agreement and convention with other countries. Relating to the Concurrent List the legislature of Province will be void, which is the power of parliament to enact weather it was enacted after Provincial Legislature. The Act of Provincial Legislature or Parliament will be invalid in the case of not having previous recommendation (The Constitution of Pakistan, 1956).

The finance distribution among center and provinces was as the provinces had no right to lay any tax under an Act of Parliament on any land within Pakistan, any trade or

business which is on behalf of any province or any other area will go to a Federal taxation. Provinces will not have an authority to impose taxes upon electricity which is in Federal consumption shall be less in price charged from another province. It was the Parliament's authority to make grants of aids for a province's revenue, the entry of export from other province and to impose tax upon any product which is produced to import the other province is under provincial jurisdiction (The Constitution of Pakistan, 1956).

Federal government has the responsibility to protect its units from external aggression and from internal disputes, and every provinces government should be carried to compliance with the constitution. The provinces are bound not to impede the executive authority of federal laws. Federal government had the authority to construct means of communications which are necessary for military and national importance. The Federal government is responsible for the maintenance and construction of railway within provincial territory. The President may with the consent of that province confer some of federal powers to that province by Act of Constitution, but the provinces had not such authority to confer such powers to any officer or other province by the Act of Constitution. It is mentioned in the constitution if Federal government confers some of his duties to the province, the Federal government will pay for that by default agreement a fixed amount. If Federal government had to acquire any land which provincial territory upon Parliament is had the authority to make laws the federal government will transfer such land by agreement. In the case of dispute between Federal and its provinces or among two provinces on any matter will first refer to Supreme Court if that case is beyond Supreme Court's jurisdiction than will be referred to a Chief Justice's Special Tribunal which will send his report to Chief Justice, then Chief Justice will refer this final report to the President for his order (The Constitution of Pakistan, 1956).

There will be a Supreme Court of Pakistan with Chief Justice appointed by the President and two provincial High Courts. A Chief Justice can be removed from his office if the President made a speech in National Assembly against him and two-third members vote against him in the Assembly. If the quorum of Judges is not in sitting than Chief Justice may appoint from judges of High Court as Judge of Supreme Court in written. Main office of the Supreme Court will sit in Karachi but from time to time it will be in other cities of Pakistan by the order of President and shall sit in Dacca twice a year. The Supreme Court will summon the cases of disputes between center and its provinces and within provinces on any matter, the decisions of the Supreme Court will be final. The Supreme Court shall have powers throughout Pakistan to implement or issue orders, decree or writs for complete justice (The Constitution of Pakistan, 1956). There will be two high Courts for each province (East Bengal and West Pakistan). A High Court's judge only be removed from his office by the order of President for his misbehavior conduct. The executive powers of both High Courts exercise the

jurisdiction throughout their territories. The judges of Supreme Court and High Court may resign from their office in written to the President and may not be eligible for the post of GG, shall not be discussed in National Assembly (Ibid).

East Bengal demanded for last eight years that Bengali should be a state language along with Urdu. In the Constitution of 1956 this demand was granted with the declaration of two state languages Urdu and Bengali. English should be official language for next twenty years, after passing these twenty years the Parliament will decide for next official language. When ten years passed the President will appoint a commission for the recommendation of next official language. The provincial government will replace English with State Languages (Ibid).

There will be a Federal Public Service Commission (FPSC) and the Provincial Public Services Commissions (PPSC), the FPSC will work under President and PPSC will be under the Governors of that province. The FPSC and PPSC will be headed by a Chairman for the term of Five years with his members appointed by President in Federal and in Provinces by Governor General. These Commissions had a duty to conduct examination for the appointment of eligible persons to run the Federal and Provincial affairs of the country. The FPSC shall present its annual report of the work done by him to the President, and then the President will send that report to the NA. The PPSC shall sent its working report to the Governor General of that Province, the Governor General than present that report to the PA (Ibid).

The interim constitution was presented in the Assembly for recommendation it had 51 subjects in the Federal List later the demands of East Bengal's province for provincial autonomy reduced to the number 30. Rests of Subjects were transferred to the Concurrent list. The federal list had defense, Foreign affairs, Currency, trade and commerce, stock exchange, insurance, industries, minerals, FPSC and federal pension. Concurrent list had only 19 subjects, center had superior authority over these subjects in relation to provinces, these includes civil and Criminal laws, scientific research, poisons and dangerous drugs, books and newspapers, refugee's rehabilitation, price control banking, stock exchange etc. The provincial list had total 94 subjects, these includes all types of taxes, jurisdiction, medicine alcoholic liquor, waqfs and mosques, zakat, gas, electricity, fisheries, forests, industries, pilgrimages, trade and commerce within provinces, opium, railways, cinema and theater, public health and education (Ibid). These were some important subjects which under constitution on 1956 arranged by the constitution making body for Pakistan.

4.5 Constitutional and political developments (1958-62)

The 1956's constitution was promulgated on 23rd March 1956 and on 25th March its first session was held, the post of Governor General (GG) was transferred to President. The constitution provided democratic form of government, and provided a solution to the Bengali dominance (NAP. 25th March, 1956). It was promised under new constitution for the capital of West Pakistan should be in Peshawar NWFP but after promulgation the Chief Minister was dismissed from his post, and the merged province's capital was formed in Lahore with the passage from the Assembly by Punjab, Sindh and NWFP. This constitution was a centralized Federation with emergency provisions (Adeney K. , Federalism in Asia, 2007). The 1956's constitution was dimmed with the creditability of healthy center-province relations (Mansoor, 2002). Before the first general elections held under the first constitution, on 7th October 1958 General Sikandar Mirza with the collaboration of Commander-in-Chief Ayub Khan abrogated the constitution. Ayub Khan ruled till 1969 but deposed Sikander Mirza and imposed Martial for two years, there had been no constitution for these two years and country was running under martial Law imposition (Khan, 2016). President Ayub Khan justified his action of emergency declaration that it was to save country as there were many disputes between center and east Bengal. The country was running under serious economic problems, state bank's statement was not a good for proper running of government machinery.

After the abrogation of the first constitution just after two years of its promulgation, for the two years there had been no constitution in the country the country was under Martial Law for two years. A commission was appointed by President Ayub Khan under the leadership of Justice Shahab-Ud-Din on 17th February 1960 for the recommendation of parliamentary form of government. But all its recommendations were denied in the constitution (Mansoor, 2002). In the new Constitution under the guidance of General Ayub, with all powers at the strong center, One-Unit for parity was also contained. The new constitution was presented on 1st March 1962 but promulgated officially on 7th July 1962, after promulgation of second constitution in first session of Constituent Assembly President Ayub Khan said, that the new constitution will represent his political philosophy and its application for 94 million people of Pakistan. it will make Pakistan a strong country with national outlook, will carry out social welfare of its people and moral happiness.

“It is based on my long association with the administration of all levels, detailed knowledge of the country and the people, wide study. deep and prolonged thought and a burning desire to help the people in building the country into a powerful and progressive State” (NAP. 8th June 1962).

4.6 Political Parties Response towards the Draft Constitution of 1962

A constitution commission was formed on 17th February 1960 headed by Justice M. Shahabuddin with ten other members equally from both wings, to recommendation for a new constitution (Ullah, 2008).

When the constitution was presented and forced by the president in the Assembly, the Assembly members seek a motion that it will be discussed in the Assembly for recommendation and thus the house was opened for recommendation. Mr. Abdul Haye from East Pakistan suggested that there are many defects in the constitution, when such necessity arise amendment will be initiated in the constitution for better running of democracy according to the people's will (NAP. 11th June, 1962).

4.6.1 Debates Over Language issue

The constitution of 1962 declared the Urdu as the national language again denied the demand of East Pakistan's Bengali language as the state language of Pakistan. There was no any debate in the Assembly over the language demand of East Pakistan because the constitution was enacted without any discussion in the house.

4.6.2 Debates Over Subjects Distribution

In Article 146 it is clearly stated that all properties, minerals, underlying oceans and territorial either in any province will goes to the Central property. Any property located in any province which had no owner will be subjected to the Central property. Mr. Farid Ahmad presented a motion in the Assembly that the students and political members who were *Lathi Charged* will be compensated by the central government, he said that the future of democracy and Constitutional working is the primary concern of the central government not the provincial. But Mr. Speaker called it the provincial responsibility so the motion was negated (NAP. 15th July 1962).

4.6.3 Debates over Finance Distribution

The Article 41 clearly describes that the Budget shall not be submitted in the Assembly for vote, members can only discuss on this. The members from East Pakistan want to discuss over the budget, Mr. Farid Ahmad requested the Parliament to allow them two to three hours to discuss over the budget during the budget session. Sardar Mir Balkh also from West Pakistan cleared the matter that members can only discuss the budget but during the general discussion of the budget only West Pakistan can present a motion for adjournment of session (NAP. 18th June, 1962). Taxes are divided between the center and provinces according to their prescribed percentage in the annual budget of 1962-63.

4.6.4 Debates Over Provincial Autonomy

In fact it was a Presidential constitution with all powers in the hand of President, the provinces were deprived from their legitimate right which had been given to them after a long struggle, first for the formation of Pakistan and second for the formation of constitution for nine years than there came a constitution of Pakistan in 1956 with minimal provincial autonomy. This autonomy again swept by this Presidential constitution. Sardar Fazlul Karim from East Bengal presented a motion that the Parliamentary government of East Bengal's province will be restored as it was done away from the province under the section 193 (NAP. 18th September, 1958). Provinces were deprived from their right to discuss or any involvement in government affairs. Provincial list was totally excluded from constitution, and a centralized presidential form of constitution was promulgated in the country (Khan, 2016).

4.7 Constitution of 1962 Federal Provisions

The second constitution of Pakistan was presidential in form with strong center's role over all administrative sphere, federal jurisdiction was dominant over the provincial, with minimal provincial assemblies' role in legislature, the authority of Head of the State and Head of the Executive lies to the President. Followed the previous parity formula between the two wings on equal representation in National Assembly, adopted once again Unicameral Legislature and defined in constitution only Federal Subjects List and Provincial and Concurrent list was not defined (Mansoor, 2002). The previous constitution was enacted by the Constituent Assembly while the constitution of 1962 was enacted by the president of Pakistan's order,

NOW, THEREFORE, I, FIELD MARSHAL MOHAMMAD AYUB KHAN, Hilal-I-Pakistan, Hilal-I-Jura'at, President of Pakistan, in exercise of the Mandate given to me on the Fourteenth day of February, One thousand nine hundred and sixty, by the people of Pakistan, and in the desire that 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 the progress and happiness of humanity, do hereby enact this Constitution.

Dated this first day of March, One thousand nine hundred and sixty-two, being the twenty-third day of Ramazan, One thousand three hundred and eighty-one (The Constitution of Pakistan, 1962).

The name of Pakistan was changed from "Islamic Republic of Pakistan" to "Republic of Pakistan". It shall consist of both wings of Pakistan and all those territories included in Pakistan. In the case of absence or removal of President the Speaker on National Assembly will perform his duties. The President may be removed from his office if he violates the constitution, if he physically or mentally declares to be unfit by the medical board. The

President is a Supreme Commander of defense services, he has the power to maintain defense services, appoint commission to defense services and appoint Chief Commander to defense services (Ibid).

The Federal Legislature will consist of President and the one house NA of Pakistan with the members of total 156 on a parity base from both wings, and three seats exclusively reserved for women in each province. The NA will expire after completion of its five-year term. The President had authority to dissolve NA if its unexpired portion completed the term for one hundred and twenty days. If there is a conflict between the President and NA the case will be decided by referendum conducted amongst the Electoral College. It is necessary to take the assent of President any bill passed by the National Assembly within thirty days. It is the authority and power of President only to make laws for the central Legislature (Ibid).

The Pakistan will have two provinces (East Bengal and West Pakistan) to manage population difference West provinces were merged in One-Unit in 1955. Both the provinces had a Governor General as its head will be appointed by the President if he is a qualified member of NA (Ibid). The Provinces had a legislature along with provincial Governor and a House (Assembly of the Province). Each provincial Assembly had 155 members with 5 seats exclusively reserved for women in every province. Assemblies of the Provinces will be for the term of five years and will stand dissolved after their expiry. If there is a conflict between the Governor and PA it will be referred to the NA and its decision will go in the favor of Governor (Ibid).

All the revenue, loans and money received by the center will go to central consolidated fund, this fund will work by the rules made by the President under his control. The President will represent every year a statement (to be known annual Budget) to the National Assembly. This statement will have following headings (a) existing taxation (b) new taxation (c) borrowing (d) another source. This annual Budget statement may be discussed in The National Assembly, all grants may be reduced or refused by The National Assembly with the consent of President. All revenue collected by the provinces will go to the "provincial consolidated fund" of concerned province. The custody, payment and withdrawal of money will be under the Act of provincial legislature made by the Governor of that province. The provincial consolidated fund will pay the administrative expenses, pays to the officers, employ of provincial Assemblies, High Courts employees and provincial civil servants (Ibid).

In administrative function the authority of Center prevails over the provinces, the center had exclusive authority to make laws for the whole country, but the provinces had the authority to make laws only for that province. Center can make laws for the whole country for the purpose of national interest, security, economic and financial stability, planning and

coordination, to make unite different parts of the world and any other reason or matter enumerated in the Schedule three, while provinces had only authority to make laws for that part not in the schedule three. The Central legislature had power not exclusively to make laws for Federal territory of Islamabad and Dacca and any other part not a part of any province. In the case of consistency between Central and Provincial law, the Central law will be authorized. The provincial governments are prohibited to lay any tax under central law, to lay tax upon any kind of trade and business with other province. The provinces had to seek consent of center for borrowing any money outside from Pakistan and raise any type of loan, but the Central Government in such borrowing free from limitations. The provinces cannot prohibit each other from any type of trade and exchange of goods (The Constitution of Pakistan, 1962).

There will be a Supreme Court of Pakistan. The Chief Justice of Pakistan will be appointed by the President and other judges amongst the judges of High Court. The permanent seat of Supreme Court will rest in Islamabad but twice in a year at Dacca and may be in other cities from time to time with the approval of President. The disputes between the Center and Provinces and between the two provinces will be under Supreme Court's jurisdiction (Ibid). There will be High court for the provinces headed by the Chief Justice and many other judges determined, appoint and fixed by the president. Permanent seat of High Court of East Bengal will be in Dacca but will be in different cities from time to time. The permanent seat of High Court of West Pakistan will be in Lahore but from time to time will be held in other major cities of West Pakistan. Both High courts will control and supervise the Courts of that are subordinate to them (Ibid).

The President may constitute a National Finance Commission (NFC) consisted the minister of finance portfolio of Center and provinces and other members with from provinces after consulting that province's Governor. NFC shall make recommendations to the President taxes on income, taxes on sale, export Duty on cotton, Jute and other duties between Center and Provinces. The NFC will recommend what should be in the possession of Center and what will be paid to the provinces. The NFC will make a report of its recommendations and shall send this report to the President relating to the next year plan, the President than send that report to the National Economic Council (NEC) for formulating these recommendations in its plans. The NEC shall send its finance report every year to the National Assembly in detail description what had been achieved (Ibid). The constitution of Pakistan 1962 had only one subject list defined with 49 items that was the Central list and the Provincial and Concurrent lists were not defined in this constitution. The language of Pakistan will be Urdu along with Bengali language but again English will remain for next ten years as official language of Pakistan.

Conclusion:

When the exclusively federal formula of Prime Minister Muhammad Ali Bogra was rejected and emergency was proclaimed in Pakistan under the “Governor Raj”. All steps were taken to underestimate the exclusive Federal form of the constitution and to create parity between the two Zones of Pakistan, the West Zone was formed One-Unit as a tactic to balance the population majority of East Bengal. Pakistan adopted loose federal formula in the shape of first Constitution of Pakistan in 1956. This was not enough for the purpose of Pakistan, nor granted provincial autonomy as it was suggested in Lahore Resolution for the new Islamic democratic state by the founder of Pakistan. The 1956 constitution again created many conflicts between the Center and Provinces over the administrative authority and subject’s distribution.

Within two years the country was suffering with many problems so in 1958 the new constitution was abrogated by the first military coup. From 1958 to 1962 there was no constitution in the Pakistan, a commission was appointed for recommendations of the new constitution. But all the recommendations were denied in the new constitution. On 1st March 1962 the new constitution was presented to the Assembly by the General Ayub Khan. This was a one-man formula with all powers at the Center and in the hands of President. This was a Presidential Constitution without Prime Minister and Governors in Provinces. This Constitution damaged all the concepts of Federalism in Pakistan. It totally relies upon central subjects without defining Provincial and Concurrent list. Central authority prevails over the Provincial in both constitutions of Pakistan.

The real Federal concept of Quaid for which Pakistan had been made was seems deemed in the first two constitutions of Pakistan. Bengal had been deprived from almost all his demands of federal constitution first in 1956’s constitution but in 1962 constitution the situation became worse with in seven years after that. The Bengali’s dis-sentiments created an atmosphere for once again abrogation of constitution and led another Military Coup in Pakistan.

CONSTITUTIONAL DEVELOPMENT FROM 1973-2010

The second constitution of Pakistan was also lasted only for seven years and in 1969 it was again abrogated by another military leader. By the abrogation of Constitution One-Unit Scheme was also abolished and Provinces were restored with the emergence of Baluchistan as full-fledged province in 1970. This time announced in Pakistan for general elections to be held in December 1970, and after that power will be transferred to the elected party. By chance Awami League of East Pakistan emerged victorious party of Pakistan, they demanded for the transfer of power to East Pakistan, when not transferred they started their own rule in East Pakistan which resulted in the form of Operation “Search Light” in East Pakistan from the Military troops. India intervene the war and East Pakistan separated and became “Bangla Dash” 94000 military men were detained in Delhi. The West Pakistan started its Government in April 1972 with two major problems, first how to get back war prisoners and second to establish a committee of elected representatives to form a permanent constitution for the country. A federal constitution which ensures provincial autonomy with Bi-Cameral legislature was proposed.

Mr. Zulfikar Ali Bhutto makes an Accord with Indian Prime Minister Indra Gandhi on 2nd July 1972 to settle all disputes between the two countries, war prisoners were exchanged, and good relations were established between the two countries after this Accord. A committee was established to prepare draft constitution of the country, committee presented its draft constitution on 31st December after jointly discussions with NAP and JUI with a Constitutional Accord. On 10th April this constitution was approved and announced on 14th April 1973 as Constitution of Islamic Republic of Pakistan. this constitution has many different features than previous constitutions, it has Bi-cameral legislation first time in Pakistan (in Basic Principles Committee reports it was suggested Bi-Cameral legislation for Pakistan but not promulgated), no one can abrogate the constitution, it has NFC to distribute finance between center and provinces and between provinces, in the case of disputes there is CCI, with all these features this was a first federal constitution of Pakistan.

This constitution was also first abrogated for two years then suspended first by General Zia-UL-Haqq secondly by General Pervez Musharraf. Zia introduced his Eighth Constitutional Amendment in 1985 to legitimate his rule till his death. This amendment changed the federal concept of the constitution. General Musharraf came to power in October 1999 by following his predecessors and same way introduced his Seventeenth Constitutional Amendment by changing the law according to his will. Musharraf held elections twice during

his regime first in 2002 when major political party's leader was in exile second in 2008 this time Benazir Bhutto and Nawaz signed with him National Reconstruction Order (NRO) and joined political campaign. In 2006 Benazir signed with Nawaz and many other political Parties a Charter of Democracy (CoD), when PPP started its government after the martyred of Benazir passed a resolution in April 2009 to form a Constitution committee for federal proposals to amend the Constitution and strengthen the democracy and center-province relations.

5.1 Political Development of Constitution in Third Constituent Assembly

After the constitution of 1962 the Ayoub's era marked in history as discrimination towards Bengali culture, politics and economics. This discrimination compelled Shaikh Mujeeb to present his six points as a solution to the poor people¹³. In West Pakistan a newly created Pakistan's People Party (PPP) raised his slogan "*Roti Keppra or makan*". The discrimination of poor in both wings defamed General Ayoub in politics and removed him from his office in March 1969 followed by another Military General. General Yahya Khan after assuming his office abrogated the Constitution of 1962 on 26th March 1969 after seven years of its formation (Ejaz, H. 2012). One-Unit plan was abolished by General Yahya Khan in 1970 and announced the revival of provinces, reconstituted three provinces¹⁴ and Baluchistan was given the provincial status first time. He sensed the public mood and announced for general elections in Pakistan, these were the first national elections in the Pakistan's history. The upcoming victory of Awami League (AL) in these elections was proved a succession of Bangla Dash (Adeney K. , Federalism in Asia, 2007). In the General Elections campaign, Awami League played with provincial autonomy, PPP played with poor people's emotion by raising a slogan "*Roti Keppra or makan*" to all, and third major party Jamaat-E-Islami (JI) stood with Islamic panacea to Pakistan (Ejaz, H. 2012). Awami League won the elections of December 1970 by securing 160 seats in East Pakistan (Mansoor, 2002), having a majority party it was a federal right of Awami League to form a Government but they were not permitted. In the words of Mir Ghous Khan Bazanju, after the victory of AL in general elections the West Pakistan stocked the power and created many hurdles in the way of East Pakistan's power. They demanded for Assembly's summon but at first, they were refused, but with them insist the session was started it was postponed by Military Dictator on the demand of Mr. Bhutto to increase the time limit otherwise he will leave the session (NAP. 11th July, 1972).

¹³ (federal government, only three subjects to the center, two separate currencies with separate banks, power of taxation to the provinces, two separate accounts of foreign exchange and separate military for both wings)

¹⁴ (Punjab, Sindh and north West Frontier Province)

When Awami League was prohibited to form a government in dominated West Pakistan politics it started its own government in East Bengal. First, they were prohibited to do so by a Martial law and curfew, but they violated, in fact they were not prepared to negotiate. The Bengalis established their own government under the authority of Shaikh Mujeeb, all offices and all other matters were carried by his order in Bengal. Situation became worse in the country, when Yahya Khan announced in a meeting with political members: “if they don’t behave Army knows how to shoot through” (Ibid). When East Pakistan arranged a Assembly Session in Dacca on 3rd March all the member of Assembly from West Pakistan were prohibited to attend the session with a threat of broken legs and ribs and will not be allowed to return back, the words of Mr. Abdul Khaliq Khan (Ibid). On 25th March 1971 General Yahya Khan led the operation “Search Light” law and order restoration, initiated by West Pakistan on the demand of East Pakistan to transfer the power and provincial autonomy. East Pakistan became a battlefield with military troops from West Pakistan, a military led operation converted East Pakistan into “Bangla Dash” an independent country thus born, forced India to intervene the war of East and West Pakistan. This Operation resulted with more than 300000 death casualties and 94000 detentions of Pakistani soldiers in India (Delhi) (Khan, 2016). President of Pakistan Mr. Zulfikar Ali Bhutto addressed the NA and blamed Mr. Mujeeb for the separation of East Pakistan, as Mr. Mujeeb was not in the favor of One Pakistan. He was a secessionist who struggled for 25 years to separate Bengal from Pakistan, from West Pakistan there were Khans (Yahya Khan and Ayoub Khan) who was responsible for the separation of East Pakistan. Because General Yahya never allowed him to talk with Mujeeb on his six points and used a “power of weapon language instead of weapon of language” (NAP. 14th July, 1972).

5.2 Political Parties Response Over the Interim Constitutional Report

A resolution was presented to the National Assembly by Mian Mahmood Ali Qasuri for approval of interim constitution and to lift the country’s Martial Law.

That this Assembly approves the amendments to the Interim Constitution of the Islamic Republic of Pakistan as are annexed to this. Resolution and adopts and enacts the said Interim Constitution of the Islamic Republic of Pakistan as so amended to remain in force until the Constitution is framed by this Assembly (NAP. 17th July, 1972).

The motion was moved and same day the house was opened for debate on interim constitution. This was of 16 pages a constitutional proposal with different Articles for the country’s administration till the approval of final constitution by the proposed committee. President had given the authority to present the budget for interim period, the seventh Schedule amended the Martial Law regulation from country, Provincial level and Central

level were answerable to the House and President himself was responsible and answerable to the house. Zakat and teachings of Islam were also provided in the interim constitution and doubts on provincial autonomy have been dispelled (Ibid).

5.2.1 Debate over Language issue

Pakistan has faced language issue since its birth, for 25 years East Pakistan demanded for Bengali language and West Pakistan for the Urdu, now with the separation of Bangla Dash Only West Pakistan lefts with four provinces, all provinces had their distinctive language, some had more than two languages so there need a common national language. It was proposed from starting to the adoption of Urdu as a national language (NAP. 17th April, 1972). Urdu was adopted as a national language because it was the language of Ghalib and Iqbal, Punjab, Baluchistan and NWFP adopted Urdu except Sindh. Sindh has its own historic old language since the time of Moen Judaro civilization than Urdu, Sindhi language had a literature and script. Mr. Bazanju advised Mr. Bhutto to adopt Sindhi as official language of Sindh Province, and adopt Urdu as a link language (NAP. 14th July, 1972).

5.2.2 Debate over Provincial Autonomy

To announce the interim constitution has two objects, first the removal of the Martial Law and second the induction of Provincial Assemblies with provincial government to begin the democratic procedure by 21st April (Ibid). All the political parties were agreed for maximum provincial autonomy, the draft constitution granted that autonomy by giving the provinces full right over the Concurrent legislative list. All residuary powers were also reserved for provinces in the interim constitution (NAP. 31st December, 1972). Mr. Amirzada Khan raised his voice for full provincial autonomy in the constitution because the draft constitution proposed 210 members in the NA and only 60 members for the Senate, every conflict will be discussed in the joint sitting so smaller provinces will not able to gain their right or present their demands for approval when there is majority provinces prevailing in the Both houses (NAP. 22nd February, 1973). To answer the demand of maximum provincial autonomy Miss Zahida Sultana told the Assembly the features of draft constitution, it ensure autonomy to the provinces by bi-cameral legislature. Provinces are free to legislate on different subjects, provinces had the power not only over the Residuary powers but on Concurrent list too (NAP. 28th February, 1973). Sahibzada Ahmad Raza Khan Qasuri criticized the difference between the draft constitution and proposed constitution, draft had 146 National Assembly members and 44 Senate members while in proposed constitution the N.A had 210 and Senate had 60 members (NAP. 20 February, 1973).

5.2.3 Debates Over Subjects Distribution

Mr. Amirzada Khan discussed the subject distribution between the center and provinces in the draft constitution, center had 59 subjects in one list and 4 subjects on second list while all residuary powers reserved for provinces. Provinces can also legislate over the concurrent list but there also center prevails, it is same as the Government of India Act repeated. Center had exclusive authority to legislate on all matters, in the case of conflict between the two, the central authority is powerful so the provincial autonomy had been curtailed in the lists, and provinces are only subordinate of centers to work like District Boards (Ibid). Miss Zahida also answered this question by saying center had authority over those subjects which are legislated for the whole country while provinces had full autonomy over the subjects related to that provinces. Center had foreign affairs, common subjects which are necessary for the country to run under central authority. Provinces had power over the Residuary powers and Concurrent Legislative list (NAP. 28th February, 1973).

5.2.4 Debates over Finance Distribution

The division of financial distribution in the interim constitution is decided on equal basis in the words of Miss Zahida. Article 160 provides that there will be a NFC to settle the amount between the center and provinces on equal basis. All the taxes and excise duties will be divisible between the center and provinces. Article 157 grants power to the provinces to establish power grid stations for provinces and undertake the electricity distribution. Article 158 provides the right over the gas of that province from where it is situated (Ibid). Mr. Abdul Hafeez Pirzada criticized the financial provision in the interim constitution that all the revenues collected by the center will go to the Central consolidated fund, the provinces collection will also go to the Provincial consolidated fund, all money will be deposited to the Supreme Court. There shall be no debate on the charged expenditures, federal government had the authority to spend anything from the funds. There are finance committees for National Assembly and Senate too but the N.A had the complete control over the expenditures (NAP. 19th February, 1973).

This will be the constitution of first elected people representatives with the consent of Pakistan People's Party (PPP), Jammiat-e-Ulema-e- Islam (JUI) and National Awami Party (NAP) jointly, the PPP will framed a constitutional formula and presented that before the JUI in the same way NAP will present his formula to the PPP when a jointly consulted with all parties a constitutional formula will be presented to the house for the federal parliamentary structure of the country (Ibid).

On 31st December 1972 Committee after consulting with JUI, NAP and PPP arranged 48 meetings within 38 working days to complete a gigantic task of constitution making for the time to come to establish the supremacy of people. Entire proceedings of constitution making have been tape recorded, available to every member. Committee suggested federal form of constitution as Pakistan has many provinces with different languages, culture, people, scripts, habits and economics so Pakistan should have federal structure. The salient features of the Constitution, it shall provide federal parliamentary system with maximum autonomy to the provinces as its federating units within united Pakistan. It will suggest Bi-Cameral system with two houses National Assembly (house of elected people on population basis) and Senate (the house of Provinces on equal basis). Two main features of this constitution are the Judiciary will be separated from executive authority and elections will be held independently. This constitution cannot be abrogated nor subversion, National Assembly was empowered to frame laws and Senate had not given any administrative or supervisory powers. The discussions on the distributions of subjects between unit and center were participated by the Mir Ajmal Khan president of NAP, Khan Afzal Khan the Information Minister, Baluchistan and NWFP Governors and Mr. Ghulam Faruque the Finance Minister of NWFP. The draft constitution had 280 total Articles with a Constitutional Accord between the all political parties with 44 Articles which were presented to the house for clause wise debate and accepted by the house that day (NAP. 31st December, 1972).

5.6 Constitution of 1973 (A Federal Constitution):

The bill was presented to the Assembly and passed as amended and will be promulgated on 12th April 1973 as The Constitution of Islamic Republic of Pakistan.

That the Bill to provide the Constitution for the Islamic republic of Pakistan, as amended, be passed (Ibid). The National Assembly of Pakistan passed the Constitution on 10th April, 1973, the President of the Assembly authenticated it on 12th April, 1973 and the Assembly published the Constitution of the Islamic Republic of Pakistan. Since then, several amendments have been made therein and it has become necessary and expedient that an up-to-date and authentic version of the Constitution be published by the Assembly (The Constitution of Islamic Republic of Pakistan, 1973).

Pakistan shall be a federal republic will have the territories of N.W.F.P, Baluchistan, Punjab and Sindh along with the Islamabad's Capital territory and Federal Administered Tribal Area. The main federal point that it cannot be abrogated, any person who suspend, subvert or abrogate by force or by unconstitutional means shall be punished by the Parliament. The State means "The Federal Government" Parliament the house of elected people, the President as its executive head and Prime Minister as Head of the State. The President is the Executive Head

of the Federal Government with his Cabinet (Prime Minister, and The Federal Minister), this Cabinet will advise and assist the President in performing his duties (Ibid).

The National Assembly will have 207 Muslims members, twenty for women and ten for Non-Muslims members, Muslim member seats will be distributed among all provinces, FATA and Federal Capital on the population basis. The Non-Muslim seats will be 4 for Christians, 4 for Hindus and Schedule Cast one for Sikhs and Parsi community and one for Qadiani community. Adult franchise (a person is entitled for vote if he is more than twenty-one years of age, a Pakistani and enrolled for vote) will be the base of member's elections. The National Assembly will conduct three sessions in every year and duration between the two sessions will at least one hundred and thirty working days (The Constitution of Islamic Republic of Pakistan, 1973). The senate is the house of Provinces, it has equal representation from all provinces, the senate will consist total number of 87 members, fourteen members from each province, eight members will be from Federal Administered Tribal Areas (FATA), three seats from Federal Capital Area and five seats will be for *Ulema* and Technocrats. Elections for the Senators will be with proportional representation system by single transferable vote. Senators will be elected for the term of six years half members will retire after three years (seven from every province, four from FATA, one from Federal capital and two from Ulema) and other half members from each sector will retire after next three years (seven from every province, four from FATA, two from Federal capital and three from Ulema). The Senate is not a subject of dissolution either by the president or by Chief Justice (Ibid).

The Pakistan has four provinces (Punjab, Sindh, Baluchistan and NWFP), with equal legislature and equal government. All the provincial Government will have a Governor, Chief Minister and Minister's Cabinet appointed by the Governor. The Governor will be the executive Head of the Province and his Cabinet will assist him in performing his duties, the Chief Minister will perform the duty of communicator between Governor and his Cabinet of Ministers (Ibid). The Provinces have seats according to their populations, there also seats reserved for the Non-Muslim candidates in all the provinces according to their population in the provinces. Women seats were also reserved in every province according to the 5 % of the total population of every province. Women also be elected from all provinces based on proportional representation by single free vote. Provincial Assembly will also be for the term of five years (Ibid).

Table 05

Provinces	Muslim Seats	Hindus Seats	Christians Seats	Sikhs	Qadiani Seats

Punjab	240	1	5	1	1
Sindh	100	5	2	1	1
Baluchistan	40	1	1	1	-
North West Frontier Province	80	-	1	1	1

Source: The 1973 Constitution of Pakistan and report of the Draft Constitution Committee 31st December 1972

It is the authority of the Parliament to make laws for the whole of the country or any part of its, the Parliament have exclusive powers over all the matters enumerated in the Federal list. The Parliament and Provincial Assembly both have power to make laws over the Concurrent List, but Center prevails the Provinces, center have exclusive powers to make laws for that part which is not in any Provincial legislation. If Provincial Assembly had made any law related to the Concurrent Legislative list and the same provision had made Federal authority than the provincial law will be void weather, it was enacted before or after the Federal law. Any subject matter which is not defined in the Federal or Concurrent list relates to the Provincial subject, but the two provinces conflicts will send it to the Federal custody. The Federal Government can transfer some of his powers to any province with the consent of that province, Federal Government had the authority to impose laws on the area which is not provincial subject. If the Federal Government imposes some of his powers to any province or officer than Federal will pay such amount agreed between the two by default agreement, or by tribunal appointed by the Chief Justice of Pakistan (Ibid).

The provinces have powers to make laws only for that province, the Provincial legislature shall have exclusive powers to make laws for that subjects not enumerated in Central List of Subjects and Concurrent Legislative List. The Provincial Government may transfer some of his powers to the Federal with the Federal consent, executive authority of every province is exercised with the compliance of Federal Government, so on the Federal authority in any province will be exercised according to that province's interest. The protection of all Provinces from internal disputes and external aggression is the duty of Federation. The provincial Governments will be run according to the constitution of Pakistan and will not impede the federal laws. A Federation has the authority to command the Provinces about any matter of Concurrent list and for the constructions of means of communication for the security purpose or national interest (Ibid). All type of trade and commerce within the provinces of Pakistan will be free, if there is necessary to impose taxes on any kind of goods f one province than will be imposed by the Federation. The provincial government shall not have the authority to impose taxes upon any of his production which is

not produced in other provinces or impose taxes for discriminating other province's manufactures and may not prohibit the entry of other province's productions (Ibid).

There will be a Federal Consolidated Fund at center who receives all taxes, all revenue received by Federal Government and all loans raised by federal government and all payments. The payment of all money, money received and withdrawal of money from Federal Consolidated Fund's custody will be in accordance to the Act of Majlis-E-Shoora made by the President. The Federal Government will present annual Budget Statement every year to the Federal Consolidated Fund (The Constitution of Islamic Republic of Pakistan, 1973). Every Province had a Provincial Consolidated Fund which will hold the revenue collected by that Province, all received payments, all taxes and repayment of any loan. The withdrawal, receiving and custody of all money of the Provincial Public Account will be regulated by the Act of Provincial Assemblies. The Provincial Assembly will present his annual Budget Statement every year to the Provincial Consolidated Fund. This Statement will have all the expenditures of Assembly, Funds, grants and all other expenditures (Ibid).

The President of Pakistan may appoint a Council of Common Interest (CCI), there will be 10 members of the CCI with President, Prime Minister, Chief Ministers of four Provinces and four members will be appointed by the PM from Federal Ministers. PM is the permanent Chairman of the Council but in his absence, President will appoint another person as Chairman. The Council is responsible to the Parliament for his functions, the Council shall regulate and formulate his policies to the matters listed in second part of federal legislative list and related to the Concurrent Legislative lists part 34 (electricity). Immediately the Council will make his own rules and procedure until Federal promulgates its laws. Majority opinion will decide the Council's decision. Parliament may refer any matter to the Council where he seems deem control in joint sittings. If both Provincial and Federal Governments are not satisfied with the decisions of the Council than they may refer that matter to the Parliament to the Joint sittings, this time decision of Parliament will be final (Ibid).

If there any executive order of Legislation about the distribution of water and natural gas effected the interest of any province, Federal Capital Area or the area of FATA than the concerned government refers a complaint in written to the Council. The Council shall consider the matter after receiving that complaint first herself if seems necessary requests to the President for the appointment of a Commission consisting of experienced persons in that field which is under decision. Such commission immediately follows the Act of 1956 constitution until Parliament make laws for the Commission. The Council will record its decision based on Commission's report, and both the governments (The Federal and

Provincial) faithfully accepts the Council's decision. The Council's decision is final and not to be discussed in any Court of law (Ibid).

The President shall form a council on National Economic with PM as its Chairman and four members from the four provinces appointed by the President, and if Prime Minister seems necessary appoint other members to the Council. The NEC shall advise the Federal and Provincial Governments to plan their financial, economic and commercial policies about their overall economic conditions. It shall guide Federal and Provincial Governments about the matters set out in the Principle of Policies Chapter two of Part two (Ibid).

After the commencement of the constitution within six months and not more than five years there will be formed a Commission on National Finance to distribute the revenue between the Federal and Provincial Government. The Commission will appointed by the President with Federal Finance Minister and four Provincial Finance Ministers appointed by the President with a duty to recommend suggestions to the President on distribution of taxes between the Federal and Provincial Governments, taxes on income, cooperation taxes payout to the Federal Consolidated Fund, taxes on sales and purchase, import or export duties, duty of excise and other taxes. The explanatory recommendations of NFC shall be presented to the both Houses and provincial Assemblies. The President shall decide on the recommendations of NFC the allocation of Finance between the Federal and Provincial Government, the President may amend the allotted fund any time when he seems it necessary (Ibid).

The 1973 Constitution established a complete Judiciary system free from executive with all its pillars to provide smooth justice to all Pakistanis and to all federations within Pakistan. There will be Supreme Court of Pakistan with four provincial High Courts, a Federal Shariat Court and many other courts in Pakistan, the Judiciary will be free from executive. The Supreme Court of Pakistan shall have a Chief Justice and many other Judges suggested by Parliament and appointed by the both (Chief Justice of Pakistan and The President). The permanent seat of Supreme Court will be in Islamabad, but may sits in other places by the approval of President. Only declaratory judgements will be pronouncing by the Supreme Court, the Court had its own pure jurisdiction for the disputes of two governments (the Central and Provincial Government). Any decision, Judgement, sentence, decree and final order of High Court can be appealed in Supreme Court (Ibid).

There shall be a High Court for each province, every provincial High Court Shall have a Chief Justice and other Judges will be appointed by the President with consultation of Chief Justice and Governor of that province. Baluchistan and Sindh will have joint High Court until the establishment of new High Court for Baluchistan. A joint High Court will be established by the order of President to carry the cases and transfer the judges immediately.

All the high courts had their branches in respective provinces such as Lahore High court has its branches in Rawalpindi, Multan and Bahawalpur. Sindh High Court shall have a branch in Sukkur, Baluchistan High Court shall have a branch in Sibi, and Peshawar High Court had two Branches at Dera Ismail Khan and Abbottabad. The High Court Judges may be transfer by the President to other Provinces with the consent of that Judge. Subordinate Courts shall be under the control of respective High Court (The Constitution of Islamic Republic of Pakistan, 1973).

The 1973 Constitution declared “Urdu” as the national language of Pakistan and for official use of this language within next fifteen years arrangements will be made by the Government. In this way importance of English shall be reduced in the country and Urdu shall be put-up as a national language of Pakistan. Provincial languages will be taught and promoted in that province by the Provincial Assemblies as regional languages. If any sect has different language, culture or script than they had a right to promote and preserve their language by establishing institutions (Ibid).

All the recruitments of the services (common services) under the Federal Government shall be according to the Federal Act of laws, in Provinces all the appointments and recruitments will be under Provincial Act of law. To run the affairs of Federation and Provinces, at federal level there will be Federal Public Service Commission with a Chairman appointed by the President and at Provincial level there will be Provincial Public Service Commission (PPSC) with a Chairman appointed by that province’s Governor. The Public Service Commissions (FPSC) will conduct exams for the appointments of Government high officials and will perform other duties prescribed by the law to them (Ibid).

The 1973 constitution had three subjects of list 1) Federal part one and part two, 2) Concurrent, 3) and Provincial list of subjects. The Federal list was again Distributed into two parts, part one had 59 subjects relates to the most important subjects such as defense forces (Military, Navy and Air forces) with all their equipment, external affairs (agreement and treaties), migration, emigration, post and telegraph, currency and coins, foreign exchange, public debt, federal public service commission, federal courts, pensions, libraries, federal agencies, education (Pakistani and foreign students), nuclear energy, port quarantine etc. (Ibid). Part two had 8 subjects only which are railways, minerals, oil and natural gas, development industries, council of common interest, fees of any matter, offense against laws, inquires and statistics and all ancillary matters of this part. National Assembly and Senate have equal powers over the second part of Federal list in this way provinces may have authority over these eight subjects (Baxter, 2011). Concurrent legislative list had 47 subjects, both center and provinces had the authority over the Concurrent legislative list, but center

prevails over the provinces right. In this way all these subjects are matter of center's legacy. The provincial list was not defined in the Constitution, all those subjects which are not presented in Federal and Concurrent list will be considered provincial subject. If two provinces had conflict on any subject than this will goes to the Federal list. All residuary powers will go to the provinces according to the Constitutional Accord between the all parties (Ibid).

5.7 Suspension of Constitution and Need for Democracy Revival

The 1973 constitution worked for only four years when third time in the history, Pakistan faced a Military officer's interruption in the politics who imposed Martial Law. Mr. Bhutto during his government started violation of constitution by two bad decisions, first, when General Tikka Khan was retired Mr. Bhutto replaced him to the most competent person as his successor, that was General Zia-Ul-Haqq, secondly he the hasty announcement of General elections in October 1976 rather than in March 1977. Political parties were not preparing they made an alliance (Pakistan National Alliance) to contest the elections. PPP won 155 seats and PNA only 36, this created mass agitation in the country against the Government. (Niaz, 2018) From 1973 to his downfall Bhutto deployed military operation in Baluchistan and had used military to strengthen his rule in Pakistan. The elections result forced PNA to seek help from military to handle the situation (Ejaz, 2012). General Zia-ul-Haqq imposed Martial Law on 5th July 1977 in the country and started his regime with the arrest of Bhutto, Bhutto was charged with corruption and mismanagement and sent to the Jail (Ibid).

Eighth constitutional amendment is a structure change in the constitution of Pakistan 1973, it empowered the President to dissolve the Assembly by law, in the 1973 Constitution Prime Minister was the Head of the State but the Eighth amendment empowered President equal to Prime Minister (Parveen, 2000). The amendment changed the Articles 46it should be the duty of Prime Minister to inform the President about all the decisions of Parliament, 48(2) the validity of President in doing anything cannot be called in question, 48(1) the President can create his own lobby and 58(2)b to empower the president only (Ibid). In Eighth amendment Senate was empowered equal to the NA, it can amend to the constitution, except money Bill it has equal power over all Bills, increased its members by adding 5 extra members from all provinces to represent Ulema, Technocrats and other professionals (Ibid). This Amendment granted Governors right to dissolve the Provincial Assemblies, more Islamic provisions were added to the Constitution, *Haddood* ordinance was promulgated in the country, Objectives Resolution was added in the constitution by adding Article 2A (Ibid).

After the death of Zia in 1988 General Sikandar Mirza, then Chairman of Senate succeeded as a President, and hold general elections in the country in November. From 1988

to 1999 in eleven years no single government completed his term of five years (Niaz, 2018). In 1999 Mian Nawaz Sharif ¹⁵ during his second coupe, he made some mistakes like as Bhutto by giving a chance to General Pervez Musharraf for Military regime in Pakistan. After the resignation of General Karamat, General Pervez Musharraf was appointed as Chief of the Army Staff but the PM Nawaz Sharif, in June 1999 in a war Pakistan seized Kargil sector of Indian Administered Kashmir, Prime Minister Nawaz Sharif visited US and broke the war on the request of Bill Clinton, this decision changed the relations of Nawaz and Musharraf later when Nawaz tried to replace Musharraf when he was on the way of his tour to Sri Lanka on 12th October 1999, meanwhile Military seized the key government departments and arrested Prime Minister Nawaz Sharif (Niaz, 2018). Again constitution was suspended under Musharraf as Chief Martial Law Administrator (CMLA). Musharraf also followed the policy of his predecessor Zia amended the constitution by issuing his famous Legal Framework Order (LFO) in the name of Seventeenth Constitutional Amendment and announced himself as a President for next five years in a referendum (Ibid).

The Seventeenth Constitutional Amendment was envisaged to amend the 29 Articles of the Constitution at once, it was passed by the Senate on 31 December 2003, in article 41 it was a force order to all Assemblies of national and provinces to held referendum to support the President for next five years by constitutional support (The Seventeenth Constitutional Amendment Report). It empowered the President to Dissolve the National Assembly by law, in Article 58 of the constitution it was the authority of President to dissolve the national Assembly under clause 2(b) of, and the matter will refer to the Supreme Court within fifteen days of the dissolution, who shall final decide the matter within thirty days (Ibid). Article 112(2)b was also amended to empower the Governors to dissolve the Assemblies of the provinces and refer the matter in same way. Articles 179 and 195 was about the retiring age of judges and Article 270AA was the most important to crush the Federal spirit of the constitution, it enforced legally all the Legal Framework Orders and amendments from 1999 to 2003 as a part of constitution and not be challenged in any court of law (Ibid).

5.8 Charter of Democracy 2006:

In 2006 leader of PPP and PML(N) decided to sign a joint agreement for the revival of democracy in Pakistan. This time both leaders were exiled by the President Musharraf, they met in London to shape the dream of Benazir Bhutto into reality, she not only dreamed but efforted to conversate with all political parties specially PML(N) the second largest political party that time (Chawla, 2017). The Charter of Democracy (CoD) was signed between

¹⁵Mian Nawaz Sharif is a politician and Chairman of Pakistan The Muslim League Nawaz Group.

Benazir Bhutto, Nawaz Sharif and all political parties in London on 14th May 2006 for the revival of Democracy and provincial autonomy (Report Eighteenth Constitutional Amendment). After signing the CoD she signed another document to restore democracy in Pakistan with Musharraf a National Reconstruction Order (NRO), by signing NRO both leaders were permitted to come back in their homeland to run their election campaigns unfortunately during this campaign Benazir was martyred (Chawla, 2017).

5.9 Eighteenth Constitutional Amendment:

A historic landmark document after the Constitution of 1973 is the Eighteenth Constitutional Amendment, it was the demand of all political parties, demand home and abroad to revive the democracy in Pakistan, it was a demand for provincial autonomy, impartial judiciary and equal power of provinces and federation (Report Eighteenth Constitutional Amendment). On 28th March 2009 the President Asif Ali Zardari addressed the both houses to constitute a Committee with members from both houses and all political parties for purposing amendments to the constitution in the light of CoD. The motion was adopted on 10th April 2009 for constitute a committee based on all parties, Senate passed the same motion in his sitting on 29th April 2009 (Ibid). A committee was constituted on 23rd June 2009 with 27 members from all political parties,¹⁶ there was also assisted committee to replace the members in the case of any member's absence. Senator Mian Raza Rabbani chaired the Committee. The Committee held its first meeting on 25th June 2009, in its meeting on 10th August Committee received 982 proposals, 91 from Senate and 11 were initiated by the committee. The Committee decided to revive the provincial autonomy, judiciary, center-province relations, strengthening of Parliament and PA, good governance and abolition of LFO and Concurrent Legislative List (Report Eighteenth Constitutional Amendment). Committee held 77 meetings with 5 hours duration and recommended amendment to 97 Articles to the Constitution of Pakistan 1973, these amendments were proposed in the shape of "Eighteenth Constitutional Amendment 2010"

5.10 Federal Features of Eighteenth Constitutional Amendment:

The Eighteenth Constitutional Amendment was passed in April 2010, by the recommendations of Constitution Committee, the Committee spent total 385 hours in meetings and Amended more than 100 Articles of the 1973 Constitution to turn it into e real

¹⁶5 members from PPP, 3 from PML(N), 3 from PML(Q), 2 from MQM, 2 from ANP, 2 from JUI(F), 1 from PML(F), 1 from BNP(A), 1 from JIP, 1 from NP, 1 from PPP(S), 1 from NPP, 1 from PKMAP, 1 from JWP and one Independent Member (A list of Committee Members from Eighteenth Constitutional Amendment Report

federal spirit (The Eighteenth Constitutional Amendment Bill 2010). It expanded its recommendations from CoD and converted the Constitution into federal form in this way;

To repealed the seventeenth Constitutional Amendment with its entire Acts including LFOs in 264 Article to the Constitution. Amended the Article 6 to the Constitution by announcing guilty of high treason to those who attempts abrogate or suspend the constitution. The words substituted Baluchistan as Balochistan, Sind as Sindh and NWFP changed as Khyber Pakhtunkhwa (Ibid). Article 46 provides that the PM will inform the President all matters and 48 insists the President responsible to held elections in the country within ninety days in the case of dissolving the Assembly. Clause 6 bounds Prime Minister to seek support of both houses in the case of referendum (Ibid). Amended the Article 58 to the Constitution,(1) President can dissolve the national Assembly on the advice of Prime Minister, (2) related part of Article 48 the President may dissolve the National Assembly after receiving vote of no confidence against the Prime Minister (Ibid).

Substituted the Article 51 with these Clause, (1) national Assembly shall have 342 seats including women and Non-Muslims seats, (5) all these seats shall be distributed according to the population basis (2) a person can vote if he is a Pakistani , more than 21 years old, had a good mental health and enrolled in electoral list. (3) the seats in National Assembly shall be allotted to provinces (Ibid). As under;

Table 06

Provinces	General Seats	Women Seats	Non-Muslim Seats	Total
Baluchistan	14	3		17
KP	35	8		43
Punjab	148	35		184
Sindh	61	14		75
FATA	12	-		12
Federal Capital	2	-		2
Total	272	60	10	10
Grand Total				342

Source: Eighteenth Constitutional Amendment report 2010

The role and seats of Senate were also increased with many responsibilities in this amendment, now Senate had equal power to National assembly, article 59 describes details about Senate as;

Table 07

Provinces	General Seats	Women	Ulema	Non-Muslim	total
Punjab	14	4	4	1	23
Sindh	14	4	4	1	23
Baluchistan	14	4	4	1	23
KP	14	4	4	1	23
FATA	8	-	-	-	8
Federal Capital	2	1	1	-	4
Total	66	17	17	4	104

Source: Eighteenth Constitutional Amendment report 2010

Article 106 increased the numbers of Provincial Assemblies,

Table 08

	General	Women	Non-Muslim	total
Baluchistan	51	11	3	65
KP	99	22	3	124
Punjab	279	66	8	371
Sindh	130	29	9	168

Source: Eighteenth Constitutional Amendment report 2010

Substituted Article 156 to enhance the role of NEC, the President shall constitute a council with thirteen members, PM as its Head, four Chief Ministers of Provinces, one member from each Province and four members nominated by prime Minister, the NEC will review the country's economic condition and shall met twice in every year (Ibid). Article 160 regulated the "National Finance Commission" in such a way that every year share of provinces shall be increased and Federal Finance Minister with Provincial Finance Minister monitors the Award (Ibid). For the revival of Judiciary to free it from executive a special Commission shall be appointed by inserting Article 175A to the constitution, there shall be Judicial Commission with seven members for the appointment of Judges of all courts, commission may make rules for the regulation and appointment of Judges (Report Eighteenth Constitutional Amendment). Articles from 10A right to fair trial, to the Article 270BB were Changed with manual changes. Changed Third, Fourth, Sixth and Seventh Schedules of the Constitution of 1973, from Fourth Schedule some new Subjects were added in First Part of Federal Legislative List, part two was also increased from eight to eighteen Subjects and Concurrent Legislative List was abolished, all the subjects were given to the Provinces (Final Audition of 1973 Constitution).

Conclusion:

Pakistan has faced several constitutional problems since its birth, finally after 25 years of hard struggle and with separation of half part and detention of 94000 men in India, after a great loss there was formed a federal constitution. The Constitution of 1973 was formed by a 25-member Constitution Committee by collaboration of PPP, JUI and NAP under the Government of President Zulfikar Ali Bhutto. With all political parties consent it was a federal constitution and changed to previous one. The 1962 Constitution was a one-man formula, designed to support the Presidential form of Government and had curtailed the democratic form of Government. The 1973 Constitution envisaged federal form of government, granted provincial autonomy, Bi-Cameral legislation, free judiciary from executive control, formation of CCI and NEC with active role of NFC by law. This was also violated by its Chief architect just few years later when he abolished Baluchistan Assembly announced the elections in October 1976 rather than in March 1977. Political parties were not prepared to contest the elections they formed Pakistan National Alliance but also lost their seats. PPP won the election and tried to govern by force and seek protection from Military General but on 5th July 1977 General Zia imposed Martial law and suspended the constitution, to legitimate his rule under the protection of law he introduced 8th Constitutional Amendment. When General Musharraf came to the power, he again used same tools to follow his predecessor and introduced 17th Constitutional Amendment, this totally changed the constitution from federal to Presidential. There was hardly need for the revival of democracy and federal constitution in the country.

Mohtarma Benazir Bhutto first dreamed for democracy in Pakistan, she takes two steps in her life for the revival of democracy with signing two treaties first Charter of democracy with all political parties second signed National Reconstruction Order with Musharraf. She was in strong favor of democracy, provincial autonomy, free judiciary and good center-province relations. President Asif Ali Zardari completed his wife's dream, presented the motion in the Assembly for constituting a Committee with 27 members from all parties including minorities and independent members to present their proposals for the revival of federal constitution in Pakistan. In this there came a historic landmark document by the name of Eighteenth Constitutional Amendment Bill by changing more than 100 Articles and abolishing the Eighth and Seventeenth Constitutional Amendments except few Clauses, abolished the Concurrent Legislative List to enhance the provinces powers. In this way center-province relations are balanced. The Eighteenth Constitutional Amendment is a final solution to the problems of Pakistan. It is the revival of federalism in Pakistan not only in papers but in practice too.

CONCLUSION

When the world was launching a campaign to adopt federalism as a solution of political problems, Sub-continent was suffering to fight for independence struggle. From 1857 to 1947 (90 years of struggle) with British and Congress, started from Muslim's empowerment by Sir Syed's efforts of Aligarh Foundation, formation of The Muslim League in 1906 joined Muslim leaders at one platform to struggle for their rights. Muslims presented their demands and got approval in Constitutional reforms step by step from 1909 to 1935 but still lacking in true federal spirit as Muslims demanded for provincial autonomy. Then in Lahore resolution in 1940 turned Muslims intention from provincial autonomy towards independent state, on other side Congress was willing for united India but elimination of British rule. While British wanted to control over India in three subjects (defence, foreign affairs and legislation). It was vital for Muslims to have struggle for a separate country (Pakistan). Muslims struggled hard for their right as a nation and finally on 14th August 1947 Pakistan formed on the world map.

Sub-continent had diversity in many ways, it is a combination of different religion (Islam, Hinduism, Christianity, Sikh mat), land of different languages (Urdu, Hindi, Bengali, Punjabi, Sanskrit, Brahmi, Sindhi, Balochi, Bengali, Kashmiri and Pashtu) and territorially divided areas. Under the Mughal Empire there was a peace and harmony but the British adopted the policy of divide and rule. In this way conditions in united India changed and friends of past became enemy forever, Congress defended only Hindus interests and Hindus started to press Muslims from every field of life. The Muslim League was formed to defend the Muslims interest from 1906 to 1913 it was a purely Muslim represented body but with the participation of Quaid-I-Azam its policy was changed to unite Hindus and Muslims. This unity soon disappeared by Gandhi's decisions, again Muslims started for a federal solution in fourteen points of Quaid. From 1935 to 1940 situation was worse to live in united India. In this changing condition separation was the best solution for this area but to adopt exclusively federal system, is most suited to sort out all communal and constitutional problems. From 1940 to 1947 Muslims struggled for their separate country and Pakistan was created as a solution of that problems which Muslims had been facing in British administered India after 1857.

From the creation of Pakistan to the presentation of Bogra Formula six years passed but no any definite conclusion had been reached. On 12 March 1949 the Objective resolution was passed by the Prime Minister Liaquat Ali Khan, on the same day BPC was formed with 24 members to present his recommendations to the legislative Assembly about the future constitution of Pakistan. The BPC presented its first report on 7th October 1950 after

nineteenth month of its formation. The First interim report suggested Bi-cameral legislature, federal form of government and Urdu as a national language. It faced many criticism from all over the Pakistan but more from East Pakistan, with the opinion to converting a majority community into a minority community, making East Pakistan a colony of West Pakistan and never considering Bengali as a lingua franca of Pakistan. the first report was failed to satisfy all communities, than second interim report was presented under Khawaja Nazim-Ud-Din on 22nd December 1952, this report presented many features which were not presented in first report it formed proper judiciary system, Federal Public service Commission and defined criteria for amendment in constitution with one-third representation in the legislature. There was again rejection from public to never fulfil their demands of free education, minority community never liked separate electorate for them, East Bengal demanded provincial autonomy on Lahore Resolution pattern with three subjects reserved for centre defence, currency and foreign affairs only.

The first two reports were failed to satisfy public than there came third report by the Prime Minister Muhammad Ali Bogra called “ Bogra Formula” this was a federal formula presented on East Pakistan’s demand for making Pakistan a federation of two Wings. Bogra formula presented a concept of two Zones (east zone and west zone) with two houses, House of Units with equal representation and House of People with the representation on population basis. This was also rejected by majority community for not defining relation between centre and provinces, from minority community for separate electorate and not defined provinces full autonomy. There need another phase for constitution making process in Pakistan.

When the exclusively federal formula of Prime Minister Muhammad Ali Bogra was rejected and emergency was proclaimed in Pakistan under the “Governor Raj”. All steps were taken to under estimate the exclusive Federal form of the constitution and to create parity between the two Zones of Pakistan, the West Zone was formed One-Unit as a tactic to balance the population majority of East Bengal. Pakistan adopted loose federal formula in the shape of first Constitution of Pakistan in 1956. This was not enough for the purpose of Pakistan, nor granted provincial autonomy as it was suggested in Lahore Resolution for the new Islamic democratic state by the founder of Pakistan. The 1956 constitution again created many conflicts between the Centre and Provinces over the administrative authority and subjects distribution.

Within two years the country was suffering with many problems so in 1958 the new constitution was abrogated by the first military coup. From 1958 to 1962 there was no constitution in the Pakistan, a commission was appointed for recommendations of the new constitution. But all the recommendations were denied in the new constitution. On 1st March

1962 the new constitution was presented to the Assembly by the General Ayub Khan. This was a one man formula with all powers at the Centre and in the hands of President. This was a Presidential Constitution without Prime Minister and Governors in Provinces. This Constitution damaged all the concepts of Federalism in Pakistan. It totally rely upon central subjects without defining Provincial and Concurrent list. Central authority prevails over the Provincial in both constitutions of Pakistan.

The real Federal concept of Quaid for which Pakistan had been made was seems deemed in the first two constitutions of Pakistan. Bengal had been deprived from almost all his demands of federal constitution first in 1956's constitution but in 1962 constitution the situation became worse with in seven years after that. The Bengali's dis-sentiments created an atmosphere for once again abrogation of constitution and led another Military Coup in Pakistan.

Pakistan has faced several constitutional problems since its birth, finally after 25 years of hard struggle and with separation of half part and detention of 94000 men in India, after a great loss there was formed a federal constitution. The Constitution of 1973 was formed by a 25 member Constitution Committee of joint collaboration of PPP, JUI and NAP under the Government of President Zulfikar Ali Bhutto. With all political parties consent it was a federal constitution and changed to previous one. The 1962 Constitution was a one-man formula, designed to support the Presidential form of Government, had curtailed the democratic form of Government. The 1973 Constitution envisaged federal form of government, granted provincial autonomy, Bi-Cameral legislation, free judiciary from executive control, formation of CCI and NEC with active role of NFC by law. This was also violated by its Chief architecture just few years later when he abolished Baluchistan Assembly announced the elections in October 1976 rather than in March 1977. Political parties were not prepare to contest the elections they formed Pakistan National Alliance but also lost their seats. PPP won the election and tried to govern by force and seek protection from Military General but on 5th July 1977 General Zia imposed Martial law and suspended the constitution, to legitimate his rule under the protection of law he introduced 8th Constitutional Amendment. When General Musharraf came to the power he again used same tools to follow his predecessor and introduced 17th Constitutional Amendment, this totally changed the constitution from federal to Presidential. There was hardly need for the revival of democracy and federal constitution in the country.

Mohtarma Benazir Bhutto first dreamed for democracy in Pakistan, she take two steps in her life for the revival of democracy with signing two treaties first Charter of democracy with all political parties second signed National Reconstruction Order with

Musharraf. She was in strong favour of democracy, provincial autonomy, free judiciary and good centre-province relations. President Asif Ali Zardari completed his wife's dream, presented the motion in the Assembly for constituting a Committee with 27 members from all parties including minorities and independent members to present their proposals for the revival of federal constitution in Pakistan. In this there came a historic landmark document by the name of Eighteenth Constitutional Amendment Bill by changing more than 100 Articles and abolishing the Eighth and Seventeenth Constitutional Amendments except few Clauses, abolished the Concurrent Legislative List to enhance the provinces powers. In this way centre-province relations are balanced. The Eighteenth Constitutional Amendment is a final solution to the problems of Pakistan. It is the revival of federalism in Pakistan not only in papers but in practice too.

After a hard struggle of 90 years Pakistan emerged on the world map as reality, it was the efforts of great leaders to draw a Muslim State on the world map. Pakistan was established to form a federal relation between the center and provinces, the first task after creation of Pakistan was, how to define a relation between center and provinces? What will be form of constitution in Pakistan? to answer these questions on 12th March 1949 Objectives resolution was presented by the Prime Minister Liaqat Ali Khan and same day a committee was formed with 25 members to draw the final proposal of the constitution. The Basic Principles Committee presented its three reports, first report faced intensive criticism from East Bengal on language, provincial autonomy and subject distribution, because during freedom movement Pakistan was demanded by the great leaders from British Government for not granting provincial autonomy and legitimate right of Muslims as a separate community. Pakistan was established only to defend all minorities and depressed communities. At the time of Pakistan's first Constituent Assembly there were eight Non-Muslim members. But in Constituent proposals from 1947 to 1973 there was low representation given to the minorities, many Hindu Leaders were forced to leave Pakistan.

Bengal also faced discrimination attitude as compared to West Pakistan, struggle for self-empowerment never ended with the creation of Pakistan, their demand for Bengali language and provincial autonomy had been continuously denied in all Constitutional proposals. It seems that Bengal will become the colony of Pakistan, Bengal had 54 % population but not granted majority in Constituent Assembly, so turned Bengal's majority into minority. When in first two reports of Basic Principles Committee Bengal criticized the Third report tried to satisfy the Bengal's demands, the Bogra Formula was a federal constitutional structure for Pakistan, it ensured population base representation, but this time too denied Bengali language, on the other hand West Pakistan was not ready to accept

population base representation. Again, constituent committee was proposing for a suitable draft constitution.

When committee was near to present its final report to adopt federal constitution emergency was proclaimed in Pakistan in October 1954. Another committee was formed to present a new draft constitution within nine months, this time another scheme was adopted to balance the population differences between the two parts. West Pakistan was merged into a One-Unit by merging Punjab, Baluchistan, Sindh and N.W.F.P into a single administrative unit, now the Bengal's demand for population majority province came to an end. In 1956 first Constitution was adopted but after the efforts of nine years it never answered all the questions of freedom movement nor Bengal's demands nor the Lahore Resolution's demand. This constitution formula adopted loose federal structure with powerful central authority, center prevails over the provinces and all the revenues collected by the provinces will be central legacy.

The 1956 Constitution never sorted the disputes and just after two years the Constitution was abrogated which took nine years to form. From 1958 to 1962 there was Martial Law in the country, without any constitutional setup. In 1962 President Ayoub announced his own Constitution ignoring all public demands of federal constitution. It was a presidential constitution with all powers in one hand, rather granting provincial autonomy and population base representation. Situation was turning from bad to worse in the country when in 1969 President Ayoub stepped down in the favor of General Yahya Khan, Yahya once again abrogated the constitution, abolished the One-Unit scheme and announced for first general elections in Pakistan. In East Pakistan Awami League was a popular party while in West Pakistan there was Pakistan People's Party, both parties launched their manifesto to attract the people, PPP launched their campaign to provide *Roti Kapra or Makan* to all the Awami League announced to minimize the central rule with provincial autonomy, abolition of Zamindari system and Bengali to be adopted as a status of national language. Awami League emerged victorious party but was not allowed to form a government in majoritarian west Pakistan's rule. They decided to hold a session in Dhakka and started self-government in East Pakistan. Operation searchlight was initiated in East Pakistan by the army soldiers, this proved last rivet to separate the East Pakistan. India intervened the situation and war broke out in Pakistan. this separated East Pakistan as Bangla Dash and more than 94000 soldiers detained in India.

The East Pakistan was separated from West Pakistan because it was the first province who sensed from beginning their legitimate right, when Sindh, Baluchistan and N.W.F.P was under the dominance of Punjab elite's authoritarian rule there was only Bengal

who talked for provincial autonomy, subject distribution and for the revival of their Bengali language. Bengali were farsighted people, if that time they had never raised their rights than Bengal had been the colony of Pakistan. For 25 years Bengali demanded a federal constitutional structure for the Pakistan. Unfortunately, this federal constitutional formula was adopted in 1973 after the separation of East Pakistan.

Separation of East Pakistan changed the political thinking in Pakistan, now realizing the fact if federal constitution was not adopted as solution for the Pakistani problems to grant smaller provinces their right the same situation may appear again. A new committee was formed to draft a final and permanent constitution with the consent of all political parties. A “Constitutional Accord” was signed between all parties including leading parties (PPP, JUI and NAP), this final constitution was debated in National Assembly for one year, after finalizing this constitution was presented in April 1973 as Constitution of Islamic Republic of Pakistan. this was a first federal constitution with all federal characteristics, bi-cameral legislature, provincial autonomy, defined center-province relations, National Finance Commission, National Economic Council, Council of Common Interest, independent judiciary and most important feature it cannot be abrogated.

1973 constitution was a federal constitution but in papers in practice it was lacking true federalism. Center’s prevailing authority over the provinces, dead role of CCI, prevention of NFC awards to the provinces, federal’s prevailing authority over the Concurrent Legislative List, and twice suspension of the constitution under the president’s authority with two important amendments to the constitution changed it from federal democratic to federal presidential constitution. First General Zia abrogated the constitution imposed Martial Law and introduced his Eighth Constitutional amendment to legitimate his rule. This step locked democratic function of the constitution and practiced Presidential rule in Pakistan. From 1977 to 1988 there was undemocratic presidential rule in Pakistan. From 1988 to 1999 democracy was not able to perform well, then another Military Coup initiated in Pakistan when General Musharraf assumed the power in October 1999. He followed his predecessor General Zia, introduced another amendment to the constitution, these amendments never had any federal feature nor any federal right to change the publicly accepted constitution according to their own will and way. The Eighth and Seventeenth constitutional amendment was series of amendments launched during the two dictator’s rule, these amendments changed the constitutional’s federal spirit.

To draw back a federal constitution there need to take final step, the leadership of PPP thought for the revival of democracy and took steps to finalize her dream, she signed an agreement with all political parties for the revival of democracy in Pakistan, she signed a

“Charter of Democracy” in London with PML(N) and other parties consent. In 2008 after her assassination her husband completed her dream and appointed a “Constitutional Committee” with all parties members, this committee held 77 meetings and presented its report with exclusive federal features to the constitution. This report was presented in the Assembly with the title of “Eighteenth Constitutional Amendment”. This amendment abolished all Presidential amendments except the increase in National Assembly’s members.

By introducing Eighteenth Constitutional Amendment the Constitution of 1973 once again converted to a federal constitution but this time not only in papers but in practice too. Concurrent list was abolished and mostly subjects were transferred to the provinces, Prime Minister is the Head of the State, CCI was regulated with regular meetings, NFC was awarded to the provinces and every coming commission will be increased from the previous and smaller provinces were given more share than past awards. By changing 102 clauses of the constitution exclusive federal constitution was adopted in Pakistan in 2010 after 63 years of its creation.

It took nine years to adopt first constitution but abrogated in two years. Second was also lasted only for seven years and abrogated, this was designed by one General and abrogated by the next one. In this situation Bengal had many demands relating to constitution making which were never accepted and after 25 years Bengal was separated by the Pakistan. History taught us federalism is a suited for Pakistan to prevent another separation, so federalism was adopted in 1973 but lacking in true spirit, and finally after two bad experiences of dictatorship in 2010 exclusive federalism was adopted in written constitution of Pakistan.

If Pakistan had adopted true federal spirit in its first constitution as it was demanded by East Pakistan in almost all constitutional debates than situation must be different as it is today. We have not faced military rules, not split down a large portion of Pakistan, nor had faced economic inflation in Pakistan. Pakistan is a diverse country with four provinces, many languages and many religions. It is an Islamic Country, and Islam suggests a democratic form of government with minority’s rights, territorial identity, religious freedom and freedom of speech. Federalism also grants all these rights to all parts which formed a combined territorial identity with an agreed constitutional formula. Every country with diversity in territory, religion and languages suits a federal form of government, same suited to Pakistan too.

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ACRONYMS

AIML	All India Muslim League
AL	Awami League
AML	Awami Muslim League
BEIC	British East India Company
BPC	Basic Principle Committee
CA	Constitution Assembly
CCDF	Central Committee Of Democratic Federations
CCI	Council of Common Interest
CMLA	Chief Martial Law Administrator
CoD	Charter of Democracy
CP	Central Province
EUf	Eastern United Front
FATA	Federal Administered Tribal Areas
FPSC	Federal Public Service Commission
FSC	Federal Shariat Court
GD	Gantantari Dal
GG	Governor General
INC	Indian National Congress
JAML	Jinnah Awami Muslim League
JI	Jamaat-e-Islami
JUI	Jammiat-e-Ulmah-e Islam
KRP	Khilafat-e-Rabbani Party
KSP	Krishan Sramic Party
LA	Legislative Assembly

LFO	Legal Framework Order
MK	Millat Khaksar
MLPP	Muslim League Parliamentary Party
MLWC	Muslim League Working Committee
MNA	Members of National Assembly
MPA	Members of Provincial Assemblies
NAP	National Awami Party
NEC	National Economic Council
NFC	National Finance Commission
NRO	National Reconstruction Orders
NWFP	North West Frontier Province
PML	Pakistan Muslim League
PML(N)	Pakistan Muslim League (Nawaz)
PNA	Pakistan National Assembly
PNC	Pakistan National Congress
PoW	Prisoners of War
PPP	Pakistan People's Party
PPSC	Provincial Public Service Commission
PSC	Pakistan Services Commission
RTC	Round Table Conferences
U. P	Utter Pradesh
UIF	United Islamic Front
UNO	United Nation Organization
UPSC	Units Public Service Commission
WML	Western Muslim League

GLOSSORY

<i>Haddood Ordinance</i>	offence of Zina according to Islamic laws
<i>Kisan</i>	farmer
<i>Kath</i>	a wooden instrument
<i>Lathi Charge</i>	beaten by a stick by the authorities
<i>Maulana</i>	religious expert
<i>Moen Judaro</i>	archaeological site in Sindh, around 2500 BCE old civilization
<i>Molvis</i>	religious obligator
<i>Mullah</i>	A person expert in Islamic Religious Practices
<i>Parda</i>	veil
<i>Quran</i> SAW)	The Holy Book revealed upon last prophet of Allah (Muhammad
<i>Sunnah</i>	all traditions of Prophet Muhammad (SAW)
<i>Talimat-e-Islamia</i>	Islamic knowledge
<i>Ulema</i>	religious expert
<i>Zakat</i>	Islamic tax on income
<i>Zamindari</i>	agriculture system

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