ISLAMIZATION IN PAKISTAN:
A POLITICAL AND
CONSTITUTIONAL STUDY FROM
1947-1988

A DOCTORAL DISSERTATION

BY

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BY

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To my MOTHER
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ABSTRACT

The universal characteristics of Islamic State are derived from the teachings of the holy Quran, as embodied in the political practice or the Prophet Mohammed (PBUH). An Islamic State is closely linked with the society because Islam is accepted as a comprehensive integrated way of life. The State is only the political expression of an Islamic society. The majority of the Islamic states are so far not in a position to recognize Islamic ideology.

In many quarters of the Muslim world a strong momentum exists to reassert Islamic principles in social, economic and political spheres. This momentum often involves a quest for a new Islamic identity, which may include redefinition of traditional Islamic institutions and application of Islamic Laws.

During the past quarter century, numerous political developments across the Muslim world have dramatically pointed to Islamic reassertion of Islam's political culture. The success and resilience of the Islamic revolution in Iran, the fierce and long Afghan resistance, popularly known as 'Jihad', against the Russian controlled government in Afghanistan, the devastating strife between the secular military government and the Islamic popular opposition in Algeria as well as progressive revival of some traditional Islamic laws in Pakistan, Egypt and Malaysia.
are testimonials to the resilience of Islamic political sentiment and the resurgence of its political values in these modern times.

In the popular media most Islamic socio-political developments are frequently attributed to "Islamic fundamentalism". Basically what distinguishes fundamentalism from liberalism is mainly the understanding of Islamic social and political values.

Islam played a definite role in Pakistan during its formation. Though many attempts have been made since 1947 to establish a political system representative of its Muslim population, the issue of secularization and Islamization is far from settled. Pakistan has had constitutions which upheld governmental and legal institutions not specifically totally Islamic where liberalism, topped a reformist agenda. Such issues in Pakistan's political and constitutional history have been characterized by increasing challenges by Islamic activists and intellectuals and terms like "Republic" had to be substituted by the notions of "Islamic Republic" or "Islamic State". The concept of Islamic state has dominated religio-political thinking in Pakistan ever since its creation in 1947. After the military coup d'état of 1958 General Ayub Khan's government imposed martial law in the country, abrogated the constitution and dropped the Islamic Republic from the nomenclature of Pakistan thus signaling a rejection of Islamic commitment but as soon as the martial law was eased the debate about the secular and Islamic nature of the Pakistan re-emerged.
The distinguishing criteria for attitudes in Muslim societies are termed as political secularists and political Islamists. Political secularists exclude Islam as irrelevant to or undesirable in statecraft. Political Islamists believe that Islam makes some political demands on them and would therefore like to pursue Islamic political teachings in matters of statecraft. In Pakistan Modernist's and Islamists have both influenced the constitutional and political development thereby affecting the process of Islamization.

The Pakistan movement mobilized the Muslim masses in the name of Islam under the charismatic leadership of Jinnah although the colonial state in its pristine form did not provide any role for either ideology or charisma. Allama Iqbal proposed the formation of a separate North-West Indian Muslim state comprising Punjab, Sindh, NWFP and Baluchistan.

The Muslim League thus produced new patterns of interaction of Islamic ideology and politics. As the Pakistan movement gained momentum the fundamentalist Ulema of Jamaat-i-Islami and Jamiat-ul-ulema Hind condemned it and termed the Muslim league as un-Islamic. The first 11 years of independence were crucial to molding Pakistan's political, ideological and institutional profile and it failed to introduce even a formal democracy with periodic free and fair elections. The bureaucratic-military elite pursued centralized and authoritarian governance, changed federal and provincial governments and excluded those who questioned their political management.
Pakistan deliberately and systematically adopted regional disparities. Economic policy under West Pakistan civil servants led industrialization in East Pakistan far behind. In the wake of ethnic conflicts the orthodox and the conservative Islamic parties, most of which lost their credibility during the last phase of independence movement due to their refusal to endorse the Muslim League's demand for Pakistan, found the confusion in Pakistan's political scene suitable to stage a comeback by demanding the establishment of an Islamic state on conservative lines.

Modernist under the Muslim League believed that Islam was an indispensable ingredient of their political legitimacy but they were reluctant to abandon their own political culture, that of western style democracy on the British model. They simply wanted to seek Islamic legitimacy to their own institutions. Pakistan was proclaimed an Islamic Republic, the declaration of objectives proclaimed the sovereignty of Allah. Principles of policy stipulated links with other Muslim countries, teaching and research organization would help build an Islamic society and a consultative commission on Islamic ideology was to ensure that the laws passed by the parliament were in conformity with the Quran and Sunnah.

More emphasis in the Peoples Party program was on Islam. Ending Pakistan's isolation Bhutto gave himself international legitimacy in the name of Islam by playing a dominant role in
the Islamic Conference organization, the Muslim countries federal body, summoning it to meet in Pakistan. Gen. Zia-ul-Haq who is usually held uniquely responsible for Islamization of Pakistan's legal system restored matters by setting limits on the Islamization of the country. In effect Zia had established a dual system of Anglo-Indian-type modernist law where Islamic law was relegated to a minor role. Gen. Zia came with a Islamic agenda and political expediency also demanded that he take a position diametrically opposed to the one taken by his military precursors Gen. Ayub and Gen. Yahya Khan. Zia also brought an alliance of sorts between the military and the Islam Pasand (favoring) parties. Zia also used Islam as an instrument of foreign policy to strengthen Pakistan's relations with Muslim countries. The trend of fundamentalists neo-totalitarian Muslim movements which is contrary to the political, cultural and historical traditions of the Muslim majority, included Muslim Brotherhood in the Arab world, Jamaat-i-Islami in Pakistan, Sharekat Islam in Indonesia and Islamic Government of post revolutionary Iran, all had their impact on Pakistan's foreign policy although none of these movements succeeded in attracting the majority of workers, peasants and intelligentsia. Emerging reality of Shia-Sunni conflict is sweeping Pakistan now as all major religious groups have their private militias.

The state has used religious parties to recruit, indoctrinate and train militants who have fought in Kashmir and Afghanistan. The all encompassing Islamic ideology of the religious parties tends
to support the state particularly the centralizing aspects of Pakistani federalism and has prevented religious parties from addressing issues of ethnicity and regional rights. Ethnic nationalism has not been handled adroitly by the Pakistani state. Pakistan has been ruled by traditional oligarchies, be it the military, civil service or political leadership. Military’s dominance in Pakistan has been because of failure of the political leadership. The military is the most cohesive, disciplined and task oriented institution in Pakistan. The military can continue to influence the political process while staying at the sidelines.

There can be no specific model of a modern Islamic state and Muslim countries have adopted different political structures in view of their socio-economic requirements. Countries like Malaysia, Indonesia, Turkey, Bangladesh and Iran: all have Islamic laws and ideology but have different systems and infrastructures to provide it.
نظام عالم

ایک اسلامی ریاست کی افعالی جسمانیت قرآن کی تلقینات پرچم بندی ڈاکتیور کی کرکے کے گئے مسیح کی بخشیں نہیں۔ جب انہوں نے اسلام دریافت کیا جامع معظم طریقہ قدم کے طور پر پارامیکسا کا کام کیا۔ اسلامی ریاست اسلامی معاصرب کے جدید تصور کے جلد اسلامی ریاست کا تنازع کیا جائے گا کیونکہ اسلامی معاصرب کے بدلے اسلامی نظام کے فقہ کی باقاعدہ کوششوں کہتے ہیں۔ ان کھیڈے معاشرتی مسائل کو کھیر کو جو بہتر فکر کی ہوتی ہے - ایک جدید معاصرب سے شاہی اسلامی نظام کا فقہ ہے۔ میں یہ معاشرتی نظریات سے سکھا ہوں۔ معاشرتی فکر سے، ایک جدید معاصرب سے شاہی اسلامی نظام کا فقہ ہے۔ اس میں وہ اسلامی ریاست کی آگرہ بنا سکتا اس حیثیت میں حاصل شدہ نہیں۔ اس معاصرب سے شاہی اسلامی نظام کا فقہ ہے۔ کوئی بھی ہمیشہ مسلم ہی بنا سکتا ہے۔ اگر ہمیشہ مسلم ہی بنا سکتا ہے۔ کوئی بھی ہمیشہ مسلم ہی بنا سکتا ہے۔ اگر ہمیشہ مسلم ہی بنا سکتا ہے۔

تقریب ہو کر پاکستان کے وہ امام کے قیام کے بعد اس کی ابتکاری دویں سے کام ہے کہ کہ کوئی کوئی انسان کی طرح کے کوئی انسان کے کردار ہوں گے۔ اس کوئی انسان کے کردار ہوں گے۔ اس کوئی انسان کے کردار ہوں گے۔ اس کوئی انسان کے کردار ہوں گے۔ اس کوئی انسان کے کردار ہوں گے۔
کے قیام اور استحکام کے نیا منہ میں مقبول ہوگئی - نئی سازی نمایشی میں سے عوام اور عوام پر ناکام خیال کی تعلیم اور فرقاً عیسیٰ نے ان کے میدان میں ایک نئی اور سیاہی قائم کے نئے خیالین کے نگائی کی نویں کو گھوڑے سب کے اور پیکا صادق بیان کے نئی اور عوامی مصنوعات کے نئی اور سیاہی ڈبلس کے نئے چیلنج کو گھوڑے سب کے سب سے طویل دور میں نوزده اصفهان کے نوازندگی کا ناکام کا ہوا دوہنگی وہ کہ اور ناکام کے نوازندگی کی حالتیں کے اور کے قیام کے بعد عوام کی فنکاری کی تبدیلی کے لئے ان کا کردار بہت چھوٹا بھی نہیں کیونکہ پاکستان کے قیام کے لئے اور وہ کی نوازندگی کے لئے اور دوہنگی بھی نہیں کیوں کہ وہ اور پر حضرت پی.
INTRODUCTION
0. **INTRODUCTION**

Islam is a complete code of life and its rise is an important event in human history. Its rise was so fast that within a century it spread over large part of the world. Its sudden rise resulted in the shattering of great empires, overthrowing long established religions, remolding the soul of races, and building up a whole new world—the World of Islam. If we analyze the various aspects of this development, it seems to be more extraordinary as the other great religions of the world had established their credentials slowly and gradually, by extra efforts, painful struggles, and finally succeeded in establishing in the world with the help of powerful monarchs converted to the new faith.

A number of factors were directly responsible for its amazing Success; foremost among them was the character of the Arab race, the simple and impressive nature of Prophet Mohammed’s (PBUH) teachings and the general environment prevailing in the world. The Arabs were a people of remarkable potentialities. As an administrator he knew what the People needed and introduced reforms both political and social having immense value because of all this once a Small town of Medina was transformed into a Universal Islamic State in the two centuries following His demise. The Islam swept out of Arabia and filled the spiritual vacuum in the neighboring Byzantine and Persian empires. Furthermore, the people living in these empires were not loyal to the state because both the empires were harsh and
despotic and adopted various repressive measures to crush their subjects. The ancient cultures of Greece, Rome, and Persia were merged by the Arabs and they encouraged inter marrying, freedom of ideas and traditions of different civilizations.

The sudden demise of the holy Prophet Mohammed (PBUH) created a virtual division in the Islamic society. At that time an Islamic State was in existence in a large part of Asia. His successors were popularly known in the first Muslim State as Caliph. After his death, almost at once, the state became divided into two groups—the followers of Hazrat Usman, and those of Hazrat Ali, Prophet Mohammed’s (PBUH) son-in-law. In 41 Hijra, the institution of the dynastic Caliphate was established, that of the Umayyad were based in Syria, and under their rule the Islamic empire extended eastwards as far as the borders of India and China and westwards to the Atlantic. In the east, local dynasties appeared in Persia, namely, the Tahirids, and the Samanids, who succeeded in raising the structure of an extensive domain in Central Asia, from where they easily expanded the borders of the Islamic empire. Spain was the first country to emerge in the west, followed by the establishment of independent dynasties in Morocco, in Tunisia and in Egypt. Later, they could not maintain their control and were compelled to share power with non-Arab converts to Islam and notably with Persians in the east and Berbers in the west. At about the same period, another ethnic element had made inroads in the Middle Eastern Islam—the Turks who in the central Islamic lands were led by the family of Seljuk, which established a new institution, the universal sultanate claiming authority over the whole of Sunni Islam and co-existing with the Caliphate, which it recognized.\(^1\)
The Mongols landed in the Middle East in the 13th Century and conquered the whole of South-West Asia and incorporated it for the first time in an empire with a capital in the East, first in Mongolia and later in Peking. Later they themselves adopted Islam, as a result of which several new states with a strong Turko-Mongol character appeared in the North-West Asia. In the period following the Mongol invasion, five prominent political centers were working in the Islamic world. The third Islamic state prospering was Iran. The Safavids were Shiites and declared immediately Shi'ism as the State religion of Islam which has remained to the present day.

The last centre of Islamic power successfully functioned in the Eurasian steppes, in what is now Southern Russia and Soviet Central Asia. Here there were two large states of Islamized Mongols, the khanate of the Golden Horde based on southern Russia, and Chaghatayakhante based on Central Asia. The military strength of the Ottoman, Mogul and Persian empires succeeded in delaying these changes for some time, but with the passage of time these also weakened and could not resist the European advance. The domination of West continued until the aftermath of World War II when the colonial empires of Britain, France, Holland, and Italy were dismantled and their former territories became independent. However, in the post Second World War period, the Muslim States once again retained their lost prestige and political and diplomatic steps were initiated to unite the Islamic countries of the world. The Muslim world because of plenty of oil it has got started playing an important role in world politics. The two super powers have their own different stakes in this region, and both had been struggling hard to further consolidate their position.
Islam is a progressive, directed equally against such human failings as immorality, materialism, and political and ecclesiastical tyrannies wherever and whenever such defects are seen to exist. To a common man, it stands for religion preached by the Holy Prophet Mohammed (PBUH) and practiced by a large section of mankind all over the world. To a historian, the word ‘Islam’ suggests more than a system of religion; it stands for a distinctive civilization and a Socio-economic order, based on a form of practical theology. To an ordinary Muslim, the word ‘Islam’ is conceived as the name of his religion and as such comprises a system of life, guiding his followers individually and socially, whilst binding its members into a fraternity which transcends the boundaries of state, language, race, color and local traditions an order that regulates the relations between men and women from the point of view of their worldly welfare, besides regulating the relations of the individuals to his or her concept of God. The secondary or derivative meaning of the same word would indicate the state of being at peace or of entering into a state of peace. The holy Quran declares that “This day I have perfected for you your religion and completed my favor on you and chosen for you Islam as a religion”. It is entire submission to God, and the doing of good to His creatures that is the true source of salvation and that is what Islam means according to the Holy Quran. The holy Quran is the most fundamental and authoritative source of Islamic beliefs and injunctions.

Islam is a universal religion. According to its teachings, every man, without distinction of race or language, is invited to accept the oneness of God and the mission of the Prophet Mohammed (PBUH). The five pillars of Islam are to be adopted and many Muslim theologians are of the opinion that any man who subscribe to these may be regarded as a Muslim. According to some
orthodox interpretations, Islam is a fixed, immutable system of values, body of doctrine, forms of worship and behaviors in the various relationships of life. Commonly, Muslims have a tendency to connect the name of Islam with the idea of peace and even some Muslim scholars of the 20th century consider that Islam is the only religion of practical peace. Wherein, a Muslim has to resign himself to the will of God. Hence Islam means submission and peace. Islam does not allow any form of mixture religion and politics and therefore, it presents politics and religion as one whole with the sovereignty of God, the fundamental principles. Islam opened a new chapter in the human history by granting social justice, tolerance and equality to all. The administration of justice was cheap, speedy, and simple and guaranteed the independence of judiciary.

The foundations of political authority in Islam were visible in the early community established by the Prophet in Mecca. The prime objective of the state was to enforce the divine law, as revealed in the holy Quran (the word of God as revealed to Prophet Mohammed (PBUH) and the Sunnah (the practice of the Prophet Mohammed (PBUH). If combined together, they were seen as containing God’s dictates on what man should be and do, and as showing a segment of God’s plan for creation. However, it was widely accepted that it was very difficult for an individual to confirm entirely to the injunctions of Islam unless and until the practical affairs of his society were in line with God’s revealed plan.4

There is no specific discussion in holy Quran regarding the concept of State in a concrete form. It has discussed at great length need for the establishment of just social set up. As the term Islamic State is widely used and abused, there is a need to examine in depth what does it really mean to the modern
Political scientists. It is believed that the Treaty of Medina has in fact announced to the world the birth and establishment of state, headed by Prophet Mohammed (PBUH) as the temporal and spiritual leader of that first nation-state of Islam. The universal characteristics of Islamic State are derived from the teachings of the holy Quran, as embodied in the political practice or the Prophet Mohammed (PBUH). An Islamic State is closely linked with the society because Islam is accepted as a comprehensive integrated way of life. The State is only the political expression of an Islamic society. The ideological foundation of an Islamic State lies in the doctrine of tawheed—the unity of God—as a comprehensive and exclusive program of worship.⁵

In theory, the Islamic State is, Allah’s state, or the kingdom of God on earth, and the Muslims constitute Allah’s party (hizbullah), it is based on two-fold concept of happiness and creating such an atmosphere in which the people must feel happy and satisfied. Even if the Ulema (traditional scholars of Islam) are asked to interpret the concept, they will broadly disagree on its various aspects. Prophet Muhammad provided the broad concepts of Islamic State and His successor Caliphs only followed his practices and sayings and accepted as the guidelines to run the affairs of the state. As during the time of Prophet Mohammed (PBUH), the territory of the Islamic rule was very limited and confined to the Arabian Peninsula which was dominated mostly by nomadic tribes. But the four pious Caliphs whose jurisdiction increased as a result of the massive victories, the Muslim armies won over the territories of the Roman and Sassanid empires, faced acute problems of complex nature.⁶ They selves into the new situation and framed new rules and regulations needed for the smooth running of the administration.
The period of the *Pious Caliphs* lasted only thirty years. With the emergence of *Amir Maviyah* (the first of the Umayyad rulers) and their consolidation of power, the basic character of the Islamic State underwent a major change. The dynastic rule was introduced and Caliphate was designated as the monarch. The area of the Islamic State also increased with more conquests which resulted in the fundamental changes in the structure of the government. The mercantile class had lost its importance and bureaucracy, landed aristocracy and military offices gaining the upper hand. The nature of Caliphate no longer remained theocratic and for all practical purposes, the Islamic rule had come to an end after the initial thirty years period. In the city state of Medina it was he who introduced a number of changes in the Muslim society and molded it into a political organization. He united all the Arab tribal courts under his own banner by abolishing the tribal courts and all the tribal chiefs of the Arabian Peninsula declared their allegiance with him. This new community of Islam owed its existence to the common bond of religion, as the *Ummah* (the universal community) or the congregation of God upsetting all ancient tribal affiliations and loyalties.

Prophet Mohammed (PBUH) was committed to introduce the feelings of fraternity, equality and brotherhood in the society as in his opinion before the authority of God everybody, including the slaves and women are equal. The views he expressed regarding equality, brotherhood and love for mankind, are being violated not only in the non-Islamic states, but the Islamic states have interpreted the sermons issued by the Prophet and various verses of the holy Quran in order to fulfill their political objectives and ambitions.
Prophet Mohammed (PBUH) advocated theocratic State in which God would be supreme and the political power would be held by Allah or the Divine Law (Shariah). In this state every individual would be free to perform the duties according to the Divine law. The Shariah has been provided in the holy Quran and supplemented by the Prophet in the body of the teachings known as the Sunnah or the way of life of the Prophet. As long as he was alive, no problem emerged as he exercised absolute sway over his followers, deriving his authority from his divine office. That was why the holy Quran did not lay down any form or type of state, nor did it provide any specific measurement to which the Islamic state must conform. There was no systematic directive available and left the govern mental activity to the ijithad of the time concerned In the holy Quran three general principles are laid down which hold good for all time for the believers:-

1. Rule of Justice

2. Decisions by consultation

3. Obedience to God, His Prophet and rulers

The holy Quran says that a ruler must try to settle his affairs by consultation, which is considered to be a democratic norm. The meaning of the term ‘consultation’ is not clear in the holy Quran. Probably the holy Prophet wanted that his successors should themselves interpret its meaning according to the political socio economic conditions prevailing in their territory and adjust the term ‘consultation’ accordingly.

The Quranic concept of Ummah is unique. The Quranic verses at many places discuss the universality of the message of Islam. The purpose behind this message “is to organize the total range of human affairs on the
foundations of a cosmic moral order; in other words, Islam is the moral orbit around which human life ought to revolve in order to revive the content of the divine message." The faith in God in fact transforms ordinary individuals into an Ummah. It is this faith which influences the overall personality of the individuals. It is firmly rooted in the rule of the Divine law." The moral laws are the only basis on which the Ummah can be integrated as Islam does not prefer the other basis of integration such as geographical unity, common bonds of language, culture, history and traditions. Therefore, it may be said that Islam is the very anti-thesis of nationalism, which localizes the area and scope of integration within a territorial society and brings about disintegration of the larger political unit. The concept of Ummah has been given due recognition in the modern world, though in somewhat different perspective form and approach. It is linked with modern concepts of national integration, confederation and a world government.

The circumstances prevailing in the Muslim world, where each country is having its own different foreign policy objectives, in the hope of achieving these objectives they have adopted different methods. Similarly, their goals, needs, aspirations and national interests are not the same. The majority of the Islamic states are so far not in a position to recognize Islamic ideology. Even those states which have committed themselves to mould the social, economic and cultural values of their people on the basis of truly Islamic ideology, have not yet been able to define the content of the Islamic ideology. Therefore, to accept the idea of evolving a common approach of the Muslim states in world affairs with an Islamic ideology at the base appear somewhat dim. It appears that proper atmosphere should be created
for achieving the ultimate goal of political integration of the Islamic Ummah:

1. The public opinion in the Islamic countries should be made aware of the ideology of Islamic universalism with a view to create the psychological climate. They should know the exact meaning and other aspects of the Islamic Ummah as ideological community with a political organization. Ummah does not recognize the idea of centralization as was prevalent in the early Caliphate. It rather believes in a complete balkanization of Ummah into sovereign nation states. The other important point is that the psychological cohesion of the world Ummah is the Islamic universal Shariah. To convince the people of the Muslim world, universal application of the all-embracing Shariah law must produce the desired unity of mind, of will and of body within the Ummah. A common belief in the world Ummah and the Shariah will ultimately destroy the complex idea of nation state.

2. The Islamic ideology must be examined closely and its various constituent concepts should be given a proper shape in the form of concrete symbols and institutions. The Islamic countries are presently moving towards such integration such as OIC.

3. The Islamic World should also work for the economic integration. The economic Co-operation among the Muslim people may be encouraged in the hope of solving the economic problems and other related matters. But, this idea is also not workable as these Muslim states have their own outlooks concerning economic development and co-operation. Moreover, there is no uniformity
among the Muslim states on the economic level. Because of general economic backwardness in most of the Islamic states, they look towards the Western world and other sources for the solution of their economic problems. We may say that first; the ultimate aim of Islam is to establish a universal community, Ummah. The others having faith in non-Islamic ideologies may convert themselves into Islam and then if they desire so can join the Ummah. Second, Islamic ideology revolves around the commitment to enforce the Universal Divine Law in the community. The community will see to it that everything may be according to the needs of the people and demand of modern age.

4. Islam also preaches about the political integration of the Ummah on a universal basis so that it may become a world Ummah.

5. An Islamic State is not fully sovereign in the sense that according to the faith of Islam, ultimate Sovereignty vests in God. In strict sense, it is not a national state because the Ummah is a community of faith, and mostly comprised of different tribes races or nationalities, who may speak different languages and be of different colors, but who share a common spiritual aspiration of faith.

The Holy Quran has not covered all the aspects of the government particularly on many of those questions in the ever changing social and political conditions of the first century of the hijra, when Islam intermingled with the highly sophisticated and advanced Byzantine and Sassanid civilizations, giving birth to all kinds of controversies, conflicts and contradictions. No doubt, there is no mention in the holy Quran about the
structure of the state, but this omission instead of leaving scope for
adjustment to new conditions motivated the Muslim scholars and jurists to
interpret the different verses of the holy Quran in their own style and way.
The government was running the administration by drawing inspiration from
the holy Quran and the teachings of Prophet Mohammed (PBUH). The
advice of the representatives of the Muslim community was made available
by the Shura or the Council of Elders. The Islamic ideology is not concerned
with popular enactment of law as they reveal the external will of the
Almighty. The laws are to be enacted by a legislative body or political
authority where the holy Quran is silent and the Prophet has also not said
anything. It seems fit that the Caliph is authorized to offer his interpretation.
In the Islamic State, no body can violate the laws of the Shariah. Violation
of law is considered a sin and a grave offence. The Caliph is responsible for
the implementation of the Shariah on citizens, and can impose limitation as
laid down by Shariah. He is also responsible for the defense of the Islamic
State and authorized to command the army, collect the lawful taxes
(according to the Shariah) from the people and punish those who involve
themselves in cheating and corruption.
No individual is authorized to dismiss the Head of the Muslim State. Even
an adulterer and a tyrant have to be tolerated by his people. But political
authority is checked by the religious restraints. If an Imam in power commits
or indulges himself in a sacrilegious act, deviates from Shariah or indulges
in something which is against the teachings of Islam, he is to be dismissed
from Imamat. The Muslim scholars Ibn Abi-ar-Rabi, Ali-Farabi and Ibn
Khalidun have discussed the concept of sovereignty in an Islamic State. Even
the holy Quran has declared that if there were other God in the universe,
there would have been chaos and confusion. A divided sovereignty is nothing but a contradiction in terms.

Islam is secular in character and it gives respect to every religion and provides justice to the non-Muslims. The holy Quran has stated "let there be no compulsion in religion." It further adds "Lakumdeena kum Waleydeen (upto you, your religion, and unto me, my religion)." In the same tone in the holy Quran, it has also been emphasized that "you are the best nation ever brought fourth to men, commanding right conduct, and having faith in God." Influenced by the Western liberal ideas of religious tolerance, the modernist interpretations tend to play up the traditional view of the identity of prophetic teachings, while at the same time not rejecting the thesis that all men ought to become Muslims.

Hence, there is also a need for rapprochement between the historic character of the Islamic institutions and the modern Western ideas concerning the mutual relationship of the state and community. The community for its proper functions must be given proper freedom of diversity, consistent with the requirements of the state as a guarantor and a Servant of its liberties. In the early days of Islam there was a strong relation between the two. Prophet Mohammed (PBUH) worked for the establishment of a nation by completely uniting different tribes and their heads. Religion, therefore, since then is the basic bond of the Islamic community: A community thus built up on the institution of worship, and associated religious ceremonies and precepts, appealed to the deepest human instincts. In the Islamic system, religion is completely understood by its relationship with the community and community in its turn is identified with the state. This community of Islam was considered in theory, of the chosen few and they were asked to establish
the sovereignty of Allah on earth. There was also an insistence on the common mode of life to be adopted in the Islamic system. The advocates of the Islamic State can learn from the experience of community building in Islam in the early period. They would definitely recommend the common mode of life for all those living in an Islamic State.

In view of the strong tendency to the identity of the state and community in primitive Islam, any modern Islamic State is likely, in loyalty thereto, to minimize differences within it arising out of geographical and cultural backgrounds. Its state structure would tend towards uniformity and common mode of life rather than towards diversity.

In the Islamic State laws which are not in conformity with the Holy Quran and the Sunnah should not be allowed to exist. The ultimate source of authority according to the Islamic principles is God alone. As Islam is a comprehensive religion, and gives guidance in all walks of life. "Fiqh the law of Islam, as developed from the very beginning, comprehends, with special care, religio-moral, social, economic, and political aspects of human life."13 That is why if a man in the Islamic state is performing his duties according to the Islamic law, he is deemed to be fulfilling God's will. The primary source of Islamic legislation is the holy Quran. Undoubtedly, the Sunnah is as an independent source, but for all practical purposes, it is secondary to the Quran.

The Sharī'ah is composed of those clear-cut commands and prohibitions which are contained in the holy Quran and the Sunnah and nothing else. The great jurists and scholars of Islamic jurisprudence over the years have deeply studied and examined the holy Quran and the Sunnah and have developed a number of legal principles with regard to many problems. But they cannot be
treated as part of the Shariah as their main intention was to facilitate the application of Shariah principles to specific questions arising in their time.

In the Muslim financial system, to secure the social welfare out of the revenue of the state has been accepted as the prime guiding principle. Prophet Mohammed (PBUH) was motivated by the simple idea that Treasury of a state belonged to whole community irrespective of any distinctions.

The Islamic economic system is accepted as the first and foremost capitalist system and it is based on three well-known economic principles: Private interest and gain as a target, competition as a means, and freedom as a prerequisite condition. Moreover, the moral and ethical concepts have been given proper place in the system and obey fully and unconditionally to these dictates. The difference between the Islamic and the capitalist economic system is regarded as cardinal and fundamental. In the Islamic system the community as a whole is accepted as the main factor whose welfare and well being is always on the forefront while in other systems such emphasis is on the individual factor.\textsuperscript{14}

The Islamic system forbids the concentration of wealth in the hands of a small minority or group. Instead it advocates the distribution of such vast capital into small and medium sized units. The law of inheritance laid down in the Islamic system provides for the splitting up and distribution of wealth over a wide range of beneficiaries. It also insists on the principle of combating, wisely and sanely, the mischievous tyrant of large financial capital.\textsuperscript{15}

The Islamic system does not at all recognize the lending of money on interest as it wages a war, a determined war against all transactions and
loans whose only aim is to collect the interest from the borrower. The lending of money on interest is prohibited by Islam because labor is "regarded in the Islamic system as complementary to capital, and in some case equal to it." While Islam prohibits interest and expects the well to do to provide interest free loans to those who lack capital, it at the same time lays very strong emphasis on all borrowers for prompt payment of their loans. If there is no interest, then a number of problems will emerge. The purchasing power of money would be used up either in consumption or in investment, directly through banks operating on the principle of profit and risk sharing in a joint enterprise in the Islamic economy. That is called the institution of mudarabah in Islamic economies. In the presence of mudarabah the positive rate of profit would take the place of rate of interest. A positive rate of profit arrests the problem of speculative demand for cash balances because the ex demand of money capital is reduced to an actual demand and this is based on a poor contractual sharing of profits from a joint venture in accordance with relative costs or relative capital outlays in a given production or investment.

Zakat is another practice of the Islamic ideology which has already become a part of Islamic economic and social set up. Was it not a wise step for enforcing the law so that economically weaker people of the Islamic community should be saved from succumbing to irresponsible and atheistic ideologies? As no one willingly and voluntarily provide material help to the needy with the result that the Muslim community won't be able to register progress in educational, cultural and allied fields.

The continuing vitality of Islam has been given due importance in the contemporary world. The Islamic world has started asserting the continuing
validity of the teachings of Islam in the context of modern history. Keeping in mind what has been said in the holy Quran and the Sunnah legal systems (Shariah), social institutions and economic structures are being examined in terms of Islamic expectations. In some parts of the world, it is the product of government action, and elsewhere the motivating force behind it is the activities of non-governmental associations and individuals. However, "behind the diversity is a common belief that the truth of Islam is regardless of changing circumstances."¹⁹

After the emergence of western colonialists and their objective to establish domination over Muslim countries which were at that time part of the Ottoman Empire, some Muslim thinkers were compelled to examine the serious modern challenges with a serious bid to come to grips with new realities of modern age. New forces, such as constitutionalism, nationalism, and even social unrest, which had long been obscurely germinating in Islam but which had been previously denied expression emerged into focus. The First World War thus found Islam everywhere deeply stirred against European aggression, keenly conscious of its own solidarity, and frankly reaching out for Asiatic allies in the projected struggle against European domination. Pan-Islamism thus emerged and spread as a result of the external aggression. It had its roots in the sentiment of unity which binds Muslim to Muslim by bonds of friendship, religious tolerance and affection. The Islamic world, one finds variations in local customs and traditions but there is complete understanding and unanimity on the basic law. In the 19th century, most of the Muslim scholars were of the view that Islam must be jettisoned, of the medieval accretions and its pristine purity restored. No one talked about reformation and were mainly interested in the restoration of the
Islam of the *Salaf* the first companions and successors of the *Prophet*.

Those belonging to the 20th century, particularly Abda Rashid Rida and Ghazali base the Islamic State on Shariah. They feel that Shariah is the axis around which the religion of Islam revolves. According to Maulana Aza Din in reality was devotion to God through righteous living, and was no exclusive heritage of any single group of people. On the other hand, *Shariah* was the common heritage of all mankind, and knew no change. A number of Indian Muslim intellectuals, particularly Sir Mohammad Iqbal and Sir Syed Ahmed Khan, dissatisfied with the plight of Muslims, had launched a movement to put limitations on those elements in traditional Islam which they felt were responsible for the decline of Islam. From the late nineteenth century onward, such self-criticism and self-advice became lasting features of Indian Islam and the modern Islam elsewhere. The resurgence in Islam is regarded as the product of developments within modern society and the continuing appeal of the Islamic tradition. The impact of the "modern transformation" on the Islamic world has a long history but during the 1970s, a less commonly observed but equally important aspect of the modern dimension of the Islamic experience was the impact on Muslim life of the "transformation of the modern demands", a key element in the resurgence of Islam. A renewed variety of traditional religion is also visible in the Islamic world. Modern educated Muslims are increasingly vigorous in the affirmation of their faith and of its relevance to all aspects of life. Countries belonging to the Islamic world, particularly Saudi Arabia, Iran and Pakistan in the seventies further strengthen the resurgence of Islam and the concept of Islamic State based on Islamic ideology and principles. The 'divine will' has motivated this phenomenon of Islamic resurgence as is usually propagated and believed by the faithful "but the mundane matters like the motive for
power, economic interests, such as political expediencies, play a very
decisive role in determining the strategies and policies of those rulers who
are riding the crest of the wave of Islamic resurgence. The role of religion in
general and international politics has always been a hot topic for discussion
even for a common man who is otherwise not active in politics or affairs of
the state. But in the case of impact of religion in the Islamic State, it is
somewhat easy to analyze any issue concerning any Islamic Polity as no
separate political, economic or social sphere of activity is independent of
religion: when one talks of Politics in an Islamic State, religion has its place
in it. When one talks of religion, the politics is always present. Furthermore,
the politics of Islamic fundamentalism is mainly based on the “variegated
political conditions from country to Country”. Neither in Pakistan nor in Iran
and Saudi Arabia, There were popular demands, to convert the social setup
according to the Shariah.

The fundamentalists regard these serious threats to the fundamental message
of Islam as enshrined in the primary sources, i.e. the holy Quran and the
sayings of Mohammed (PBUH) (Hadith). The Muslim fundamentalism is
also called Islamism, because it visualizes itself as a rival to all ‘foreign’
ideologies such as socialism, communism, fascism, nationalism and
liberalism.21

In the seventies, the sudden increase in the prices of oil in 1973 and the
emergence of Ayatollah Khomcini in Iran are some of the reasons which
increased the pressure of those who were supporting fundamentalism in
various Islamic countries. But the former commands more respect and
prestige even in those countries where their respective governments are
making all out efforts to strengthen the foundations of Islamic State, by
changing, amending and replacing the Constitutions. "For the Islamic conscious, the political domination of the unbelievers became increasingly unacceptable as the civilization impact of the colonizers deepened." A section of the Muslims in different Countries of the world has developed a feeling that their failure to solve their political, economic and social problems attributed to the neglect of their Islamic heritage. They are convinced that only Islamic ideology and the state system based on it, would overcome all types of Western-oriented misfortunes. Primary need was felt to return to the great old system, return to the Shariah, to a serious understanding of Islam and its calculated applications in the public and private life of all the Muslims. The fundamentalists advocate that Islamic ideology should be the basis of political and social institutions in the Islamic world. As an opposition force, it is present in almost all the countries belonging to the Islamic world. As a mass belief system which is deeply concerned in the shaping of individual and collective perceptions of social reality and as a political force which is being exploited by both government and political opposition movements, recently Islam has reasserted itself with increased vigor. In this sense, the world over the years has witnessed the beginning of a new phase as a cyclical pattern of ebb-and-flow between secularist trends and Islamic tendencies. This pattern has been witnessed by the people of the world continuously since the latter part of the nineteenth century. In the social sphere the current Islamic phenomenon can be witnessed in the revivalist religious movements launched in different parts of the world, in the regeneration of Islam's cultural heritage and in the apparent rise of an Islamic consciousness.
Islamic ideology has been highly politicized and used in the modern Muslim world, in the hope for further strengthening the belief amongst common man that only Islamic ideology has the solution of all their political, economic, social, cultural and religious problems. A considerable part of the population in the Islamic world has adopted the Western mode of life and the majorities are illiterate. They consider Islamic traditions, customs, institutions and beliefs as part of their every day life and protest against colonial and imperialist oppression in religious form. The people find in Islam 'a form of protest' against a way of life, foisted on them from the outside with its cult of the golden calf, oppression of national culture, and the propagation of 'violence and immortality'. Nevertheless the forces of modernization are also active in the Islamic world, with even more upsetting impact. The separation of individual collective entities, resulting from rapid population growth and the process of urbanization, the rise and growth of centralized bureaucratic state, the changing nature of economic activities, the introduction of new techniques and methods in almost all the fields of human activity, have changed the whole context of human mind.

The Iranian Revolution convinced many Muslims that Islamic revival is possible only through violent means and revolutionary methods. The term Islamic resurgence is being used by political analysts in the western countries in a totally different manner. Furthermore, the secular politicians have accepted firmly the Western mode of political life as real and final, Islamic movements still hope that they would change the situation and restore the Islamic order in the years to come.

Islam has great potential for establishing a new sense of confidence among the Muslim masses to launch a movement against the inequality, corruption
and injustice, made popular by the rulers at home, and, against the exploitation of imperialist powers. Strict legalization of Islam has become a tool in the hands of those Muslim rulers who are making its maximum use for the political purposes and to consolidate their political positions. This tendency should be checked forthwith. The teachings of Islam have to be re-examined in the deeper social, economic, scientific and cultural. There is a need in the Muslim countries to launch a movement with a definite purpose and clear aim of re-examining the various planks of Islamic ideology. Thus, the struggle for political power has not been exception to Muslim society like Pakistan. The tussle has always been between traditionalists and modernists. The interpretations of various aspects of Islam have always been a source of dichotomy, creating problems which sometimes pose a serious challenge to the existence of Islamic social political and economic institutions. Particularly, the differences were on the increase in the recent past. Issue like state authority, interests of the capitalists and feudal forces have dominated the political milieu. Thus, the Ulama used to sanction any reforms in the prevailing Islamic institutions and presently their circle have been broaden to include religious scholar, politicians and even political parties having deep faith in the Islamic ideology. Particularly, in Pakistan, Saudi Arabia and Iran, such groups have further led to dissension in those societies. Although through the passage of time various groups have been created to discuss and debate the relevance of the Quran and Sunna in the modern world. However, the debate remains inconclusive in Pakistan, therefore political, economic and social problems remain unresolved.
0.1. **Research Questions**

On the basis of the above discussion the following questions are raised in this research work.

I. *How far is Islam compatible to the modern democratic system?*

II. *Which country can be the best model of Islamic reassertion in the Muslim world?*

III. *What was the approach of Muhammad Ali Jinnah towards Islam?*

IV. *And what was the nature of the process of Islamization in Pakistan during 1947 till 1977?*

V. *How far the drive for Islamization of Pakistan is a sincere and honest attempt to eliminate evils from the socio-economic, judicial and political set up of the country?*

VI. *What is the position of Islam in the Constitutions of 1956, 1962 and 1973?*

VII. *What were the primary factors which account for the slow pace of Islamization in the beginning and what were the political agendas of the regimes, such as that of General Muhammad Ayub Khan and Zulfiquar Ali Bhutto towards Islamization?*

VIII. *What were the sudden reasons for gaining momentum during the military regime of General Muhammad Zia ul Haque?*

IX. *What has been the impact of the Islamization drive on the social, economic and political institutions of Pakistan?*

X. *What is the future of Islamization in Pakistan?*
0.2 RESEARCH METHODOLOGY
This is a basic and exploratory research and it is based on the extensive literature survey is conducted from various sources. Hence the research is essentially a product of the following sources:

I. Published material on Pakistan, Books,
II. Journals, Periodicals, Newspapers,
III. Unpublished dissertations and reports.
IV. Government documents, constitutions, resolutions and other official publications.

0.3 ORGANIZATION OF THE STUDY
The general scheme of the study is simple and has been divided into six chapters in addition to an introduction and conclusion.

Chapter I provides an historical overview of Islam and its meaning and application in the true sense. It covers the Islamic concepts from the time of the prophet (P.B.U.H.), the four Caliphs of Islam and onwards in the succeeding centuries explaining the meaning of the terms like Ummah, Shariat, Millat, Shura etc. as analyzed and applied in Muslim societies.

Chapter II examines the advent of Islam in the sub-continent region which become central to Muslims in their struggle for power and establishment of a society based on Islamic ideology. It covers the period between the 8th century to the time the freedom struggle of Muslims of the Indo-Pak subcontinent, finally achieved their aim of an independent Muslim homeland. It also deals with the opposition the Qaid-e-Azam Mohammad Ali Jinnah faced as well the disharmony between moral and cultural ideals
of Islam and the modern structure of the state during the struggle for freedom from imperialist control.

Chapter III is an analysis of the various efforts of constitution making in Pakistan between 1947-56 covering the nations of the Islamic character of the state as well as the political conditions prevalent in the century which affected the framing of the constitution of the newly born state resulting in its delay. Since Islamization is a process which should be implemented through the necessary state structure with clear objectives and aims, the various debates on the process and disparity of views and between the ulema and moderate elements in Pakistan is also discussed. It was these diverse views and their incompatibility at times together with the political intentions of the ruling elites which led to the unnecessary delay in constitution making in Pakistan.

Chapter IV covers the temporary resolution of issues in Pakistan political and constitutional history when the first constitution was made having definite features. This also covers the issues which surfaced after the constitution was abrogated and replaced by authoring in 1962 by a military Junta and how the unsettled problems of representation language and the role of Islam finally led to the dismemberment of the country in 1971.

Chapter V throws light on the political and constitutional conditions during the time of L.A. Bhutto and how as a seasoned politician he was able to assume the highest authority before embarking on the road to Islamization through constitution making. It also covers political controversies which generated mass agitations as well as the efforts of combined opposition in support of Nizam-i-Mustafa. How far Bhutto was successful in pulling the country through the most difficult times as well as establishing legitimacy of
his civilian administration is also covered in this chapter. It also explains how far PPP proved its love for Islamic ideology and principal by introducing a constitution containing sufficient scope for the establishment of an Islamic estate in Pakistan with Islamic provisions more tough and detailed as compared to the earlier two constitutional documents.

Chapter VI, analysis the role of General Zia ul Haque and the military in the domain of politics after coup d'etat of 5th July 1977. It also covers now a Muslim fundamentalist for the first time in the turbulent history of Pakistan dedicated himself to the process of Islamization in the country by introducing sweeping changes in the legal judicial and administrative structure and what was the political fallout of such a move were all his efforts a genuine move to establish a theocratic state or were they a political agenda for military regime.

NOTES AND REFERENCES


3 Holy Quran, (III: 18).


9 Ibid., pp. 11-12.
10 Al Quran,
11 Ibid.
12 Shaukat Ali, op. cit., p. 3.
13 Ibid.
15 Ibid., pp. 9-10.
16 Ibid., p. 10.
18 Ibid.
23 Ibid., pp. 4-5.
24 Ibid., pp. 53-54.
CHAPTER 1

ISLAM AND POLITICS:
A HISTORICAL OVERVIEW
CHAPTER 1

1. **ISLAM AND POLITICS: A HISTORICAL OVERVIEW**

The Muslim society of today faces issues which it has not encountered for the last 1500 years. Muslims do not look at social, political or economic issues from purely secular angles. Their approach and perspective is usually 'faith-oriented'. Since faith is not a mathematical affair, answers to such issues are usually approximations opening fresh questions, arguments, disagreements and new efforts. Since the establishment of Pakistan there has been a growing popular demand for incorporating Islamic principles into the constitution and for the Islamization of laws, economy, politics and society. With the exception of a few minor political groupings with secular orientations, almost all sections of the political populace agree and recognize that in spite of their mutual differences regarding details, there is an urgent need for reconstruction of Pakistani society on the basis of Islamic ideology. This would therefore be an appraisal of the process of Islamization in the constitutional and political development.

A clear understanding of what is meant by Islam and Islamic state is essential as well as appropriate in our context. The term Islam has been grossly misunderstood and misused sometimes tendentiously – by scholars, statesmen, politicians and apologists of capitalism (and even Islamic socialism). As every ruling class needs an ideology to perpetuate its rule,
Islam has been variously interpreted throughout the centuries in the Muslim world by different classes, political groups, autocratic rule, fundamentalists, modernists and religious fanatics. Unless the concept of Islam is clearly defined, emotive and confusing terms like 'militant Islam', 'upsurge of Islam', 'renaissance of Islam', 'Islamic democracy', 'Islamic economics', 'Islamic Science' and such other popular clichés, cannot be correctly understood. Hence in broad interpretation three categories can be made (a) Original or revolutionary Islam of the Quranic conception (b) feudal or medieval Islam (c) capitalist or bourgeois Islam – there are forms of interpretations actually pertaining to different historical periods, socio-economic formulations and conditions of medieval and modern times.

It is the central thesis of this study that Pakistani political system has failed because the foundations of the state and requirements of modernization have not been bridgeable by any institutional arrangement yet. Hence since the creation of the country in 1947 several constitutional failures, military coups, secession of the eastern wing of the country, half hearted efforts to enforce an Islamic ideology has lead to little success in developing a workable political system. Why there has been a failure to develop an effective and durable political and constitutional arrangement within an ideological framework, the following factors have been important: First there is incompatibility in among the concepts of authority which compete for dominance within the system. Second, there is incongruity between the more traditional of these concepts and the demands of the modern state. Third, the political process has been more accessible and responsive to certain political interests, specially regional and economic, resulting in frustration and hostility. Fourth, there has been a failure to evolve a political
culture prescribing ways in which political institutions are supposed to work. Finally, international events have conspired to frustrate developmental efforts. An analysis would require an understanding of political system in totality as viewed in Islam as well as issues involved from the origins of Pakistan till the late 1980s.

During the classical Muslim state, the life time of Prophet Muhammad (PBUH) the exercise of leadership was a function of the Prophetic mission hence the terms state, government and community had a different meaning. But the distinction between the early concept of state and community, government and authority must be understood so that the true nature of the early organization of Islam and modern political concepts in this regard are not used interchangeably. These Islamic political concepts had developed in the context of entirely different social, economic, political and historical settings. This creates problems of definition and semantics. However, Ummah and Khalifah both have their own distinctive meanings. In view of these difficulties it is essential to sort out the politically relevant terms of Islam in the light of basic sources of Muslim political theory namely the Quran, Sunnah, Hadith, the early historical records and medieval treatises on Muslim Constitutional Law. The community as described by the Quran as Ummah, the members as Mumineen (faithful), the ideology as Islam or submission to one God. The Quran says:

1. Mankind were one community, Allah sent unto them Prophets as bearers of good tidings and as warners.

2. Thus we have appointed you a middle nation that ye may be witness against mankind and that the Messenger may be a witness against you.
To modern sociologists the community antedates the state implying that every community may not necessarily be a political community in the modern sense. R. M. Maclver defines community as follows:

"Communities comes from having lived a life in common, it is a focus of social beings... all the laws of the cosmos, physical, biological and psychological, conspire to bring it about that beings that live together shall resemble each other. Wherever men live together they develop in some kind and degree distinctive common characteristics, manners, traditions, modes of speech etc."

In contradistinction to this concept the state is that stage where a community attains a sovereign status hence it can be pre-political but not un-political. The moment a community starts endeavouring consciously to define and obtain its political goals it becomes potentially a state-community and when these goals are achieved it becomes a state in the formal sense. This logic of interpreting the Prophetic phase of Islam results in the notion that the Holy Prophet (PBUH) was not solely or primarily concerned with organizing a state his aim was to lay the foundations of a moral community to permeate the people with the spirit of Islam. In this process methods and pre-Islamic institutions which were morally acceptable to Muslims were pressed into form. The question of political leadership came into prominence after the death of the Prophet (PBUH) mainly because the Prophet had not determined the problem of his succession leaving it to be decided in accordance with the good sense of the community and as soon as its was decided the early state-community became a state.
In the text of the Quran terms like *Ummah* (community), *din* (faith), *Millah* (religious community), *Shariah* (Prime Law), *Qaum* (group), *Khalifah* (succession), *Imamah* (leadership) are used in their generic as well as technical sense but in the later sources of *hadith* (tradition), *tafsir* (exegesis), and *fiqh* (jurisprudence) are used in their technical sense. Hence in understanding a developing Muslim society and state these terms should be defined in their proper ideological, historical and social perspectives.

In modern Arabic, the term *qaum* means ‘nationality’ while *qaumyiat* is the equivalent of *nationalism*.\(^8\) The term *qaum* in the modern sense is not used in the context of the medieval Islamic usage where it was used in a general sense to mean a group of people or folk who assemble for some specific objectives. Hence it does not connote either the modern concept of nationality or nationalism.\(^9\)

The Quranic term *Millah* refers to a human group united by a prophet on the basis of divine guidance. It literally means *Din* (faith) or *Shariah* (revealed law). *Din* is used in a wider sense, used both for religion of *God* as well as of a prophet (Din Allah) (Millah al-Ibrahim) Khalifah occurs frequently in the Holy Quran and in the great *hadith* literature. Technically it applies to the institution of choosing the successor of the Prophet as the head of the Islamic community. In examining materials on *Caliphate* there are two major expressions – Khalafat Allah and Khilafat al-Rasool. In the first expression it is Allah Almighty, who is the predecessor in so far as the Khalifah is the vice regent of God. Either the Prophet himself or the community should be regarded as the successor the object of succession would be either prophetic mission or the leadership of the Ummah or both. The ultimate responsibility of enforcing the divine laws would be vested in the Khalifah. The Islamic
political theory based on such a series of propositions would necessarily presume four basic concepts:

1. The ultimate sovereignty of God
2. The vicegerency of mankind on earth
3. Political authority to be exercised either by the successor of the Prophet or by the Ummah and
4. The enforcement of the Shariah (Divine Law) as the ultimate object of the political authority.

In other words it is difficult to say who is the ultimate sovereign of the Islamic Ummah because God is the ultimate sovereign but he will not descend to rule hence he has sent Prophets who received divine laws and organized the Ummah. Thus we can conclude that in this sense political authority rested with the Prophet. If we limit the role of the Prophet as a messenger of God then real political authority would lie elsewhere i.e. either with the successor of the Prophet or the Ummah as a collective organization or the Shariah as a core of divine laws. If we assume that authority lay with the Prophet then it may be argued that as the Prophets role was limited and had ceased after his death, then there could be no successor of the Prophet as the ruler of the community. After dismissing these two propositions only two valid explanations remain (1) either the political authority rested with the community as a whole or (2) otherwise it would rest with the Shariah. But the sovereignty of the Shariah cannot be sustained because it is subject to interpretations in legislation, application and enforcement therefore authority would ultimately reside in the community or Ummah.
During the classical and medieval periods of Muslim history the Islamic community did not experience such political developments in concepts of authority which were brought about by two revolutions:

1. Reformation paving the way for separation of the church and the state.
2. Industrial revolution which transformed the medieval culture into integrated and cohesive national cultures. These western political concepts made inroads into Muslim thinking during the 19th and 20th centuries when the Muslim world was exposed to the colonial domination of the European powers.

The medieval political institutions lasted until the Ottoman Caliphate was abolished in 1924 when modern Turkey, under Mustafa Kamal Ataturk, decided to overthrow medieval institutions and organized the young republic on European lines, accepting its legal, political and cultural values as guidelines for modernization.10 We have sufficient historical evidence to prove that in establishing a new political order, the Turkish Elite, in the initial stages of the revolution, had attempted to rationalize their approaches to modernization in Islamic terminology.11 Hence we conclude that sovereignty in the modern sense of the term is the most important attribute of a modern state wherein a modern territorial state must be independent from control or limitations from within the community. Such a concept is not compatible with Islamic notion of sovereignty because according to Islamic belief no one can arrogate to him the claim to absolute, permanent indivisible authority because Allah, the Almighty is the only sovereign over the entire universe with ultimate power. This implies that an Islamic society and its political authority are subject to the Divine Laws in the Quran and a Muslim State is not free to conduct its foreign affairs or domestic policies
unrestrained by *Qur'anic* Laws. There no appropriate concept that can accurately explain the idea of state. Similarly the concepts of nationalism, democracy, socialism and capitalism as understood in the western context are completely foreign to Islam. Similarly the words *Mulk, Hukm*¹³ and its derivations are not used strictly in the political sense in the Quran the term *Shura*¹⁴ is used by contemporary Muslim scholars to rationalize modern democracy in Islam. It means ‘consultation’ in the Quran on affairs of the community on wide ranging activities excluding certain areas where there is clear divine guidance or practice of the Prophet. *Shura*, as practiced in the life of the Prophet, was not an Islamic innovation but was, in fact, continuation of the pre-Islamic tribal institution of *Al-Nadwah* where important matters of the tribe were decided by mutual consultation. With the advent of Islam it was recognized on the foundations of religious affiliation creating a new kind of *popular* participation in the deliberations of the Islamic community. *Ita‘ah*¹⁵ as interpreted by Muslim constitutional jurists implies the doctrine of political *obligation*. The famous Quranic verse: ‘obey Allah and obey the Prophet and those of you who are in authority’,¹⁶ is cited by jurists as the theory of *obligatory* obedience of the *Ummah* to the Kalifah.

The construction of the logical and coherent theory of politics in Islam so that the nature, scope and structure of political authority can be determined a correct understanding after thorough investigation of these concepts is necessary so that they can be adapted to the requirements of the modern age.

When Pakistan appeared in the world map it had no *territorial* existence but it was *geographically* and politically a part of the Indian sub-content. The British conquest of India was facilitated by the absence of a single powerful government which could resist the foreign onslaught. The creation of
Pakistan was due to many factors apparently Hindu communalism Muslim separatism and hatred towards British imperialist designs. But the record of history is that the conflict between Hindus and Muslims had started long before the British arrival in India. Perhaps Emperor Aurangzeb (1658-1707) was responsible for increasing Hindu-Muslim tension by trying to Islamize the Mogul Government. Several Muslim historians have glorified Aurengzeb for making Muslims conscious of their separate religious and ideological identity. But the fact remains that under Aurengzeb, Maratha & Sikh leaders raised their banners of revolt precisely because of trying to organize his government on Islamic lines. The British established their rule in India and after the abortive revolt of 1857 their hegemony was practically unchallenged. The Indian Muslims suffered in particular at the hands of the British as disloyal subjects of Her majesty Queen Victoria. The Muslims were not reconciled to foreign domination and despised infiltration of foreign culture and language while the Hindus did not harbour the same animosity against the British. They readily adapted themselves into the new order forging ahead of Muslims laying the foundations of an organized political movement when the Indian National Congress was set up in 1885, and, surprisingly enough, it was presided over by an Englishman.

When the Muslims still stuck to their aloofness, Sir Sayyed Ahmed Khan, foreseeing the dangers to the community if it did not adopt itself to the changing environment by shedding its prejudices, exhorted them to take modern education. He could also foresee the dangers of a political system wherein a bigger nation would establish its ascendancy. When the Muslims realised the dangers and finally started acquiring western education the British feeling that they had perhaps been unfair to Muslims inaugurates the
scheme of partition of Bengal in 1905. But on a hue and cry of Hindus throughout India the British yielded and partition was revoked in 1911. Series of events in the Middle East which confirmed Muslim fears and suspicious of British policies towards Muslims in general and Muslims powers like Turkey in particular resulted in the Khilafat Movement 1920-22. This was a marriage of political convenience between Hindus and Muslims. For Muslims it was a proclamation of Pan-Islamic solidarity on an international plane and for the Hindus it was an opportunity to press their demands through the joint struggle of the two communities. 19

From the Minto-Morley Reforms to the Government of India Act 1935 the main objective of the Muslim struggle was security through constitutional safeguards which the Congress was never willing to concede. The British knew that Hindus and Muslims could not arrive at an agreed solution and Nehru Report and Jinnah’s famous Fourteen Points confirmed their belief. The summed up terms for a constitutional settlement by Jinnah included a federal constitution with residuary powers to provinces, separate electorates, one third Muslim representation in the central legislative, safeguards for Muslim culture and a constitutional guarantee that no bill affecting Muslim interests will be passed if vetoed by three fourths of the Muslim legislators.

The demand for a separate state for the Indian Muslims was first proposed by Allama Mohammad Iqbal, poet philosopher at the annual session of the All India Muslim League at Allahabad, a city in the heartland of India in 1930. Though earlier, Sir Sayed Ahmed Khan went to lengths to prove that basically Islam was a rational system and superstitions beliefs and practices had arisen among Muslims and Sayed Ameer Ali in ‘The Spirit of Islam’ painstakingly explained that Islam in its day of glory had been ahead of
other religious in its spirit of tolerance towards minorities and rights of individuals, it was Iqbal who pointed out that there was no need for Muslims to emulate the western example in politics or philosophy because the west had itself become disenchanted and had produced the inequitable capitalist system and horrible global conflicts. To Iqbal Islam preached international brotherhood and was vibrant with a sense of social justice and humanitarianism. Since these values need to be reinterpreted in the light of the modern times, the most important instrument that Indian Islam needed was a separate Muslim polity. Iqbal dilating on the future course of Muslim politics in India observed:

“I would like to see the Punjab, NWFP, Sind, and Balochistan amalgamated into a single state self-govt within the British Empire or without the British Empire, the formation of a consolidated North-west Indian Muslim state appears to me to be the final destiny of Muslims, at least of North-west India.”

However, it took a decade before the concept of a Muslim state could be formally articulated as a specific political demand of the Indian Muslims in the form of the Lahore Resolution at the annual session of the All India Muslim League on March 23, 1940 under the dynamic leadership of the Quaid-e-Azam (the Great Leader) Muhammad Ali Jinnah. The Lahore Resolution, also popularly known as the Pakistan Resolution, states:

“Resolved that it is the considered view of this session of the All India Muslim League that no constitutional plan would be workable in this country or acceptable to the Muslims unless it is designed on the following basic principles, viz, that geographically contiguous units are demarcated into regions
which should be so constituted with such territorial areas in which the Muslims are numerically in majority as in the North Western and eastern zones of India, should be grouped to constitute ‘Independent States’ in which the constituent units should be autonomous and sovereign”.  

This was the crux of the Lahore resolution which marked a complete and final abandonment of the policy of reconciliation with the Congress on the basis of a single polity. A day before the famous Lahore Resolution was passed, Jinnah’s Presidential Address spelled out the two-nation theory which became the bedrock of the Muslim League ideology: 

"It is extremely difficult to appreciate why our Hindu friends fail to understand the real nature of Islam and Hinduism. They are not religious in the strict sense of the word, but are in fact different and distinct social orders, and it is a dream that the Hindus that the Hindus and Muslims can evolve a common nationality... they neither intermarry, nor intercede together and, indeed they belong to two different civilizations which are based on conflicting ideas and conceptions. Their aspects on life and of life are different. It is quite clear that Hindus and Mussalmans drive their aspirations from different sources of history. They have different epics, their heroes are different, and different episodes. Very often the hero of one is the foe of the other and likewise their victories and defeats overlap. To yoke together two such nations under a single state, one as a numerical majority, must lead to growing discontent and final
destruction of any fabric that may be so built up for the
government of such a state".22

So irresistible had become the movement for partition that it would not be
ignored at any discussion of the constitutional problem which was hinted at
by Sir Stafford Cripps offer of 1942 whereby a province could withdraw
from the dominion if supported by its population by a plebiscite. The Quit
India Movement launched by the Congress served to demonstrate the
League thesis that India was already politically divided into two rival camps
as the Congress appeal for non-cooperation did not evoke any response from
the Muslims.

From 1940-47 Jinnah played his hand with consummate skill and with
meticulous devotion he was able to capture the imagination of the Muslims
and his prestige soared. The Gandhi-Jinnah talks in September 1944 to
resolve the Congress League deadlock on the issue of Pakistan showed that
there was no meeting of the minds. Gandhi was not prepared to accept a
Pakistan of the Quaid’s conception – sovereign and independent in every
respect nor did he concede to the leagues claim that Muslims constituted a
separate nation. To the Quaid, the Lahore Resolution was the key to a
settlement while to Gandhi it would have unlocked the door to the ruination
of the subcontinent. The difference between the two leaders was over the
question of federal and confederal arrangements between the two states. For
the first time it was clearly and publicly recognized that there were two
leaders, Gandhi representing the Hindus and Jinnah representing the
Muslims, meeting at the summit to resolve the political deadlock in India.

The next stage was reached when the Viceroy Lord Wavell called a
conference of Indian leaders in June 1945 to hold discussions for the
reconstitution of the Viceroy’s Executive Council to include leaders of Indian political parties in such a way that a balanced representation was given to the main communities the league claimed to have the role right to nominate all Muslim members of the Council being the sole spokesman of the Muslims of India. The Viceroy suggested the inclusion of Malick Khizer Hyat Khan, the Muslim League pioneer of Punjab who had broken with Jinnah and the Congress insisted on another Muslim member of the Congress for inclusion in the council the conference failed. Jinnah knew that once the various Muslim leaders – and particularly the Muslim leaders of the Punjab, realized they were not likely to get any prize offices by remaining outside the Muslim League; they would all have to flock to the Muslim League. Such a stand by Jinnah was bound to win for him great admiration among the Muslims, for he was satisfying a very deep and religious urge of his community, namely that for the unity and solidarity of the Millat (community of believers).  

On July 26, 1945 a Labour Government was established in Britain which had won a signal victory by its long record of advocacy of India’s freedom, could not adopt delaying tactics. With sympathies with the congress it had to make its own assessment of the situation so a parliamentary delegation was sent to India to elicit answers to two broad questions:

1. **How long the British could stay in India?**

2. **Whether the Muslim League could be taken seriously.**

The cabinet mission knew that to have a workable system the support of both parties was essential but despite discussions the difference between the Congress and the Muslim League could not be bridged. Announcing their plan on May 1946, the cabinet mission turned down the demand of a
sovereign state of Pakistan as impracticable and unworkable. The league called on Muslims of India to celebrate August 16, 1946 as Direct Action Day saying that it had no option but to adopt non-constitutional means because the government was trying to appease the Congress. The British government in such circumstances felt that a bold policy under a new Viceroy was needed to save the situation. Hence on February 20, 1947; the appointment of Lord Mountbatten was announced. Prime Minister Atlee set June 1948 as the date of British withdrawal and transfer of power. There is considerable evidence suggesting that soon after Mountbatten arrival, most of the opponents of partition had veered round to the idea that Pakistan was inevitable. Sardar Patel remarked, whether we like it or not there are two nations in India. Now only the mechanics of Pakistan was to be worked out and the Indian Independence Act 1947 brought into being the two dominions of India and Pakistan. The law making power in each dominion belonged to the legislature of the dominion and until the constitution was framed the Government of India Act 1935 was to be applied.

The Muslim League, throughout its role as a party defending Muslims interests in India, constantly reminded. The Muslims that they would lose their culture and religious identity under Hindu domination, hence, when it put the ideal of Pakistan before the Muslims, there were certain questions to be answered. Would Pakistan be an Islamic state based on the Islamic Ideology? What kind of Islam would be established? Would it be the Islam with its pristine purity that the Prophet (PBUH) had brought into being or would there be a re-interpretation of the Quran and Sunnah in the light of modern times?
The western educated lawyers, merchants, doctors, journalists, landowners and civil servants knew that Pakistan meant a state where Muslims will be in a majority and where basic institution like the army, bureaucracy, industries, and banks would be under Muslim control. They had not given much thought to problems of social philosophy, political ideology or Islamization for that matter. A small group of Muslim intellectuals and young political leaders were concerned about the ideology of Pakistan. Allama Iqbal had raised the hopes of some of the socialists by suggesting that “social democracy in some suitable form and consistent with the legal principles of Islam is not a revolution but a return to the original purity of Islam”. In his poetry he championed the cause of the poor peasants and the downtrodden masses but elsewhere his thought also indicated that despite his stress on Islam’s dynamism he was conservative and in favour of religious revivalism.

To Muslim socialists like Mian Iftikharuddin, nationalisation and equitable distribution of wealth were more relevant and vital to the future of Pakistan than the issue of an Islamic state. Idealists and socialists, orthodoxy and modernists soon become disenchanted because the promised Islamic state was in no way a reality and a long constitutional and political struggle lay ahead. The above study makes it evidently clear that a distinction could not have been made in religion and politics in Islam.

NOTES AND REFERENCES

2 For a comprehensive treatment of semantic problems see Izutsu, Toshihiko (1959), *The Structure of ethical terms in the Koran*, (Tokyo, Keio University), Chapters II, III, & IV.


4 Quran. 11:213

5 Ibid. 11:213


7 Chefne Anwer (1960), *Succession to the Rule in Islam*, Lahore.


9 Ibid., p.29.

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15 *Al-Quran*, 4:80.


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CHAPTER 2

ISLAM IN THE INDIAN SUB-CONTINENT
CHAPTER II

2. ISLAM IN THE INDIAN SUB-CONTINENT

Islam came to the Indian Sub-Continent during 712 A.D., when Muhammad bin Qasim defeated Raja Dahir of Daibul. Muhammad bin Qasim was son-in-law of Hajjaj bin Yusuf, the Umayyad Governor of Iraq. However, he did not establish a government; however, he left Basra without establishing a government. It was nearly three centuries later that the second phase of the conquest of India began under the Turks. Mahmud of Ghazna (known as Mahmud Ghaznvi), invaded India seventeen times and defeated the Rajput princes and carried away fabulous wealth. The Ghaznavids were followed by the Ghauris. They reduced the whole of northern India. Since Muhammad Ghauri had no son, his Empire was divided among his Turkish slaves. These were the early Sultans of Delhi. The line started with Qutb-ud-din Aibak. The dynasty boasted such famous names as Ilutmish, Balban and Razia Sultana, the first female Muslim ruler in Muslim history.

The slave dynasty was followed by the Khiljis. Then came the Tughlakhs followed by Afghans. The height of Muslim power was however achieved under the Mughal. The dynasty was founded by Babar in 1526 and lasted until 1857 when the British exiled the last Mughal Emperor, Bahadur Shah Zafar, to Burma.

This was the lowest ebb of Muslim power in India. Muslims entered India as conquerors in 712 A.D. By 1205 they had become masters of the northern
Indian plains and ruled the greater part of the country until the death of Aurangzeb in 1707. The Mughal decline of political and economic power set in the eighteenth century. A series of political and military moves enabled the British East India Company to establish de facto power. In 1765 Shah Alam II, the nominal Mughal Emperor of India, provided de-jure basis for this power by appointing the Company as the Diwan (revenue collector) of the eastern provinces. After the death of Aurangzeb while political power gradually slipped from Muslim hands and passed to the British, intellectual power passed from the ruling elite to the Ulema, the most outstanding of who was Shah Waliullah (1703-1762), who deeply influenced subsequent generations of Muslim scholars.

In the first decades of the nineteenth century, Indian Islam made a feeble attempt at rallying its resources under the guidance of Shah Abdul Aziz, son and successor of Shah Waliullah who ruled that the sub-continent was no longer dar-ul-Islam, a land where Islam enjoyed sovereign authority and political power. It had been converted into a dar-ul-harb, a land where Islam was not free. But with the collapse of the Jihad organized by Sayyid Ahmad Barelvi, the movement of resistance came to grief. The Muslim millennium had come to an end.

It must be noted that Islam reached to India and Spain at about the same time, Mohammad bin Qasim conquered Sind almost simultaneously with Tariq bin Zayyad who subjugated Spain in the early eighth century. The Muslim rule lasted until 1452 A.D. in Spain while it continued in India until 1857 A.D. King Ferdinand and Queen Isabella took over Spain while Queen Victoria ruled as Empress of India. Both were Christians, one Protestant, and the other Roman Catholic. Both saw themselves as defenders of their faith.
The Roman Catholic Rule in Spain employed the instrument of Inquisition to wipe out the Muslims. The persecution was so pervasive and painful, the intolerance so complete and devastating that not a single Muslim survived in Spain. In India, the British used the Bible, the bullet and beer to intimidate the Muslims. They were deprived of their political and economic security; their religion was subverted; their culture was invaded through English education. Their language and laws were displaced through the system of democracy was used to convert them into a permanent minority. But the British were not Spaniards. With the exception of occasional atrocities such as the massacre in Jallianwala Bagh, they did not use the Inquisition. They embarked on a cultural conquest but they were defeated in their own game by those Indians who learnt their culture in the British universities.

Unlike the Spaniards who spared not a single Muslim, The British left over a hundred million Muslims in India. This massive survival is a tribute to the strength and resilience of the Indian Muslim. His sense of identity is so strong that he was able to cope with two enemies—the British and the Hindus. While the Western educated Muslim dealt with the problem at a political level the Ulema helped maintain the steel frame of Islam. The form was as important as the spirit. The ulema played a role in the movement to oust the British, and helped the common man not to loose heart in the years of his servitude, poverty and deprivation. There was a mosque in every village; the call for prayers went forth from the minarets five times a day, allegiance was proclaimed to God and the Prophet punctually and persistently. The contribution of the Mawlvi to the preservation of Islam in the sub-continent over centuries of turmoil cannot be underrated. He helped maintain an identity and kept intact the form, a basis on which later refor-
mers and leaders could build. The link with tradition was never snapped, the glory of the past provided succor, and gave hope of success when the present appeared too terrible to bear. The Muslims in India passed through hell but never gave up dreaming of the heaven that was their past.

The history of Indian Islam has, however, seldom inspired the Indian Muslim. He has not wanted to revive the rationalist tradition of Akbar. Jahangir lies buried in Lahore and so does Noor Jahan. Both are romantic figures of much significance but the people of Lahore do not care even to hold a meeting to commemorate them. Mehmud of Ghazna is a hero who ransacked Somnath: a man of fabulous wealth; he is remembered for his regret at leaving it all behind; but not for anything more significant. The Indian Muslim recalls with some pride the role played by Aurangzeb in preserving the purity of Islam but here again while a Mughal King is praised by a section of the people. The Pathans came into conflict with the Mughal and resisted their imperial expansion.

When Mr. Jinnah came to Karachi from Delhi in August, 1947, he was accorded a right royal reception and slogans of 'Shahinshah-i-Pakistan Zinda Bad', rent the sky. The welcome angered the Quaid-e-Azam who admonished the emotional crowd against rising a slogan whose import they understood but little. A lesser man could have worn the crown and founded a dynasty. In raising the regal slogan at the height of their achievement which bad cost them dearly the people of Pakistan were expressing their gratitude to the man who had created a 'kingdom' for them. They could not think in any other terms. Independence to them meant the revival of the power that had been lost to the British over a century ago. The romantic figure of the last Mughal Emperor came readily to mind and the people were willing and
anxious to invest the Quaid-e-Azam with the robe and authority of a king. They would hear and obey him as indeed they had done through the years.

The people were illiterate; concrete images mattered to them more than abstract concepts of freedom, democracy and fundamental rights. They had heard of the kings in a thousand years of their history in India and they had expressed their aspiration for freedom in the only idiom they knew. They had fought for the Sultan of Turkey as the Caliph, forgetting the humiliating role played in betraying Islam. The Shohinshah of Iran was the first head of state to pay a state visit to Pakistan and was accorded a hot welcome.

In the psyche of Pakistani Muslims there is a significant streak which looks for a savior, a promised Messiah, a man of destiny, a strong leader who can lead and decide without wavering. People are impatient and unaware of their own role, their own responsibility in the exciting drama of development and progress. An illiterate people cannot be blamed for immature judgment. Their experience in statecraft is negligible. They have not had the freedom yet to make their own mistakes and learn by them. In all their life only one general election has been held which is recognized as fair and impartial and that led to the dismemberment of the country. Islam was a great cementing bond between the two wings of Pakistan which were geographically separated from each other by a thousand miles of Indian Territory. But the national, racial and linguistic prejudices prevailed over the liberalizing influences of Islam and East Pakistan, which became Bangladesh in 1971. This development shook the confidence of some and steeled the determination of others to pursue the ideal of an Islamic State.
The ideal, without doubt, is the period of the Prophet followed by four of his ablest successors, 'the rightly guided caliphs'. This republican era in the history of Islam continues to provide inspiration to those who believe that the message of Islam is meant for all times and all places. The message has been masked and veiled in the course of history; it has been mauled, twisted and distorted deliberately by powerful vested interests. But the idea is to rediscover the revolutionary content of a message which once transformed the world and may yet perform the same function.

There is no disagreement in Pakistan that Islam must form the basis of life including the state. What is clear in the Quran and the Sunnah is acceptable to all. What is, however, not entirely explicit needs to be determined, and in so doing one will require faith, imagination, vision and cooperation of the entire Community to work out the problem. Revivalism is an easy solution for it requires no intellectual endeavor; *ijtihad* is infinitely more difficult. In Pakistan one sees a struggle between different schools of thought in this regard and it is going to take time before a clear picture can be expected to emerge. The past can both be a sinking weight and a source of inspiration. We will have to watch how the people of Pakistan tread the path to the future. They look upon themselves as a people with a mission; it is their duty, they believe, to enjoin what is good and to forbid what is bad. And the touchstone is the Quran, the final message of God to mankind. The Ulema hold that all the answers to man's problems are in the Book; others are not so sure of this claim. They think that questions need to be clarified before an answer can be sought; and in seeking answers to the problems of today one need not necessarily reconstruct, revive or resuscitate the situation of yesterday.
A study of the political and constitutional development in the Indian subcontinent during British rule covers a critical analysis of the British colonial policies that kept on changing from one pattern to another according to different situations and it also covers several constitutional and administrative reforms. Political development in the Indian history continued in these two important directions, which constitutes the British colonial policies: it correlates the political development with the constitutional development in the Indian Subcontinent through different stages in the process of changing socio-economic and political conditions. The constitutional developments were also meant for an effective administrative system, which could meet, the needs of colonial masters.

2.1 POLITICAL AND CONSTITUTIONAL DEVELOPMENT

THE BRITISH COLONIAL ERA

A study of British colonial policies in the Indian Sub-continent can be seen as the policy of the counterpoise of the natives against the natives. The long history of British rule may, therefore, be defined as a record of India's political subjugation and economic exploitation at the hands of the English empire-builders for a period of about two hundred years. The policy of divide and rule, signifying a deliberate and persistent effort on the part of the Englishmen to keep the Indian people divided and disunited, as it alone would enable them to maintain their colonial hegemony, through exploiting the traditional antagonism of the Hindu and Muslim communities. As a matter of fact, this policy aimed at keeping the opponents divided, so that they could never be united and thereby be able to offer any effective challenge to the authority of the English masters. Even after the transfer of
administration of India from East India Company to the British Crown. The colonial policies remained the same. However, the intensity of its application varied from time to time, as per the exigencies of the prevailing situation. Therefore, it can be said without any hesitation that the vigorous pursuance of divide and rule policy ultimately resulted in the partition of the country in 1947.

The eighteenth century proved a turning point in the history of modern India in view of the fact that the rise of "independent feudal despotism" in different parts of the country and the decline of the Moghul Empire, which prepared a wholesome ground for the political success of the European colonial nations. In the beginning of the same century, the English, Dutch and the French trading corporations were engaged in eliminating each other from India. However, the British emerged triumphant in their imperialistic designs for ascendancy after the battle of Plassey in 1756 that resulted in easy possession of Bengal. As a result, the East India Company was established in 1757 and got rights implying control over and administration of revenues in Bengal, Bihar and Orissa and the rights of administering civil justice as well. Finally, with the annexation of Punjab in 1849 the English could consolidate their unchangeable control over the Indian Subcontinent. Thus, the English assiduously pursued their policy of conquest, annexation and consolidation ever since the fast decline of the Mogul political order till the war of independence in 1857.

The insurgency of independence in 1857 came as a rude shock or the first terrific jolt to the British's who called it 'Mutiny'. It compelled the English rulers to revise their colonial policy of conquest, annexation and consolidation in a way signifying gradual but cautious association and co-
operation of the local people. The British Parliament enacted the Government of India Act, 1858, and assumed sovereign power over India with a view to overcoming the chaos and confusion, which prevailed in the country. With the transfer of Sovereignty to the British Crown, bureaucratic rule was firmly established in India.

2.1.1 **THE GOVERNMENT OF INDIA ACT 1858**

This Act was the product of the rude shock that the British's had from the War of Independence what they called by the notorious name of 'the Indian Mutiny'. It transferred the administration of India from the Company to the Crown. All powers hitherto exercised by the Board of Directors and Court of Proprietors were transferred to the Secretary of State for India—a member of the British Cabinet drawing salaries and emoluments from Indian revenues.

The Secretary of State was to be assisted by a body, called India Council, consisting of 15 members, 8 of whom were to be nominated by the Crown and 7 elected by the outgoing Directors.  

The Act of 1858 is very significant in the view that it has paved the way for the accommodation of locals in administration and expansion of administrative structure. Through this Act it becomes evident that there is a positive correlation between constitutional development and administrative change. However, the real point of significance of this Act should be discovered in the termination of the rule of the Company and its substitution by the rule of the Crown. In general, the nature of the British administration remained the same. That is why Lord Derby, the then Prime Minister, said that 'the transference of the authority of the Crown is more real than nominal'.  

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The British policy until the end of the nineteenth century was to maintain law and order by strengthening military and administrative services. Since India was the best market for British manufactured goods, raw material and labor, the maintenance of law and order was given the highest priority. The Indian Civil Service performed this function efficiently, while the government played the role of a referee controlling a fight rather than that of an architect designing a temple of wealth.\(^8\) Promise was also made to stimulate peaceful industry of India, to promote works of public utility and improvement and to administer its government for the benefit of all the subjects' resident therein. It was very clearly proclaimed that "We desire no extension of our present territorial possessions.... We shall respect the rights, the dignity and honor of the Native Princes as our own."\(^9\)

The educated Indians hailed the royal proclamation. Thus began the new era of English colonialism, as described by Lord T. B. Macaulay\(^10\) 'The Benevolent Despotism'—'Benevolent' as the new policy signified association of the Indian people with the alien administration and 'Despotism' as the English Government was kept as irresponsible and autocratic as before. While the British government was consolidating its rule in India, it performed several essential functions. In 1835, the British introduced the English system of education into India.\(^11\) The British also improved the system of communication with a view to facilitating the growth of the British-owned industries and the movement of British troops and manufactured goods. The medium of Western education and the English language as medium of communication also exposed the Indian middle class to Western thought and tradition. Among the peoples of India, the Hindus were more willing to acquire western secular education, which ultimately
brought into existence of a new integrated all-India class with a varied background but a common foreground of knowledge, ideas and values. From the political aspirations of this class was born modern Indian nationalism. It was Western in concept and was strengthened by the unifying effects of the British rule and by the discovery of India’s past under the auspices of Western scholarship. The demand for self-government that asserted by Indian nationalism in due course was also characteristically Western. Freedom and a democratic ideal became the focus of the Indian politics. This emerging middle class however was not satisfied with British autocratic rule and expressed its dissatisfaction through various attacks on the Vernacular Press Act, the Arms Act, and the Ilbert Bill.

A new step in the direction of pursuing this policy of association was taken in 1861 when the Indian Councils Act was passed whereby, for the first time, Indians were nominated as the members of the Executive Council for legislative purposes. It obviously meant association of the native element with the alien administration in appreciation of which Sir Bartle Frere said, that the addition of the native element to the Council has, I think, become necessary unless one is prepared for the perilous experiment of continuing to legislate for millions of people with few means of knowing except by a rebellion, whether the laws suit them or not.

2.1.2 THE INDIAN COUNCILS ACT OF 1861
In order to give a semblance of implementation to the policy of association as contained in the Royal proclamation of November 1, 1858, the Act of 1861 was passed. It added some additional members, not more than 12 and not less than 6, to the Supreme Council for the purposes of legislation. They were to be nominated for two years by the Governor-General. Not less than
one half of the members were required to be non-officials and the Indians were invariably nominated to fill the vacant seats.

A number of societies were formed to express public opinion on political matters. The Indian Association of Calcutta was formed in 1876, and the Indian National Union in 1883. This new middle class mainly consisted of Hindus. The founding in 1885 of the Indian National Congress provided a sign of the new times. A. O. Hume, an Englishman, is known as the architect of Indian National Congress. The aspiration for self-government reflected a profound transformation of political ideas among the Western educated classes. It also furnished the means whereby freedom from the alien rule could eventually be achieved. The empire had sowed the seeds of its own dissolution. The movement towards self-government was, however, slow.

The Indian Councils Act of 1892 marks another milestone in the direction of this policy of apparent association now slightly sharpened in response to the demands of the Indian National Congress formed in 1885. The introduction of the system of indirect election for the non-official members of the Executive Councils, nomination of some members to the Councils by the Governor-General on the advice of the provincial Councils and local bodies, conferment on the Executive Councilors the right to ask questions and discuss budgetary provisions. Above all, increase in the strength of the Indian members in the Central and Provincial Executive Councils were certain novel features of this Act that looked like a sort of constitutional movement in the sphere of responsible government. Thus, this Act was like an attempt at compromise between the official view of the Councils as pocket legislatures and the educated Indian view of taking them as embryo parliament.\(^{15}\)
2.1.3 **THE INDIAN COUNCILS ACT OF 1892**
As the Act of 1861 had certain weaknesses; the Act of 1892 was framed to remove some of them. The Executive Council of the Governor-General was expanded for legislative purposes with additional members whose number was to be not less than 10 and not more than 16; in Bombay and Madras, additional members were to be between 8 and 20; for N.W.F.P. and Oudh the number was to be 15 at the most. Thus, the Indian Councils Act of 1892 has been described as a drastic improvement upon the Indian Councils Act of 1861.

2.1.4 **THE GOVERNMENT OF INDIA ACT 1909:**
The enactment of the Indian Councils Act of 1892 was very much due to the role of the moderate leaders of the Indian National Congress. In no more time, the role of the Indian National Congress became a matter of apprehension for the English rulers who sought to sharpen the application of their policy of 'divide and rule'. It is discoverable in the statement of George Francis Hamilton, the then Secretary of State for India, who wrote to Viceroy Curzon on Sept. 2, 1897: "I think the real danger to our rule in India, not now but say 50 years hence, is the gradual adoption and extension of western ideas of agitation and organization, and, if we could break the educated Hindu party into two sections holding widely different views, we should, by such a division, strengthen our position against the subtle and continuous attack which the spread of education must make upon our system of Government." Thus, the shrewd English rulers adopted the divide and rule policy. The Act of Minto Morley Reform came as the first effective dose of the communalization of Indian politics. Its main provisions were: first, both the Imperial and the Provincial Councils were expanded. For the
Imperial Legislative Council, the maximum number of additional members was raised from 16 to 60; the number of such members for the Councils of Bombay, Madras and Bengal was raised from 20 to 50, for UP from 15 to 50 and for all others it was fixed at 30. Separate electorate system was introduced as the constituencies for the election of non-official members were divided into Muslims, Muslim landlords, landlords, Chambers of Commerce, Universities, Corporations, Municipalities, and District Boards etc. Second, the functions of the Legislative Councils were also enlarged. The members were given the right to ask questions and supplementary questions, to move resolutions on matters of general public interest; resolutions could be moved and votes taken on the notable portions of the budget. Third, some changes took place in the composition of the Executive Councils also. The Secretary of State for India-in-Council were given the power to raise the membership of the Executive Councils of Bombay and Madras presidencies from 2 to 4 of whom at least half must have worked for at least 12 years in the service of the Crown in India. The Governor-General-in-Council was given the power to establish an executive council in Bengal of not more than 4 members with the approval of the Secretary of State for India.

In 1906 the Muslim League was founded in Dacca to protect the interests of the Muslims masses. The Morley-Minto Reforms of 1909 granted the Muslims the right of separate representation on all local, provincial, and central bodies. It is observed that after this reform the Muslim League became committed to safeguarding the rights and interests of Muslims rather than fighting for the introduction of responsible government. After the annulment of the partition of Bengal in 1911, the Muslims were convinced
that their interests could be safeguarded only through the Muslim League and by 1913 Mohammed Ali Jinnah joined it. The League Council passed a resolution in 1913 calling for the attainment under the aegis of the British Crown for self-government suitable to India.\textsuperscript{19} Jinnah persuaded the Muslim League to come to an understanding with the Indian National Congress. This understanding was reflected in the Lucknow Pact of 1916, which registered the Congress acceptance of separate Muslim representation in the various legislative bodies and granted them special safeguards.\textsuperscript{20}

It was under the impulse of the mass freedom movement launched by the Congress and the aftermath of World War-I to which India had made a massive contribution with men and material 'to make the world safe democracy' which forced the British statesmen, in Lord Asquith's phrase, to look at the Indian problem 'from a new angle of vision. The result of these developments was the momentous declaration of 1917, which stated "the progressive realization of self-government in India" as the goal of the British government.

\textbf{2.1.5 THE GOVERNMENT OF INDIA ACT 1919}

The Government of India Act of 1919, which followed the Montagu-Chelmsford Report of 1917, set up partially responsible governments in the provinces.\textsuperscript{21} The provinces were considered as the domain in which the earlier steps towards progressive realization of responsible government should be taken.\textsuperscript{22} The Act of 1909 failed to satisfy the Indian leaders, as it involved no real transfer of power. Even moderate Congress leaders like Gokhale, who wanted to give these reforms a trial, were soon disillusioned. The policy of association still remained vague. Facts show that only two
Indians were appointed to the India Council of the Secretary of State and one Indian each to the executive councils of the Governor-General and Governors. It was just for the sake of giving a semblance of association that few Indians were admitted to the decision making bodies. Even the English writers realized the inadequacy of these reforms particularly when the English Government was involved in the First World War as Professor Philips justly comments: “Lacking a clearly distinguishable and steadily British policy towards the growth of politics in India, Morley and Minto were driven to devising not so much a coherent plan as a series of expedients to meet the particular and admittedly difficult situations.”

The famous Montague Declaration of 1917 pledged progressive realization of self-government in India. Thereafter, the Act of 1919 was announced that furnished a slightly refined version of the policy of merely symbolic apparent association. It kept the Central Government and its affairs entirely in the hands of the Governor-General-in-Council responsible to the British Parliament alone. The Indian Legislative Council was transformed into a bicameral legislature consisting of a Legislative Assembly and Council of State whose composition was liberalized so as to put into them elective majorities though their area of authority remained far from being expanded in the direction desired by the Indian people. It introduced a novel system of administration in the provinces notoriously known as the 'dyarchy'. The subjects of administration were divided into 'reserved' and 'transferred' categories, the former under the charge of the Governor and his councilors and the latter under ministers responsible to the legislative council. These experiments failed as they were bound to prove so on account of certain inherent defects. Even an English writer admitted that the system of dyarchy
failed in its primary purpose, which its authors intended to serve. It did not provide a real training in responsible government.25

The Khilafat Movement and the draconian suppression of rioting in the Punjab brought the Muslims and the Hindus closer than ever before. Gandhi joined the Khilafat movement and started the non-violent and non-cooperation movement against the British government. The Hindu-Muslim alliance, which Gandhi created, broke down when he suddenly called off the entire non-cooperation movement because a mob of his supporters attacked a police station and killed a policeman. This led Muslims to believe that they had been betrayed.

The Muslim League was revived in 1924 and it was still the party of the big landowners and the upper middle class. Its purpose was to safeguard the rights and interests of the Muslims by supporting the continuance of a separate Muslim electorate, increased weighting of their votes, and more provincial autonomy. British Government sent its Statutory Commission (also known as the Simon Commission) in 1927 to study and submit its report on the implementation part of the new constitutional reform based on the scheme devised by Secretary of State Montague and Viceroy Chelmsford. Indian leaders staged a boycott of this Commission. With a view to placate the Indian public opinion, Viceroy Lord Irwin in 1929 announced that the goal of British policy was 'Dominion Status'. The Commission was boycotted by the Indian leadership, as there was no local representative in the Commission. In pursuance of the decision of the All-Party Conference, to provide an alternative constitutional scheme, a committee was formed presided over by Motilal Nehru made a report in 1928, known as the 'Nehru Report', laying down the principles for framing a
constitution for India. The Report rejected separate electorates for the Muslims and federal nature of the future constitution.26 At the All-Party Conference, Jinnah pleaded for the acceptance of the amendments; however, all the proposed amendments were rejected. Jinnah is recorded to have commented: "This is the parting of the ways."27 Jinnah put forward the demands of the Muslim League in his 14 points28 in 1929 and rejected the Nehru Report. The 14 Points put forward by Jinnah, were approved at the All India Muslim League session held at Delhi in March 1929, included the demands of a federal constitution with residuary powers vested in the provinces, separate electorate for Muslims, separation of Sind from Bombay Presidency, introduction of reforms in the N.W.F.P. and Balochistan on the same footing as in other provinces.

The Lucknow Pact of 1916 was in shreds. H. M. Seervai has explained the attitude of the Congress by observing that, "the war of succession to the British Raj had not begun in 1916, but had begun in 1928, as full provincial autonomy was the obvious line of political advance in India as the Simon Commission Report in 1930 was to show. The few opportunities for averting that war were missed by the Congress. The war of succession ended with the partition of India."29 Although vague ideas about a possible state for the Muslim were floating for quite some time, yet it was left to Iqbal to develop a political philosophy of such a state and announce its feasibility from the platform of All India Muslim League. The constitutional scheme presented by Sir Muhammad Allama Iqbal in his presidential address at the Allahabad session of the all India Muslim League in 1930 offered a solution of the inter-communal conflict.30 He said:
"I would like to see the Punjab, the North-West Frontier Province, Sindh and Balochistan amalgamated into a single state. Self-government within the British Empire or without the British empire, the formation of a consolidated north-west Indian State appears to me to be the final destiny of the Muslims at least of north-west India."\(^3\)

This scheme is known as the 'Dream of Pakistan', provided a separate homeland for the Muslims of the Sub-continent, was based on the geopolitical realities of the time. Initially did not include the eastern parts of the Muslim majority areas. The eastern parts were included in 1937.\(^2\)

The Muslim League was not yet ready for a radical break. It did not pass any resolution in support of the proposal made by its President. But Allama Iqbal had provided a vision to the later rise of the Pakistan movement. Muhammad Ali Jinnah returned to India after a temporary stay in England in 1934 and began the reorganization of the Muslim League. In the same year he was elected as the president of the Muslim League. Muhammad Ali Jinnah realized that without a strong organization, it would be impossible to "secure from the Congress the kind of constitutional safeguards which would assure Muslim interests in a self governing India."\(^3\)

On the bases of these constitutional schemes, the Simon Commission Report, Nehru report and Jinnah's 14 points, the Round Table Conferences of 1930, 1931 and 1932 held in London but failed to resolve the controversy, as the English leaders were not prepared to grant reforms that would weaken the foundations of the empire and were adamant for a stronger central government. Not only that, a policy of the counterpoise of the natives against the natives became more effective at this stage that had its
manifestation in the 14-point program of Jinnah and in the representation of the Indian princes in the Round Table Conferences. However, eventually, the Government of India Act of 1935 agreed.

2.1.6 **THE GOVERNMENT OF INDIA ACT 1935:**
This Act provided for an all-Indian federation of a novel type consisting of all provinces as well as the princely states. It provided that the federal cabinet would be responsible to the legislature but the defense and foreign relations would be reserved subjects under the Governor-General who was also given certain special responsibilities in respect of subjects under his ministers. Thus, he was given special responsibilities to secure due administration of the reserved subjects, to ensure financial stability and credit of India, and for the protection of minorities, Indian princely states and public services. The notorious system of ‘dyarchy’ was thus transferred from the provinces to the Center. In the provinces all subjects were transferred to the ministers accountable to provincial legislatures. But here too, the Governors were given special responsibilities to act in their individual judgment and to assume all power in the case of the breakdown of constitutional machinery. This was called provincial autonomy.

In the election to the provincial assemblies in 1937 held under the Act 1935, the Muslim League was able to secure only about 7% of the Muslim votes.\(^\text{34}\) The Congress was able to form ministries in seven provinces out of 11.\(^\text{35}\) Flushed with victory the attitude of the Congress became further hardened. The conduct of the provincial ministries, notably in the United Province (UP), gave a foretaste of rule by the Hindu majority. The Congress offered two ministries to the Muslim League members of the assembly, on the condition if the Leaguers carry out the Congress policies and programs and
merge the Muslim League party in the assembly with the Congress Parliamentary Party. The offer was rejected for obvious reasons. The Congress thereupon formed a one party ministry. On this situation, Ian Stephens has observed: "The effect of this, simultaneously on many Muslim minds, throughout India, was of a lightning flash. What had before been guessed at now leapt forth in a hurriedly clear outline. The Congress, a Hindu dominated body, was bent on the Muslims eventual absorption; western style majority rule, in an undivided subcontinent, could only mean the smaller community being swallowed up by the larger, as Syed Ahmed Khan had long ago pointed out."  

The Working Committee of the League after its meetings held in February 1940 came up with its recommendation. Jinnah seems to have thought "a hundred times" before making up his mind. On March 23, 1940 at the historic session of the Muslim League held at Lahore, the resolution, that later came to be popularly known as the 'Pakistan Resolution' was passed. The resolution was moved by the Bengal chief minister, A. K. Fazlul Haq, and was seconded by Choudhury Khaliquzzaman and others. The resolution stated that: -

"Resolved that it is the considered view of the Session of All India Muslim League that no constitutional plan would be workable in this country or be acceptable to the Muslims unless it is designed on the following basic principle, namely, that geographically contiguous units are demarcated into regions which should be so constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in a majority, as in the north-western
and eastern zones of India, should be grouped to constitute independent states in which the constituting units shall be autonomous and sovereign. Adequate, effective and mandatory safeguards should be specifically provided in the constitution for minorities for the protection of their religious, cultural, economic, political, administrative and other rights.\textsuperscript{38}

It was further said that federal government should have the subjects such as defense, communication, foreign affairs and currency; the residuary subjects should be given to the provinces.\textsuperscript{39} Muhammad Ali Jinnah was able to transform the League into a mass organization by 1945, having resolved the horizontal cleavages, which had existed among Muslims.\textsuperscript{40} This transformation of the League into a mass organization enabled it to capture the great majority of Muslim seats in the 1945-46 elections. It needs to be pointed out here that, following the Lahore Resolution of 1940, the League sought to achieve independence rather than to prepare any program or ideology for building a new state.\textsuperscript{41}

It is also noted that a convention of Muslim League legislators, central and provincial, met in Delhi, on April 9, 1946 and passed a resolution demanding that the six provinces, Bengal and Assam in the north-east and the Punjab, the North-West Frontier Province, Sindh and Balochistan in the north-west, should constitute a sovereign independent State of Pakistan.\textsuperscript{42}

The Congress and the Muslim League followed their established positions. In brief, the Congress wanted a single Constituent Assembly to draw up a constitution for, “an all-India Federal Government and a Legislature with full power.”\textsuperscript{43} Following its resolution of April 9, 1946, the Muslim League proposed two constitution-making bodies, one for the six provinces in the
Pakistan group; and the other for the group of six Hindu provinces. The mediation of the Cabinet Mission could not bridge the gulf for an agreement on the constitutional issues.

*Muslim League* had a tremendous influence on political and constitutional development in Pakistan. An analysis of the league will be essential for our study. The league, firstly, was *not* a homogeneous organization. Various groups joined the League in the fight for independence. Secondly, the League was a highly centralized organization. Jinnah realized that without a strong political organization it would not be possible to protect the interests of Muslims. He reorganized the League to transform it into a mass organization. Provincial, district and local committees were formed in various parts of India. Powers of the League were concentrated in the hands of the President and the Central Parliamentary Committee of Action. The center controlled provincial branches. Jinnah took the supreme political decisions of the League. Unlike the Indian National Congress, the League organization was highly autocratic. No one was allowed to question the decisions of the leader. By contrast, Gandhi, Nehru and Sardar Patel took the political decisions of the Congress over partition. In addition the fact was that the Muslim League was mainly “a coterie of landlords and retired senior officials.”

Also, since the League was mainly concerned with the achievement of independence after the Lahore Resolution of 1940, it failed to formulate any program or ideology for the building of the new state. In the elections of 1945-46, many young intellectuals urged Jinnah to develop a comprehensive social and political program for the new state, but he refused to become involved in discussion of ideology, stating that, “We shall have time to quarrel our selves and we shall have time when these differences will have to be settled. When wrongs and injuries will have to be remedied, we
shall have time for domestic programs and policies, but first get the
government. This is a nation without any territory or any government.  

2.1.7 THE INDIAN INDEPENDENCE ACT OF 1947:
Like previous constitutional reforms, the Act of 1935 also failed to achieve
the real purpose on account of the very fact that, as Clement Attlee himself
said its keynote was 'mistrust' and 'distrust'. The role-played by the Congress
party in the elections of 1937 and in the working of the provincial ministries.
The experiment of provincial autonomy, however, came to an end in 1939
when the Congress governments resigned in protest against the declaration
of the British Government in joining India on the side of the Allied Powers
without seeking the advice of the Indian leaders. During the war period, the
British Government made a number of attempts to end the deadlock. In
Aug., 1940, Viceroy Linlithgow offered enlargement of the size of executive
council to include more Indians and also proposed that a new constitution
would be devised with the co-operation of all shades of opinion after the
war. The August Offer failed and later the Cripps Scheme of 1942 appeared.
This scheme stated that after the War, India would have Dominion Status
and that a new constitution would be framed by a constituent assembly
subject to its ratification by the English Parliament. A treaty between the
English Government and Indian Constituent Assembly would be signed to
provide for the complete transfer of power. Finally the Wavell Plan of 1945
was announced, saying that the Cripps Proposals still stood and a new
constitution was to be worked out by the Indians alone. A conference of the
Indian leaders with the Viceroy was held in Simla to consider this plan, but
nothing could materialize on account of unbridgeable differences between
the Congress and League leaders
The Cabinet Mission Plan of 1946 is very important. It rejected the demand for country's partition as raised by the Muslim League ever since its resolution adopted at the Lahore session of 1940. It suggested a three-tier system: a Union-Center, an intermediary the authority representative of the groups of contiguous provinces and, finally, the Indian provinces. It chalked out a scheme for the formation of the Constituent Assembly consisting of the representatives of the provinces and of the native states. Finally, it suggested the formation of an Interim Government consisting of the leaders of major political parties. After prolonged discussion, the Congress joined the interim government in September 1946 and the League did so about a month later. This government failed to run smoothly owing to the obstructive role of the League members. The British government then decided to convert its policy of divide and rule into that of divide and quit. Thus, on February 20, 1947 came Prime Minister Attlee's historic declaration that the British would leave this country by the end of next year. The Gordian knot was cut on June 3, 1947 when the Congress leaders accepted Lord Mountbatten's plan to partition the country. Thereupon, the British Parliament passed the Indian Independence Act that provided the division of the country into India and Pakistan. It signified the termination of the centuries old British rule over India.

It is, therefore, clear from the above discussion that all these constitutional reforms were devised by the English rulers to somehow safeguard the interests of the empire. The policy of association as well as the declarations of progressive realization of self-governing institutions were all hoax in view of this political axiom that "imperialism and popular government have nothing in common: they differ in spirit, in policy, in method."49
Muslim politicians and the Muslim masses lacked an adequate understanding of the parliamentary system of government, and especially its requirement for substantial participation of masses. Under the Act of 1919, four provincial elections were held with only 3 per cent of the people forming the electorate. Under the Act of 1935 two provincial elections were held with only 14 per cent of the people forming the electorate. Since the Muslim League was not a mass-based party before 1940, elections were fought on communal and personal issues rather than on programs. Though the election of 1945-46 began to reverse this trend of low public participation, the leaders were not able to capitalize on this experience because of the fact that partition occurred barely a year later. Furthermore, Muslims were not well represented in the various legislatures. Finally, since Muslim leaders were more, concerned about achieving independence, they were less likely to be in a position to acquire experience in the functioning of representative institutions.

The foregoing pages prove that the process of political and constitutional during the British colonial period was rather very slow. The struggle of the Muslim League was primarily meant to achieve constitutional safeguards. The preceding analysis also helps us to understand some of the problems posed for political development in Pakistan. It also enables us to measure the level and the nature of political and constitutional development during the formative period of Pakistan and to determine that relationship between political, constitutional and administrative development.

2.2 SIR SYED AHMAD KHAN TO M. A. JINNAH (1857-1947)

The Muslims were held responsible for the insurrection of 1857 and were victimized severely. After the Mutiny, the British who were determined to
reduce them to an inferior position and distrusted them. One upshot was that Muslims were kept out of government services, particularly in army and administration for several decades.\textsuperscript{50} On the other hand, it was not difficult for the Hindus to accommodate in the new system, to them only rulers are changed. Therefore, they accepted with thanks such crumbs as their former conquerors dropped, from the table.\textsuperscript{51} After the Mutiny, the cooperation of Hindus became indispensable to the new rulers of India.

Almost a century ago the Muslims were the rulers of India and monopolized all the important offices of state. As long as the Muslims were ruling India, they never realized that they were a minority in India and after loosing power they became a minority and suddenly realized that their religion, language and culture are insecure and had a fear of being assimilated by the Hindu majority.\textsuperscript{52} This fear resulted in taking a refuge in religion to meet the new challenges. As a result the Muslim middle class remained much smaller than that of the Hindus, owing to the fact that Muslims did not compromise with the change, remained isolated and boycotted the English education and services. In these circumstances, men like Sir Syed Ahmed Khan took the responsibility and persuaded the Muslims to acquire modern scientific education. He founded the Anglo- Oriental College at Aligarh in 1875 and laid the foundation of the Annual Muslim Educational Conference in 1886. When the Indian National Congress was founded in 1885, Syed Ahmed Khan discouraged Muslims from any participation in it, since it was mainly a Hindu organization.\textsuperscript{53} Moreover, the Congress pressed for a larger share for Indians in the various services and in particular for the introduction of parliamentary government, an institution based on universal suffrage would reduce the Muslims to an inferior position. Though many, like Syed Ahmed
Khan, discouraged Muslim participation in the Indian National Congress, an important section of Muslim opinion (Jinnah was among them) emphasized the need for Hindu-Muslim co-operation to put an end to British rule. In the end of 19th century the British masters changed the policy of nominal association into the policy of divide and rule and as a result many members of the Congress began to criticize the British for undue favor to the Muslims. The partition of Bengal in 1905, which the Muslims favored, widened the rift between the British and the Congress. But the position of the extremists in the Congress was weakened by British concessions, including the Reform Act of 1909 and the annulment of the partition of Bengal in 1911.

The Mutiny of 1857 marked the end of Muslim resistance. The Muslims “found their prestige gone, their laws replaced, their Language shelved and their education shorn of its monetary value.” The British Government deliberately, though gradually, abrogated the Islamic Law. The whole of Muslim Criminal law was superseded by, the Indian Penal Code and the Code of Criminal Procedure. The Indian Evidence Act and the Indian Contract Act replaced the Islamic law. The Indian Majority Act, 1875, abrogated Muslim Law except in matters relating to marriage, dower and divorce. The Caste Disabilities Act, 1850, ‘abolished the civil disabilities which Muslim Law attached to apostasy. The process continued until the British left.

During the British rule in India Muslims began to live with Hindus for the first time in their history as subjects of an alien power, but while existing together they lived apart. The differences between Hindus and Muslims were fundamental. “Hindus worship many gods, Muslims only one...Hinduism maintains a rigid caste system; Islam proclaims the equal brotherhood of
believers. The classical language of Hindus is Sanskrit, of Muslims Arabic and Persian...Though Hindus and Muslims live side by side all over India, yet the natural ties of kinship are completely lacking, since both the Koran and the Hindu law of caste prohibit intermarriage; nor many an orthodox Hindu shares his table with a Muslim".  

History intensified this sense of difference. The Muslims were nostalgic about their past. Never had India been so powerful and prosperous or as famous throughout the world as in the days of Muslim rule, especially that of the Mughal. The splendors of that age seemed all the brighter by contrast with the long period of decline and decay that followed it. With the collapse of the Mughal Empire and the advent of the British rule Muslims ceased to be the governing class. Even in the lower ranks of public service they soon found themselves edged out by Hindus who were keen, purposeful and better-organized.

2.2.1 SIR SYED AHMAD KHAN

In 1857 Syed Ahmad Khan, a subordinate judge, found himself the leader of a defeated and demoralized community. He saw the connection between education and power and called upon his people to cooperate in acquiring western knowledge consistent with the tenets of Islam. "Syed Ahmad Khan sought to produce a leadership for Muslim India which could help rescue the mass of Muslims from their stupor, despair and poverty, and lead them along a path which would ensure for them a secure future in British India.

Syed Ahmad Khan employed his loyalism to emphasize Muslim political separateness. He clearly saw that the emergence of Indian nationalism would spell disaster for Muslims who were numerically a quarter of the Hindu population and had little experience of political agitation and lacked
enterprise and economic resources. Against four votes of the Hindus to every one vote for the Muslims, there was no possibility of the latter guarding their interests. "It will be like a game of dice, in which one man had four dice, and the other only one."  

Syed Ahmad Khan carried his message to the Indian Muslims through the Mohammedan Educational Conference which he founded in 1886. It was a powerful instrument which was used effectively by the leading intellectuals of the Aligarh School in frustrating the designs of the Indian National Congress, founded a year earlier by Allan Octavian Hume, a retired Civil Servant, at the instance of Lord Dufferin who insisted that his name in connection with the founding of the Congress should not be divulged so long as he remained the Governor-General of India.

Syed Ahmad Khan was ably supported by Shibli Nu'mani, the distinguished scholar of Islamic historiography, Altaf Husain Hali, the eminent poet and critic of his generation, a scholar of rare caliber, and many others who helped create and consolidate a sense of separate identity in the Muslim community. The Indian Muslim, by and large, followed the lead of Sir Syed Ahmad in politics even though he received stiff opposition from the Ulema. Much of the political and intellectual leadership of Muslim India in three succeeding generations was provided by the College that Syed Ahmad founded in Aligarh in 1877.

Nawab Mohsin-ul-Mulk, the colleague and successor of Syed Ahmad carried his mission further and was able by 1906 to secure British recognition of the principle of adequate and separate representation for Muslims, both in local bodies and legislative councils. In order to make separate representation effective, a political organization—All India Muslim
League—was founded in Dacca in December 1906. The one Muslim of any consequence who opposed the principle of separate electorate was Mr. Jinnah who remained the most inflexible critic and opponent of this approach for nearly a quarter of a century. He pleaded passionately the cause of Indian nationalism and condemned the principle of separate electorate as a British attempt to divide the nation against itself. But he failed in his mission as an ‘Ambassador of Hindu-Muslim Unity’. He was not alone. Maulana Mohamed Ali who became a leader of Muslim separatism in his last years was in the same boat.

2.2.2 SIR ALAMA MUHAMMAD IQBAL

Sir Allama Muhammad Iqbal is known as the person who dreamt of and proposed the idea of Pakistan. In the beginning he was an Indian Nationalist and he was also the author of a poem which instantly became India’s national anthem—

\[ Sare Jahan se acha Hindustan hamara \]

\[ Ham bulbulain hain iski Yeh gulsitan hamara \]

For the first and last time the Indian National Congress briefly articulated the sentiments of Indian Muslims from 1920 to the beginning of 1923. The Khilafat Movement petered out with the abolition by Mustapha Kemal of the Caliphate in Turkey in 1924. While Abul Kalam Azad was its principal theoretician, Maulana Mohamed Ali was the most outstanding leader of the movement. Maulana Azad remained loyal to the Indian National Congress and lost his following among the Muslim masses; Mohamed Ali left the Congress and retained his respect. But the person whose thoughts dominated the 30’s was Sir Allama Muhammad Iqbal, the theoretician of Pakistan.
Jinnah, the inveterate advocate of Indian nationalism was prevailed upon to accept the theory of a separate homeland for Muslims after much advocacy by Sir Aḥma Muhammad Iqbal. It was two years after his death that Muslim India proclaimed in Lahore its determination to carve out for itself a separate homeland, the solution that Aḥma Iqbal had advocated in his Presidential address to the All India Muslim League at Allahabad in 1930. Aḥma Iqbal concept of an Islamic State was extremely liberal and flexible. He declared:

“Nor should the Hindus fear that the creation of autonomous Muslim States will mean the introduction of a kind of religious rule in such states”.

Although vague ideas about a possible state for the Muslims were floating for quite some time, yet it was left to Alama Iqbal to develop a political philosophy of such a state and announce its feasibility from the platform of All India Muslim League. The constitutional scheme presented by Sir Muhammad Allama Iqbal in his presidential address at the Allahabad session of the all India Muslim League in 1930 offered a solution of the inter-communal conflict. He said:

“I would like to see the Punjab, the North-West Frontier Province, Sind and Balochistan amalgamated into a single state. Self-government within the British Empire or without the British empire, the formation of a consolidated north-west Indian State appears to me to be the final destiny of the Muslims at least of north-west India.”

He went on to assert that in certain cases a Muslim state could adopt such a flexible approach as to impose no restrictions on the realization of interest on money loaned:
"I, therefore, demand the formation of a consolidated Muslim State in the best interests of India and Islam. For India it means security and peace resulting from an internal balance of power, for Islam an opportunity to rid itself of the stamp that Arabian Imperialism was forced to give it, to mobilize its law, its education, its culture, and to bring them into closer contact with its own original spirit and with the spirit of modern times".63

Alama Iqbal’s concept of Islam was different from that of the subsequent religious leaders like Maulana Maudoodi, who in their zeal to purify Islam of its Mughal or Indian associations, wanted to cast it in a rigid Arab mould.64 The problem in India was no longer of an inter-communal character but ‘manifestly of an international one’.

In 1940, Mr. Jinnah argued:

"the only course open to us all is to allow the major nations separate homelands by dividing India into autonomous national states... it is a dream that the Hindus and Muslims can ever evolve a common nationality. The Hindus and Muslims belong to two different religious philosophies, social customs and literatures. They neither intermarry nor interdine together and indeed, they belong to two different civilizations which are based mainly on conflicting ideas and conceptions they have different epics, different heroes, and different episodes. Very often the hero of one is a foe of the other and, like wise, their victories and defeats overlap. To yoke together two such nations under a single state, one as a numerical minority
and the other as a majority, must lead to growing discontent and final destruction of any fabric that may be so built up for the government of such a state".65

The Lahore Resolution of Muslim League neither used the word nation nor Islamic. The Muslim League was willing to accept a compromise on the issue of Pakistan. After all they accepted the Cabinet Mission Plan of 1946 which rejected the Pakistan Scheme.66 The Muslim League withdrew its approval only when the Congress acceptance of the plan turned out to be a conditional acceptance with its own interpretation of the Cabinet Mission proposals, which amounted to killing the idea of secession irretrievably.

It was only after the Lahore Resolution of 1940 that Muslims flocked to the Muslim League. The demand for Pakistan reminded them of their past glory and opened before them vistas of future greatness. The tremendous following that Jinnah acquired among the people is largely explained by the fact that he offered them political power under a new Muslim State. The Muslim League, by demanding Pakistan, was satisfying a craving for power and influence free from Hindu competition in India and was responding to the religious urge of, the masses. It was really becoming a representative institution. Speaking at the 28th session of All India Muslim League in Madras on April 12-15, 1941, Quaid-e-Azam said:

"What is the goal of the Muslim League " Let me tell you as clearly as possible The goal of the All India Muslim League is as follows : we want the establishment of completely independent States in the North-Western and Eastern Zones of India with full control of Defense, Foreign Affairs, Communications, Customs, Currency, Exchange etc."67
It was only in April 1946, at a Delhi Conference, that it was officially decided for the first time that the goal of the Muslim League was to create a single independent Muslim State.

Hussain Shaheed Suhrawardy launched a political campaign under the slogan of a sovereign, independent and indivisible Bengal in a divided India. The campaign was backed by Sarat Chandra Bose, Kiron Shankar Roy and other Bengali Hindu politicians. Support also came from Khawaja Nazimuddin. A United Committee was formed to supervise the struggle for a single and independent Bengal. Its members included H.S. Suhrawardy, Abul Hashim, Abdul Malek, Faziur Rahman, Khawaja Nizamuddin, Sarat Cliandra Bose, Kiron Shankar Roy, and S. R. Bakhshi. An agreement worked out by the Committee envisaged that in the future State of Bengal seats in Parliament would be divided equally between Muslims and Hindus: the post of Prime Minister would always be occupied by a Muslim and that of the President by representatives of all religious communities in turn.”

The background of the men who organized the campaign for Pakistan was not theology and Islamic law but politics and the common law, not Deoband but Cambridge and Oxford. They used the idiom of Islam and referred to its history but they thought in terms of the Western political system—“an incongruity which is visible all around the spirit soars to the lofty heights reached in Hazrat Uma’s time, but eyes are fastened on the spires of Westminster”.

The idea of making Pakistan an Islamic state began with the politicians and not the Ulema. The only important organization of the Ulema in India was the Jamiat-al-Ulema-i-Hind. It co operated closely with the Congress and opposed the Muslim League right up to partition. The first important aalim
who was successfully persuaded to accept the League’s two-nation theory was Maulana Shabbir Ahmad Usmani, one of the senior teachers at Deoband.70

The struggle for Pakistan led by Western educated men rather than by the traditional ulema. Within five years of the Lahore Resolution the Muslim League captured 460 out of the 533 Muslim seats in the central and provincial elections in 1945-46. It was clearly responding to the inner urge for political power among the Muslims. The Quaid-e-Azam became a symbol of Muslim regeneration. His followers, particularly in the country side were assured that an Islamic State based on the Quran and the Sunnah would be established in Pakistan. The Quaid-e-Azam assured Pir Sahib of Manki Sharif; “It is needless to emphasize that the Constituent Assembly which would be predominantly Muslim in its composition would be able to enact laws for Muslims, not inconsistent with the Shariah laws and the Muslims will-no longer be obliged to abide by the unislamic Laws.”71

In 1946, when Jinnah came to know that he was being criticized by the Ulema for avoiding the expression Shariah while talking generally of Islam, retorted to this effect:

“Whose Shariah? Hanafis? Hambalis? Sha’afis? Ma’alikis? Ja’afirs? I don’t want to get involved. The moment I enter this field, the Ulema will take over for they claim to be the experts and I certainly don’t propose to hand over the field to the Ulema. I am aware of their criticism but I don’t propose to fall into their trap”.72

The Muslim League’s appeal to the hoary past of Islam evoked tremendous response from the masses though most intellectuals and the Ulema initially
remained unimpressed. The *Ulema* became bitter in their denunciation of Quaid-e-Azam. Maulana Husain Ahmad Madni, President of the *Jamiat-ul Ilama-i-Hind*, gave a *fatwa* in October 1945, forbidding Muslims from joining the Muslim League on the ground that such action was contrary to the dictates of *Islam*. He also attacked Quaid-e-Azam for radically amending the *Shariat* Bill brought before the Legislative Assembly in Delhi.\(^73\)

Maulana Maudoodi wrote:

> "From the League’s Quaid-e-Azam down to the humblest leader, there was none who could be credited with an Islamic outlook and who looked at the various problems from an Islamic point of view".\(^74\)

With an obvious air of contempt, Maulana Maudoodi added:

> "One cannot discover even a hint of *Islam* in the ideas, ideals and the political style (of Quaid-e-Azam), from the most trivial to the most crucial problem, he shows no knowledge of the *Quranic* point of view nor does he care or consider necessary to seek it. All his knowledge comes from the western laws and sources".\(^75\)

While the *Ulema* quibbled about the orthodox Islamic political theory and rejected Pakistan as being inconsistent with it, the mass of Muslims simply equated Pakistan with the *Ummah* and its government with the Caliphate. In 1857, when Sir Syed Ahmad tried to rally the Muslims the *Ulema* opposed him. Nearly a hundred of them, including Maulana Rashid Ahmad Gangohi, the leading light of *Deoband*, ruled that it was unlawful to join the Patriotic Association founded by him. The Muslim community proved wiser than the religious elite and decided to follow the political lead given by Syed Ahmad.
The *Ulema* as a class concentrated on jurisprudence and traditional sciences. They developed a penchant for argument and hair splitting. This resulted in their progressive alienation from the people who while paying them the respect due to religious scholars rejected their lead in national affairs. While their influence on the religious minded masses remained considerable their impact on public affairs shrank simply because the *Ulema* concentrated on the traditional studies and lost touch with the realities of contemporary life.

The *Ulema* retained a tradition, however, of fierce opposition to the British rule. During the First World War Maulana Mahmud Hasan of Deoband and his disciple Maulana Ubaidullah Sindhi commanded great respect. Maulana Abul Kalam Azad was the theoretician of the *Khilafat movement* which created a stir in India and under whose auspices the first non-Violent movement of non-cooperation was launched in India. It was under the inspiration of Maulana Abdul Ban of Firangi Mahal that the *Ulema* began to participate in the *Khilafat movement* and formed an association of their own—*Jamiat-i-Ulema-i Hind*. The Deobandi group which had anti-British tradition, and a pro-Congress bias, dominated this organization. But the *Ulema* were not the policy makers; they were not leaders of the *Khilafat Movement*. They helped arouse public enthusiasm for the cause and provided impetus to the mass movement.

It is an irony of history that Jinnah in his own day, like Syed Ahmad before him, faced the opposition of the *Ulema* who were by and large opposed to the movement of Pakistan. The *Jamiat-i-Ulema-i-Hind*, the most prestigious organization of the *Ulema*, saw nothing Islamic in the idea of Pakistan. Its president, Maulana Husain Ahmad Madni, the leading theologian, had to be taken to task by the poet Alama Iqbal for preaching territorial nationalism.
Alama Iqbal Remarked, "Those who accepted Muhammad's leadership became part and parcel of the Muslim Community irrespective of the fact whether they belonged to his own nation or other nations. Formerly they had been slaves of land and race; now became their slaves". He further wrote, "He who sticks to race or country, does not understand the religion of Arabia; had nation been founded on country, Muhammad need not have called upon Abu Lahab to change his religion".

Maulana Abul Kalam Azad, who commanded the position of Imam-al-Hind, was dubbed "Show-boy of Congress" by Jinnah. The reaction of the daily Madinah, Bijnaur, to this comment was outrageous:

"If God has not endowed the Quaid-e-Azam with natural civility and, if through long association with Anglo-Indians and Christians, he has handed over not only his daughter but also his manners to strangers, it is at least the duty of Muslims to call him to account."

The Ahrar Ulema seldom mentioned the Quaid-e-Azam by his correct name which was always distorted. One of them used the insulting sobriquet Kafir-i-Azam (the great unbeliever) for Quaid-e-Azam. The opponents of the Muslim League resorted to a campaign of calumny and slander against the pirs and mash'ikh that were pressed into service during the elections in 1945. Their help in the referendum in Sylhet and the N.W.F.P. was invaluable; they rendered useful service to the League in the Punjab and Sind. Maulana Shabbir Ahmad Usmani, an eminent theologian was prevailed upon to break away from the Jamiat al-Ulema-i Hind to head the Jamiat-i-Ulama-i-Islam he stoutly defended the Quaid-e-Azam against the
attacks of other Ulama. He exhorted the Muslims to vote for the Muslim League because it was fighting for the establishment of a Muslim State.

The Ulama, during the Pakistan movement, much like their counterparts during the Khilafat movement, did not, however, comprise the vanguard and had little influence in shaping the political policies and program of the organization they helped win public support. Jinnah was by far the most towering personality whose irreproachable integrity and uncanny understanding of the complexities of contemporary politics made him the unquestioned leader of Indian Muslims.

The Muslim nation followed the political lead of Sir Syed Ahmad in the nineteenth century and rejected the Ulama. But in religion they followed the Ulama and rejected Sir Syed Ahmad. Much the same happened in the 40’s of the twentieth century. The Indian Muslims followed the political lead given by Mr. M.A. Jinnah (who could have been a knight like Sir Syed but he resolutely refused both title and office during the British regime) who had no pretensions to leadership in the sphere of religion.

2.2.3 QUAIM-E-AZAM MUHAMMED ALI JINNAH

The founder of Pakistan, the largest Islamic state in the world in 1947, was a perfectly simple Muslim. He was a Shia and a Khoja by origin but always said that he was only a Muslim. He offered his public prayers with the Sunni Muslims. The simple doctrine that he preached was that Islam transcended all petty sectarian differences. The sort of Islam that he put forward was simple and straightforward, free of all theological and doctrinal subtleties, which the ordinary Muslim masses could understand. No one was quite sure what the Islamic State, Islamic Government, and the Islamic Constitution meant. In fact there was little expenditure of any intellectual effort on the
problem before partition. All the effort was directed at achieving Pakistan. And in this task the services of ulema were used as were those of the pirs, the sajjadanashins, the 'amindars, and other categories commanding influence and authority with the people. It was Jinnah himself who requested the ulema to help the League in the referendum campaign in Sylhet and N.W.F.P. But while using the landlords, the pirs, and the mullahs, Jinnah spoke against the exploitation of the common man by landlords and capitalists:

"There are millions and millions of our people who hardly get one meal a day. Is this civilization? Is this the aim of Pakistan? ...If that is the idea of Pakistan I would not have it."⁸⁰

In 1906 Mr. M.A. Jinnah made his maiden political speech from the platform of the Indian National Congress in support of a resolution on Waqf-alal-Aulad, endowments in favor of a Muslim family. The Privy Council, in a judicial pronouncement, had ruled against this practice. Prominent Muslim leaders had expressed their disapproval of the ruling of the Privy Council but it fell to the lot of Mr. Jinnah to move the first private member’s bill under the reforms of 1909 in the Imperial Legislative Council. It was almost entirely due to his efforts that the bill which he piloted so skillfully reached the Statute book. His brilliant defense of Muslim interests won him the applause and gratitude of the entire Muslim Community.

Mr. Jinnah piloted the Musalman Waqf Validating Bill in the Imperial Legislative Council of India as early as March 1911. In his speeches on the subject Jinnah shows a certain mastery of the subject and refers to international authorities on Islamic jurisprudence. The Editor of his Speeches and Writings pertinently points out that "many people have had an
erroneous impression that Mr. Jinnah had no touch with the spirit of religion. True, he did not wear a halo of religious sanctity, nor did he try to exploit the religious passions and prejudices of the people. He did not make a show of religious performances. He did not wear a hocus-pocus of religion or metaphysical subtleties. But he was not only aware but thoroughly saturated with the true spirit of religion."\(^{81}\)

For the first time Mr. Jinnah was elected President of the Muslim League in 1916. In his presidential address, while he talked of the “affairs of our common secular existence”, and “new appeals of territorial patriotism and nationality”, he also referred to the “history, the traditions, and the literature and the precepts of Islam”, and remarked: “There are no people in the World who are more democratic even in their religion than the Musalmans”.\(^{82}\) This shows his general and genuine understanding of the spirit of Islam.

Jinnah kept himself scrupulously out of all controversial issues so far as Islam is concerned. He was not the man to dabble in dialectics. He was familiar with the tenets of Islam and practiced them as far as he could. In his Id message to the Muslims of India in 1939, he said:

“From the Atlantic to the Ganges”, says Gibbon. “The Quran is acknowledged as the fundamental code, not only of theology, but of civil and criminal jurisprudence, and the laws which regulate the actions and the property of mankind are governed by the immutable sanctions of the will of God. Every one, except those who are ignorant, knows that the Quran is the general code of the Muslims. A religious, social, civil, commercial, military, judicial, criminal, penal code; it regulates
every thing from the ceremonies of religion to those of daily life; from the salvation of the soul to the health of the body; from the rights of all to those of each individual; from morality to crime, from punishment here to that in the life to come, and our Prophet has enjoined on us that every Musalman should possess a copy of the Quran and be his own priest. Therefore, Islam is not merely confined to the spiritual tenets and doctrines or rituals and ceremonies. It is a complete code regulating the whole Muslim society, every department of life, collective and individual.”

Speaking at Ismaili College, Bombay on February 1, 1943, and Mr. Jinnah referred to religion as “strictly a matter between God and man”. In a message to N.W.F.P. Muslim Students Federation on April 4, 1943, Mr. Jinnah asked:

“What message can I give you? We have got the greatest Message in the Quran for our guidance and enlightenment. All that we have got to do is to know ourselves and the great qualities virtues and powers that we possessed. Let us work up to that great ideal”.

Early in 1943 Mr. Jinnah said that Pakistan “would be a base where we will be able to train and bring up Muslim intellectuals, education, economists, scientists, doctors, engineers, and technicians etc. who will work to bring about Islamic renaissance...Eventually resulting in the creation of a “solid, cohesive bloc—a third bloc—which will neither be communistic nor capitalistic, but truly socialistic based on the principles which characterized Caliph Umar’s regime.”
Speaking at the concluding session of the Conference of Punjab Muslim Students Federation at Lahore on March 19, 1944, M. Jinnah stated:

"Islam did not recognize any kind of distinction of various castes. The Prophet was able to level down all castes and create a national unity among Arabs in Arabia. It was the foundation so firmly laid by him that took them across, and they were knocking at the gates of Spain....There is no question even of Shias and Sunnis. We are one and we must move as one nation and then alone shall we be able to retain Pakistan". 86

Before the Partition, the first public picture of Pakistan that the Quaid-e-Azam gave to the world was in the course of an interview in New Delhi with Mr. Doon Campbell, Reuter's correspondent. The Quaid-e-Azam said that the new state would be a modern democratic state, with sovereignty resting in the people and the members of the new nation having equal rights of citizenship regardless of their religion, caste or creed. 87 An acute observer of the Indian scene had referred to Jinnah as a "sword of Islam resting in a secular scabbard". 88 This assessment seems to be confirmed by Jinnah's first address to the Constituent Assembly of Pakistan.

Mr. Jinnah an ardent advocate of the two nation theory, a Champion of the Muslim cause in India, and the creator of the largest Muslim State in the world was neither a bigot nor a 'fanatic. A liberal democrat, a believer in the rule of law, he inspired millions of Muslims to unprecedented heights of endeavor and led them to an independent nation state. On 11th August 1947, in his inaugural Address to the parliament Mr. Jinnah had estimated a period of eighteen months to two years a new constitution to be framed. What kind
of a constitution did Jinnah visualize. Since he did not leave a blue print, it has remained a matter of speculation. On June 9, 1947 he had remarked:

"I do not know what the ultimate shape of the constitution is going to be, but I am sure that it will be a democratic type, and embodying the essential principles of Islam. Democracy is in our blood. It is in our marrow. Only centuries of adverse circumstances have made the circulation of that blood cold. Islam and its ideals have taught equality of man, justice and fair play to everybody."89

Muhammad Ali Jinnah apparently saw no disharmony between the ethical and moral ideals of Islam and the modern structure of the state. In his famous address of August 11, 1947 at the inaugural session of the Constituent Assembly he said:

"I cannot emphasize it too much. We should begin to work in that spirit and in course of time all these angularities of the majority community—the Hindu community and the Muslim community—because even as regards Muslims, you have Pathans, Punjabis, Shias, and Sunnis and so on. Among the Hindus you have Brahmans, Vaishnavites, Khatries; also Bengalis, Madrasies and so no will vanish. Indeed, if you ask me this has been the biggest hindrance in the way of India to attain its freedom and independence and but for this we would have been free people long ago. No power can hold another nation and especially a nation of 400 million souls in subjection; nobody could have conquered you, and even if it had happened, nobody could have its hold on you for any length of time but for this.
Therefore we must learn a lesson from this. You are free; you are free to go to your temples. You are free to go to your mosques or any other place of worship in this state of Pakistan. You may belong to any religion or caste or creed— that has nothing to do with the business of the State. We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste and creed or another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State.”

The point to note in this speech made on August 11, 1947 is that in the moment of elation as the founder of Pakistan Jinnah did not think of the city neither state of Medina as the ideal nor did he refer to the first four Caliphs but the country which came readily to his mind in the extempore speech was the one which had given him liberal education and had prepared him for a struggle against the British Government. And he referred to religion, even at the inauguration of Pakistan, as the ‘personal matter of each individual’.

On 11 October, 1947, in a speech to officers of the Defense Services, the Governor General said that Pakistan was only “a means to an end and not the end in itself. The idea was that we should have a State in which we could live and breathe as free men and which we could develop according to our own lights and culture and where principles of Islamic social justice could find free play”. In January 1948, on the occasion of the Holy Prophet’s Birthday, Mr. Jinnah said, “The Prophet was a great teacher. He was a great law giver. He was a great statesman and he was a great sovereign In Islam
there is no difference between man and man. The qualities of equality, liberty and fraternity are the fundamental principles of Islam". 92

In February 1948, at the Sibi Darbar Mr. Jinnah said, "Our loyalties lies in following the golden rules of conduct set for us by our great law giver, the Prophet of Islam. Let us lay the foundation of our democracy on the basis of Islamic ideals and principles". 93 In February 1948, in a broadcast talk to the people of the U.S.A., Mr. Jinnah described Pakistan as the premier Islamic State and said:

"The Constitution of Pakistan has yet to be framed by the Pakistan Constitutional Assembly. I do not know what the ultimate shape of this Constitution is going to be, but I am sure that it will be of a democratic type, embodying the essential principles of Islam. Today, they are as applicable in actual life as they were 1300 years ago. Islam and its idealism have taught us democracy. It has taught equality of man, justice and fair play to everybody. We are the inheritors of these glorious traditions and are fully alive to our responsibilities and obligations as framers of the future constitution of Pakistan. In any case Pakistan is not going to be a theocratic state to be ruled by priests with a divine mission". 94

In his last public speech on July 1, 1948 at the opening ceremony of the State Bank of Pakistan, Mr. Jinnah rejected the Western economic system and advised that "We must work our destiny in our own way and present to the world an economic system based on true Islamic concepts of equality of manhood and social justice." 95
Mr. Jinnah was well acquainted with the history of Islamic jurisprudence. He knew the orthodox Islamic political theory of the state in which unity had come to mean political unity under a single caliph; and divine guidance had come to mean divine right. Divine guidance was transformed into the requirement that the advice of the Ulema be sought on all legal questions. There is plenty of internal evidence in Jinnah's life and works to show that he did not want the Ulema to share power, much less exercise a veto on the power of the State. Jinnah kept aloof from the Khilafat movement in the 1920's for he was aware of the dangers that led Mustapha Kemal to the abolition of the institution in 1924. In their search for sovereignty he did not want the Indian Muslims to be tied to the apron strings of a corrupt Caliph in Turkey where he commanded neither respect nor power. Jinnah did not share the distress that accompanied the abolition of Caliphate by Ataturk. But he saw clearly during the Khilafat Movement that the dormant Muslims could be roused into action in the name of Islamic Solidarity. This lesson was not lost on him. He was neither an ardent Islamic reformer nor a revolutionary. As a hard headed politician he could not ignore the asset that Islam and allegiance to it, provided to the Muslim struggle for survival and independence.

The spectacular victory of the Muslim League in the Punjab elections in 1946 (79 of the 86 Muslim seats as against only 2 out of 86 Muslim seats in 1937) cannot be understood only in terms of Quaid-e-Azam's charisma. One cannot ignore the use that was made of the religious emotions by the ulema, the sojjanashins, and their supporters. The thrust of their message was simple: those who vote for the Muslim League are Muslims, they will go to Heavens for this good act; those who vote against the Muslim League are
kafirs, they will go to hell after their death. They were to be refused burial in a Muslim cemetery.

The Quaid-e-Azam was not unaware of the use of religion in this manner by the Muslim League, although on principle he was opposed to mixing religion with politics. And yet it is a fact that the people of Pakistan talked in the only idiom they knew. Pakistan was to be the laboratory of Islam, the citadel of Islam. The refugees from India were hailed as Muhajirin like the first Muslims who followed the Prophet to Medina. Ministers of Government often said in their speeches that Pakistan would be, or was, an Islamic State, that its constitution would be based on the Quran that Pakistan would be the laboratory of Islamic principles.

The ulema identified their own political recognition with the Islamic Constitution. They did not wait long to demand their share of power in running the new state. On January 13, 1948, Jamiat-al-Ulama-i-Islam, passed a resolution in Karachi demanding that the government appoint a leading 'Alim to the office of Shaikh-al-Islam, with appropriate ministerial and executive powers over the qadis throughout the country.16

The Jamiat submitted a complete table of organization of a ministry of religious affairs with names suggested for each post. It was proposed that this ministry be immune to ordinary changes of government. It is well known that Quaid-e-Azam was the Head of State at this time and that no action was taken on the ulema’s demand.

The process of Constitution making did not start in the life time of the Quaid-e-Azam but the demand for an Islamic Constitution was certainly voiced vociferously by a section of the population. Referring to it the Quaid-e-Azam said at the end of January 1948.
"I cannot understand why this feeling of nervousness that the future constitution of Pakistan is going to be in conflict with Shariah Law? There is one section of the people who keep on impressing everybody that the future constitution of Pakistan should be based on the Shariah. The other section deliberately wants to create mischief and agitate that the Shariah Law must be scrapped."³⁷

Before Pakistan Quaid-e-Azam stresses the egalitarian aspects of Islam and talks of equality, fair play and justice for all; after Pakistan he assures that no laws inconsistent with the Shariah would be enacted by the Constituent Assembly. He withstands the pressure of the priests to share power. But nowhere does he appear as a revivalist intent on reverting to the early days of Islam. On the contrary his stance is that of a modernist who wishes to move forward to Islam. A biographer of the Mr. Jinnah argues that in his vocabulary the words "Islamic" and "Muslim" were synonymous, indeed interchangeable. He cites an instance when Jinnah used "Muslim" in apposition to "Islamic" and then concludes that "Jinnah preferred popular to learned words, concrete to abstract terms, facts to ideas Thus Jinnah’s speeches on Pakistan tend to yield forth the concept of an "Islamic State", although the actual words might not have been used".³⁸

This is a poor apology which does little justice to a man who used his words with the utmost care. An astute lawyer of high standing, he talked generally of the Quran and the Sunnah but avoided deliberately a discussion of the details of an Islamic State. He realized that the Ulema were the experts on this subject.
In that capacity they had rejected the idea of Pakistan. After the creation of Pakistan all that was required of the government was to recognize the institution and function of the Ulema. This Quaid-e-Azam was loath to do. He refused resolutely to be dragged into any discussion of details of the constitution that Pakistan would frame for itself. All that he knew was that it would be democratic and that the government would not be run by the priests.

The Quaid-e-Azam’s concept of Pakistan as a modern Muslim nationalist state, as described in his speech of 11 August, 1947 to the Constituent Assembly, was unacceptable to the Ulema. Even the Ahrar, who flirted with the Indian National Congress right up to partition, and with whom before partition this concept was almost a part of their faith, rejected it. If the Muslims had been motivated by religious zeal or had wanted the revival of the age of Khulafā’-i-Rashideen, they and their leaders would not have struggled against the British in cooperation with the Hindus for such a long time, and the mullahs would not have opposed the creation of a Muslim homeland. The Quaid-e-Azam believed in Pakistani nationalism rather than in Muslim nationalism. Daultana revealed that the Objectives Resolution was passed to please Maulana Shabbir Ahmad Usmani, who had proposed to Prime Minister, Liaquat Ali Khan, at an informal Nathia Gali meeting that Sovereignty of Allah over all time and space should be acknowledged by a Muslim state.

Mian Mumtaz Daultana, a leading Muslim League figure, addressing the Lahore Press Club in September 1983, asserted that leaders of the Pakistan movement were motivated only by a desire to see India released from the imperialist stranglehold. About 30% non-Muslims were to be citizens of
Pakistan and a somewhat lesser proportion of Muslim was to remain in India. Pakistan, he affirmed, was purely a political solution to India's national question. Religion had nothing to do with it and the Quaid who, time and again talked of Muslim nationalism, referred only to Islamic principles of democracy, justice and fair play, and never to religion as a state system. He did not aim at converting the state of Pakistan into a laboratory of religious experiments in which Muslim divines and Ulema would be acid-testing the faith of Muslims. He added that the present champions of Islam and the ideology of Pakistan did not support the Quaid-e-Azam when he was struggling for a Muslim State.  

NOTES AND REFERENCES


4 J. C. Johari. *op. cit.* p. 27.

5 See *Montague-Chelmsford Reforms*, Known as the *Act of 1919*, p. 31. Sir Bartle Frere, a member of the Executive Council of the Governor-General said in 1861: "The terrible events of the Mutiny brought home to English men mind the dangers arising from the entire exclusion of Indians from association with the legislation."

6 For a detailed reference see Reginald C. Coupland. *op. cit.*

7 J. C. Johari. *op. cit.* p. 34.


10 "The destinies of our Indian Empire are covered with thick darkness. It may be that the public mind of India may expand under our system till it has outgrown that system. That by good government we may educate our subjects into a capacity for better government; that having become instructed in European knowledge they may, in some future age, demand European institutions. Whether such a day will ever come, I know not. But never will I attempt to avert or retard it. Whenever it comes, it will be the proudest day in English history." Speech delivered in the House of Commons on July 10, 1833, on the India Bill. 1833. Quoted in Hamid Yusuf. *op. cit.* p. 3.
The English language is considered to be the primary reason for the emergence of Indian National Movement.

Percival Spear, op. cit., p. 291.

These laws were based on discrimination against the local people.

J. C. Johari, op. cit., p. 29.

Percival Spear, op. cit., p. 42.

For a detailed reference see Reginald C. Coupland, op. cit.

Ibid., p. 516


M. R. Hassan, op cit., p. 149.


See the Preamble to the Montague-Chelmsford Report.

J. A. Hobson, op. cit., It was confessed in the Proposals of the Government of India and Dispatch of the Secretary of State (1908) that "the avowed purpose of these changes, however, was not to train Indians in the self-government, but simply to enable the Government the better to realize the "wants, the sentiments, of the governed, on the other hand to give the governed a better chance of understanding, as occasion arises, the case for the Government against the misrepresentation of ignorance and malice."

‘Dyarchy’ means dual rule at the same level.

Reginald C. Coupland, op. cit., p. 70.

K. B. Sayeed, op. cit., p. 63.


Ibid., Also see Stanley Wolpert (1984), Jinnah of Pakistan. (New York: Oxford University Press).

H. M. Seervai, op. cit., p. 16.


Quoted in Hamid Yusuf, op. cit., p. 15

Ibid.

Syed Sibté Hasan, op. cit., pp. 146

38 K. B. Sayeed, op. cit., p. 113.

39 Ibid., For the viewpoint of Lahore Resolution, read with initial acceptance of the Cabinet Mission plan of 1946, was used by Jinnah as a bargaining counter. A review of the criticism has been made in Pakistan Revolution Revisited (Chapter- III), (National Institute of Historical and Cultural Research, Islamabad, 1990).


41 See Ian Stephens, op. cit., also see K. B. Sayeed, op. cit.

42 Quoted in Hamid Yusuf, op. cit., p. 15

43 Quoted in Hamid Yusuf, op. cit., p. 15.

44 Ibid., p. 17.


47 K. B. Sayeed, op. cit., p. 208.

48 Jamiuddin Ahmed (ed.) (1947), Some Recent Speeches and Writings of Mr. Jinnah, Vol. 11, (Lahore: Mohammed Ashraf), p. 393.


50 See Hamid Yusuf, op. cit., p. 25.


56 Quoted in S. M. Ikram, Modern Muslim India and the Birth of Pakistan, pp. 44-45.

57 Ibid.


59 Syed Sibt Hasan, op. cit.

60 Quoted from K.B. Sayeed (1968), Pakistan the Formative Phase, London, , p. 14.

61 A. H. Dani, (ed ) op. cit., see the Introduction.


63 Ibid.

64 K.B. Sayeed, op. cit., p. 105.
65 Jamil-ud-Din Ahmad, *Speeches and Writings of Mr. Jinnah*, pp.150-163.
69 Farid S. Jafri, *Foreword to Spirit of Pakistan*.
70 Afzal Iqbal, *op. cit.*
72 Mahmood A. Haroon who was an A.D.C., to the Quaid-e-Azam in 1946 as a young member of the Muslim League National Guards.
73 Presidential Address Fourteenth Annual Session of *Jamia-ul-Ulema i-Hind*, Delhi, 1945, pp. 46-47.
74 Quoted in K. B. Sayeed, *op. cit.* p. 199.
75 *Tarjuman-ul-Quran*, Lahore, Zilhaj 1359, p. 474.
77 Ibid.
78 Quoted by Afzal Iqbal, *op. cit.*, p. 28, from Daily Madinah, Bijnour, 17 July, 1940.
79 Quoted in Afzal Iqbal, *op. cit.*, p. 23.
81 Introduction, p. xxiii.
83 J. D. Ahmad, Vol. 2, pp. 208-209.
84 Ibid., Vol. 1, p.486.
85 Jamil-ud-Din Ahmad, ed., *Quaid-i-Azam: As Seen by his Contemporaries*, p. 42.
87 Munir Report, p. 201.
90 Quoted in Muhammad Munir, *From Jinnah to Zia*, (Lahore: Vanguard, 1985), p. 29.


97 *Dawn*, January 26, 1948


CHAPTER 3

THE PROCESS OF ISLAMIZATION IN PAKISTAN FROM 1947-1956
CHAPTER III

3. THE PROCESS OF ISLAMIZATION IN PAKISTAN

FROM 1947-1956

This chapter attempts to analyze the process of Islamization in Pakistan since the independence from 1947 till 1956, by examining the chaquered history of political and constitutional development with reference to Islamization in the country.

Pakistan achieved independence on August 14, 1947 through the Indian Independence Act of 1947. The Government of India Act of 1935, with necessary modification and the Indian Independence Act of 1947 were adopted as the interim constitution of the country. Parliamentary form of government and federal system were also maintained. A Constituent Assembly was set to frame a constitution for the newly born country. The Constituent Assembly was also authorized to act as the central legislature until the new constitution may be framed. The Assembly, by acting as the central legislature, exercised its power to amend the Government of India Act of 1935, as well as the Indian Independence Act of 1947. However, the centralized structure of the Government of India Act of 1935 was retained. Under this Act the Governor-General had adequate discretionary powers and responsibilities, which were not given to the Governor-General under the adopted or amended Government of India Act of 1935. The Governor-
General remained as the head of State, and was to act, however, only as titular head, i.e., on the advice of the cabinet. The Governor-General had also enjoyed certain emergency powers, which were enumerated, in Section 102 of the adopted Government of India Act of 1935 and when the emergency powers were in force, the federal nature of the country ceased to exist and its administration took the form of a unitary system of government. The structure of government in the provinces was similar to that at the center. The Governor was appointed by the Governor-General and was titular head of the province. He was to act on the advice of the cabinet, but in the similar way had also enjoyed certain emergency powers like the Governor General, which could be exercised on the direction of the Governor-General. The Governor was the executive head of the province, but was not under the direct control of the province. This is one of the essential features of the Government of India Act of 1935. In sum, Pakistan's political system was parliamentary as well as federal only in a formal sense during the first decade of the independence.

However, the circumstances under which Pakistan began to achieve her independence were the most unfavorable. The problems faced by this newly independent country included an inadequate administrative System, an extreme refugee problem, the lack of financial resources, and inadequate means of communication and transportation. Pakistan’s difficulties were even more colossal than those faced by India. Politically, it was engaged in preparing a constitution. It is established fact that soon after independence, Pakistan started her struggle to organize its national government and the administrative system. Many believed that Pakistan would not survive for long. It is also necessary to point out that carnage and communal violence
attended the dawn of independence. About seven million people, uprooted from their homes in India, trekked down to Pakistan to seek refuge and resettlement. The problems of reprisals and the safety of the Hindus and Sikhs moving eastward weighed down on a skeleton administration already strained to breaking point in dealing with the vast influx of refugees.\(^7\)

However, the partition line of the subcontinent cut across the two major provinces of Pakistan, namely, the Punjab in the west and Bengal in the east.\(^8\) Unlike the case with India where these provinces lay on the periphery and the system of government was already established and functioning. This also needs to be mentioned that the consequences of Sir Cyril Radcliff Award was the fatal demarcation of the Punjab boundary whereby overland access was allowed to India to the princely Muslim Majority State of Jammu and Kashmir. Its significance became apparent during the first war with India on Kashmir in October 1947, just two months after the independence.\(^9\) The determined hostility which the Indian Congress leadership showed towards Pakistan from the very beginning sprang not only from embittered memories of a conflict of interest and a sense of defeat arising from its failure to prevent the partition of the sub-continent but also from the conviction that Pakistan was going to be short-lived and its collapse, in the perception of the Congress, could be hastened.\(^10\)

The Cabinet Mission considered Pakistan as impracticable, a feeling that was also shared by Lord Mountbatten.\(^11\) Pakistan's unpaid share of cash balances was withheld by the Indian government, which showed itself equally determined to deprive Pakistan of its share of the large stocks of reserve arms, equipment, and stores belonging to the Indian army\(^12\) at the time of independence.
This research work also undertakes to examine the impact and influence of civil bureaucracy on the parliamentary system in the early phase of Pakistan. The edifice of the parliamentary system adopted at independence was based on a bureaucratic foundation. It has also been observed in the political tradition in Pakistan since beginning that the civil services were long established institutions, with a strong *esprit de corps*. They were, however, unaccustomed to any immediate parliamentary authority and worked almost independently. *The military stood* by the civil bureaucracy, which shared the ethos of the bureaucracy and was supported by a political tradition, where obedience to authority was based on *effective force*, while obedience to an authority based on the principle of elected representation was a new phenomenon. The politicians faced the challenges of building the *institution* of the political democracy in essentially state.

It is also to be stated that the authoritarian feudal culture, which dominated political life in the west wing, was itself needed reform to accord with democratic values. A few discerning eyes might have visualized that if the politicians failed to establish their pre-eminence, the civil-military bureaucracy, in the resulting institutional imbalance, would appropriate political functions. For the *time being*, there was no ambiguity. The mantle of authority fell on the Muslim League, a movement, which now transformed itself into a political party and became responsible for *shaping the destiny* of the country.

3.1 **ESTABLISHMENT AND ORGANIZATION OF THE GOVERNMENT**

The establishment of the government began with the swearing in of Quaid-e-Azam as the country’s first Governor General by the last of the British
viceroys, Lord Mountbatten. M. A. Jinnah appointed Liaquat Ali Khan, as the Prime Minister. Liaquat Ali Khan was also given charge of two other ministries, foreign Affairs and commonwealth relations and defense. The cabinet, also included political stalwarts like Abdul Rab Nishtar from the North-West Frontier province who was placed in charge of the ministry of communications; Fazlul Rehman, a leading politician from East Bengal was given the ministry of interior and information; I. I. Chundrigar, a lawyer, was given commerce and industries; Ghazanfar Ali Khan, from the Punjab, agriculture and health and Ghulam Muhammad the ministry of finance. Outside the cabinet. Sir Muhammad Zafrullah, later became the foreign minister, who had an outstanding record of judicial service, was deputed to represent Pakistan at the United Nations. Sir Feroze Khan Noon was appointed as Pakistan’s envoy to the Middle East. The cabinet and other appointments to such a high political office reflected a paucity of talent among the politicians.

The position of Muhammad Ali Jinnah as Governor General was unique and he could not obviously fit into the traditional pattern of a ceremonial head of the state. He was indeed above any office, which could be offered. As a leader who had successfully led the Muslim nationalist movement to achieve a homeland, he personified the new state and was a symbol of its identity. On June 9, 1947 he had remarked that he had done his job and appeared reluctant to assume any office. The long struggle had apparently taken a toll of his fading health. The powers as envisaged in the Act of 1935, were supposed to be exercised by a cabinet through parliamentary convention the cabinet was answerable to the legislature, now the same powers to be exercised by Mr. Jinnah. Affected by the plight of the refugees he took the portfolio of the
ministry of refugees under his own control. The Constituent Assembly elected him as its first President and also appointed its legal advisor. However, under the parliamentary system of government, the Prime Minister, with his Council of Ministers, becomes the real executive. In the case of Pakistan, the Prime Minister and his Council of Ministers failed to play their appropriate role as they depended more on the father of the nation. It is also one of the reasons that “Mr. Jinnah personified the new state of Pakistan and served in triple capacity as President of the Muslim League, Governor-General of Pakistan, and President of the Constituent Assembly.” During his brief tenure, Jinnah’s decisions became obligatory on the new state of Pakistan. Khalid B. Sayeed has maintained, “As long as Jinnah was alive, he was Pakistan. He held the position of Governor-General, but the powers and influence that he exercised were far beyond those normally associated with that office. The cabinet rarely functioned without his directives. He was the supreme arbitrator between the Center and the Provinces.”

Following the death of Mr. Jinnah, Khawaja Nazimuddin became the Governor-General of the country. But it may be noted that the capability and authority of Khawaja Nazimuddin were not a match with the prestige and powers as exercised by Mr. Jinnah. Liaquat Ali Khan tried to improve his authority and prestige of his office and succeeded in establishing parliamentary conventions. The power exercised by Mr. Jinnah was therefore dispersed between the Governor-General, the President of the Constituent Assembly, and the Prime Minister. Keith Callard states, “This dispersal of the power of the Quaid-i-Azam... was to have important consequences in 1953 and 1954.” The evidence suggests that Liaquat Ali Khan was at first able to control the government, the Muslim League and the Constituent Assembly,
but nevertheless failed to reach consensus on a constitution. Consequently, political opposition, however ineffective, began to grow as the provinces protested against the central government for its failure to solve the various problems faced by the country. After the assassination of Liaquat Ali Khan in 1952, Khawaja Nazimuddin left the office of the Governor-General and assumed the responsibilities of Prime Ministership. He retained most of the members of the previous cabinet, but included Choudhury Mohammed Ali, as Finance Minister. Since Nazimuddin, an old Muslim Leaguer was a Bengali, the new Governor-General Ghulam Mohammed, feared that Nazimuddin might triumph in an electoral contest and will eventually oust him from the office. Though Nazimuddin was, a man of piety, and integrity, he was incapable of imposing his will upon the members of the cabinet, who had long experience in administration and politics. Moreover, Nazimuddin failed to deal effectively with the language riots in East Pakistan in 1952 and the Ahmadiya riots in Punjab in 1953. The Governor-General accused Nazimuddin and his cabinet of being incapable of solving Pakistan's numerous problems, declaring, "I have been driven to the conclusion that the cabinet of Khawaja Nazimuddin has proved entirely inadequate to grapple with the difficulties facing the country. In the emergency which has arisen I have felt it incumbent upon me to ask the cabinet to relinquish office so that a new cabinet better fitted to discharge its obligations towards Pakistan may be formed." Thus, the Governor-General invited Mohammed Ali Boga, Pakistan's Ambassador to the United States, to become Prime Minister. Mohammed Ali assumed the office of the Prime Minister and retained six members of the outgoing ministry in his cabinet. Though not a leader of a party, he was the personal choice of the Governor-General. Such an action by the Governor-General indicated a fundamental lack of power and leadership
### TABLE 3.1

<table>
<thead>
<tr>
<th>PARTY ALIGMENT IN THE SECOND CONSTITUENT ASSEMBLY</th>
<th>1955</th>
<th>1957</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republican Party</td>
<td>~</td>
<td>21</td>
</tr>
<tr>
<td>Muslim League</td>
<td>33</td>
<td>15</td>
</tr>
<tr>
<td>United Front</td>
<td>16</td>
<td>~</td>
</tr>
<tr>
<td>Awami League</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Krishak Sramik</td>
<td>~</td>
<td>06</td>
</tr>
<tr>
<td>National Awami Party</td>
<td>~</td>
<td>04</td>
</tr>
<tr>
<td>Noor Group</td>
<td>03</td>
<td>~</td>
</tr>
<tr>
<td>Nizam-e-Islam</td>
<td>~</td>
<td>03</td>
</tr>
<tr>
<td>Congress</td>
<td>04</td>
<td>04</td>
</tr>
<tr>
<td>Scheduled Caste Federation</td>
<td>03</td>
<td>02</td>
</tr>
<tr>
<td>United Progressive Party</td>
<td>02</td>
<td>01</td>
</tr>
<tr>
<td>Independents</td>
<td>06</td>
<td>09</td>
</tr>
<tr>
<td>Vacant</td>
<td>00</td>
<td>02</td>
</tr>
<tr>
<td><strong>TOTAL NO. OF SEATS</strong></td>
<td><strong>80</strong></td>
<td><strong>80</strong></td>
</tr>
</tbody>
</table>


In the Muslim League. From this period onwards, the Governor-General, and later on the President, emerged as the country’s most powerful officer. It may be noted that the Muslim League party despite its overwhelming majority in the Constituent Assembly did not challenge the action of the Governor-General. There were two major parties in the House, the Muslim League, held 60 seats, and the Congress, held 11. Even the Constituent Assembly, consisting mainly of lawyers, landlords, businessmen and the liberal professionals, did not challenge the new government. Technically speaking, it was still a government of the Muslim League, which filled almost every Muslim seat in the central and provincial legislatures. But in reality this was
not so. The Muslim League was split in many directions and could not act on future action. The defeat of the Muslim League in East Pakistan in the March 1954 elections showed that East Pakistan repudiated the leadership of the Muslim League.

In September 1954 the Constituent Assembly adopted legislation to ensure that the Governor-General would act only with the advice of the cabinet, and that the members of the cabinet must be selected from the membership of the national legislature. Sensing that his powers would be reduced by this legislation, the Governor-General issued a proclamation dissolving the Constituent Assembly. The proclamation reads as follows: "The Governor-General having considered the political crisis with which the country is faced, has with deep regret, come to the conclusion that the constitutional machinery has broken down. He, therefore, has decided to declare a state of emergency throughout Pakistan. The Constituent Assembly as at present constituted has lost the confidence of the people and can no longer function." A new government was formed with Mohammed Ali Bogra as the Prime Minister. The President of the Constituent Assembly, Maulvi Tamizuddin Khan, challenged the Governor-General's authority of dissolving the Constituent Assembly. He also petitioned the Sind Chief Court to issue writs of mandamus and a quo warranto against the members of the cabinet who were not qualified to become Ministers under Section 10 of the Government of India Act, 1935, as substituted by the Government of India Act (Fourth Amendment), 1954. The Court decided in favor of Maulvi Tamizuddin Khan. On appeal, however, the Federal Court of Pakistan upheld the power of the Governor-General to dissolve the Constituent Assembly.27 However, the court ordered the Governor-General to summon a Second
Constituent Assembly, to be elected indirectly by members of the provincial legislatures. The members elected to the Assembly were divided into approximately 12 groups, of which the Muslim League was the largest, though it failed to command an absolute majority (see Table 2.1).

It is also noted that the Second Constituent Assembly consisted mainly of lawyers, landlords, retired officials, industrialists, and businessmen. Others who were represented in the Assembly included newspaper proprietors, journalists, *ulemas* (religious leaders,) teachers, trade unionists, tribal chiefs and rulers of Princely States. The landlords were dominant force in West Pakistan because of the highly concentrated pattern of land ownership. By contrast members of the legal profession were dominant force in East Pakistan. The first session of the Second Constituent Assembly was held in Muree in July 1955. Since Ghulam Mohammed was ill, Iskander Mirza succeeded him in August 1955. Meanwhile the various groups who formed the Assembly were engaged in seeking alliances and a coalition of the Muslim League and the United Front Party of East Pakistan was formed with Chaudhuri Mohammed Ali as Prime Minister, replacing Mohammed Ali Bogra (an East Pakistan Muslim Leaguer). This new coalition government, now in power at the center, was one in which East Pakistan was well represented, and it quickly sought to frame a constitution for Pakistan. During the period of this coalition government, the Constituent Assembly adopted a constitution and Iskander Mirza became the first President in March 1956. During the first two years of his presidency four Prime Ministers held office and there were several coalition cabinets. Table 2.2, Table 2.3 and Table 2.4, show the persons who held the office of the Governor-General, President, and Prime Minister during 1947-88.
<table>
<thead>
<tr>
<th>GOVERNOR-GENERALS</th>
<th>TENURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>M. A. Jinnah</td>
<td>August 1947</td>
</tr>
<tr>
<td>Khawaja Nazimuddin</td>
<td>September 1948</td>
</tr>
<tr>
<td>Ghulam Mohammed</td>
<td>October 1951</td>
</tr>
<tr>
<td>Iskander Mirza</td>
<td>September 1955</td>
</tr>
<tr>
<td></td>
<td>March 1956</td>
</tr>
</tbody>
</table>


Table 2.1 shows that the Muslim League, which was defeated in East Pakistan in the elections of 1954, became a minority party in the Aonstituent Assembly when many of its members joined other parties. By September 1956, the Muslim League was ousted from the central cabinet and from two provincial cabinets. It was replaced by the Republican Party, Which for several years controlled West Pakistan and became a major participant in the central cabinet. For about a year the Republican Party shared power with the Awami League (see Table 2.1). But a split between the Republican Party and the Awami League on the one unit issue led to a new short-lived coalition headed by the Muslim League. The cabinet fell when the Republican Party withdrew its support because it did not agree with the Muslim League on the separate electorate issue. In December 1957, another government was formed with Republican leader Malik Firoz Khan Noon as Prime Minister. He was supported by a coalition that included the Awami League, the Krishak Sramik Party (the party of peasants and laborers) and his own Republican Party. But the Awami League and the National Awami Party did not join the cabinet. As a result of the transfer of allegiance from one party to
another, the parliamentary government at the center was on the verge of collapse, and the situation in the provinces was not much better.

### TABLE 3.3

<table>
<thead>
<tr>
<th>PRESIDENTS</th>
<th>TENURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iskander Mirza</td>
<td>March 1956</td>
</tr>
<tr>
<td>Mohammed Ayub Khan</td>
<td>October 1958</td>
</tr>
<tr>
<td>General Yahya Khan</td>
<td>March 1969</td>
</tr>
<tr>
<td>Zulfiqar Ali Bhutto</td>
<td>December 1971</td>
</tr>
<tr>
<td>Ch. Fazal Ilahi</td>
<td>August 1973</td>
</tr>
<tr>
<td>General Zia ul Haq</td>
<td>July 1977</td>
</tr>
</tbody>
</table>


Both politicians and heads of state were thus responsible for the break-up of party solidarity. For example, Ghulam Mohammed dismissed the Nazimuddin cabinet in 1953 even though he held the confidence of the majority party in the legislature. Similarly, Iskander Mirza encouraged the formation of a dissident group under the name of the Republican Party the Muslim Leaguers in 1956. Finally, the cabinet used the emergency powers given to the head of the State for partisan purposes. For example, Prime Minister Suhrawardy imposed emergency rule in West Pakistan in 1957 with a view to preventing the Muslim League from forming the provincial government. In sum, it can be said that the years before the October coup of 1958 were years of instability, chaos and disorder, which culminated in the declaration of martial law, by President Iskander Mirza on October 7, 1958. President Mirza appointed General Mohammed Ayub Khan the Chief Martial
Law Administrator. Within three days of the declaration, Ayub was able to secure Mirza’s resignation and became both head of the State and head of the government.

### TABLE 3.4

<table>
<thead>
<tr>
<th>PRIME MINISTER</th>
<th>TENURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Khawaja Nazimuddin</td>
<td>Oct. 17, 1951</td>
</tr>
<tr>
<td>Mohammed Ali Bogra</td>
<td>April 17, 1953</td>
</tr>
<tr>
<td>Ch. Mohammed Ali</td>
<td>Aug. 11, 1955</td>
</tr>
<tr>
<td>Hussain S. Suhrawardy</td>
<td>Sept. 12, 1956</td>
</tr>
<tr>
<td>Ismail I. Chudrigar</td>
<td>Oct. 18, 1956</td>
</tr>
</tbody>
</table>


### 3.2 THE OBJECTIVES RESOLUTION 1949

The Objectives Resolution embodying the main principles on which the constitution of Pakistan was to be based:

In the name of Allah, the Beneficient the Merciful:

WHEREAS sovereignty over the entire universe belongs to God Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limit prescribed by Him 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 powers and authority through the chosen representatives of the people;

WHEREIN the principles of democracy, Freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

WHEREIN the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah;

WHEREIN adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures;

WHEREIN the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the Units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;

WHEREIN shall be guaranteed the rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

WHEREIN adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

WHEREIN the independence of the judiciary shall be fully secured;
WHEREIN the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded; So 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 progress and happiness of humanity.

This was an occasion next in importance only to the achievement of independence, as the Prime Minister of Pakistan rightly mentioned. Pakistan was founded because the Muslims of the sub-continent wanted to build up their lives in accordance with the teachings and traditions of Islam. Introducing the Resolution, the Prime Minister said:

"All authority is a sacred trust, entrusted to us by God for the purpose of being exercised in the service of man, so that it does not become an agency for tyranny or selfishness. This is not a resurrection of the dead theory of Divine Right of Kings or rulers, because, in accordance with the spirit of Islam, the Preamble fully recognizes the truth that the authority has been delegated to the people, and to none, and that it is for the people to decide who will exercise that authority." 33

It was made clear in the Resolution that the State shall exercise all its power and authority through the chosen representatives of the people. The people are the recipients of all authority and it is in them that the power to wield it has been vested.

The Prime Minister emphasized that the idea of theocracy government by ordained priests—was absolutely foreign to Islam which does not recognize either priesthood or any sacerdotal authority. The Objectives Resolution, according to the mover, lays emphasis on the principles of democracy,
freedom, equality, tolerance and social justice. It lays down that Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah. The Quaid-e-Azam always made declarations during the struggle for Pakistan that that Muslim demand was based upon the fact that they had a way of life and a code of conduct which was different from the Hindus.

Maulana Shabbir Ahmad Usmani, the only theologian elected to the Constituent Assembly from East Bengal, made it clear during the debate on the Objectives Resolution, that Islam had never accepted the view that religion was a private affair between man and his Creator. He quoted the Quaid-e-Azam’s observations in a letter he wrote to Gandhi in August 1944:

“The Quran is a complete code of life. It provides for all matters, religious or social, civil or criminal, military or penal, economic or commercial. It regulates every act, speech and movement from the ceremonies of religion to those of daily life, from the salvation of the soul to the health of the body, from the rights of all to those of each individual, from punishment here to that in the life to come. Therefore, when I say that the Muslims are a nation, I have in mind all physical, and metaphysical standards and values.”

Dilating on the principles of an Islamic State the Maulana emphasized the sovereignty of God who had made man His vicegerent on Earth. He had, therefore, to exercise the authority delegated to him on the principle of a ‘state within a state’, and within the limits prescribed by “to the Holy Quran”, he expounded, “the real aim of the Islamic state is to exhort all within its sphere of authority to do good and to shun evil. Islam has no truck with
capitalism, the Islamic State brings about an equitable distribution of wealth it wants to keep capital in circulation. The Islamic State does not stand for abolition of private property and allows capital fund to a certain extent. For surplus wealth Milli Bait-ul-Mal (Public Treasury) is maintained, on which all have equal claims.\textsuperscript{35}

He further explained:

"The real basis of the Islamic State is \textit{shura} (mutual consultation) The Islamic State is the first political institution in the world which abolished imperialism, enunciated the principle of referendum and installed a Caliph (Head of the State) elected by the people in place of the King. Islam does not recognize hereditary right of kingship or supremacy acquired by force or oppression. It delegates authority to the state through and by the will of the people, though the latter are not entitled to neglect the organization of the government and to lend a hand to disruption, disorder and anarchy by withholding the exercise of lawful authority."\textsuperscript{36}

While the leading religious divine waxed eloquent about the Islamic State, the Objectives Resolution, it was forgotten, merely talked of "The sovereign independent state of Pakistan", and omitted to mention the nature of the State. While the status of the state was declared, the nature of the state was deliberately not described".\textsuperscript{37}

The Objectives Resolution talked of the people's resolve to frame a constitution for the sovereign, independent State of Pakistan. The State and God are both sovereign and so perhaps was the Constituent Assembly which was to 'frame a constitution'. The recital of such simultaneous sovereignty is misleading. Does it not deny the Ulema's claim that the divine law is already
there; it has only to be elaborated and applied, not ‘framed’, as the Resolution suggested. Sardar Abdur Rab Nishtar, a leading light of the Muslim League, was proved manifestly wrong when, defending the proviso “within the limits prescribed by Him”, he prophesied that the limitation ensured that “the ruling authority in a Muslim country cannot be a king, it cannot be a dictator”.38

Begum Shaista Suhrawardy Ikramullah, the wife of a senior Bureaucrat, did not consider the mere declaration of intent “as a great achievement that justifies the orgy of praise we have been giving to ourselves”. She pointed out; “There has been a tendency in some of our speeches already to give ourselves cries of deliverers of mankind and saviors of the world”. “I do not think”, she said, “that for a State where the majority of the population is Muslim, it is such a tremendous achievement to have declared that the sovereignty of this universe belongs to God and that in this State “Muslims will be enabled to order their lives in the individual and collective in accord with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah.”39

The Objectives Resolution was adopted on March 12, 1949. Not a single Muslim member of the Constituent Assembly dissented. And yet at that time, it must be stressed, the Islamic character of the state was not the central issue of Pakistan politics. The cease fire on January 1, 1949, in Kashmir had created a crisis. Maulana Maududi who had opposed the creation of Pakistan had to be jailed because he did not believe the struggle in Kashmir was a jihad, a term which was hastily used by the Government to create enthusiasm among the people. The problems attendant on the resettlement of millions of refugees were enormous. The Indian Constituent Assembly had finished its task by the end of 1948; the Pakistan Constituent Assembly had not yet even
begun the task entrusted to it. The public pressure was growing. Maulana Shabbir Ahmad Usmani addressed at Dacca on February 9, 10 the Ulama-i-Islam Conference and demanded that the Constituent Assembly "should set up a Committee consisting of eminent Ulema and thinkers to prepare a draft and present it to the Assembly". 40

It was in this background that the Muslim League Parliamentary Party presented the Objectives Resolution. The Resolution had no legal validity but was merely a declaration of intent, vaguely worded with deliberate ambiguity. The logical consequence of acknowledging God's sovereignty was the acceptance of Shariah, the law of God, but even the word was not mentioned in the Resolution. The compromise was aimed at placating everyone "Thus God is sovereign, the people 'sovereign, parliament sovereign, and the state sovereign in Pakistan". 41

No details were spelled out; the wording of the Resolution was kept imprecise. A set of unexceptionable general principles were mentioned, an equivocal declaration, it appears, was made only to gain time. A committee of twenty five, under the chairmanship of Mr. Tamizuddin Khan, President of the constituent Assembly, was appointed to report on the basic principles of the future Constitution. The sub-committee on Constitution set up a board of experts on Islam—Talimat—Islamia—to advise on matters arising out of the Objectives Resolution. When the sub-committee finished its work the Ulema and the politicians were as far apart as ever. The views of the Board of Talimat were submitted to the full Basic Principles Committee. These views were not published and did not, therefore, arouse any public discussion. Since all committee proceedings were confidential, Ulema could not release their report to the press.
The Resolution, verbose in words, lacks in substance. It does not contain even a semblance of the embryo of an Islamic State. On the contrary its provisions, particularly those relating to fundamental rights, are directly opposed to the principles of an Islamic State. The basis of Islamic Law is the principle of inerrancy of revelation and of the Holy Prophet. The law to be found in the Quran and the Sunnah is above all man-made laws. In case of conflict between the two the latter must yield to the former.

The Objectives Resolution rightly recognized that all sovereignty rests with God Almighty alone. But the authors of the Resolution misused the words ‘Sovereign’ and ‘democracy’ when they recited that the Constitution to be framed was for a sovereign state in which principles of democracy as enunciated by Islam shall be fully observed. Both words were borrowed from Western political philosophy and were wrongly used in the context of orthodox political theory of an Islamic State. When it is said that a country is sovereign, the implication is that its people are entitled to conduct the affairs of the country in any way they like. But an Islamic State cannot be sovereign in this sense. It is not competent to abrogate, repeal or do away with any law in the Quran or the Sunnah. Absolute restriction on the legislative power of the State is a restriction on the sovereignty of the people of that State.

The precedents that are generally cited for an Islam State are:

1. The form of government during the Islamic Republic from 632 to 661 A.D.

2. Some add to (a) the brief period of Hazrat Umar bin Abdul Aziz, a ruler of the Umayyad dynasty.
3. While others also add regimes of Salah-ud-Din Ayyubi of Damascus, Sultan Mahmud of Ghazna, Muhammad Tughlak and Aurangzeb of India.

In all these precedents there is no room for a Legislature in the modern sense. Since Islam is a perfect religion containing laws, express or derivable by *ijma* or *ijtehad*, governing the whole field of human activity, there is no need or sanction for legislation. There is no doubt that Islam enjoins consultation and that not only the Holy Prophet but also the first four Caliphs and even their successors resorted to consultation with the leading men of the time, which could be relied upon for their piety and knowledge of law. These men were not elected by the people though they were closely in touch with them and enjoyed a representative character. Their advice was sought ad-hoc. The decisions taken by them were in the nature of *ijma*, (consensus) which is not legislation but the application of an existing law to a particular case. The Ulema merely seek to discover and apply the law, they do not promulgate it. Indeed if legislation in an Islamic State is a sort of *ijma* or consensus of the Ulema, the masses are expressly disqualified from taking part in it because *ijma* is restricted to Ulema of acknowledged status and does not at all extend, as in democracy, to the populace.

It is the Ulema whose advice has to be sought on all legal questions. They become the symbol and strength of Islam and interpret it for the populace, an overwhelming majority of which is illiterate but has deep sentimental attachment with their Islamic past. Although there is no clergy in Islam, the Ulema, by virtue of their knowledge, become a powerful class in a country which claims to be an Islamic State. Not unnaturally, the Ulema who opposed the creation of Pakistan called upon the new State, once it came into being to
recognize their institution and function as the guide of the Islamic community for they alone were the link which could ensure continuity, unity and divine guidance to the mass of Muslims. While the Ulema emphasized the law or the Shariah, the modernists tried to relegate Islam to the sphere of policy. The Objectives Resolution which had no legal validity was an example of this approach. Liaquat Ali Khan, the Oxford educated first Prime Minister of Pakistan, was an exponent of this approach.

India promulgated her constitution in January 1950. The Prime Minister of Pakistan said that delay in framing a constitution for Pakistan was inevitable "because we want to frame our Constitution on a new ideology, on Islamic principles."42

The views of the Board of Tu’limat-i-Islami were ignored. The Constituent Assembly postponed consideration of the Basic Principles Committee’s Interim Report and invited suggestions from the public up to January 31, 1951.

The Ulema of different schools of thought met in January 1951 to formulate the fundamentals of an Islamic Constitution. They agreed unanimously on the following 22 points which were considered the basic minimum.

1. Sovereignty of God.
2. Quran and Sunnah as the basis of all law. Current laws considered in conflict with the Shariah to be abrogated or suitably amended to conform to the Shariah.
3. The State to be based on principles and ideals of Islam and not on any geographical, racial or linguistic concepts and considerations.
4. The State to enjoin practices prescribed by the *Quran* and *Sunnah* and to prohibit those forbidden by it. Beliefs of various sects to be taken into consideration while reviving or establishing Islamic customs, practices and law.

5. The State to strengthen bonds of unity and solidarity with the Muslim world.

6. The State to undertake responsibility for providing the basic needs of its citizens who are unable to earn their own livelihood irrespective of religion, race or creed.

7. All citizens to enjoy fundamental rights granted by the *Shariah* such as safety of life and property, freedom of religion, worship, freedom of expression, assembly and movement, freedom to work and to enjoy equality of opportunity etc.

8. No citizen would be deprived of fundamental rights except under the law of Islam and no court of law would sentence a citizen without providing him with an opportunity for defense.

9. Recognized Muslim sects were to enjoy full religious freedom within the limits of law. They had the right to impart education to their own followers in their own way. Their personal law was to be governed by the laws of their own sect and the law courts were to respect these sectional laws while dealing with members of the sect.

10. Similar freedom was to be enjoyed by non-Muslim citizens of the State in respect of their religion, education and culture. Law
courts were to respect their religious law and custom while dealing with cases involving personal law.

11. All agreements and treaties entered into with non-Muslim subjects of the State were to be honored in accordance with the Shari'ah. Non-Muslim citizens were guaranteed fundamental rights on par with Muslim citizens.

12. The Head of State was to be a Muslim male citizen of the State.

13. All responsibility for running the State was vested in the Head of State who could delegate his authority or part thereof to any individual or institution in the State.

14. The Government constituted by Head of the State was to be of a consultative and not dictatorial character. The Head of State was required to discharge his responsibility in consultation with the elected representatives of the people.

15. The Head of State had no right to rule the country by abrogating the whole or part of the Constitution.

16. The institution responsible for electing the Head of State had the power also to remove or suspend him.

17. The Head of State enjoyed no immunity and was subject to law like any other citizen.

18. The accountability to the law of the land was equally applicable to all members of the government and functionaries of the State.

19. The judiciary was to be independent of the executive.
20. Propagation of such ideas and ideologies as are considered contrary to the fundamentals of Islam was to be prohibited.

21. The State was to be of a unitary nature. Different regional, racial, tribal or linguistic areas constituting the territory of the State were not to enjoy the right of secession.

22. No interpretation of the Constitution which was repugnant to the Quran and the Sunnah was to be considered valid.

The Interim Report of the Basic Principles Committee was wisely criticized by the Ulema. Mufti Shafi, a leading theologian scholar said that the report was "totally void of any provision for the positive requirement of Islam, and many of its contents are even against Islam and against the Objectives Resolution". The Prime Minister spoke of Islamic Socialism, an amalgam of capitalism and socialism. He was mysteriously eliminated. Nobody so far knows details of the enquiry which was conducted to determine responsibility for his assassination. Liaquat Ali Khan was succeeded by Khawaja Nazimuddin. On 21 January 1953, a deputation of Ulema delivered an ultimatum to the Prime Minister, demanding the expulsion of the Qadiani community from the fold of Islam within a month, the removal of Choudhri Zafarulla Khan, the Foreign Minister who was an Ahmadi, and other members of his community who were occupying key posts.

The demand for declaring the Ahmadis as a non-Muslim minority was first publicly made at an Ahrar meeting held at Pind Dadan Khan on 1st May, 1945. After the creation of Pakistan which was opposed by the Ahrar right up to partition, they rightly judged that they could use this issue to bolster their waning strength. The parties which clamored for the enforcement of the demands on religious ground were all against the idea of an Islamic State.
Jama'at-i-Islami was opposed to the idea of Pakistan which it described as Na Pakistan (not pure). In none of the above the Jama'at is to be found the remotest reference in support of the demand for Pakistan. Maulana Abul Ala Maudoodi, the founder of the party, was of the view that the form of Government in the new Muslim State, if it ever came into existence, could only be secular. According to his statement before a military Court, short of an armed rebellion the Jama'at believes in, and has its objective the replacement of the present form of government by a government of the Jamaat's conception. In a speech shortly before partition he had asked:

"Why should we foolishly waste our time in expediting the so-called Muslim-state and fritter away our energies in setting it up, when we know that it will not only be useless for our purposes, but will rather prove an obstacle in our path".  

The Ahrars were flinging foul abuses on all the leading personalities of the Pakistan movement, including the Quaid-e Azam, accusing them of leading un-Islamic lives. One of the resolutions passed by the Working Committee of the Majlis-i Ahrar which met at Delhi on 3rd March, 1940, disapproved of Pakistan plan.  

The Ahrars flirted with the Congress until August 1947 and toed the Congress nationalist line but after the establishment of Pakistan they used and abused Islam as a political weapon which could b dropped and picked up at their pleasure to humiliate a political adversary. In their dealings with the Congress, religion was a private affair to them but in Pakistan they became the exclusive agents of Islam who alone knew what Islamic way of life was. They consistently exploited religion for their political ends. The Ahrar brought the anti-Ahmadiya controversy out of their old armory purely as a
political weapon. The Khaksars opposed Pakistan. One of them tried to eliminate Quaid-e-Azam. But all these parties which opposed Pakistan tooth and nail posed as the sole monopolists of Islam in a state which they had done their best to prevent from coming into existence.

Now by their agitation the Ahmadis set about to create unprecedented disturbances which led to the imposition of the first Martial Law in Pakistan. Their anti-Ahmadiya demands were a corollary from the Objectives Resolution passed by the Constituent Assembly on 12 March 1949. The express recognition by the Objectives’ Resolution that Pakistan was claimed and brought into existence so that the future political set-up of the new state may be based on the Quran and the Sunnah, had created in the mind of the Ulema and the citizens of Pakistan the belief that any demand based on religious grounds would have to be conceded by those in authority. The Ulema roused the masses to embarrass the government. Soon, to quote the Munir Committee report, “Vast multitudes of human beings who in ordinary times were sane, sensible citizens, had assumed the form of unruly hysterical mobs, whose only impulse was to disobey the law while baser elements of society were behaving like wild beasts killing people, robbing them of their possessions and burning valuable property either for the sake of fun or to spite a fancied enemy.”

No two learned divines were agreed on the definition of a Muslim and yet they demanded that the Ahmadis be declared a non-Muslim minority. “According to the Shias all Sunnis are Kafirs, and Ahl-i-Quran, namely, persons who consider hadith being unreliable and therefore not binding are unanimously Kafirs and so are all independent thinkers. The net result is that neither Shias nor Sunnis nor Deobandis nor Ahl-i-Hadith nor Barelvis are
Muslims and any change from one view to the other must be accompanied in an Islamic State with the penalty of death if the government of the State is in the hands of the party which considers the other party to be Kafirs. However, Government of Pakistan declined to concede the demand of the Ulema to declare Ahmadis as a non-Muslim minority in 1953 but twenty years later, a Government headed by a socialist, conceded this demand. Such indeed was the power and pressure of the Ulema that they were able to mobilize the mass of Muslims in favor of their demand.

The most complicated convergence of constitutional and religious politics, of provincial and federal issues, of personalities and social groups, of administrative and political matters, and of violence and judicial settlement occurred in the anti Ahmadis agitation and subsequent disturbances in the Punjab. The argument of the agitation was that since the Ahmadis deny the finality of prophet-hood, they are not Muslims. Consequently they should be constitutionally declared, a minority. The Chief Minister of the Punjab, Mian Mumtaz Daultana, was sympathetic to the demand but he suggested that the question was to be settled by the Basic Principles Committee. Nazimuddin, Prime Minister of Pakistan, agreed that the Ahmadis were heretics but demurred at the thought of constitutional excommunication. The Ulema had threatened the government that they would resort to direct action if the Ahmadis were not declared a non-Muslim minority. Nazimuddin was weak though, he ordered the army to move in. The prominent Ulema were arrested. The provincial Chief Minister had to resign. Nazimuddin while blaming the Ahrars tried to absolve the Ulema of all blame. Although the offensive of the Ulema in 1953 was not a success. The anti-Ahmadiya disturbances in Lahore were crushed in six hours by the area military commander, Major General
Mohammad Azam Khan who later became Governor of then East Pakistan. The investigation into the unrest produced a most comprehensive indictment of the Ulema. However, several of the Ulema in the Muslim League withdrew from the political scene. The Islamic parties met with disappointment at the polls. The Jama'at-i-Islami had a single seat in the 197 member Punjab Legislative Assembly. In the 1954 election of East Pakistan the Nizam-i-Islam captured 20 seats and the Khilafat-i-Rubbani an additional one seat from a total of 309 seats.

A state of emergency declared on October 30, 1954. A week earlier the Governor General dismissed the first Constituent Assembly. Major General Iskander Mirza, newly appointed Minister of Interior, expressed the view that Pakistan needed "controlled democracy for some time to come". He added that in his personal view religion and politics could be, and should be, separated. On December 1, 1954, the Prime Minister, in his monthly talk to the nation, used the word Islam once in his speech, and that too was a quotation from another statement made several months before."\(^{48}\) At the end of 1954 it seemed that the struggle for an Islamic constitution had ended in a defeat for the religious interests.

The Central Government, after the dissolution of the first Constituent Assembly in 1954, decided to merge the provinces and states of West Pakistan into one unit with a view to ensuring parity of representation between East and West Pakistan. In spite of strong opposition from provincial governments, the Second Constituent Assembly adopted this policy and the new province of West Pakistan came into being in October 1955.\(^{49}\) It may be pointed out here that the governments of Pirzada in Sind and Rashid in the North-West Frontier Province were dismissed by the
Central Government because of their opposition to the merger into one unit. The first major clash between East and West Pakistan took place in 1952 on the question of national language. The 1950 draft Constitution stated, "Urdu should be the national language of the State." Liaquat Ali Khan, first Prime Minister of Pakistan, stated in 1950 that "Pakistan is a Muslim State and it must have as its lingua franca the language of the Muslim nation... (Hindus) should realize that Pakistan has been created because of the demand of 'a hundred million Muslims in this subcontinent and the language of a, hundred million Muslims is Urdu. . It is necessary for a nation to have one language and that language can only be Urdu and no other language." Since 56 per cent of the population of Pakistan spoke Bengali, the Bengalis resisted the imposition of Urdu as the national language. This attempt to make Urdu the national language led to a violent clash between the police and students in Dacca in February 1952 and 19 persons sacrificed their lives for the cause of Bengali language. (Bengalis still celebrate February 21 as Shaheed (Martyrs’ Day) after the provincial election of 1954 in which the Muslim League Party was totally defeated in East Pakistan; a compromise formula was reached whereby Bengali and Urdu were recognized as the State languages of Pakistan.

3.3 DISMISSAL OF PRIME MINISTER NAZIMUDDIN

It was against the background of the Anti-Ahmadiya agitation and language, which led to the imposition of martial law in Lahore, that Nazimuddin forced the resignation of the Punjab chief minister, Mian Mumtaz Daultana. In the ensuing political crisis Nazimuddin was made to pay the price. Governor General Ghulam Muhammad soon after martial law was lifted in Lahore in April 1953 called a cabinet meeting and demanded the resignation of
Nazimuddin and the other cabinet members. Upon Nazimuddin’s refusal Ghulam Muhammad dismissed him. “When Nazimuddin arrived back to the Prime Minister’s House after the cabinet meeting at which he had been dismissed, he attempted to reach the Queen in London to advise her to remove the Governor General. He found that his telephone had been cut. When he attempted to leave his house, it was surrounded by a heavy police detachment.”

There was little doubt that the dictatorial action of the Governor-General dealt a serious blow to the nascent parliamentary system in the country. The Governor General, however, could succeed with the support of many members of the Constituent Assembly, with the firm backing of the army and the formidable plenary powers of police suppression, which were at his disposal. Keith Callard has observed, “The price of the governor-general’s coup was high. Three major conventions of cabinet government had been destroyed or gravely weakened. First, the tradition of the impartiality of the governor-general had been demolished. Second, the convention of cabinet and party solidarity had been disregarded. Third, the role of the Legislature as the maker and sustainer of government had been impugned.” As Callard has rightly remarked the action was aimed as much against the Assembly as against the Prime Minister.

The Constituent Assembly was not summoned until about five months after the dismissal of Nazimuddin. Muhammad Ali Bogra, who was at that time Pakistan’s ambassador in the USA was summoned and hoisted as the new prime minister on the Muslim League Parliamentary Party which was still smarting under the humiliation caused by the dismissal of Nazimuddin. However, six of the nine Ministers of Nazimuddin’s cabinet (including
Chaudhry Muhammad Ali) had joined the new government. The remaining three (including Nishtar) had been removed along with Nazimuddin. Lawrence Ziring has observed, that "By his dismissal of Nazimuddin and by the shuffling of the cabinet, Ghulam Muhammad was also eliminating the Muslim League as an independent voice in the central government, as Muhammad Ali Bogra was also elected as President of the Muslim League Parliamentary Party and replaced Nazimuddin who had resigned fearing a successful vote of no-confidence by repudiating Nazimuddin, the Muslim League surrendered whatever remaining claim it had to leadership at the federal level."^{58}

Maulvi Tamizuddin Khan, President of the Constituent Assembly, challenged the order of the Governor-General dissolving the Constituent Assembly, in the Chief Court of Sindh by a writ petition filed under Section 223-A^{59} of the Government of India Act, 1935. A full Bench of the Chief Court presided over by the Chief Justice, George Constantine, gave its verdict in favor of the President of the Constituent Assembly, whereupon the Governor General filed an appeal in the Federal Court. 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 Constituent Assembly. By a majority judgement delivered by Chief Justice Muhammad Munir, with Cornelius, J. dissenting, it was held that since section 223-A of the Government of India Act, 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 Chief Court had no jurisdiction to issue the writs.^{61} The Federal Court thereby validated the dissolution of the Constituent Assembly.
The legal difficulties to which the decisions of the Federal Court had forced the Governor General to move the Federal Court for an advisory opinion under Section 213 of the Act of 1935. The Federal Court, Cornelius, J. and Muhammad Sharif, dissenting held that the dissolution had become imperative because the Constituent Assembly had failed to frame a constitution within a reasonable time. The Governor General's action was held to be valid under the 'doctrine of necessity'. The fact that the dissolution had in fact aborted the approved draft constitution was not placed before or considered by the court.

It may be observed that the coup of 1954 caused no stir among the people, coming as it was fast on the heels of the first coup of 1953 in which Prime Minister Nazimuddin had been dismissed. Binder has observed that, “No public protest was raised, no procession taken out, no further agitation went on; the man in the street was unconcerned, completely indifferent.” It may, however, be observed, that the people were generally unaware of the great legal battle which was being fought out in the courts and which was destined to alter the course of Pakistan's history. In East Pakistan the reaction of the people could not find expression as the province was under the Governor's rule.

3.4 DISSOLUTION OF THE FIRST CONSTITUENT ASSEMBLY

The Governor General After the dismissal of Nazimuddin and his cabinet apparently felt confident that he could now manipulate the Constituent Assembly to give approval to his own proposal of an interim constitution that would have provided for the integration of the provinces in the west wing into a single province of West Pakistan. The Governor General also wished to see the dissolution of the Constituent Assembly and the election of a new
assembly over which he would have the power of veto. The One Unit plan had greatly appealed to General Muhammad Ayub Khan. In his proposal of One Unit the Governor General, therefore, enjoyed the support of the army. To allay the fears of the smaller provinces against the likely dominance of the Punjab, it was proposed that the Punjab would agree to forty percent of the voting power in the One Unit, which was less than its entitlement based on population.

The Constituent Assembly met in September 1953, its first session after Nazimuddin’s dismissal about five months later. Muhammad Ali Bogra submitted the plan of the interim constitution. It was, overwhelmingly rejected, an unsuspected setback for the Governor General who was entertaining fanciful notions of viceregal power. Therefore, Bogra submitted the Second Report of the Basic Principles Committee (BPC) in an effort to arrive at a consensus on a constitution. He introduced an amendment, known as the ‘Muhammad Ali Formula’ relating to representation of the provinces in the legislature. It proposed the election of the Lower House on the basis of population. (See Table 2.5). The upper house was to comprise equal representatives from all the five constituent units. In joint sittings each of the two wings would have equal representation. Powers were to be divided equally. A joint sitting could resolve deadlock, but the majority must include at least 30% of the total members belonging to each Zone. This somewhat complicated and a new mechanism had been worked out to satisfy the both regions but it could still be feared that the Bengalis, by combining with one or more provinces, could still manage the required majority. The Prime Minister announced that the proposals had met with the approval of the cabinet, the chief ministers and the members of the Muslim League.
parliamentary party. The Constituent Assembly passed without discussion the amendment embodied in the Muhammad Ali Formula and it adjourned to enable the East Bengal members to attend to the provincial elections.

In the provincial elections held in East Bengal in 1954, the Muslim League was completely routed. Its strength from a position of an overwhelming majority party was reduced to 10 members in a house of 309. Nurul Amin, the Muslim League chief minister, lost to a medical student. Since then on the Muslim League ceased to be a significant factor in East Pakistan politics. The representative capacity of the Bengali members of the Muslim League Parliamentary Party in the Constituent Assembly had been undermined. The United Front Party led by A. K. Fazlul Haq, which had won in the provincial elections, demanded new elections to the Constituent Assembly and called for provincial autonomy under its 21 Points.⁶⁶

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A. K. Fazlul Haq fell foul of the central government on account of his advocacy of autonomy and his alleged failure to maintain law and order.
Fazlul Haq had also aroused an adverse reaction by his reported advocacy of a united Bengal. The ministry was dismissed in May, 1954 and the province was placed under the governor’s rule. Iskander Mirza, who was then the defense secretary, was sent as the governor. The result of the provincial elections in East Bengal aroused fears notably among the politicians of the Punjab, about East Bengal exploiting the differences among the provinces in the West Wing. The proposal of One Unit gained momentum.

Notwithstanding the challenges to the proposed constitution on which a consensus had been reached, the Constituent Assembly moved ahead with the draft constitution. Sir Ivor Jennings was supervising and vetted the same constitution. Muhammad Ali Bogra announced that the constitution, which was ready for publication and would be implemented in December, 1954. The constitution contained the Objectives Resolution as its preamble, the Government of India Act of 1935, as adapted by the Basic Principle Committee Report. The Constituent Assembly was apprehensive of Governor General’s reaction to the proposed constitution; therefore as a defensive measure it repealed the Public and Representative Offices (Disqualification) Act (PRODA) in September, 1953. Although Muhammad Ali Bogra enjoyed a majority in the Assembly, the memories of Nazimuddin were still fresh in the minds of the members. On the same day the Constituent Assembly amended the Act of 1935 whereby the Governor General could act only on the advice of his ministers; requiring ministers to be members of the assembly; the ministers to hold office so long as they retained the confidence of the legislature and was to be collectively responsible to the house. The constitutional conventions of a cabinet form of government were made a substantive part of the constitution and thus became enforceable in a court of
law. The Governor General after securing the assurance and approval of General Ayub Khan to the dissolution of the assembly, the formation of One Unit and his agreement to serve in the new cabinet, the Governor General issued a proclamation:

"The Governor General, having considered the political crisis with which the country is faced, has with deep regret come to the conclusion that the constitutional machinery has broken down. He therefore has decided to declare a state of emergency throughout Pakistan. The Constituent Assembly as at present constituted has lost the confidence of the people and can no longer function...The ultimate authority vests in the people who will decide all issues including constitutional issues through their representatives who are to be elected; fresh elections will be held as early as possible."

3.5 **THE NEW CABINET**

A new cabinet assumed office under Muhammad Ali Boga who continued as the nominal Prime Minister. The main direction of the affairs of the country was, however, placed in the hands of the administrators and the army. The Governor General had himself been a bureaucrat and had contempt for the politicians and deep admiration for the viceregal system of government. Iskander Mirza was made the interior minister. The former head of the civil service, Chaudhry Muhammad Ali, retained finance. The commander-in-chief of the Army, General Muhammad Ayub Khan, became the defense minister. The foremost objective before the ministry was the integration of West Pakistan into a single unit. This was what the political leader from the Punjab, notably Ch. Muhammad Ali, Gurmiani and Dauftana had been
pressing as a condition precedent to a constitutional settlement with East Wing. General Ayub Khan, for reasons of strategy, had come to a similar conclusion and had pleaded for the Purjab accepting less than its due share, in the larger interests of the country.

But the minority provinces were fearful of losing their identity, which was likely to be submerged in the larger unit in which Punjab would predominate. The strategy devised to carry the scheme into effect aggravated such fears. The implementation scheme was embodied in the One-Unit documents. The plan recommended that, "All opposition of which we are morally convinced that it is motivated by evil must be made inoperative." It recommended the dismissal of Abdul Sattar Pirzada, a 'self-denying ordinance' on Noon (Sir Feroze Khan Noon), "unreserved support to Rashid" (a former Inspector-General of Police of N.W.F.P. and then chief minister of the North West Frontier Province), "stilling his suspicions. fortifying his nerve," and employment of various other means such as the use of news media and of the mullahs.

The documents outraged Sardar Abdul Rashid when they were disclosed to him. The consequent opposition of Abdul Ghaflar Khan and Sardar Abdul Rashid was overcome by offering the Chief Ministership of the newly created province of West Pakistan to Dr. Khan Sahib. The regime was determined to take speedy actions. In Sindh, Pirzada was dismissed and replaced by Khuhro who produced a dramatic reversal of votes by the provincial assembly in favor of One Unit. The province of East Bengal had been under the governor's rule since May 1954. In March, 1955 the Emergency Powers Ordinance was issued to amend the Act of 1935 and to invest the Governor General with the powers to establish the province of West Pakistan.
It is to be noted that the Governor General was denied by the Usif Patel’s case73 to the right to abrogate the functions of the Constituent Assembly. The Governor General was, therefore, obliged to call into existence a new Constituent Assembly. The new Constituent Assembly, however, it may be observed, was going to be subject to the Governor General’s veto power, as a result of the Court’s earlier verdict in Tamizuddin Khan’s case.

3.6 THE BASIC PRINCIPLES COMMITTEE 1949
The Basic Principles Committee was established on the day the Constituent Assembly passed the Objectives Resolution in March 1949. It was to formulate principles for a federal constitution, and to submit a detailed report to the Constituent Assembly on the basic provisions of the future Constitution. The Board of Islamic Teaching (Ta’limat-i-Islami) was set up to advice the Basic Principles Committee on the Islamic aspects of the Constitution. The report of the Board was not published. It was not made available even to members of the Constituent Assembly. The views of the Board are, however, summed up by Maulana Muhammad Shafi, a member who later became Chairman, in a pamphlet entitled: “The Basic Principles of the Quranic Constitution of the State”. The original pamphlet in Urdu, Dustur-i-Quran, was published in Karachi in 1953 while the English version came out two years later. The Board of the Talimaat-i-Islamia had definite opinions on the qualifications and duties of the Head of State. He should be “the trustee of interests of the Millat, the symbol and manifestation of its power and authority and its executive organ in all walks of state”. He is to be chosen by Muslims who should “elect the wisest and most God-fearing person from amongst themselves as their head He should be male, of sound
mind, not blind, dumb nor totally deaf and have completed forty lunar years of age. He should be a man of erudition and learning in terms of Shariah and a person of poise and composure and able to control his humours”. He should lead Friday and Eid prayers in the Capital and should arrange for the teaching of Islam both at home and abroad.²⁶

The Constituent Assembly, after postponing consideration of the proposed draft of the Constitution on November 21, 1950, invited suggestion from the public by Jan; 1951. A sub-Committee was appointed to examine them. The sub-Committee reported its findings to the Basic Principles Committee in July 1952. On the basis of these findings a second draft was presented to the Constituent Assembly by Prime Minister Khawaja Nazimuddin on 22 December 1952, but it was not approved until December 21, 1954.

Khawaja Nazimuddin, introducing the Report to the Assembly pointed out;

“A Constitution should not be judged from any preconceived notions based upon school book maxims of political science; it should be judged from the point of view of the achievement of maximum compromise between the different sections of the nation. Judged purely as a political document as well, this report will not be found wanting, but as the embodiment of major agreement between the different sections of our nation, this report should be welcomed as a remarkable achievement”.²⁷

The second draft, based on the principle of parity between the two wings, had created extremely unfavorable reaction, this time in the Punjab. The critics saw no logic in treating a single unit of the federation as of equal importance with all other units put together yet this was the inevitable logic of the principle of one man, one vote. In fact the numerical majority of East
Pakistan was being curtailed in order to create some semblance of a constitutional balance of power and responsibility between the two wings of the country. While the Punjab opposed, other smaller units in the western wing expressed a favorable opinion but the Punjab forced the Constituent Assembly to postpone once more its deliberations, thus creating a constitutional deadlock.

Besides representation in the federal legislature, the other issues between the two wings were about distribution of powers, provincial autonomy, the controversy about language and the place of Urdu and Bengali in the country, but the Islamic provisions were not attacked either in East or West Pakistan: The Ulema and the Jamaat-i-Islami called the amended draft of the Basic Principles Committee’s Report “Islamic”. On October 12, 1954 the Central Executive of Jamaat-i-Islami declared that “the proposed constitution of Pakistan was to a very great extent Islamic in character” and demanded its adoption forthwith. Mufti Shafi, in a statement to the press, called upon the citizens of Pakistan to celebrate Islamic Constitution day on October 22, and to demand the enforcement of the draft constitution without delay.

The Constituent Assembly was to reconvene on October 27, but three days earlier, on the evening of October 24, the Governor General, Mr. Ghulam Mohammad, declared a state of emergency and dissolved the Constituent Assembly which he thought “had lost the confidence of the people”. While the rest of the draft created controversies five sections of the draft viz the Preamble, the Directive Principles of State Policy, the nomenclature of the State, the qualifications of the Head of State, and the Islamic provisions were adopted in the final version in 1956 without any substantial change.
The Islamic provisions of the Basic Principles Committee were based essentially on the recommendations of the Board of Ta'alimat whose report was never published. The Ulema had a powerful lobby outside the Constituent Assembly.

The Report of the Basic Principles Committee was adopted by the Constituent Assembly on 21st September, 1954. The report comprised 17 parts, 2 schedules, and three lists of subjects dealing with Federal, Provincial and Concurrent lists. Islam was neither the most important nor the most difficult subject it dealt with. In fact the Report devoted only part I, consisting of 10 paragraphs to Islamic provisions while as many as 266 paragraphs dealt with other subjects. As regards the Islamic provisions, the Committee recommended that the Objectives Resolution passed by the Constituent Assembly on the 12th March, 1949, should form the Preamble of the proposed Constitution.

Recommending the incorporation of Directive Principles of State Policy the Committee emphasized the need of enabling Muslims to order their lives individually and collectively in accordance with the Holy Quran and the Sunnah. They suggested:

i. Provision of facilities to the people to understand what life in accordance with the Holy Quran and Sunnah means. They recommended that the teaching of the Quran to the Muslim should be made compulsory.

ii. Prohibition of drinking, gambling and prostitution.

iii. Elimination of Riba.

iv. Promotion and maintenance of Islamic moral standards.
v. Proper organization of Zakat, Auqaf and Mosques.

The Committee recommended that steps should be taken to bring existing laws into conformity with Islamic principles. It called upon the state to secure basic needs of the people like clothing, housing, education, medical relief etc. for the poor, the unemployed, the infirm and the indigent. The Committee desired (Article 5) that the economic policy of the State should be so directed as to secure an all-round well-being of the people. The state was “to prevent the concentration of wealth and means of production in the hands of a few to the detriment of the common man”\textsuperscript{79} and “to ensure equitable adjustment of the rights of labor and the peasantry in order to prevent their exploitation”.\textsuperscript{80}

Illiteracy was to be removed within fifteen years; parochial, tribal, racial, sectarian and provincial prejudices were to be discouraged. The separation of the judiciary from the Executive was to be effected within three years. The State was to provide social security for all persons in Government and private employment by means of compulsory social insurance. The state was to secure for its citizens the right to work, the right to an adequate means of livelihood and the right to rest and leisure. Of course all these exhortations were not to be enforceable in any court of law or else successive governments would have been involved in ceaseless litigation for criminal neglect.

Outlining the procedure for preventing legislation repugnant to the Quran and the Sunnah the Basic Principles Committee made the following recommendations:

1. No legislature should enact any law which is repugnant to the Holy Quran and the Sunnah.
2. Wherever these expressions occur, when applied to any sect, their interpretation of the Quran and the Sunnah is to be accepted.

3. The Supreme Court alone should have jurisdiction to determine whether or not a particular law is repugnant to the Quran and the Sunnah.

4. Every citizen of Pakistan should have a right to challenge the validity of the legislation on the ground of such repugnancy. A full Bench of not less than five judges should hear the case. Their decision should be by majority. The Committee recommended the setting up of an organization for Amr-bil maruf and Nahi anil-munkar, and to make the teaching of Islam known to the people. The expenses of this organization were to be met from the proceeds of a special tax.

Seven years after the adoption of the Objectives Resolution, Pakistan was given its first Constitution on March 23, 1956. The first amendment changed the nomenclature of the state to Islamic Republic of Pakistan—a recognition of intent rather than a de-jure description of the de-facto situation in the country. The seven years that lapsed since the Objectives were defined were years of stormy unrest. The first Prime Minister of the country was assassinated and the second was dismissed by a haughty bureaucrat, the third was repudiated by his own party. The fourth, a seasoned bureaucrat turned politician, gave the country its first constitution—a lengthy document divided into thirteen parts and six schedules comprising in all two hundred and thirty-four articles. The Government sponsored draft was introduced in January and
approved in February by the second Constituent Assembly and it was implemented in March, 1956.

The Constitution had an Islamic facade but the hard core was missing. Preamble started in the name of Allah, the Beneficent, the Merciful; it recognized His sovereignty over the entire universe; and declared that the authority to be exercised by the people of Pakistan within the limits prescribed by Him was a sacred trust. It was immediately followed by a declaration that the Founder of Pakistan asserted that the country “would be a democratic State based on Islamic principles of social justice”. Having recognized the sovereignty of God, the Constituent Assembly proceeded to frame “for the sovereign independent State of Pakistan a Constitution”, wherein “the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam, should be fully observed”. The Preamble wished to ensure for the Muslims of Pakistan a State in which they could, individually and collectively “order their Jives in accordance with the teachings and requirements of Islam, as set out in the Holy Quran and Sunnah”.

Islamic provisions were continued in the Directive Principles of State Policy, which were not enforceable in the Law Courts. The directive principles reaffirmed the statement in the Preamble that “Steps shall be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Quran and Sunnah.” Further the State was to endeavor for:-

I. to provide facilities to the Muslims to enable them to understand the meaning of life according to the Holy Quran and the Sunnah;
II. to promote unity and observance of Islamic moral standards;

III. to secure the proper organization of Zakat and Awkaf.

Article 29 dealt with the social and economic well-being of the people. Article 57 sought to abolish riba (usury) “as early as possible”. Article 24 provided that the State should endeavor to strengthen the bonds of unity among Muslim countries. The same article enjoined Pakistan to foster friendly relations among all nations. There was no provision to make Islam the State religion in Pakistan. Article 21 provided that no person should be compelled to pay any special tax, the proceeds of which were to be spent on the propagation of any religion other than his own.

The Head of State was to be a Muslim not younger than 40 years of age. The Speaker of the National Assembly would exercise the function of the President during the latter’s absence from Pakistan or his inability to discharge his duties owing to illness or any other cause. The Speaker could be a non-Muslim so that on occasions the President of the Islamic Republic of Pakistan could be a non-Muslim.

The argument for the President being a Muslim was that he was a symbol of a State which was based on Islam. Article 198 laid down that ‘no law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and the Sunnah”, and that existing laws “shall be brought into conformity with such injunctions.” Whether a law was repugnant to Islam or not, would be decided by the National Assembly. Article 198 provided that the President should appoint within one year of the Constitution Day a commission to make recommendations as to measures for bringing existing laws into conformity with the injunctions of Islam and as to stages by which such measures should be brought into effect. They were also to compile, in a
suitable form, for the guidance of the national and provincial Assemblies, such injunctions of Islam as could be given legislative effect. The Commission was to submit its final report within five years of its appointment and might submit any interim report and the report whether interim or final was to be laid before the National Assembly within six months of its receipt. It was made clear that nothing in Article 198 should affect the personal laws of non-Muslims or their status as citizens. The Article 197 provided that the President “shall set up an organization for Islamic research and instruction in advanced studies to assist in the reconstruction of the Muslim society on a truly Islamic basis”.

NOTES AND REFERENCES

1 Pakistan was granted a Dominion status under the Independence Act of 1947.
3 Ibid., p. 17.
7 Quoted in Viqar Ahmad and Rashid Amjad, The Management of Pakistan's Economy 1947-82, (Karachi: Oxford University Press, 1984), p.71. It is mentioned that until 1955, about 7 million refugees entered into West Pakistan from India and as compared to about 5.6 million Hindus and Sikhs refugees left Pakistan. In East Pakistan the number of entering refugees was 1.25 million.
8 It was only in 1946 when Pakistan became a certainty and it was realized that the partition of India would entail the partition of the two historic Muslim majority provinces.


12 Field-Marshal Claude Auchinleck, the Commander-in-Chief of the British Indian Army, was appointed the Supreme Commander and entrusted with the responsibility for the movement of stores, ammunition, equipment, and installations from one Dominion to the other. He reported about the hostility of the Congress to the first division of assets. Quoted in Hamid Yusuf. *Pakistan: A Study of Political Development 1947-95*. Lahore: Sang-e-Meel Publications, 1996, p. 19.

13 The proposal to have a common Prime Minister for both India and Pakistan favored by Lord Mountbatten had to be dropped in view of opposition from Jinnah. Mountbatten, however, became the first Governor General of independent India. Chaudhury Muhammad Ali, *op. cit.*, pp. 174-78, discusses the background of Jinnah's appointment.

14 Ibid.

15 Hamid Yusuf, *op. cit.*, p. 34.

16 Mustafa Chaudhury, *op. cit.*, p. 32.


19 Ibid. p. 22.

20 Hamid Yusuf, *op. cit.*, p. 34.


22 Language riots took place when Government of Pakistanis tried to impose Urdu as the national language of the country.

23 Violence erupted in Punjab when some religious parties sought to declare a sect known as the Ahmadiyas / Qadianis / Mirzais, as non-Muslim and a result of rioting; the first Martial Law was imposed in Lahore in 1953.

24 Quoted in Keith Callard, *op. cit.*, p. 22. It is mentioned that Iskander Mirza and Ayub Khan were active participants in the removal of Nazimuddin and had the army in readiness in case there was opposition. Nazimuddin enjoyed a majority support in the Constituent Assembly. In fact, the budget had been passed a few days before his dismissal. Nazimuddin as "an illegal and unconstitutional course against the principles of democracy." See also, Noor Ahmed Syed. *From Military Law to Martial Law*. (Boulder: Westview, 1985).


27 For detailed discussion of the legal disputes, see G. W. Choudhury, "Constitutional Development in Pakistan" in K. J. Newman (ed.), *Essays on the Constitution of Pakistan,*
One Unit, which amalgamated the four provinces of West Pakistan into the province of West Pakistan. It was done with a view to ensuring parity of representation in the central legislature between the East and West Pakistan.

See M. Rashiduzzaman, op. cit., p. 48.


Ibid.

Ibid.

Ibid

Ibid

Ibid., p. 59.

Ibid., p 87


Ibid., p. 149.


Dawn, November 5, 1950.


See Afzal Iqbal, Islamization of Pakistan, (Lahore: Vanguard, 1986).

Munir Report, p 184.

Ibid., p. 219.

Leonard Binder, op. cit., p. 361.

Dawn, October 14, 1955.


A Shaheed Minar (Martyr’s Monument) was erected at the sight of the firing. Ever since the day is commemorated every year.

55 In the "Cabinet of Talent" which was at a later stage formed by Ghulam Muhammad, Gen. Ayub Khan, the commander-in-chief of the army, held the defense portfolio.

56 These powers derived from the preventive detention laws of pre Independence era; from the police rules; from the *Code of Criminal Procedure*; from the *Public Safety Acts* of 1949-50 and from the Public and Representative Offices Disqualification Act (PRODA) passed during the period of Liaquat Ali Khan’s government.

57 Keith Callard, *op. cit.*, p. 137.


61 Sir Ivor Jennings, who was an advisor to the Government, had vetted the final draft. Chief Justice Mohammad Munir had also spoken about the draft constitution while addressing the Lahore Bar Association in October 1954. The litigation attending the dissolution of the Constituent Assembly is discussed at length by Allan McGrath in *The Destruction of Pakistan’s Democracy*. Oxford University Press, Karachi, 1996, see also Sir Ivor Jennings, *Constitutional crises in Pakistan*, (Cambridge: Cambridge University Press, 1956).

62 Ian Stephens, *op. cit.*, p. 64, describes that it was the civil servants, second coups, more thorough than the first.


65 See G. W. Choudhury, *op. cit.*


67 The corrections made by Sir Ivor Jennings on the final draft of the constitution are shown in his handwriting in the *Jennings Papers*. (London: Institute of Commonwealth Research, 1957) B/XV/4-S.


70 He had been finance minister since 1951.

71 There were nine ministers included in the new cabinet, who were not the members of the Assembly at the time of its dissolution, including General Ayub, C-in-C of army; Iskander Mirza (governor of East Pakistan), and Mr. Ghulam Ali Talpur from Sindh, landowners, and others. The cabinet also included two ministers from the opposition, namely Dr. Khan Sahib (dismissed as chief minister of Northwest Frontier Province in 1947) and Mr. Hussain Shaheed Suhrawardy, leader of the Awami League.


74 Quoted in Hamid Yusuf, *op. cit.*, p. 57.

77 Leonard Bender, op. cit. 1961, p. 345.
78 See clause b of Article 5.
79 See clause c of Article 5.
80 Afzal Iqbal, op. cit., p. 65.
81 See the preamble of Constitution of Islamic Republic of Pakistan, 1956.
82 Ibid.
83 Ibid.
84 See Constitution of Islamic Republic of Pakistan, 1956
85 Ibid.
86 Ibid.
87 Afzal Iqbal, op. cit., p. 68.
CHAPTER 4

THE PROCESS OF ISLAMIZATION IN PAKISTAN FROM 1956-1971
CHAPTER IV

4. THE PROCESS OF ISLAMIZATION IN PAKISTAN
FROM 1956-1971

Discussion in the preceding chapter demonstrates clearly that the Assembly dominated by the Muslim League until 1954, failed to solve the problems of representation, national language, and the role of Islam in state. All these issues were temporarily resolved only after they had evoked a high degree of bitterness and suspicion from the people of Pakistan. Instead of being resolved through the process of accommodation, these issues were temporarily dealt with by force. Moreover, the drafting process of the Constitution of 1956 indicated clearly how “controlled” the debate really was, as Keith Callard observed, “The government resolved to profit by the lessons of the previous attempts to reach agreement on the constitution, and the new Assembly was not asked to set up machinery to prepare a draft. Instead the government prepared its own draft, which was published in January 1956. On the day after publication the Law minister rose to introduce a Bill to’ provide a constitution for the Islamic Republic of Pakistan. After the Minister’s speech the House adjourned for a week, so that the members might have an opportunity to study the provisions of the Bill. After general discussion had taken place for twelve days, the’ Assembly proceeded to consider the Bill in detail. This required a further seventeen sittings, during which the closure was frequently invoked. On one
occasion the Opposition was so unwise as to leave the chamber in protest against a ruling of the Chair; this enabled the government to secure approval of many clauses without discussion. The 1956 Constitution can thus only be described as another temporary stabilizing action; it was an expression of the desires of a small group of people.

Besides the issues discussed above, another controversy was that the Constitution of 1956, did not reach a decision on the question whether Pakistan should adopt a joint or a separate electorate. A "joint electorate" implies that the Muslims and non-Muslims would have joint representation in the legislature, while a "separate electorate" would require Muslims and non-Muslims to have separate representation in the legislature, meaning that a certain number of seats would be reserved for the Hindus. The Hindus were opposed to separate electorates since it would reduce them to a permanent minority, having no voice in the administration of the country. The electorate issue was left to the National Assembly (legislature) to decide. When Suhrawardy came to power in 1956, the National Assembly passed a law providing for a joint electorate in East Pakistan and separate electorate in West Pakistan. Various groups, including the orthodox ulema, Jamait-i-Islami and the Muslim League opposed the policy of a joint electorate on the ground that it would negate the two-nation theory and the very spirit of Pakistan Movement. Suhrawardy however defended the joint electorate system, stating: "The two-nation theory was advanced by the Muslims as a justification for the partition of India and the creation of a state made up of geographically contiguous units where the Muslims were numerically in a majority. Once that state was created the two-nation theory lost, its force even for the Muslims... Today we do not want to develop
fissiparous tendencies within the country but create one nation. I, therefore, advocate a joint electorate because this will help... in destroying the seeds of suspicion, distrust, and hatred between the citizens professing different religions. ¹³ The electorate issue created additional bitterness between the two parts of Pakistan. West Pakistan supported the introduction of the separate electorate since it would reduce the East Pakistan Muslims to a permanent minority. Since the Hindus constituted about 19 per cent of the population, they would have received 31 seats of the 155 allotted to East Pakistan. When the Muslim League-Republican government came to power after the Ouster of Suhrawardy, an attempt was made to introduce the separate electorate; Realizing that it would create tension in East Pakistan, the Republican Party abandoned the attempt. Thereafter, the issue was resolved in favor of a joint electorate. In sum, though the parties temporarily resolved the various issues, they failed to achieve a lasting consensus.

The new Constituent Assembly met on July 7, 1955. Out of its 80 members the Muslim League had only 26, all except two from West Pakistan.⁴ In view of the drastically changed party position, Chaudhry Muhammad Ali replaced the Prime Minister Muhammad Ali Bogra. Meanwhile, Iskander Mirza succeeded Ghulam Muhammad as the Governor General. The two major acts of the Second Constituent Assembly were the establishment of the province of West Pakistan on September 30, 1955 and the first constitution of Pakistan was adopted on March 23, 1956. The constitution of 1956 has been justly acclaimed as the work and achievement of Prime Minister Chaudhry Muhammad Ali whose tireless exertion in bringing about a consensus deserves to be recorded.⁵
The constitution retained a substantial portion of the Act of 1935 and provided for a federal parliamentary system. However, the federation consisted of two provinces only, namely, East Pakistan and West Pakistan. As there was a parity of representation between the two provinces, a second chamber was not considered necessary. Parity denied the principle of majority and the retention of One Unit in the shape of West Pakistan constitutionally demolished the federal principle particularly in the west wing. The Objectives Resolution was embodied as the preamble. The constitution contained fundamental rights, and judicial review, empowering the superior courts to issue writs of certiorari, mandamus, prohibition, quo warrant and habeas corpus. It also embodied a number of Islamic provisions. These were new additions. The emergency provisions of the Act of 1935 were also retained in the Constitution of 1956.

The legislature was to consist of 300 members, equally divided between the two provinces, with additional 10 seats for women, five for each province. Until the national assembly was elected, the second Constituent Assembly, having 80 members, was to serve as the legislature. The constitution empowered the president to dismiss a Prime Minister if he was satisfied that the Prime Minister did not command the confidence of the majority of the members of the national assembly. Iskander Mirza had made his assent to the constitution conditional on his election as president, an office to which he was elected with fateful consequences.

The constitution barely lasted two turbulent years of a triangular conflict of power between the two wings and president Iskander Mirza who had a passion for authority and intrigue for which the decaying political life of the country provided him with abundant opportunities. Political conflict in West
Pakistan was provoked by the decision of the Muslim League under Daultana's leadership to oppose Dr. Khan Sahib who had been made the chief minister of West Pakistan as a price for his support of One Unit. Dr. Khan Sahib, with Iskander Mirza's support, promptly lured away 26 out of the 30 members of the Muslim League to form the Republican Party. In the tussle for power, a small group of the National Awami Party (supported by Khan Abdul Wali Khan and G. M. Syed of Sindh and committed to dissolve West Pakistan into four provinces. The Muslim League which had been the moving spirit behind the integration of West Pakistan sided with the minority group to bring down the Republicans, who were in turn saved by the imposition of the Governor's rule. They re-emerged again but this time found it more expedients to support the National Awami Party group.\footnote{9}

The president was supporting the Republicans in West Pakistan, in East Pakistan he was behind the Krishak Sramik Party as against the Awami League of Hussain Shaheed Suhrawardy. Chaudhry Muhammad Ali at the center lost the majority and abandoned efforts to regain it. Suhrawardy, who became Prime Minister in September 1956, headed a coalition cabinet of the Awami League and the Republicans. The distrust between Mirza and Suhrawardy was acute. His advice to the president to summon the national assembly so that he could find out his position in the house alarmed Mirza who saw in the move a design to shift the decision from the Governor General to the assembly. Suhrawardy was made to resign on October 11, 1957.

Sir Feroze Khan Noon, who succeeded Suhrawardy, failed to win the president's confidence. The latter suspected that Suhrawardy had offered presidentialship to Sir Feroz Khan Noon. Mirza was not the man to yield
rapidity. In these changes, which looked like a palace intrigue, the people were not involved as a general election had yet to take place. They were only the spectators of change and the sufferers of its consequences.

The situation could not continue indefinitely and it seems that about the time of the ugly scene in the provincial assembly meeting at Dacca a “tactical outline” had been prepared to impose martial law in the country. The man behind the plan was General Muhammad Ayub Khan who apparently had decided that the politicians had had enough time to prove their sincerity. Thus, during the night of October 7-8, 1958, a group of Generals led by the commander-in-chief seized the power, and the President, abrogated the constitution of 1956, dismissed the central and provincial cabinets ‘with immediate effect’, dissolved the central and provincial legislatures, banned all political parties throughout the country, and imposed Martial Law. General Ayub by an order abolished the office of the Prime Minister and declared himself as the President of the country.

In sum, as a result of the constitutional evolution in the sub-continent, Pakistan had acquired a federal parliamentary system. The tradition of democracy and federalism, for reasons already discussed, was weak. The political mechanism, in the shape of political parties or even a single party, was insufficiently developed to translate these ideals into deed. The political culture of a pre-industrial society was dominated, in the case of the west wing, by a powerful land owning elite, which provided unfavorable conditions for democracy. The Muslim League due to its late rise had been unable to establish an institutional strength. The early loss of its top leadership left a vacuum and aggravated the institutional imbalance between the politicians and the bureaucracy, civil and military.
These difficulties were compounded by the fact that the country had to face since its inception a problem of extraordinary complexity arising from the physical distance between its two halves. Although the east wing had more population, the west wing enjoyed a position of dominance-political, military, administrative and economic, which led to regional tensions. The inter-wing conflict caused a fatal delay in the framing of a constitution and a general election could not be held. With the decline of the League politics became fragmented and power began to be concentrated in the hands of the bureaucracy, with the military being dominant. The dismissal of Prime Minister Nazimuddin in 1953 and the dissolution of the Constituent Assembly in 1954 by the Governor General were only the more dramatic instances of the shift in the balance of power. In the circumstances the hopes engendered by the Constitution of 1956 proved illusory. The democratic forces had in fact crumbled before they were able to lay the foundation of democracy. The administrative state re-asserted itself under a new dispensation. The military, which had steadily become the major force in the body-politic now, became the ruler of the country.

What is evident from the above analysis is that none of the parties in Pakistan was able to articulate and aggregate the interests of different regions. The strength of regional cleavages in Pakistan worked against the development of national political parties. In other words, unevenness in economic development created differences in the ideology of parties, which in turn produced high levels of political instability. The facade of parliamentary politics in Pakistan led in turn to the advent of a military dominated politics in 1958. We will now review the Ayub period in order to
determine the extent to which representative institutions were allowed to function.

The Constitution of 1956 was accepted without widespread opposition from Muslim groups concerning its Islamic provisions. The East Pakistan Muslim League passed a resolution regretting that the repugnancy clause was not to be enforceable in the Law Courts. This criticism was countered by the Leader of the Opposition, Mr. H. S. Suhrawardy who said: "You are deluding the people here calling this an Islamic State".\(^{12}\)

Since the emergence of Pakistan, Muslims had debated the desirable role of Islam in a modern state. The constitution did nothing to settle this fundamental issue. Justice Munir wrote about the confused state of mind of the Muslims in Pakistan.

"The Musalman finds himself in a state of helplessness, waiting for some one to come and help him out of this morass of uncertainty and confusion Nothing but a bold re orientation of Islam to separate the vital from the lifeless can preserve it as a World Idea and convert the Musalman into a citizen of the present and the future world from the archaic incongruity that he is today It is this lack of bold and clear thinking which has brought about in Pakistan a confusion which will persist until our leaders have clear conception of the goal and of the means to reach it".\(^{13}\)

The leaders had neither the conception nor the sympathy for the aspirations of the people. Maj. General, Iskander Mirza, had no regards whatever for Islamic ideology. He preferred to keep religion out of politics. "We cannot run wild on Islam",\(^{14}\) he declared. There was a clear tendency to evade the
Islamic provisions which had been made merely to appease the Ulema. Thus the appointment of the Commission stipulated in Article 197 was delayed as long as possible. During the two years that the Constitution was in force hardly any steps were taken to enforce the Islamic provisions.

The declaration of divine sovereignty in the Preamble was irrelevant to the interpretation of the Constitution because Pakistan was created as a territorial state with its citizenship regulations and nationality laws. The traditional concept of the Ummah has now undergone a change. In the Preamble of the Constitution of 1956, which delegates' authority to the people of Pakistan, the idea of the traditional Universal Ummah has been abandoned because the people of Pakistan comprise Muslims and non-Muslims. No distinction is made between the two in fundamental rights on the basis of faith. The Constitution also departs from the classical theory by investing the final interpretation of the Quran and Sunnah to the legislature rather than to the theologians. The framers of the Constitution did not envisage Pakistan as a mediaeval Islamic State. The Constitution of 1956 declares:

"Pakistan would be a democratic state, based on Islamic principles... wherein the principles of democracy, freedom, equality, tolerance and social Justice as enunciated by Islam would be fully observed".15

The Constitution produced by the second Constituent Assembly is best understood when we keep in mind the social background of the members that comprised it. Twenty eight members, 11 from West Pakistan, were land owners, twenty three lawyers of whom twenty were from East Pakistan, fourteen retired officials, nine of then from the eastern wing, seven
entrepreneurs, and eight members represented other social strata such as Ulema journalists etc. Among the members three were provincial governors, two rulers of princely states and seventeen ministers of the Central and provincial governments.¹⁶

The first Constitution of Pakistan seems to suggest that its framers decided to borrow the political institutions of the West and made an effort to invest them with the spirit of Islam. A liberal interpretation of Islam was incorporated into the Constitution. The institution of representative government was reconciled with the fundamental principles of Islam and the idea of restoring mediaeval political institutions was rejected. The most striking feature of the Constitution is the avoidance of the use of ‘Shariah’, for it refers only to the Quran and Sunnah in general. At the end of Article 198 there is a significant footnote which has the effect of permanent recognition of sects within the Muslim community. This is proposed to be discussed in some detail in the next Chapter.

The Constitution of March 23, 1956 was abrogated two years later by General Ayub Khan on 7 October 1958. The Commission was set up by General Ayub Khan to examine the progressive failure of parliamentary government, leading to the abrogation of the Constitution of 1956 and to determine the causes and the nature of the failure:

The Commission reached the conclusion that the parliamentary system had failed. There was no doubt that the parliamentarians—the politician—"forgot his duty to the country". Provincialism and personal advantage preceded the national interest. "After the Constitution was passed", the Report said, "one would have expected the Prime Minister, who was successful in piloting it, to be able to continue in office for sometime, but
hardly six months passed when he resigned". The next Prime Minister hardly remained in office for about a year. There were four prime ministers in about two and a half years. None of them went out as result of an adverse vote in the legislature. Such was the atmosphere of intrigue. The Constitution Commission observed with some distress that "Even in the first year of Pakistan, when the enthusiasm of the people for building up a new country was at the highest, personal rivalry started amongst the members of the parties in power".  

The Commission recorded that 97.14% of the opinions received by them favored the retention of the Directive Principles of State policy enunciated in the 1956 Constitution; only 2.45% considered their incorporation unnecessary for the simple reason that they could not be enforced in a court of law. The Commission however argued that even though they were not enforceable in law, still they had a great effect on future legislation. "It is the fundamental principle of any civilized government that its legislators should act within the sphere, and the limits, fixed by the constitution under which they have been elected to the office and although the constitution would not, by merely enunciating the directive principles, make it obligatory on them to follow it, nevertheless the very fact that they are mentioned as principles to guide their deliberations, does have an effect on their minds."  

The Commission also recorded that 96.64% of the opinions received by them were in favor of adopting the preamble of the 1956 Constitution. A minority opinion did not consider it necessary, not because they had any quarrel with the preamble, but they thought it had only a sentimental value for none of its provisions could be enforced by law. Dismissing the debate whether the founding fathers wanted Pakistan to be an Islamic State as
merely academic the Commission remarked: "Seven if it is taken that in the beginning the objective was not an Islamic State, it cannot be doubted that the majority in this country now desire an Islamic way of life". 19 

Analyzing the apprehensions of the minorities the Commission pointed out "Islam permeates the life of a Muslim and does not allow, politics to be kept apart from ethics as is the case in countries with secular constitutions. The non-Muslims in Pakistan need have no fear on this account as Islam gives them a guarantee of equality, freedom and justice, which is far more effective being a matter of ideology, than mere declaration of secularity." 20 

In the second paragraph of the preamble of the 1956 Constitution reference is made to the Islamic principles of social justice and in the fifth paragraph the principles of democracy, freedom, equality, tolerance etc. are qualified by the words "as enunciated by Islam". These principles are expected of any modern nation the skeptics argued and asked why they should be dubbed as Islamic. The Constitution Commission found the answer to these doubts in the opening speech of the Prime Minister of Pakistan when the Objectives Resolution was introduced in the first Constituent Assembly. The Prime Minister observed:

"It has, therefore, been found necessary to define these terms further in order to give them a well-understood meaning. When we use the word democracy in the Islamic sense, it pervades all aspects of our life; it relates to our system of Government and to our society with equal validity, because one of the greatest contributions of Islam has been the idea of equality of all men. Islam recognized no distinction based upon race, color or birth, even in the days of its decadence which vitiated human
relations in many other parts of the world. Similarly, we have a
great record in tolerance, for under no system of government,
even in the Middle Ages, have the minorities received the same
consideration and freedom as they did in Muslim countries.”

The Constitution Commission favored the retention of Article 197, dealing
with the setting up of an Islamic Research Institute. “If the modern
generation doubts the efficacy of Islam, that is due to their lack of
appreciation of the universal applicability of the Quranic teachings and a
lack of knowledge of the Islamic history.” The remedy, therefore, lies in
acquainting one self with the principles of Islam and with the Islamic history
and not in discarding religion”. Dealing with the Constitutional provision
that a Commission for bringing laws into conformity with the Quran and the
Sunnah should be appointed, the Constitution Commission reported to
President Ayub Khan that an overwhelming majority (97.23 %) favored the
adoption of this provision However the report emphasized: “We do not think
that this majority has fully considered the difficulties involved in this
question”.22

A minority of 1.63% took the view that no Islamic provision was required.
(This was the secular point of view). Some of those who did not subscribe to
the secular view advocated that the laws should be brought in conformity
only with the Quranic principles and that the expression “Sunnah” should be
deleted from the Article for there is no unanimity with regard to how many;
and which, of the traditions are authentic.

The official view of the government of President Ayub Khan was that
Islamic provisions may either be confined to the preamble or it may be laid
down that no law should be enacted which is repugnant to the principles of
Islam as enunciated by the Holy Quran and the Sunnah with the right of Ijtihad to meet the requirements of the times and the needs of present day society. The Supreme Court alone should have the power to determine whether a particular law conforms to this provision of the Constitution. Article 198 of the abrogated Constitution of 1956 gave this right to an elected parliament. There are different views about ijtihad, it necessary at all to disturb the general law that is law other than personal law: which has held the field for such a long time in this sub-continent? With regard to traditions, one will have to consider “how far the traditions of legal import embody the pre-Islamic usages of Arabia which were in some cases left in tact and in others modified by the Prophet”.

In view of a variety of difficulties surrounding the “repugnancy” clause, it was considered advisable to recommend the setting up of a commission, it is necessary “to create a climate wherein different schools of thought could evolve unanimity with regard to the fundamentals of Islam as far as traditions are concerned.”

The Commission was required to advise as to whether instructions given by the Prophet with reference to local conditions should necessarily be followed literally regardless of the local customs. A relevant extract was quoted from Iqbal’s “Reconstruction of Religions Thought in Islam”, where he sums up the substance of Shah Wali ullah’s view of the matter as follows:

“The prophetic method of teaching, according to Shah Wali ullah, is that generally speaking, the law revealed by a prophet takes especial notice of the habits, ways, and peculiarities of the people to whom he is specifically sent. The prophet who aims at all embracing principles for different peoples, however, can
neither reveal different principles for different peoples, nor leave them to work out their own rules of conduct. His method is to train one particular people, and to use them as nucleus for the building up of a universal Shariah. In doing he accentuates the principle underlying the social life of all mankind, and applies them to concrete cases in the light of specific habits of the people immediately before him. The Shariah values (Ahkam) resulting from this application (e.g. rules relating to penalties for crimes) are in a sense specific to that people; and, since their observance is not an end in itself, they cannot be strictly enforced in the case of future generations. It was perhaps in view of this that Abu Hanifa, who had a keen insight into the universal character of Islam, made practically no use of these traditions”. 27 The Commission pertinently pointed out that “the bringing of the laws into conformity with the Quran and Sunnah does not by itself make one a good Muslim”. 28

The overwhelming majority of Muslims in Pakistan are illiterate. Their knowledge of Islam is what the Imam of their mosque provides them in the village. And the average Imam is at best a semi-literate person. He is not capable of explaining the principles of Islam in the context of modern conditions. He is in fact a tool in the hands of the landed aristocracy which makes sure that the mosque is not converted into a centre of change for the Muslim community. “He (the Imam) has to depend on the bounty of one or a few rich members of the limited society he serves and cannot therefore afford to criticize any action which does not infringe the ritual however anti-social and un-Islamic in effect it may be an average preacher carries on
following the line of least resistance by keeping on the good side of the powerful section". ²⁹

4.1 **The Constitution of 1962**

The first Constitution of Pakistan which took nearly nine years to complete lasted no more than two and a half years. It was abrogated on 7 October, 1958 by General Ayub Khan. In his proclamation, imposing the Martial Law, General Ayub Khan, *inter alia*, stated:

> "The Constitution which was brought into being on 23rd March, 1956, after so many tribulations, is unworkable. It is full of dangerous compromises that Pakistan will soon disintegrate internally, if the inherent malaise is not removed". ³⁰

A Martial Law ordinance declared that the Islamic Republic of Pakistan was to be known as Pakistan. The expression 'Islamic Republic' was dropped. 'Characteristic of the Government's initial attitude was a statement of Mr. Manzur Qadir the Foreign Minister who was the author of the 1962 Constitution, declared that I did not say at any time whether the future Constitution will be Islamic or not". ³¹ It was up to the elected representatives to work out the 'details' ³² Before the promulgation of the Constitution in 1962, General Ayub Khan introduced the Muslim Family Laws through an Ordinance on March 2, 1961. **Unmitigated polygamy was abolished** consent of the current wife was made mandatory for a second marriage, brakes were placed on the practice of instant divorce where men pronounced it irrevocably by pronouncing *talaq* thrice in one go. The Arbitration Council set up under the law in the urban and rural areas was to deal with the following cases:
I. grants of sanction to a person to contract a second marriage during the subsistence of a marriage;

II. Reconciliation of a dispute between a husband and a wife;

III. Grant of maintenance to the wife and children.

All Muslim marriages were to be compulsorily registered with registrars to be appointed by union Councils, one in each ward. The Registrars were also empowered to perform marriages. For such services they were to be paid substantial fees. The offices of Registrars were filled by Imams and Khatibs. A sum of Rs. 5 crores annually went into the pockets of these religious leaders as a result of the fees prescribed by the ordinance. When Jamaat-i-Islami launched an agitation against this "un-Islamic" Law, religious leaders either supported the President or kept aloof from the movement. Having secured the vested interests of the mullah, the President promulgated the West Pakistan Waqf Properties Ordinance, 1961 on October 23, 1961.

According to this law the Government took over huge and valuable properties of Muslim trusts. The Chief Administrator could even sell or otherwise dispose of any of these properties, and spend their incomes under the various schemes to be prepared by him. Enormous funds recovered from the waqf properties, which previously went into private pockets, were not at the disposal of the Government. Some of these funds were spent on the salaries of the Imams and Khatibs of important mosques. The President was able thus to get further support from these religious leaders who were already indebted to him for being provided with jobs under the Family Laws Ordinance, 1961.
The President announced the Constitution in a broadcast on March 1, 1962. The new Constitution differed in several respects from the late constitution. For the first time the presidential form of government was introduced in Pakistan. We will, however, confine ourselves to the Islamic provisions only.

The identification with Islam was formally retained. The preamble of the 1956 Constitution was retained with some modifications. In the first paragraph of the preamble of the 1956 Constitution is a sentence "authority to be exercised by the people of Pakistan within the limits prescribed by Him (Allah) is a sacred trust." This sentence was omitted in the 1962 Constitution. The Objectives Resolution of 1949 on which the Preambles of the 1956 and 1962 Constitutions are based include the following sentence:

"The sovereignty over the entire universe belongs to God Almighty alone and authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him as a sacred trust".

The aspect of delegation of authority was done away with the 1956 Constitution while the 1962 constitution tried to get away from the "limits prescribed by Him". But as a result of the first amendment made in 1963 the words were restored. This was the result of the pressure exercised by the orthodox section of the National Assembly who demanded strengthening of the Islamic provisions of the Constitution. The word "Islamic was initially deleted from the nomenclature of the State "Islamic Republic of Pakistan", but it was later restored under similar pressure. The Constitution of 1956 referred to the Quran and Sunnah in Article 198 but the new Constitution
replaced the "Quran and Sunnah" with the word 'Islam'. In the text of the 1956 constitution there was a note at the end of Article 198 which read:

"In the application of the article to the personal law of a Muslim sect, the expression Quran and Sunnah shall mean the Quran and Sunnah as interpreted by the Sect".  

This note had the effect of permanent recognition of sects within the Muslim Community. The note was deleted, indicating a desire to cut across differences among various schools of thought as a pre-condition of compiling a code of Islamic law to which all legislation should conform. The new constitution substituted for Article 198 of the late Constitution a clause on the 'principles of law making' to the effect that "no law should be repugnant to Islam". The responsibility of deciding whether a proposed piece of legislation disregarded or violated the spirit of Islam was that of the legislature concerned. The provision in the new constitution that no law should be repugnant to Islam was not enforceable in a court of law, while Article 198 of the late constitution dealing with the same subject was enforceable in a Court of Law.

There was no provision in the new Constitution to bring the legal code of the country in conformity with the laws of Islam it was, however, ensured through the first amendment that all existing laws shall be brought in conformity with the Holy Quran and Sunnah. Further, while in the original constitution of 1962 it was simply provided that "no law shall be repugnant to Islam", it was elaborated with the additional words: "No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah". The amendment restored the footnote to Article 198
of the 1956 constitution stating that the expression Quran and Sunnah shall mean the Quran and Sunnah as interpreted by the sect concerned.

The Directive Principles of both the Constitutions were the same except for the fact that instead of using the 1956 formula which talked of enabling Muslims "to live in accordance with the Holy Quran and Sunnah"\(^{38}\); the 1962 constitution confined itself to fundamental principles and basic concepts of Islam.

Constitution neither made Islam the State religion of Pakistan nor created an ecclesiastical department to deal with religious affairs. Both adopted the same Directive Principles of Policy with minor differences. The Constitution of 1962 laid down the Principles that:\(^ {39}\)

I. Teaching of the *Quran* and *Islamiat* to the Muslims of Pakistan should be made compulsory—the word *Islamiat* was not used in a similar article of the 1956 Constitution;

II. Unity and observances of Islamic moral standards would be promoted among the Muslims of Pakistan;

III. Proper organization of *Zakat*, *Auqaf* and mosques should be ensured.

Article 21 provides that the bonds of unity among Muslim countries should be preserved and strengthened. A similar provision was also made in the 1956 Constitution; The Head of the State was to continue to be a Muslim.

Under Article 199, the Constitution of 1962 provided for an Advisory Council of Islamic Ideology to be appointed by the President. It was to consist of not less than five or not more than twelve members who hold office for three years. The Council was not confined to theologians like the
Board of Ulema proposed under the constitutional draft of 1952, but was to comprise persons who had an understanding of appreciation of Islam and of economic, political, legal and administrative problems of Pakistan. The Law Minister, Mr. Mohammed Munir, claimed that the Council of Islamic Ideology "represents the first instance where in modern history an effort is being made to bring Islam in contact with modern political, legal, ethical, social and economic conditions and to present new and unanticipated problems for solution to a jurisprudence which has for almost a thousand years been in a static condition." The Council was to make recommendations to the Governments, both Central and Provincial; as to steps and means which would enable and encourage the Muslims of Pakistan to order their lives in accordance with the principles and concepts of Islam. It is to advise the President, a provincial governor, the National Assembly or the Provincial Assembly or any question referred to it for advice whether a proposed law is or is not repugnant to the Quran and Sunnah. The advice of the Council is not binding on the legislature or the President. The Legislative Assembly is the final arbitrator. Explaining the relations between the Council and the Legislature, President Ayub asserted:

"This body is an advisory body. It is not an elected body. It cannot have super-power over the elected body. It is the legislature and the President who will be elected by the people. It is, therefore, they who finally accept the responsibility for making laws and giving decisions. The function of the Council is to produce considered, well thought out, scientific advice. But they cannot be put in a position of veto. That will be fatal."
The Islamic Research Institute, which was provided for under Article 197 of: the 1956 constitution was retained as Article 207 in the constitution of 1962. The main objective of the Institute was “to assist in the reconstruction of Muslim Society on a truly Islamic basis”. The Constitution of the Institute enumerates the following four objectives:

I. to define Islam in terms of its fundamentals in a rational and liberal manner and to emphasize among other, the basic Islamic ideals of universal brotherhood, tolerance and social justice;

II. to interpret the teachings of Islam in such a way as to bring out its dynamic character in the context of the intellectual and scientific progress of the modern world;

III. to carry out research in the contribution of Islam to science and culture with a view to enabling the Muslims to recapture an eminent position in these fields;

IV. to take appropriate measures for organizing and encouraging research in Islamic history, philosophy, law, jurisprudence etc.

President Ayub Khan, who promulgated the constitution of 1962, explained his own concept of an Islamic state as “While all sovereignty belongs to Allah, the people of an Islamic State have the authority to organize and administer their affairs”. Turning to the Ulema’s concept of an Islamic State he remarked that “the only way of having an Islamic Constitution was to hand over the country to the Ulema and beseech them”. He further remarked that “this is precisely what the ulema wanted. A Constitution can be regarded as Islamic only if it were drafted by the Ulema and conceded them the authority to judge and govern the people. This was a position
which neither the people nor I was prepared to accept, opposed as it was to
the fundamental democratic principle that all authority must vest in the
people".45

The Constitution of 1962, like the one of 1956 recognized the implication of
the ideological foundations of Pakistan. In his speech promulgating the
Constitution, President Ayub Khan said:

"Being an ideological state, our first objective must be to
adhere unflinchingly to our ideology—the ideology of Islam. It
is for this that we demanded Pakistan in this world of growing
skepticism, penetrating enquiry and exacting reason, we shall
be proving that Islam is timeless; that it is dynamic and can
move with times; that it is a practical code of life here and an
effective passport for life hereafter".46

Both the constitutions, however, rejected the idea of reviving the universal
Khilafat, but at the same time affirmed the need for promoting bonds of
unity among Muslim States. The Constitution of 1962 did not sharply
deviate from the basic philosophy of the 1956 constitution. It, however,
adopted a more liberal attitude. The parliamentary system was replaced by
the Presidential system. The 1962 Constitution not only preserved the
Islamic content of the old Constitution but also enlarged the scope of the
earlier Islamic provisions by introducing the institution of Advisory Council
of Islamic Ideology.

The hopes raised by Mr. Justice Munir at the appointment of the Council of
Islamic Ideology which was supposed to open the flood-gates of Ijihad after

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a thousand years of intellectual inertia on the part of the Muslim scholars were more than belied by its poor performance.

The first annual report submitted by the council pertains to the year 1964 and comprises no more than two pages. In 1965 the Council met only three times and made recommendations about adulteration of food, kidnapping of children, traffic offences, smuggling, imported literature, obscenity, compulsory military training in educational institutions, reorientation of legal studies and compulsory study of Islam from kindergarten to the graduation level.

In 1966, the Council held four meetings and met only for 15 days in the whole year. It made recommendations about marriages between Muslims and non-Muslims, adoption of children, separate religious education for Shia students. It considered the implications of Riba and recommended the setting up of a religious affairs authority but the recommendation was returned by the Government for clarification. In 1967 the Council met for 12 days in three meetings. Two were held in Rawalpindi and one in Dacca. Nothing of significance came out of the deliberation.

Two meetings were held during 1971, each lasting three days. A blueprint for an Islamic Social Order was considered. There is a gap of 3 years again and one comes across next an interim report for 1974-1975. The Council met four times during the year and made recommendations about national dress and Zakat.

A new Council of Islamic Ideology was set up in February, 1974 with a term of three years. The Council submitted its first interim report direct to the
speakers of the Assemblies for being laid before the Assemblies. It was so
discussed and adopted by the Assemblies of Balochistan and N.W.F.P.
No action was taken by the speakers of other Assemblies but the Central
Government amended the rules of procedure requiring the Council to submit
its reports to the Central Govt. After this no report was laid before any
Assembly even though the constitution required this to be done within 6
months of its receipt.

The Council carried on a casual though consistent scrutiny of laws with a
view to determining which of them came into conflict with the Law of
Islam. It is pertinent to recall that this process of restoration of Muslim Law
started in India a decade before the creation of Pakistan. The Legislative
Assembly of India passed the Shariat Act in 1937. The Act superseded
customary law. It was the first attempt to codify Islamic law. This process
continues While President Ayub Khan was hesitant in introducing Islam in
the body politic of Pakistan; he gave the country a capital which is called
Islamabad. The order which gave this title to the capital laid down that no
other town or city in the country shall be called by this name. This
distinction of being the Metropolis of Islam would belong only to the capital
of a country which at that time claimed to be the largest Muslim State of the
world.

Islamabad was the popular name adopted in many towns in the country by
the poor areas but now it became the exclusive preserve of the capital. The
biggest mosque in the city, which now houses the Islamic
University, was founded significantly by King Faisal of Saudi Arabia.

NOTES AND REFERENCES
1 Keith Caillard, *op. cit.*, p. 121.

2 Quoted in Mustafa Chowdhury from *The Constituent Assembly of Pakistan, Debates*, April 10-11, 1952.


4 The United Front had 16, Awami League 13, Congress 4, and Scheduled Caste Federation 3, United Progressive Party 2 and others 16. The composition of the Assembly was thus 'heterogenous.'

5 Hussain Shaheed Suhrawardy headed the Constitution Committee.

6 See *the Constitution of 1956*.

7 *Ibid*.

8 Governor General's assent was required, following the Federal Court's verdict in Mauvi Tamizuddin Khan's case.


25 *Ibid*.


27 Afzal Iqbal, *op. cit.*, p. 69.


31 Ibid.
33 See the preamble of Constitution of Pakistan, 1962.
34 Ibid.
36 Ibid.
37 See the Constitution of Pakistan, 1962.
38 See (Directive Principles) the Constitution of Pakistan, 1956 and 1962.
39 Ibid.
41 Ibid., p. 185.
42 Article 197, Constitution of Pakistan, 1962.
43 Quoted in Afzal Iqbal, op. cit., p. 73.
44 Ibid.
CHAPTER 5

ISMAIIZATION IN PAKISTAN: 1971-1977
THE ERA OF ZULFIQAR ALI BHUTTO
5. ISMAIZATION IN PAKISTAN: 1971-1977
THE ERA OF ZULFIQAR ALI BHUTTO

Zulfiqar Ali Bhutto assumed the position of the highest authority as a result of an extraordinary political career. He had already served in the cabinet of President Iskander Mirza and General Muhammad Ayub Khan as a minister. The developments following the Indo-Pakistan war of September 1965 had led to Bhutto's exit from Ayub Khan's cabinet in 1966. He had, however, by then earned a reputation as a young nationalist with flair of appeal for the youth. His image as the champion of the rights and sovereignty of the country was greatly enhanced by his moving presentation of Pakistan's case in the Security Council during the 1965 war. The period from the mid of 1966 until 1970, Mr. Bhutto spent most of his time in building up his political position.

Bhutto formally announced formation of his new party the Pakistan People's Party (PPP) at Lahore in December 1967. J. A. Rahim, a diplomat, and Dr. Mubashir Hasan, an engineer by profession, were the ideologues of the party. Towards the end of 1968, he had emerged as a formidable opponent. In 1969, Ayub Khan, who was ousted from the office in consequence of a mass political agitation which paved the way for military regime of General
Yahya Khan to assume the power. In the following year general elections were held in the country for the first time. Bhutto who came forward with a promise of economic uplift received spontaneous support from the people in West Pakistan. Bhutto's charismatic leadership projected himself as a passionate champion of the rights of the common man. He rode to triumph in West Pakistan during the general election. Although he had now emerged as an elected leader in the western wing, political office eluded him. As discussed earlier, the country was engulfed in a deep political crisis, followed by the cataclysmic events of the army action and the civilian uprising in East Pakistan that culminated in Indian aggression and the secession of the eastern province. The defeat of the army during the India-Pakistan war of December 1971 paved the way for Bhutto to use his mandate to get political power transferred from General Yahya Khan.

J. A. Rahim, who had been instrumental in framing the fourfold motto and drafting the Manifesto of the Pakistan People's Party in October 1966. The nutshell of the program of the new party was on the following slogans:

I. Islam is our Faith,

II. Democracy is our Polity, and

III. Socialism is our economy,

IV. The source of power rests to the People.

Through a grand synthesis Bhutto apparently sought to create a society based on religious faith, economic justice and popular rights. He came forward with a program of economic and social reform and laid down the guiding principles of his policy: Islam, Socialism and Democracy. A promise of economic uplift was epitomized in the slogan of Roti, Kapra and
Makan (food, clothing and shelter). The manifesto contained the pledge to nationalize basic industries. During the election campaign of 1970, Bhutto found the Opportunity to develop a mass following in the provinces of the Punjab and Sindh, which led to his electoral victory in the two provinces Sind and Punjab.

The majority of the people of Pakistan resides in the rural areas and is mostly landless peasants, workers or tenants, who lived in appalling conditions of extreme poverty and endured the oppression of the landlords for generations. The inability to change the conditions of their lives had bred deep apathy and they lived as if they were the victims of nature's seemingly unchanging laws.

5.1 EFFORTS FOR CONSTITUTION MAKING

Framing a new constitution was the highest priority for Bhutto. Therefore, the developments in the direction of constitution making began soon after Bhutto had taken over power. The appointment of governors belonging to the Pakistan People's party in the provinces of North-West Frontier (NWFP) and Balochistan provoked the reaction of the National Awami Party (NAP) and the Jamiat-ul-Ulema-i-Islam (JUI), which were the majority political parties in those provinces. It may be recalled that whereas the PPP had 82 seats out of the 144 National Assembly seats, in the provinces it commanded a majority only in the legislative assemblies of the Punjab and Sindh. In the North West Frontier Province, the People's Party had secured only 3 seats out of the 40 seats of the provincial assembly. In the case of the province of Balochistan, the PPP had not been able to win a single seat out of a house of 20. In both these provinces, the National Awami Party and the Jamiat-ul-Ulema-i-Islam together commanded an absolute majority.

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The NAP and the JUI insisted on the appointment of their nominees as governors in these two provinces on the same basis as Bhutto had appointed his own party men as governors in the Funjab and Sindh. It also campaigned for the lifting of martial law and for the end of the Emergency, a demand, which was joined in by other parties. It appeared that in any constitutional scheme Bhutto could not ride roughshod over the wishes of these two provinces where, apart from its negligible representation in the legislatures, the hold of the People's Party was practically non-existent. Obviously, Bhutto could not continue to act indefinitely on the strength of martial law, which would have meant increasing reliance on the army. There was a need to place his authority on constitutional and a more durable basis.

An accord was reached with the National Awami Party and Jamiat-Ulema-i-Islam on March 6, 1972. An order for a short session of the National Assembly 1972 was issued, summoning the national assembly on April 4, 1972 at Islamabad to frame an Interim Constitution for the country. In its session held on that day a unanimous vote of confidence in the leadership of Zulfiqar Ali Bhutto was passed. It was also announced that the martial law would be lifted from April 2, 1972. The draft interim constitution was adopted on April 17, 1972 and laid the legal basis of Bhutto's authority. The interim constitution prescribed a presidential form of government at the center and a parliamentary form of government in the provinces.

5.2 **THE CONSTITUTION OF 1973**

On the day the interim constitution was adopted on April 17, 1972, the national assembly also appointed a committee to prepare a draft of the permanent constitution. The progress towards the permanent constitution was very difficult. Controversy and political conflict centered on the
presidential versus a parliamentary form of government and on the division of powers between the center and the provinces. Bhutto's own preference for a presidential system with a strong and stable executive was well known. Equally determined was the opposition to make the executive answerable to the legislature. Apart from the genuine fears of placing too much authority in the hands of a president, a parliamentary system appeared to be a more practical response to the demand for regional self-expression, keeping in view the lessons of the One Unit and the Constitution of 1962. However, an accord was signed by the leaders of all the parliamentary parties and groups in the assembly representing the Pakistan People's Party, Muslim League (Qayyum), National Awami Party, Jamiat-Ulema-i-Islam, Council Muslim League, Jamiat-e-Ulama e-Pakistan, Jamait-i-Islami, Tribal Areas and Independents on October 20, 1972. NAP and JUI boycotted the National Assembly in the wake of the dismissal of NAP-JUI government in Balochistan and the resignation of the NAP-JUI government in the Frontier Province, and the violent disruption of the meeting held by the opposition at Liaquat-Bagh in Rawalpindi on 23 March. The boycott was ended on 10 April and the assembly adopted it without dissent. The president authenticated the permanent constitution on 12 April 1973. The constitution laid down a federal parliamentary system with a bicameral legislature. In yielding to a parliamentary form Bhutto had shown flexibility. He was keen that the constitution should carry a broad political consensus. But Bhutto's concern for a stable executive was also conceded. A vote of no confidence against the Prime Minister was virtually made impossible for ten years in view of the conditions, which were required to be satisfied before it could be
moved. At the same time NAP-JUI dropped some of their demands in the larger interest of the constitution.

The constitution of 1973 marked a major step forward. The framers of the Constitution of 1956 could claim only a qualified representative position as the members of the Constituent Assembly had been indirectly elected. The general election planned for February 1959 was aborted by the promulgation of martial law. Besides, the integration of the provinces of the west wing into a single unit, which was an integral part of that constitution, could not be said to have enjoyed the free consent of the smaller provinces and it negated the federal principle. As for the constitution of 1962, it had owed its creation to the will of a single man and provided for indirect elections. By comparison, the constitution of 1973 had the distinction that the elected representatives of the people framed it and was based on consensus and provided for adult franchise as the basis of election for the national and provincial assemblies, and set up a federation consisting of all the provinces.

The rise of Bhutto to the office of the chief executive of the state had signaled the return of the politicians after an interval of about fifteen years. For the first time the politicians were truly ascendant. In resolution, vision, and ability, the new leader was equal to the task of creating a democratic order based on social and economic justice to which his party was committed. However, the foundations on which such a system could be built were required to be laid. Over a long period of authoritarian rule, the institutional framework of a representative system based on adult franchise could not come into existence. On the other hand, even the basic institutions of government had undergone a decline. Likewise, public opinion had been unable to find an opportunity to develop and organize itself to a level where
it could compel observance of the spirit of the constitution. New traditions and values were needed for a democratic reconstruction.

It is necessary to note that the five years of Bhutto's' governance shows a curious contrast with the ideals of the party, which is more a matter of dismay. The constitution of 1973 was a notable achievement, and it has ever since served as a symbol of national consensus. Within a few hours of its promulgation, however, under a proclamation of emergency, the right to enforce fundamental rights was suspended. The organization of the party was neglected. In the absence of party election, leadership at various levels was nominated. Power shifted from the people to the party and from the party to its leader who towered over his lesser associates. No system of local government was established to develop local leadership and democracy at the grass roots.

The land reforms had generated a sense of self-respect, even defiance, among the hitherto lowly, but a vast population of peasants, tenants and farm workers. But they did not break or alter significantly the traditional power of the feudal class. Anwar H. Syed has expressed the view that, "Bhutto may, indeed, have despised feudalism and wanted to abolish it. But it would not be fanciful to suggest that he hoped to abolish it as much by inducing landlords to become successful entrepreneurs as by awakening the peasant to resist assaults on his dignity as a human person and on his rights under the law." Nevertheless, the radicalism of the party conflicted with the perpetuation of the feudal power structure.

The Bhutto regime also faced a number of crises, among these one crisis was the movement launched in 1976 for the declaration of the Ahmadis as a non-Muslim minority. The movement, which had a long history, was animated
by a powerful religious sentiment. The politicians were of the view that in
the process of confronting the situation the regime would be faced with a
dilemma. The Ahmadis had rendered considerable service to Bhutto during
his election campaign and it was anticipated that he would find it difficult
either to ignore this fact or the strength of the community which had
international affiliations. But the opposition leaders had misjudged. Having
allowed the movement to reach a climax, Bhutto allowed the community to
be declared as a minority by the national assembly in dramatic
circumstances and thus claimed credit for an act, which he said, had eluded
politicians in the past. The religious sentiment was no doubt satisfied. The
political aspect was ignored.

The moment of danger thus came and passed and the government became
entrenched in a position of seemingly impregnable authority. As the
enrolment of the membership of the People’s Party began in the summer of
1976, the last stalwarts in the opposition were falling in order to gain access
to power. It was a long distance from the ideals with which the new
government had begun its career. The institutions of the state had been
subordinated to serve the needs of an authoritarian rule. The executive
authority had been used to bend all opposition and the resources of the
nation employed to win the allegiance of men.

On 7 January 1977 news appeared in the national press announcing the
dissolution of the Assemblies and the holding of a general election to the
national and provincial assemblies on March 7 and 10, respectively.
Although there had been some speculation about the holding of the election
or its likely announcement of a date, the news hardly caused any stir. The
result of the elections was considered as a foregone conclusion.
5.3 **THE ISLAMIC PROVISION OF THE CONSTITUTION 1973**

A general analysis of the Constitution of 1973 is outside the scope of our work. We will confine ourselves to a narration of its Islamic provisions in the context of the earlier constitutions of 1956 and 1962.

Document begins in the name of Allah, the Beneficent, the Merciful. It began the same way in 1956 and in 1962. The Preamble reflects the sentiments expressed in the Objectives Resolution adopted by the first Constituent Assembly. It concedes the principle that Sovereignty over the entire universe belongs to Almighty Allah alone, and that the authority to be exercised by the people of Pakistan is a sacred trust within the limits prescribed by God.

The Preamble is more detailed and more eloquent in its representative character than in the previous constitutions. It talks of dedication to the cause of "preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny"\(^{12}\), and makes a spirited resolve to create an ‘egalitarian society through a new order’, an idiom which is unfamiliar to the constitutional documents of 1956 and 1962. Unlike its predecessors, it clearly implies that the present order is undesirable for it is unjust.

Part I of the Constitution is introductory. The country is called the Islamic Republic of Pakistan. Unlike 1962, there is no hedging or evasion on this score. For the first time in the history of Pakistan, Islam is declared the State religion of the country (*Para 2*) and the religion is identified with progressive forces which pledge to ‘ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from
each according to his ability, to each according to his work. The elimination of exploitation was also contained in the two previous constitutions, but the latter half of the article is entirely new modification of the socialist dictum.

Further according to Article 35 (a) the state shall raise the standard of all the people by preventing the “concentration of wealth and means of production and distribution in the hands of a few”. The previous constitutions spoke not of ‘concentration of wealth’ but ‘undue concentration of wealth’. The words ‘means of production and distribution’ are entirely new. This means that whenever public demands, any industry, service etc. may be nationalized.

These clauses were seen as a fulfillment of the socialist pledges given in the Manifesto of the Pakistan Peoples Party which proclaimed: “Islam is our religion, democracy our politics and socialism is our economy”.

Chapter I of Part II embodied fundamental rights. All laws inconsistent or in derogation of Fundamental Rights were to be void. Security of person was assured, and safeguards were provided as to arrest and detention; slavery, forced labor etc. were prohibited. Protection was provided against retrospective punishment, against double punishment and self-incrimination. Dignity of man was declared inviolable. Freedom of movement, assembly, association, speech, trade, business or profession, was guaranteed as was the freedom to profess religion and to manage religious institutions. No person could be compelled to pay any special tax the proceeds of which were to be spent on the maintenance or propagate of any religion other than his own. Nor was any person attending any educational institution required to receive religious instruction or attend religious ceremonies or worship relating to a religion other than his own.
A whole chapter comprising 20 Articles was devoted to Fundamental Rights. The Article dealing with the right of property (Article 24) is based on Article 15 of the 1956 constitution but in the matter of payment of compensation, it departs from previous precedents and lays down (clause-3-e) that private property can be acquired for some public purposes even without payment of compensation. This marked a significant departure from the Constitutions of 1956 and 1962 which did not envisage nationalization without compensation in any situation.

According to Article 253 (a) "Parliament may by law prescribe the maximum limits as to property or any class thereof which may be owned, held, possessed, or controlled by any person". 15

This provision accepts the basic provision of social justice that the state can interfere in private wealth, should it become detrimental to the interests of the society as a whole.

Chapter 2 deals with Principles of Policy. These principles are not enforceable in a court of law. They are merely a declaration of intent. Paragraph 31 appearing in Chapter 2 of the Constitution deals with the Islamic way of life and assures that:

(1) "Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.

(2) The State shall endeavor, as respects the Muslims of Pakistan,
a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;

b) to promote unity and the observance of the Islamic moral standards; and

c) to secure the proper organization of zakat, aqaf and mosques.

The undertaking in (2) (a) above is an advance on previous pledges as no government from 1947-1973 pledged to secure correct and exact printing and publishing of the Quran—a basic need, one would have thought, in an Islamic State. Full participation of women in national life (clause 35) was a new pledge that steps shall be taken to ensure full participation of women in all spheres of national life. This was an entirely new and a highly welcome principle. Maternity benefits for women in employment were assured for the first time (Clause (e) in 37). Prostitution, gambling, intoxicants including liquor and drugs, were to be prohibited. In promoting social and economic well being of the people sub-clause (f) of clause 38 pledged to “eliminate riba as early as possible”16, a vague reiteration of an old promise. The 1962 Constitution interpreted Riba as usury (Article 18) but the Constitution of 1973, embodying progressive economic measures’ remains ambiguous on this score. Bonds were to be strengthened with the Muslim countries—the expression Ummah was avoided—and Pakistan was to foster goodwill and friendly relations among all nations.

Part III of the Constitution dealt with the Federation of Pakistan. In Chapter I of this part it was stated that unless he is a Muslim a person shall not be
qualified for election as President (41)-(2). On assuming office the President was required to take an oath and solemnly swear that he is a Muslim and believes in the "Unity and Oneness of Almighty Allah, the Books of Allah, the Holy Quran being "the last of them, the Prophet- hood of Muhammad (peace be upon him) as the last of the Prophets and that there can be no Prophet, after him, till the day of Judgment, and all the requirements and teaching of the Holy Quran and Sunnah".

This elaborate oath was something new and reflected the growing demand for manifestation of faith. The declaration about the finality of Prophet should be read in the context of the campaign to have the Ahmadis declared a non-Muslim minority. The National Assembly which adopted this Constitution also excommunicated the Ahmadis from Islam and there fore, demanded a declaration of faith in the finality of the Prophet before the person could assume office of the Head of the Islamic Republic of Pakistan. Amendments were made in Article; 105 and 260 of the Constitution. By the first amendment, Ahmadis have been bracketed with other minorities and have been given special representation in the Provincial Assemblies. By the second Amendment, the following new clause was inserted in Article 260 of the Constitution:

"A person who does not believe in the absolute and unqualified finality of the Prophet-hood of Muhammad (peace be upon him) the last of the Prophets, or claims to be a Prophet, in any sense of the word, or of any description whatsoever, after Muhammad (peace be upon him) or recognizes such a claimant as a Prophet or a religious reformer, is not a Muslim for the purposes of the Constitution or law".17
In absence of the President, the Speaker of the National Assembly or Chairman of the Senate could perform the function as Acting President. There is no provision that these two persons should be Muslims. A situation can, therefore arise when the Head of the Islamic Republic of Pakistan could be temporarily a person who does not profess the faith of Islam and yet acts as the symbol of its authority as exercised in Pakistan. This anomaly also existed in the 1956 Constitution.

Article 91, in clause (2) makes for the first time a constitutional provision that the Prime Minister is to be elected from among the Muslim members of the National Assembly. In other words, the Prime Minister, like the Head of State, has to be a Muslim. The Prime Minister is required to take the same oath of allegiance to Islam as the President. He is required to make the same declaration about the finality of prophethood and other articles of faith as the President.

While it was the practice in the past that the leader of the majority party would naturally reflect the faith of the majority of the people there was no constitutional bar to a non-Muslim becoming the Head of Government in Pakistan. This provision was made for the first time in the Constitution of 1973, and it reflects the reality and accords de-jure and accords de-facto situation. But it certainly offends the theoretical liberty of a sovereign Parliament to elect any one they like as their leader.

This is not the only known Parliamentary norm which was disregarded. The Prime Minister normally stays in power only as long as he enjoys the confidence of the Parliament which is free to express its lack of it by a vote in the House. Article 96 of the Constitution, however, makes an unusual provision in Clause (5) which did not exist in any of the previous.
Constitutions no-confidence motion against the Prime Minister could not be moved unless by the same resolution the name of another Prime Minister was put forward as his successor. If such a resolution was not carried, a resolution of no-confidence could not be moved again until after six months had elapsed. The idea perhaps was to impart stability to the government and discourage frequent unsuccessful moves to remove it. To discourage the crossing of the floor which was frequent in a Parliament which had yet to develop its traditions, a provision was made that the vote of a member shall be disregarded if he cast it against the passing of a confidence motion while the majority of the members of the political party on whose ticket he was originally elected voted otherwise. This means that he could not cross the floor and defies the whip of his party at will.¹⁸

Similar stipulations were also made in regard to a vote of no-confidence against a provincial chief minister. But such provisions both at the centre and in the provinces, tended to defeat the objectives of Parliamentary government. A Prime Minister who thinks he is free from the control of Parliament can become a tyrant.

Islamic Provisions” is the title given to Part IX of the Constitution. It comprised five articles. (227-231). Article 237 lays down that “all existing laws shall be brought in conformity with the Injunctions of Islam”—an expression used for the first time in a Constitution of Pakistan. No Law shall be enacted which is repugnant to the Injunctions laid down in the Holy Quran and Sunnah. The personal law of non-Muslim citizens is exempted from the operation of such Injunctions. One highly welcome change in the Constitution is that it has dropped a paragraph contained in the two earlier constitutions i.e. “In the application of this principle (i.e., that no law shall
be enacted which is repugnant to the Quran and the Sunnah) to the personal
law of any Muslim sect, the expression “Qur and Sunnah” shall mean the
Quran and Sunnah as interpreted by the sect”. This provision would prevent
an achievement of uniformity of the law of Islam in Pakistan. But who
decides whether a certain law is or is not repugnant to the Quran and the
Sunnah? No mechanism is set up in the Constitution of 1973 for this
purpose.

It will be recalled that the Board of Talimaat-i-Islami, set up the same day as
the Objectives Resolution was passed, proposed that the matter should be
resolved by the Ulema, the only body who are experts on the subject. The
Basic Principles Committee, disregarding this advice, recommended that the
matter should be entrusted to the Supreme Court. The Second Constituent
Assembly which framed the 1956 Constitution, however, made the elected
representatives of the people—the National Assembly the arbiter of such a
dispute. And the '73 Constitution refers this important issue to the Islamic
Council without giving it the final say.

Article 228 reiterates the earlier provisions regarding the setting up of a
Council of Islamic Ideology, and deals with the composition and the
qualifications of its members who hold office for a period of three years.
Article 229 lays down that the President or a provincial Governor or a
provincial Assembly (if two-fifths of its total membership so requires) could
refer to the Islamic Council for advice as to whether a proposed law is or is
not repugnant to the Injunctions of Islam. Where a House, a Provincial
Assembly, the President or the Governor, as the case may be considers that,
in the public interest, the making of the proposed law should not be
postponed until the advice of the Islamic Council is furnished, the law may
be made before the advice is furnished. But if the Islamic Council rules that a given law is repugnant to the Injunctions of Islam—not the Quran and Sunnah as laid down in the earlier constitution—the House is bound to reconsider the law.

The Constitution is silent about the conflict of views between the Council and the House. Whose view finally prevails is left to imagination. The Council is a body appointed by the President and has an advisory function; the House is elected by the people on the basis of universal franchise, and although its 'Sovereign' character is nowhere delineated in the Constitution, it is reasonable to expect that the will of the people will prevail. The Ulema did not accept this view for in Muslim history consensus on such matters is the consensus among the Ulema and not the people who are not equipped with the knowledge necessary to make such decisions.

The functions of the Islamic Council are spelled out as follows in Article 230.

a) to make recommendations to Parliament and Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah;

b) to advice a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the injunctions of Islam:
c) to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect, and

d) to complete in a suitable form, for the guidance of Parliament and the Provincial Assemblies such Injunctions of Islam as can be given legislative effect.

The Council is required to submit an annual interim report and the final report within seven years of its appointment. The Constitution of 1973 marked a clear advance on the earlier attempts in this direction—and not only in the sphere of Islamic provisions. We are not concerned, however, with the contribution it made towards resolving the issues of provincial autonomy and distribution of powers between the provinces, but only with the lead it affirmed and provided in the direction of fortifying the Islamic content of the quest.

Not only the President, as hitherto provided in previous Constitutions, but the Prime Minister too was to be a Muslim. The oaths to be taken by both the President and Prime Minister dealt with the fundamental issue—ignored by the Basic Principles Committee—of the finality of Prophet-hood.

The principle of sovereignty of Allah over the entire universe, as enunciated in the Objectives Resolution, was reaffirmed although the Constitution of 1973 skirted the question of delegation of authority by God to the people, and merely mentioned the trust within limits prescribed by Allah.

For the first time the Constitution of 1973 talks of "preservation of democracy", creating; an egalitarian society through a new order; "from
each according to his ability, to each according to his work’, for the first time it was provided that private property could be acquired for some public purposes without payment of compensation; the teaching of Quran and Islamiat is made compulsory; a pledge is made to secure for the first time correct and exact printing of the Holy Quran; for the first time also a pledge is made to secure the full participation of women in life, an assurance the Ulema would find difficult to give.

It is significant that while retaining the earlier provision for an Islamic Council, the word has been omitted. The Islamic Research Institute, an appendage or a secretariat of the Council, no longer appears in the Constitution of 1973. It has not ceased to exist but it has no statutory existence. At present it is part of the Islamic University rather than that of the Islamic Council.

All the Islamic provisions in the Constitution were in accordance with the agreement reached among party leaders at a meeting at the Presidency on October 17-20, 1972.

All the Party leaders agreed that:

a) The oath of office of the President shall be amended to include a declaration with appropriate text that he is a Muslim.

b) In the introductory chapter of the Constitution it shall be stated that Islam is the state religion of Pakistan.

c) No law shall be repugnant to the Injunction of Islam as laid in the Holy Quran and Sunnah and existing laws shall be brought in conformity with such injunctions.
d) Council of Islamic Ideology shall be constituted in a manner that it may pave way for the positive implementation of the teachings of Islam.

e) The Republic shall be styled as the Islamic Republic of Pakistan.

The Constitution was passed by the National Assembly of Pakistan on the 10th April, 1973 and authenticated by the President of the National Assembly on the 12th April. But the Martial Law proclaimed by General Yahya Khan continued with Mr. Z.A. Bhutto as Chief Martial Law Administrator until August 14, 1973 when the Constitution came into force and it lasted until July 4, 1977.

5.4 PNA MOVEMENT AND NIZAM-E-MUSTAFA

In January, 1977 Prime Minister Bhutto announced General Elections to the National and Provincial Assemblies, which were scheduled on March 7 and 10 respectively. Although the opposition lay inert and resourceless, it nevertheless responded with confidence and promptitude. Two days after the call to the general election nine political parties belonging to the opposition met at Lahore on 10 January 1977 and formed a united election front named as the Pakistan National Alliance or, briefly, the PNA. The parties were: The Muslim League, Tehrik-i-Istiqlal, Jamaat-i-Islami, Jamiat-e-Ulema-i-Islam, Jamiat Ulema-i-Pakistan, Pakistan Jamhoori Party, National Democratic Party, (the new version of NAP) Khaksar Tehrik and the Muslim Conference of Azad Kashmir.

The parties in opposition had apparently been working for some time to evolve a united front in the event of a general election. Their total unity,
however, came as a surprise, especially the speed with which it was accomplished. The alliance came as result of common feeling against oppression borne by the leadership of the opposition, so it seems, more than any lesson of the general election of 1970 united its leaders in the firm resolve to go to the polls as a single body with such strength as they could muster to oppose the government. Political parties with widely different persuasions, such as the National Democratic Party, which had socialist leanings, and the Jamait-i-Islami, which was an orthodox party, made common cause against the regime.

As the curbs on political activity were relaxed for the first time there was a spontaneous outburst of criticism against Bhutto's rule through the medium of the press and in the shape of public meetings and processions held in the cities and towns, which broke the long silence. The PNA, whose unity had given a fillip to the forces of discontent, became the beneficiary of a mass upsurge. It also now became its directing force. The air was full of perilous excitement. The brief period of two months allowed to the election campaign carried a dramatic intensity.

The extinction of political liberty and civic rights ran counter to the process of liberalization, which had been taking place for nearly a century. It ran counter to the democratic will of the people to the rise of which Bhutto himself had made a signal contribution. The occurrence of a number of murders of political leaders, including a prominent leader of the PPP, which went untracked, cast a deep shadow on the law enforcing institutions. It was expected that the resumption of political activity would generate criticism. It was decided to release controls gradually to minimize or dissipate the effect. As often happens, the party, which employs propaganda,
as a shield against criticism, or truth is the first victim of its deception. The mass fury, which manifested itself, was a development for which the government, so it seems, was not prepared. When the pent-up anger broke out, it had the passion of a revolt. Though there were signs of bewilderment in the party, even panic Bhutto himself appeared unmoved at the turn of events, confident of his charismatic appeal and the support of the common man with whose interests he had striven to identify himself. Effective political opinion in the country had arrayed itself against the government. The elements, which it represented, had their individual grievances. Businessmen, traders and industrialists, students, lawyers and religious groups, for example, had their separate causes for complaint. The common and the dominant note were protest against authoritarianism. The PNA had provided a platform for a broad spectrum of disaffected public opinion. Though a minority of the nation had come forward, it was nevertheless, an effective minority.

The upsurge in the cities and the towns, which converted itself into a movement, carried the message of replacing an unjust government with a just order. The protest was expressed in the moral framework of religion, a natural idiom known to the people. The PNA promised to usher in a system practiced by the Prophet of Islam, which it called as Nizam-e-Mustafa (lit. the Prophetic Model). The religious parties and orthodox sections of the people combined their forces with the movement. From the beginning, the religious sections had viewed with skepticism the purported blend of socialism with Islam. Socialism was in fact conceived as opposed to religion, and was regarded as a god-less creed.
Bhutto, however, still enjoyed popular support among large segments of the population, notably in the rural areas of the Punjab and Sindh, but was unable to mobilize the support to meet the challenge of the PNA movement. It lacked the will, the organization, and a cause to place its weight behind the regime, which was now under assault.

The PNA movement placed the government on the defensive. There was a move towards securing unopposed election of candidate’s apparently to release senior politicians or important candidates from worrying about their own election. The attempt boomeranged in view of the blatant manner in which the rival candidates in several cases were removed from the contest. By January 23, 1977, about 69 candidates to the provincial assemblies, (including all the four chief ministers) and 25 candidates to the national assembly (including Bhutto) had been declared to have been elected unopposed. A few of the cases might have been genuine. But credibility in the unhindered process of the ballot had been eroded. To meet the challenge, the mechanism of a genuine political organization was not available to Bhutto. Many of his ministers and party members of the assemblies owed their position to the personal appeal of Bhutto. They were mostly the beneficiaries of patronage but in turn lent no strength to the party. No system had been built up for elected local bodies or for developing local leadership. Bhutto thus lacked an organization capable of mobilizing public opinion.

The results of elections to the National Assembly were announced on the evening of March 7, 1977. PPP had won 154 seats and PNA 38 seats.22 About the same time political activity was placed under a ban and the assembly of five persons or more as prohibited by orders issued under section 144 of the Code of Criminal Procedure, in all-important cities. The
landslide victory of the People's Party came as an anti-climax to the PNA movement and was received with disbelief by large sections of the people. It was probably considered too glittering by the PPP itself to call for jubilation. The results were promptly rejected by the PNA, which it declared, were the product of large-scale rigging. The elections to the provincial assemblies, scheduled to take place on 10 March were boycotted. The PNA demanded fresh elections under the judiciary and the army and the resignations of the Chief Election Commissioner and of the Prime Minister himself.

Was the National Alliance a bad loser? Did the silent 'majority' and the female vote upset calculations? Was it a question of a margin only, a few more seats to the PNA (as conceded later by the ruling party itself) but leaving the PPP in a comfortable majority? The credibility of free elections, of the unhindered process of the ballot was at issue. If this was in doubt, the number of seats won by either side did not matter. The legitimacy of the assembly and the position of the Prime Minister himself depended on this. In the public mind, a number of factors tended to reinforce the PNA's stand. It recalled that the People's Party at the height of its popularity had polled a minority of votes in the elections of 1970 when the opposition was divided. Things stood differently in March 1977. The unopposed elections in many cases had been viewed with skepticism, even disbelief. The bye-elections had set a poor example and made the public responsive to accusations of malpractices. During the campaign and at the actual polling, the partiality of the administration and misuse of government facilities had become well-known. The people directly witnessed the tactics of rowdy-ism and intimidation adopted by many of the candidates. There were small incidents pointing in the same directions. The PNA's allegations were lent perhaps the
most convincing, though indirect support, by the polls to the provincial assemblies, boycotted by the PNA, where the turnout of voters had been extremely low, at places virtually nil. It was, however, announced that 62% of the voters had cast their votes. These factors, weighty in themselves, were inflated by a generous sentiment in favor of the PNA. The movement had in fact pitched itself against the government and it was determined to bring about its fall. The sanctity of the ballot was the stick to beat the government with.

To concede the demand for fresh elections amounted to an admission of rigging, which could hardly be acceptable to a man who had intense pride as a democratic Leader, although in a free run of the polls he would have won, though with a reduced margin. On the other hand, lay the choice of suppression. But the employment of force could harden resistance and conceivably plunge the country into a deeper crisis. It was, however, the latter course, which was adopted. The Federal Security Force, the police and other exigencies, fearful of the prospects of PNA's rule, waited with restless energy to stamp out any show of resistance by the Alliance.

If Bhutto had judged the situation dispassionately he might have promptly offered to go to the polls again because he would have won, notwithstanding the sharp failings of his government and the upsurge of disaffection. But other counsels apparently prevailed. Curiously, Bhutto seemed to ignore the danger of military intervention in a prolonged civilian conflict, despite his acute sense of realism.

The PNA took the decision to launch a movement of protest from 14 March if its demands were not met. During the four months, which followed, the nation was locked in a mortal conflict. Unarmed, normally peaceful, civilian
people stood up against a regime determined to stay in power at all costs. Widespread arrests of workers and leaders of the PNA followed in a rapid sweep. Yet, the regime appeared unable to control the situation as each mosque turned itself into a citadel of resistance, sending out volunteers to maintain a steady stream of resolute defiance. On April 19, the army was called in Lahore, Hyderabad and Karachi and curfew was imposed in Karachi. On 21 April following the call for a ‘wheel jam’ strike, which would have brought all business to a frightening standstill, martial law was imposed in Karachi, Hyderabad and Lahore. Important cities were placed under curfew.

The entry of the army marked the end of a phase. Evidently, the army, which had held back from any large-scale shooting by the daring of the people to face the bullets, could not have remained immune to the mass upsurge, to suppression and to the moving expression of religious zeal. It was probably now under persuasion from the generals that Bhutto met with Mufti Mahmood at Sihala and thus began the tortuous course of parleys with the imprisoned leaders of the Alliance.

The proposal taken by Bhutto to Maulana Mufti Mahmood during his first meeting with him at Sihala on 23 April was the one, which had previously been made by Mr. Yahya Bakhtiar, the Attorney General of Pakistan. Dubbed as the Yahya Bakhtiar formula, the proposal contained an offer to hold fresh elections to the national assembly provided the PNA was able to secure an overall majority of votes in the elections to the provincial assemblies, earlier boycotted by the PNA, which the government was willing to hold again. This proposal, which conceded the possibility of new elections to the national assembly, had however, been already rejected by the
General Council of the PNA on the ground that the main issue was election to the national assembly itself.

Meanwhile, the government took some other steps. On April 27, the Army Act was amended whereby army action in aid of civil authority could now include martial law as well. On the same day, a joint statement appeared in the press, issued by the three chiefs of staff and the chairman, expressing their loyalty to the state and to the government. A seat in the Senate was made available for General Tikka Khan, former C-in-C of the army and he was made minister of state for defense and national security.

The PNA stood firm on its three main demands, the resignation of the Prime Minister, and fresh elections under the auspices of the army and the judiciary, a new Election Commission. Behind these demands were arrayed the passions of public opinion, which left little room for flexibility. The negotiations, which had a fitful start, seemed to run into an impasse. But a hope emerged through the mediation of the emissaries of King Khalid of Saudi Arabia and of Sultan Sheikh Zaid Bin Al Nahyan of the UAE. There were further proposals from both sides. The PNA’s demands, or proposals, made public on 5 May, were expressed in Five Points, under which were grouped thirty-two proposals. The last point related to the resignation of the Prime Minister. To these proposals Bhutto responded with the declaration that conditions inside and outside the country were not suitable for holding a general election, which seemed to bring the talks to an abrupt halt. In view of the position taken up by the government, the PNA declined to hold any further talks until its three main demands were met.

Bhutto’s again referred to the unfavorable conditions for holding elections, which, he declared, would lead to serious polarization in society and open
the door to foreign intervention. He, however, offered to hold a referendum on the issue, and to have the constitution amended for this purpose. The proposal of a referendum was however, promptly rejected by the PNA. With that ended the first round of negotiations. There was a fresh wave of repression and the PNA leaders were shifted from Sihala and taken to undisclosed far-off prisons.

A referendum, if successful, would have signified for the government a kind of popular approval or a mandate. The failure or inability of the government to go ahead with the proposal represented a setback. The ground was prepared for further talks by the good offices of the Saudi Ambassador, Mr. Riaz-ul-Khatib, as a result of which Sardar Abdul Qayyum Khan, apparently with government's blessing, met with the PNA leaders now detained in different prisons. The PNA team comprised Maulana Mufti Mahmood, Nawabzada Nasrullah Khan and Professor Abdul Ghafoor. They were released a day before the first meeting scheduled for 3 June and brought back to Sihala. The other leaders of the Alliance were still under detention.

The government team comprised, besides Bhutto, his two ministers, Maulana Kausar Niazi and Abdul Hafeez Pirzada. During the first meeting, held on 3 June, the government agreed to release the PNA leaders, as well as those who were detained under section 144, and also to lift the press censorship. On its side, the PNA agreed to suspend the political agitation.23

It seems unnecessary at this stage to trace the tortuous course of the negotiations, which carried moments of tension and uncertainty. It appears that an agreement was eventually on the anvil. But, by then, too much time had already elapsed, and the generals had gone far too ahead in their plans. On the night of 4-5 July, under an operation, code-named, 'Fair Play', the
army took Bhutto and leaders of the l'NA into custody and assumed control of the administration of the country. The constitution of 1973 was not abrogated. Martial law was proclaimed. General Zia-ul-Haq, chief of the army staff, expressed it, as his aim to restore authority to civilian hands after a new election, which he visualized, would be held within three months. Bhutto was later sent to the gallows by the military regime of General Zia-ul-Haq, following his conviction for murder by the judiciary.

The above study abundantly proved that the army transferred power to Bhutto in circumstances when it became indispensable for them to rescue the remaining Pakistan after the fall of East Pakistan. Bhutto was highly successful in this test. He gave the country for the first a constitution framed by the representatives of the people. Introduced reforms in the civil services of Pakistan and again for the first time in the history of Pakistan he was able to implement the reforms to curtail the powers of the Civil Services of Pakistan (CSP).

NOTES AND REFERENCES

2 Ibid.
3 Ibid., p. 99.
5 Stanley Wolpert, *Zulfi Bhutto of Pakistan. His life and times*, (New York: Oxford University Press, 1993), p. 110. According to Wolpert, Bhutto had revealed his plans about the new People’s Party to J. A. Rahim during his meeting with him in Paris in 1966. J. A. Rahim, an ICS officer, was then serving as the country’s ambassador to France. Bhutto has left a record of high praise for Rahim: “Above all he more than any one else made me to decide for launching a new party. Actually he and I founded it in Paris in 1966. He worked hard on the Foundation Papers.” Both also served as ministers in Bhutto’s first cabinet after his assumption of power.


9 See Article 96 of *The Constitution of the Islamic Republic of Pakistan 1973*.

10 Specifically the demand on provincial Autonomy was dropped by the NAP and JUI.


12 See the preamble of the *Constitution of Islamic Republic of Pakistan, 1973*.

13 See the *Article 35 (a). of the Constitution of Islamic Republic of Pakistan, 1973*.

14 See the *Manifesto of Pakistan People’s Party, op. cit.*

15 See the *Article 253 (a). of the Constitution of Islamic Republic of Pakistan, 1973*.

16

17 See the *Article 260, of the Constitution of Islamic Republic of Pakistan, 1973*.

18 See the *Article 96, clause 5, of the Constitution of Islamic Republic of Pakistan, 1973*.


21 It must be noted that PNA was alliance of both the extremist groups, the extreme orthodox like Jamait-I-Islami and progressive secular parties like NDP and *Tehreek e Islaqal*.


23 *Dawn Daily*, June 3, 1977
CHAPTER 6

ISLAMIZATION IN PAKISTAN

THE ERA OF GENERAL ZIA UL HAQUE

1977-88
CHAPTER VI

6. ISLAMIZATION IN PAKISTAN

THE ERA OF GENERAL ZIA UL HAQUE 1977-88

The secular and liberal Bhutto, whom most people would identify as an Islamic Revivalist – brought about an Islamic revival in Pakistan through his skillful manipulation of Islamic symbolism in domestic and foreign policy. However the politics of Islam in which Bhutto so acutely engaged to enhance his own power and popularity came to haunt him in the twilight months of his tenure and ultimately resulted in his overthrow. On July 5, 1977 military commanders assumed power by a coup later called ‘Operation Fair play’. This was a surprise to no one. General Muhammad Zia ul Haque declared Martial Law in the country and took over power as Chief Martial Law Administrator (CMLA). The PNA – The combined opposition against Bhutto and deadlocked with the government on modalities and arrangements for the interim period before the new elections (because Bhutto had rigged the previous elections extensively) welcomed the coup and celebrated the removal of Bhutto by the military.

For the first time in the turbulent history of Pakistan, a Muslim fundamentalist in the person of General Mohammad Zia ul Haque assumed the reigns of power on 5th July 1977, ostensibly as a ‘soldier of Islam’ temporarily leading a ‘caretaker regime’ and dedicated to engage in
'Operation Fair-play' and hold free and fair elections within ninety days. This military coup differed fundamentally from that prevailing in 1958. Zia had deposed an elected civilian government an act of treason under the 1973 Constitution. In addition the military did no longer command the public prestige that it enjoyed when General Ayub Khan had stepped in to ouster a weak, incompetent and unrepresentative government. The military bore the stigma of responsibility for the shame and humiliation of 1971. Both these factors accentuated the need for the army to redefine its role in society in order to acquire the legitimacy to govern. The ideological imperatives for justifying the usurpation of power led the army to seek a remedy in the conversion of Pakistan into a theocratic state. A number of factors initiated a change in the initial sincere intention which prolonged his stay in power until he died in an air crash eleven and a half years later. First, there was heavy pressure on him from his colleagues in the armed forces, who enjoyed privileges of power and wanted to stay on as long as they could. Secondly there was an incredible amount of at least circumstantial evidence incriminating former Prime Minister, Z. A. Bhutto of gross misuse of his virtually absolute authority. Thirdly Zia and his generals feared that if the charismatic and vindictive Bhutto came back to power they would be sent to jail or even terminated for subverting the constitution. Fourthly Zia had strong Islamic predilections of his own and he felt that Pakistan was initially created in 1947 not just to be a mere homeland for Muslims but to be a genuine Islamic state. In this respect, the revival of Islam in the world at large in the 1970's and in Pakistan in particular, culminating with the 1977 Nizam-i-Mustafa (Prophet Mohammad's Order) mass movement, convinced Zia that he could possibly have been chosen by Almighty Allah to fulfill Pakistan's destiny by making his country an Islamic state. General Zia
confirmed this in his first speech after take over of power- 'I consider the introduction of an Islamic system as an essential prerequisite for the country'\textsuperscript{12} and later, defining priorities of his government he said 'introduction of an Islamic order was on the top'.\textsuperscript{3}

In the context of our concern, General Zia's period of power can broadly be divided into three phases. During the first phase from 1977-79 the regime outmaneuvered the civilian opposition parties by publicly reiterating its commitment to hold elections while it undertook measures to consolidate its position. The army justified its intervention by making the somewhat incredible claim that Pakistan was on the verge of a civil war\textsuperscript{4} and such a grave polarization was not, however, going to prevent the military from holding elections and transferring power within ninety days.\textsuperscript{5}

The second phase from 1979-83 when Zia dropped the pretence of being the leader of an interim regime and the military, wrapped itself into the role of an ideological vanguard for a theocratic state. Zia said 'there is no possibility of an early end to the third and longest martial law.... we have come to stay.'\textsuperscript{6} Elsewhere he warned 'I will neither leave the scene nor allow anyone else to rise.'\textsuperscript{7} The third phase began in 1983-85 with the junta desperately seeking to break its isolation because of domestic pressure of Bhutto's hanging and introduction of punitive measures of public flogging and amputation and strained relations with the US in response to the pursuit of a nuclear capability, Zia tried to assimilate civilians into the government by an institutional mechanism of public bodies. The Fourth phase 1985-88, which was of ostensibly party-less parliamentary democracy, with a strong interventionist presidency. The following policy instruments were used in expanding and sustaining the controls:-
1. Political control and political inclusion
2. Political exclusion
3. Islamization and ideological cleansing
4. Promotion of corporate interests of the military
5. Economic policies and strategic alliance with the United States

6.1 POLITICAL CONTROL AND POLITICAL INCLUSION

General Zia was considered a 'soldier of Islam' by his colleagues much before he took over the reigns of power. Born on 12th August 1924 in the home of a petit bourgeois Panjabi family in Jalunder (India) to Akbar Ali, a senior clerk in the Indian Civil Service who was a strict disciplinarian and a Maulvi (Islamic cleric) Zia and his six brothers and sisters were taught the Quran from a very early age and indoctrinated never to question God Almighty's holy words in the Quran. General Zia joined the Royal Indian Military Academy at Dehra-Dun and migrated to Pakistan in 1947 personally witnessing the horrible massacres of partition from the plague of communalism. Bhutto regarded him as a professional soldier and totally apolitical hence he was promoted to the rank of a Maj. General in the armored division. Zia ul Haque was also one of the team of Pakistani Generals who loyally and faithfully carried out Bhutto's orders to quite the insurgency in Balochistan for greater autonomy in 1973. He was also the one to hand over severe punishments to a group of junior army officers, as presiding judge of the court martial, who had attempted to subvert the constitution and overthrow a legitimate government. Bhutto, who was always suspicious of politically ambitious generals, pursuing a policy of extremely selective
promotions and relying on his intuitions which had often proved right in the past, observed Zia for over three years. Convinced that he has found the ideal man to head the Pakistan army he promoted him to the rank of a full four-star General on 1st March 1976 and elevated him to the position of Army Chief of Staff ignoring or intentionally superseding eight or more senior and competent three-star generals, who were much more entitled to promotion. As Chief of Staff, General Zia began to lecture the army Jawans on the necessity of religiously observing Namaz (prayers) and Roza (fasting). In May 1977 he is said to have written to a number of senior army officers urging them to be dedicated soldiers in the professional military tradition and leave politics to the professional politicians.

The group of army officers, who came to dominate and control decision-making process with General Zia, shared a number of characteristics. Almost all of them obtained commission during 1945-49. They had similar social class origins, educational background, combat experiences, attitude towards political process and ideological orientation. In the formative phase of their careers they were exposed to the experience of military action during the II world war and also saw the liberation of India and Pakistan from a distance. Most of them went through military action in the 1965 war and experienced a humiliating defeat in the 1971 war. They were promoted as Maj. Generals and corps commanders during the mid 1970's. They were conscious and sensitive about senior command's failures during 1971 war and believed that Bhutto was equally responsible for the breakup of the country and humiliation of the armed forces of Pakistan. They found the conduct and behavior of political leaders and parliamentarians unsatisfactory and were somewhat disillusioned by the unprincipled nature of politics in the
country. These negative images and unsatisfactory political environment facilitated development of ambitions to replace the political structure and institute military controls. In terms of ideological orientation these officers were generally conservative, social promiscuity and political liberation was perceived by them as undermining the religious values therefore they went along with Zia’s ideological orientation and did not resist politics of Islamization.

The regime of Zia initiated a process of political inclusion and control and began to cultivate PNA leadership to support it and become part of the regime. On the other hand, by various control measures it made large-scale arrests of PPP workers and leaders. Between July and September 1977 it conveyed the impression that it lacked effective control and direction. The regime released Bhutto on July 8 and to its surprise found that despite the PNA movement he had not lost popular support. It was evident that if elections were to be held Bhutto and his party would win again. Fearing his return to power a section of the press portrayed Bhutto as a criminal, who had engineered the murder of his political opponents. A political and social environment was created in which opponents of Bhutto began to demand his trial and execution. Through his autocratic style Bhutto had alienated many political leaders of the opposition. Air Marshal Asghar Khan, Pir Pagaro, Musheer Pesh Imam, Sardar Sher Baz Mazari gave statements to this effect. A section of the judiciary also joined the chorus and on August 30, 1977 four former judges of the Supreme and High Courts of Pakistan issued a joint statement demanding the trial of Bhutto for committing crimes against Pakistan. Simultaneously General Zia held private meetings with eminent lawyers and jurists like A. K. Brohi, Justice Hamood ur Rehman,
Justice Qadeer Khan who conveyed to him that Murtial Law could be defended if the brutalities of Bhutto regime could be exposed. Political leaders like Mian Tufail Mohammad (JI), Chaudhry Zahur Ilahi (ML), a veteran Sindhi former Chief Minister Ayub Khor and Khan Abdul Wali Khan in their private meetings urged Zia not to hold elections until he initiates the process of accountability on the misdeeds of the Bhutto government. The political leader’s main priority and attitude was that trial and accountability of Bhutto should take place first, elections could be held later.\(^{15}\) Bhutto was rearrested in September 1977 and the state of Pakistan reopened a case of murder against him.\(^ {16}\) By August 1978 General Zia was able to co-opt the PNA leadership and in his new cabinet out of 21 ministers, 13 were from various components of PNA.

For the first time in its history the Jamaat-i-Islami shared power and was given the ministries of Information and Broadcasting, Water and Power and Production. The important portfolios were held by Zia or his military men but the PNA became a part of the regime and its policies throughout the period of trial of Bhutto (August 1978 – April 1979) these ministers remained part of the military regime. It was only after the Supreme Court of Pakistan gave a verdict against Bhutto that the PNA cabinet members decided to disassociate them from the military regime.\(^ {17}\) This cooperation proved useful for the military in dealing with political dissidents and partly civilianized the military rule at least to the political right but it could not produce an alternative leadership the military could trust and ultimately transfer power. It also failed to eliminate the support base of the dissident left and those political parties on the right that were not willing to join hands with the military rulers because firstly, not all the constituent parties of the
PNA agreed to an active cooperation with the military regime. The *Tehrik-i-Istiqqlal, the Jamiat-i-Ulema-i-Pakistan* (IUP) and the National Democratic Party (NDP) did not favor close identification with the military. Second there was a lack of agreement on goals between the military and PNA. The PNA expected to share the credit for the Islamization of the polity and make use of the state patronage to strengthen their political influence. But the PNA ministers soon found that the ruling generals and senior civilian bureaucrats often bypassed them on important policy matters which impaired their ability to distribute patronage among their workers. The military rulers on the other hand were somewhat disappointed by the intra PNA-squabbles. Third, there were personality, policy and factional conflicts within the PNA. It was after the introduction of the first set of Islamic laws in February 1979, rescheduling of election date (to November 1979) and execution of Bhutto in April 1979 that the PNA decided to loosen its ties with the military. It withdrew its ministers from the cabinet but assured the military commanders of its continued cooperation, albeit outside the government.  

During 1977-79 the regime of General Zia skillfully cultivated the judiciary. The Chief Justices of the High Courts were made provincial governors. Judges who were reluctant to pursue the goals of the military regime were either removed or allowed to seek premature retirement. The principal dilemma before the High Courts was whether to uphold military takeover as constitutionally valid or invalid. To legitimize the extra constitutional action of General Zia ul Haque, the higher courts of Pakistan relied on the doctrine of necessity in the *Begum Nusrat Bhutto vs. Chief of Army Staff* stating that the action of the CMLA was extra-constitutional yet, since it was taken in the interest of the state, for the welfare of its people, the judicial authorities
should accept it as valid. The Supreme Court accepted the validation of Zia’s Martial Law on the condition that he would hold fair and free elections in the shortest possible time. General Zia interpreted it to mean that the Supreme Court had empowered him to amend the 1973 constitution. Therefore, he established a system of military courts parallel to the existing civilian courts, and empowered them with indiscriminate and absolute powers. Unmitigated by judicial checks the arbitrary martial law that these courts dispensed was used as a conscious policy to instill fear. These military courts operated in a framework of absolute power, defined by a decree empowering the government to detain any person speaking or acting against the regime. Political activity itself was made liable to be punished by seven years rigorous imprisonment and twenty lashes.

**TABLE 6.1**

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<th>YEAR</th>
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*Source: Compiled from various issue of *Dawn* *Jang* and *Morning News* and the Reports of *Amnesty International* and *Human rights Commission* on Pakistan*

Lt Gen Faiz Ali Chishti, Federal Minister for Labor and Manpower once advocated that ‘enemies of Islam must be hunted down and killed like snakes’
even when they were offering prayers’. In this context it is significant that measures to inject terror, such as hand amputation and public lashings were announced initially as martial law regulations prior to the Islamisation process. Only later they were incorporated into the religions arena. The conscious use of terror as an instrument of domestic policy was implemented through the uninterrupted use of Martial Law between 1977 and 1985 which was necessary because Zia had to justify his coup and finding acceptance for military rules.

The drift towards a military – theocratic state required in addition to imposing fear, elimination of independent sources of authority. Upto 1979 the judicial structure protected the citizens against arbitrary coercion by the state. For example:

1. Supreme Court Judgment on Mrs. Nusrat Bhutto petition stressed the right of the courts to review the legality of Martial law instruments and to issue writs of habeas corpus.

2. Frequently detention orders issued by military courts were quashed and flogging of political prisoners was stayed.

3. The Balochistan High Court stayed the execution of death sentences passed by special military courts.

4. The same court declared that General Zia’s measures for curbing the judiciary were illegal.

Indeed even the Supreme Court verdict in the Nusrat Bhutto case was conditional in the sense that while the legality of the martial law regime was accepted on grounds of necessity it meant that the new regime does not represent a new order but only a phase of constitutional deviation dictated by
necessity with the solemn pledge given by the regime that the period of constitutional deviation would be as short as possible and even during this time all energies will be concentrated in creating conditions conducive to the restoration of democracy and holding of free and fair elections. Hence the measures taken against the judiciary were directed towards removing two critical powers:-

a. The power of judicial review of the legality and constitutionality of executive decisions.

b. The judiciary was deprived of the authority to protect civil rights.

These powers were taken away by successful annual measures between 1979 and 1981 and the constitution (Second amendment) order of 1979 established a system of military courts, parallel to the civilian courts.

The most severe measure to curtail the judiciary by the CMLA was issuing the Provisional Constitution Order (PCO) in March 1981. The military commanders did not abrogate the Constitution of 1973 but most of its articles were suspended. The President of Pakistan, Mr. Fazal Ilahi Chaudhry, was allowed to continue as titular head of state till he himself resigned in September 1978 and Gen Zia assumed presidency as well. It was only when the military decided to expand its goals several changes were made in the 1973 Constitution and the PCO was one of the most severe methods of subordinating the judiciary to the Martial Law authorities. The PCO was to serve as the Constitution of Pakistan for years to come. It was the CMLA’s Order, meant to make adequate provisions for governing Pakistan and for ‘effectively meeting the threat to the integrity and sovereignty of Pakistan and its Islamic ideology’. It restated that the 1973
Constitution was held in abeyance, while adopting 138 articles of the Constitution of 1973. These articles related to the daily working of government, both federal and provincial. Other important features of the PCO were as under:

"...this possibility did not materialize. It did not take long for the judiciary to uphold the PCO as valid. In keeping with its dubious tradition, the Lahore High Court applied its seal of approval to the PCO soon thereafter. A retired army general who was convicted and sentenced by a Field General Court Martial, challenged the PCO on the ground that during the subsistence of the 1973 Constitution, the PCO could not be issued, nor could the CMLA, an army officer under oath to defend the Constitution in its suppression. These contentions were repelled by a Divisional Bench of the Lahore High Court as under."

1. The PCO appeared to be a misnomer. It was not a compact and self contained constitutional document but derived its existence, strength and validity from the judicially recognized proclamation of 5th July 1977 read with Laws (continuance in Force) Order 1977 and could not be of a superior or a higher status than its ancestor. The PCO, therefore, was just another order of the CMLA and did not lie down or give a new legal order.

2. The effect of the PCO as regards the powers of the High Court and terms and conditions of the superior judiciary
was to relegate the two to substantially the same position as it was after the Fifth Amendment to the Constitution. If the CMLA would amend the Constitution to remove the effect of the Fifth Amendment, he could also withdraw his own enactment even if its effect was to curtail the powers of the High Court.

3. Since the Supreme Court had conceded to the CMLA the power to amend the Constitution, the PCO could not be said to be in excess of or ultra-virus to the power of the CMLA.

4. The courts would neither be pleased with more powers or dismayed with less. The judges had never criticized any law on the ground of it being harsh or unjust and did not refer to the administration for amending any law for the reason that it did not provide just or full relief. The judges, being themselves a creation of the law, ought to be indifferent as to the state of law which would be a pure political question.

The reasoning adopted by the High Court to validate the PCO was clearly complex, labored and faulty. The judges carefully avoided examination of the PCO on the touchstone of Nusrat Bhutto’s case who can deny that the extra-constitutional step of Martial Law was validated by the Supreme Court, subject to the condition that superior courts would exercise the power of judicial review against acts and orders of the martial law authorities.31

The judges of the Supreme, High and Federal Shariat Courts were required to take new oath of office to uphold the PCO. A few judges of the Supreme
and High Courts resigned but by and large they complied with the order. These measures marginalized the effectiveness of the judiciary and helped the regime to include new sets of individuals and groups in the ruling coalition thereby consolidating military hegemony. The PCO had judicial and political implications. On the judicial side the PCO terminated the right of the judiciary to review the constitutionality and legality of the politically important civil rights restricting their rights of issuing bail before arrest. On the political side the PCO provided for the formation of a Federal Council (Majlis-e-Shoora) to be nominated by the President. Invoking art 4 of the PCO on 11th January 1982 the President created Federal Council consisting of 288 members. This council was accountable to Zia alone and had no representative character. This changed the basis, style and recruitment process of political leadership and included men who were notables in their districts and were willing to serve in a non-representative system. The Federal Council was assigned four primary tasks:

1. To accelerate the process of Islamization.
2. To create conditions and plans for Islamic democracy.
3. To advise government on national and international matters.
4. To assist government in overcoming the social and economic difficulties.  

The creation of the Federal Council weakened the structure of political parties which became irrelevant for gaining position of power and access to government. Members of the council acquired experience in the functioning of government by interacting with the civil and military bureaucracies. A number of these individuals contested the 1985 elections. Thus during the
period of 1979 and 1985 Zia created a political constituency of a set of individuals who were to emerge as advocates of the 'partie military' thereby consolidating the hegemony of the military in the political process. Thus when Zia allowed restricted elections and restored a system of guided parliamentary politics, a set of leadership had been groomed, trained and accepted who would be willing to share power with the military and not demand transfer of power.

6.2 POLITICAL EXCLUSION
The Zia regime imposed restrictions on political activities and talked of 'depoliticizing' the society but the policies it adopted contributed to greater political controversies and polarization. The major step that eluded the goal of de-politicization was their decision to identify the regime with the politicization, the political right and temper with the fundamental features of the 1973 constitution. The regime also devised extra-legal means to exclude the PPP, Zulfiqar Ali Bhutto and his family from the political process. It also sought the political exclusion of groups like students, labor, lawyers, women and political parties which were unwilling to conform to military rule. It made large scale arrests of PPP workers and made alliances with social and political groups opposed to Bhutto. Pressure was built around the Bhutto family, and Begum Nusrat Bhutto and Benazir Bhutto were put under arrest for prolonged periods. The regime was effective in controlling its leadership from launching any large-scale protest movement. It also faced periodic political difficulties but none of them proved to be a formidable challenge. The most vocal critics of the regime were lawyer, journalists and political parties constituting the MRD, Movement for the restoration of democracy. This was a left oriented political alliance
dominated by the PPP, set up in February 1981. It included the PPP, NDP, PDP, TI, PML (Khairuddin-Qasim group), QMA, PMKP, JUI, PNP, The Awami Tehrik, NAP (Pakhtconkhwah). The MRD launched two major political movements. First in 1981 for a countrywide agitation, and second in 1983 with a call for civil disobedience which was low keyed in Punjab, NWFP and Balochistan but sparked a militant ethnic movement in Sindh.

After controlling the PPP the Industrial labor was coerced into submission and union activities were launched and strikes declared illegal. During 1977-83 the Zia regime acted in concert with religious right for ideological cleansing of universities and colleges. Liberal, secular student organizations having links with the PPP were targeted for political exclusion. The regime did not restrain the IJT (Islamic Jamiat Tulaba) in making their presence felt at the campuses. The Punjab University, which was the bastion of IJT power, welcomed Martial Law and distinguished itself by conferring an honorary degree of doctorate on General Zia ul Haque in 1978. The IJT students began to put pressure even on the academic staff, the Vice Chancellor and other functionaries of the universities and colleges. In 1983 when they became such a powerful force on campuses that it even began to challenge the military regime, its excesses could not be tolerated. Besides, the regime found that patronage of IJT was no longer serving its purpose. It changed its strategy and decided to cut the religions right to size by banning student unions.

Women who constitute almost 50% of the country’s population were also targeted for political exclusion. They were perceived by the regime as an important constituency of the PPP therefore the effort was there to confine them to household roles. In addition, through symbolic and legal means,
attempts were made to project inferior status of women in an Islamic polity. In 1979 Hudood and Zina Ordinance were initiated.\textsuperscript{36} In 1984 a law was passed whereby evidence of two women was made equivalent to that of one man in certain legal situations.\textsuperscript{37}

6.3 **ISLAMIZATION AND IDEOLOGICAL CLEANSING**

Gen Zia redirected the discourse of Pakistani politics with new vigor with the object of Islamizing the polity, society and economy. He was emphatic and persistent in arguing that Pakistan is an 'ideological state' where Islamic laws have not been operationalized.\textsuperscript{38} The regime propounded that Bhutto regime was immoral and corrupted the society with social permissiveness and by propounding the ideology of 'Islamic Socialism'. Therefore ideological reorientation was a desirable goal. Since the mission was sacred, suppression of dissenting views was justified. Gen Zia started implementing the process by ordinances, martial law orders and executive action. Not all religious groups agreed with his content and methods of Islamization but Jamaat-i-Islami emerged as the most enthusiastic supporter and defender of Zia’s Islamization a partner in the pursuit of transforming Pakistan into an 'ideological state'.

The regime started introducing value-reinforcing symbolic martial law directives to reformulate the parameters of Islamic system. A new office culture was introduced wherein during working hours people must say their prayers. On Friday during prayer hours the shops were closed, it was obligatory for Muslims to fast during Ramadan. For criminal offences Islamic punishments (i.e. following the Arab code, amputation of wrists and ankles for theft, stoning to death for adultery and flogging for drinking
alcohol) were announced and selectively enforced. Some criminals were publicly flogged. 36

Since Zia did not want to restore the constitution and democratic institutions, he kept experimenting with the various ideas that could strengthen and validate his government. At the same time he wanted to show to the United States and Western powers that institutions similar to theirs were functioning in Pakistan. One such idea was to establish the office of Ombudsman on the lines of such an institution in Sweden and other Scandinavian Countries. He toyed around the idea for a long time and ultimately promulgated a President’s Order establishing the office of Wafaqi Mohtasib (OMBUDSMAN). 40

The jurisdiction of the Ombudsman was extended to all departments of the federal government and statutory corporations or other institutions established or controlled by the federal government. He could hear cases of ‘maladministration’ which included a decision, process, recommendation act of omission or commission which was:

1. Contrary to law, rules or regulations or was a departure from established practice or procedure, unless the same was bonafide and for valid reasons; or

2. Perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory or

3. Based on irrelevant grounds, or

4. Involved the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favoritism, nepotism and administrative excuses.
Acts and omissions that caused neglect, inattention, delay, in competence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities would also constitute ‘maladministration’.

The Ombudsman was to be appointed by the President for four years. He could recommend action in any case of maladministration and no appeal was provided against his decision but a representation could be filed with the President within thirty days of the decision. The idea of an Ombudsman in Pakistan was not conceptually clear. It appears that due to lack of representative institutions, machinery for the redress of grievances was provided against the misuse and abuse of authority by the federal bureaucracy. It is entirely different to the concept of Ombudsman provided in the Scandinavian states where he is independent and carries a lot of clout due to support from the legislatures of these countries.

The experience of Ombudsman for ten years did not indicate any positive results and failed to check the bureaucratic strangulation of the people of Pakistan.

On 2nd December 1978, committed to the Islamic transformation of Pakistan, Gen. Zia announced his intention to start the process of establishing a legal system based on NIZAM-I-ISLAM (the Islamic system). He established a permanent law commission to simplify the legal system and to bring all the existing laws into conformity with Islamic guidelines. The ultimate goal was to make SHARIAH the basis of all law in Pakistan. In February 1979, Zia announced the establishment of Special Shariah Benches (courts that would decide cases on the basis of the Shariah) and religious courts were established as a supplement to the existing judicial courts. With the addition of the SHARIAT BENCH as part of the Supreme Court, cases could be
brought challenging the validity of any law. The Shariah Bench consisted of five judges who were to be advised by competent Ulema in matters of classical Islamic Law. The main function of these Islamic legal bodies was to exercise a form of Islamic Judicial Review, where any citizen could request the judiciary to declare the law either wholly or partially, un-Islamic. This was a big step towards establishing the supremacy of SHARIAH (Islamic law) over the secular Anglo-Saxon law that Pakistan had inherited from its British colonial master.

Hence, Zia utilized the happy occasion of Eid-Milad un Nabi (Prophet Mohammed’s Birthday) on 10th February 1979 to introduced a new set of Islamic laws. ‘I am today formally announcing the introduction of the Islamic System in the country.’ he declared ‘May Allah bless our efforts’. Later in a press conference in 1983 Zia said:-

My only ambition in life is to complete the process of Islamization so that there will be no turning back...the Islamization process, its aims and objectives are straight on the path of righteousness. And that is what I call Islamization.

In March 1984 Zia proposed an ‘eleven point’ Islamic charter incorporating basis tenets of an Islamic Political Order in Pakistan.

1. General elections, to be held in Pakistan by March 1985, would be based on Islamic Shariah.

2. Sovereignty lay with Almighty ALLAH.

3. The head of the state, including elected representatives and administration, would confirm to the will of Allah and abide by the principles of Islam.
4. Islam incorporated faith, economy and politics and guiding principles of the structure of the state.

5. Islamic equality to form the core of systemic value premises and processes.

6. Every citizen was entitled to respect and dignity on the basis of competence and ability and not by virtue of office held.

7. Those who were involved in anti-social and anti-Islamic acts, including drinking, smuggling, profiteering, hoarding, adultery and other malpractices, would not be recognized as men of opinion and debarred from contesting polls.

8. Elections would be based on the unity of the nation, purging society of professional political monopolists.

9. Electioneering based on campaigning against the ideology of Pakistan would not be allowed.

10. Political leadership would vest in the middle class comprising noble, pious, God-fearing and intellectual people, who had for long been ignored.

11. The Country would not be allowed to relapse into negative or agitation politics.

Before formally announcing his program of Islamization, Zia invited a number of prominent leaders and scholars in the Islam Pasand parties (Islam oriented parties) and groups within the PNA to officially join his administration as advisors in order to help the Martial Law authorities in the prompt and effective implementation of NIZAM-I-MUSTAFA. Jamaat-i-Islami members were prepared to cooperate with the leader of a regime that
shared their Islamic ideology and was prepared to implement a series of Islamic measures although Islamic state which Maulana Maudoodi, founder of the party, had envisaged, did not permit a military despot as ruler. While the members of the Jamaat-i-Islami accepted positions in the federal cabinet and as official advisors for the first time in Pakistan's history, they resigned eight months later. Mian Tufail Mohammad, the Amir (leader) of Jammat-i-Islami hailed that it would be a golden opportunity for the establishment of an Islamic system which should never be allowed to go unavailed of. When in November 1979 elections were indefinitely postponed and Jammat-i-Islami was legally outlawed, Zia continued to advocate ideas of Maulana Maudoodi for an Islamic state. These ideas included:

1. the sovereignty of Allah and not the people (as in the west) should be a fundamental constitutional principle in an Islamic state.

2. the Islamic state should be ruled by a devout Muslim whose tenure of office and power should be limited only by his faithfulness to the ideology (Islamic) of the state.

3. that a leader, called an Amir (ruler) should be chosen in some form of election from among those who were faithful to Islam and once elected, must be advised by Majlis-i-Shura (advisory council) composed of men of educational qualifications to make valid applications f the fundamental law of the Quran and the Sunnah (deeds of the Holy Prophet s. a. w.)

4. there should be no political parties and no provision for an opposition because that only caused conflict and divisions within UMMAH (Muslim brotherhood).
5. that non-Muslims should be allowed to reside safely in an Islamic state but not hold any major policy-making position.

6. Minorities could vote in elections but only in separate electorates.

To Islamize the economy the Zakat and Ushr Ordinances were issued in 1979 and Prof. Khursheed Ahmed emerged as the leading voice of Islamization of the economy for Zia's regime. The Zakat Fund was instituted with initial capital of over two thousand million rupees Saudi Arabia and UAE made generous contributions in this fund. The Zakat Ordinance was expected to perform welfare functions for the state by obtaining contributions from the wealthy to fulfill the needs of the poor and needy. The disbursement of Zakat fund led to the growth and expansion of Zakat Administrator and its functionaries. Zakat means regular charity, Ushr means a tenth or a tithe of the produce given to a Muslim state and Riba means usury. Gen. Accepted that it was not possible to immediately replace the present economic system with the Islamic one so the Zakat and Ushr Ordinance was to make the Islamic economic system to Zakat and Ushr working while Interest free Islamic System was to be introduced in stages but all strictly in accordance to the Shariah.

The Holy Quran directs:

1. Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity will have their reward with their Lord. S. 11:277

2. To spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask and for the ransom of slaves. S. 11:177
The preamble of the Ordinance justifies it on the grounds that the Shariah lays the responsibility on the state for the proper collection, disbursement and utilization of Zakat and Pakistan, being an Islamic state must provide for the implementation of Islamic percepts and Zakat and Ushr are among the fundamental pillars of Islam. The purpose of the Zakat fund was:

a. Assistance to the needy, the indigent and the poor particularly orphans and widows, the handicapped and disabled eligible to receive Zakat according the Shariah, for the subsistence or rehabilitation either directly or indirectly through assistance to Madaris (religious schools) or vocational educational institutions or public hospitals, clinics, dispensaries or health laboratories.

b. Expenditure on the collection, disbursement and administration of Zakat and Ushr.

c. Any other purpose permitted by Shariah.

The fund was utilized for giving sufficient amount to enable a person to become self-supporting, scholarships to deserving students, grants to social welfare departments and non-government organizations for training projects.

The Ordinance set up an organizational structure which moves from the apex of the Central Zakat Council and Fund to the lower echelons of the Local Zakat Councils. The Central Zakat Council disburses funds to each of the Provincial Zakat Councils; these in turn disburse such funds to the Local Zakat Councils. The funds are required to be audited.

The Federal Government appoints the Central Zakat Council, whose function is to: provide guidelines for, and to exercise general superintendence and control over, matters relating to zakat and ushr. The
Zakat Council is to consist of a chairman, nominated by the President, four persons of whom three shall be ulema nominated in consultation with the Council of Islamic Ideology, one person from each province, the chief administrators, Secretaries to the Ministries of Finance and Religious Affairs and the Administrator General appointed by the President.

In each province, the Provincial Government is required to establish a Provincial Zakat Council consisting of a chairman, five persons three of whom shall be ulema to be nominated by the Governor, Secretaries of the Ministries of Finance, Local Government and Social Welfare and the Chief Administrator.

District Zakat and Ushr Committees are to be set up in each district, which following the guidelines of the Central and Provincial Zakat Councils, shall oversee generally the functioning of the tehsil, taluqa and sub-divisional committees. These committees are particularly concerned with supervising the assessment of ushr and the collection of zakat, ushr and attiyat (voluntary donation), and the disbursement and utilization of the moneys in Local Zakat Funds by the Local Committees. The committee is also required to plan for the district, complete the accounts of the district and arrange for its auditing.

The District Committee is to consist of a non-official chairman to be nominated by the Provincial Council (now Provincial Assembly), one non-official member from each tehsil, taluqa or sub-division in a district to be appointed by the Provincial Assembly in consultation with the chairman; and the deputy commissioner of the district.

Zakat and Ushr Committees are required to be set up at the tehsil, taluqa or sub-divisional levels. The committee’s functions are, subject to guidelines
by the Central, Provincial, or District Zakat Committees to: oversee the assessment of ushr and the collection of zakat, ushr and attiyat, and the disbursement and utilization of moneys in the local Zakat Fund by the Local Committees in the tehsil, taluqa or subdivision, and to plan compile accounts and advise the District Committees. Each of the committees consists of the assistant commissioner and six members to be elected by the chairman of the Local Committees of the tehsil, taluqa or sub-division from among them.

A Local Zakat Committee is constituted in each revenue district, or deh village in rural areas, or ward in an urban area as the case may be. Ward means a distinct compact locality with a population not exceeding five thousand. The Local Committee is required, subject to guidelines from the committees above it to: determine ushr, demand compulsorily realizable ushr under the Ordinance, and to collect zakat, ushr and attiyat. They are also required to disburse and utilize the moneys in the Local Zakat Fund, make plans for the locality, prepare and maintain accounts and advise the zakat committees above it.

Each local committee is to consist of seven members selected by the people of the locality. For this purpose the district committee has to constitute a team of three or more persons, including a gazetted officer, one aalim-e'deen (learned in religion) and one member of the district committee. This committee organizes a public gathering of adult Muslim residents of a localitity and calls supon them to select seven adult Muslims, resident in that locality, who are known to be pious and are not known to be engaged in political activity and who enjoy the trust of those assembled. This manner of selection has not been found to be satisfactory.
There are nearly forty thousand Zakat Councils and Committees in the country, and more than two hundred and fifty thousand people are involved in carrying out the purposes of the zakat system on a voluntary basis. These hundreds of local committees carry out the real work of assessment of ushr and the disbursement of the zakat and ushr moneys. Grass roots participation is essential for the success of this program as the people of a locality can best determine who the needy and the deserving in their area are.

There have been some cases reported of the embezzlement of zakat funds by Local Zakat Committees. There have also been some reports of misbehavior or criminal behavior by the members of zakat bodies. Recently the Chairman of the zakat body of Sherkott was arrested on charges of drug trafficking.

In view of the fact the Local Zakat Committee members are to be selected from persons who do not participate in political activities it was disturbing to hear Ministers and Members of the Majlis-i-Shoora and Provincial Councils extolling the chairman and members of the Zakat Committees to, “mobilize and motivate the people in casting their votes in large numbers in the country wide referendum on December 19, 1985 for the President. This referendum was a political process, boycotted by many.

The Federal Minister for Finance Mr. Ghulam Ishaq Khan, in July 1984 is reported to have stated that the Collection of Zakat, so far a totaled rupees four hundred and thirty crores and from the recently introduced ushr rupees twenty four crores. More than two million beneficiaries are covered per annum by the social security net offered under the system. Roughly 100,000 mustahiqueens (needy person) had been rehabilitated and have become earning members of the family.
According to the Pakistan Economic Survey 1984-85, Rs. 3,750 million of Zakat has been released in ten installments to the provinces and Islamabad for distribution through the Zakat Committees.

As the above data shows there has been a marked increase in the amount collected and distributed under the Zakat system.

Actual collection of ushr commenced in July 1983. There has been low assessment and collection of ushr relative to value added in agriculture. The Economic Survey 1984-85 states that:

This might be a reflection on the fact that government is still facing problems in the administration of ushr, especially when 41 percent of total farm area consists of farms of over 10 hectares (25 acres). Assuming that a sum of Rs.750 million from Zakat and a sum of Rs.150 million from Ushar are distributed to the poorest 10 percent of the population some 9.5 million persons and each family in the group consists of 3.5 members the per household distribution of Zakat and Ushar comes to about Rs.330 per year. No doubt this is a meager amount, yet it has created an institution through which the mustahiqueen can be helped to some extent.

Though the Zakat Ordinance provided for Zakat and Ushar in 1980, Ushar was not collected till 1982-83. Ushar is compulsorily to be collected from an individual Muslim Sahib-e-Nisab landowner, grantee, allotee, and lessee and lease holder unless he is eligible under Shariah to receive Zakat or the produce from his land is less than 948 kilograms of wheat or its equal value in case of other crops liable to Ushar. Actual collection of Ushar commenced
in July 1983. There was low assessment and collection of Ushr relative to value added in agriculture. The Economic Survey of 1984-85 states:

"This might be a reflection on the fact that government is still facing problems in the administration of Ushr especially when 41 percent of total farms area consists of farms of over 10 hectares (25 acres). Assuming that the sum of Rs.750 million from Zakat and a sum of Rs.150 million from Ushr are distributed to the poorest 10 percent of the population some 9.5 million persons and each family in the group consists of 3.5 members the per household distribution of Zakat and Ushr comes to about Rs.330 per year. No doubt this is a meager amount, yet it has created an institution through which the Mustahiqeen can be helped to some extend".

The Pakistani shi’at minority, emboldened by Iran’s Islamic Revolution, decided to protest at the state organized mandatory Zakat and Ushr collection because it was not in keeping with their Fiqh-i-Jafariyah (Shii’te jurisprudence). On 20th June 1980, realizing the destabilizing effects of the Shi’ah anger, the regime appointed a committee of Shi’ah and Sunni Ulema to study the Zakat and Ushr Ordinance with a view to make recommendations for collection of Zakat. The government announced (1) there would be no interference in the religious beliefs of individuals (2) that no dogma would be imposed on any Muslim sect (3) the Shi’ah community will be allowed to formulate its own procedures to collect, administer and distribute voluntary part of Zakat and in 1981, Zakat as a compulsory requirement for Shah’s was withdrawn.
<table>
<thead>
<tr>
<th>YEAR</th>
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<tr>
<td>04 July '81 to 22 June '82</td>
<td>799</td>
</tr>
<tr>
<td>23 June '82 to 12 June '83</td>
<td>855</td>
</tr>
<tr>
<td>13 June '83 to 04 March '84</td>
<td>1011</td>
</tr>
<tr>
<td>30 May '84 to 22 May '85</td>
<td>1171</td>
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<table>
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<tr>
<th>COLLECTION</th>
<th>ZAKAT DISTRIBUTION</th>
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<tr>
<td>500</td>
<td></td>
</tr>
<tr>
<td>750</td>
<td></td>
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<td>750</td>
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<td>1000</td>
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Interest free banking was introduced and it was hailed as a major step towards developing a framework of Islamic Economics. Changes in banking services providing for Profit and Loss sharing Accounts began in 1980 when the Banking Law was amended to expand the scope of banking including provisions for bank finances through profit and loss, mark ups in price, lease and hire purchase. Government policy to eliminate interest from the banking system was defined in 1984. A new legal framework of interest free banking was introduced through the Banking and Financial Services (Amendment of Laws) Ordinance 1984. This amended seven statutes and introduced new types of financing for investment and trade. The provincial government brought in provincial ordinances involving amendment of provincial laws with the same objective. A serious lacunae in the ordinance is that it does not define interest and is based on the premise that *riba* means interest, irrespective of its nature and rate. This equating is fallacious because it fails to take into account the prevalent inflation. The Quran prohibits and condemns usury in the strongest possible terms. It states:

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Those who devour usury will not stand except as stands one whom the evil one by his touch hath driven to madness. That is because they say: trade is like usury, but God hath permitted trade and forbidden usury. 11:275

To some this would include profiteering of all kinds but excluding economic credit, the creature of modern banking and finance...

To inculcate Islamic values among the youth, Shariah Faculty (which is now a full-fledge International Islamic University) was founded at Quaid-i-Azam University, Islamabad, learning or Arabic was encouraged and Islamic studies was made a compulsory subject at the high school and college level. To top it all in 1984 Nizam-i-Salat campaign was launched. The regime appointed 100,000 prayers wardens for village and urban localities. During the same year Qadiani Ordinance was introduced.44

Zia also tried to Islamicize criminal law as the Penal Code of 1860 and Criminal Procedure Code of 1898 were not religious laws based on Islamic Shariah. None of the governments from 1947 to 1977 saw any purpose in changing these two laws but the Martial law regime in 1979 initiated legislation towards the so-called Islamization of Laws. The statutes promulgated on 9th February 1979 were the Prohibition (Enforcement of Hadd) Order 1979, the Offense of Zina (enforcement of Hudood) Ordinance 1979, the Offences against Prophecy (enforcement of Hadd) Ordinance 1979 and the offence of Qazi (enforcement of Hadd) Ordinance 1979, collectively known as Hudood Laws. According to the preamble of the four Hudood Laws, each one of those laws was brought in as a measure to bring the relevant law in conformity with the injunctions of Islam as set out in the Holy Quran and Sunnah. These laws were promulgated on the
recommendations of the Islamic Ideology Council. They were not presented for public opinion nor did they go through any legislative body and had serious repercussions and met with constant criticism. The four Hudood Ordinances discriminate against women. For awarding Hadd punishment only the evidence of males is acceptable and women are completely excluded.

Some of the most controversial measures adopted by Gen. Zia were those pertaining to the role of women in the emerging Islamic state. The Majlis-i-Shura angered many women when it unanimously approved the Qanun-i-Shahadat (Law of evidence) Ordinance 3rd March 1983 bringing the law in conformity to Islamic injunctions of the Quran and Sunnah. Many women were insulted when it was stated that in an Islamic system charges of rape had to be corroborated by four witnesses (an almost impossible requirement) to find the alleged rapist guilty. Failure to convict the rapist made the woman guilty of fornication in Islamic Law. Most of these Islamization measures were protected by the Eight Amendment, which radically altered the 1973 Constitution.

General Zia also tried to Islamize Pakistan’s secular political system inherited from the British colonialists. In August 1979 he amended the 1962 Political Parties Act allowing the registration with the election Commission of only those political parties that limited their party funds to the lower level mandated, sore allegiance to the Islamic ideology of Pakistan and held party elections annually. Failure to comply would result in disqualification of the party.

1. By amendment in the Provisional Constitution Order (PCO), he introduced the definitions of ‘Muslim’ and ‘non-Muslim’ as under:
a) ‘Muslim’ means a person who believes in the Unity and Oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Muhammad (PBUH) the last of the prophets, and does not believe in, or recognize as, a prophet or religious reformer any person who claimed or claims to be a prophet in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him), and

b) ‘Non-Muslim’ means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist, or Parsee community, a person of the Quadiani group or the Lahori group (who call themselves ‘Ahmedis’ or by any other name), or a Baha'i and a person belonging to any of the scheduled castes.

This amendment was made apparently to clarify and determine the status of Ahmedis as ‘non-Muslims’. The second amendment of 1974 only gave definition of ‘non-Muslim’ but not of ‘Muslim’. Even in the definition of ‘non-Muslim’ there was no specific reference to Ahmedis.

2. By another amendment, the Federal Shariat Court was given revision jurisdiction over the criminal courts trying cases of hudood. The Supreme Court was vested with appellate jurisdiction over the judgments, final orders or sentences of the Federal Shariat Court in hudood cases. The decisions of the Federal Shariat Court were made binding on the High Courts. Thus, the revision jurisdiction of the High Courts in criminal cases was further curtailed. The status of the High Courts was reduced and subordinated to the Federal Shariat Court.
3. The *nomenclature* of the 'Chairman' and 'members' of the Federal Shariat Court were changed to 'Chief Justice' and 'judges' respectively.

4. A major change was brought about in the Shariat Appellate Bench of the Supreme Court which previously consisted of three Muslim judges. It was extended to five: three Muslim judges of the Supreme Court and two Ulema to be appointed by the President to sit on the Bench as *ad hoc* members. Thus, the Ulema who had sneaked *into* the Federal Shariat Court after the judgment in the 'rajm' case, now *found* their way into the Shariat Appellate Bench of the Supreme Court. It was a harbinger of things to come which were to disturb the settled laws in a big way, particularly *in relation to* pre-emption and land reforms.

5. The decisions of the Federal Shariat Court striking down a law or a provision of a law as repugnant to the injunctions of Islam would not take effect before the expiration of the period within which an appeal might be preferred to the Supreme Court or, where an appeal was so preferred, before the disposal of the appeal.

In order to bring about changes in the 1973 *constitution* to make it effective of his political ideology, Gen. Zia *sought* opinion from three committees in addition to the advice of the bureaucracy and his own private consultations

2. The Special Committee of the Federal Council recommended that the 1973 Constitution should be adopted with the minimum essential changes in its provisions, supporting the right of the people to form political parties.

3. A commission headed by Maulana Zafar Ahmed Ansari was appointed to recommend an appropriate form of government. The report (Ansari Report) forwarded very conservative views of the future shape of the polity but was very close to the official standpoint.

Addressing the Majlis-i-Shoora on 12th August 1983, Gen. Zia gave his own constitutional plan. He discussed three alternatives available to him:

1. to restore the 1973 Constitution.
2. to abrogate the constitution and frame a new one.
3. to promulgate the 1973 Constitution with necessary amendments.

He ultimately chose the last alternative and decided to make elaborate and fundamental changes to the 1973 Constitution in the following manner:

6.4 THE PROVISIONAL CONSTITUTION ORDER, 1981

1. The 1973 Constitution was to be restored, but a balance was to be brought about between the powers of the President and the Prime Minister and the Constitution was to be harmonized with Islamic principles. In adopting these amendments, due consideration was to be given to the opinion of the members of the Majlis-e-Shoora and the recommendations of the Ansari Commission.

2. There was a lot of controversy regarding the role of the armed forces. Zia wanted to end this. The armed forces would have no new
constitutional role. The accepted position then in this matter was to be maintained.

3. Elections would be held on the basis of adult suffrage.

4. The Prime Minister would be appointed by the President, but the person appointed must, in the President's view, command a majority support in the National Assembly. The Prime Minister, within two months of assumption of office, would be required to obtain a vote of confidence from the National Assembly.

5. When the President felt that a need had arisen for seeking a fresh mandate of the electorate, he could dissolve the National Assembly, but in such an event, fresh elections would have to be held within seventy-five days.

6. The President would have the powers to return for consideration to the National Assembly and the Senate a Bill which had already been passed.

7. The President would be the Supreme Commander of the armed forces. He would appoint the Chairman of the Joint Chiefs of Staff Committee and the Chiefs of Staff of the three armed services and determine the terms and conditions of their appointments.

8. The appointment of the Chief Election Commissioner and members of the Commission would also be made by the President in consultation with the Chief Justice of Pakistan.

9. The provincial Governor would also be appointed by the President.

10. Additionally, a National Security Council would be established. The government of the day would not be able to declare an emergency
without the advice of the Council. The composition and duties of the National Security Council would be announced later.

11. In order to improve the economic conditions of the country, the private sector would be encouraged and protected.

12. For representation of minorities, separate electorates would be introduced both at the national as well as provincial level.\textsuperscript{45}

After twice postponing scheduled elections (October 1977 and November 1979) a non-party or non-partisan elections were finally held in February 1985. But before these elections Zia held an Islamic Referendum on 19\textsuperscript{th} December 1984 which was to legitimize his Presidential tenure for another five years. This effort was considered by many as the most blatant and unprecedented effort to exploit Islam. In the referendum the votes, were asked to vote for against Gen. Zia's program of bringing the laws in conformity with the injunctions of the Quran and Sunnah, safeguarding Pakistan's ideology and transfer of power in a peaceful manner. The proposal was framed in such a way that a negative answer would mean the respondent was an enemy of Islam and Pakistan. An affirmation vote would mean a mandate for Zia to continue as President for another five years. The official results showed a high turnout (62.15 percent) in the referendum with 97.71 percent votes in favor of the proposition. Once his political future was secure he announced the schedule of national elections. February 25-28, 1985 were fixed for polls for the National Assembly and Provincial Assemblies respectively. For the first time, direct elections were held on non-party basis. The principle of separate electorates was also applied.
The MRD (Movement for the Restoration of Democracy) comprising of 11 political parties appealed for boycott of polls but it was not very effective. Pakistani voters turned out in large numbers.

A large number of candidates were political non-entities who wanted to try their luck in non-party elections. About one quarter belonged to the newly rich category that had made fortune within the last five to ten years engaged in manpower transport to Gulf States, contractors and middle class traders. The leading feudal families could not afford to stay out of power due to their stakes in local politics fielded candidates. The Jamaat-i-Islami nominated candidates who contested in their individual capacity. The PPP was split in the Punjab and Sindh. It expelled 31 members in Sindh for contesting elections and 60 members from Punjab. There was limited participation by tribal leaders and landlords of Balochistan and Sindh.

The sheer magnitude of the turnout was a surprise to all (52%). Despite the bland and timid campaign such a turnout appeared to be the perception among voters that elections were a decisive phase in the transfer of power to civilians. Zia helped to create and sustain this impression, promising a withdrawal of Martial Law soon after the elections, as part of a phased departure of the military from politics.46

The government did receive a few minor set backs – five of the nine cabinet ministers were defeated, sixty three members of the Advisory Council lost and the Jamaat-i-Islami suffered serious losses.

6.5 **PROMOTION OF CORPORATE INTERESTS**

Gen Zia expanded the regimes corporate interests by expanding their role in the civilian sectors by protecting defense budgets and by establishing military’s hegemony in the economic and political decision-making process.
First extensive penetration in administration and other Para-economic institutions was sought. Secondly, the bureaucracy was encouraged to play the role of a junior partner. Thirdly, rule making devices were sought in influencing the working of an independent judiciary. In July 1977, Corp Commanders were appointed as Zonal Martial Law administrators later they were to hold office as Governors. A number of serving generals were appointed to the posts of ‘permanent secretaries’ and in 1980, according to one estimate as many as one fourth of the top 35-40 bureaucratic positions were held by the military. During 1981-85 out of total 40-46 ambassadorial positions 16-20 were held by retired military officers. In addition, military officers held top positions in corporations like PIA, WAPDA, PASSCO, NTRC, NLC created in 1976 grew into a giant transport company giving tough time to its competitors and Fauji Foundation, the largest employer of retired army personnel grew into a big economic conglomerate. The CSP (Civil Services of Pakistan) somewhat disconcerted in the last days of Bhutto was given a moral boost by Zia in giving them a sense of confidence and reappointing those dismissals by Bhutto.\textsuperscript{47} To look into their grievances a Civil Services Reform Commission was made under Justice Anwarul Haque\textsuperscript{48} which gave quite a few recommendations. He included military men in the decision making process. Between 12-14 officers as Corp Commanders and personal staff officers (PSO) to the CMLA worked as key decision makers. He created the post of deputy COAS and upgraded at least 12 positions to the ranks of Brigadiers, Major-Generals and Lieutenant General.
TABLE 6.3

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<th>1985 GENERAL ELECTIONS: CANDIDATES</th>
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<td>NWFP</td>
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<td>Balochistan</td>
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(Seats reserved for women are not included)

TABLE 6.4

<table>
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<th>1985 GENERAL ELECTIONS: VOTERS TURNOUT</th>
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<td>National Assembly</td>
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<td>Provincial Assembly</td>
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<td>Balochistan</td>
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Through selective extensions, expansion and rotation Gen. Zia was able to keep control over the command structure of the military. His team in the provinces helped in building the coalition of interest groups that not only gave longevity to his regime but also facilitated the re-alignment of social and political groups.

6.6 **STRATEGIC ALLIANCE WITH THE US AND ECONOMIC POLICIES**

The Soviet invasion of Afghanistan in 1979 provided Gen. Zia an opportunity to reconstruct the tarnished image of the army in the 1971 war after Pakistan’s dismemberment and to project himself as an Islamist to help
Afghan brothers in faith caught up in a situation of distress. In 1981 when the Reagan Administration agreed to support the Afghan Mujahideen, aid began to filter in. It would not have been possible for the US to continue its ideological war with the Soviet Union without collaboration of Zia regime. Consequently the Afghan war and the US aid helped to facilitate the modernization of the Pakistan army. The planning and coordination of the Afghan resistance movement was done in close collaboration with the US intelligence agencies and Inter Services Intelligence (ISI) of Pakistan. While supporting, training and organizing the various Afghan gorilla bands, the ISI built its reputation as a professional organization. In the process ISI enhanced its intelligence and surveillance capabilities. Zia regime also started to modernize the army and struck a deal with the Reagan Administration for the procurement of the sophisticated F-16 fighter planes with other advance artillery and amour equipment. Unfortunately, the successful conduct of Afghan resistance movement led to the politicization of the ISI who developed an ideological affinity and linkage with religious groups like the Jammat-i-Islami even leading the military elite to believe that they understood politics better than the political leaders. Thus under Zia the ISI became assertive in defining how politics may be managed and controlled in Pakistan.

The military in Pakistan has generally been pro-business. The Ayub regime in the 1960's built coalition and formulated policies leading to the emergence and consolidation of commercial-industrial groups. The military regime under Zia was no different but the factors largely responsible for economic growth were external in nature. The US aid of 4 billion dollars and annual workers remittances of 2 billion dollars from the Middle East is an
example. To restore the confidence of the business groups the regime of Zia embarked on a pro-business process. In his cabinet Gen Zia appointed Lt. Genneral Habibullah Khattak, a known industrialist and Mustafa Gokal, having family interests in rice trade and shipping as symbols to reassure the business groups and also to redirect the Orientation of Pakistan's economy from public to private sector. But the person who became the pivot of economic decision-making during 1977-85 was Ghulam Iskaque Khan (President of Pakistan from August-May 1988-93). He was appointed Secretary General in Chief, Finance, provincial coordination and planning (July 1977- August 1979). He emerged as 'Dean' of civil bureaucracy in Pakistan providing patronage, guidance and direction to the higher echelons of Civil Services. With a distinguished career and enormous experience in administration and economic management, Ghulam Iskaque Khan advised the regime to go slow on denationalization and considering the political imperatives, selectively de-nationalized some of the industries in Punjab. He appointed Nawab Haider Naqvi, a leading economist to head Pakistan Institute of Development Economics (PIDE). The PIDE as an autonomous research organization encouraged academic and policy debate on privatization and Islamization of the economy.

As a bulwark against Soviet invasions in Afghanistan Pakistan under Zia became a 'front line state' for the US aid. By 1981 the US agreed to provide 3.2 billion dollars in economic and military assistance to Pakistan. Besides the remittances of migrant workers from Pakistan, especially in the Middle, East rose from 577.4 million dollars in 1976-77 to 2885.80 million dollars in 1982-83 reaching the tune of 2.5 billion dollars in 1987.
However the regimes repressive policies against its political opponents and disaffected political parties resulted in the formation of a coalition as Movement for restoration of Democracy (MRD) between 1981-83 which came out with its demands of a four-point agenda:-

1. End of Martial Law
2. Restoration of 1973 Constitution
3. Elections to the parliament
4. Transfer of power to the elected representatives

In the meantime in 1983 the US Congress, by a bi-partisan vote, created the National Endowment for Democracy (NED) to check Human Rights in countries with a poor record and to strengthen democratic processes and institutions at global level. Pressed by the Reagan administration from abroad to hold elections and jolted by the MRD at home, Gen. Zia agreed to hold a presidential referendum in 1984 and elections in 1985.

After the 1985 party-less polls, a new phase of guided democracy was initiated in Pakistan. To complete the process of Islamization and to make it irreversible Gen. Zia on 2nd March 1985 issued the Revival of Constitution Order (RCO) which amended or substituted 57 articles, added 6 articles and deleted 2 articles of the original 1973 Constitution. Chapter 3-A of Part VII ABOUT THE federal Shariah Court was first inserted in the Constitution in 1979. It was amended in 1980, 1982, 1983 and 1984. This was retained in the RCO. Two schedules (2nd and 7th) were added and two (3rd and 5th) were amended. The parliamentary system of government was retained. However the president was assigned so many overriding powers that the original character of the 1973 Constitution was diluted. The all-powerful president
was given wide discretionary powers which made it impossible for the Prime Minister to emerge as an autonomous power centre. The President appointed and removed the Prime Minister. The Services Chiefs, provincial governors, Chief Justice and judges of the Supreme Court, High Courts, Federal Shariat Court and a number of other top officials were also appointed by him. The President was to act on the advice of the cabinet on matters not falling under his discretionary powers. Even in these matters, he could ask the cabinet, including the Prime Minister, to reconsider the advice. He could dismiss the federal government and dissolve the National Assembly in his discretion (article 58-2b) if he was of the firm view that the government could not be run in accordance with the constitution and an appeal to the electorate was necessary. The RCO inserted article 270-A in the Constitution for validation of all Martial law regulations, laws, orders and all other actions including the judgments of the military courts. The Presidential Referendum 1984 was provided Constitutional cover and Zia ul Haque was allowed to retain the post of the Chief of Army Staff after the withdrawal of Martial law. Thus the transition to democracy and functioning of the parliament were inherently constricted.

A joint session of the parliament was held on 23rd March 1985 and Zia ul Haque took oath as elected president for a term of five years (1985-90) and appointed Mohammad Khan Junejo, a follower of Pir Pagaro, a land lord of modest means, relatively inactive in politics since the 1960's, was not a new comer to the game of power sharing. He was polite, unassuming, non-charismatic and little known to the public but had sufficient experience of politics and government like Bhutto; he was also a product of Ayub's Martial Law. In 1962 he was elected to the West Pakistan assembly and
remained a provincial minister from 1962-1969. He served as federal minister in Zia’s Cabinet during 1978-79. Though Gen Zia co-opted a docile political leadership which began on a cordial note, the differences in temperament and style of governance brought their strains to the limelight both an internal and external policy matters.

The first strains between Zia ul Haque and Junejo appeared when the Prime Minister, two houses of the parliament and the provincial assemblies of the Punjab, Sind and NWFP demanded withdrawal of Martial Law.

The second legislative measure was the Political Parties (amendment) act which revised and expanded the Political Parties Act 1962 to regulate the formation, registration and working of political parties.

The Federal Government announced plans in 1985 to set up a Federal Reserve Force (FRF) which was dropped on strong reservations of the provinces. Junejo distanced himself from Zia ul Haque in 1987-88 on important issues like the signing of the Peace treaty for withdrawal of Soviet troops from Afghanistan, to hold consultations with political leaders including Zia’s adversaries on Pakistan’s Afghan policy, on planned reduction in the defence expenditure and on perks of senior officers inside and outside the parliament in 1986-87. The military circles were perturbed considering it a deliberate provocation of anti military sentiments. Finally Gen. Zia, making use of his position as Army Chief, on 29th May 1988 removed the civilian government of Mohammad Khan Junejo in a coup like manners by invoking Article 58(2-b) of the Constitution. He began to work towards co-opting another set of leaders but his military rule came to an abrupt end on 17th August 1988 when Gen Zia and 28 other were killed
(including 9 senior generals and US ambassador to Pakistan, (Arnold Raphael) in an air-crash of C-130 over Bhawalpur.

Zia ul Haque was perhaps the most underestimated ruler of Pakistan. He portrayed two facets: one of private virtue where he was polite, full of humility and a God-fearing person, the other of a consummate political strategist where he was shrewd, skillful and pragmatic in dealing with political leaders. Displaying a deep commitment to Islamic ideology he took initiatives for Islamization not only at the domestic political front but also as a crucial determinant of Pakistan’s Foreign Policy. To add to politico-constitutional measures of Islamization he also concentrated on enforcing measures for Islamizing the social and economic system.

He believed that without a firm and sound Islamic socio-economic base, a political system based on borrowed alien concepts could not produce positive results. He explained that a stable, democratic and legitimate political order could be effectively ensured only in a ‘sane, God-fearing and just’ society. Hence he gave priority in building an Ideal Islamic society in accordance with Islamic morals and ethical norms. He single-mindedly pursued his self-ordained mission to induct, propagate and sustain Islamic way of life. All these efforts resulted in polarization of interests groups and conflict of values hence, when he died there were two dominant trends in the political arena in Pakistan, first the polity was polarized and divided and second, the military hegemony had become an unalterable fact of Pakistan’s political system.
NOTES AND REFERENCES


6 Interview of General Zia with *Ittefaq* (Bangladesh) April, 1982.

7 Quoted in the *Quarterly Report on Pakistan, Economist Intelligent Unit, Second Quarter, 1982*, p.4.


10 *Ibid.*, p.8

11 One July 28, 1977, Bhutto along with other PNA leaders was released. On 8 August, he had arrived Lahore from Multan and was given a rousing welcome by his supporters, for details see *Daily JANG*, Lahore, July 29 and August 9, 1977.


13 See *Daily JANG*, Lahore, August 30, 31 and September 2, 1977.

14 *Ibid.*, 31 August 1977


17 On March 19, 1978 the Lahore High Court full bench found Bhutto guilty of Nawab Ahmed Raza Kasuri giving him a death sentence on 25 March 1978. He challenged it in the Supreme Court; In March 1979 the Supreme Court upheld the decision of the High Court and Bhutto was executed on 4 April 1979.


19 In September 1977, Yaqub Ali Khan, Chief Justice of the Supreme Court was removed from office.

20 For details see *Begum Nusrat Bhutto vs. Chief of Army Staff, PLD, 1977*, Supreme Court pp, 659-763.

21 Martial Law Regulation issued on 22.7.77.

22 Martial Law Regulation issued on 01.3.78.

23 *Daily Morning News*, Karachi, January 20, 1980, General Chishti like General Zia was ideologically close to the religious cadre party, the Jamaati Islami.

24 On July 10, 1977, just five days after the coup, military courts were set up. Simultaneously a Martial Law Regulation instituted punishments of hand amputation, public lashing and death by hanging.

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26 In a Farcical Trial of Abdul Hameed Baloch the name of the victim was changed twice because it was discovered that the alleged murder victim was still alive.

27 Daily Dawn, March 3, 80.

28 Provincial Constitutional Order (PCO) promulgated on March 24, 1981.


31 Hamid Khan, op cit. p.652.

32 Saeed Shafiqat, Civil Military Relations in Pakistan From Zulfiqar Ali Bhutto to Benazir Bhutto, Pak Book Corporation: Pakistan, p.194.


35 The Nation, Lahore, June 15, 1992


37 The Qonoon-i-Shahadat Order 1984.


41 Baxter Craig, Restructuring the Pakistan Political System in Shahid Jawed Burki, Pakistan under the Military: Eleven Years of Zia ul Haque, Boulder Colorado, West View Press, 1991, p.36.


44 The Qadiani Ordinance 1984 – clause : 98 C. The Ahmadies had filed a petition in the in the Supreme Court gave a majority verdict upholding the Ordinance.


46 In his final television broadcast before the elections, Zia laid considerable emphasis on the gradual withdrawal of military rule.
47 Interviews with some CSP officers.


CONCLUSIONS
CONCLUSIONS

In many quarters of the Muslim world a strong momentum exists to reassert Islamic principles in social, economic and political spheres. This momentum often involves a quest for a new Islamic identity, which may include redefinition of traditional Islamic institutions and application of Islamic Laws.

Countries like Pakistan, Tunisia, Saudi Arabia Indonesia, Bangladesh and Iran are grappling with the exigencies of industrial expansion and economic growth in the context of international economy. Pakistan, Sudan and Malaysia have begun to experiment with the supposedly Islamic mechanisms for raising, managing and distributing resources. Other countries like Saudi Arabia, Kuwait, Libya and Iran claim that they are already operating the Islamic system, but a well articulated explanation of what Islamic economic management is, is yet to be given. Along with this, these states are facing increasing demands for political participation by their respective populations.

The reality of pre-modern Muslim politics – of Caliphate, Sultanate, of dynastic and tribal solidarity of the Millat system (the communal organization of society along religious boundaries) and the communal law changed long ago in many
Muslim lands and the medieval Muslim sciences, literature *and* education *that sustained* traditional Islam have by and large fallen into disuse at *least* among the modernized sections of Muslim society which *long ago* replaced the traditional administrators and generals who along *with* ulemas (Scholars of traditional Islamic Sciences) once played the role of elite's in the Muslim societies.

*During* the past quarter century, numerous political *developments* across the Muslim world have dramatically pointed to Islamic reassertion of Islam's political culture. The success and resilience of the Islamic *revolution* in Iran, the fierce and long Afghan resistance, popularly known as *'jihad'* against the Russian controlled government in Afghanistan, the devastating *strife* between the secular military government and the Islamic popular *opposition* in Algeria as well as progressive revival of some traditional Islamic laws in Pakistan, Egypt and Malaysia are testimonials to the resilience of Islamic political sentiment and the resurgence of its political values *in these modern times*.

The current resurgence of Islam is *far* from monolithic. It has theological, cultural, as well as political dimensions and political ideas and values associated with it are enormously *diverse*. In the popular media most Islamic socio-political developments are frequently attributed to "Islamic fundamentalism". In many journalistic writings this term *is ill defined* and its use often indiscriminate.
The reckless use of the term in popular media usually presents a simplistic view of contemporary Islamic ideas and masks the important diversity in values and attitudes among contemporary Muslims. Most seriously in some political commentaries such an indiscriminate use of the word does not just obstruct a correct understanding of contemporary Islam, it leads to a distortion of reality and reinforces sensationalism. The fact is that, even without its current popular misuse this term is an unhappy choice for labeling what one seeks to identify in Islamic context though the term can be reasonably employed to designate a parallel development in Islamic religion. Basically what distinguishes fundamentalism from liberalism is mainly the understanding of Islamic social and political values.

Disagreement on theological matters like the nature of God, the nature of prophecy, Quran as the revealed Message of God, is rare. Discussions of theological issues is minimal specifically among twentieth century Muslims their major pre-occupation being first the struggle for independence from European colonization and secondly facing the problems of nation-building which has directed their energies mostly into political and ideological rather than theological matters.

The political and ideological debates among contemporary Muslims mainly reflect their quest to understand and resolve the socio-political problems that the Muslim societies have been facing which point towards reaffirmation of traditional elements of Islam's political culture while at the same time producing
some Islamic political ideas that are essentially new, thereby leading to difficulties when traditional Islamic terms are employed to describe new ideas. To understand the true nature, values, meaning of Islam, its culture and attitudes and its relation to modernity various Muslim countries and their ideologically based political systems have to be studied so that a comparison can be made and those attitudes and values can be identified for which Islamic support is claimed. These attitudes can be national, self-identity, political systems, economic and social order. Such an analysis is required because Muslims generally do not look at social and economic issues from what we may call a purely secular angle. Their perspective of such issues is usually faith oriented. There is in most cases, an unexpressed question whether the proposed solution to an issue is consistent with Islamic faith percep and practices.³

In Pakistan, Islam played a definite role during its formation as well as after its establishment, in its progress and development. Though many attempts have been made since 1947 till the present to establish a political system representative of its Muslim population, the issue of secularization and Islamization is far from settled Pakistan has had constitutions which upheld governmental and legal institutions not specifically totally Islamic where liberalism, toppled a reformist agenda. Such issues in Pakistan’s political and constitutional history have been characterized by increasing challenges by Islamic activists and intellectuals and terms like “Republic” had to be substituted by
the notions of "Islamic Republic" or "Islamic State". The controversy between Islamists and Secularists over both the character and desirability of the Islamic state ensued much before 1960's. The concept of Islamic state has dominated religio-political thinking in Pakistan ever since its creation in 1947. It was the first major ideological issue which engaged the attention of great many Pakistanis. From 1949 when the first Indo-Pak war over Kashmir ended to March 1956, when the first constitution was passed by its National assembly, this issue was debated in the newspapers, columns and magazine articles and became a central theme of numerous political speeches at political platforms. After the military coup d'état of 1958 General Ayub Khan's government imposed martial law in the country, abrogated the constitution and dropped the Islamic Republic from the nomenclature of Pakistan thus signaling a rejection of Islamic commitment but as soon as the martial law was eased the debate about the secular and Islamic nature of the Pakistan re-emerged. In the seventies the popular discourse favored the use of such terms as "Nizam-I-Islam" or "Nizam-I-Mustafa" both closely linked with the concept of Islamic state. In Pakistan the desirability and nature of the Islamic State has covered several political topics and four of them have engaged most attention

1. The functions of the state
2. Democratic values
3. The character and form of government
4. The law and legislation

The topologies commonly employed to characterize these political orientations, whether in favor or against include progressive and reactionary, liberal and totalitarian, liberal and conservative, orthodox and fundamentalists but all these are true of western political systems. The distinguishing criteria for attitudes in Muslim societies are termed as political secularists and political Islamists. Political secularists exclude Islam as irrelevant to or undesirable in statecraft. Political Islamists believe that Islam makes some political demands on them and would therefore like to pursue Islamic political teachings in matters of statecraft. The modernists can be described as those who would like to reinterpret Islamic tenets particularly its legal rules thereby granting validity by *ijtihad* (reasoning to determine specific Islamic laws) hence claiming to go back to the Quran and Sunnah they actually seek to revive the bulk of medieval Islamic law, a large part of which were derived from Muslim jurists more than a century after Prophet’s death (PUBH). In Pakistan Modernist’s and Islamists have both influenced the constitutional and political development thereby affecting the process of Islamization.

The Pakistan movement mobilized the Muslim masses in the name of Islam under the charismatic leadership of Jinnah although the colonial state in its pristine form did not provide any role for either ideology or charisma. The Two-Nation theory was the most comprehensive indicator of Muslim nationalism in
India where the Islamic ideology was seen to manifest its tremendous mobilizing force. This approach Hegemonies Islamic ideology, so to say, from explaining political process in terms of the pursuit of a normocratic ideal for a universal social order. Both the ends and means of this movement can be defined, only with reference to the predominant concerns of political actor themselves who responded to the prevalent constitutional opportunities and depended on ideology for general mobilization in pursuit of their interests. In McDough's words:

"What religion does is to provide a number of options which are likely to move believers if these are stressed, political leaders then selected what seems appropriate at a given time."  

From the politics of constitutional safeguards the Muslim leadership moved on to a defining role in a more comprehensive way, The rising influence of Pan-Islamism during and after the Khilafat movement affected a certain fusion of religion and politics in the Muslim community and Allama Iqbal explained the Muslim position in his address delivered to All India Muslim League at Allahabad in 1930:

The units of Indian society are not territorial as in European countries. India is a continent of human groups belonging to different races, speaking different languages and professing different religions........The principle of European
democracy cannot be applied to India without recognizing the fact of communal groups.\textsuperscript{6}

Allama Iqbal proposed the formation of a separate North-West Indian Muslim state comprising Punjab, Sindh, NWFP and Baluchistan\textsuperscript{7}. He tried to arrange the Hindu fears by saying that it would not mean “The introduction of a kind of religious rule”\textsuperscript{8}, instead it would mean “for Islam an opportunity to rid itself of the stamp that Arabian imperialism was forced to give it”.\textsuperscript{9}

The Muslim League thus produced new patterns of interaction of Islamic ideology and politics. Thus the Two-Nation theory emerged as an ideological manifestation of a tangible move to establish constitutional majority of Muslims in a separate homeland. It now represented the big ideological thrust of the Muslim minority provinces into Muslim majority provinces led by such groups such as Aligarh students. The ideological synthesis of the urban based intellectuals and Ulema, who largely represented the scriptural Islam, gave way to the popular Islam of Sufis and Pir. As the Pakistan movement gained momentum the fundamentalist Ulema of Jamaat-i-Islami and Jamiat-ul-ulema Hind condemned it and termed the Muslim league as un-Islamic. But later, many of them joined hands with the Muslim league thus becoming an in-built pressure group within the Pakistan movement for Islamization of polity. The Two-Nation theory became the focus of many shades of Muslim political activity and Jinnah proudly claimed:
"We are nation with our own distinctive culture and civilization, language and literature, art and architecture, names and nomenclature, sense of value and proportions, legal laws and moral codes, customs and calendar, history and tradition, aptitudes and ambitions, in short we have our own distinctive outlook on life and of life. By all cannons of international law we are a nation".

The first 11 years of independence were crucial to molding Pakistan's political, ideological and institutional profile and it failed to introduce even a formal democracy with periodic free and fair elections. The absence of a central-state apparatus and Pakistan's threat perception entailing diversion of scarce resources from the provinces towards defense efforts as well as the absence of stable consensus-based political culture leading to national harmony, the political machinery was handed over to the governors and the bureaucrats. Liaquat Ali Khan's mysterious assassination left the bureaucracy in total command. The bureaucratic-military elite pursued centralized and authoritarian governance, changed federal and provincial governments and excluded those who questioned their political management. Pakistan deliberately and systemically adopted regional disparities. Major constitutional conflicts arose largely on the question of representation in the legislature and demographic balance favored East Pakistan in any democratic framework. Economic policy under West Pakistan civil servants led
industrialization in East Pakistan far behind. The Bengalis often displayed their resentment towards Punjabi domination in civil services and the army, which soon affected Pathan, Baloch and Sindi ethnic boundaries. In the wake of ethnic conflicts the orthodox and the conservative Islamic parties, most of which lost their credibility during the last phase of independence movement due to their refusal to endorse the Muslim league’s demand for Pakistan, found the confusion in Pakistan’s political scene suitable to stage a comeback by demanding the establishment of an Islamic state on conservative lines. Hence many difficulties arose in integrating together linguistically and culturally diverse constituent units.

The post Liaquat era under Ghulam Mohammed marked the second phase of bureaucratic ascendancy where emerging power of bureaucrats openly played a political role and manipulated politicians to suit their purpose reaching its highest form under Gen. Iskander Mirza. Side by side with this, Pakistan’s stance of giving highest priority to attainment of a favorable military balance vis-à-vis India and its place in the geo-strategic environment of the region and the world added to the complexities underlying and affecting its constitutional and political progress. In the early post-independence years when Britain was still the most influential foreign power in South Asia, Pakistan’s quest for a western alliance remained unfulfilled. Though Britain was eager to recruit Pakistan as an ally, it rejected the Pakistani alliance directed not only against
the communist bloc but also India. The breakthrough came when the US took over from Britain the "responsibility" of defending the Asian rim-land. US also insisted that alliance should also be directed against the communist powers but it also offered massive military and economic aid to its allies and Pakistan seized the opportunity to buildup its military potential against India. The Sino-Indian war 1962 transformed Pakistan's security environment and when American military supplies to the two South Asian countries were cut off, Pakistan turned to China as a countervailing power establishing a Sino-Pakistani partnership directed against India. The end of the decade saw a transformation of the global strategic environment when the US decided to seek and detente with China to turn the balance against the Soviet Union, Islamabad's ties with Beijing became a valuable asset in search of close relations with the US. The result was Nixon's famous 'tilt' during the 1971 Indo-Pak war which turned out to be Washington's passing phase. The year 1979 however is marked by developments leading to leading to a new clandestine US- Pakistan understanding by the fall of Shah of Iran and Soviet invasion of Afghanistan. For the next decade Pakistan as a 'front line ally' of the US used its position to advance its nuclear and conventional military potential. The Soviet withdrawal from Afghanistan and the end of the cold war opened a new chapter in post world war II diplomatic history. In a world where US emerged as the sole super power, alliances started giving way to episodic US led 'coalitions of the willing' designed to cope with a specific threat where participants may be
rewarded and durable ties dependant not on membership of alliances or pacts but on economic interdependence, buttressed by close civil society interlinks based on common political, social and cultural values. Pakistan is ill prepared for forging such durable relationships. The obsessive preoccupation with the military factor has severely retarded the country’s political, economic and social development The growth of democratic institutions has been aborted and economic growth has been excessively dependant on uncertain flows while the social fabric has been rent asunder by religious, military and drug-trafficking. Presently more so and less as in the past, Pakistan has become a country of concern in relation to terrorism, non-proliferation of weapons of mass destruction, denial of democracy and Human Rights and drug trafficking and unless Pakistan carries out drastic internal reforms the situation is not likely to improve.

As one of the many factors affecting the political and ideological setup of Pakistan, economic factors too played an important role from the beginning. After partition the leadership of Pakistan did not opt for a straight-forward liberal economy. The first five year plan was no more than a dead letter as it did not start until 1955 owing to problems of establishing the new state and the political instability following the assassination of the Prime-minister Liaquat Ali Khan. In 1968 all this changed when Gen. Ayub Khan who had no time for politicians and their intrigues surrounded himself with competent civil servants, young economists trained in the US and advisors, mainly
American graduates from Harvard, concentrated on economic development and the second five year plan (1960-65) was unsuccessfully implemented. This phase was short lived after the waning influence of Ayub Khan, who suffered from failing health; the economy became unstable leading to the fall of the regime in 1969. A new era began with Zulfikar Ali Bhutto’s arrival, after dismemberment of Pakistan in 1971. But Bhutto, by abuse of power and dubious maneuvering was sent to the gallows in April 1979. When in power the economic prospects were bleak as the state proved inadequate in managing and developing enterprises brought from public sector. The vitally important textile industry made slow progress. Since there were waves of nationalization between 1971 and 1976 there was little private-sector investment because no one wanted to innovate for fear of being nationalized. Agrarian reforms were also very slow, inflation rate became very high and weakness of regimes planning became very apparent. A positive aspect to this depressing scenario was that the people became more conscious of their rights and in Sind farmers dared to confront their landlords and in factories workers were less likely to tolerate exploitation although it was obvious that socialism could be as corrupt as capitalism. In 1977, after trouble in the country as an aftermath of rigged elections Gen. Zia-ul-Haq took over power in July to remain in office for eleven years. He and his entourage were inclined to be pragmatic and the unsatisfactory economic condition reinforced this. It was the end of ‘Islamic Socialism’ and there was some denationalization and the country became
more open to private investment and foreign trade. Two external factors the Soviet invasion of Afghanistan and the boom in the Middle East helped to improve the prospects of developments. Large industry took on a new base of life; Pakistan stopped importing wheat and became an exporter of rice. A GDP data confirms this:

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<tr>
<th>GDP GROWTH</th>
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<tbody>
<tr>
<td>1950 - 1960</td>
<td>+ 3.00% per annum</td>
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<tr>
<td>1960 - 1970</td>
<td>+ 6.77% per annum</td>
</tr>
<tr>
<td>1970 - 1980</td>
<td>+ 4.84% per annum</td>
</tr>
<tr>
<td>1980 - 1990</td>
<td>+ 6.24% per annum</td>
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**Source:** Economic Survey. Financial Year June-July, 1998

After 1980 alarm bells sounded from the Finance Ministry and the World Bank to reform the Taxation System and reduce domestic debt (Between 1980 and 1990 the fiscal deficit stood at 7 percent of GDP a year – unsuitable over the long term) Nawaz Sharif after his election victory promised liberalization, opening up, de-regularization, privatization but the process seized after an encouraging start. Nine years later, in Dec 1999 Gen. Pervaiz Musharraf gave a sobering account of the economy. Domestic, economic and political factors had taken their toll and the economic future never looked so bleak.

The role of Islam and the pursuit of a fundamentalist ideology had affected the structure of the state apparatus and the success of polity. To the secular elite’s after Jinnah, the continuity and effectiveness of the state and technical competence of its public
servants were sufficient guarantees of legitimacy thereby leading modernist politicians Iskander Mirza, interior minister to declare in 1954 “Religion and Politics should be kept separate.” Modernist under the Muslim League believed that Islam was an indispensable ingredient of their political legitimacy but they were reluctant to abandon their own political culture, that of western style democracy on the British model. They simply wanted to seek Islamic legitimacy to their own institutions. To this end they drew on an important authority, the poet, philosopher and politician Allama Mohammed Iqbal, who was himself part of the early 20th century Arab modernist tradition. He linked medieval political institutions to those of the modern world by means of Arab concept of IJMAH (consensus) which is the third source of law after the Quran and Sunnah. (Traditions of the Holy Prophet PBUH) which allows Islam to be adapted to historical circumstances. However the definition of consensus is a matter for the Ulema. For modernists with Iqbal as their head the definition of consensus was a matter for much wider elite which should interpret public opinion which could mean elected assemblies where consensus would emerge. Finally it was explicitly acknowledged that the modern interpretation of Islamic law, which would be the law of the country, would be the task of the elected Muslim members who would explain the consensus of the community and give it the force of law without feeling that they were bound by the letter of medieval Muslim law. In this Pakistan would become an Islamic state and assemblies will have Islamic legitimacy.
The Ulema had their disagreements but agreed on three points

1. Supremacy of law revealed by God

2. They believed that religious communities should be kept separate from non-Muslims

3. They were suspicious of western democracy and multiparty system

After great efforts of Ulemas like Maulan Shabbir Ahmed Ansari, Abul Ala Maududi, Ihteshamul Haq Thanvi, Mufti Muhammed Shafi, they were able to set themselves up as religious experts. The Constitution of 1956 was the first compromise of the state or the first balancing act between the modernist and conservatives. Pakistan was proclaimed an Islamic Republic, the declaration of objectives proclaimed the sovereignty of Allah, Principles of policy stipulated links with other Muslim countries, teaching and research organization would help build an Islamic society and a consultative commission on Islamic ideology was to ensure that the laws passed by the parliament were in conformity with the Quran and Sunnah. But in spirit the Ulemas remained a minority and state was to have the final word. Since these groups could not achieve a special position in the state apparatus, they changed themselves in to political parties so that they could promote their ideas in public. These political parties which are a unique feature in Pakistan's political landscape may be minority parties (Jamaat Islami, Jamiat Ulema Islam, Jamiat Ulema Pakistan) but they
have an incalculable influence by putting religious overtones to their demands so that their opponents will do the same.

Ayub Khan is known to have escaped this trend. The Presidential Ordinance of 1962 actually dropped the word Islamic from the country's title but he had to reinstate the word by the First Constitution Amendment Bill 1963 under Ulema pressure. His secular credentials were confirmed by the Family Law Ordinance 1961 inviting sharp reaction from the right wing fundamentalists. It is noteworthy that Ayub's contempt for the Ulema and his tight grip on the country's affairs kept sectarian controversies at bay. He made only the most minimal concessions to the Ulema and Pakistan remained a forward looking modern nation. But Ayub Khan did not hesitate to use the Islamic card as a political survival tactic. During 1965 elections he sought the help of the orthodox religious groups to issue a "Fatwa" (A ruling by jurist on the legality or otherwise of an action) to de-legitimize the contesting Mohtarma Fatima Jinnah from president-ship of Pakistan on the religious grounds that a woman cannot become Head of an Islamic state. For political legitimacy he also cultivated the 'Pirs' and 'Mashaiks'.

In the late 1960's the Ulema joined widespread agitation against Ayub's authoritarian rule probably because they believed that only in a democratic environment they could press their case for Islamization. As the general election 1970 approached there was clear polarization for the political right and left.
During Yahya Khan’s rule in 1971 the Ulema supported the government for the army crackdown in East Pakistan because they considered Mujeeb-ur-Rehman to be secular in orientation. In Ayub’s era, the liberals, under pressure yielded to the Islamists lobby for reasons of expediency and convenience. More often than not such efforts lacked credibility stemming from an opportunistic and often cynical use of religion by those who were seen as liberal and secular in conflict.

Ayub Khan’s paternalism was replaced by ‘Socialism’ which in fact meant ‘populism’ by Zulfiqar Ali Bhutto. He flagrantly and deliberately used religion to whip up the crowds and praised the merits of Islamic socialism that was quickly re-baptized as Musawat-I-Muhammad. More emphasis in the Peoples Party program was on Islam. He announced Islamic reforms, banned liquor shops, gambling, horse racing, and night clubs and changed the weekly holiday from Sunday to Friday. Ending Pakistan’s isolation he gave himself international legitimacy in the name of Islam by playing a dominant role in the Islamic Conference organization, the Muslim countries federal body, summoning it to meet in Pakistan. The out bidding tactics of the religious parties which criticized his nationalization policy on behalf of the wealthy gradually drew him in to the terrain of laws and constitution and paradoxically it led him to change the compromise not in a modernizing direction as Ayub Khan had done but in the direction of fundamentalism. He drew a line between the Muslims and non-Muslims by declaring the Ahmedis
non-Muslims thereby lowering their constitutional status. He was cornered by a right wing coalition (PNA), which he believed would defeat him in 1977 elections, declared that the law of the country was Shariah law which meant that it will cover every domain that is codified in medieval Islamic law. He soon found himself in a legislative, political, and constitutional impasse till he was overthrown by another military leadership in July 1977.

Gen. Zia-ul-Haq who is usually held uniquely responsible for Islamization of Pakistan’s legal system restored matters by setting limits on the Islamization of the country. He used Islam as a legitimization strategy for the consolidation of his autocratic military rule in an unprecedented manner and therefore cultivated and strengthened Islamists elements most vigorously. As a conservative and a Jamaat-i-Islami sympathizer he may have harbored fundamentalist convictions but he was by no means fanatical. In fact he was coolly reasonable. The decrees promulgated in his time actually place very strict limits on the application of the Shariah confining it to a few prominent domains of criminal law. The meting out of Islamic punishments: stoning to death or whipping for adultery, amputation for theft, whipping for the use of intoxicants, prison or death penalty for blasphemy. As for criminal proceedings only the rules of evidence were changed while another decree introduced two canonical religious taxes, Zakat and Ushr. The decrees covered only a part of the legal system. It affect Zia had established a dual system of Anglo-Indian-type modernist law where Islamic
law was relegated to a minor role. Gen. Zia came with a Islamic agenda and political expediency also demanded that he take a position diametrically opposed to the one taken by his military precursors Gen. Ayub and Gen. Yahya Khan. Zia also brought an alliance of sorts between the military and the Islam Pasand (favoring) parties. Mian Tufail Ahmed, the Amir of Jamaat-i-Islami was Gen. Zia’s uncle who openly said that this (Zia’s era) was a golden era for the establishment of Islamic system which should never be allowed to go un-availed of. The war theatre in Afghanistan provided an even better opportunity for this alliance as the CIA (Central Intelligence Agency) and the ISI (Inter Service Intelligence) trained thousands of Pakistani and Arab volunteers to become diehard Jihadis, an amalgam of both homicidal and suicidal tendencies and viciousness.

Zia also used Islam as an instrument of foreign policy to strengthen Pakistan’s relations with Muslim countries. The trend of fundamentalists neo-totalitarian Muslim movements which is contrary to the political, cultural and historical traditions of the Muslim majority, included Muslim Brotherhood in the Arab world, Jamaat-i-Islami in Pakistan, Sharekat Islam in Indonesia and Islamic Government of post revolutionary Iran, all had their impact on Pakistan’s foreign policy although none of these movements succeeded in attracting the majority of workers, peasants and intelligentsia. Zia’s significant objective of Islamization was concurrent with the Soviet military intervention in Afghanistan in 1979 as the Soviet Union was depicted as
"Islam in Danger". The interest of the US and Pakistan converged as the US wanted to wage a proxy war with the Soviet Union via Pakistan and the Afghan conflict militarized Pakistani society. Zia's exploitation of Islam may have produced revulsion among many but the Islamists appetite grew and Pakistan is paying the price now for the fundamentalist policies it had pursued. Religious schools sponsored by political-religious parties of the purist Deobandi-Wahabi sects continued to spread in an unregulated manner and became breeding grounds for sectarian hatred and intolerance. Emerging reality of Shia-Sunni conflict is sweeping Pakistan now as all major religious groups have their private militias.

The advance of religious legislation can partly be explained by the lingering effects of Bhutto's and Zia's Islamization policy. They started a process which went on after they were gone and some of the institutions (Islamic Courts) they had made continued to have effect. Benazir Bhutto in the face of assertion of the orthodox section in her troika government could not completely do away with Zia's Islamization legacy. Thus in 1989 a modified version of the 1985 Shariat Bill was passed but it lapsed due to the dissolution of the assemblies in 1990. Due to her political vulnerability she could not repeal the anti-women Hudood laws. The Qisas and Diyat ordinance in 1990 was introduced on the basis of introduction of medieval models. Nawaz Sharif sought to start where Zia had left and a Shariah act which Zia had not managed to push through was voted in 1991.
The most effective measure was the 1991 amendment to the 1986 Blasphemy law which was used against the minorities. Discriminatory institutionalization of religion has brought in its wake politicization and radicalization of sectarian divides which have now become the basic ingredient of policies in Pakistan. In face of imminent economic collapse and growing sectarianism Nawaz Sharif, like his predecessors, used the Islamic card for his survival by declaration of the Shariah as the Supreme Law by the 15th Constitutional Amendment (1998). This would have pushed the country into a dangerous form of religious dictatorship. Despite the increasing pressure form the men of religion the periodic references to the Supremacy of the Shariah has not led to the widening of its application. Islam’s role in Pakistan’s institutions and policies may attract a lot of political attention but it is still limited and the state still has its last word.

When we have the case study of Pakistan in the process of Islamization during the period of infancy up to time when it was given the most comprehensive outlook (Gen. Zia’s period) we find that there always has been cross currents and opposing interests which need to be identified. They have played a decisive role in molding the policy whether towards Islam genuinely or in just a superficial way

1) An obscurantist version of Islam versus modernity

2) The narrow thrust towards a unitary state as against broader federalism

3) A monolithic Pakistan ideology versus ethnic aspirations
4) Authoritarianism versus democracy

5) The tug of war between the military civilian combine versus the political class

As a spillover we may see traditional oligarchies, both political and military that have ruled Pakistan against the neglected aspirations of the masses.

There is a strong impulse towards what can be dubbed as Islamic fundamentalism. At the lower level it leads to even fanatic rabble-rousing, branding what was once considered as Muslim communities as heretics and a general ongoing 'Jihad' against 'Kafirs'. This has now taken the form of western imperialism being turned into anti-American attitudes. Against this is the thrust towards modernization and western education. It would be incorrect to blame Gen. Zia alone for turning the polity on its head and attempting to bring a radical form of Islam center-stage. After Gen. Ayub politicians have exploited Islam to their own advantage. Some other points towards Islam in Pakistan need to be mentioned:

a. After the demise of Bhutto and his brand of Socialism it was the cadres of Islamist parties that voiced and orchestrated the voice of the poor. It was they who had appreciated the anti-imperialist agenda and which has turned into Anti-American agenda

b. In madrassas (in NWFP) it is the poor sections that go there and are trained in Islamic discipline while the
elite classes go to schools that impart western education. Thus the divide between the madressa educated and the others is further entrenched.

c. Islamic parties criticize the elite who, according to them, have helped in bolstering the country’s and its society’s dependence on the west to the extent of even borrowing their social and cultural mores. They feel that the west wants to keep the Islamic countries down and impoverished. They feel that the US in particular bolsters corrupt regime like those of Shah of Iran and Anwar Sadat.

d. Till the October elections of 2002 the vote bank of religious parties has been meager. They had 15.5% and 6.7% vote together in 1970 elections, 6.6% in elections of 1988, 5.5% in 1990 and 6.7% in 1993.

e. Religious parties have paid no heed to regional grousers and aspirations

f. The state has used religious parties to recruit, indoctrinate and train militants who have fought in Kashmir and Afghanistan. The religious parties did not use arms against the state but have used democratic discourse although they slaughtered each other (Shia’s and the Sunni’s, Sipah-I-Sahaba, Lashkar-I-Jhangvi and Sipah-I-Mohammadi)
There is a present thrust towards modernization, which should not be underestimated. The present government in Pakistan is holding ongoing dialogues with religious sections to modernize the madrassas so that their students can be moved in to the mainstream of Pakistani life and a balance is struck between the two divides.

It is ironical that for decades the Muslim aspirations have centered on a strong federal polity and regional autonomy in the sub-continent. After the creation of Pakistan tensions between federating units and the all powerful center have plagued the country. Repeated military coups and the Generals and bureaucrats distrust of the politicians militated against giving more powers to the federating units. The loyalties of the Pashtuns who followed Khan Abdul Ghaffar Khan were suspects in the eyes of the ruling elite’s. The NAP of Wali Khan inherited the legacy of distrust. The Awami league was a suspect prior to 1970-71. The overwhelming domination of Punjab in all walks of life has been paradoxical while on the one hand giving a semblance of strong centre the distribution of resources to other provinces has lead to breakaway movements. Starting with East Bengal and leading to NWFP, Lalochistan and Sindh. Bhutto dealt with the Balochs more ruthlessly than the military and the leaders like Ataullah Khan Mengal, Khair Buksh Marri and sher Mohd Marri took shelter in Afghanistan with their lashkars. The Jiye (long live) Sindh movement of G.M. Sayed took its toll of the state. Radical Islam becomes as authoritarian as the state.
Sindh and Balochistan have their own religious version—Sufis, shrines and reverence for Pirs. The all encompassing Islamic ideology of the religious parties tends to support the state particularly the centralizing aspects of Pakistani federalism and has prevented religious parties from addressing issues of ethnicity and regional rights. National integration means bringing together various social groups blunting the edge of their parochial loyalties and to shift their expectations and political activities towards the centre. Suppression of primordial attachments or alienation of smaller ethnic communities is not the appropriate method of attaining unity in diversity. Ethnic nationalism has not been handled adroitly by the Pakistani state. After the military operations against the Balochs nationalists in 1974-77 the Sindhis launched an ethno-political agitation against the Zia regime in 1983 and 1986 spearheaded by Rasul Buksh Palejo and Benazir Bhutto but the state used brutal force to crush it. A massive door to door police operation was launched by Benazir against the Mohajirs in 1992. Ideology based on a homeland for Muslims does not seem to be the answer to linguistic, cultural and socio-economic disparities among the provinces.

Pakistan has been ruled by traditional oligarchies, be it the military, civil service or political leadership. Government is viewed by the masses as a dome of absolute authority, suspended high over the ordinary folk, a power which they might supplicate or manipulate but which they can never hope to draw in their
own hands. Military's dominance in Pakistan has been because of failure of the political leadership. The military is the most cohesive, disciplined and task oriented institution in Pakistan. The military can continue to influence the political process while staying at the sidelines. The post 1998 pattern of civil-military relations enables the military to influence the nature and direction of political change as an autonomous actor by virtue of its organizational strength. The best safeguard against the military's expanded role is the removal of the causes that produce its intervention.

The internal dynamics of the nation and the polity militate against its external obligations and what the world expects from Pakistan. There is external pressure on Pakistan to

1. refrain from nuclear proliferation

2. stop exporting terrorism and manufacturing Jihadis

3. restore real democracy and release the hold of the military on the throat of polity

4. show more considerations to its minorities and women

Above all the inclusion of faith in the polity or to strive for a modern Islamic state wherein the fundamentals of religion as well as the basis of a modern democratic state are fused, is difficult to achieve in totality unless the required structure, mindset and social norms are included in all cross-sections of society. To strive for an Islamic state in the traditional sense is
not possible and to work only for a democracy will not be sufficient.

There can be no specific model of a modern Islamic state and Muslim countries have adopted different political structures in view of their socio-economic requirements. Countries like Malaysia, Indonesia, Turkey, Bangladesh and Iran; all have Islamic laws and ideology but have different systems and infrastructures to provide it.

The constitution of the Federation of Malaya because effective on 31st August 1957 and was subsequently amended and is now the constitution of Malaysia. Malaysia is a Muslim country and faith binds the people together more powerfully than any other social force. Islam is the state religion and provincial heads control the operation of mosques, which are the centers of social activity. The government levies a religious tax on Muslims to finance their institutions and also grants the privilege of enforcing their religious laws through special courts. Hence the district heads are political as well as religious leaders. The constitution provides guarantees of religious freedom but it is subject to public order, health and morality, which is determined according to Islamic standards. Laws concerning marriage, divorce and property-owning are basically Muslim intent. Non-Muslims are judged under the constitutional law administered by secular courts. Most of the important events revolve around the practice of Muslim religion. Customary law or (adat) may conflict with Islamic law but secular courts are expected to
resolve these conflicts of law. Hence Malaysia is a westernized, democratized and a modernized Muslim state.

Indonesia has had three provisional constitutions i.e. 1945, Feb 1950 and August 1950 and in July 1959 the constitution of 1945 was re-enacted. This constitution consists of 37 articles, four transitional clauses and two additional provisions preceded by a preamble. According to the text of the perusable Indonesia has the state power of a Republic with sovereignty residing with the people and is based on five fundamental principles:-

1- Belief in one supreme God.

2- Just and civilized humanity.

3- The Unity of Indonesia

4- Democracy led by the wisdom of deliberations and consensus among representatives

5- Social justice for all the people of Indonesia.

Many political parties including Islamic parties like the PKU(Partai Kebangkitan Umat) and PNU(Partai Ndblatul Umat) are a part of the political system.

Bangladesh came into being in 1970 after separating from Pakistan and a new constitution was approved in November 1972 and put into effect on 16th December 1972 for the People's Republic of Bangladesh. It was suspended after a military coup in March 1982 revived in November 1986. The constitution was initially based on the fundamental principles of nationalism, socialism, democracy and secularism but in 1977 an amendment
replaced secularism with Islam. The country is guided by the principles of absolute trust and faith in Almighty Allah, nationalism, democracy and socialism.

A further amendment in 1988 established Islam as the state religion. The constitution aims to establish a society free from exploitation in which the rule of law, fundamental human rights and freedoms, justice and equality is to be secured for all citizens. A socialist economic system is to be established to ensure the attainment of a just and egalitarian society with a universal, free and compulsory system of education. In foreign policy the state is to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity.

Turkey is an example of a westernized, regularized Muslim country. Previously a large part of Turkish civil law the laws affecting the family, inheritance, property, obligations etc was based on the Koran and this hold law as administered by special religious (Shariat) courts. But now the process of secularization has also brought a radical change of the legal system to fit Turkish customs and traditions.

Egypt another important Muslim country adopted its present constitution on 11 September 1997. Egypt is proclaimed on Arab republic with a democratic socialist system based on the alliance of the working people derived from the country's historical heritage and the spirit of Islam. Islam is the religion of the state, Arabic is the official language and the Islamic code is the
principal source of legislation. The state safeguards the freedom of worship and of performing rites for all religions. Sovereignty is of the people done which is the source of all powers. The protection, consolidation and preservation of the socialist gains are a national duty, the sovereignty of law is the basis of the country's rule and the independence of immunity of the salivary are basic guarantees for the protection of rights and liberties.

Iran is a model of traditional Islamic state with demands of a modern political society adjusted according to the requirements of its people enforced after a successful revolution brought about by Ayatollah Khomeini.

Democracy if it means a political system that allows full and sustained participation of the people has yet to take roots in Pakistan because the roots of democracy lie in the egalitarian social and economic structure, a modern entrepreneurial elite and a large middle class. It also needs an independent judiciary and rule of law. In case of Pakistan, its social and economic structures and its mindset are still deeply feudal. Religion too has to be inducted as a dominant force laying down the fundamental outlines of a political structure. The military too has to be seen as it has repeatedly found for itself to take over power because the so-called democratically elected governments tend to behave in an utterly non-democratic way. When the military takes over power the political leaders question its presence and when it is back to the barracks the leaders have asked for its return to save the nation. So we have been moving in circles.
Religion has to play an all pervasive role in Pakistan but the necessary political setup and laws must be agreed upon by consensus, both from religious scholars as well as sections of the populace. Democracy too will take a few decades to acquire unshakable roots but the political training and transformation must begin. Islam should not be used as a tool for seeking legitimacy for a regime but should be applied in all spirit. The religious parties in Pakistan must change their political agenda and feel the pulse of the people and leave behind their doctrinal, theological and sectarian differences for change and progress by coming in to mainstream of politics through a moderate ideology to reaffirm Islamic laws and values within the state infrastructure.

The romanticism of the idea of an all encompassing Islamic state continues to persist specially getting a new lease under Islamic resurgence. Leaders have not come to grips with the multi-ethnic, multi-religious society and it is this phenomenon, which is undermining the basic framework of civil society in Pakistan.

To conclude Islamization is based on the assumption that the state must legislate and regulate all aspects of human activity. The Islamic laws so far introduced do not show any trend towards greater piety among the people nor have the reforms strengthened unity among the various sects or linguistic and ethnic groups. There is such a lack of purpose and widespread social malaise that Pakistan seems to be a country which is still in search of a nation.
APPENDICES
Appendix A

Islamic provisions of the Basic Principles Committee Report
Recommendations

PART I
Chapter I Preamble

1. The Preamble should contain the Objectives Resolution passed by the
Constituent Assembly on the 12th March, 1949, the terms of which are as
follows:

"In the name of Allah, the Beneficent, the Merciful;

Whereas sovereignty over the entire Universe belongs to God Almighty
alone and the authority which He has delegated to the State of Pakistan
through its people for being exercised within the limits prescribed by
Him 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 powers and authority through the chosen
representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social
justice as enunciated by Islam, shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual
and collective spheres in accord with the teachings and requirements of
Islam, as set out in the Holy Quran and the Sunnah;

Wherein adequate provision shall be made for the minorities freely to
profess and practice their religions and develop their cultures;

Whereby the territories now included in, or in accession with, Pakistan and
such other territories as may hereafter be included in or accede to
Pakistan shall form a Federation where in the Units will be autonomous
and with such boundaries and limitations on their powers and authority as
may be prescribed;
Wherein shall be guaranteed fundamental right including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

Wherein the independence of the Judiciary shall be fully, secured;

Wherein the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea 'and air shall be safeguarded;

So that the people of Pakistan may prosper and attain rightful and honoured place amongst the nations of World and make their full contribution towards international peace and progress and happiness of humanity."

Chapter II Directive Principles of State Policy

2. The following should be the Directive Principles of State Policy:

1. The State should be guided in all its policies and activities by the principles enunciated in the Objectives Resolution.

2. Steps, particularly those specified below, should be taken in the various spheres of Governmental activities to enable the Muslims to order their lives individually and collectively in accordance with Holy Quran and the Sunnah.

(a) Facilities should be provided for them to understand what life in accordance with the holy Quran and (like Sunnah means, and the teaching of the Holy Quran to the Muslim should be made compulsory;

(b) Prohibition of drinking, gambling and prostitution in all their various forms,

(c) Elimination of ‘Riba’ as soon as it may be possible to do so;

(d) Promotion and maintenance of Islamic moral standards; and

(e) Proper organization of Zakat, Waqfs and Mosques.
3. An organization should be set up for making the teachings of Islam known to the people, and for ‘amr bi-l-maruf and ‘Nahi-anil-Munkar’.

4. Suitable steps should be taken for bringing the existing laws into conformity with the Islamic principles, and for the codification of such injunctions of the Holy Quran and the Sunnah as can be given legislative effect.

5. Suitable steps should be taken to prevent activities subversive of the principles embodied in the Objectives Resolution.

6. The State should endeavour to secure basic necessities of life like food, clothing, education and medical relief for those citizens of Pakistan, irrespective of caste or creed, who are temporarily or permanently incapable of earning their livelihood due to unemployment, infirmity, sickness or any other similar reason.

7. The economic policy of the State should be so directed as to secure an all round well-being of the people irrespective of creed, race or colour and should be so operated as—

   (a) to improve the standard of living of the common man;

   (b) to prevent the concentration of wealth and means of production in the hands of a few to the detriment of the common man; and

   (c) to ensure equitable adjustment of the rights of labour and the peasantry in order to prevent their exploitation.

8. The State should make every effort to remove illiteracy from the country within the minimum possible period.

9. It should be the endeavour of the State to enable, within the minimum possible period, the population of different areas, through training and education, to participate fully of all forms of national activity and service.

10. The State should endeavour to discourage amongst the Muslims of Pakistan parochial, tribal, racial and other similar un-Islamic feelings and inculcate in them the spirit to keep foremost in their minds the fundamental unity and solidarity of the Millat and the requirements of the ideology and the mission for the implementation of which Pakistan came into being.
11. The State should endeavour to strengthen the bond of unity amongst the Muslim countries of the world.

12. *It should be the endeavours of the State to promote peace, security and goodwill among the peoples of the world.*

13. Only such person should be elected as Head of the State who in the opinion of the electors possesses ability, character, integrity and piety, and who is fit to conduct the affairs of the State in accordance with the Objectives Resolution.

14. *It should be the endeavour of the State to effect the separation of the Judiciary from the Executive within three years.*

15. The State should protect all the legitimate rights and interests of the non-Muslim communities of Pakistan.

16. The State should endeavour to ensure the children; youth and women are not subjected to exploitation or made to enter avocations unsuited to their age and sex.

17. Steps should be taken to provide suitable financial assistance to the dependants of those Government servants who die before retirement without making adequate provision for their maintenance.

18. The State should ensure that people should obtain justice in courts of law free of payment in any form to the State.

The following further *Directive Principles of State policies were recommended by the Committee on Fundamental Rights and Matters relating to Minorities:* ---

(i) Protection shall be accorded to all duly established places of worship, burial and disposal of the dead;

(ii) The State shall promote with special care the educational and economic interests of the backward sections of the people and, *in particular,* of the Scheduled Castes and the people of the tribal areas.
Chapter III

Procedure for Preventing Legislation

Repugnant to the Quran and Sunnah

1. No Legislature should enact any law which is repugnant to the Holy Quran and the Sunnah.

2. No objection on the ground that legislation is in contravention of the provisions of paragraph 3 should be taken except in the Legislature concerned and in the manner provided for in the next two succeeding paragraphs.

3. (1) The Head of the State should constitute, for a period of five years, a Board consisting of not more than five persons well versed in Islamic Laws.

   (2) When a Bill is discussed in a House of the Federal Legislature, if any Muslim member raised an objection, at any stage of the discussion, that the Bill or any provision thereof is in contravention of the provisions of paragraph 3, the Chairman of the House should record that objection.

   (3) If the Bill to whom reference has been made in sub paragraph 2, of this paragraph comes up for discussion before the other House of the Federal Legislature the Chairman of that House should inform the House of any objection taken in the House in which the Bill has been initiated.

   (4) When Bill is finally passed by the Federal Legislature the authority concerned should forward the Bill together with any objection taken in either or both the houses of the Federal Legislature, to the Head of the State for assent.

   (5) The Head of the State should consult the Board to ascertain whether the Bill or any provision thereof to which objection has been taken, is in contravention of the provision of paragraph 3. The Board should send their views to the Head of the State within seven days of the receipt of such reference.
(6) If a difference of opinion arises amongst members of the Board the Head of the State should give his assent to the D or withhold his assent there from.

(7) If the Board is unanimously of the opinion that the Bill or any provision thereof is in contravention of the provisions of paragraph 3 the Head of the State should return the Bill to a joint sitting of the two Houses of the Federal Legislature together with the views of the Board and a message that the Bill or any provision to which objection has been taken should be reconsidered on the lines suggested in the message.

(8) (a) If the Federal Legislature amends the Bill on the lines suggested by the Head of the State in his message the authority concerned should forward the Bill to the Head of the State for his assent.

(b) If the objection is to the whole of the Bill it should not be deemed to have been passed unless it is passed by the majority of the members present and voting which should include the majority of the Muslim members present and voting.

(c) If the objection is to certain provisions of the Bill, amendments in respect of such provisions should not be deemed to have been passed unless passed by the majority of the members present and voting which should include the majority of the Muslim members present and voting.

(9) When the point raised in the message are disposed of in the manner prescribed in sub-paragraph (8) above, the Bill, unless it is withdrawn by the leave of the House, should be resubmitted to the 1-lead of the State for his assent and it 5 be assented to by the Head of the State.

(i) The Head of the Unit should constitute, for a period of five years, a Board of not more than five persons well versed in Islamic Laws.

(ii) When a Bill is discussed in the Legislature of the Unit, if any Muslim member raised an objection at any stage of the discussion, that the Bill or any provision thereof is in contradiction to the provisions of paragraph 3 the
chairman of the Legislature concerned should record that objection and when the Bill is finally passed by the Legislation the authority concerned should forward the Bill together with any objection taken in the Legislature to the Read of the Unit for assent.

(iii) The Head of the Unit should consult the Board to ascertain whether the Bill or any provision thereof to which objection has been taken is in contravallation of the provisions of paragraph 3. The Board should send their views to the Head of the Unit within seven days of the receipt of such reference.

(iv) If a difference of opinion arises amongst the members of the Board, the Head of the Unit should give assent to the Bill or withhold his assent there from or may reserve the Bill for the consideration of the Head of the State.

(v) If the Board is unanimously of the opinion that the Bill or any provision thereof is in contravention of the provisions of paragraph 3, the Head of the Unit should return the Bill to the legislation of the Unit together with the VICWS of the Board and a message that the Bill or any provision to which objection has been taken should be reconsidered on the lines suggested in the message.

(vi) (a) If the Legislature of the Unit amends the Bill on the lines suggested by the Head of the Unit in his message the authority concerned should forward the Bill to the Head of the Unit for his

(b) If the objection is to the whole of the Bill it should not be deemed to have been passed unless it is passed by the majority of the members present and voting which should include the majority of the Muslim members present and voting.

(c) If the objection is to certain provisions of the Bill, amendments in respect of such provisions should not be deemed to have been passed unless passed by the majority of the members present and voting, which should include the majority of the Muslim members present and voting.
(vii) When the points raised in the message are disposed of in the manner prescribed in sub-paragraph (6) above the Bill, unless it is withdrawn by the leave of the House, should be resubmitted to the Head of the Unit for his assent and it should be assented to by the Head of the Unit or he may reserve it for the consideration of the Head of the State.

7. The provisions of this chapter should not apply to Money Bills.

8. The provisions of this chapter relating to assent should have effect notwithstanding anything to the contrary relating to assent to Bills in other parts of the Constitution.
Appendix B

The Constitution of the Islamic Republic of Pakistan
(March, 1956)

Preamble

In the name of Allah, the Beneficent, the Merciful,

Whereas sovereignty over the entire Universe belongs to Allah Almighty alone and the authority to be exercised by the people of Pakistan within the limits prescribed by him is a sacred trust;

Whereas the Founder of Pakistan, Quaid-i-Azam Moha mmad All Jinnah, declared that Pakistan would be a democratic State based on Islamic principles of social justice;

And whereas the Constituent Assembly, representing the people of Pakistan, have resolved to frame for the sovereign independent State of Pakistan a constitution.

Wherein the State should exercise its powers and authority through the chosen representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam, should be fully observed;

Wherein the Muslims of Pakistan should be enabled individually and collectively to order their lives in accordance with the teachings and requirements of Islam, as set out in the Holy Quran and Sunnah;

Wherein adequate provision should be made for the minorities freely to profess and practice their religion and develop their culture;

Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan should form a Federation, wherein the Provinces would be autonomous with such limitations on their powers and authority as might be prescribed;

Wherein should be guaranteed fundamental rights including rights such as equality of status and of opportunity, equality before law, freedom of thought, expression, belief, faith, worship and association, and social, economic, and political justice, subject to law and public morality;
Wherein adequate provision should be made to safeguard the legitimate interests of minorities and backward and depressed classes;

Wherein the independence of the Judiciary should be fully secured;

Wherein the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights over land, sea and air should be safeguarded;

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the world and make their full contribution towards international peace and the progress and happiness of humanity.

Now therefore, we the people of Pakistan in our Constituent Assembly this twenty-ninth day of February, 1956, and the seventeenth day of Rajab, 1375, do hereby adopt, enact and give to ourselves this Constitution.

PART III

Directive Principles of State Policy

24. The State shall endeavour to strengthen the bonds of unity among Muslim countries, to promote international peace and security, to foster goodwill and friendly relations among all nations, and to encourage the settlement of international disputes by peaceful means.

25. — (1) Steps shall be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Quran and Sunnah.

(2) The State shall endeavour, as respects the Muslims of Pakistan,—

(a) to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah,

(b) to make the teaching of the Holy Quran compulsory;

(c) to promote unity and observance of Islamic moral standards; and

(d) to secure the proper organization of Zakat, wakfs and mosques.
PART XII

GENERAL PROVISIONS

Chapter I—Islamic Provisions

197. (1) The President shall set up an organization for Islamic research and instruction in advanced studies to assist in the reconstruction of Muslim society on a truly Islamic basis.

(2) Parliament may by Act provide for a special tax to be imposed upon Muslims defraying expenses of the organization set up under clause (1), and the proceeds of such tax shall not, notwithstanding anything in the Constitution, form part of the Federal Consolidated Fund.

198. (1) No law shall be enacted which is repugnant to the Injunctions of Islam as laid down in the Holy Quran and Sunnah, hereinafter referred to as Injunctions of Islam, and existing law shall be brought into conformity with such Injunctions.

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in clause (3).

(3) Within one year of the Constitution Day, the President shall appoint a Commission—

(a) to make recommendations—

(i) as to the measures for bringing existing law into conformity with the Injunctions of Islam, and

(ii) as to the stages by which such measures should be brought into effect; and

(b) to compile in a suitable form, for the guidance of the National and Provincial Assemblies, such Injunctions of Islam as can be given legislative effect.
The Commission should submit its final report within five years of its appointment, and may submit any interim report, earlier. The report, whether interim or final, shall be laid before the National Assembly within six months of its receipt, and the Assembly after considering the report shall enact laws in respect thereof.

(4) Nothing in this Article shall affect the personal laws of non-Muslim citizens, or their status as c or any provision of the Constitution.

Explanation.—In the application of this Article to the personal law of any Muslim sect, the expression “Quran and Sunnah” shall mean Quran and Sunnah as interpreted by that sect.
Appendix C

Islamic Provisions of the Constitution of 1962

Principles of Policy

1—Islamic Way of Life.

(1) The Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam, and should be provided with facilities whereby they may be enabled to understand the meaning of life according to those principles and concepts.

(2) The teaching of the Holy Quran and Islamic ideology to the Muslims of Pakistan should be compulsory.

(3) Unity and the observance of Islamic moral standards should be promoted amongst the Muslims of Pakistan.

(4) The proper organization of zakat, wakfs and mosques should be ensured.

18.—Elimination of Riba. Riba (Usury) is to be eliminated.

19.—Prostitution, Gambling and Drug-taking to be discouraged.

20.—Consumption of alcohol to be Discouraged.

The consumption of alcoholic liquor (except for medicinal purposes and, in the case of non-Muslims, for religious purposes) should be discouraged.

21.—Strengthening Bonds with the Muslim World and Promoting International Peace.

The bonds of unity amongst Muslim countries should be preserved and strengthened, international peace and security should be promoted, goodwill and friendly relations amongst all nations should be fostered,
and the settlement of international disputes by peaceful means should be encouraged.

Part II.—PRINCIPLES OF LAW-MAKING AND OF POLICY

CHAPTER 1

Principles of Law-making

5. —The Principles set out in this Chapter shall be known as the Principles of Law-making and it is the responsibility of each Legislature to ensure that a proposed law is not made by it if the proposed law disregards, violates or is otherwise not in accordance with those Principles,

6. ---(1) The responsibility of deciding whether a proposed law does or does not disregard or violate, or is not otherwise in accordance with, the Principles of Law making is that of the legislature concerned, but the National Assembly, a Provincial Assembly, the President or the Governor of a Province may refer to the Advisory Council of Islamic Ideology for advice any question that arises as to whether a proposed law disregards or violates, or is otherwise not in accordance with, those Principles.

(2) The validity of a law shall not be called in question on the ground that the law disregards, violates or is otherwise not in accordance with the Principles of Law-making.

No law should be repugnant to Islam.

PART X.—ISLAMIC INSTITUTIONS

CHAPTER 1

Advisory Council of Islamic Ideology

199. There shall be an Advisory Council of Islamic Ideology.

200. The Council shall consist of such number of members being not less than five and not more than twelve, as the President may determine.
201. (1) Members of the Council shall be appointed by the President on such terms and conditions as the President may determine.

(2) The President shall, in selecting a person for appointment to the Council, have regard to the person's understanding and appreciation of Islam and of the economic, political, legal and administrative problems of Pakistan.

202. (1) A number of the Council shall, subject to this Article, hold office for a period of three years from the date of his appointment.

(2) If a resolution recommending the removal of a member of the Council from office is passed by a majority of the total number of members of the Council, the President may remove that member from office.

(3) A member of the Council may resign his office by writing under his hand addressed to the President.

203. The President shall appoint one of the members of the Council to be the Chairman of the Council.

204. (1) The functions of the Council shall be—

(a) to make recommendations to the Central Government and the Provincial Governments as to means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam; and

(b) to advise the National Assembly, a Provincial Assembly, the President or a Governor on any question referred to the Council under Article 6, that is to say, a question as to whether a proposed law disregards or violates, or is otherwise not in accordance with, the Principles of Law-making.

(2) When, under Article 6, a question is referred by an Assembly, the President or a Governor, as the case requires, of the period within which the Council expects to be able to furnish that advice.

(3) Where the Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not
be postponed until the advice is furnished, the law may be made before the advice is furnished.

205. The proceedings of the Council shall be regulated by rules of procedure to be made by the Council with the approval of the President.
Appendix D

ISLAMIC PROVISIONS OP THE CONSTITUTION OF 1973

Islamic way of life

31. — (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.

(2) The State shall endeavour, as respects the Muslims of Pakistan,—

(a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;

(b) to promote unity and the observance of the Islamic moral standards; and

(c) to secure the proper organization of zakat, auqaf and mosques.

PART IX

ISLAMIC PROVISIONS

Provisions relating to the Holy Quran and Sunnah

227. — (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam and no law shall be enacted which is repugnant to such Injunctions.

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.
(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

Composition, etc., of Islamic Council.

228. — (1) There shall be constituted within a period ninety days from the commencing day a Council of Islamic Ideology, in this Part referred to as the Islamic Council.

(2) The Islamic Council shall consist of such members, being not less than eight and not more than fifteen as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.

(3) While appointing members of the Islamic Council, the President shall ensure that—

(a) so far as practicable various schools of thought are represented in the Council;

(b) not less than two of the members are persons each of whom is, or has been a judge of the Supreme Court or of a High Court;

(c) not less than four of the members are persons each of whom has been engaged, for a period of not less than fifteen years, in Islamic research or instruction; and

(d) at least one member is a woman.

(4) The President shall appoint one of the members referred to in paragraph (b) of clause (3) to be the Chairman of the Islamic Council.

(5) Subject to clause (6), a member of the Islamic Council shall hold office for a period of three years.

(6) A member may, by writing under his hand addressed to the President, resign his office or may be removed by the President upon the passing of a resolution for his removal by a majority of the total membership of the Islamic Council.
Reference P, v Parliament, etc. to Islamic Council

229. The President or the Governor of a Province may, or if two-fifths of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic Council for advice any question as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

Functions of the Islamic Council

230.—(1) The functions of the Islamic Council shall be—

(a) to make recommendations to Parliament and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah;

(b) to advise a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the Injunctions of Islam;

(c) to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect; and

(d) to compile in a suitable form, for the guidance of Parliament and the Provincial Assemblies such Injunctions of Islam as can be given legislative effect.

(2) When, under Article 229, a question is referred by a House, a Provincial Assembly, the President or a Governor to the Islamic Council, the Council shall, within fifteen days thereof, inform the House, the Assembly, the President or the Governor, as the case may be, of the period within which the Council expects to be able to furnish that advice.

(3) Where a House, a Provincial Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of the Islamic Council is furnished.
Provided that, where a law is referred for advice to the Islamic Council and the Council advises that the law is repugnant to the injunctions of Islam, the House or, as the case may be, the Provincial Assembly, the President or the Governor shall reconsider the law so made.

(4) The Islamic Council shall submit its final report within seven years of its appointment, and shall submit an annual interim report. The report, whether interim or final, shall be laid for discussion before both Houses and each Provincial Assembly within six months of its receipt, and Parliament and the Assembly, after considering the report, shall enact laws in respect thereof within a period of two years of the final report.

President to act on advice etc.

(1) In the exercise of his functions, the President shall act in accordance with the advice of the Cabinet, the Prime Minister, or appropriate Minister;

Provided that the President may require the Cabinet to reconsider such advice, as the case may be either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration or consideration.

(2) Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter of which he is empowered by the Constitution to do so.

(3) If any question arises whether any matter is or is not a matter in respect of which the President is by the Constitution empowered to act in his discretion, the decision of the President in his discretion, shall be final, and the validity of anything done by the President shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(4) The question whether any, and if so what advice was tendered to the President by the Cabinet, the Prime Minister, a Minister or Minister of State shall not be inquired into in, or by, any court, tribunal or other authority.
Whether the President dissolves the National Assembly he shall, in his discretion:

(a) Appoint a date, not later than one hundred days from the date of the dissolution, for the holding of a general election to the Assembly; and

(b) Appoint a care-taker Cabinet.

(6) If, at any time, the President, in his discretion, or on the advice of the Prime Minister, considers that it is desirable that any matter of national importance should be referred to a referendum, the President may cause the matter to be referred to a referendum in the form of a question that is capable of being answered either by “Yes” or “No”.

(7) An Act of Majlis-e-Shoora (Parliament) may lay down the procedure for the holding of a referendum and the compiling and consolidation of the result of a referendum.

59. (1) The Senate shall consist of eighty seven members, of whom:

(a) Fourteen shall be elected by the members of each Provincial Assembly.

(b) Eight shall be elected by the members from the federally administered Tribal Areas in the National Assembly.

(c) Three shall be chosen from the Federal Capital in such manner as the President may, by order, prescribe, and

(d) Five shall be elected by the members of each Provincial Assembly to represent Ulema, technocrats and other professionals.

(2) Election to fill seats in the Senate allocated to each Province shall be held in accordance with the system of proportional representation by means of the single transferable vote.

The Senate shall not be subject to dissolution but the term of its members, who shall retire as follows, shall be six years.

(a) Of the members referred to in paragraphs (a) and (d) of clause (1), six shall retire after the expiration of the first two years, six shall retire after the expiration of the next two years and seven shall retire after the expiration of the next two years:
(b) Of the members referred to in paragraph (h), two shall retire after the expiration of the first two years and three shall retire after the expiration of every two years there after, and

(c) Of the members referred to in paragraph (c), one shall retire after the expiration of every two years.

Provided that the term of office of a person elected or chosen to fill a casual vacancy shall be the unexpired term of the member whose vacancy he had filled.

(4) A casual vacancy in the office of a member referred to in paragraph (d) of clause (1) shall be filled for the remainder of the term of such member by the member of the Provincial Assembly by whom such member had been elected, electing another person under the said paragraph

70. Introduction and passing of Bills:

(1) Bill with respect to any matter in the Federal Legislative List or in the concurrent Legislative List may originate in either House and shall, if it is passed by the House in which it originated, be transmitted to the other House; and if the Bill is passed without amendment, by the other House: also, it shall be presented to the President for assent.

(2) If a Bill transmitted to a House under clause (1) is rejected or is not passed within ninety days of its receipt or is passed with amendment the Bill, at the request of the House in which it originated, shall be considered in a joint sitting.

(3) If a request is made under clause (2), the President shall summon a joint sitting: and, if the Bill is passed in the joint sitting, with or without amendment, by the votes of the majority of the total membership of the two Houses, it shall be presented to the President for assent.

(4) In this Article and the succeeding provisions of the Constitution, "Federal Legislative List" means respectively the Federal Legislative List and the Concurrent Legislative List in the fourth Schedule.

75. President's assent to Bills,

(1) When a Bill is presented to the President for assent, the President shall, within forty-five days,—
(a) assent to the Bill; or

(b) in the case of a Bill other than a Money Bill, return the Bill to the Majlis-e-Shoora (Parliament) with a message requesting that the Bill, or any specified provision thereof, be reconsidered and that any amendment specified in the message be considered.

(2) When the President has returned a Bill to the Majlis-e-Shoora (Parliament), it shall be reconsidered by the Majlis-e-Shoora (Parliament) in joint sitting and, if it is again passed, with or without amendment, by the Majlis-e-Shoora (Parliament), by the votes of the majority of the total membership of two Houses, it shall be again presented to the President and the President shall assent thereto.

(3) When the President has assented to a Bifi, it shall become law and be called an Act of Majlis-e-Shoora (Parliament).

(4) No Act of Majlis-e-Shoora (Parliament) and no provision in any such Act shall be invalid by reason only that some recommendation, previous sanction or consent required by the Constitution was not given if that Act was assented to in accordance with the Constitution.

90. Exercise of executive authority of the Federation: The executive authority of the Federation shall vest in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution.

91. The Cabinet.

(1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions.

(2) The President shall in his discretion appoint from amongst the members of the National Assembly a Prime Minister who, in his opinion, is most likely to command the confidence of the majority of the members of the National Assembly.

(5) The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of the members of the National Assembly.
A. National Security Council:

(1) There shall be a National Security Council to make recommendations relating to the issue of a Proclamation of Emergency under Article 232, security of Pakistan and any other matter of national importance that may be referred to it by the President in consultation with the Prime Minister.

(2) The National Security Council shall consist of the President, the Prime Minister, the Chairman of the Senate, the Chairman Joint Chiefs of Staff Committee, the Chiefs of Staff of the Pakistan Army, the Pakistan Navy and the Pakistan Air Force and the Chief Ministers of the Provinces.

239. Constitution Amendment Bill:

(1) A Bill to amend the Constitution may originate in either House and when the Bill has been passed by the votes of not less than two-thirds of the total membership to the other House it shall be transmitted to the other House.

(2) If the Bill is passed without amendment by the votes not less than two-thirds of the total membership of the House to which it is transmitted under clause (1), it shall be transmitted to all the Provincial Assemblies.

(3) If the Bill is passed with amendment by the votes of not less than two-thirds of the total membership of the House to which it is transmitted under clause (1), it shall be reconsidered by the House in which it had originated; and if the Bill as amended by the former House is passed by the latter by the votes of not less than two-thirds of its total membership it is transmitted to all the Provincial Assemblies.

(4) Subject to clause (5), if the Bill transmitted to the Provincial Assemblies under clause (2) or clause (3) is passed by each such Assembly by a majority of its total membership, it shall be presented to the President for assent.

(5) A Bill to amend the Constitution which would have the effect of altering the limit of a Province shall not be presented to the President for assent unless it has been passed by the Provincial Assembly that in Province by the Votes of not less than two-thirds of its total membership.
(6) No amendment of the Constitution shall be called in question in any court on any ground whatsoever.

(7) For the removal of doubt, it is hereby declared that there is no limitation whatever on the power of the Majlis-e-Shoora (Parliament) to amend by way of addition, modification or repeal any of the provisions of this Constitution.
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