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**AN ANALYTICAL STUDY ON THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN**

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ABSTRACT:

Pakistan's political and constitutional history has been a mystery for many years. The country's political progress has been severely hampered by exceptional political crises, security challenges, and failures of domestic and foreign policies. The political system was dominated by bureaucratic-military elites, according to historical underpinnings. They had a symbiotic connection with feudal rulers who were willing to embrace the policy of playing second fiddle. To consolidate control, the military and bureaucracy colluded to restructure the political system and bring constitutional amendments. On the other hand, the political parties were unable to capitalize upon political power. They were resistant to resolving political concerns, and as a result, they constantly contributed to the strengthening of extra-constitutional forces. Other issues that inhibited political progress included an inefficient accountability system, insufficient judicial organization, and socioeconomic backwardness. This paper attempts to reveal the historical analysis of political and constitutional development and how those developments had impacted the political system of Pakistan. It also tries to examine as to which government which be suited best for the smooth functioning of Pakistan's government.

INTRODUCTION:

The antiquity, creed and origin of Pakistan in partition, however, as well as the area, the population and the form of Pakistan's interim government, will undoubtedly have grander influence upon any embryonic constitution than will international events. Politics and religion go hand in hand in Pakistan. However, the progressive factor held itself as a strong stakeholder in

the power play right after the independence encompassing liberals, secularists, leftists—both Communists and Socialists. As far as the Islam as a socio-political dynamism is concerned its sway can be traced back to the times of Arab traders, followed by military expeditions in the 8th century A.D. onwards. As a matter of fact, the latter had a slight influence on the spread of Islam, which, in turn was spread comprehensively by the efforts of those religious intellectuals and luminaries who came to the region, remained over here and started educational institutions, especially after the establishment of the Delhi Sultanate in 1206. From thirteenth to mid-nineteen century, several Muslim dynasties reigned over the subcontinent, and during the time Islam spread gradually without any large-scale forceful conversion. Overall, the approach of the Muslim conquerors had been one of toleration. The founder of Pakistan, M.A Jinnah (1876-1948)—an enlightened, British educated lawyer hoped to build a modern, progressive Islamic state devoid of any element of theocracy. As per his ambitions, Pakistan was shaped through a democratic process and Muslim common people voted heavily in favour of an independent Pakistan in 1945-46 elections, considered to be a referendum for the formation of Pakistan out of the Indian sub-continent.

It took nine arduous years for Pakistan to effectively frame a constitution, executed on March 23, 1956, amongst great zeal all over the country. The delinquent of constitution-making for Pakistan had become a nightmare giving rise to the worst forms of political conflict, intimidating the unity of the country and building a widespread sense of frustration and disappointment among the people. When the First Constituent Assembly of Pakistan had nearly completed its duty of framing the constitution, it was dissolved in October 1954 claiming it had lost "the confidence of the people." The outcome was that the country after seven years of independence was still without strong political institutions. The action of the Governor-General at that time in dissolving the Constituent Assembly went a long way towards slaughter the faith that solid political institutions would be created. Doubts were articulated that the democratic process was not yet for Pakistan. Pakistan's international reputation suffered because of its inability to produce a codified constitution.

Meaning of Constitution:

A constitution is a set of fundamental principles that govern the formation and administration of a state. A constitution is a set of laws and rules that establishes a state's government machinery and defines and determines the relationships among the various institutions and areas of government, such as the Executive, Legislature, and Judiciary, as well as the federal, state, regional, and local governments. Infact, Constitution is the source, the jurisprudential fountain head from which other laws must flow, briefly and harmoniously. The Constitution is the creation of a sovereign act. It is the outcome of extraordinary legislation direct from the people acting in their sovereign capacity enabling a government structure to be set up, laying down the procedure and extent of the dissemination of its powers; the approaches and principles of its operations as well as embracing the spirit of the nation. The omnipotence of the Constitution lies mostly in its eternal nature. Constitutions are not only giving powers to the government for pursuing collective good but also the rules and regulations controlling the powers of the government.

Need for the Constitution:

- i. Constitution permits harmonization and assertion that allows for marginal coordination between the members of a society.

- ii. Specification of decision-making powers are explicitly been mentioned in the constitution. It decides how the government will be instituted.
- iii. Restrictions on the powers of government by granting the rights to its citizens. Targets and goals of a society: -It empowers the government to fulfil the goals of a society and construct conditions for a just society.
- iv. Fundamental identity of a people: - Finally, and perhaps even most significantly, a constitution enunciates the fundamental identity of a people. This means the people as a collective entity come into being only through the basic constitution. It is by agreeing to a basic set of norms about how one should be governed, and who should be governed that one forms a collective identity.

Constitution making: - A Historical development:

Soon after the commencement of Pakistan, the Government of India Act 1935 and the Act of Independence (1947) after few amendments were amalgamated as interim arrangements for administering the political business of the state. Further, the Constituent Assembly was also given the charge of accelerating the new constitution. This assembly failed to respond positively and got disheveled into political intricacies thus postponed the process of making constitution. The constitutionalists and the political elites gave subsequent reasons for posing delay in making the first constitution were influx of refugees- an unprecedented migration; organizational void; economic downfall; political unrest; Indian-British Treacheries; diffident borders.

The members of Pakistan's first Constituent Assembly began their work with a landmark resolution known as the Objectives Resolution.¹ In 1949, this Resolution set Pakistani constitutionalism apart from the secular language of India while at the same time seeking to stitch the provinces of East and West Pakistan together within the terms of Islam. This Resolution — construed as a non-binding constitutional preamble — began as follows:

“Whereas sovereignty over the entire universe belongs to God almighty ... and [whereas] the authority which He has delegated to the state of Pakistan through its people ... is a sacred trust, ... this Constituent Assembly, representing the people of Pakistan, resolves to frame a Constitution for the sovereign independent state of Pakistan; wherein the state shall exercise its power ... through the chosen representatives of the people; ... [and] Muslims shall be enabled to order their lives ... in accordance with Islam.”

Pakistan's first Constituent Assembly reaffirmed the power of parliament. First, they sought to create a purely advisory commission recommending the Islamization of existing laws (while, at the same time, protecting the sectarian diversity within ‘Muslim personal law’ from the homogenizing thrust of this process). And, then, having done so, they resolved that any statute deemed religiously repugnant by Pakistan's Supreme Court would be referred back to the legislature for amendment.² Before these recommendations were fully enacted, however, political turmoil led the president to dismiss Pakistan's National Assembly, declaring martial law before, three weeks later, being removed by his own martial law administrator. Pakistan's first Constitution, if you will, imagined a powerful parliament, but during the mid-1950s real power still lay with Pakistan's executive. The key features of the Objective Resolution were as follows:

¹ Dieter Conrad, ‘Conflicting Legitimacies in Pakistan: The Changing Role of the Objectives Resolution (1949) in the Constitution’, in *Legitimacy and Conflict in South Asia*, S.K. Mitra and D. Rothermund, eds., (Delhi: Manohar, 1997), pp. 122–51.

² Richard Wheeler, *The Politics of Pakistan: A Constitutional Quest* (New York: Cornell University Press, 1970), p. 99

Islamic State; Equality before Law; Federal Structure; Independence of Judiciary; Distribution of Powers; Urdu and English be the National Languages

Objective Resolution invited surplus of problems. The language question, distribution of seats in the Legislative Assembly and the division of powers between the federation and the confederating units propagate agitation politics in East Pakistan. With the assassination of Liaqat Ali Khan (1951), political insecurity anomalously crept in. Further more, in the year 1953 the Ahmedi Movement also contaminated the political environment and resulted in the imposition of limited Martial Law in Lahore. Future the dissolution of the Constituent Assembly and re-constituting of the second Assembly also disrupted the political system. The capricious use of powers by the governor generals extremely endangered the working of political system. The rising influence of army and bureaucracy in the politics also rang alarming bells for the politicians who looked weakened to counter such preponderance. These developments negatively carved the process of political development. In the year 1956, Ch. Muhammad Ali the former Prime Minister was able to present the first Constitution in 1956 and it was welcomed as one of the greatest political triumph of a bureaucrat. Unfortunately, the Constitution of the Islamic Republic in Pakistan remained in vogue only for couple of years.

The salient features were:

- **Written Constitution (234 articles, divided into 13 parts and 6 schedules)**
- **Officially designated Pakistan an Islamic republic**
- **Federal System with Unicameral Legislature**
- **Division of Powers**
- **Parliamentary Order**
- **Independence of Judiciary**

After the formation of the parliamentary system within two years it was facing numerous challenges, and in 1958, General Ayub Khan launched Pakistan's first military coup, declaring martial law. In the year 1960 General Ayub Khan became President, and by 1962, Pakistan saw its' second constitution, with politics placed in the strong grip of the military rule. During this time there was an utter chaos caused by the failure to win a second war with India in 1965, growing corruption and ever more strenuous relations with East Pakistan gradually undermined the General's authority, finally compelling him to resign in 1969. In the consecutive year 1980 the first election on a nationally democratic basis was conducted. The elections saw the chiefly East-Pakistan based Awami League, led by Shaikh Mujibur Rahman, gaining an overall majority. However, the results were not well-received in West Pakistan, and power was not transferred to elected leaders. This set the stage for a new constitutional crisis where, in the period following, relations between East and West Pakistan further polarized.

The 1973 Constitution declared Pakistan as a Federal Republic to be known as the Islamic Republic of Pakistan, identifying Islam as the religion of the state. Pakistan was to be a Federation of four federating Units, the **North West Frontier Province, Punjab, Sindh and Baluchistan**. The Constitution was parliamentary in nature, with a bicameral legislature at the Center consisting of two Houses, the National Assembly and the Senate. Though the 1973 Constitution has been held in abeyance during military rule in the late 1970s/early 1980s, and has to date, been amended 19 times, it is presently the constitution governing the state. The Eighteenth Amendment to the Constitution, which was passed in April 2010, removed most of the constitutional changes introduced during military regimes, as well as formally changing the name of the North West Frontier Province to Khyber Pakhtunkhwa, and has granted provinces greater autonomy.

Nature and Salient Features of the Pakistan Constitution:

The Constitution of 1956 was very lengthy and detailed; it contained 234 articles in total, divided into thirteen sections and six schedules. The Constitution provided for a federal system, keeping the principle of parity between East and West Pakistan. The performance of the Federal Legislature was to be similar to that of the British Parliament. The Constitution called for a parliamentary form of government, where real executive authority was vested in a cabinet, which would be collectively responsible to the legislature. It has a bicameral parliament that is composed of two chambers– the Senate (upper house) and the National Assembly (lower house). Some key salient features of the Constitution are:

- Written Constitution –It is a written and lengthy document.
- Rigid Constitution - The constitution could only be amended through a process requiring the amendment to be passed by at least a two-thirds majority of the parliament and authentication by the President.
- Islamic Republic of Pakistan - The name of the country was adopted as the Islamic Republic of Pakistan.
- Objectives Resolution - The objective resolution was included as permeable by the constitution.
- Federal System - The constitution provides for a federal system in the country. Powers was divided between the centre and the provinces. The subjects were divided into 3 lists; The Federal List, The Provincial List, and the Concurrent List.
- Unicameral Legislature - The legislature would consist of a single house. The National Assembly consisted of 300 members.
- Parliamentary System - According to it the President was the head of state and the Prime Minister the head of government.
- The President - required being a Muslim of at least forty years of age. The tenure of his office was five years. In case of internal or external danger he could declare a state of emergency in the country. He was authorized to appoint the Governors, the Judges of the Supreme Court, Auditor General and the Advocate General.
- The Prime Minister - He was to be the leader of the Parliamentary group and was thus indirectly elected by the people. He could choose his cabinet from the members of the National Assembly; the cabinet was answerable to the Assembly.
- Provincial Autonomy - Curtailed in the constitution to a great extent.
- Islamic Law - no law would be passed against the teachings of the Quran and Sunnah.
- Independent Judiciary - An independent judiciary in the country. A Supreme Court interpreted the constitution, advised the state whenever required, and decided the issues whenever required.
- Fundamental Rights - included freedom of movement, freedom of speech and expression, freedom to choose profession and freedom to profess religion. Right to life, liberty, and property.
- Language – Urdu was made national languages.

After the military coup of 1958, Ayub Khan hang on for some time with the purpose of paving public opinion in his favour. A legislative commission was established under the leadership of Justice Shahaab-ud-din. The commission forwarded a report on May 06, 1961. Justice Manzoor Qadir designed and drafted the entire constitution. Ayub Khan with the aid of a presidential ordinance ordained the new constitution on **June 08, 1962**. It had the following prominent features: -

- Written Constitution with the mention of the powers of the state institutions. It consisted of 250 Articles, which were divided into 12 Parts and three Schedules.
- It was the creation or brain child of a single person.
- The constitution was president friendly; making amendments was easy only if maintained and endorsed by the president or it was a very lengthy and demanding job. For making any amendment, the 2/3rd majority of the assembly had to pass the bill and then had to send it to the president. If president did not take up any objection for thirty days, the amendment was considered valid. Nevertheless, the president might object or send back the resolution with certain amendments. In that case, it was needed to gain the consent of 3/4th majority of assembly. The president had to give consent in 10 days or had to promulgate it for the opinion of Basic Democrats. The opinion of the Basic Democrats was considered final.
- Apparently, it was a federal system of government with East Pakistan and West Pakistan as its units. The constitution contained the list of only federal authorities, the rest were given to the federating units. The center had the authority to intervene in the provincial matters if considered necessary.
- Distinct top preceding constitutions, the Indian Act 1935 and Constitution of 1956, it was presidential in its nature with all the executive powers resting with the president. He was the constitution head of government and state.
- It was a unicameral system of government with only one house. The members of the National Assembly were elected by the basic democrats.
- The judiciary was kept independent to the extent of theory. All the judges of the High courts had to be selected and appointed by the President on the advice of the chief justice. But President was not bound to the opinion or wishes of the Chief Justice.
- The constitution assured the basic human rights for all the citizens of Pakistan without any discrimination of caste, creed and color.

The constitution of 1962 was a solo show. It was designed for a single man. Apparently, it gave many rights and securities to the people but truly it deprived the people from all kinds of political rights and their representation in the legislation. When Ayub Khan handed over power to Yahya Khan, Martial Law was enforced in the country and the Constitution was ended on March 25, 1969.

The constitution of Pakistan 1973 was enforced on Aug 14, 1973. It comprises of 280 articles and 7 schedules with Objective Resolution forming the preamble of the constitution beside 20 amendments which have been made since then. It is regarded as the landmark accomplishment of Bhutto's era as it was an un-disputed act of the Parliament with comprehensive consensus of all the political parties. Nevertheless, many twists and turns have been perceived ever since its enforcement but still it is the supreme law of land and the sacrosanct instrument which reigns supreme in governance of the state.

Executive: - The 1973 Constitution lay down that the President was to be the Head of the State. The President was to act on the advice of the Prime Minister of Pakistan and could be removed on the grounds of physical or mental incapacity or impeached on charges of violating the Constitution or gross misconduct by a two-thirds vote of the Members of the Parliament.

The Electoral College consisted of the Members of the Senate, National Assembly and the Provincial Assemblies for the selection of the President. To be a Member of the National Assembly and to contest the Presidential election one has to be a Muslim and not less than 45 years of age. The President is elected for a term of five years. It also has the power to appoint the

Judges of Supreme Court and High Courts, Attorney General, and the Chief Election Commissioners. Governors who are the heads of the Provincial Government, is also been appointed by the President. The President though may be re-elected but could not hold office for more than two terms. The Prime Minister is appointed by the President from among the members of the National Assembly and has to display majority support in the House. His office is supported by the Federal Cabinet, a council of ministers whose members are appointed by the President on the advice of the Prime Minister.

Legislature: - The bicameral federal legislature is the Majlis-i-Shura consisting of the President and two houses i.e. Upper House (Senate) and Lower House (National Assembly). **The National Assembly** and Senate constitute Pakistan's bicameral Parliament. The Senate was constituted for the first time in 1973 under Article 50 of the Constitution of Pakistan that stipulates a bi-cameral Parliament. The Members of the National Assembly are elected by universal adult suffrage (over eighteen years of age in Pakistan). It has 342 seats, including seats reserved for women and non-Muslims. 272 of which are elected on a first-past-the-post basis. The candidate who gains the major number of votes in a single constituency is chosen elected member of the National or Provincial Assembly. Of the 70 remainder seats, 60 are reserved for women and ten for non-Muslim minorities; they are allocated, on the basis of proportional representation, to parties that win more than 5% of the directly elected seats. Seats are assigned to each of the four provinces, the Federally Administered Tribal Areas, and Islamabad Capital Territory on the basis of population. The National Assembly must be dissolved at the expiration of a five-year term but can be terminated earlier by the President on the advice of the Prime Minister. The tenure of a member of the National Assembly **“is for the duration of the House, which is five years (Article 52), or sooner, in case the member dies or resigns,”** or if the Assembly is dissolved.

The Senate: - It is a permanent legislative body with equal representation from each of the four provinces, elected by the members of their respective provincial assemblies. The chairman of the Senate, under the constitution, is next in line to act as President should the office become vacant and until a new President can be formally elected. It consists of 104 members elected indirectly by the members of the National Assembly and the members of the provincial assemblies. In each of the four provincial assemblies elects 23 members from their respective provinces, including 14 Senators to general seats, 4 women, 4 technical experts including Ulema (religious scholars), and 1 non-Muslim. The Senate is a permanent body and the term of its member is six years. One-half of its members retire after every 3 years.

The basic qualifications to be a Member of Parliament are provisioned under article 62 of the Constitution:

- a) He is a citizen of Pakistan;
- b) He is, in the case of the National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll in—
 - Any part of Pakistan, for election to a general seat or a seat reserved for non-Muslims; and
 - Any area in a Province from which she seeks membership for election to a seat reserved for women.
- c) He is, in the case of Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;
- d) He is of good character and is not commonly known as one who violates Islamic Injunctions;
- e) He has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;

- f) He is knowledgeable, virtuous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law;

Federating Units	General Seats	Seats Reserved for Women	Seats Reserved for Technocrats including Ulema	Seats reserved for Non-Muslims	Total
Punjab	14	4	4	1	23
Sindh	14	4	4	1	23
KPK (Khyber Pakhtunkhwa)	14	4	4	1	23
Baluchistan	14	4	4	1	23
FATA (Federally Administered Tribal Areas)	8				8
Islamabad	2	1	1		4
Total	66	17	17	4	104

Table 1: -Break up of seats – The Senate of Pakistan

Judiciary: - It provided for a free and autonomous Judiciary. It guarantees a right to the citizens to be protected by law and enforced the duties like allegiance to the Republic and compliance to the law. Any person who was found to revoke or attempt or conspire to revoke or subvert the Constitution was to be treated guilty of high sedition. The Constitution deliberate dnumerous kinds of fundamental rights to the individuals such as the right to life, liberty, equality and freedom of speech, trade and association. It has also declared any laws inconsistent with or offensive to fundamental rights as null and void. The Supreme Court is the apex court in Pakistan’s judicial hierarchy, the final arbiter of legal and constitutional disputes. It consists of a Chief Justice and not more than 16 other Judges appointed by the President. A person with five years’ experience as a Judge of a High Court or 15 years’ experience as an advocate of a High Court is eligible to be appointed as a Judge of the Supreme Court. The chief justice of the Supreme Court is appointed by the President; the other Supreme Court judges are appointed by the President after consultation with the chief justice. The chief justice and judges of the Supreme Court may remain in office until age sixty-five. The Supreme Court has original, appellate, and advisory jurisdiction. Judges of the provincial high courts are appointed by the President after consultation with the chief justice of the Supreme Court, as well as the governor of the province and the chief justice of the high court to which the appointment is being made. High courts have original and appellate jurisdiction.

The Federal Shariat Court creates another key pillar of the judiciary and comprises of eight Muslim judges, comprising a chief justice appointed by the President. Three of the judges are ulema, that is, Islamic Scholars, and are supposed to be well versed in Islamic law. It has both original and appellate jurisdiction. This court decides whether any law is objectionable to the injunctions of Islam. When a law is believed repugnant to Islam, the President, in the case of a federal law, or the governor, in the case of a provincial law, is charged with taking steps to bring the law into conformity with the injunctions of Islam. The court also hears appeals from

judgments of criminal courts under laws relating to the enforcement of Hudood laws (It substituted parts of the British-era Pakistan Penal Code, adding new criminal crimes of infidelity and fornication, and new penances of flogging, amputation, and pelting to death). In addition, there are special courts and tribunals to deal with definite kinds of cases, such as drug courts, traffic courts, labour courts, commercial courts, an insurance appellate tribunal, an income tax appellate tribunal, and special courts for bank offenses. There are also special courts to try terrorists. Appeals from special courts go to high courts, except for labour and traffic courts, which have their own forums for appeal. Appeals from the tribunals go to the Supreme Court. Within the constitution, the office of Wafaqi Mohtasibor Ombudsman is provided for, as established in many early Muslim states, to ensure that citizens had a forum on which to register

1956 Constitution	1962 Constitution	1973 Constitution
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complaints against public officials. Appointed by the President, the Mohtasib officer, who administers adherence of laws and penalizes offenders, holds office for four years. The term cannot be extended or renewed. The Mohtasib's purpose is to institutionalize a system for enforcing administrative accountability, through investigating and rectifying any injustice done to a person through maladministration by a federal agency or a federal government official. The Mohtasib is empowered to award compensation to those who have suffered loss or damage because of maladministration. Excluded from jurisdiction, however, are personal grievances or service matters of a public servant as well as matters relating to foreign affairs, national defence, and the armed services. This institution is designed to bridge the gap between administrator and citizen, to improve administrative processes and procedures, and to help curb misuse of discretionary powers.

Military-Bureaucratic Oligarchy: - The military in Pakistan has played a prominent role in conventional politics, having taken over from civilian governments on four junctures. Military governments were led by (in the 1960s) General Ayub Khan and General Yahya Khan, (in the late 1970s and 1980s) General Zia-ul-Haq, and (from 1999 to 2008), General Pervez Musharraf. In total, military or military backed civilian regimes have been in power for half of the years of the country's existence. The power of the military extends far beyond its constitutional role even in times of civilian rule. The military high command has on various instances acted as a moderator between the government and other state actors, on one hand and between political leaders and government on the other hand. The military also has economic interests in Pakistan which it seeks to shield. According to one analyst, the progression of the military's business interests inspires the top stratum of the armed forces to upkeep "policy making environments" that will "proliferate their economic opportunities" and such actions are "both the cause and

Enforced on March 23, 1956 to October 07, 1958.	Enforced on June 08, 1962 to March 25, 1969.	Enforced on August 14, 1973 till now.
234 Articles and 6 Schedules	250 Articles and 5 Schedules	280 Articles and 12 Schedules
Written Constitution	Written Constitution	Written Constitution
Form of Government: Introduced Parliamentary Form of Government	Introduced the Referendum institution	It has authorized President to hold Referendum on any national issue.
Introduced direct elections	Introduced indirect elections	Introduced direct elections
Islamic Institutions: - There was no such institute	Introduced 2 Islamic Institutions i.e. advisory council of Islamic ideology and Islamic research institutions.	Council of Islamic Ideology Federal Shariat Court
It contains 3 list of subjects i.e. federal, provincial and concurrent matters.	Consists of 2 lists of subjects i.e. central and provincial.	Two list: - Federal and Concurrent List Residuary powers belong to provinces.
President have reasonable and limited powers.	President have excessive powers	President have reasonable and limited powers.

effect of a primitive, totalitarian, non-democratic political system”.

Table 2: - Comparative analysis of Constitution of 1956, 1962 and 1973.

CHALLENGES:

When reading the lengthy and elaborate written document, one can perceive the difficulties that the constitution's framers experienced. The failure of both parliamentary and presidential forms of administration to stabilize the nation-state was a major source of concern for the drafters of the constitution. The only way Bhutto agreed to a parliamentary form of government was to make the Prime Minister's office far more powerful than the President's. The President was not to appoint the Prime Minister from the National Assembly, he had no legislative veto authority, he was to act on the Prime Minister's binding advise, and he was only to dissolve the National Assembly on the Prime Minister's advice. The President could be removed by two-thirds majority in the joint session of the parliament. On the other hand, a vote of no confidence against the Prime Minister could only be moved if the name of a successor was also provided and in case of failure of such a vote to oust the Prime-Minister, such a resolution could not be moved again for a period of six months. All these safeguards, however, were removed by the Eighth Amendment Act of 1985, which added a clause to Article 58 granting the President the power to dissolve the National Assembly at his discretion, effectively making the assembly subservient to the President and changing the form of government once more. After being inducted in the Constitution, this clause was invoked by the President on four occasions in a short span of nine years between 1988 and 1996. This section was repealed in the 13th Constitutional Amendment, which restored the Constitution's parliamentary character on April 4, 1997. However, the 17th Amendment once again shifted the pendulum to the side of the President. The President can now once again dissolve the National Assembly at his discretion. A federal form of government was prescribed by the Constitution, as needed in a state with such ethnic diversity as Pakistan and in keeping with the founding fathers' vision, with provinces having

jurisdiction and legislative powers over their provinces while the federal jurisdiction was over the entire state. The legislative powers were divided into two lists, the Federal List, comprising of 67 items and in which were enumerated subjects on which the Federal Centre alone could legislate and the second Concurrent list, having 47 items and on which both the Centre and the provinces were entitled to legislate, but in case of conflict the federal law was to prevail. The Chief Justice was to appoint an arbitrator to settle a dispute between the centre and provinces. The Constitution however failed to deliver a distinct list for sole Provincial legislation.

Unlike in the preceding constitutions, this time a bicameral parliament was provided with the Senate (Upper House) giving equal representation to the units and the National Assembly (Lower House) allotting seats to each province according to population. Thus, the Constitution provided several safeguards in order to maintain a stable and prosperous system but it was not enough. A series of changes have obliterated the original wording and meaning of the 1973 Constitution, and ironically, they have exacerbated the system's problems. General Musharraf's Constitution (Seventeenth Amendment) Act, 2003 has once again made the office of the Prime Minister subservient to that of the President's. The Legal Framework Order revived Article 58(2)(B), 112(2)(B), introduced the National Security Council (NSC) with military members superseding the civilian authority of the National Assembly and Senate, and allowed General Musharraf to simultaneously be the Chief of Army Staff and the President of Pakistan. It would certainly not be unfair to question the 'democratic' nature of the current system. In the government's attempt at bringing democracy to the people, the local governments have been given the powers of the provincial governments, according to the devolution plan – but the central government has yet to devolve its powers. The President has direct authority over local administrations, while the provinces are left in the dark.

POSSIBILITIES:

The constitution is lengthy and difficult as it is now, and the legislative, executive branch, and judiciary functioning under it are all in a condition of disarray. The question is still being raised as to which form of government would suit Pakistan – parliamentary or presidential. Each has advantages and disadvantages, and one can cite instances such as the United States, the United Kingdom, France, India, and even China, which has propelled them to the status of economic behemoth and soon to be superpower, but Pakistan has its own requirements. The legislative system is thought to have failed to offer the necessary checks and balances for a stable administration. The parliamentary form of government envisioned in the original Constitution of 1973 was more than adequate in safeguarding the legislature, executive and judiciary. Formerly, the National Assembly was safe from any malevolent attempt from any single individual. In a presidential form of government, all powers are concentrated in the hands of a single person, and in Pakistan, the legislature, which is made up of corrupt and weak political figures, will not provide an adequate check on the all-powerful President, especially if he is a member of the military – a contingency that Pakistan must unfortunately plan for based on its history. The President may have only ceremonial roles with a few discretionary powers. He may not have the power to veto a bill, he may only be able to send it back to the legislature with proposed amendments which are not binding on the Parliament and the latter may then pass the bill with two-thirds majority in a joint session. Thus Pakistan needs a parliamentary form of government in which the Prime Minister is chosen from the people's representatives and is answerable to the legislature alone. As observed, Pakistan must prepare for military intrusion because the military is currently Pakistan's most powerful institution, receiving the majority of the country's GDP,

and there are no quick plans to reverse the situation. Secondly, the Pakistani nation has never fervently opposed military intervention, rather at times has glorified it. Thus, it could be possible to have a retired military officer as the figurative head of the state i.e. the President, one who is chosen by direct elections as in this case the interest of the people will be aroused, and it will be followed by a vote of confidence by simple majority in each house. Senators must also be directly elected by the people.

Disputes between the centre and the provinces may be resolved by the court, which would be independent. To keep the judiciary apart from the other two branches of government, a committee or small body of current and former Supreme Court justices might be formed to recommend new judges to the President, and that advice must be binding on him. The option of Judicial Review should be available. Furthermore, all legislation and changes must adhere to Islamic norms and regulations, and as such may be scrutinized by relevant Islamic organizations or committees prior to ratification. Their advice may not be binding but in case of objections, a lapse of three months will be required for adoption by a two-thirds majority in a joint-session of Parliament. The duality of criminal and Islamic law must also end. There needs to be an amalgamation of the two as currently the Islamic laws are serving the purpose of a white elephant or as source of torture for the Pakistani public as the laws are misconstrued, harsh and just plain cruel. Once again, a two-thirds majority in a joint session would suffice to overcome any extremist elements in the Parliament. The national consensus among the people should also be considered, as enacting Islamic laws is at the very heart of Pakistan's existence, and as such, the Pakistani people should be directly involved rather than having their politicians fight the issue. Perhaps a nationwide referendum could be held after a national debate in which different points of view are discussed and highlighted in front of the public and the media, so that people are fully aware of the issues and understand what kind of Islamic law and order system can be implemented in Pakistan. Despite the fact that the majority of the Pakistani population is illiterate, it is the responsibility of elected officials to inform their voters about the situation, and while the task is laborious, it is necessary for the country's progress and success. The Constitution is a state's supreme law, and as such, it cannot be changed on the spur of the moment, as has happened in the past. It would also be incorrect, if not absurd, to place the burden solely on the shoulders of the military and bureaucracy. Politicians, like the Bhutto administration, have their own demons and require limitations. That is why the people's representatives in each house will prove the best check on each other. This, together with a free and vigilant media, will guarantee a steady and an affluent democratic system based on the rule of law.

CONCLUSION:

Pakistan is a proud country — a nuclear power, a geopolitical and geostrategic asset – but it has been beset by crises from its inception. Outwardly beleaguered by issues of security, refugees, water and food shortages, and internally by sectarian and ethnic divides, tantrums of power-hungry yet politically inept military and non-military men at the helm of the affairs and just plain political immorality and debauchery by the political parties involved, robbed the Pakistani nation of a steady and conducive constitution and political system. The ethnic gap between the East and the West was exacerbated by the geographic distance between them and the governmental elite's discriminating attitude toward the majority people. Further more, early misgivings about non-Muslim rights and the status of Islamic laws in relation to minorities all contributed to a delay in the establishment of a functional constitution. The political parties were

weak and inefficient, with an acute instance of gerrymandering and a significant lack of competent leadership. Rather than erecting a state based on Islamic ideals, they were employed as means of enslavement and power accumulation. The state elite had no change of heart when the state was split up, and they continued to wield undue power over three-quarters of the state. Due to these tremendous obstacles and a sequence of damaging events, Jinnah's ambition of framing a functional Constitution in even two years could not come true. The power struggle between the centre and the units, as well as between politicians and the military, has wreaked havoc on the state, tarnished the political process, and made a mockery of the constitution. Despite all odds, Pakistan has accomplished countless achievements, the most important of which is that it has developed the vision to see beyond all the concerns and challenges that it faces today and has begun to look to the future - a future of choice and possibilities. Pakistan's policymakers and constitution writers must acknowledge past and present mistakes and ensure that everyone has a fair share and a fair position in the state, particularly the federating units, because a federation is only as strong as its constituent units, and a constitution is only as practical as those who follow it.

REFERENCES:

- Chaudhry, G.W., "Constitutional Development in Pakistan", Longman, U.K., 1969.
- Hussain, J., "An Illustrated History of Pakistan – Book 1", Oxford University Press, Karachi, 1981.
- Hussain, J., "An Illustrated History of Pakistan- Book 2", Oxford University Press, Karachi, 1983.
- Asian Development Bank. Devolution in Pakistan: Overview of the ADB/World Bank Study. Department for International Development, World Bank (2004).
- Hackett, J. (Eds.). The Military Balance 2010. International Institute for Strategic Studies. London, 2010.
- Mezzera, M.; Aftab, S.; Yusuf, S. Devolution Row: An assessment of Pakistani's 2001 Local Government Ordinance. Netherlands Institute for International Relations, Conflict Research Unit, Clingendael. The Hague, November 2010. MEZZERA, M., AFTAB, S. Pakistan State–Society Analysis. Netherlands Institute for International Relations, Conflict Research Unit, Clingendael. The Hague, January 2009.
- Pakistan Ministry Of Finance, 2011.Economic Survey 2010-2011. Pakistan Ministry of Finance, 2011.
- Pildat. The Calculus of Electoral Politics in Pakistan (1970-2008). Pakistan Institute of Legislative Development and Transparency, PILDAT. Islamabad, January 2008.
- Siddiq, Ayesha. Military Inc: Inside Pakistan's Military Economy. Oxford University Press. 2007.