
ESTABLISHMENT OF PAKISTAN-CONSTITUTIONAL PATH

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ABSTRACT

Pakistan came into being after long political and constitutional struggle. This study mainly explores the important constitutional efforts which ultimately paved the way for the partition of Indo-Pakistan Sub-continent and emergence of Pakistan as an independent country. For this qualitative source of research has been adopted. The books, articles and material available electronically have been referred to complete the task. It has been unearthed through this study that the Muslims launched struggle on various fronts including the constitutional to get themselves emancipated from the slavery of the British occupants. At the end, the study concludes that new country of Pakistan did not exist before 14th August 1947 as most of other countries under British occupation. But the efforts and sacrifices rendered by the Muslims compelled the foreign rulers to partition the Sub-continent and accede the demand of separate homeland for the Muslims.

Keywords: British, Constitution, Pakistan, Partition, Sub-continent

INTRODUCTION

Pakistan is the outcome of long struggle against the foreign subjugation which was established for exploiting the conquered land in the interest of the power prevailed. The Muslims of the Indo-Pak Sub-continent struggled for independence side by side other nations and communities living in the country. Siraj-ud-Daula, Nawab of Bengal, waged a war against the aliens in the field of Plassey in 1757 and embraced martyrdom. Another Muslim ruler Fateh Tipu, popularly known as Tipu Sultan, the ruler of Mysore, met the British East India Company and their allies in fourth war of Mysore in 1799 after about forty years of fall of Bengal. He also embraced martyrdom for the honour of his land. Both were defeated for one or other reasons. The non-Muslims also compelled the British soldiers to face them in battle field but their efforts also could not check advancement of the foreigners. Finally, the war of Independence was fought in 1857 in which the freedom fighters remained unsuccessful.

It brought various changes in political and constitutional fabric of the Sub-continent. Firstly, the Mughal rule came to an end. Secondly, the British rule got sound footing in the vanquished land. Lastly, the British parliament passed the Government of India Act 1858 on 2nd August 1858 which liquidated East India Company and the Sub-continent came under direct control of the British crown.

After the War of Independence in 1857, 1858 Act was major constitutional document. It was beginning of the constitutional development which started from strengthening the British power and authority in the Sub-continent to accepting the rights of the locals. Ultimately this constitutional advancement culminated in the promulgation of the Indian Independence Act 1947 which caused emergence of the two Dominions i.e. Pakistan and India by dividing the Sub-continent.

RESEARCH PROBLEM

- Did constitutional struggle help the Muslims to have their separate and independent homeland?
- Were the policies of the foreign rulers and biased attitude of the opponent political party (s) main causes to convince the Muslims for launching freedom movement?

LITERATURE REVIEW

K. B. Sayeed has surveyed the causes leading to the establishment of Pakistan, transformation of Quaid-e-Azam from ambassador of Hindu-Muslim unity to proponent of Two Nation Theory, civil and military rule in Pakistan and division of Pakistan etc. in his book entitled, *“Politics in Pakistan: The Nature and Direction of Change”*. It is important for the reason that the book contains history of pre and post partition of Pakistan in detail.

Syed Mahmud-un-Nasir has given account of pre- and post-partition constitutional development of Pakistan in his book entitled, *“Constitutional History of Pakistan”*. Its prominence may be graded from the fact that major constitutional cases from Maulvi Tamizuddin Khan Case to Benazir Bhutto Case have been discussed in background of constitutional development of the country.

“Pakistan: Political Roots & Development 1947-1999”, written by Safdar Mahmood, surveys the historical, political and constitutional

development of Pakistan even from the pre-partition period. It has critically examined the political history of post partition Pakistan

RESEARCH METHODOLOGY

To accomplish task of writing this article, second source of research was adopted. Books written in Pakistan and abroad have been referred to bring out facts and to analyze them. Moreover, material available on various websites has also been explored to make this research rich.

DISCUSSION

The English rulers held the Muslims of the Sub-continent as main responsible for the war of independence in 1857. They adopted the policies which pushed back the Muslims in almost every major departments of life. The discriminatory policies soon received reaction when Sir Syed Ahmed Khan initiated Aligarh movement. It sensitized the Muslims for their resurgence and minimized the gap between the Muslims and the strange rule. With the passage of time awareness began finding its roots in the Muslims who began thinking on maintaining their separate entity and ensuring respectable survival.

Their first such important effort was witnessed in 1906 when the Muslim deputation led by Sir Agha Khan met with the Viceroy/Governor General of the Sub-continent, Lord Minto, on 1st October for achieving their political rights. One of the demands placed before British head of the Sub-continent was right of separate electorate for the Muslims. This event convinced the Muslims to assemble them in such a way that they could bring their voice in the power corridors.

Prior to meeting between Muslim deputation and the Viceroy, the Bengal was partitioned on 16th October 1905 AD mainly for the administrative reasons. It was divided into East Bengal and West Bengal. It benefitted the Muslims as they emerged as majority in East Bengal. The All India National Congress and others quarters staged protest against the decision and demanded its annulment. The political atmosphere mainly created due to the partition of Bengal convinced the Muslims to establish a political party for battling the anti-Muslim hatred, political forces and the policies of the English rulers politically and constitutionally aimed at achieving their due share in the body

politic of the country. It also sensitized the Muslims that they will have to depend on themselves as no other would come for their rescue.

All India Educational Muslim Conference, founded by Sir Syed Ahmed Khan in 1886, held its 20th session from 27th to 29th December 1906 in Dhaka. This event paved the way for meeting of the participants of the Conference on 30th 1906 under presidency of Nawab Waqar-ul-Mulk. Sir Saleemullah of Dhaka moved a resolution of establishment of the Muslim representative organization. It was seconded by Hakim Ajmal Khan. The organization was named as All India Muslim League. Its main objectives were to create sentiments of loyalty among the Muslims for the British government, safeguard and advance the Muslims' political rights and to prevent rise of hostile feelings among the Muslims towards other communities (Singh, 2010).

These objectives of Muslim League transformed with the passage of time. The conditions of the country, Congressite policies and attitude towards legitimate rights of the Muslims and international circumstances etc. paved the way for demanding separate homeland for Muslims of the Sub-continent.

After capture of the Sub-continent by the English, it was for the first time when the Muslims organized themselves on one political platform. Though there were other political forums representing the Muslims but All India Muslim League emerged to counter the policies and behaviour of All India National Congress on one side and anti-Muslim attitude of the alien masters.

The new political representative organization of the Muslims adopted separate electorate as its demand. The difference between joint electorate and separate electorate is that under the former all voters cast their votes for the candidates contesting the elections for becoming members of assembly/council without any communal or national bifurcation whereas under the latter seats of assembly or council are reserved for candidates of particular community/nation and only people belonging to them contest the elections on such reserved seats. The long cherished demand of separate electorate was accepted under the All India Councils Act 1909 was promulgated by the Great Britain.

The, Secretary of State for India, Lord Morley, introduced reforms' Bill for Indo-Pakistan Sub-continent in the British parliament in 1908 which was enacted in 1909 and is called Indian Councils Act

1909. It is popularly known as Minto-Morley Reforms. Lord Minto was the Governor General of the Sub-continent. The Muslims' right of separate electorate was accepted by extending constitutional cover. This Act associated the local people with legislation work. Moreover, they began to participate in the administration of the country. Introducing a separate electorate, narrow franchise, increasing strength of the councils and indirect election heralded new era in the political life of the country (Mahesh, 2005). After introducing separate electorate for the Muslims some constituencies were earmarked for the Muslims and only they could vote for their representatives (Brijesh, 2023). The constitution of the councils is changed in three aspects. It included numbers, proportion of official and non-official members and methods of appointment or election (Courtenay, 1911). The functions of the councils were distributed in three divisions i.e. legislative, deliberative and interrogatory (Courtenay, 1911:250).

The political events from 1909 to 1919 proved decisive in the history of the Sub-continent because of various reasons. Firstly, direction of the Muslim politics was set in the sense that All India Muslim League could struggle and achieve the legitimate rights and demands of the Muslims. Secondly, Lucknow Pact was signed between Congress and the Muslim League on December 13, 1916, mainly due to endeavors of the Quaid-e-Azam, which was last understanding between the two parties to make efforts against the foreign yoke. Sarojini Naido called this great leader, "Ambassador of Hindu Muslim Unity" in 1917 (Sikander, Quaid). Thirdly, the Quaid-e-Azam joined Muslim League in 1913. Lastly, the Muslims found a leader in shape of the Quaid-e-Azam who could lead them through the stormy sailing under the British rule and anti-Muslims policies of the various quarters.

The British Sub-continent took further step on constitutional path in 1919 when the English parliament enacted Government of India Act 1919. The Secretary of India was Edwin Montague and the Governor General of the Sub-continent was Lord Chelmsford. Both prepared a report on the constitutional reforms to be introduced in the colony through the Act of the Parliament. The Act contained Six Parts and Four Schedules. It provided for the bicameral legislature at the center in the subjugated land. The Secretary of State was being paid from the revenue of the British Indo-Pak Sub-continent but after the enactment

of the new law he began receiving payment from the exchequer of England (Mitra, H. N., 1920). The Act reduced the control of the State Secretary's for India in transferred subjects allocated to the provinces and Diarchy found place in the provincial administration by dividing the provincial subjects in the Transferred Subjects and the Reserved Subjects. The Governor was to deal with the former with assistance of the Executive Council and later by the Governor with the help of the Ministers. The diarchy system worked from 1921 to 1937. The Provincial Legislative Councils were expanded. Bicameral legislature was introduced at the Center which replaced the Unicameral Imperial Council (Syed, 2017). The Act 1919 was step ahead for legislative empowerment of the people of the Sub-continent. However, British control on the colony remained intact.

The period from 1927 to 1940 was a formative phase for building Muslims' concept of having a separate homeland. Firstly, the constitution of Simon Commission, consisting of all whites, united the people of the Sub-continent on the point that they will have to plead their respective cases themselves and leave to rely on the English for solution of their political problems. The British premier, Stanley Baldwin appointed a Commission to visit India aimed at reviewing the Government of India Act 1919. It came to India in 1928 (February-March and October 1928). The report of the Commission was published in two volumes known as Simon report (Simon, Open). The leaders of the subjugated land decided to boycott the Commission being composed of all whites (Edgar Thrope & Showick Thrope, 2012). The Commission was greeted with black flags and slogan "Simon go back" when it arrived in the Sub-continent (Baz, 2006). Secondly, the Nehru Report presented by the Moti Lal Nehru on platform of All India National Congress began to convince the Quaid-e-Azam that Hindu-Muslim unity is not panachea for the problems of the Muslims. Thirdly, the Nehru Report supported the joint electorate instead of separate electorate. In other words the report conveyed sense that the Muslims will have to live under the enmity of majority prejudice to them. Fourthly, the Quaid-e-Azam put forwarded his Fourteen Points in 1929 to counter the provisions of Nehru Report presented in 1928 and conveyed message to the English rulers that not the Congress but Muslim League is the only organization which represented the Muslims. Fifthly, three sessions of the Round Table

Conferences (1930-32) provided the Muslims an opportunity to place their demands. Sixthly, the Quaid-e-Azam had tendered resignation from the Congress in 1920 when it supported *Satyagrah* movement launched by Mohandas Karamchand Gandhi.

Satyagrah was defined by Gandhi as, “Satayagrah is literally holding on to Truth *and* it means, therefore, known as Truth-force. Truth is soul or spirit. It excludes the use of violence because man is not capable of knowing the absolute truth and, therefore, not competent to punish”. (Gandhi, 2001). All India National Congress launched non-cooperation movement. The Muslims launched Khilafat movement in support of the Ottoman Khilafat against the Britishers. Though the reasons of launching the two movements were different but both were initiated against the English rulers. The civil disobedience soon turned violent and mob attacked a police station at Chauri Chaura village of Uttar Pardesh in February 1922 and many police personnel lost their lives. Gandhi called off the non-cooperation movement (Britannica). The gulf between the congress (along with other Hindu organizations) and Muslim League grew wider rather unbridgeable from 1935 to 1940 (Shafique, 2008).

The Quaid-e-Azam dedicated himself for propagating, struggling, convincing and achieving the rights of the Muslims to maintain their separate identity and save them from any political, economic and constitutional etc. exploitation. Sixthly, the Muslims found a leader in personality of the Quaid-e-Azam who was honest to his words, efforts and aims. Lastly, the policies of the Congress, attitude of foreign rulers and emerging international scenario etc. convinced the Muslims to have their separate homeland. By 1940, one could see the transformation of a lawyer fighting for the constitutional and political safeguards of a community into an advocate of the two nation theory and proponent of separate state of Pakistan (K.B., 2015).

During this building period, the Government of India Act 1935 was enacted. It consisted of 14 parts and ten schedules. It caused the establishment of federal form of government. Section 46 of the Act classified thirteen provinces including Sindh, the Punjab, the NWFP (now KPK) and Bengal as Governor’s Province (India Act 1935, bing.com). The right of separate electorate was kept intact under the new constitution.

The Act divided subjects between federation (center) and federating units through three legislative lists. Federal Legislative List mentioned 59 subjects, Provincial Legislative List contained 54 subjects and Concurrent Legislative List provided 36 subjects. The diarchy at provincial list, introduced through Government of India Act 1919, was abolished and was introduced at federal level. Thus, the bifurcation of the subjects of administration within the provinces came to an end.

After the inception of Pakistan on 14th August 1947, with some amendments, the Act of 1935 was adopted as interim constitution of the country which remained in field till 1956 when the constituent assembly made its own constitution of the country.

The provincial elections were held in 1936-37 under the new Act. The Congress secured majority seats in the seven provinces and formed ministries there. The policies of the Congressite governments in such provinces further widened gulf between the Muslims and the Hindus and strengthened idea of maintaining separate identification.

In the meanwhile the Second World War started in 1939 and continued till 1945. The Global war environment and political conditions of the Sub-continent paved the way for demand of independent state for the Muslims. In order to build pressure on the English rulers of the Sub-continent the Congress resigned from the provincial ministries in 1939. The Muslims on the directions of the Quaid-e-Azam observed Day of Deliverance (historypak.com).

In the next year 1940, the Muslims of the Sub-continent determined their destination and then within seven years they achieved their dream. The All India Muslim League held its three days historic 27th session from 22nd to 24th March, 1940, at Minto Park Lahore. The Quaid-e-Azam presided over the session. On 23rd March Maulvi A.K. Fazalul Haq moved a resolution demanding a separate and independent state for the Muslims. The demand infused confidence among the Muslims and energized the movement launched for the establishment of the independent state. From this onwards, the Muslims under the leadership of the Quaid-e-Azam, who 'set his force steadfastly towards partition and would not be deflected either by blandishments or by threats', had devoted all their energy and wisdom to the achievement of Pakistan (Ali, K., 2018).

The All India Muslim League held its another momentous session at New Delhi from 24th to 26th April, 1943. A map of Pakistan was placed at the head of the dais in the tastefully decorated canopy... The Quaid-e-Azam, for the first time, wore on his collar a button inscribed with the letter "P" symbolizing Pakistan (Siddiq, 1997).

In July 1945, the general elections were held in the Great Britain. Labour Party won the elections and its leader Clement Attlee became the prime minister and replaced Sir Winston Churchill. He decided to dispatch high level delegation to the Sub-continent aimed at introducing constitutional reforms in the country. Three members of the British cabinet popularly known as Cabinet Mission came to the Sub-continent in March 1946. It consisted of Sir Stafford Cripps, Board's President for Trade, A.V Alexander, First Lord of Admiralty and Lord Penthick-Lawrence, Secretary of State for India. It was aimed at forging Indian federal union in which all elements of the population have ample scope to achieve their legitimate political and economic aspirations (Foreign, 1969). It also provided to establish constituent assembly to prepare a constitution of the Sub-continent, to establish national interim government by reconstruction of Viceroy's Executive Council from among the different political parties' and to establish Union of India consisting of British India and the Indian States with a federal center dealing with Defence, Foreign Affairs, Finance and Communications (Luthra, 2007).

The Muslim League accepted the plan on 6th June 1946 on the perception that the proposals had foundations of independent state for the Muslims. The Congress opposed the regional sub-federations decided to join the constituent assembly on 25th June 1946. The party was of the opinion that it could alter the plan which would abolish distinction between Muslim and non-Muslim provinces. The Congress rejected the proposal pertaining to establish interim government. Viewing the opinion of the Muslim League and the Congress afterwards rejected the plan. The Mission failed to convince two major political parties to reach on an agreement and left the Sub-continent on 29th June 1946 (Abel, 2005).

Before the Cabinet Mission Plan, provincial elections were held in 1945-46. The Muslim League represented the aspirations of the Muslims who infused their full confidence. It received clear majority on the seats reserved for the Muslims. In the provincial legislatures the

Muslim League won 440 seats out of 495 seats with following break up (Muhammad, 2011):

Name of Province	Muslim Seats League	Muslims
Punjab	86	79
Bengal	119	113
Assam	34	31
Sindh	35	35
U.P	66	55
N.W.F.P	38	17
Bombay	30	30
Madras	29	29
C.P	14	13
Orissa	04	04
Bihar	40	34

The results of the provincial elections were outcome of the struggle of Muslim League for sole objective of separate and independent state for the Muslims. Now the objective was near to be achieved. These were the last years of setting the sun of the English Empire all over the world particularly from the Sub-continent. In order to expedite and complete the process of winding up its rule from the vanquished land, Lord Mountbatten was appointed as viceroy in March 1947. He presented partition plan on 3rd June 1947. The main points of the Plan included the British government would divide India into two separate states, Dominion status would be given to successor governments of the two states, a Boundary Commission would be appointed to demarcate the boundaries if any of the communal groups decides in favor of dividing the province of Punjab and Bengal. The Sindh Legislative Assembly would be authorized to opt out whether it desires to join the current Constituent Assembly or the new Constituent Assembly and a referendum would be conducted in the North West Frontier Province to know the public opinion on joining the new state..... (Jehangir, scribd).

Jinnah, Nehru and Baldev Singh broadcast their acceptance of the plan. The League Council approved it a few days later (Safdar, 2000). All the political parties accepted 3rd June Plan. The Muslim League was jubilant because it had after all said and done, get their

‘homeland’ (Grover, 2018). 3rd June Plan was second last constitutional step for the establishment of Muslim state by partitioning the Sub-continent.

In order to implement the said Plan, the British Crown granted sanction of the Indian Independence Act 1947 on July 18, 1947 which later on the English parliament passed it. The Act’s main provisions included Sub-continent’s partition by mid of August 1947, the provinces of the Punjab and Bengal would be divided into two newly created countries, to establish office of Governor General in new countries, the constituent assemblies would enjoy complete legislative authority and the princely states were to decide to join either dominion or remain independent (legislation.uk).

The Quaid-e-Azam Muhammad Ali Jinnah became the Governor General of Pakistan and Sub-continent’s last viceroy. Lord Mountbatten took oath as Governor General of India. The efforts for the establishment of Pakistan were made without waging armed war but it was mainly outcome of the constitutional struggle which faced the policies of the Congress and the Governments of the Great Britain and the British Indo-Pak Sub-continent.

CONCLUSION

The independent state for the Muslims was inevitable due to policies of the All India National Congress and governance by the British government in the Sub-continent. All India Muslim League while representing the sentiments and wishes of the Muslims also fought constitutional war. The foreign rulers convinced with the passage of time that the Muslims deserve a separate state. The establishment of separate state for the Muslims in shape of Pakistan was different from most of the countries who gave up foreign yoke. It was created after partition of the Indo-Pak Sub-continent which was mainly governed under the one central territorial governance.

REFERENCES

BOOKS

- Abel, M. (2005). *Glimpses of Indian National Movement*, ICFAI University Press, Hyderabad, p.262.
- Ali, K. (2018). *A New History of Indo Pakistan*, Pakistan Book Center, Karachi, p.443.

- Bhatnagar, Mahesh (2005). Constitutional Development and National Movement of India, S. Chand & Company Ltd, New Delhi, p.169.
- Gandhi, M.K. (2001). Non-Violent Resistance (Satyagrah), Dover Publications, New York, p.3.
- Grover, B.L & Alka Mehta. (2018). A New Look at Modern Indian History: From 1707 to Modern Times, 2018, S. Chand & Company Ltd, Noida, p.425.
- Khan, Shafique Ali. (1988). The Lahore Resolution: Arguments for and Against: History and Criticism, Royal Book Company, Lahore, p.48.
- Luthra, H. L. (2007). A Text Book of General Studies, Vol.II, Pitamabr Publishing Co. (P) Ltd, Karol Bagh, p-137.
- Mahmood, Safdar. (2000). Pakistan: Political Roots & Development 1947-1999, Oxford University Press, Karachi, p.30.
- Mitra, H.N. (ed.). (1920). The Government of India Act 1919 Rules There Under & Govt. Reports 1920, N.N.Miter Annual Registrar Office, Calcutta, p.22.
- Muhammad Baz. (2006). Pakistan Studies, Royal Book Company, Karachi, p.24.
- Nasir, Syed Mahmud-un-Nasir, (2017). Constitutional History of Pakistan (1909-1927), Mansoor Book House, Lahore, pp.12-15.
- Saeed, K.B. (2015). Politics of Pakistan: The Nature and Direction of Change, Peace Publication, Lahore, p.25.
- Salik, Siddiq. (1997). Politics and State: A Case Study of Pakistan, Al-Faisal Nashran, Lahore, p.23.
- Singh, Brijesh. (2023). Comprehensive Modern Indian History, S.Chand & Company Limited, New Delhi, p.229.
- Thrope, Edgar Thrope & Showick Thrope. (2012). The Pearson Concise General Knowledge Manual, Dorling Kindersley (India) Pvt. Ltd. Noida, p.2, 29.
- Vipul, Singh. (2010). Longman History & Civics, Dorling Kindersley (India) Pvt., Ltd., Novida, p.70.
- Yusuf, Muhammad. (2011). Pakistan: Milestones Chronology: March 1940-August 2010, Sindhica Academy, Karachi, p.19.

PERIODICALS

- Foreign Relations of the United States 1946 Volume V, The British Commonwealth: Western and Central Europe, 1969, Department of State Publication, Washington, p.100.

WEB SITES

- Britannica, "Noncooperation Movement: Indian History", retrieved from: <https://www.britannica.com/event/noncooperation-movement>. Accessed on 5th September 2023.
- HistoryPak, "Congress Ministeries (1937-39)", retrieved from: <https://historypak.com/congress-ministeries>. Accessed on 10.9.2023
- Ilbert, Courtenay, "The Indian Councils Act 1909", *Journal of Comparative Legislation*, 1911, Vol.II, No.2 (1911), Cambridge University Press,

- retrieved from <https://www.jstor.com/stable/75250>. Accessed on 05.08.20230, p.246.
- “Indian Independence Act 1947”, https://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf. Accessed on 11.09.2023.
- Jehangir, “June 3rd Plan 1947”. Retrieved from <https://www.scribd.com/document/290837169/3-june-plan>. Accessed on 11.09.2023.
- Sikander Hayat, “The Political Transformation of the Quaid”, retrieved from <https://www.hilal.gov.pk/eng-article/detail/NTY5Mw==.html>. Accessed on 4.9.2023
- “Simon Report”, Making Britain, The Open University, retrieved from: <https://www5.open.ac.uk/research-projects/making-britian-content/simonreport>. Accessed on 3.9.2023.
- “The Government of India Act 1935, 26 Geo.5. CH.2, P-213. Retrieved from: <https://www.bing.com/search?q=Govt+of+India+Act+1935+text&cvid=09ec3187cc4c4dc884288003cb492911&aqs=edge..69i57j69i64.10984j0j4&FORM=ANAB01&PC=U531>. Accessed on 10.09.2023.
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