

A Page From History

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When the 1st Constituent Assembly was dissolved by the Governor-General, a legal dispute started between the Governor-General and those who did not accept this arbitrary action of dissolving a sovereign body. This action of Governor-General was challenged by Maulvi Tamizuddin Khan, President of the Constituent Assembly, in the Sindh Chief Court by a writ petition filed under section 223-A of the Government of India Act, 1935. A full bench of the Chief Court of Sindh decided unanimously in favour of Maulvi Tamizuddin Khan. It was stated that the Governor-General had no power of any kind to dissolve the Constituent Assembly. It was a sovereign body created for special purpose and it was to function till that purpose was completed, unless it was dissolved by a majority of two-third of its members. The Governor-General as to encounter the decision of the Sindh Chief Court, appealed in the Federal Court against this verdict. The Federal Court did not go into the merits or the constitutionality of the action of the Governor-General but concerned itself with the validity of section 223-A which had been passed by the Assembly. It was held by a majority judgment of the Court that since section 223-A of the Government of India Act, 1935 under which the Chief Court of Sindh had issued the writ, had not received the assent of the Governor-General, it was not yet law and therefore, the Sindh Chief Court had no jurisdiction to issue the writ. The dissolution of the Constituent Assembly was thereby validated by the Federal Court. Consequently, the Governor-General on 27 March 1955 issued the emergency powers ordinance and assumed powers to make provisions for framing the constitution of the state.

After the dissolution of the 1st Constituent Assembly the powers of the Governor-General came up indirectly for determination by the Federal Court in Usif Patel's case. It was held that the Governor-General could neither claim the powers of the Constituent Assembly nor could he claim to succeed to the Constituent Assembly. The Federal Court observed that the first concern should be to bring into existence another representative body so that all the legislation rendered invalid by Tamizuddin Khan's case could be validated by the new body.

The Governor-General followed the judgment of the Federal Court and issued orders to hold elections of the 2nd Constituent Assembly. The Assembly was to consist of eighty members equally distributed between

the two wings of the country. Representative from East Pakistan, the Punjab, Sindh, Khairpur state and the Frontier Province were elected by the Provincial Assemblies, from Karachi by the Municipal Corporation and from Balochistan by the Shahi Jiga and non-official members of the Quetta Municipality. Those from Bahawalpur and the Frontier State were nominated by their respective rulers, while the Tribal Advisory Council and Council of rulers of Balochistan State elected the remaining four members.

Elections to the second Constituent Assembly took place on 21 June 1955, nearly eight months after the dissolution of its predecessor. However, Muslim League emerged the largest single party in the Assembly but it could get neither absolute nor even a simple majority mainly due to its defeat in the provincial elections in



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East Pakistan. As no single party was in a position to command a majority, the various groups lost no time in seeking alliance. A coalition of the Muslim League and United Front was ultimately formed with Choudhury Mohammad Ali, the former finance minister, as Prime Minister. As a leader of the coalition party he contributed largely to the success of the new Assembly in framing a constitution.

The Assembly was successful in conducting its immediate task of revalidating those statutes which had become null and void as a result of the legal disputes which were started after the dissolution of the first Constituent Assembly. An important and highly controversial task performed by the 2nd Constituent Assembly was the unification of West Pakistan. On 30 September 1955 the Assembly passed a bill merging 310,00 square miles into a single province known as West

Pakistan. Thereafter the Assembly produced quicker results than its predecessor. Its inaugural session took place in July 1955 and on 8 January 1956 it presented a draft constitution to the country which with certain changes and amendments, was finally adopted on 29 February 1956. The Governor-General's assent to the draft constitution was accorded on 2 March 1956. The draft constitution was formally enacted by President Iskandar Mirza on 23rd March, 1956. Major characteristics of this constitution were as under.

The constitution of 1956 was one of the lengthiest written constitutions of the world. It contained one preamble and as many as 234 Articles divided into 13 parts and 6 schedules.

The state was declared as an Islamic Republic of Pakistan, wherein the principles of freedom, equality, tolerance and social justice enunciated by Islam, should be fully observed. It affirmed that sovereignty over the entire universe belongs to Allah Almighty alone. Islamic provisions were contained in the Directive Principles of State Policy and were supposed to serve as guide to the state authorities in the formulation of policies. Steps were to be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Quran and the Sunnah. No law repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah should be enacted and that existing laws should be brought into conformity with such injunctions. It was also made clear that nothing should effect the personal law of non-Muslims or their statutes as citizens or any provision of the constitution.

The constitution embodied all the characteristics of a federation: a written constitution, a dual polity, distribution of powers between centre and provinces and an independent Supreme Court. The powers were divided between centre and provinces through three lists, i.e. Federal, Provincial and Concurrent. Under Article 106 (1), the Parliament was given exclusive powers to make laws concerning thirty items in the Federal list. The Provincial list was consisted of ninety-four subjects while the Concurrent list of nineteen subjects. The residuary powers were vested in the provincial legislatures. In case of any conflict between centre and provinces or between the provinces the Chief justice of Pakistan had a significant role in the settlement of disputes, by appointing a tribunal to settle such a dispute.

The constitution retained a substantial portion of the Act of 1935 and provided for a federal parliamen-



Governor General Ghulam Muhammad

tary system. However, the federation was consisted of the two provinces namely, East Pakistan and West Pakistan. As there was a parity of representation between the two provinces a second chamber was not considered necessary.

It invested in the central authority certain powers such as emergency powers of directions to provincial governments due to which the Government might be converted into a virtual unitary Government.

The constitution provided for two national languages- Urdu and Bengali- although English was to be retained for official use for a period of 25 years.

Part II the constitution, from Article 3 to 22 contained provisions about fundamental rights. It was provided that all citizens would be equal before law and no person would be deprived of life or liberty saves in accordance with the law. The constitution declared that if there was any conflict between a fundamental right and any law of the state that was to be void to the extent of repugnancy. Only in times of emergency fundamental rights could be suspended.

The constitution of 1956 was fully democratic in nature. A Muslim Head of the State was an elected person who was to be elected by an electoral college consisting of members of the central and provincial legislatures.

In its structure, the constitution of Pakistan was fundamentally British. It adopted the parliamentary system of government or cabinet system, both at centre and in provinces but it adopted certain feature of presidential system of government too, i.e. it generally accepted judicial supremacy of American type in place of parliamentary sovereignty of the British type.