CONSTITUTION-MAKING IN PAKISTAN
(1947 - 1956)

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FOREWORD

The 1956 Constitution of Pakistan deserves more than passing interest from students of constitutional history because it symbolizes the first attempt by a Muslim country to set up an ideological state based on the tenets of Islam. Incidentally, it has achieved uniqueness amongst the world's written constitutions for the longest period of time spent in its framing in contrast with the briefness of its life.

For the alliance-minded group of Filipinos in particular, the study of the subject would assist, it is hoped, in creating a desire to know more about their Pakistani partners considering the fact that amongst the eight member nations of SEATO, Pakistan and the Philippines are the most alike in several respects. Both are sister Asian nations formerly colonized by a foreign English-speaking race; both were led during the struggle for independence by two brilliant and contemporary lawyers (the Quaid-i-Azam was born in 1876 and Manuel L. Quezon in 1878) who died of the same disease within the same decade; both countries regained their freedom without bloodshed after World War II, chose the republican system of government, and grappled with problems common to an agriculturally-based economy, both would have been Muslim were it not for the accidental "discovery" of the Philippines by Ferdinand Magellan in 1521 and the subsequent destruction of the country's 15th century Islamic foundations by Christian Spain's conquistadores. Coincidentally, the familiar markings on military vehicles in Pakistan such as PN for the Pakistan Navy, PAF for the Pakistan Air Force, and PMA for the Pakistan Military Academy would delightfully surprise a Filipino soldier since these also stand for corresponding units in the Armed Forces of the Philippines.

Although constitution-making in Pakistan has aroused the curiosity of Pakistani, British, and American authors, a survey has revealed that the available dissertations were prepared either with politics or political institutions in mind, or to fill the textbook need of undergraduate students. The writer believes that no one so
far has written a detailed account of the topic during the period under study from the historian's point of view.

This research was undertaken with a two-fold purpose. (1) to examine Pakistan's constitutional problems by recounting the events linked with the framing of the 1956 Constitution and at the same time, (2) to analyse the factors that delayed the promulgation of the constitution. Moreover, Pakistan's experience in constitution-making may provide helpful pointers to emerging countries still in the intermediate stage of drafting their fundamental law.

Whenever possible, primary sources were looked into, secondary materials were utilised, and various persons were interviewed to seek clarification on the significant aspects of the subject. While it is true that the era of constitution-making in Pakistan extended to 1962, the scope of this study has been confined within the years 1947-1956 not only because 1956 was the logical year for terminating the first phase but also in view of the fact that the succeeding events were, in the words of President Mohammad Ayub Khan, "too much a part of the present to permit a dispassionate interpretation at this time".

Insular as this study is concerned, no attempt has been made to include legal commentaries or the assurance that these had been dealt with by competent authorities. With knowledge of his country's constitutional background, the writer noted in Pakistan's 1956 Constitution and the Philippines' some similarities and differences which are briefly discussed in the subsequent pages. As planned, pertinent portions of the debates were quoted whenever advisable to convey what Collard referred to as the "authentic flavour" of the speeches but care had been taken to omit unnecessary details. As an aid to the understanding of the constitutional issues involved, a short historical setting is presented in the first two introductory chapters. The major portion traces the history of constitution-making while the concluding chapter appraises the different aspects of the subject with a view to attaining the second objective mentioned earlier.
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as a historian have eliminated diverse errors of fact and inter-
pretation. For other inaccuracies which escaped detection, the
writer admits sole responsibility.

L. A. U.

University of Karachi
March, 1968

1For commentary on the time spent by countries in constitu-
tion-making, see Sir Iver Jennings, *Constitutional Problems in

2Mohammed Akbar Khan, *Friends Not Allies* (Karachi: Oxford
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CHAPTER I

EARLY CONSTITUTIONAL DEVELOPMENT

The word "Pakistan" was coined in 1935 by Chaudhry Rahmat Ali, a Punjabi Muslim who was then an undergraduate student at Cambridge. He derived the word from the initial letters and ending of the provinces having Muslim majorities, viz., P - Punjab, A - Afghan Province (North West Frontier Province), K - Kashmir, S - Sind and TAN - Baluchistan. Literally, it means Land of the Pure because "Pak" means pure and "Stan" is the regular combining form which means place.

Dr. Ishtiaq Husain Qureshi feels that the name "India" more aptly applies to Pakistan than to India because it is derived from "Hind" which is a phonetic variation of Sind, a former province in West Pakistan where the Indus river flows across before emptying into the Arabian Sea. The Muslims were credited for conceiving the name "India" for the entire subcontinent and as Dr. Qureshi puts it, "It is an irony that the Muslims have to struggle against the tyranny of a word that they themselves began to use in the sense in which it was used until 1947."

Basic Facts

Pakistan has an area of 365,529 square miles divided into two provinces which are separated by 1,100 miles of Indian territory. West Pakistan covers an area of 310,403 square miles while East Pakistan contains 55,126 square miles. The total population according to the 1961 census was 93,721,000 with 50,840,000 people living in East Pakistan and 42,881,000 residing in West Pakistan.
The west wing, West Pakistan, lies south of the Himalayas and the Hindukush mountains and is separated from the Union of Soviet Socialist Republics by a few miles of territory. (See map on page viii). It stretches from the Pamirs to the Arabian Sea with Iran on the west, Afghanistan on the north-west, and India on the east and south-east.

East Pakistan, formerly known as East Bengal before the passage of the West Pakistan Establishment Act of 1955, lies along the Bay of Bengal between West Bengal and Burma.

West Pakistan is a land of contrasting scenery - the mountainous regions of the north slope down the plains of the Indus Valley in the south where fertile fields and a barren desert lie adjacent to each other.

On the other hand, East Pakistan is a "green country" due to the heavy annual rainfall and extensive river system (see map on page viii) and therefore, it produces subtropical products.

Villagers in West Pakistan travel by camel while those in East Pakistan do so by boats.7

The Coming of the British to India

Before Vasco da Gama pioneered a sea route to India via the Indian Ocean and around the Cape of Good Hope, commercial contacts had already been established between India and the Western countries through three medieval trade routes that brought spices, precious stones, and textiles to Europe from the East. The first originated from the Chinese coast and the Malay Peninsula, circled the Indian tip, passed through the south coast of Arabia before reaching its terminus at Cairo, Egypt. The second route, mostly by sea from Asia through the Persian Gulf,
ended at Baghdad. The third, a camel caravan trail commenced from the interior of Asia; then, it branched out before reaching the eastern rim of Europe. 8

The fall of Constantinople into the hands of the Turks in 1453 A.D. sealed these routes. As a consequence, steps were taken to find an alternative passage by way of the West. After the discovery of the Cape of Good Hope by Bartholomew Diaz in 1487, a sea voyage to India had left the realm of impossibility. 9 Ten years later, Vasco da Gama departed from Portugal with four small ships and a three-year stock of provisions, spent five months rounding the Cape and the same period to navigate along the east coast of Africa, and cruised across the Indian Ocean before casting anchor at Calicut on May 27, 1498. 10

The surprisingly successful voyage of Vasco da Gama blazed a trail for English ships which increased the extent of England's overseas trade considered the only means of survival for majority of her people. 11 The Englishmen's appetite for expansion was whetted further by their country's victory over the Spanish Armada in 1588. Soon a series of eight voyages to the East was undertaken under Queen Elizabeth's reign with funds from the East India Company. 12

Conditions in India

When the British came, India had already experienced life under the Aryans, Persians, Greeks, and the Muslims. The Muslims set foot for the first time on Sind's desert sands in the eighth century. 13 Under the Mughal emperors who were ruling at the time of the arrival of the British, the Indian subcontinent was controlled by a central government similar to that of the Sultanate. The highest dignitary was the Wazir, who was
the emperor's Prime Minister; next the Mir Bakhshi, Captain-General of the realm; the Sadr, head of the religious department, charities, and emoluments, and the Mir Shamam, in charge of stores, ordinances, and communications. A system of public services was in existence comparable to the modern gazetted officers system. The provincial administration had a governor and officials representing all branches of activities working under him.¹⁴

Mainly agricultural, Mughal India's people earned their living through cultivation of the arable land belonging to the sovereign who collected his share from the produce. Also from the annual yield, artisans such as the weavers and the blacksmiths received their portions.¹⁵ Trade and finance were the monopoly of the Hindus.¹⁶ The products produced by India's industry and handicraft were so finely made that they were eagerly sought in Europe.¹⁷

On the religious aspect, Hinduism maintained the largest following despite its caste system.¹⁸ Islam had the second largest number of converts most probably because millions of outcasts were attracted to it by its playing "a humanitarian and liberating role partly by offering within its fold, complete equality and an opportunity for social, economic, intellectual, and spiritual development".¹⁹

Although some large cities were prosperous, there were times when the peasants suffered because of the recurrence of famine arising from the failure of crops. In 1630, soon after the arrival of the English, a drought of abnormal duration caused the death of hundreds of thousands of people in Surat and Madras so that "the whole country was covered with corpses lying unburied".²⁰
Company Rule

The inspiring reports of English travellers in India encouraged several English adventurers and merchants to pray for a charter "to trade to the East Indies in 1599". On December 31, 1600 the East India Company was given the royal blessing. The petitioners led by the Earl of Cumberland were authorized to "act forth one or more voyages, with convenient number of ships and pinnaces, by way of traffic and merchandize to the East Indies, in the countries and parts of Asia and Africa and to as many of the islands, ports and cities, towns and places, thereabouts, as where trade and traffic may by all likelihood be discovered, established or had; divers of which countries, and many of the islands, cities and ports thereof, have long since been discovered by others of our subjects, albeit not frequented in trade of merchandize".

From the date of their organisation to 1773, the company was left free by the British Parliament to pursue their commercial activities. Every now and then, however, regulations were passed to provide some sort of constitution of the company, to control their dealings with the native princes, and establish a system of local government for their settlements and territories.

On May 31, 1609, James I changed the fifteen year tenure of the company to that of perpetuity subject to revocation if the company's monopoly harmed British interests. Six years later, the company was authorized to issue commissions to their captains to maintain discipline on board the ships. This, contrary to expectations, did not resolve the problem of indiscipline in general. Therefore, on February 4, 1623, James I granted the presidents and chief officers of the company permission
to discipline employees for offenses committed on land.

In 1635, the company's profits were affected and their operations hampered by the establishment of a rival company. Fortunately, the tight situation was eased in 1657 by Oliver Cromwell who merged both companies on a joint stock basis. This arrangement was made permanent by Charles II on April 3, 1661.²⁶ Although the company were already coining money in their Madras settlement, the authority for doing so emanated from the Moghul emperor. Asserting his political authority, the English King gave permission to Bombay to mint money on October 5, 1676.²⁷

Seven years later, Sir Josiah Child conceived of an empire in India. With this idea in mind, he persuaded the King to give the company "full power to declare and make peace and war with any of the heathen nations of Asia, Africa, and America ... and to muster such military forces as seemed requisite...".²⁸ The army were augmented by naval forces and the new King, James II, allowed the company to commission their own admirals and other naval officers.²⁹ Territorial conquest appeared to have become an objective next to trade. The lure of financial gain was still strong as proved by the increase in capital and membership of the company in 1693 after Parliament learned through petitions submitted two years earlier that trade with the East Indies was profitable. The £1,000 share required for one vote was reduced to £500 in 1694 and office holders were rotated.³⁰ In the same year, the British Parliament authorised the formation of a new company to merge with the old London Company. By 1709, the latter ceased to exist.³¹

A judicial system was established as early as 1683 but later on, it had to undergo some modifications to suit the company's needs. Thus, by a charter of 1726, mayor's courts were authorised in Madras, Bombay, and Calcutta.
whose jurisdictions were to be recognised in English courts. Unfortunately, the implementation had to be postponed due to the French conquest of Madras.

On military affairs, the recruitment of sepoys after the war with France necessitated the grant, by the Act of 1754, of further powers to the company to discipline Indian forces wider in scope than those given in 1683. The capture of booty from the battles that the company waged against their enemies evoked more royal grants. A series of charters in 1757 and 1758 recognised "the doctrine that acquisition of territory by conquest necessarily vested not merely the sovereignty but also the property therein in the Crown, while peaceful acquisition gave the Crown the sovereignty only but not proprietary rights".

In their dealings with the native princes, the company received concessions exempting British servants from local jurisdiction; treaty settlements were made by the King and the Mughal rulers; factories and forts were built subject to sharing of customs and revenues between the company and the princes; and criminal jurisdiction was obtained through "judicious bribery" over Mohammedan and Hindu subjects.

At the outset, no elaborate organisation was needed by the company to maintain their trading activities but gradual acquisition of territories and the exercise of steadily increasing powers rendered ineluctable the organisation of an elaborate governmental machinery. Executive government and courts were established in Bombay, Madras, and Calcutta. With the victory of Robert Clive over the Nawab of Bengal in 1757 and the resulting arrangements, real power was transferred to the company. Direct rule of India having been rejected by the Crown, Clive resorted to a system known as dyarchy in which although "the revenues belonged to the company, the territorial jurisdiction must
be exercised through the chiefs of the country acting under him and the presidency in conjunction". 36

The working of dyarchy proved to be a calamity. Many Englishmen sought positions in India primarily to amass wealth as quickly as possible and to return to England to purchase seats in the House of Commons. 37 Clearly, the financial exactions from the people by the English administrators impoverished the province. The problem was aggravated by the desire of the British Parliament to "share in the plunder" by demanding large sums of money for allowing the company to tax Indian territories. Efforts to stop graft and corruption proved fruitless. Keith made the following observation: "The coup de grace to the attempt to carry on these lines was administered by the appalling famine of 1770, when at least a fifth of the population of Bengal then perhaps fifteen millions, perished while some of the Company's servants profited in necessities and the principal deputy added 10 per cent to the assessments to make good at the expense of the living the losses involved in the wholesale depopulation." 38

The failure of the company to curb the abuses in the administration of India resulted in the enactment of the East India Act of 1773 which had been considered as the "first important step in the modern constitutional history of the sub-continent". 39 The act established certain regulations designed to improve the management of the affairs of the East India Company, not only in India but also in Europe. It provided for the election of six directors for one year term, six for two years, six for three years, six for four years, and six yearly thereafter. No director was to be chosen unless he had returned to England and had resided therefor at least two years. Perjury and corrupt acts were made punishable under the laws of Parliament, a supreme court
of judicature was established at Fort William; the Governor-General and Council in India were expressly prohibited from receiving gifts or be interested in any transaction. In other words, all money-making activities of the British agents were to cease once and for all. 40

Parliament did not stop at this point. After realising that a more strict parliamentary control was dictated by the conditions in India, it appointed a select committee to look into the administration of justice. The committee's work culminated in the enactment of the Judicature Act of 1781 which readjusted the judicial arrangements in Bengal and authorised the Governor-General and Council to promulgate regulations for the provincial courts and council. 41

Sometime in 1783, Parliament's desire to recall Governor-General Warren Hastings whose activities had become the subject of impeachment proceedings resulted in the drafting of two rival Indian bills, one by Fox and the other by Pitt. 42 Fox's bill was defeated in the House of Lords while Pitt's became the East India Company Act, 1784 whose long title was as follows: 'An act for the better regulation and management of the affairs of the East India company, and of the British possessions in India; and for establishing a court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies.' The Act established a Board of Control to supervise the affairs of India. 43 Conflict was not long in coming. The Board's power to send British troops to India at the expense of the company was questioned by the company's directors. To end the controversy, the Declaratory Act of 1788 was passed giving the Board supreme authority over the directors. 44 Further changes were made on June 11, 1793
when a new charter act was passed for "continuing in the East India company, for a further term of 20 years, the possession of the British territories in India, together with their exclusive trade, under certain limitations; for establishing further regulations for the government of the said territories, and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said company; and for making provision for the good order and government of the towns of Calcutta, Madras, and Bombay". This Act was unduly lengthened by the inclusion of old laws. Seven years later, regulations were added to govern new territorial possessions in Coromandel and Orissa. By 1807, similar powers to enact regulations were extended to the governors and councils of Madras and Bombay.

The abolition of the company in 1813 as specified in the Act of 1793 was eagerly awaited by some British investors who wanted a share in the trade with India. But the defenders of the company, powerful in British politics, succeeded in pushing through the passage of the Act of 1817 which renewed the company's charter for another twenty years but their efforts to maintain the trade monopoly in the whole of Asia proved futile. China's trade, however, was maintained. In 1823, the Act was amended to allow payment of pensions to members of the armed forces and religious orders in India, and to establish a Court of Judicature in Bombay.

As the twenty-year period of company existence drew to a close, the demand for non-renewal was intensified. At about this time, great changes had occurred in England such as the passage of the Reform Act of 1832, abolition of slavery in 1833, and the production of more goods as a result of the Industrial Revolution. Thus, the passage of the Government of India Act on August 28,
1833 introduced numerous constitutional reforms in India. Henceforth, the company were to be officially known as the East India Company and in lieu of their commercial functions they were given political power on behalf of the Crown. Administration was centralised, laws were to be codified, and offices were opened to Indian subjects. As a concession, the company were given a grace period up to April 30, 1854 to wind up their business. Parliament also put a stop to the "exclusive right of trading with the Dominions of the Emperor of China, and of trading in Tea" which was granted to the company by King George III. A year before the expiration of the term, Parliament decided to allow the company to continue the administration of British territories in India. Consequently, it passed the Government of India Act of 1853 which introduced a system of parliamentary government with an appointed Vice Chairman in the Executive Council and a Court of Directors. The following year additional powers were vested in the Governor-General of India in Council and for the first time the term "India" was defined as the "Territories for the Time being in the Possession and under the Government of the East India Company". The Act of 1854 was the last of its kind giving powers to the East India Company. Three years later, the first great upheaval once referred to as "one of the most terrible crises that ever confronted a statesman" broke out in British India. The holocaust had been designated by Pakistani and Indian writers as the first "War of Independence".

From Company to Crown Rule

Before his departure to assume the Governor-Generalship of India on February 1856, Lord Charles Canning had prophesied the outbreak of the war of independence known
to British writers as the Sepoy Mutiny during a banquet given in his honour. He said that despite his "wish for a peaceful term of office" he could not "forget that in the sky of India, serene as it is, a small cloud may arise, no larger than a man's hand, but which, growing larger and larger may at last threaten us with ruin."  

As a very significant milestone marking the end of an era and the commencement of a new one in the constitutional development of the Indian sub-continent, the War of Independence deserves more than passing treatment. The armed attack was launched on May 10, 1857 by three Sepoy regiments (one cavalry and two infantry) stationed at Meerut that murdered their officers and freed their fellow soldiers who were in jail for refusing to use the cartridges supplied to them. Encountering no opposition, they decided to hike to Delhi to join the native garrison in the capital. Having been informed by Sepoy runners of the mutiny in Meerut, the Delhi contingents massacred their British officers too and every European found in the city. The rebels, fortunately for the British, were prevented from getting hold of the ammunition depot by the British defenders who blew it up together with a thousand native soldiers. Undaunted, the rebels captured the palace and installed Bahadur Shah, the aged king of Delhi as the Mughal Emperor of India. Warned in time, the British units in the Punjab succeeded in disbanding the Sepoy units based in the area but in other places this proved impossible. The rebellion became general and a large number of mutineers started their trek to Delhi to join their comrades and put up a clamour defence.

In the meantime, the combined British force from Agra and Meerut won a battle against a rebel army at Murli Sarni. This gave them the chance to occupy the
ridge overlooking Delhi as a besieger although the situation was discouraging. Actually, they were less than 5,000 against an enemy numbering approximately 30,000 with more coming in. After a two-month wait, the British were reinforced by troops from the North West Frontier Province. On September 14, the British attack commenced with heavy losses on both sides. A week later, Delhi was recaptured by the British, the Mughal Emperor was placed under arrest and his sons were executed. Fierce fighting continued in besieged garrisons, massacres took place, and isolated campaigns were undertaken by the remaining British commanders outside Delhi. With the arrival of reinforcements from England, the reconquest of garrisons occupied by the rebels started and by December a regular campaign dispersed the native troops. A year after the outbreak of the war, fighting was confined to outlying districts furnishing Lord Canning sufficient justification to proclaim on July 8, 1858 the restoration of peace in India. 57

The causes of the uprising had been summarised in one phrase as the "burning indignation" of the Indian people against British rule. Some British historians have taken the view that the cause was purely military. Although it was a fact that this aspect triggered the rebellion, it was also a fact that the disaffection became widespread even among the non-military forces. This development indicated the existence of underlying causes which Lord Canning might have had in mind. The factors that contributed to the general unrest might be enumerated under the headings, political, social and economic, religious, and military.

On the political aspect, all the classes of people whether Muslim or Hindu hated the British policy of annexations which appeared to them as a misuse of law.
Socially and economically, the conquests resulted in displacements of the aristocracy and landowners who lost their estates and therefore, their means of livelihood. On the religious side, the people suspected that the British government had deliberately planned to convert them to Christianity. Traditions such as sati (widow burning) were being abolished and the remarriage of widows was being legalised. The religious feelings of the Hindu and Muslim soldiers were hurt by the introduction of cartridges reported to have been greased by the fat of cows and pigs. The refusal of the troops to use the cartridges precipitated the revolt. No doubt, the insurrection could have been quelled easily were it not for the great disparity in numbers between the British and native soldiers and the faulty distribution of troops which placed some cities and garrisoned wholly under the control of sepoys regiments. Adding to the discontent were the new conditions for enlistment which offended the religious customs of the Hindus. As events showed, a blunder that could have been remedied with comparative ease resulted in a terrible conflagration.58

Early Laws

The tragedy of 1857 put an end to the political powers of the East India Company when the British Parliament passed on August 2 the Government of India Act, 1858 which provided that “territories under the Government of the East India Company [were] to be vested in Her Majesty, and Powers to be exercised in Her Name and the Secretary of State [was] to exercise Powers now exercised by the Company or Board of Control”.59 The transfer of power and the appointment of Viscount Canning as first Viceroy and Governor-General were disseminated to the princes and people of India by a procla-
motion on November 1, 1858 whose salient points were as follows: (1) all British subjects were enjoined to submit themselves to the authority of those duly appointed by the Crown; (2) the services of persons employed in the East India Company in civil or military capacities were confirmed subject to the pleasure of the British ruler and the laws and regulations to be enacted in the future; (3) all treaties and agreements made with the Princely States under the authority of the Company were to be maintained; (4) the "Rights, Dignity, and Honour" of the native Princes were to be respected; (5) the present territories in India were not to be extended and no encroachment on them would be permitted; (6) the freedom to believe in or worship of any religion would not be interfered with; (7) Indians would not be debarred from government employment on account of race or religion; (8) ancient rights, usages, and customs in India would be respected; and (9) clemency would be granted to those who were merely misled into joining the rebellion but the leaders and those who directly took part in the murder of British subjects would be punished. As an encouragement to the people of India, the British sovereign promised that as soon as peace and order was restored, efforts would be exerted to develop the industries of the country, to introduce improvements in utilities and public works, and to administer the Government for the welfare of the masses for in "their prosperity will be Our Strength; in their Contentment Our Security; and in their Gratitude Our best Reward".

An amendment to this Act approved the following year granted power to the Government of India to execute contracts in the name of the Crown.
The assumption by the Crown of the government in India was an important step in the setting up of representative institutions in the sub-continent. The British, after the war of 1857-58, saw perhaps for the first time the need for giving the people a voice in the government through the introduction of the "representative principle into the Indian Constitution" by promulgating the Indian Councils Act of 1861 "to make better provision for the Constitution of the Council of the Governor-General of India; and for the Local Government of the several presidencies and Provinces of India, and for the temporary Government of India in the event of a Vacancy in the office of Governor General". This law authorised the participation of native elements in legislation and restored legislative powers to Bombay, Madras and other provinces. In the same year, the Supreme Courts and Sudder Courts were abolished and High Courts of Judicature were established in the several Presidencies of India.

The Government of India Act of 1861 was substantially amended in 1865 by "enlarging the powers of the Governor-General of India in Council at Meetings for making Laws and Regulations" and by authorising the Governor-General to determine the limits of Presidencies. Certain changes were also undertaken on the Government of India Act of 1858 such as the setting of ten years as the duration of service and granting a pension out of the revenues of India to the members of the Council. In 1870 the Governor-General was empowered to make regulations for certain territories in India without reference to the Legislative Council and to appoint natives of India to certain offices without passing the civil service examinations.

In view of the transfer of government in India to the Crown, essential modifications had to be made to the titles of the reigning monarch. An addition, "Empress of India" was accordingly appended through a royal procla-
mation in 1876. 68

Although there was considerable increase of legislative authority following the passage of the Indian Councils Act of 1861, agitation for further reforms did not subside. Its intensity increased particularly after the birth of the Indian National Congress in 1885. 69 As a form of response, the Indian Councils were increased in size in 1892. Membership in the Supreme Council was not to be less than ten and not more than sixteen while that of the councils in Madras and Bombay was to be not less than eight and not more than twenty. 70 A major concession was given to the Indian National Congress when the Government allowed elections though the members so elected had to be nominated by the government before taking their seats. This was an auspicious beginning for eventual control by the Indians of the country's administration. 71

The Minto-Morley Reforms

The last years of the 19th century and the first ten years of the twentieth belonged to an age of great political restiveness and intense nationalism.

The Hindus in particular were bitter against Lord Curzon who, as Viceroy, maintained that the highest ranks of civil employment should be occupied by Englishmen despite the availability of Indians who had attained a high degree of Western education. It might be remembered that the promotion of education for the natives had been urged by the Act of 1813. 72 In 1905, the breach was widened further by his decision to partition Bengal into two provinces on grounds of public interest and sound administration. 73 To Hindu eyes, the motive behind the division was the creation of a Muslim majority province which could, and actually it did, lead to a rift between the Hindus
and the Muslims. The British looked at the partition as a simple case of improving the administration of the provinces. The population of Bengal at the time was seventy-eight million which was almost twice that of the United Kingdom. Due to the large area, the Lieutenant Governor could not properly administer the districts lying on the eastern bank of the Ganges river. Abuses were committed by the absentee landlords on the hapless peasants residing there and succor could hardly be expected from the inefficient police. Crimes were committed in remote places without being known due to the poor condition of communications. The solution, it was agreed, lay in following precedents such as the partition of the Fort William Presidency and the separation of Assam. Unmindful of the logic behind the decision, the Hindus expressed their resentment through the formation of secret societies, assassinations, press attacks, and boycott of English goods. The deterioration of economic conditions added to the gravity of the situation caused by the great famine of 1896-97 and an outbreak of bubonic plague at Poona offered opportunities to the leaders of extremist movements in discrediting the British rulers.

The Muslims on the other hand, submitted the following demands to Lord Minto, the Viceroy who was then vacationing at Simla, on October 1, 1906 through a deputation headed by His Highness, the Aga Khan III: (1) the electoral system for the elective bodies should be such as to provide for the right of the Muslims to elect their own representatives from special constituencies; (2) keeping in view their historical importance and political position the Muslims should be given more seats than are warranted by their population strength; (3) the Muslims should be given appointments in gazetted and non-gazetted services according to a certain proportion. They should be appoint-
ed as Judges of High Courts and Chief Courts and Members of the Executive Council; (4) some seats should be reserved for Muslims in the Syndicates and Senates of the Universities; (5) aid should be given for the establishment of the Muslim University." The delegation believed that "a system of separate electorates, implicit in the proposals, was the best device the Muslim leaders could suggest for safeguarding Muslim rights and the preservation of the political, social and cultural identity [sic] of the Muslims within the overall framework of representative government for the sub-continent".

Encouraged by the Viceroy's sympathetic reply, the Muslims organised the All-India Muslim League at Dacca on December 30, 1906. Among the resolutions passed were those intended to promote feelings of loyalty to the British Government, to protect and advance the interests of the Muslims, and to prevent the rise of communal hostility.

International developments added fuel to the fire of nationalism burning in the Indian people's breasts. Italy suffered defeat in the hands of Abyssinia in 1896 and Japan emerged victorious in the Russo-Japanese War in 1905. These proved that the Western powers, the British in particular, were not invincible. The situation had, by this time, reached a point where constitutional changes had to be undertaken to win back the estranged feelings of the people.

Although slow to react, the British finally took the first concrete step in the right direction on May 25, 1909 when it started the series of Morley-Minto Reforms with the passage of the Indian Councils Act of 1909 "to amend the Indian Councils Acts, 1861 and 1892 and the Government of India Act, 1833". The Act expanded the membership in the Legislative Councils of the provinces,
to fifty in Madras, Bengal, Bombay, United Provinces and to thirty in Punjab, Burma, and any province which may be constituted later. The Governor-General's Council was also expanded from sixteen to a maximum of sixty members. Separate representation for the Muslims was conceded, the functions of the Legislative Councils were increased, appointment of natives to Executive Councils was given assurance, and a new system of election was inaugurated. 80

Minor pieces of legislation followed the Act of 1909. In 1911, the Government of India Act of 1858 was amended to confirm grants of gratuity to legal personal representatives of a deceased officer made before the act was passed. 81 Corresponding alterations were also made on previous laws as a consequence of the appointment of a separate Governor for Bengal, the constitution of a new province of Bihar and Orissa, and the taking over by the Governor-General in Council of the management of Assam. 92 Three years later, all the enactments relating to the Government of India were consolidated and all acts repealed or may be repealed by the Governor-General in Legislative Council were listed. 83 Amendments to this Act were made on August 23, 1916 to remove doubts as to the validity of certain Indian laws. 84

The Minto-Morley Reforms proved to be a disappoint- ment to the Indians who had their eyes on self-government. The Hindus took umbrage at the grant of separate representation to the Muslims while the latter fumed over the annulment of the partition of Bengal. 85 The reunification of Bengal was announced on December 12, 1911 by the British King at a Coronation Durbar held at Delhi. It was clear that the Hindu agitation started as early as 1906 had been crowned with success. In the same Durbar the proposal of Sir John Jenkins, a member of the Viceroy's
Council, for the transfer of the capital from Calcutta to Delhi was also published as one of the king's "boons" to India.

At the outset, Lord Morley had clearly stated that his reforms had nothing to do with the establishment of parliamentary government. Expecting that much, the Indian people came to realise the insignificance of what was conceded to them. Although there was an official Indian majority in the Imperial Council and non-official majorities in the Provincial Councils, the Governor-General still retained the power of veto. In actual practice, the Councils' hold over the government merely lay in the right to criticise. Even this advisory role was rendered impotent when "their advice was more often disregarded than accepted."

By this time too Mrs. Annie Besant who was President of the Congress at one time had advocated Home Rule for India on two grounds: first, because "Freedom is the birthright of every Nation", and second, "because her [India's] most important interests are now made subservient to the interest of the British Empire without her consent, and her resources are not utilised for her greatest needs". She pointed out that Japan won over Russia, a Chinese Republic arose from the ashes of the Manchu dynasty, and a Russian Republic took over from the Tsar. The existence of self-governing countries across Asia would, in her opinion, strengthen India's desire for independence.

Instead of being alienated by Mrs. Besant's movement, India's leaders remained loyal to Britain during World War I. Doubtless, they did so with the expectation of a reward in the form of responsible government. The princes of India gave assistance to the Crown, major political groups supported the Allies, the Indian army
fought in France, East Africa, Mesopotamia, and Palestine. The Imperial Legislative Council donated a hundred million pounds to the British Government and war loans were raised right in India. It was thought that since Britain fought the war on the issue of liberty she, certainly, could not refuse Indian demands for independence.\footnote{91}

**Montagu-Chelmsford Scheme**

Definite commitments came after the League-Congress rapprochement of 1916 wherein both parties fought for early self-rule. On August 20, 1917, Edwin Montagu, then Secretary of State for India, declared in the House of Commons that the "policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration; and the gradual development of self-governing institutions with a view to the progressive responsible government in India as an integral part of the British Empire". He continued that the Government "have decided that substantial steps in this direction should be taken as soon as possible.\footnote{92}

Soon thereafter, Montagu paid a visit to India to clear the ground for the introduction of responsible government in the country as promised. After five months, he and Chelmsford, the Viceroy, published the "Report on Indian Constitutional Reforms" which recommended a new system of government known as dyarchy. This recommendation repudiated the Congress-League scheme of 1916 outlining a constitutional structure based on provincial autonomy, election of majority members of the legislative councils, election of at least half of the central and provincial governments, and the power of the councils to override the executive's
veto among others. 93

Although both major political parties were not satisfied with the report, the British Government proceeded to implement it through the passage of the Government of India Act, 1919 on December 23rd. An idea of the new system may be gleaned from the following salient features: (1) The system of local government was revised with eight provinces made Governor's Provinces to be governed in relation to reserved subjects by a governor in council, and in relation to transferred subjects by the governor and his ministers; (2) Provincial Legislative Councils were enlarged to as much as 125 and the elected members numbered not less than seventy per cent. Franchise was extended to the poor masses by lowering property qualifications. Communal representation was accorded to all minorities (the report recommended otherwise); (3) Provincial self-government was made more definite through the listing of "reserved" and "transferred" subjects; (4) In finance, subjects were divided between the Centre and the Province and the latter was authorised to raise loans; (5) The Governor retained the veto and could dissolve or extend the term of the legislature; (6) The Legislature was composed of two Chambers - the Council of State and the Legislative Assembly with 140 members who were all directly elected; (7) The Governor General's Executive Council remained responsible to the Secretary of State of India as before and the Governor could enact a measure over the legislature by justifying it as an emergency bill subject only to disapproval by the British Government. 94

Due to the numerous insertions, substitutions, omissions, and repeals made by the Government of India Act, 1919, a consolidation of all provisions in force was published in 1924. 95 The Act was subjected to amendment
in 1933 "relating to the extension of the duration of a Governor's Legislative Council" by making indefinite the continuance of the three-year period prescribed for the council instead of the one year limitation which could be granted only under special circumstances.96

For the successful operation of the Montagu-Chelmsford Reforms as embodied in the Act of 1919 two factors were needed - wholehearted cooperation from the Indian people themselves and sufficient time. The impossibility of obtaining cooperation was indicated by the conditions in India prevailing at the time. The war had intensified the feeling of Indian nationalists for the earliest implementation of self-determination. Coupled with this restiveness was the outbreak of an influenza epidemic that killed six million people.97 On top of these was the passage in the year 1919 of the Rowlatt Act over the vigorous opposition of the Indians belonging to all shades of political opinion. Ostensibly to stop the revolutionary movement in India, the Act empowered Special Courts to try cases in camera if necessary and accept evidence not admissible by laws in force in India. The decisions of the courts were unappealable and provinces were authorised to prescribe the place of residence of suspected persons, to require them to report regularly to the police, to search homes and make arrests without warrant.98 One of the horrible outcomes of the Act's enforcement was the Jallianwala Bagh massacre in the Punjab wherein 379 persons lost their lives and about 1,200 were wounded after General Dyer of the British-Indian army ordered his troops to fire on a public meeting of unarmed Indians.99

Another development of heart-rending significance to the Muslims was the Treaty of Sevres which dismembered Turkey, the seat of the Muslim caliph. Characterised as
"the spoliation of the Ottoman Empire and the Khilafat", the treaty was mainly responsible for the launching of the Khilafat movement encouraging thousands of families to migrate to Afghanistan from India. Not to be outdone, the Hindus under Mohandas Karamchand Gandhi, who was disgusted by British atrocities, implemented a policy of noncooperation at the Calcutta session of the Congress with wholehearted support from the Muslims. Normally moderate, the Congress had turned revolutionary in 1920 when one of their splinter groups resolved to join the Legislatures with intentions of sabotaging their proceedings.

This belligerent attitude was interlocked with the inadequacy of time for the system of dyarchy to sink its roots. The British desire for a long period of transition was supported by conservative-minded Indians but the more enthusiastic members of the Congress, hastily concluding that the time was ripe for full self-government for the provinces, made a bold push to attain swaraj (self-rule) as soon as possible.

The provisions of the Act of 1919 were themselves an impediment to successful operation. It was found impossible to divide the Government, being a single unit, into "water-tight compartments" of Reserved and Transferred subjects. Furthermore, the absence of joint responsibility on the ministers was noticeable because the Governors dealt with the ministers individually instead of collectively. A system of joint deliberations had no opportunity to develop due to the absence of such responsibility. The Governors themselves exercised their veto power as "a normal feature of the administration".

The civil servants were given the chance to bypass the ministers and even defy their views through a provision giving them direct access to the Governors. Looking at
the prevailing conditions, one might be led to the conclusion that the gravest obstacle to the success of the Act of 1919 was the cancer of communalism which stunted the growth of parliamentary democracy in India. 103

The Simon Commission

In accordance with the Act of 1919, a statutory commission was formed with Sir John Simon as chairman and six other British parliamentarians as members. The non-inclusion of an Indian was naturally resented by the natives but it was explained that "apart from the difficulty of representing all Indian parties without making the Commission unmanageably large, it seemed appropriate that a body which owed its origin to an Act of Parliament and was charged with an inquiry on Parliament's behalf should be composed of members of that Parliament."

The British explanation for the activation of the Commission two years before the expiration of the statutory period was to enable Parliament to consider earlier the Indian demand for a revision of the Constitution. To the Indians, however, the motive was clearly political as analysed by an Indian writer who foresaw the great probability of the Labour Party's return to power in the 1929 elections for the British House of Commons. Should this happen, the grant of more reforms to India by a Labour Government known for their sympathetic attitude to the demands of Indian political leaders would jeopardise the "vested interests" of Britain in the sub-continent. The early appointment of the Commission was, therefore, aimed at forestalling the Labour Government. 106

The Commission's arrival in Bombay on February 3, 1928 was greeted by a strike. In Madras, they were confronted by a bloody demonstration resulting in the death of two persons. In Calcutta, they witnessed a fight
between students and the police. The people of Delhi and Lahore staged big demonstrations to show their displeasure.

Before the Simon Commission left England, the Congress had appointed a committee to draft a constitution. This committee submitted a report, designated as the Nehru Report after Motilal Nehru, the chairman, whose recommendations did not satisfy the Muslims who in turn formulated, through the Quaid-i-Azam's (still plain Mohammad Ali Jinnah) guidance, revisions which became known as the "Fourteen Points." The basic principles of this formula are listed below to enable the reader to judge the extent of the Muslim fear against Hindu domination.

1. The form of the future Constitution should be federal with the residuary powers vested in the province.

2. A uniform measure of autonomy shall be granted to all provinces.

3. All legislatures in the country and other elected bodies shall be constituted on the definite principle of adequate and effective representation of minorities in every province without reducing the majority in any province to a minority or even equality.

4. In Central Legislature Muslim representation shall be one third.

5. Representation of communal groups shall continue to be by separate electorates as at present provided; it shall be open to any community, at any time, to abandon its separate electorate in favour of joint electorates.

6. Any territorial re-distribution that might at any time be necessary shall not in any way affect the Muslim majority in the Punjab, Bengal and North-West Frontier Province.
7. Full religious liberty, i.e. liberty of belief, worship and observance, propaganda, association and education shall be guaranteed to all communities.

8. No Bill or Resolution or any part thereof shall be passed in any legislature or any elected body if three-fourths of the members of any community in that particular body oppose such a Bill, Resolution or part thereof on the ground that it would be injurious to the interests of that community, or in the alternative such other method is devised as may be found possible and practicable to deal with such cases.

9. Sind should be separated from the Bombay Presidency.

10. Reforms should be introduced in the N.W.F. Province and Baluchistan on the same footing as in other Provinces.

11. Provision should be made in the Constitution giving Muslims an adequate share along with other Indians in all the services of the State and in Local Self-Government bodies having due regard to the requirements of efficiency.

12. The Constitution should embody adequate safeguards for the protection of Muslim Culture and for the promotion of Muslim Education, Language, Religion, Personal Laws and Muslim Charitable Institutions and for their due share in the grants-in-aid given by the State and Self-governing bodies.

13. No cabinet either Central or Provincial should be formed without there being a proportion of at least one-third Muslim ministers.

14. No change should be made in the Constitution of the Central Legislature except with the concurrence of the States constituting the Indian Federation.

On the other hand, the Nehru Report had recommended residuary powers at the Centre and joint electorates with reservation of seats. A majority might be expected to give in to the minority if confronted by far more pressing
considerations: During these months, however, none of these seemed to exist. In the Calcutta session held in December, 1928, Indian impatience was manifested in Gandhi’s resolution that Congress would adopt the constitution drafted by the Nehru Committee "if it is accepted in its entirety by the British Parliament on or before 31st December, 1929, but in the event of its non-acceptance by the date or its earlier rejection, the Congress will organise a campaign of non-violent non-co-operation by advising the country to refuse taxation and in such other manner as may be decided upon". 109 This was an ultimatum that Lord Irwin could not ignore. He departed in a hurry for London and came back to India with a statement issued on October 31, 1929.

In view of the doubts which have been expressed both in Great Britain and India... I am authorised on behalf of His Majesty’s Government to state clearly that in their judgment, it is implicit in the Declaration of 1917 that the natural issue of India’s Constitutional progress, as there contemplated is the attainment of Dominion Status. 110

Somehow, in a meeting between the Viceroy and Gandhi held on December 23, 1929, the former could not assure the latter that a constitution for the proposed dominion of India would be framed at a Round Table Conference scheduled in London which Lord Irwin had referred to in his announcement. Furthermore, the Viceroy mentioned quite vaguely the objectives of this conference but he believed that it would include a discussion of the Simon Report and proposals regarding the Indian constitutional problem.

This development triggered a resolution at the Lahore session of the Congress declaring complete independence instead of dominion status. To commemorate the occasion, the tricolor flag of India was displayed and it was also decided not only to boycott the Round Table Conference, but also to launch a programme of civil disobedience and non-payment of taxes. 111 On January 2, 1930, the Working Committee
of the Congress wrote a manifesto declaring the 26th of January as Independence Day. 112 Alienated by the Nehru Report and fearful of Hindu dominance, the Muslims inhibited themselves from joining these activities. 113

Having completed their inquiry, the Simon Commission submitted in May 1930 their report containing the following recommendations: (1) the constitutional framework should be federal to enable the states to unite with India, (2) dyarchy must be abolished to give full autonomy to the provinces, (3) the members of the Federal Assembly (new name of the lower house) should be elected by the Provincial Councils instead of by the people while the Council of State (the upper house) should be composed of three members from each province, and (4) no substantial change should be made in the Central Executive to keep it stable while the provinces were undergoing new responsibilities. Commenting on the report, Coupland observed that "the advance towards the goal proclaimed in 1917 was still to be by stages of more or less lengthy duration". 114

As scheduled, the First Round Table Conference was inaugurated in London on November 12, 1930. It was attended by sixteen members from British political parties, sixteen from the Indian States, and fifty-seven from British India. Muhammad Ali Jinnah represented the Muslims together with other prominent Muslim leaders. Paradoxical though it may seem, the largest party in India had no representatives because the Congress leaders, even if they had changed their minds about refusing to attend, had been incarcerated soon after the eruption of the civil disobedience movement.

The conference closed with an accord over the formation of an All-India Federation and acceptance by the British Government of the proposals "for full responsible government in the Provinces and for responsible government
with 'some features of dualism' at a federalised Centre. A Second Round Table Conference was opened on September 7, 1931 after Gandhi and Lord Irwin concluded a pact ending the civil disobedience movement and releasing the political prisoners. Congress appointed Gandhi to represent the party in the conference.

Unlike the First Round Table Conference, the second was a disappointment because Gandhi presented himself as the representative of all India — a presumption that angered the delegates of the Muslims and the Depressed Classes. The Hindu leader also exhibited intransigence in refusing dyarchy and a period of transition. He firmly stood against separate electorates demanded by the Muslims, Depressed Classes, the Indian Christians, the Anglo-Indians, and the British community in India.

Gandhi's return to India became the go-signal for the resumption of the disobedience movement and the consequent arrest of Congress leaders. This fresh outbreak of disorder may have delayed but did not deter the concluding sessions of the Second Round Table Conference. The different committees went on with the preparation of their reports. To solve the communal problem, Prime Minister Ramsay MacDonald announced in August, 1932, a provisional scheme of minority representation popularly termed the "Communal Award" which not only gave weightage to the Muslims but also representation for women, and recognition of the Depressed Classes as a minority community. The new status of the Depressed Classes prodded Gandhi into drafting a plan to increase the number of seats for them and to provide a system of election wherein the voters "would first elect a panel of candidates and from this the members of the legislature would be elected by the general body of Hindu voters including those of the Depressed Classes". Although the system adversely affected the Caste Hindu representation, the
Congress leaders had to give way when Gandhi started a fast. Thus the so-called "Poona Pact" was concluded. 119

With the failure of the two Round Table Conferences to draw the future constitution of India, a third had to be convened by Sir Samuel Hoare, then Secretary of State for India. The Third Round Table Conference commenced on November 17, 1932 and terminated on December 24, 1932 with only forty-six delegates attending. The Opposition Labour Party on the British side and Congress on India's were unrepresented. On the basis of the decisions taken during the three conferences, the complete outline of a constitution was to be indicated in a White Paper being prepared by the British Government for submission to Parliament. The conflict between the Muslims and the Hindus over residuary powers was resolved by empowering the Governor-General to decide whether the control of a subject not expressly allocated will be given to the Centre or to the Provinces or to the concurrent jurisdiction of both.

The Government of India Act, 1935

In March 1933, the White Paper was submitted to Parliament and the following month the joint select committee of both Houses was formed under Lord Linlithgow to examine the proposals and draft the appropriate legislation. With but one major change - that of indirect election of members of both houses in the Central Legislature which was against the White Paper proposal of a direct and unitary method of election for the lower house and the indirect or federal for the upper - the bill was introduced in the House of Commons on December 19, 1934. During the deliberations in the House of Lords, an amendment was moved stipulating direct election for the upper house. Passed by both houses, the bill became the Government of India Act, 1935 after
it received the royal assent on August 2, 120.

This Act had been tagged as an "unusual piece of constitutional legislation" for attempting to put up a constitution for "a sub-continent which has an area of 1,570,000 square miles, a population approaching at that time 340 million, inhabited by numerous races and tribes, speaking a dozen main languages, and distinct from one another in origin, tradition, and manner of life". 121 A lengthy document consisting of 321 sections, 14 parts, and 10 schedules, the Act provided for a federal system of government. 122 Its provincial part was enforced on April 1, 1935 while the federal remained a dead letter due to the failure of the Princely States to accede to the proposed federation. To provide a glimpse into the fundamental structure of the Indian governmental machinery, the Act's salient features are briefly enumerated as follows: (1) the provinces were given provincial autonomy with "safeguards", (2) each province had a Council of Ministers who were responsible to the Legislature, (3) Dyarchy in the provinces was abolished, (4) representation in the legislature followed the provisions of the "Communal Award" and the "Poona Pact", (5) the Federal aspect provided for a bicameral Federal Legislature with the members of the lower house directly elected on the basis of population and the upper house members indirectly elected by the Provincial Legislatures, (6) the representatives from the States to both Houses were appointed by the rulers, (7) Dyarchy was maintained in the Centre. 123

Although the act contained provisions which were unsatisfactory to both the Muslims and the Hindus, it became the interim constitution of both Pakistan and India from the date of their independence up to the promulgation of their respective constitutions. This
piece of legislation was of great significance to Pakistan particularly if it is noted that she had no permanent constitution for almost nine years.

The approval of the Government of India Act of 1935 became the warning signal to Mohammad Ali Jinnah to leave London where he had exiled himself since 1930 to avoid the wranglings of Indian politics and return to India to organise the forces of the Muslim League for the 1937 elections. His sojourn away from his people exacted its toll when the Muslim League performed unimpressively by winning only one hundred eight out of four hundred eighty-two Muslim seats. 124 Fortunately for Jinnah, this defeat sowed the seeds of victory later on for the triumphant Congress Party pursued, as reported by the Pirpur Committee of the Muslim League, such policies as the exclusion of Muslims from the Ministry, the adoption of the anti-Islamic "Bande Mataram" as the national anthem, interference in religious matters and in the work of Muslim subordinate civil servants, mass contact to wear the Muslims away from the Muslim League, subordination of the Urdu language to Hindi, and the use of Hindu names and forms to an educational scheme which, needless to say, offended the Muslims. 125 Despite criticisms of one-sidedness and exaggeration, 126 the Pirpur Report provided grounds for the Muslims to conclude that the "Congress Governments during 1937-1939 tended to look at social and educational problems from a Hindu point of view." 127 This preview of a Muslim future under a Hindu Raj supported Jinnah's contention that the Muslims would suffer in an undivided India. At this stage, however, the hard task of transforming Pakistan from a mere vision to concrete reality still lay ahead.


3. Ihtiqat Hussain Turashi, The Struggle for Pakistan (Karachi: The Inter Services Press Ltd, 1965), pp. 1-2. The writer of this study is inclined to agree with the adoption of "India" as the name of Pakistan and the retention of "Sharote" for India but with a reservation. On a geographical basis, how is Pakistan territory where the Ganges meets the sea to be incorporated in the term "India."

4. Actually, the nearest point is approximately 725 miles while the distance between Karachi and Deccan is 1,175 miles. See I. A. Smith, Pakistan (London: Ernest Benn Ltd., 1963), p. 33.


7. Ibid., p. 33.


25. Ibid., p. 79.
26. Ibid., p. 80.
27. Ibid., p. 94. Seabrook was acquired by the British as part of the dowry of Catherine of Braganza, who married King Charles II in 1662. In 1665, King Charles leased the seaport town to the East India Company at ten pounds a year. Unprofitable at the outset, Seabrook became the chief settlement of the western coast of India in 1687. See Roberts, pp. cit., p. 41.
28. Ibid.
29. Ibid., p. 11.
30. Ibid., pp. 13-14.
31. Ibid., pp. 15-16.
32. Ibid., p. 19.
33. Ibid., p. 21.
34. Ibid., pp. 22-25.
35. Ibid., pp. 31-92.
36. Ibid., p. 55. At the beginning of his career in India, Robert Thirza was just a young writer in the East India Company. To him goes the credit for having established a strong English foothold in Indian soil. See Roberts, op. cit., p. 161.

37. A former prime minister of Pakistan described the early days of the East India Company as an era wherein the company officials "behaved more like Indian robbers than honest traders." The quotation may be cited, "Are there lawful robbers?" See Firoze Khan Noon, From Moghul to British (Lahore: n.p., 1956), p. 262.


39. Pakistan Historical Record, op. cit., p. 327.


41. Keith, op. cit., p. 93.

42. Thompson and Corlett, op. cit., p. 146. Distress was charged on twenty counts; the most important of which were the violation of treaties made with the Rakesh Dui, unnecessary interference in the internal affairs, compulsion put upon him to maintain an excessive number of troops, with oppression in the case of the Joes of Bengal, with the arbitrary settlement of royal revenues of Bengal, the removal of the treasury from Murshidabad to Calcutta, with fraudulent dealings in contracts, and the compel-

43. "The East India Company Act, 1784," Constitutional Documents, op. cit., p. 279. The Board of Control was the begin-

44. Keith, op. cit., p. 100.


46. "The Government of India Act, 1858," Ibid., pp. 216-

47. Keith, op. cit., p. 126.

48. Ibid., p. 127. See also J. C. Jewell-Price, A History of India (London: Thomas Nelson and Sons, Ltd., 1935), pp. 496-
50. Ibid., p. 248. The former was the United Company of Merchants of England Trading to the East Indies.
60. "A Brief History of India," ibid., pp. 325-331.
64. "East India High Court of Judicature Act, 1861," ibid., pp. 390-392.
66. "The Government of India Act, 1869," ibid., pp. 401-
68. "Queen Victoria's Proclamation, 1876," ibid., pp. 466-488.
71. Coupland, op. cit., p. 24. See also Keith, op. cit., p. 177.
74. Roberts, op. cit., p. 549.
75. Keith (abridged), op. cit., p. 264.
77. Ibid., pp. 39-50.
78. Valentine Chiria, India (New York: Charles Scribner's Sonz, 1926), p. 117. See also Coupland, op. cit., p. 151.
79. "The Indian Councils Act, 1892," Constitutional Documents, pp. cit., pp. 113-141. The act was jointly sponsored by Mr. Forster, Secretary of State for India and Lord Minto, the Viceroy of India, hence, the term 'meutle-kinds of states.'
86. Qureshi, The Struggle for Pakistan, op. cit., pp. 35-36.
87. Ibid., p. 53. See also Coupland, op. cit., p. 47.
89. Philips, op. cit., p. 205.
90. Ibid., pp. 202-203.
93. Qureshi, The Struggle for Pakistan, op. cit., p. 47.
100. Husain, op. cit., Vol. III, p. 195. The attitude of the Muslims was best exemplified by the pithily prophetic remark uttered by Sayyid Abul, an Indian educator of India: "Then there were many Muslim kingdoms we did not feel so much grief when one of them was destroyed; now we are left to feel the loss even of a small one. It is said in the Quran that will be a great grief, for she is the last of the great powers left to Indians. We are afraid that we shall become like the Jews, a people without a country of our own." Quoted in Qureshi, The Making of Pakistan.
102. Coupland, loc. cit.
108. Husain, op. cit., Vol. III, pp. 283, 293-301. See

110. Ibid., p. 321.
111. Ibid., pp. 325-326.
112. Ibid., pp. 350-351.
115. Coupland, ibid., pp. 113-122.
118. Ibid., p. 138. See also the discussion in K. A. Ahmad, Pakistan: A Partition of India (London: Macmillan and Company, 1947), pp. 97-119.
119. Coupland, loc. cit.
123. Pakistan Historical Board, op. cit., pp. 397-399.
127. Tinker, op. cit., p. 146.
CHAPTER II

LATER CONSTITUTIONAL DEVELOPMENT

The fundamental objection of the Muslims to the Government of India Act of 1935 was the danger that the Hindus, being the majority, might reduce the Muslims to a helpless minority in undivided India. To forestall this possibility, they rallied around their great leader, Muhammad Ali Jinnah, to work for the substitution of the Act or the partition of India into two sovereign states in one of which the Muslims would have their own homeland free from the Hindu Raj. 1

Early Ideas for the Formation of Pakistan

The establishment of independent states in India had been advocated as early as the 19th century by several writers, politicians, and religious leaders. The earliest prediction was aired on June 24, 1858 by John Bright, a member of the British Parliament, who foresaw Britain's withdrawal from India and the necessity of forming five or six independent presidencies there. 2 Bright's vagueness about the ideology and form of government of these presidencies was partly remedied by Jamalud-Din Afghani from Afghanistan who envisioned a Muslim republic consisting of the "present Central Asian Socialist Republics, Afghanistan, and the Muslim majority areas in the north-west of the sub-continent". 3 In his point of view, a part of West Pakistan would have to be sliced off. The first Indian Muslim endowed with uncanny prescience about the future of India was Syed Ahmed Khan who foretold a fight between the Hindus and the Muslims after British withdrawal from India because it would be impossible for both to "sit on the same throne and remain equal in power". 4 In
preparation for the birth of a Muslim country, he estab-
lished in May, 1875 a college for Muslims which later
became Aligarh University and founded the Mohammedan
Educational Congress (later called Conference) in December,
1886 as a forum for discussing educational matters. 5

A more thorough approach to the Muslim-Hindu problem
in India was presented by a British writer, Wilfred S.
Blunt, who after visiting India and interviewing the
people, came to the conclusion that a unitary system there
was inconceivable. In December, 1883, he suggested that
the northern provinces should be placed under a Muslim
government while the southern portion should be under a
Hindu. 6 While Blunt still had the British Raj in mind, a
Muslim journalist and novelist, Abd al-Halim Shurur,
advocated total partition of India as the only solution
to the Hindu-Muslim question. 7 The 19th century campaign
for Pakistan was closed by a great literary figure of
India, Altaf Hussain, poetically surnamed Hali, who took
for granted in his essays that the Muslims were a separate
nation. 8

The ideal of Pakistan started assuming a tangible
form at the turn of the century. In 1912, Syed Ameer Ali,
-a Muslim scholar and jurist, suggested the severance of
Muslim relationship with the Congress because "any attempt
to drive the smaller [Muslim] into the bicker [Hindu] camp
will only lead to discord and strife". 9

Having been convinced by the idea of partition,
several thinkers initiated the drawing up of plans for
that purpose. Mention may be made of the Khairi brothers
(1917), Muhammad Abdul Qadir Bilgrami (1920), Lovat Fraser
(World War I period), and Lala Lajpat Rai, a Hindu (1924).
Another Hindu, Savarkar, who was at one time President of a
Hindu political party, discarded the concept of an Indian
nation by referring to the Hindu and Muslim nations. 10
The thread of partition was taken up by Sardar Muhammad Gul Khan in 1923, by Aga Khan III in 1928, and by Sir Muhammad Iqbal in 1930 who in his presidential address to the Muslim League annual session at Allahabad remarked:

I would like to see the Panjab, North-West Frontier Province, Sind and Baluchistan amalgamated into a single State. Self-government within the British empire, the formation of a consolidated North-West Indian Muslim State appears to me to be the final destiny of the Muslims, at least of North-West India. 11

As mentioned in the previous chapter, the work of christening this state fell to Chaudhry Rahmat Ali who also founded the Pakistan National Movement in 1933. He claimed to have suggested a Muslim state in North India as early as 1915. 12

Later Ideas

Seemingly remote at first, the ideal came closer to reality in October, 1938 during the session of the Sind Provincial Muslim League Conference at Karachi when Mohammad Ali Jinnah guided the passage of a resolution which recommended the division of India into two federations - one Muslim and the other non-Muslim to insure peace and uninterrupted cultural development of the two nations. The Conference requested the All-India Muslim League to devise a scheme to implement the division. 13

As Chairman of the Foreign Committee of the Muslim League, Sir Abdullah Haroon formed a Constitution Sub-Committee to consider various schemes. As a result of the sub-committee's invitation, Dr. Latif, one of the sub-committee members presented a plan which divided India into four cultural zones for the Muslims and at least eleven for the Hindus while the Indian states would be distributed in the zones according to their affinities.
Each zone would have its government and would be composed of more than one unit but all would constitute an All-India Federation. The Muslim cultural zones would be (1) the North-West Block consisting of Sind, Baluchistan, the Punjab, North-West Frontier Province, and the Indian States of Khairpur and Bahawalpur; (2) the North-East Block covering the provinces of Eastern Bengal and Assam; (3) the Delhi-Lucknow Block consolidating areas in the United Provinces and Bihar, and (4) the Deccan Block uniting the scattered areas in the South.  

Choudhry Khaliquzzaman and Abdur Rahman Siddiqui offered another blue print to the British officials in London in March, 1939 to separate the Muslim areas in the north-western and eastern parts from the rest of India as an alternative to the British intention to give self-government to India as a federation. In the same year, Kifayat Ali, a Pakistani writer who signed himself "A Punjabi" suggested the splitting up of India into various countries and joining them together into a Confederacy of India. The regions to be formed would be the (1) Indus Regions Federation; (2) Hindu India Federation; (3) Rajasthan Federation; (4) Deccan States' Federation; and (5) Bengal Federation. The first and last federations, it might be noted, cover what is now Pakistan. The author abstained from calling the Muslim cultural zones "Pakistan" because he believed that "ultimately our destiny lies within India and not out of it" and to him, the term has "gathered round itself some unwholesome and alien associations". What these alien associations pertained to, he did not elucidate.

In 1939, a pamphlet was circulated by Sir Sikander Hayat Khan embodying the establishment of an All-India Federation composed of the following seven zones: Zone One -
Assam, Bengal and the Bengal States together with Sikkim; Zone Two - Bihar and Orissa; Zone Three - United Provinces and U.P. States; Zone Four - Madras and Travancore to include the Madras States and Coorg; Zone Five - Bombay, Hyderabad, Western India States, Bombay States, Mysore, and Central Provinces States; Zone Six - Rajputana States and neighboring States; Zone Seven - Punjab, Sind, NWFP, Kashmir, and including the neighboring States. This division was disapproved by the Muslim League Working Committee in 1940.17

The growing interest in partition schemes invaded the non-political spheres. In the field of education, two professors of the Aligarh University designed a map to parcel out India into three sovereign states: (1) North-West India - Punjab, NWFP, Sind, and Baluchistan; (2) Bengal - Bengal and the adjacent district of Purnea (Bihar) and Sylhet but excluding Howrah, Midnapore, and Darjeeling districts; and (3) Hindustan - the rest of India.18 In religious circles, Muhammad Abu-l-Ala Maududi expounded an international federation for India wherein the nations would enjoy sovereignty and cultural autonomy adopting the plan envisaged by Dr. Latif. Should it be unfeasible, the Hindus and the Muslims would have to form national federal states with a confederacy having powers over defence, communications, and trade and commerce.19

After a thorough examination of all these proposals, the Constitution Sub-Committee prepared a draft report which was published in March, 1941 by an Indian newspaper without authority from the Muslim League. Probably anxious to avoid evil consequences that would result from such premature publication, the Quaid-i-Azam denied that such a sub-committee was ever appointed by the Muslim League.20
Conditions Favouring Separatist Tendencies

In the previous chapter, it was shown that the Congress attitude created apprehensions in the Muslims that they would be relegated to the status of a perpetual minority in a united India. This was an important factor in the development of Muslim separatist tendencies as indicated by the various schemes described above. Another factor which exerted strong influence on the separatist movement was the nature of the Islamic and Hindu religions. Despite considerable interaction, "no rapprochement in respect of popular or national traditions, and those social and religious ideas, beliefs, practices and institutions which touch the deeper chord of life and give it a distinctive form, tone, and vigour" was developed between the two communities. The Hindus and the Muslims lived in water-tight compartments, so to speak, without social intercourse by way of inter-dining or inter-marriage. It was said that "they [Muslims and Hindus] preserved their even tenor, resembling the two banks of a river, separated by the stream that flows between them. Attempts were made to build a bridge connecting the two, but ended in failure. Even if there were any temporary bridge, it collapsed in no time". 21

The Hindus have claimed that for years, the Muslims and the Hindus had existed side by side with but occasional pickings and riots. This was true in the 19th century but not in the 20th where the feelings of separatism reached fever pitch. This may be explained by the fact that earlier the two communities had nothing political to quarrel about. In the early 1900's, the British promise of self-government brought about the question as to who would inherit the mantle of power. The political situation produced two claimants - the Hindu Congress and the Muslim League. 22
Separatism was also accentuated by the economic dominance of the Hindus who controlled a large part of business and held an overwhelming majority of the posts in the administration.\footnote{23}

\[\text{Pakistan Resolution of 1940}\]

Of course, the Muslims would always remember that they were the rulers of India during the Mughul era and the Hindus, their subjects. In the 20th century the possibility of Muslim ascendancy was remote, hence all the schemes brought forward had recommended a weak centre which would, in all probability, be Hindu-controlled. It is significant to note that among those that recommended a separate Muslim federation not one plan had come up with a federation consisting of West Pakistan and East Pakistan.\footnote{24}

Such a project was soon to materialise during the 27th Annual Session of the All-India Muslim League scheduled in Lahore on the 22nd, 23rd, and 24th of March, 1940. Momentous decisions were eagerly awaited especially after the defeat of the Muslim League in the 1937 elections. In an effort to destroy the opposition party, the Congress had offered ministerial posts to Muslim Leagueers on condition that they would join Congress ranks. For the ambitious Muslim Leaguer, this was very tempting, indeed.\footnote{25} Also, up to this time, the Muslim League had not adopted any of the separatist schemes mentioned earlier.\footnote{26} However, the Quaid-i-Azam had given an inkling of the choice when he said:

The problem in India is not that of an inter-communal but manifestly of an international one and it must be treated as such. So long as this basis and fundamental truth is not realized, any constitution that may be built will result in disaster and will prove destructive and harmful not only to the Muslims, but also to the British and Hindus. If the British Government are really in earnest and sincere
... to secure peace and happiness for the people of this sub-continent, the only course open to them is to allow the major nations to have separate homelands by dividing India into autonomous national states. 27

Two nights before the Lahore Resolution was to be presented, the Subjects Committee of the All-India Muslim League discussed the draft. No decision having been reached, the conference was continued the next day. 28 On the second day of the session, March 23rd, immediately after the annual report was read, Fazlul Huq, then Premier of Bengal, moved the resolution which embodied the following paragraph:

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 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 constituent units shall be autonomous and sovereign.

Thus, for the first time, the Muslim League hammered into shape their ultimate objective of a Muslim state separate from India.

Widely publicized as the Pakistan Resolution, the above statement was vehemently opposed by the Congress. Their president, Maulana Abul Kalam Azad who was himself a Muslim, came to the conclusion that the Pakistan scheme was "harshful not only for India as a whole but for Muslims in particular" and added that such a division... is un-Islamic and a repudiation of the very spirit of Islam. 30 Hindu newspapers were no less indignant. British papers, on the other hand, were divided in their stand depending upon the sympathy of the writers. 31 Before the
resolution was passed, the Muslim League president, Mohammad Ali Jinnah, had been warned of the "economic dangers, frontier problems, military and administrative difficulties" but the Quaid-i-Azam's mind had already been fixed on the goal. Needless to say, Gandhi who was the foremost exponent of Indian unity stood against the creation of Pakistan and in his philosophical way, remarked that "... Pakistan is such an untruth that it cannot stand".

After the approval of the resolution, the League realised the need to make it a part of the League's constitution. This was met the following year at the League's annual session at Madras after a resolution was passed to amend the aims and objects of the All-India Muslim League by including the Lahore Resolution. An attempt to clarify the meaning of the resolution proved fruitful when the word "together" was inserted after the phrase "shall be grouped" to imply a federation or similar set-up.

In the meantime, world politics dragged Britain into a war against Germany in September, 1939. Without ascertaining the feelings of the Indian parties, she committed Indian troops and resources to the war, an act which was deeply resented by the leaders of the political parties who considered the war of no direct interest to India. Of course, the British Government were legally within their rights since they were still rulers of India but they failed to recognise the danger of employing Indians whose whole-hearted cooperation was in doubt. In a belligerent mood, Congress directed all their ministers to resign in October, 1939. The Muslim League took their time and later decided to table a demand that India's future constitution should be examined and reconsidered de novo after the termination.
of hostilities. Moreover, they asked for a guarantee that a constitution would not be enacted without the approval of the Muslims and the Hindus. The Viceroy replied that the demands would be considered which must have satisfied the Muslims. The Muslim League welcomed the Congress resignation as a "Day of Deliverance". 36

In an effort to secure greater contributions from India in the war, the Viceroy, Lord Linlithgow, divulged on August 8, 1940, a statement of British Government policy which promised dominion status for India, expansion of the Governor-General's Council to include representatives from political parties, and establishment of a War Advisory Council with Indian membership. He emphasised the fact that the views of the minorities would be considered fully in revising the Act of 1935. But the most significant in his policy speech was his declaration that the British Government "will most readily assent to the setting up after the conclusion of the war with the least possible delay of a body representative of the principal elements in India's national life in order to advise the framework of the new constitution...." 37 Although elated on being assured of the adoption of a constitution only with their consent, the Muslim League found the Muslim representation promised in the offer "inadequate". 38 Registering violent reaction against it, the Congress led by Gandhi initiated a civil disobedience campaign which sent thousands of Congress members including Gandhi himself to jail. 39 To pacify the Indians, the Viceroy expanded the membership of his Executive Council from seven to twelve and bestowed a clear majority to Indians by increasing their membership from three to eight. As self-protection, however, he retained British control over the ministries of Defence, Home, and Finance. In December, 1941, he released Congress
leaders who were arrested. 40

Cripps' Offer

In Europe, German armies were winning on all fronts and Russia was being attacked. Then on December 7, 1941, Japan bombed the United States' installations at Pearl Harbour thus bringing the war to the Pacific Ocean. The entry of Japan alerted Britain to the danger in India, particularly after Japanese troops had occupied Malaya and Rangoon, Burma in March, 1942. Once more, the British attempted to secure the cooperation of India 41 by sending Sir Stafford Cripps, Leader of the House of Commons to India. Being a friend of Pandit Nehru, Cripps was considered the best envoy to win Indian collaboration for the greatly pressed Allies.

In this venture, Britain was aided by two Allied countries which manifested anxiety over Japanese advance in Asia. Visiting India in early 1942, China's Chiang Kai Shek appealed to Indian prominent leaders for help in the prosecution of the war. President Franklin Delano Roosevelt of the United States felt too that Indian cooperation could best be secured through British modification of her policy towards India. 42 He could point out with pride that his country had won the loyalty of her colony, the Philippines, by promising complete independence on July 4, 1946.

Arriving on March 22, 1942, Cripps lost no time in presenting the following draft proposals to the Indian leaders: (1) the establishment of a dominion; (2) a Constituent Assembly would be set up after the termination of hostilities and the Indian States would be allowed to participate in constitution-making; (3) the Constituent Assembly would be composed of members elected by the
provincial legislatures and would number approximately one-tenth of the total electorate; the Indian States would be allowed to appoint representatives to the Assembly; (4) an interim settlement would be entered into in which Britain would retain the responsibility of defending India and the Government of India would take the responsibility of organising the resources and obtaining the people's cooperation.43

A great advance compared to the offer made in August, 1940, Cripps's proposals had the most likelihood of being accepted by the Congress, the Muslim League, and the Indian States. Despite the liberality of the terms, Congress found the following grounds for rejection: (1) the principle of self-determination should not be restricted, (2) ignoring the wishes of the people in the Indian States was a "negation of democracy", (3) non-accession for a province was a blow to Indian unity, (4) Congress preferred to handle the ministry of Defence, and (5) India's government should be allowed to function freely and independently during the war.44

The Muslim League pushed aside the terms on different grounds: (1) the League felt that it was unjust and impossible to compel them to constitute one Indian Union which appeared to be the objective; (2) the League believed in partition, hence, it would be unfair to force the Muslims to enter a constituent-making body for the creation of an Indian Union; (3) a separate electorate for the Muslim representatives to the Constituent Assembly was not provided for; true Muslim representation was unattainable by the system of election proposed and bare majority decisions were unfair to the Muslims; (4) the League wanted an infinite proposal with respect to the interim arrangement; and (5) the League believed that any plan would be unacceptable unless the Lahore Resolution of 1940 was
"unequivocally accepted".45

The rest of the minorities fretted over the absence of sufficient safeguards for their security.

In view of these oppositions, Sir Stafford Cripps was forced to return to England on April 12, 1942 without accomplishing his mission.

Meanwhile, Japan continued her advance with unabated speed to the consternation of the defending forces. With the Indian conquest fast becoming a reality, Gandhi assumed that if Britain would be obliged to leave India, the Japanese would not invade the Indian sub-continent. In line with this thinking, the Congress passed a resolution on August 8, 1942 which contained the following declaration:

The Committee [All-India Congress Committee]... have made it clear that the immediate ending of the British rule in India is an urgent necessity both for the sake of India and for the success of the cause of the United Nations. The continuation of that rule is degrading and enfeebling India and making her progressively less capable of defending herself and of contributing to the cause of world freedom.46

After demanding the independence of India, the Committee resolved to sanction the "starting of a mass struggle on non-violent lines on the widest possible scale...".47

The following morning, the British authorities arrested Gandhi and the rest of the Congress leaders. Congress was declared an illegal association throughout India. Instead of halting the rebellion, the arrests served to intensify anti-British activities. In certain parts of the country workers and labourers of factories and mills staged hartals48 and demonstrations, the masses set railway stations on fire, removed rail tracks, cut telegraph wires, looted post offices, and destroyed airfields. Fighting between the demonstrators and the police
resulted in the death of hundreds of persons.\textsuperscript{49}

Viewing this "Quit India" resolution as "legally high treason," the Muslim League advised their followers not to participate because it was directed "not only to coerce the British Government into handing over power to Hindu oligarchy and thus disabling the British from carrying out their moral obligations and pledges even to the Muslims and other sections of the people of India from time to time, but also to force the Muslims to submit and surrender to the Congress terms and dictation".\textsuperscript{50}

Lasting three months, the "Quit India" movement was unable to seize power due to the Congress leaders' imprisonment and the successful campaign of the police in suppressing the revolt. Blamed for the uprising, Gandhi tried to prove his innocence by fasting for twenty-one days. Surviving the ordeal, he fell ill in April, 1944 and the Viceroy, then Lord Wavell, released him the following month.\textsuperscript{51}

\textbf{Attempts to reconcile Congress and the Muslim League}

Not all the prominent Congress leaders, however, favoured the Congress "Quit India" movement of 1942. The most courageous among them and a close friend of the Mahatma himself was Shakravarti Rajagopalachari.\textsuperscript{52} Popularly known as C.R., he was a member of the Congress Working Committee for more than two decades, a former prime minister of Madras, and later to become the first Indian governor-general of India after independence in 1947.\textsuperscript{53} Although he expressed antipathy to the Lahore Resolution, as firmly believed that unity among the people of India was a \textit{sine qua non} to the establishment of national administration. In his opinion, a way to achieve this harmony was the recognition of the Muslim League's
separatist claim. On May 2, 1942, he moved a resolution based on this premise during the session of the All-India Congress Committee, but Gandhi's sympathisers criticised him. Threatened with disciplinary action for insisting on campaigning against the unrealistic "Quit India" movement, he could not perceive of any alternative except to resign his membership in Congress.54

Still convinced of the soundness of his thesis, he prepared in 1943 a formula to resolve Muslim-Hindu differences. While still in prison, Gandhi saw the feasibility of the plan and gave it his blessings. Briefly, the scheme set as its objective the Muslim League's endorsement of India's independence and cooperation with the Congress in the establishment of an interim government during the transition period through the following terms:

(1) After the termination of the war, a commission shall be appointed for demarcating contiguous districts in the north-west and east of India, wherein the Muslim population is in absolute majority. In the areas thus demarcated, a plebiscite of all the inhabitants held on the basis of adult suffrage or other practicable franchise shall ultimately decide the issue of separation from Hindustan. If the majority decide in favour of forming a sovereign state separate from Hindustan, such decision shall be given effect to, without prejudice to the right of districts on the border to choose to join either state.

(2) It will be open to all parties to advocate their points of view before the plebiscite is held.

(3) In the event of separation, mutual agreements shall be entered into for safeguarding defence, commerce and communications and for other essential purposes.

(4) Any transfer of population shall only be on an absolutely voluntary basis.

(5) These terms shall be binding only in case of transfer by Britain of full power and responsibility for the governance of India.55

After a perusal of the terms, Jinnah decided to pass them on to the League's Working Committee for discussion.
C.R. opined that such a discussion would come to naught without Jinnah's prior support. To secure such a commitment from the Muslim League leader, he arranged a series of Gandhi-Jinnah talks. These conferences were doomed even before they were started because Jinnah had already made up his mind against it as early as July 30, 1944 when he pointed to the objectionable aspects of the formula:

First, take the preamble basis of the terms which if accepted will completely bind the Muslim League, whereas the Mahatma may withdraw his blessings as he is not speaking, according to C. Rajagopalachari, with the authority of the Congress or in his representative capacity whatever that may mean. Then we come to the first clause, "subject to terms set out below as regards the constitution"; I do not see "the constitution" in this formula. Which constitution does he refer to? Then comes the demand for our endorsing the Indian demand for independence. It implies that we are against the independence of the peoples of India, and both Mr. Gandhi and C. Rajagopalachari know that it is an uncalled-for insinuation to make.

Next comes the condition that we will co-operate with the Congress in the formation of a provisional interim government for the transitional period, thereby arrogating to the Congress a dominant and superior position and requiring our co-operation as a subordinate body with this leading organisation. As to the kind of provisional interim government for the transitional period that is to be formed, no indication is given as to its form, character, personnel, its powers, etc.

After the termination of the war, a commission shall be appointed for demarcating contiguous districts in north-west and east of India, and a plebiscite of all the inhabitants would be held district-wise where Muslim population is in absolute majority. It is not stated who will appoint this Commission, what will be its personnel and its powers and who will enforce its findings. Really, how can C. Rajagopalachari stand unembarrassed and make a public statement that this formula concedes all that the Muslim League's resolution of March 1940 demanded?

After enumerating several more objections, the Jbid-i-Azam concluded:

As regards the merits of the proposal, Mr. Gandhi is offering a shadow and a husk, a maimed, mutilated,
and moth-eaten Pakistan, and thus trying to pass off as having not our Pakistan scheme and the Muslim demand. 57

After several weeks of correspondence between Jinnah and Gandhi, the areas of conflict crystallized as follows: (1) the formula called for the taking up of the question of partition after British withdrawal while Jinnah wanted division before that event; (2) the suggestion that a
constituted interim government would receive power from the British, would hold a plebiscite, and would implement the decision was opposed by Jinnah because the interim government, dominated by a Hindu majority, would stifle the Muslims who would be in the minority. In the face of these irreconcilable points of view, the talks ended in failure. 58

Najjopalachari's endeavour to reconcile the Muslim-Hindu discord was pursued further by Bhashabhai Desai, Leader of the Congress Party in the Central Legislative Assembly. At the end of the autumn session of the Assembly in 1945, Desai and Liaquat Ali Khan, a prominent leader of the Muslim League, discussed the role of India in the war against Japan and the difficulties that the people of India would encounter should India become the main base of Allied operations. In the exchange of views, Desai wanted to know the Muslim League reaction towards the implementation of a temporary arrangement in the Governor's Executive Council which would strengthen Indian capability to solve future problems. Liaquat Ali Khan answered that the Muslim League was duty-bound to give such proposals their "careful consideration". 59

In January, 1945, Desai handed to Liaquat Ali Khan a copy of the plan to form an interim government at the centre. After commenting that it could be made a basis for discussion, Liaquat Ali Khan emphasised the fact that
he was speaking neither on behalf of the Muslim League nor of anyone else. This remark attained great significance when Jinnah later repudiated this so-called Desai-Dinquit Pact. The conditions of this pact appeared favourable to the Muslims since they provided for an interim government to be composed of the Commander-in-Chief; Scheduled Castes, Sikhs, and other minority representatives; and an equal number of persons from the League and the Congress in the Central Executive. The Government of India Act of 1935 would be made the constitutional basis but no controversial measure would be passed by resorting to the reserve powers of the Governor-General or Viceroy. Before the interim government was to be formed, all the members of the Congress Working Committee were to be released. These proposals were to be submitted after the Governor-General had suggested the formation of an interim government. The last step would be the formation of a coalition government in the provinces.

On hearing of the plan, the Governor-General doubted the possibility of getting cooperation in the war effort from the interim government, and asked several relevant questions expressing misgiving over the probable deprivation of his prerogative of appointment, extent of control of the party over the Councillors, and amount of support of Congress, Muslim League, and other minorities. Jinnah's denial, mentioned earlier, of the Muslim League's hand in it precluded clarification.

**Wavell Plan**

Faced by a problem with no solution in sight, the Viceroy, Lord Wavell, thought of consulting the British government on the means to resolve the deadlock. Equipped with information gathered from interviews with Indian leaders, he discussed the situation obtaining in India
and reviewed the solutions to the Indian constitutional problem. On June 14, 1945, Amery, the Secretary of State for India, broadcast a statement of British Government policy to the House of Commons. Among its salient points were:

(1) The main constitutional position remains therefore as it was. The offer of March 1942 stands in its entirety without change or qualification;

(2) It is proposed that the Executive Council should be reconstituted and that the Viceroy should in future make his selection for nomination to the Crown for appointment to his Executive from amongst leaders of Indian political life at the centre and in the provinces, in proportions which would give a balanced representation of the main communities, including equal proportions of Muslims and Caste Hindus;

(3) The members of his Council who are chosen as a result of this arrangement would of course accept the position on the basis that they would whole-heartedly co-operate in supporting and carrying through the war against Japan to its victorious conclusion;

(4) The members of the Executive would be Indians with the exception of the Viceroy and the Commander-in-Chief, who would retain his position as War Member;

(5) There is one further change... that external affairs (other than those tribal and frontier matters which fall to be dealt with as part of the defence of India) should be placed in the charge of an Indian Member of the Viceroy's Executive so far as British India is concerned, and that fully accredited representatives shall be appointed for the representation of India abroad.

It was clear that the Executive Council was, with two exceptions, to be completely Indianised. To achieve full representation from all parties in the conference scheduled at Simla on June 25, 1945, Lord Wavell ordered the release of the arrested members of the Congress Working Committee. Twenty-one invitations were sent to "leading Indian politicians who are the heads of the most important parties or who have had recent experience as Prime Ministers of provinces, together with a few others of special experience and authority". Abul Kalam Azad and Mohammad Ali
Jinnah with their lieutenants attended. Refusing the Viceroy's invitation, Gandhi signified his disagreement to giving parity representation to Muslims and Caste Hindus in a telegram. 67 Throughout the conference, however, he remained in Simla as unofficial adviser of Congress. 68

During the opening session, the Viceroy outlined the details of what was to be known later as the Wavell Plan; he ended with an appeal for cooperation from the conference. In the second session (afternoon), to Azad's assertion that the Congress party disapproved of a scheme that would make them a communal body, Jinnah maintained his stand for communal parity and for Pakistan. 69 Days dragged on but no solution could be found to the conflicting claim on the nomination of the Council representatives of the various communities. Congress, advised by Gandhi, insisted on nominating all the representatives including the Muslims. The Muslim League demanded the right of nominating persons to occupy the Muslim seats. Private talks between Pandit Pandit and Jinnah ended in a stalemate. Tired of waiting, Lord Wavell adjourned the session on June 29th. Subsequently, he invited the Congress and the Muslim League to recommend from eight to twelve representatives and the other parties to submit three or four names for membership in the Executive Council. Each party was given freedom to include persons belonging to other parties. From the lists, the Viceroy would select the persons he thought would be acceptable to all. 70

All the parties submitted lists except the League which asked the Viceroy that they should be granted sole power to nominate all the Muslim members of the Council. This request arose from Jinnah's suspicion that Congress "may adopt an offensive attitude by including a Muslim in their quota", which, of course, would antagonise the League. 71
To the Muslims' disappointment, the Viceroy withheld the assurance. Instead, he offered to nominate four Muslim Leagueers and one Muslim from the Punjab Unionist Party, the rulers of the Punjab since 1937. It was Jinnah's turn to refuse.

Admitting failure, Wavell closed the sessions of the Simla Conference on July 14, 1945.

It should be noted that the Congress and the Muslim League had claimed in the conference just ended that they represented all the Indian communities and all the Muslims respectively, yet their representative character had not been proved. The standing of these two parties was to be tested after the surrender of Japan on August 15th which allowed the holding of elections. Election issues were enlivened by the coming to power of the Labour Government after the July 1945 elections in Britain, an event which brightened Indian hopes of self-government within a short period. The League campaigned on two issues: (1) the Muslims constitute a nation with the Muslim League as their sole representative, and (2) Pakistan was the only solution to the problems in India. On the other hand, Congress fought the elections on a platform of independence and Indian unity.

In the elections for the Central Legislative Assembly held in December, 1945, the Muslim League won all the Muslim seats and the Congress all the rest except those reserved for special interests. The results of the Provincial Assembly elections showed a similar trend. The Muslim League captured 423 Muslim seats out of a total of 492 which was a big jump over the 108 garnered in 1937. Increasing their strength from 704 in 1937 to 930, the Congress obtained an absolute majority in eight provinces. The 1945-46 elections demonstrated to the British that the two parties could not be ignored in the setting up of a
Cabinet Mission

Before the elections, Lord Wavell had broadcast that a constitution-making body would be created and he would form an Executive Council with membership approved by the two biggest political parties. The termination of World War II and Indian elections paved the way to the early birth of these governmental organs. Accordingly, the British Parliament decided to send a delegation to India to meet leading political leaders for preparatory discussions on constitution-making and future self-government. Originally recounted by Lord Pethick-Lawrence, then Secretary of State for India, to the House of Commons on February 19, 1946, the planned steps were: first, preparatory meetings with the elected representatives of British India and with the Indian states to determine the procedure to be adopted in framing a constitution; second, the establishment of a constitution-making body; and third, the organisation of an Executive Council supported by the main Indian parties. The three ministers of the Cabinet Mission had an overnight stop in Karachi on March 23, 1946 before finally landing at New Delhi the following day.

The Mission was eagerly expected in India, particularly by the Congress members who felt that it was an expression of British sincerity on the promise of independence. That the motive was not purely altruistic was suspected by Pandit Nehru who remarked that a strong influence was "forcing England to recognize the freedom of India". Gandhi and other high-ranking members of Congress appealed to the masses to keep the peace so that the Mission could accomplish their task. The Muslim League, however, were still in a quandary in the absence of definite pronouncements.
clarifying their stand on Pakistan. Jinnah had been displeased by Prime Minister Attlee's statement alluding to the League as the minority checking the advance of the majority. In an angry mood, the Muslim leader denied that the Muslims were a minority and if the allusion was to the Muslim League's stand that ended the Simla Conference, he argued that the Muslims were merely evading the trap set by Congress. 31 Lord Pethick-Lawrence softened the impact of Attlee's remarks by stating soon after arrival that the Muslim League were not a minority party but a majority party representing the millions of Muslims of India. 32

In a press conference in New Delhi, Lord Pethick-Lawrence said that the purpose of the group's discussions with various entities was to look for a basis "to the setting up of a machinery, whereby the form under which India can realise her full independent status can be determined by Indians". 33 On April 3, 1946, conferences started between the Mission and the representatives of the Congress and the Muslim League. A Sikh delegation came on the fifth. Interviews were also granted to leaders of the Hindu Mahasabha, the Communist Party of India, and pro-Congress Muslims. 34 All shades of opinion were expressed by hundreds of people but the seemingly interminable deliberations failed to bring the two political parties to a settlement. Congress resisted stubbornly the Muslim clamour for the formation of Pakistan. 35

A new approach was adopted by the Mission to reconcile the two conflicting demands. Both parties were requested to send four negotiators to Simla to discuss the following basis for the future constitutional structure:

A Union Government dealing with the following subjects: foreign affairs, defence and communications. There will be two groups of provinces, the one of the predominantly Hindu provinces and the other of
the predominantly Muslim provinces, dealing with all other subjects which the provinces in the respective groups desire to be dealt with in common. The provincial Governments will deal with all other subjects and will have all the residuary sovereign rights.

It is contemplated that the Indian States will take their appropriate place in this structure on terms to be negotiated with them. 86

Unfortunately, the joint conference bogged down over Congress intransigence despite the Muslim League's expression of willingness to join an all India Federal Union 87 instead of outright partition. Unable to reconcile the two parties, the Mission made up their mind to frame their own proposals. Approved by the British Government and published on May 16, 1946, the Cabinet Mission Plan provided that "immediate arrangements should be made whereby Indians may decide the future constitution of India, and an Interim Government may be set up at once to carry on the administration of British India until such time as a new constitution can be brought into being". After reviewing the arguments presented by the two political parties, the Mission examined the possibility of dividing India. They found the anxiety of the Muslims over a perpetual Hindu rule "very genuine and acute" but on the other hand, the setting up of a sovereign state for Muslims "could not solve the communal problem". They, therefore, recommended: (1) a Union of India to deal with foreign affairs, defence, and communications; (2) the Union should have an Executive and Legislature and questions concerning communal issues should be decided by majority vote of the Muslims and the Hindus and majority of all the members present and voting; (3) all residuary powers to be with the provinces; (4) the States would retain all subjects and powers other than those ceded to the Union; (5) the provinces should be free to form groups with their
own Executives and Legislatures; and (6) a constitutional provision should allow any provincial Legislative Assembly to ask for the revision of the constitution every ten years.

The system of electing members of the constitution body would be to allot to each province seats roughly one seat for every million to be divided among three main communities: General, Muslim, and Sikh. These representatives would be elected by members of their respective communities in the Legislative Assembly of each province. The three groupings of provinces would have a total membership of 385 in the Constituent Assembly distributed as follows: 210 for General, 93 for Indian States, 78 for Muslims, and 4 for Sikhs. After a preliminary session the provinces would divide into three sections to settle provincial constitutions and then any province would have "power to leave the group in which it had been placed." An interim government "having the support of the major political parties" would, in the meantime, carry on the administration.

As expected, the Plan was subjected to criticism by political parties. The Congress interpreted one paragraph to mean that the provinces would be free to opt out of the sections in which they were initially placed even before the operation of the constitutional arrangement. This interpretation was subsequently corrected by the Mission themselves on May 25th. Jinnah regretted the rejection of the Muslim demand for Pakistan and pointed out that some arguments were presented merely to appease the Congress. Without committing himself, he referred the Plan to the party's Working Committee for final decision. In June 6, the Muslim League accepted the Plan believing that a peaceful solution to the grave issues was necessary so that Pakistan was inherent in the provincial groupings.

The initial grouping disturbed the Sikhs who felt they would not have safeguards in the Punjab against
the Muslims. They rejected the Plan outright.\textsuperscript{92}

In the formation of an Interim Government, Jinnah suggested that there should be five Congress, five League, one Sikh, one Anglo-Indian or Indian-Christian in the Executive Council. Although accepted by Lord Wavell, the ratio was rejected by Nehru who preferred five Congress Hindus, four League Muslims, one non-League Muslim, one non-Congress Hindu, one Congress Scheduled Caste, one Indian-Christian, one Sikh, and one Congress woman totalling fifteen altogether. Lord Wavell's recommendation of six (including one Scheduled Caste) Congress, five League, and two members of other minorities was unacceptable to Congress.

In view of this deadlock, the Cabinet Mission and the Viceroy proceeded to set up an Interim Government composed of fourteen persons - six from Congress, five from the League, one Sikh, one Indian-Christian, and one Parsi.\textsuperscript{93} In their statement of June 16, the Mission and the Viceroy promised, in the event either of the two major parties refused to join the Coalition Government, to go ahead "with the formation of an Interim Government, which will be as representative as possible, of those willing to accept the statement of 16th May".\textsuperscript{94}

The formation of an Interim Government seemed inevitable after the Congress Working Committee rejected the proposals on June 25 while the Muslim League voiced acceptance. To the League's astonishment, the Viceroy broke his promise. On this unexpected turn of events, Dr. Qureshi had this to say:

The truth of the matter seems to be that the Cabinet Mission had expected the rejection of the plan by the League because Pakistan had not been
conceded. For that reason it had also expected the
Congress to accept it. The intention, therefore,
was to try to have a coalition, but if the effort
failed, to proceed with the formation of a Government
by the Congress alone. When the unexpected happened
and the Viceroy was left with the choice of forming
an interim government with the League alone, he found
himself in a dilemma. He chose to go back on his
pledged word rather than have a League government.
The reason was that the formation of a government
by the League with the Congress in opposition would
have offered no solution to the problem of having a
broad based government that would have commanded
general support. But then people in authority should
not make statements without weighing all contingencies
that may arise. The Viceroy and the British Government
must have been fully aware of the fact that their
pledged word was being dishonoured.95

Empty-handed, the Cabinet Mission departed from
India on June 29, 1946, after three months of strenuous
but useless efforts.

A week after their departure, the session of the
all India Congress Committee held on July 6–7, 1946 was
to result in the Muslim League's change of heart. In
winding up the Committee's proceedings, Nehru who was
then the newly elected President of the Congress, made
some "indiscreet utterances" which destroyed the last
chance to form a united India. He said, "We are not
bound by a single thing except that we have decided for
the moment to go to the Constituent Assembly."96 He
repeated this remark in a press conference on July 12.
This statement aroused the fears of the Muslim League
that the Congress were utilising the Plan to set up a
united government in which the minorities would be at
their mercy. Subsequently, the League passed several
resolutions on July 29, 1946 one of which withdrew
support to the Cabinet Mission Plan and the other calling
on the "Muslim nation to resort to direct action
to achieve Pakistan".97
Still aiming at Congress support before forming an Interim Government, the Viceroy proposed to Nehru and Jinnah the ratio of six (including one Scheduled Caste) for the Congress, five from the League and three from the minorities to be nominated by the Viceroy. Jinnah declined the offer. It was now the Congress' turn to change their stand. After a rejection on July 23, the Congress accepted it on August 8. Without delay, Lord Wavell invited Nehru to form the Government.

Meanwhile, the League resolution on direct action was misinterpreted by the masses who staged riots in Calcutta despite elucidations made by Jinnah to the press two days before "Direct action Day" on August 16. It was estimated that the "unbridled savagery" resulted in the death of 4,000 and the injury of 10,000, so far, the largest casualty list of all riots during British rule. This was followed by communal clashes in Dacca. In October, reports were received of troubles in Noakhali and Tippera districts where the Muslims were in the majority. The Hindu retaliation in Bihar against the Muslim minority in the area inflicted an estimated 5,000 deaths. More casualties were added in the communal riots in the United Provinces and Bombay. This calamity underscored the danger of forming a government unsupported by all the major communities. The Viceroy's eyes were opened to reality. Appalled by the enormity of the Calcutta tragedy, he pressed Gandhi and Nehru in the evening of August 27, 1946, to guarantee Congress acceptance to the Cabinet Mission Plan's statement concerning the provinces' staying within their groupings until after the expiration of the stipulated ten-year period. Gandhi's puzzling reply was as follows: "In any case, what the Cabinet Mission Plan really means is not what the Cabinet Mission thinks but what the interim Government thinks it
means." Lord Wavell reminded him that without the League, the Interim Government's opinion would be biased. "I am not concerned with bias," was Gandhi's retort. Unable to convince the two, the Viceroy also hesitated in forming the Interim Government without the Muslim League for fear of an outbreak of civil war. However, Wavell's days in India were already numbered. Before the end of August, he was overruled by Prime Minister Attlee. 103

Although they realised that an Interim Government, if formed, would be Congress-rulled, the Muslim League finally decided to join with the main purpose of protecting the interests of the Muslims. Thus, on October 25, a reconstituted Executive Council included six Congress, five Muslim League, and three from the minorities. 104

While the discussion on the Interim Government's composition was going on, elections of representatives to the Constituent Assembly were held. By the end of July, 296 were elected representing British India. The League, however, refused to participate in the sessions of the Constituent Assembly until the interpretation of the clause regarding the grouping of provinces was resolved. No settlement was forthcoming as Congress refused to change their stand even after the talks in London on December 2, 1946. When the Assembly met on December 9, all the Muslim League representatives were absent. Jinnah and Liaquat Ali Khan were then in London. 105

In a meeting on January 5, 1947, Congress officially rejected the interpretation of the British Government. As a counter-measure, the League passed a resolution declaring the Constituent Assembly illegal and calling for their dissolution. 106 A chain reaction ensued. Five days later, the Congress and the non-Muslim minority communities demanded the resignation of the League members from the Interim Government. Should the demand be refused,
the Congress members planned to withdraw from the Assembly. The result, it was clearly foreseen, would be communal violence on a scale never before experienced in the Indian sub-continent. The crisis needed a major decision to avoid civil war.  

Unwilling to side with any of the protagonists, the British opted to leave cherishing the belief that this "would bring the parties together by the very urgency of the need for agreement". On February 20, 1947, Prime Minister Clement Attlee delivered a speech in the House of Commons announcing the intention of the British Government "to effect the transfer of power to responsible Indian hands by a date not later than June 1948". Exuding a tone of finality, the Prime Minister added that in the absence of a constitution: "His Majesty's Government will have to consider to whom the powers of the Central Government in British India should be handed over, on the due date whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interests of the Indian people".

This last sentence was interpreted by the Sikh leaders in the Punjab as a chance to form a separate Hindu-Sikh province outside the control of the Muslim League and beyond the boundaries of Pakistan. The Sikh revolt started on March 4, 1947 and three days later, 1,036 had been reported killed, 1,110 injured, c. 40,050 homeless in Amritsar alone. This was just the beginning of a senseless destruction that reduced India's population by approximately half a million of all ages, sexes, and creeds.

The Mountbatten Plan

The February 20 statement was accompanied by an
announcement of the relief of Lord Wavell as Viceroy and
the appointment of Admiral the Viscount Mountbatten as
his successor. 113 Arriving in New Delhi on March 22, 1947,
the new Viceroy lost no time in interviewing prominent
Indian leaders. He gathered from Gandhi the impression
that India's partition was not ineluctable and from Jinnah
the belief that the creation of Pakistan was the only
practical solution to the Indian problem. 114 Having been
known for his previous stand, Nehru underwent a change
of heart in April, 1947 when he was overheard to have
said, "The Muslim League can have Pakistan. But on the
condition that they do not take away other parts of India
which do not wish to join Pakistan." 115 He was referring
to the 34,063,345 non-Muslim minorities in the six pro-
vinces claimed by Jinnah for Pakistan distributed as
follows: (1) Punjab - 12,201,577, (2) NWFP - 249,270;
(3) Sind - 1,326,683; (4) British Baluchistan - 62,701;
(5) Bengal - 27,301,091; and (6) Assam - 6,762,251. These
figures comprise 48.31 per cent of the total population
in these areas. On the other hand, some 20 million Muslims
were dispersed among the rest of the provinces left to
India. 116 Sardar Patel, another prominent Congressite,
had already been persuaded by V. P. Menon, a civil servant
who had planned his own scheme of partition before the
coming of Mountbatten. 117 Dr. Rajendra Prasad, the Presi-
dent of the Constituent Assembly, accepted not only the
division of India but also the partition of some of the
provinces as well. 118 Most probably to generate bargaining
power, Jinnah claimed the Punjab and Bengal as whole
provinces. In addition, he asked for a corridor through
India to link the two wings of Pakistan. This was too
much for Congress to concede. 119

After witnessing the bloody orgy happening all
around him, Mountbatten realised the need for a speedy
operation. Forty days after arrival, he submitted his plan to London for approval. The Mountbatten Plan, as it was now called, simply recommended the transfer of power to the provinces, a weak administration at the Centre, and intentional delay of provincial groupings until after British withdrawal. Trouble from the Congress side was avoided in the nick of time when Mountbatten showed his draft, still classified secret, to Nehru who "having read it, vehemently turned it down". Nehru was dead against the Balkanisation of India. Clearly, there was a misunderstanding because the original plan was supposedly agreed upon by all the Indian leaders. A revision of the plan was hastily sent to London prescribing dominion status as an interim measure with the Government of India Act of 1935 subject to modifications as the interim constitution for the sovereign states. Flying to London on May 19, Mountbatten succeeded in convincing the Prime Minister of the necessity to change the previous recommendation. As the talks progressed, they decided to advance the date of transfer of power to August 15 which was barely two and a half months away. A British author explained the reason behind the move:

The foundations of British India had been built upon sand, the sand of a people's consent. That consent was now trickling away, and the walls of the imperial edifice - so solid-seeming in the past - were crumbling. The British, however, who had neither the strength nor the inclination to bolster them up seemed in danger of being crushed when they fell.

A Pakistani statesman, however, saw the early transfer of power as a "deal between Mountbatten and the Congress leaders" wherein the Viceroy could achieve his objective of bringing India into the Commonwealth and the Congress could expect the collapse of Pakistan in the face of "enormous handicaps" involved in "an extremely hurried scuttle".
In five minutes, the Viceroy secured Cabinet approval of his revised plan. By the end of May, 1947, he was back in New Delhi. On June 2nd, a meeting was held to enable him to get the acceptance of the Indian leaders to the plan before publication the next day. The Congress readily assented but Jinnah, representing the Muslim League, did not commit himself to writing although later that evening just after the conference, he expressed general agreement. On June 10, the Muslim League Council authorised Jinnah to "accept the fundamental principles of the plan as a compromise".

As finally approved, the scheme sought to divide the sub-continent into two sovereign states. The members of the Legislative Assembly of the Pakistan provinces were to signify their intention to join Pakistan or not. The Punjab and Bengal Legislative Assembly members would vote on the issue whether to remain united or not. Should the verdict be a division, a boundary commission would draw the demarcation lines. For the North West Frontier Province, a referendum was prescribed but the system was considered unreliable for British Baluchistan. Therefore, the Governor-General was given the task of evolving an appropriate method. The Indian States had the choice of joining either Dominion or becoming independent in accordance with the policy set up by the Cabinet Mission on July 12, 1946.

The June 3 Plan was implemented during the following two months. Having decided on partition, Bengal was divided into East and West with the former becoming a part of Pakistan. Arriving at a similar choice, the Punjab and its western slice apportioned to Pakistan. Sind, Baluchistan, and the North West Frontier Province voted for Pakistan. Abandoning Assam, Sylhet became a district of East Bengal.
The Indian Independence Act of 1947

To give effect to the Mountbatten Plan, the Indian Independence Bill was introduced in the House of Commons on July 4, 1947 "to make provision for setting up in India of two Independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions". After tributes were paid to Attlee and Mountbatten, the bill was passed on July 15th. The next day, the House of Lords registered their approval. In just a fortnight after introduction, the bill became law after receiving the Royal Assent.

As provided for in the Act, Pakistan became officially independent on August 15, 1947. Two days before that date, Mountbatten flew to Karachi to swear in Mohammad Ali Jinnah, the Quaid-i-Azam, as the first Governor-General of Pakistan.

The struggle for a Muslim homeland had been fought and finally won, but the Pakistanis had to face concomitant difficulties of independence among which was to "define, at least in broadest outlines, what other and more established peoples may take for granted: their society's ultimate objective". The succeeding pages attempt to unfold the story of Pakistan as a nascent state in quest of her first constitution.
1. I. A. Qadri, "Qudratul Din (Karachi: The All-Pakistan Legal Councils, 1963), pp. 151-152.


3. J. J. D. S. M. Mueez, The Struggle for Pakistan (Karachi: The Inter Services Press, Ltd., 1965), p. 117. During the first decade of independence, Pakistan successfully worked off Afghanistan's attempt to seize the former North-West Frontier Province.


7. Ibid., p. 58.

8. Ibid., p. 63.

9. Ibid., p. 64. He was responsible for the organization of the London Turko League in 1926, Ibid., p. 69.

10. Ibid., op. cit., p. 118. Levant areas included the eastern part of a Muslim state. Another author quoted Stalin's speech for asserting the rise of unknown nationalities in India after the partition. Did he mean Muslim or Communist? Ibid., op. cit., p. 114.


12. Ibid., op. cit., pp. 131-135. Overthrown by death in 1927, Chaudhry was able to lead the mission to witness the realization of his mission.

13. Ibid., pp. 145-156. In that year, the title of Quaid-i-Azam (Great Leader) was claimed by Maulana Shahr-ud-Din, editor of Al-Ahram, a Delhi newspaper. Ibid., p. 147. Chaudhry's ideas on the essence of Pakistan were recorded in Beverley Nichols, Verdict on India (London: Jonathan Cape, 1946), pp. 198-199.


17. Ibid., pp. 175-181. Khaliquddin claimed that his argument to exclude the non-Muslims from the council contrary to Sikander’s recommendation was accepted by Shahzam Ali Dinnah. See Khaliquddin, op. cit., pp. 233-234.

18. Ibid., pp. 181-182. The two were Syed Mehar Hasan and Dr. Rehman Azal Husain Iqbal.

19. Ibid., pp. 181-182. For the first time, a division of powers by subjects was introduced in a partition proposal.

20. Ibid., p. 182.


24. The author of this article is unknown. For the history of Pakistan (Kurachi: Akbar Publishing House, 1960), p. 118. See also Coupland, *The Indian Way*, p. 3.


27. Ibid., p. 119. The author is the writer’s.


33. ibid., op. cit., p. 118-119.
34. Gurushe, op. cit., p. 134. The meaning of the resolution became an issue during the debates in the first and second Constituent Assemblies of Pakistan. Vide succeeding chapters.


38. Ahmad Ali, op. cit., p. 43.


40. R. P. Varma, Britain in India (London: Oxford University Press, 1980), p. 178. The Indian term for civil disobedience is "satyagraha".


43. Senan, op. cit., pp. 28-41.

44. Senan, op. cit., pp. 132-139.


46. Ibid., p. 53.

47. Ibid., p. 57.

48. satyagraha in the Indian term for strike.


50. Senan, op. cit., p. 56.


52. Rajgopalachari's daughter is the wife of Gandhi's son.


54. Senan, op. cit., p. 27.


57. Ibid., p. 75.


60. Gurushe, op. cit., p. 236. In his fo tute, Gurushe
referred to Keynes’s book, The Transfer of Power in India, as the only source of data on these events. It seems difficult to believe that Linlithgow’s plan, the right-hand side of dinner would attempt to force the issue over such a vital question behind the back of his leader. The rumors about a Desai-Linlithgow understanding only have one real dinner’s attention since these were published in Indian newspapers as indicated by Greenshields, op. cit., p. 286, whether Linlithgow’s statement made on August 31, 1945 was the plain truth and not window-dressing after the fact may never be known.

61. Keynes, op. cit., pp. 66-68.
64. Greenshields, op. cit., pp. 89-90. Numbers have been added by the writer. Included paragraphs have not been indicated by a series of dots.
66. Ibid.
68. Lamba, op. cit., p. 52.
69. Greenshields, op. cit.
70. Lamba, op. cit., pp. 54-55.
72. Ibid., p. 95.
73. Lamba, op. cit., pp. 92-93.
75. Lamba, op. cit., pp. 88-90.
76. Ibid., p. 66-67.
78. Greenshields, op. cit., p. 106.
80. Zulfiqar Ashraf (comp.), Cabinet Mission and After (London: Oxford University Press, 1946), p. 9. The ministers were Lord Birket-Smith, Secretary of State for India; Sir Stafford Cripps, President of the Board of Trade; and A. V. Alexander, First Lord of the Admiralty.
81. See Greenshields, op. cit., p. 246 and Lamba, op. cit., p. 75.
82. Ashraf, op. cit., p. 11. This statement appears to be a mere juggling of words.

83. Ibid., p. 7.

84. Ibid., p. 96. An interesting conclusion by Ismail Abul Khaldun 
Abd, a Persian scholar, that the scheme of
abrogation was handed to the Muslims and would create no prob-
lems in united India, his The Last Days of the British
the President of the Congress, Amr, made a profound impres-
sion on both the Viceroy and the Cabinet Mission" in his views on
provincial autonomy. Ibid., p. 23.

85. N. C. Rau, History of the Freedom Movement in

86. Same, op. cit., pp. 121-122.

87. Qureshi, op. cit., p. 25.

88. Same, op. cit., pp. 151-152.

89. Ibid., p. 196-197. The General Council would in-
clude all anti-Europeans and non-Hindus.

90. Ibid., p. 136.

91. Ibid., pp. 139-140, 140-141.

92. Rau, op. cit., History of the Freedom Movement in India,
p. 756.

93. Qureshi, op. cit., p. 147.

94. Same, op. cit., p. 150.

95. Qureshi, op. cit., pp. 257-270. See also Muhammad
Ali, op. cit., p. 67-68.

96. Rau, History of the Freedom Movement in India,
p. 770.

97. Hasan, op. cit., p. 165-173. During this session,
former Prime Minister of India, Jinnah denounced the British with so
much energy that his dusters fell from his mouth. See H. G.
Iqbal, Jinnah, a Life Story, p. 195.


100. It was reported that Jinnah went to Jinnah's home in
Calcutta, in order to persuade the latter to change his mind
about direct action and join the Government. Jinnah refused to agree
on the condition that two men who were used to hurl epithets at each
other should be present. See Hasan, op. cit., pp. 25-30.

101. Sir Francis Tuker, Firma Hicken, Server (London:


120. Campbell-Johnson, ibid., p. 89.

121. *Ibid.*, p. 92. Mountbatten's behaviour in showing the plan to Nehru and not to Jinnah and amending it to suit Congress desires was criticised as an act of partiality. See Muhammad Ali, *cit.*, p. 159.


126. Suresh, op. cit., p. 299.
131. Suresh, op. cit., p. 306. A minor controversy occurred over the appointment of the Governor-General of Pakistan. A cursory reading of the struggle for Pakistan would make the Quaid-i-Azam the logical choice. Nevertheless, section 5 of the Indian Independence Act of 1947 provided a clause that "the same person may be Governor-General of both the new Dominions". This could be seen that a untutted, having had a say in this Act, coveted the position too. After receiving lots of offers of the Governor-Generalship, he expected Pakistan to do the same. His attempts, however, to get inclusion of the post to him were fruitless. Then the two states again on June 23, 1947, a untutted cited the benefits that Pakistan could reap if he were her Governor-General. Especially during the critical period, apparently cornered, the Quaid-i-Azam promised to give his answer. On July 2, 1947, the lot was cast, and the Quaid-i-Azam was elected President of Pakistan. Suresh, ibid., pp. 306-307; Asim, op. cit., p. 177-180; and Lacsiani, op. cit., pp. 220-222. Former head of the Pakistan Parliamentary Service believed that the provision for a common Governor-General would have been unnecessary if the original date of June 1, 1948, had been implemented instead of August 15, 1947. See Muhammad Ali, op. cit., p. 141.
CHAPTER III

THE FIRST CONSTITUENT ASSEMBLY

Immediately after their election in July, 1946, few, if any of the members of the Constituent Assembly of Pakistan entertained in their minds that the venue of their sittings would be at Karachi and that the duration of the sessions would lengthen to seven years. The more realistic among them, particularly the non-professional politicians, expected to return, after several months' labour, to the work they were wont to do, after having contributed whatever knowledge they possessed regarding constitution-making. But Fate not only decreed otherwise, but also denied to them the inner satisfaction that is felt after accomplishing such a Herculean task as the framing of the nation's fundamental law.

Source of Authority

In accordance with the statement of the Cabinet Mission and His Excellency the Viceroy issued on May 16, 1946, all the Provincial Legislative Assemblies of British India were empowered to elect the Constituent Assembly members by proportional representation with single transferable vote and those chosen would meet at New Delhi to frame as soon as possible a constitution for an independent India.\(^1\)

From the start, it might be noted that the seats were chosen by a very limited group of voters. Though the Cabinet Mission realised that a more accurate representation of the whole population could have been achieved by adult suffrage, the possibility that "any attempt to introduce such a step now would lead to a wholly unacceptable delay in the formulation of the new constitution" could not be totally eliminated.\(^2\)
In another proclamation issued on June 16, 1946, the Viceroy directed all the Governors of the provinces "to summon the Provincial Legislative Assemblies forthwith to proceed with the elections necessary for the setting up of the constitution-making machinery". Apart from their constitution-making duties, the Constituent Assembly were to function simultaneously as a temporary Federal Legislature until a new constitution provided for the establishment of a permanent legislative body.

For reasons intimated earlier, the Muslim League refused to send their Assembly delegates to the first session at New Delhi. Only after partition was definitely decided were they permitted to attend the first session of a separate Constituent Assembly for the new dominion of Pakistan scheduled at Karachi on August 10, 1947.

**Membership**

In 1947, the first Constituent Assembly had 49 members from the Muslim League, 16 from Congress, and 4 from other parties. In 1953, the Muslim League members increased to 60 while the Congressmen were reduced by five. At all times, the Assembly had a preponderance of lawyers and landowners and a sprinkling of businessmen and others belonging to the liberal professions excluding law. Fazlul Huq, the mover of the Lahore Resolution was, at seventy-four, the oldest member followed by the Mazid-i-Azam who was due to celebrate his seventy-first birthday by December 25, 1947. The youngest, Mian Kumta Daultana of the Punjab, was only thirty-one years old. With the exception of a few young delegates, the majority were middle-aged men who had already distinguished themselves in public affairs or in their respective professions.

Many held bachelor's degrees, several finished training in religious schools (Muslim), and a few had completed postgraduate studies in England and other foreign countries.
Unlike the all-male membership of the Philippines' Constitutional Convention, the Constituent Assembly of Pakistan could boast of two women members. Begum Shaiista Suhrawardy Ikramullah, a Ph.D. graduate of the University of London and author of an autobiographical book, joined on February 24, 1948 to represent the constituents of East Bengal while Begum Jahan Ara Shah Nawaz, a prominent civic leader and world traveller, attended the opening session as a representative from West Punjab, the most populous province in West Pakistan.

Majority of the members (44) represented East Bengal although a few were non-residents of the province. The rest of the seats were distributed as follows: Punjab - 22; Sind - 5; Northwest Frontier Province - 3; Baluchistan, Baluchistan States, Bahawalpur, Khairpur, North West Frontier Province States - 1 each. On the opening day (August 10, 1947), thirty-nine Muslims and fifteen Hindus presented themselves for registration.

It is reasonable to conclude that the members of the first constituent assembly were well-equipped by their training and experience in legislative, executive, judicial, religious, agricultural, and educational affairs to accomplish the job of constitution-making.

During the seven-year life of the Assembly, many changes in membership arose due to various factors, the saddest of which was the death of several members. On March 2, 1949, there were six vacant seats. Kiran Sankar Roy and Abdul Natin Choudhury had died after resignation; another member, Ghazanfar Ali Khan, became a diplomat; one, Suhrawardy, was disqualified for lack of residence; Khan Abdul Ghaffer Khan was under arrest; and a sixth had been described by Firoz Khan Noon as "going in and out of jail". Just after the partition, eight members resigned and joined India. Six of them were Hindus.
and two were Muslims, one of whom was Maulana Abul Kalam Azad, a former president of Congress and elected representative from the North West Frontier Province. During the preliminary meetings, the Assembly decided not to fill one General and two Sikh seats in the Punjab. The seat for the States of the North West Frontier Province remained vacant until May 7, 1954 when Brigadier Miangul Abdul Raq Jahanzeb was sworn in.

From August 10, 1947 to May 7, 1954, new members were sworn on twenty-three occasions either individually or in groups. During the same period, six members died. The multiple duties of the members accounted, to a large degree, for the poor attendance record.

Opening Session

In preparation for the transfer of power, Pakistani leaders scheduled the opening session of the Constituent Assembly at 10 o'clock in the morning of August 10, 1947 in the former Provincial Assembly Chamber of Karachi, then temporary capital of Pakistan.

The fifty-four delegates who attended the opening session were augmented by three Muslims and one Hindu on the second day. Liaquat Ali Khan opened the meeting by proposing Jogendra Nath Mandal, a scheduled Caste Hindu member from East Bengal, as temporary chairman. Mandal took the chair after Khwaja Nazimuddin, a Muslim from East Bengal, seconded the motion.

In his inaugural address, Mandal thanked God for the opportunity to assemble and the members of the Constituent Assembly for electing him. He assured the listeners that Pakistan "will bring to one and all of her citizens prosperity, happiness, and peace". Acknowledging the Quaid-i-Azam's role in the creation of the State of Pakistan, he expressed the hope that the minorities would be treated not only justly and fairly
but "also magnificently. With the Hindu-Muslim communal riots in mind, he pleaded for the replacement of hatred with trust. In reminding the assemblies of their main function, he exhorted: "Our endeavour should be to frame one of the best constitutions that any world state has ever produced."20

After the applause, the members were called to present their credentials and sign the register. Before the adjournment, the Assembly fixed meetings from ten in the morning to one o'clock in the afternoon daily, adopted the rules and standing orders of the Central Legislative Assembly with modifications pending the framing of the Assembly's own rules, confirmed the existing organisation of the Office of the Constituent Assembly subject to necessary changes by the President, and approved the rules for election of the President of the Assembly moved by Sardar Abdur Rab Khan Nishtar.21

The approval of the resolutions was expedited by the moderating influence of Kiron Sankar Roy, a Hindu member, who appealed to the good sense of Shibanda Nath Battach, his co-Hindu, who could have delayed the proceedings by asking for copies of the Central Legislative Assembly Rules and Standing Orders which were unavailable in sufficient quantities. He pleaded too, to Raj Kumar Chakraverty, another Hindu, not to press his point about circulating the agenda forty-eight hours before discussion.22

The next day, August 11, 1947, the Quaid-i-Azam was declared elected permanent President of the Constituent Assembly after the Secretary of the House received seven nominations all in the Quaid's favour. He was escorted to the chair by Liaquat Ali Khan and Nishtar. Congratulatory speeches were then delivered by Liaquat Ali Khan23 and the leaders of the different parties and groupings. Following Liaquat Ali Khan, Roy voiced his grief over the partition of India but since it was agreed upon, "we accept it loyally and shall work for it loyally."24
Touching on a subject that was to become the cause of bitter discord between the Hindus and the Muslims later on, he declared that if Pakistan meant a secular democratic state, utmost cooperation was assured; otherwise, the Hindus would put up opposition. The threat was made good sooner than expected.

Mandal delivered a speech offering the services of the Scheduled Castes while Begum Jahan Ara Shah Nawaz congratulated the new President on behalf of "half of your nation".

In reply to these congratulations, the Quaid-i-Azam enumerated the dangers (he called them curses) present in the breakdown of law and order, nepotism and jobbery. To allay the apprehensions of the minorities, he said:

You may belong to any religion or caste or creed - that has nothing to do with the business of the State.

We are starting with this fundamental principle that we are all citizens and equal citizens of the State.

Before resuming his seat, the Quaid-i-Azam intimated that his "guiding principle will be justice and complete impartiality".

After the thunderous and prolonged applause had died down, he read messages of goodwill from the United States and Australia.

Serious objections came from the Congress members when the agenda for the adoption of a flag for Pakistan and the conferment of title on Mohammad Ali Jinnah were introduced. On the day the flag of Pakistan was discussed, Liaquat Ali Khan unfurled a sample which evoked a smile from the Quaid sitting on the presidential chair. The mover of the flag resolution took pains to remind the gathering that "it is not the flag of any one political party or any one community", but these words failed to appease the Hindus. Bhim Sen Sachar, a
Congress member, stood to make an amendment to the original resolution requiring the nomination of a committee with at least three non-Muslims to determine the flag’s design. In view of the inadequate time available, Sachar recommended the submission of the committee report the following day. Wondering aloud on Liaquat Ali Khan’s failure to consult the representatives of the minorities, he called attention to the fact that Pakistan was created not by conquest but by agreement; therefore, "in no case should the minorities think that here is a majesty, which conscious of the strength of its members, can march alone merrily without even bothering to consult the wishes of a minority in a measure of such great national importance."  

Siding with Sachar, Dhirenda Nath Datta remarked that the proposed national emblem was "almost identical" with that of the Muslim League. When heckled about the Congress flag, the speaker maintained that the Congress flag did not represent any community while the Muslim League flag did.

It was Liaquat Ali Khan's turn to explain that the sample he exhibited was not a religious flag because more than one fourth was white which was composed of seven different colours representing the minorities. Lack of time prevented the consultation of the minorities.

While it was true that time was short from the start of the session of the Constituent Assembly to the day of independence, a two-month period was available from the day (soon after the June 3 plan was published) the Quaid had assigned several Muslim League members to design the national flag which resulted in the submission of various designs. As early as April, 1947, flags of green with the white crescent of Pakistan were being waved by people in the rural areas.

Although appealed to by Liaquat Ali Khan, Sachar refused to withdraw his amendment and the question was rejected by the
Muslim majority. With the adoption of the original resolution, Kiran Sankar Roy tried to ease the atmosphere by promising to give it respect and loyalty. 40

A second clash between the Muslim League and the Congress members occurred on the third day of the session when Liaquat Ali Khan moved that the title "Quaid-i-Azam" be conferred on Jinnah in all official papers to formalise a form of address which, he claimed, was already well-known all over the world. 41 The resolution was immediately opposed by Dhupendra Kumar Datta, a Hindu, who asked for the withdrawal of the motion on the ground that "we are in the year 1947 and it is too late in the day to move a resolution like this today in this Constituent Assembly". Whether Datta thought that the conferment had already been rendered obsolete in modern times was not made clear because he refused to amplify his statement. 42

Datta's objection was supported by Chandra Chattopadhyaya, leader of the Congress Party, and Dhirendra Nath Datta, a Hindu member, who assumed that Jinnah himself disliked titles. Subsequently, Abdul Hamid, a Muslim representative from Sylhet, pointedly asked why the Hindus did not object to the word "Mahatma" for Gandhi. No reply came from the Hindu ranks. Nur Ahmed, a Muslim from East Bengal, hastened to add that it was not really a title in the true sense but a "sort of recognition of the inestimable services of one of the greatest leaders of the world." 43 Several Muslim and Hindu speakers spoke either in favour or against but the speech of Jogendra Nath Mandal, the temporary chairman, saved the Quaid, then presiding, from further embarrassment by requesting Jinnah not to mind the exchange of views and imploring the Opposition to accept unanimously the resolution. Before the debate could get out of hand, Abdullah-al Mahmood moved for a closure followed by Liaquat Ali Khan who paraphrased a passage in the Bible to terminate the discussion:
"Father, forgive them for they know not what they are talking about." The motion was adopted.

The last day of the first session of the Assembly was also the day of the inauguration of the new State of Pakistan. After the parade, Lord Mountbatten, the last Viceroy, and Quaid-i-Azem Mohammad Ali Jinnah entered the chamber of the Assembly at ten minutes after nine o'clock, August 14, 1947.

Lord Mountbatten read a message from the King of England which carried greetings and warm wishes to the new dominion. The British monarch warned that great responsibilities lay ahead; nevertheless, he assured the people of Pakistan of his sympathy and support in all future tasks. Speaking for the last time as Viceroy, Mountbatten paid tribute to the leaders who made possible the peaceful transfer of power particularly to the Quaid who gave his sincere good wishes as the new Governor-General of Pakistan. With the minorities' welfare in mind, he recited the portion of the agreement where the interests of all citizens regardless of religion, caste, or sex have to be safeguarded. On the problem of religion, he cited Emperor Akbar's example of religious tolerance. Mountbatten's speech was ended by fond expressions of farewell.

The Quaid-i-Azam, as President of the Constituent Assembly, thanked the King for the gracious message and the Viceroy for his expressions of goodwill and hopes for a prosperous Pakistan. The President highlighted the fact that the parting had been between friends and he, therefore, sincerely wished that "we shall remain friends". Before concluding the proceedings of the Assembly, he acknowledged with thanks messages of goodwill from the United States, Egypt, France, Syria, and Nepal.

Organisation

The first session of the Assembly was closed despite an
incomplete internal organisation. However, emergency measures
were taken to ensure the smooth functioning of the meetings.
The Quaid was elected President on the basis of special rules
drafted by Nishtar, some sort of one-man committee. A typographi-
cal error in the rules was fortunately discovered in time. 50

Panel of Chairmen

Foreseeing the problem that might arise should the Presi-
dent fail to attend the session or his office should become va-
cant, Liaquat Ali Khan moved for the passage of a resolution
authorising the President to nominate not more than four Chair-
men one of whom would preside in his absence. A clarification
sought by a member from the North West Frontier Province as to
whether the Panel of Chairmen would be nominated for the dura-
tion of the sessions or for every session remained unanswered,
because the Presiding Officer appeared to be in a hurry to ad-
journ the meeting. 51 The resolution was approved.

Rules Committee

On the second day of the first session, Nishtar pointed
out the unsuitability of the Central Legislative Assembly Rules
adopted the previous day since these would become obsolete after
the 14th of August. He stressed the sovereign category of the
Constituent Assembly which permitted action on special matters
beyond the scope of the Central Legislative Assembly Rules. To
remedy the situation, he proposed the appointment of a committee
"consisting of a Chairman to be nominated by the President and
seven other members to be elected by the Assembly" to report on
the Assembly rules of procedure, Presidential powers, and system
of declaring and filling vacancies. 52 An amendment moved by
Dhirendra Nath Datta inserting the committee members instead of
the President with power to choose the Chairman was withdrawn
after Liaquat Ali Khan made clear that in such committee's the
President became Chairman ex-officio, a position which entitled him to nominate his representative as Chairman in his absence. Elected on August 19, 1947, the committee submitted the initial report on February 24, 1948. Debates ensued on the rules debarring a member for failure to take the oath of allegiance during a prescribed period, excluding Bengali as one of the official Assembly languages, fixing of sittings in Karachi, scheduling the meetings, and prescribing the procedure on the passage of bills. After a thorough discussion lasting three days, the rules with some amendments were adopted. However, changes were admitted from time to time in conformity with changing conditions.

**States Negotiating Committee**

The second body to be formed was the States Negotiating Committee which was assigned the delicate matter of arranging for the representation of groups of states, individual states or tribes in the Assembly. Hitek, the sponsor, underscored the need to renew the agreements between the British on the one hand, and the Princes and the Tribes on the other, which have lapsed after the partition. Liaquat Ali Khan was appointed chairman and four others as members. One of the members, Ghazanfar Ali Khan, resigned after he became the Pakistan ambassador to Iran and was replaced by Muhammad Zafrullah Khan. Meeting several times, the committee compiled data to form a basis for the negotiations.

On December 30, 1949, the States agreed to the following procedure and allocation: (1) "the Governments of the States of Bahawalpur and Khairpur should nominate one representative each; and (2) all the States of Baluchistan should jointly nominate one representative agreed to by the Governments of these States".

Liaquat Ali Khan's motion for the consideration of the interim report of his committee received mixed reactions.
Shaukat Ali Khan expressed gladness for allowing the people of the States to participate in constitution-making but he objected to giving the rulers of the States the prerogative of selecting their representatives. Bhorendra Nath Datta seconded this objection by describing the rulers of these States as the worst oppressors for withholding freedom from their subjects. Mian Muhammad Iftikharuddin followed with an argument making it a "great sin" to negotiate with the rulers instead of with the people. Liaquat Ali Khan made it plain that after the States had become independent on August 15, 1947, their rulers surrendered only matters of defense, foreign affairs, and communications in their accession agreements. Since the ruler was the authority in these States, the Government of Pakistan had to negotiate with him in determining the people's wishes. To Gazder's query as to whether the representative of these States would have the right to vote on subjects not mentioned in the accession instrument, Liaquat Ali Khan replied that the question could be cleared after the representatives had reported to the Assembly. A motion to allow representation to Bahawalpur, Khairpur, and the States of Baluchistan was approved.

On October 6, 1950, the States Negotiating Committee rendered their final report which recommended that "all the States of the North West Frontier Province be allotted one seat in the Constituent Assembly of Pakistan and that they be asked to jointly nominate one representative agreed to by the Governments of these States". When a motion to this effect was presented to the Assembly, Iftikharuddin instantly registered his opposition by repeating his arguments against the interim report. Cutting short the debate, Liaquat Ali Khan refused to repeat his reply given on a similar occasion in the past. The motion was adopted without any division of the House.

Committee on Fundamental Rights of Citizens and Minorities

Comparatively speaking, the task of the States Nego-
tiating Committee was less difficult in securing Assembly approval than that of the Committee on Fundamental Rights of Citizens and Minorities which was appointed on the third day of the opening session through a resolution moved by Liaquat Ali Khan who emphasised that the advice of the committee was essential in examining thoroughly the question of fundamental rights of the citizens and minorities. To allow representation to minorities who had no delegates in the House, the resolution empowered the President to appoint not more than seven non-Assembly members, thereby increasing the committee's strength to a maximum of twenty-three with sixteen Assembly members.60

On September 28, 1950, seven members belonging to the minority communities were nominated. Changes in membership were made. Khan Sardar Bahadur Khan, Cazi Mohammad Isa, and Rallia Ram replaced Ghazanfar Ali Khan, Bhim Sen Sachar, and Dewan Bahadur J.P. Singha. The first two resigned their seats in the House while the last mentioned died. To facilitate their work, the committee appointed a sub-committee on the Fundamental Rights of Citizens of Pakistan and another on Matters Relating to Minorities. The former submitted a report on June 26, 1949 and another on June 17, 1949, but the latter failed to submit any. On September 9, 1950, the chairman decided to present only the report of the Sub-Committee on Fundamental Rights together with a note of dissent penned by Professor Chakraverty against two articles.61 To allow the Assembly members time to study the report and table amendments, consideration was postponed from September 28 to October 4, 1950.62

For two days, the report's provisions were attacked and defended. Intent on viewing the whole picture, Shabesh Chandra Nandy moved an amendment for the postponement of the consid-
ation of the report until the report of the minority Sub-Committee had been submitted. This was opposed by M.M. Khuhro who asked for the withdrawal of the motion to avoid criticism that the Assembly was using "diary tactics" to prolong their life. He mentioned the lapse of three years with no constitution in sight. Instead, he suggested the consideration of the report on fundamental rights at the moment and the recommendations for the minorities later. Dhirkoda Nath Dutta supported Nandy's proposal. On a totally different angle, Iftikharuddin desired postponement because the report, in his opinion, was outside the concept of an Islamic democracy as declared by the Objectives Resolution adopted on March 12, 1949. Arguing against postponement, Nurul Amin pointed out that the subject was only an interim report whose provisions could be changed when the draft constitution came up for discussion. Sardar Shaukat Hyat Khan exuded sarcasm in his observation that three years of work produced "nothing new" but "more mouse out of a mountain". A lady member of the committee, Begum Shah Nawaz, cited provisions to disprove the "nothing new" contention and struck at the minority members of the committee as the cause of the delay. The latter remark received an apologetic, "No, Sir", from Professor Chakraverty. After reminding the Assembly that further postponement would produce an impression of deliberate delay, Abdul Hamid saw no obstacle to any addition or alteration on the fundamental rights by the minorities representatives. Rallia Ram took the same point of view. In a belittling vein, Gazar mentioned Burma as having framed her constitution in two months and Syria in a month while the Minorities Sub-Committee could not produce a report after three and a half years. Professor Chakraverty finally had the chance to follow up his objection to Begum Shah Nawaz' statement by alluding to the controversy on separate or joint electorates between the majority community and the minor-
ity, which was responsible for delaying the report. To end the discussion, Chattopadhyay advised the sending of all the reports to a Drafting Committee, which suggestion was opposed by Dr. Qureshi on grounds of impracticability because the draftsmen needed guidance at the outset. After telling an anecdote to illustrate Iftikharuddin's irrelevance, Qureshi concluded that the "Gordian knot can be cut with nothing better than the sword of fundamental rights". The amendment to postpone was rejected and the interim report was considered. After two days of debate, the Interim Report was finally adopted.

In the meantime, the Sub-Committee on Minorities issued a questionnaire to important individuals and organisations to ascertain public opinion. The replies were circulated to the sub-committee members for comment. After a discussion, the sub-committee agreed on separate electorates to ensure real representation with a note of dissent registered by three Hindu members on the ground that the safeguards for the minorities were inadequate.

The final report was presented on December 22, 1952, but it was not until September 22, 1953 that M. I. Chaghtai moved for its consideration. However, the President ruled that the motion could not be moved on that day. Finally scheduled on August 10, 1954, the report consumed three days of tempestuous discussion before it could be taken up for consideration. A week later, it was discussed clause by clause with the Hindu members attacking the provisions and the Muslims defending them. With but one amendment, the report was accepted after B. R. Ambedkar, Datta and Akshay Kumar Dass staged a walk-out. The other Congress members had walked out earlier.

Committee on Addition and/or Re-Distribution of Seats

The Select Committee on Addition and/or Re-Distribution
of Seats in the Constituent Assembly of Pakistan was formed on February 24, 1948 to "re-examine the question of allotment of seats to various provinces". In his sponsorship speech, Liaquat Ali Khan mentioned the movement to and from Pakistan of millions of people belonging to different communities and the indispensability of their representation in the Constituent Assembly. Dhirenda Nath Datta disapproved of the resolution because aside from the fact that the movement was still in a state of flux, it would be difficult for the committee to make a report by April 1, 1948. The resolution was approved after Ghazanfar Ali Khan, the Minister for Refugees, Relief, and Rehabilitation, assured Datta that "although we have not counted the heads and we do not know to the last man, we have got a very clear idea of the number of people who have emigrated from India to Pakistan". 69

The committee report was submitted on May 18, 1948 70 but it was taken into consideration only on January 3, 1949 under the sponsorship of Khoja Shahabuddin. 71 After a preliminary meeting at Karachi on March 7, 1948, the committee transferred to Lahore on March 24, 1948 without the presence of Dhirenda Nath Datta who resigned his committee membership due to pre-occupation in East Bengal. After questionnaires were sent out and interviews conducted to elicit public and official opinion and evidence from the minorities, the committee recommended: "(1) that the Muslim Seats for West Punjab should be increased by five; (2) that one should be added to Muslim Seats for Sind; (3) that one vacant "General" Seat allotted to Sind should be filled up; and (4) that the Christians, Anglo-Pakistanis and Parsees of the whole of Pakistan should be given one seat". 72

In the Assembly deliberations on the report, Nur Ahmed noticed that the committee failed to consider the case of East Bengal. Dr. Qureshi, on the other hand, questioned the committee's exceeding their term of reference. In reply to the
observation raised by Nur Ahmed, Shahabuddin referred to a statement from the Government of East Bengal that the change of population in the province was too negligible to justify an adjustment of seats. Admitting that Dr. Qureshi's point was debatable, he expressed the committee's feeling of giving special representation to the minorities which could best be attained by filling one of the vacant General seats allotted to West Punjab as embodied in an amendment moved by Khan Jardar Bahadur Khan. After a careful deliberation, the Assembly adopted the motion to allot five more Muslim seats to West Punjab, one more Muslim seat to Sind, and to fill up the two General seats in Sind and West Punjab. 73

Steering, Finance and Credentials Committee

Three permanent committees were set up according to the rules adopted by the Assembly, namely, Steering, Finance, and Credentials whose members were elected on March 6 and 8, 1948. 74

Given the responsibility of preparing the yearly Assembly budget, the Finance Committee members were elected on a fiscal year basis. 75

Basic Principles Committee

The largest committee in point of membership and the most important with regard to the magnitude of their function was the Basic Principles Committee commonly referred to by the members as the Constitutional Committee. The members were appointed on March 12, 1949 just after the motion on the Aims and Objects of the Constitution, otherwise known as the Objectives Resolution, was approved by the Constituent Assembly. Composed of the President, twenty-four Assembly members, and not more than ten additional individuals not necessarily belonging to the Assembly, the committee was given the trying work of formulating the main principles of the Constitution.
of Pakistan. The Chief Ministers of East Bengal, Sind, and the North West Frontier Province and Chief Justice Abdur Rashid of the Pakistan Federal Court were co-opted as additional members. To divide the assignment, four sub-committees were organised, namely: Steering, Federal and Provincial Constitutions and Distribution of Powers, Franchise, and Judiciary. All the sub-committees except those on the Franchise and the Judiciary rendered reports whose recommendations were embodied in the Interim Report of September 7, 1950.

**Board of Talimat-i-Islamia and Nomenclature Committee**

To consider religious matters touched on by the Objectives Resolution, a committee of five experts on Islamic religion was set up and named the Board of Talimat-i-Islamia. Although this board was saddled with difficulties such as the prolonged absence of their chairman, Al-Haj Maulana Sulaiman Nadvi who was still out of the country, shortage of reference books, and lack of research assistants, the members succeeded in airing their views on questions referred to them such as the following: (1) definition of an Islamic State, (2) qualifications and powers of the Head of State, (3) rules to guide the Muslims in ordering their lives in accordance with the Holy Quran and Sunnah, (4) the inclusion of the organisation of religious societies in the "Concurrent List", (5) differentiation of an Islamic State from a democratic one with a recommendation for the setting up of a board of experts to settle differences of opinion, and (6) qualifications and powers of Legislative members.

On August 7, 1950, the Board opined that despite their recommendation for the selection of the presidential system, they were amenable to the parliamentary system so long as the Cabinet members were Muslims. Among the Board's views accepted
by the Basic Principles Committee, the suggestions to allow only Muslims to qualify for Presidency, to adopt Islam as the state's ideology, and to establish a board of experts to decide on the repugnancy of legislation to the Holy Quran and Sunnah were to start a series of acrimonious debates that finally led to the estrangement of the Hindu members of the Assembly.

The comparatively minor charge of providing suitable names to organs sought to be established by the Assembly was delegated to a special committee on appropriate nomenclature with Dr. Mahmud Husain as convener and Dr. Qureshi and Dr. Maulvi Abdul Haq as members.80

**Reforms Committee for Baluchistan**

The Reforms Committee for Baluchistan was created three years after the opening session of the Constituent Assembly. The idea of activating such a committee arose after Liaquat Ali Khan, then Prime Minister, saw in the course of his visits to the rural areas, the peculiarity of Baluchistan's governmental set-up compared with the other provinces. With beneficial changes in mind, he sponsored a resolution proposing a committee to make an inquiry and submit recommendations on which a suitable constitution for Baluchistan could be drafted. As usual, Iftikharuddin opposed the resolution for being "entirely against the Objectives Resolution". He maintained that the principles of freedom and democracy did not change with the times and they should not be applied in different ways in different areas even in Baluchistan. Though it seemed unnecessary, Liaquat Ali Khan explained that the preamble to his motion merely stated that a committee would be appointed "to review the entire field of administration of Baluchistan" for the purpose of "bringing the administration of the Province of Baluchistan, as far as possible, to the level of other provinces of Pakistan..." Without further
debate, the resolution was adopted. 81

With Dr. M. Husein as chairman, the committee commenced their investigation in Quetta on November 2, 1950. A seven days' preliminary survey was conducted over the areas of the province. Several weeks later, a "public opinion" questionnaire was dispatched to individuals, organisations, and the administration of the province. Another questionnaire was mailed to gather data from official sources. Furthermore, meetings were held in Ziarat and Karachi and also in Quetta where the sessions were opened to the press and the public. 82

The committee submitted a report covering the following fields: (1) area, population, and languages; (2) constitutional and administrative set-up; (3) educational and social conditions; and (4) economic conditions and financial resources. Unluckily for Baluchistan, the five recommendations calculated to achieve the objective of "bringing the administration of the province... to the level of other provinces" could not be implemented during the life of the Constituent Assembly. 83

**Citizenship Committee**

On October 6, 1950, the Assembly appointed a select committee with Jagendra Nath Mandal as chairman to study within three months a proposed bill for Pakistan citizenship. 84 Before the committee could render their first report, the chairman left Pakistan and was replaced by Abdus Sattar Durrani. Chaudhri Nazir Ahmad Khan became a new member. 85 In a report dated November 22, 1950, the members agreed with the Basic Principles Committee recommendation that citizenship, naturalisation, and aliens should be the subject matter of laws passed by the Central Legislature; therefore, the Pakistan Citizenship Bill should be introduced in the Legislature instead of in the Assembly. Khwaja Shababuddin implemented the committee's recom-
mendation by withdrawing the pertinent bill from the House.

**Drafting Committee**

The adoption of 130 paragraphs of the Basic Principles Committee Report out of a total 250 was considered sufficient progress to call for the appointment of a Drafting Committee. Accordingly, on November 14, 1953, Abdus Sattar Pirzada moved for the formation of such a committee under the chairmanship of the President of the Constituent Assembly. In his motion, he suggested the utilisation of the two to three months before the sixteenth session for drafting the constitution to facilitate the production of the first draft since the remaining provisions could easily be appended. Ghayasuddin Pathan moved an amendment to add to the five original members three more—A.K. Brohi, Chaudhri Mohamad Ali, then Finance Minister, and Sardar Amir Azam Khan. After the amendment and the motion were adopted, the House adjourned.

The Drafting Committee was the last to be formed during the life of the first Constituent Assembly.

**Preliminary Activities**

Normally, the first session of an assembly is to be devoted to organisation but in the case of the Constituent Assembly of Pakistan, only four committees were formed during that period; the rest were appointed later when the need arose. The opening session ended on August 14, 1947 and more than six months elapsed before the Assembly resumed their work on February 24, 1948 to frame the constitution. The second (February 24 to March 2, 1948), third (May 15 to May 22, 1948), and the fourth (December 14, 1948 to January 6, 1949) sessions had no item in the agenda having a direct bearing on the proposed precepts for the constitution. The second session concerned itself mainly with the consideration of the rules of procedure of the Assembly, appoint-
ment of committees and election of their members, and the passage of bills amending the Government of India Act of 1935 and the Indian Independence Act of 1947, both of which were the interim basis of Pakistan's governmental set-up. Discontent developed among the assembly members from Sind during the third session when the debates centered on the choice of Karachi as the capital of Pakistan. The rest of the time was consumed by amendments of the House rules of procedure and of the two acts previously mentioned. When the Assembly started their fourth session, the Quaid-i-Azam was already dead and a new President had to be elected. Except for the lively debates on the Public and Representative Offices (Disqualification) Bill, the members busied themselves on internal housekeeping activities and amendments to the interim constitution.

Major Accomplishments

If the work of the first Constituent Assembly were to be assessed in terms of their ultimate objective, some observers could rightfully claim that very little was accomplished. Examined in the light of the spadework they actually performed, they should be credited for laying the foundation of the 1956 Constitution upon which the second Constituent Assembly constructed the superstructure.

The three major accomplishments of the first Constituent Assembly were the Objectives Resolution, the Basic Principles Committee Report, and the 1954 Draft Constitution. The first gave the general direction, the second outlined the basic principles to be followed, and the third was the product in its rough stage.

Objectives Resolution

The absence of a committee to draft the aims and objects
of the Constitution during the first one and a half years of the Assembly's existence developed an attitude among the Hindus that an "Objectives Resolution" was no longer necessary. Probably unknown to them, the Muslim League Parliamentary Party had been holding prolonged deliberations until agreement was reached over such a resolution. Copies of this document were mailed to the Assembly members a few days before the fifth session commencing on March 7, 1949. After the usual opening ceremonies, Liaquat Ali Khan moved the following:

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 limit prescribed by Him is a sacred trust;

This Constituent Assembly representing the people of Pakistan resolved to frame a constitution for the sovereign independent State of Pakistan;

WHEREIN the State shall exercise its power 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 teaching and requirements of Islam as set out in the Holy Quran and the Sunna;

WHEREIN adequate provision shall be made for the minorities freely to profess and practice their religion's 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 acceded 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 fundamental 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 honoured place amongst the nations of the world and make their full contribution towards international peace and progress and happiness of humanity. 25

Delivered in a "firm and clear voice" and heard by hundreds in the galleries and thousands through the radio, Liaquat Ali Khan's 45-minute sponsorship speech emphasised the salient features of the resolution and endeavoured to allay the fears of the minorities that their rights would be ignored. Nevertheless, the brilliant speech failed to lessen the impact of the opening sentence on the non-Muslims who, through Prem Hari Barma, a Hindu member from East Bengal, attempted to delay its approval by introducing an amendment that the motion be circulated until April 30, 1949 to elicit public opinion. Barma pleaded that the constitution needed a strong foundation which could only be secured through public consultation. Another Hindu, Chattopadhyaya, then leader of the Congress Party, bolstered his stand for postponing the
consideration of the resolution by enumerating three reasons: (1) the resolution was not required for Pakistan as a sovereign state, mentioning the fact that one committee had already finalised their report before the resolution was thought of; (2) the resolution had a religious basis which necessitated more time for a thorough study; and (3) only a few members were present to consider such an important matter. Although Liaquat Ali Khan had answers to all the objections, he accommodated the request for postponement but only until the next day. Barma's seven-week delay was rejected.

The following day, the Opposition members gathered a massive number of amendments to eliminate the religious character of the resolution. Bhupendra Kumar Datta moved for the omission of the paragraph on God's sovereignty over the entire universe on the ground that "politics and religion belong to two different regions of the mind" and if both were intermingled, religion would be exposed to criticism which was sacrilege. On the other hand, if criticism were to be suppressed, progress would be hindered. Datta cited the difficulties that would arise as soon as the constitution was subjected to different interpretations due to ignorance and the presence of various sects. His third reason concerned the possibility of curtailing the happiness of the people through the imposition of thoughts and beliefs. Such interference, he added, was bound to be followed by force. Usually brief and to the point, Professor Chakraverty introduced an amendment to make the people supreme over the state as a means to eliminate the religious flavour of the resolution. Objecting to the phrase "within the limits prescribed by Him", Prem Hari Barma complained that the limits were neither stated nor publicised to non-Muslims. The most eloquent speech came from Kamini Kumar Dutta who insisted an amendment clarifying the concept of sovereignty as that of the
Lincolnian type. He quoted the constitutions of Muslim states
to prove that in those countries, sovereignty was vested in the
people. Although painstaking research was evident in the speech,
one columnist belittled the arguments by remarking, rather acid-
ly, that the criticisms were due to ignorance of Islam and men-
tioning Kamini Kumar Datta's reading the "wrong authors". 96

The attack on the resolution was renewed by the Hindu mem-
bers the next day by Chakraverty who tried to squeeze in a
phrase conveying an idea to make Pakistan a democratic state.
Apprehensive of possible changes in the Islamic concepts of
democracy, freedom, equality, tolerance and social justice,
Bhupendra Kumar Datta, another Hindu, moved for the deletion
of the phrase "as enunciated by Islam" altogether. Kamini al-
lowed the retention of the phrase provided the words "and as
based upon eternal principles" would be added. 97 It was diffi-
cult to escape the conclusion that all the Hindu amendments
were motivated by the fear of an Islamic constitution. 98

The first Muslim speaker to spearhead a strong defence
was Dr. Guroshi who initially categorised the Opposition speeches
into two: (1) those that revealed a fundamental difference of
outlook between the two factions, and (2) those that had fear
as a basis. Aiming at the first group, he proceeded to expound
the impossibility of separating politics from religion for "our
reason is fashioned by our faith, and our faith is fashioned
by our reason". In his view, the "real political safeguard for
any minority is to win the affection and respect of the majority".
Dealing with the second category, he expressed bewilderment over
the fear of the Hindus who had lived side by side with Muslims
for centuries. 99 The professor cited the Muslim abhorrence of
the caste system to demonstrate that there was no "inherent
contradiction" between Islamic and UN principles. He maintained
that Islamic principles are "richer and fuller". 100 Compared
with the Hindu speeches, Dr. Qureshi's defence had a more severe tone.\textsuperscript{101}

The next speaker was Maulana Shabbir Ahmad Osmani who, after elucidating the nature of an Islamic state, asked the non-Muslims to give the Islamic constitution a "fair trial". Unfortunately, most of the non-Muslims, being Bengali, failed to understand his Urdu speech.\textsuperscript{102}

The third day of the debates on the resolution ended with the speech of Birendra Chandra Mandal who asserted that Prime Minister Liaquat Ali Khan had committed a serious blunder in introducing the resolution. Speaking in a loud baritone voice, swinging his arms, and pounding the desk before him at times, he inquired why Pakistan should have the principles of its constitution based on Islam when other Muslim countries such as Arabia and Turkey had not made theirs so. He cited the case of Christian countries where the bishops were not given a voice in governmental affairs. With a voice that became pleading but at times so loud as to make the loudspeaker system, he reminded the members that while individuals might have a religion, the state should not have any.\textsuperscript{103}

The Muslim speakers monopolised the deliberations on March 10, the fourth day of the fifth session. Launching his speech with congratulations to Liaquat Ali Khan for introducing the resolution, Ilahiuddin soon thereafter changed the tenor of his arguments by saying that its preamble, being similar to those used by other countries, was not a new discovery. He asserted that the words "Islamic State" was no guarantee for justice and fair play and to prove this point enumerated four Islamic states whose constitutions were not democratic at all. At this stage, the President had to call his attention for uttering "impolitic" remarks. By digressing too much from his topic, the speaker's 40-minute speech came to an end without
achieving a lucid exposition of the points brought out. 104

The other speaker of the day, Nishtar, delivered a 90-minute speech designed to eliminate the causes of the misunderstanding generated by the resolution. He explained to the Hindu members in particular, the fact that the Muslim religion was a complete code of life and it was inconceivable to divorce it from politics; that delegation of authority simply meant that "authority has been conferred upon the people but is to be exercised by the people through their own organised will and in an organised manner". As proof that the Objectives Resolution contemplated a democratic state, he specified five provisions in the resolution itself. He continued that the reason behind the avoidance of the word "democracy" was that it had "lost all its real meaning now-a-days". To assure the non-Muslims of the absence of classes in Islamic society, Nishtar cited pertinent provisions of the Quran. He claimed that the resolution contained much more than the UN Human Rights Declaration. There was no necessity to borrow Lincoln's phrase since it was inherent in the resolution itself. In opposing the amendment of the Hindus, Nishtar asked the minority to state the reason behind their attempt to deny to the Muslims the right to create conditions that would enable them to lead their lives as good Muslims. After all, the provision, according to Nishtar, had nothing to do with the minorities. In conclusion, he said:

If you are not ashamed of borrowing phrases from Abraham Lincoln; if you are not ashamed to quote Marx, Lenin, Rousseau and others, why should you be ashamed of borrowing something from Islam. 105

No doubt, Nishtar's speech was well-prepared but unfortunately, the speaker who was the Minister of Communications, did not deliver it with feeling so that as a consequence, it "added to the general tiresomeness of the day". 106

Seven Muslims and one Hindu took the floor on the fifth and last day of the debate on the Objectives Resolution.
Discoursing on religion and politics in his 50-minute speech, Foreign Minister Sir Muhammad Safrulla Khan defined the functions of religion as a way of establishing and maintaining the "most harmonious relationship between man and his Maker on the one hand and between man and man in all aspects of their relationship on the other". He stressed the point that politics was only one of the components of the relationship between men; and the provision for Muslims to lead their lives according to Islamic teaching was not compulsory to non-Muslims. Using concrete illustrations, the speaker endeavoured to dispel the suspicions which seemed to worry the non-Muslims. In the same vein, Nazir Ahmad Khan did his best to allay the feelings of the Hindus by pointing out that the resolution was not as yet official legislation nor the constitution; therefore, their apprehensions were premature. He quoted prominent thinkers to support his argument on the role of religion in politics and the eventual abolition of interest in banking. He refuted Datta's assertion that some Muslim countries did not have Islamic provisions by actually reciting provisions in the constitution of those countries prescribing a state religion. Near the end of his speech, he appealed to the Opposition for the withdrawal of all their amendments. Thereupon, another Muslim, Dr. Gopar Hayat Malik expressed disappointment over the non-Muslims' aversion to Pakistan's becoming an Islamic state by bringing confusion and inconsistencies through numerous amendments.

Parrying Chakraverty's objections, Nur Ahmed quoted Professor Halsbury's definition of democracy and extracted portions of the resolution to show that it satisfied all the elements. Whereupon, Chakraverty tried to stop the debates by calling the President's attention to the lack of quorum. The technique failed after a head count proved the existence of a quorum. Nur Ahmed talked for a few more minutes before
the President adjourned the meeting for lunch.

Almost all the aspects of the resolution had been discussed when Dr. Mahmud Husain took the floor. Describing the resolution as "the beginning of a new chapter in the history of political thought", he traced the origin of the concept of sovereignty and the separation of morals and politics. He urged the return of morality to politics - a move which he believed no religion could possibly refuse. After expounding the fact that state and people were synonymous, he recommended the use of the former term for its legal personality in lieu of the latter which, he thought, was but a sociological concept. With an air of casualness, he dismissed some of the amendments as merely verbal in nature.

A note of pessimism, expressed in fluent English, was sounded by a lady member, Begum Shaista Suhrawardy Ikramullah, who minimised the importance of the provisions of the resolution with the remark: "I do not think that mere declaration of its provisions of the resolution is such a great achievement and justifies the orgy of praise we have been giving to ourselves". She preferred to reserve the congratulations after the declaration had been translated in practice.

Rising to oppose the resolution, Chattopadhysaya, the venerable Hindu politician from West Bengal, reminded the Assembly members that non-Muslims constituted one-fourth of the total population in his province and, therefore, it was his duty to take a hand in constitution-making. He asked the following pointed questions: "What are those limits prescribed by God? Who will interpret them? Is it not a fact that a non-Muslim cannot be the head of a Muslim state? Only Muslims can change any law, so what is the reason for our participation?" In reply to Dr. Qureshi's suggestion, he maintained that the majority should create confidence in the minority by just treatment.
Expounding the one-nation theory, the speaker contended that no country existed where nationality was not divided by religion for even the people in Muslim states belonged to different religions. The speech ended with a note of resignation: "But I feel it is useless bewailing before you, it is useless reasoning with you."

The last speaker, Liaquat Ali Khan, retorted that it was futile "to convince a man who refuses to be convinced" by explaining the provisions all over again. However, he assured the non-Muslims that any one of them could be the head of the administration under a constitutional government. He added further that any contrary statement was misleading. He enjoined the non-Muslims to trust the Muslim majority and "give us a chance to show that what we are preaching we are determined to practise."

In an atmosphere of great solemnity, the House rejected all the amendments and adopted the resolution on March 12, 1949. Many spectators shed tears of happiness during the passage of this most crucial milestone in the history of constitution-making in Pakistan. The adoption of the Objectives Resolution paved the way for the appointment of the Basic Principles Committee. The reports (there were three including one supplementary) of the Basic Principles Committee in turn guided the Drafting Committee in the writing of the Draft Constitution.

**The Basic Principles Committee Reports**

Starting their work in March, 1949, the Basic Principles Committee took more than one and a half years before they completed their investigations. Finally, on September 28, 1950, Liaquat Ali Khan presented the first product of their labours entitled, "The Interim Report of the Basic Principles Committee" but consideration was postponed to allow the members to study the report and to table amendments. Professor Chakravarty questioned the venue outside Karachi of the committee and
sub-committees on grounds of excessive expenditure but his resolution was subsequently withdrawn when it was objected to by the members and Liaquat Ali Khan pointed out that the rules of the House included his (Chakraverty’s) resolution.\textsuperscript{111}

Rescheduled on October 6, 1950, the Interim Report’s discussion was reset for another day for lack of time.\textsuperscript{112} A strong agitation against the report constrained Liaquat Ali Khan to move on November 21, 1950 for an indefinite postponement to enable the committee to examine new proposals. It might be noted that the publication of the Interim Report evoked adverse criticism in the form of speeches and articles in the press. As an appeasement measure, the populace were asked to submit suggestions not later than January 31, 1951. No Assembly member dared speak against this suggestion which was formally moved in the House.\textsuperscript{113}

The enthusiastic response of the public necessitated the appointment of a sub-committee which took a year before a report could be submitted to the parent organisations. The Basic Principles Committee Report was further delayed by the Judiciary Sub-Committee’s late submittal of their findings (April 24, 1952) and by the Franchise Sub-Committee’s submission of their report only on May 17, 1952. Without the provisions on financial allocation between the Centre and the Units, nomenclature, and the position of the acceding states in the governmental structure, the BFC Report was handed to the Assembly on December 22, 1952.\textsuperscript{114} The task of defending the report fell on the shoulders of Khwaja Nazimuddin who resigned from the Governor-Generalship to accept the Prime Minister’s position vacated by Liaquat Ali Khan who was assassinated in October, 1951.

Objection was immediately raised by Iftikharuddin who wanted his minute of dissent included in the report, but it
was overruled by the President.\textsuperscript{115} The report also received adverse reaction from the Punjab whose representatives deprecated the principle of parity between East Bengal and all the provinces in West Pakistan. The Punjab press saw in the formula a situation involving the permanent domination of East Bengal over the other provinces.\textsuperscript{116} This opposition prevented Khwaja Nazimuddin from moving for the consideration of the report on January 21, 1953 as scheduled. Quite unexpectedly, Iftikharuddin and Sardar Shaukat Hayat Khan insisted on taking it into consideration. It was perceived later on that both had plans to attack its provisions and to move for the dissolution of the House. The two were, however, declared to be out of order and the President adjourned the meeting.\textsuperscript{117}

Unable to resolve the deadlock on the BFC Report, Khwaja Nazimuddin had no other recourse but to request another postponement when the Assembly met on September 22, 1953. However, he promised to move it "when the Constituent Assembly meets again as a constitution-making body".\textsuperscript{118} This promise remained unfulfilled after he was relieved as Prime Minister by Mohammed Ali (Bogra), then Pakistan ambassador to the United States.\textsuperscript{119} Elected to the Constituent Assembly, he took his oath on the day Nazimuddin requested for postponement.\textsuperscript{120}

The impasse on the report was broken on the 7th of October, 1953 after Mohammed Ali (Bogra), the Prime Minister, announced in the Assembly chamber that the "obstacles that had bogged and held up progress with constitution-making have been at last resolved". Amidst the applause of the rest of the members, Iftikharuddin interrupted the speech of Mohammed Ali by moving an adjournment motion. The President pacified him by ruling that an adjournment motion could be made as soon as the speaker finished his speech. Thus, when Mohammed Ali
(Bogra) moved for the consideration of the Report, Iftikharuddin immediately called for adjournment on account of the inadequacy of the twenty-four hours' notice given to study the formula. Brohi advanced three reasons for resuming discussion. First, the discussion would not be exclusively confined to the new formula since the report covered a wide field. Second, Iftikharuddin had already set himself against the formula, hence, his further study was useless. Third, persistently desiring the passage of the constitution, Iftikharuddin should not delay the report's consideration. The Law Minister concluded that Iftikharuddin's request was not really sincere. After the question of adjournment was rejected by the House, Iftikharuddin stood again to demand the sending of the report to a committee. The President's ruling it out of order silenced him. 121

The report was discussed from October 7 to November 30, 1953. After an adjournment sine dic to permit the members to attend to the work of the Legislature, consideration paragraph by paragraph was resumed on April 5, 1954. The debates were finally brought to a close on September 21, 1954 by Brohi 122 who expressed his gratitude to God and his friends for "having enabled this Constituent Assembly after a course of many years to reach a decision as to the Constitution for Pakistan". Conceding the possibility that the Constitution could be good, bad, or indifferent, nevertheless, he assured everyone that the task of making it was "motivated by the best of intentions". During the division of the House, eleven members voted against and twenty-nine favoured the adoption of the amended report. 123

Aside from Iftikharuddin's attempts to suspend the deliberations on the report, there was one made on April 8, 1954 by Khan Abdul Ghaffar Khan who moved for postponement to allow the replacement of the old members of the Constituent Assembly with newly-elected ones. 124 It may be recalled that in the March,
1954 elections in East Bengal, the Muslim League candidates were decisively defeated by the United Front Party.\textsuperscript{125} Khan Abdul Ghaffar Khan argued that the Muslim League members of the House were no longer representative of East Bengal. Rebutting Abdul Ghaffar Khan's arguments, Brohi expounded the theory that the Assembly was forced to frame a constitution and no condition had been put up to determine their life. The House would fail in their duty if they interrupted their work. He was supported by Gaddar, Jaffar, Rahman, Jam Sahib Mir Ghulam Qadir Khan of Lasbela, Begum Nawaz, and Qureshi. Unable to find support, Abdul Ghaffar Khan's motion for postponement was negated.\textsuperscript{126}

In four instances, the meeting of the Assembly was adjourned when differences could not be ironed out by the Muslim League Parliamentary Party. These postponements were moved on November 14, 1953, April 20 and 22, 1954. On April 22, five thousand supporters of Urdu led by Dr. Maulvi Abdul Haq, president of Anjuman-i-Tarraqi-Urdu, paraded along the streets of Karachi and finally assembled at the lawn of the Constituent Assembly chamber to demand the adoption of Urdu as the only national language. The demonstrators wore black armbands, carried black flags, stoned buses, and picketed schools. Despite this demonstration, the Muslim League could not arrive at a decision. For lack of quorum, the session scheduled on April 26, 1954 had to be adjourned. The deadlock still unresolved in the May 7th session, Mohammed Ali (Bogra) had to request for a half hour recess. Finally, the members came to a compromise to make "Urdu and Bengali and such other provincial languages as may be declared to be such by the Head of the State on the recommendation of the Provincial Legislatures concerned".\textsuperscript{127} When the Constituent Assembly met on September 21, 1954, there was only one item to be thrashed out concerning an amendment tabled by Dhirendra Nath Datta to modify Schedule II (Table of Seats -
House of the People). On the advice of the President, Satta withdrew his amendment with the leave of the House. Within a period of less than a year after Mohammed Ali (Dogra) took over, the arduous tasks of framing the principles were accomplished.

**Draft Constitution**

During the succeeding weeks, it was expected that the Constitution would be finally drafted. The Prime Minister exuded an air of optimism by hoping "that when the Draft Constitution Bill will come, we will be able to make satisfactory progress as we have done in the adoption of the B.P.C. Report and that Insha-Allah [God permitting] we shall be able to finalise the constitution-making completely by the end of this year so that by the first of December, 1954 [subsequently corrected by the speaker to January after Nishtar reminded him] Pakistan may be an Islamic Republic". By working day and night, the Drafting Committee completed the Draft Constitution. Confidential copies were printed and distributed to the members in time for discussion in the meeting scheduled on October 27, 1954. This session never materialised.

**Minor Accomplishments**

During the Assembly's existence, several minor tasks such as the approval of the amendments to the interim constitution, Public and Representative Office (Disqualification) Act, Franchise Bill, Irtysh Council Abolition Act, Rawalpindi Conspiracy Act, Seats Redistribution, and East Bengal Legislature (Continuance) Act were disposed of. Although not directly connected with constitution-making, they should be listed as accomplishments because they had as an objective the surmounting of difficulties expected during the transition period and the greasing of the wheels of the administrative machinery.
From March 2, 1948 when the first amendment was introduced in the Constituent Assembly to September 21, 1954 when the Assembly met for the last time, approximately thirty-seven bills amending either the Government of India Act of 1935 or the Indian Independence Act of 1947 were passed. A large number were adopted without opposition but some were controversial and these provoked heated argument from both sides.

To minimise if not totally eliminate graft and corruption, the Public and Representative Office (Disqualification) Bill otherwise known as PRODA had been introduced by Liaquat Ali Khan on January 3, 1949 and discussed three days later. It provided for the debarment from public life of persons declared guilty of misconduct in an appointive or representative capacity for a period not exceeding ten years. The bill was passed on January 6, 1949 with many amendments aimed at preventing its abuse by a political opponent or political party. Dr. Qureshi's open admission of the existence of considerable corruption had been corroborated by data compiled by the police. In 1948, the Special Police Establishment examined 721 complaints against corrupt practices out of which six secured conviction in the courts and 14 were punished through departmental proceedings. In 1949, the number of complaints increased to 953, in 1950 to 1,123, in 1951 to 1,515, and in 1952 to 1,931 with corresponding increases in convictions.

It is a sad commentary on Pakistan's political record that the apprehensions on the use of the law as a weapon of vindictiveness became a reality. For this reason, Gadder prepared a bill to repeal the act as early as October 10, 1951 but this was shelved by the party in power as being "unthinkable". It was not until September 20, 1954 that he obtained the approval of the Assembly after a three-hour debate.
Another minor achievement was the passage of the Franchise Bill designed to delimit the constituencies particularly in the North West Frontier Province and Sind where elections were to be held on the basis of adult franchise. This act was subsequently amended on November 19, 1951 to give seats to refugees who had settled in Sind from India.

A boon to the judicial branch was the adoption in April 1950 of the Privy Council (Abolition of Jurisdiction) Act which stopped the elevation of civil and criminal appeals from Pakistan to England in consonance with the desire of the Government to take complete responsibility in the administration of laws. This act converted the Federal Court of Pakistan into a Supreme Court.

On the strengthening of the country's security, the Rawalpindi Conspiracy (Special Tribunal) Bill introduced by Abdur Rehman Pirzada induced a lively exchange of ideas between the supporters and the opposition. Citing rules and criminal codes, Muir Farooq Muthut maintained that the proper place for such a bill was the Federal legislature. Pirzada ably countered this argument by pinpointing provisions of various acts to prove that the Federal legislature had no power to enact such a law. The case was extraordinary since it involved a high-ranking officer and in the words of Nur Ahmed, it "affects the happiness and the fate of the people of Pakistan as this plot if it had materialized, would have endangered the very existence of Pakistan". The lawyer members of the Assembly winnowed out all the questionable aspects of the bill through numerous amendments before passage was assured.

In constitution-making affairs, mention had been made earlier of the laudable work done by the Committee on the Addition and/or Re-distribution of Seats to give adequate representation in the Constituent Assembly to the provinces and States which have acceded to Pakistan.
To the Muslim League in particular, the East Bengal Legislative Assembly (Constitution) Bill may be considered an accomplishment in the sense that it was adopted despite the seemingly unsalvageable arguments of the Opposition. Abduh Settar Mirzada, the pilot of the bill, underscored the need to extend for a year the life of the East Bengal Legislative Assembly which was due to expire on March 14, 1953 or barely three days after the introduction of the bill by setting forth the following reasons: (1) preparation for the elections would take much time; (2) the work would be hindered by the cold weather; and (3) allowing the Assembly to continue was better than letting the Ministry govern the province by itself or applying section 92(a) (Governor's Rule). Countering with the Opposition's usual weapon of killing a bill, Nandy moved for its circulation to elicit public opinion to enable the Assembly to arrive at a reliable assessment of the situation. However, in his arguments it was evident that he desired immediate elections.\textsuperscript{144}

The East Bengal Legislative Assembly members were elected in 1946; therefore, their five-year term expired in 1951. But by dating the start of the term from the first meeting after partition, which was in 1948, the members who were mostly Muslim Leaguers stayed in office up to 1953. It may be recalled that the Muslim League did not fill up vacancies after the party candidate was defeated in a by-election so that at the time the bill was moved in the Constituent Assembly thirty-four seats were empty.\textsuperscript{145}

Siding with Nandy, Chattopadhyaya remarked with a tinge of suspicion that the preparations for an election were intentionally delayed. Khwaja Nazimuddin returned the shot by blaming the Caste Hindus for hindering the preparations by demanding a joint electorate for East Bengal against the wishes of the Scheduled Castes. After a verbal battle lasting two and a half hours, the Hindus were pacified when Prime Minister Nazimuddin
assured them that elections would be held before March 14, 1954. 146

Miscellaneous

There were some aspects of constitution-making which, for lack of a proper term, have been relegated to the miscellaneous classification. The three most prominent were the deaths of members, attitude of the press, and the presence of neutral forces. These are briefly discussed in the following pages.

During the life of the first Constituent Assembly, several members who could have contributed more luster to the discussions were snatched by death. The Father of Pakistan, the Quaid-i-Azam, died on September 11, 1948, barely a year after independence. He had calculated that Pakistan's Constitution would be framed within eighteen months or two years at most. 147 He never lived long enough to see the day of the constitution's promulgation.

The second member who died in harness was Maulana Shab-bir Ahmad Tanani who suffered a heart attack at Baghdadul Jadid, Bahawalpur on November 13, 1949. 148 An independent thinker, he aided the Pakistan movement against the wishes of other noteworthy men. Had he lived longer, he could have given invaluable advice in resolving the constitution-making problems that cropped up later. 149

Prime Minister Liaquat Ali Khan, the most trusted lieutenant of the Quaid-i-Azam, was felled by an Afghan assassin's bullet on October 16, 1951. During his lifetime, he was the sponsor of most of the bills and resolutions passed in the Constituent Assembly. 150

The fourth member who died in March, 1951 was Malik Khuda Bakhsh Kar, a lawyer-member from the North West Frontier Province. 151 Another loyal Muslim Leaguer from Dacca, East
Bengal, Abul Masud Abdul Hamid, expired in April, 1952 while working for the service of Pakistan. The last death to be announced in the Constituent Assembly was that of Maulana Abdullah-el Baqui which occurred in December, 1952. The deceased came from East Bengal and having been a former member of the Congress Party, he could have given advice to the Hindus on the Islamic principles embodied in the constitution.

As mentioned earlier, Kiran Shankar Roy and Abdul Matin Choudhury had died before March, 1949.

Notes of condolence on the death of each of these members were moved in the House and the whole congregation silently stood in their seats as expressions of respect to the departed souls and sympathy for the bereaved families.

Let us turn our attention to the attitude of the press on the proceedings in the Assembly. At the outset, the sessions were held in public and this policy was adhered to by their successors. For those who were unable to attend the deliberations, the debates were recorded by various news correspondents who stayed in the press gallery and transmitted to their respective papers the proceedings together with their observations for publication the following day. At times the editorials commented on the controversial issues and unhesitatingly attacked the Assembly members for their views. This provocation did not fail to receive rejoinders from the aggrieved person. An instance may be narrated to serve as an illustration. During the debates on the Basic Principles Committee Report, Chakraverty criticised its Islamic provisions. This criticism was published in the October 20, 1952 issue of a local paper, Times of Karachi, under the headline "Chakraverty Assails Islam". Unfortunately, this was a misrepresentation because Chakraverty did not attack Islam but the Islamic provisions in the report. Two dailies, Dawn and the Morning News, published the correct version. The
President of the Assembly, expressing full sympathy with Chakraverty, mildly admonished the press to be "careful not to give misleading headlines and not to hurt the feelings of any member belonging to any community in this house".

The same newspaper figured in another incident regarding the discussions on PPA. In the course of the debate, Dhirendra Nath Datta voiced his apprehension that the repeal of the act was made an instrument to save a minister of East Bengal and he mentioned an article in the Times of Karachi to support his allegation. Syed Shamas Rahmee, a member from East Bengal, reminded Datta not to be "misguided by the irresponsible criticism in the press". As proof of the paper's irresponsibility, Rahmee cited a case in the past when the paper supported the adoption of Bengali as an official language but when the Assembly started debating on this topic, it changed its views by stating that the existence of two state languages would ruin Pakistan.

Chakraverty, however, assumed a favourable attitude towards one paper called the Sind Observer which was then edited by Mir Ali Mohammad Bashdi. He quoted extensively from its pages to bolster his argument against the Islamic provisions which would result, according to the paper, every part of the country a "cockpit of religious feuds".

The biased attitude of some newspapers was not reflected among a few Assembly members who championed the allies of narrow partisanship by remaining neutral during the debates. One of them, Birat Chandra Mandal, admitted not having opened his lips from the beginning of the sessions on August 10, 1947 to March 9, 1949 when he felt he "should say something". Indeed, the members of this silent committee must have taken to heart an Urdu saying:

Ta mard cukhan na guftah bashad,
Alb-o hunarash nekshah bashad.
So long as a man does not speak,
His merits and demerits remain concealed.158

It is noteworthy that attempts were made at the beginning
of the Assembly sessions to establish an entente cordiale by
the majority party leaders. These efforts were reciprocated by
similar though cautious feelings from the members of the minor-
ities. During the opening session on August 10, 1947, Jogendra
Nath Mandal, a member of the Scheduled Castes, was proposed by
Liaquat Ali Khan, then Prime Minister and a staunch Muslim
League leader, as temporary chairman of the Constituent Assembly.
The proposal was duly seconded by Khwaja Nazimuddin, another
Muslim League stalwart from East Bengal.

This happy trend was continued by the Quaid-i-Azam in
his presidential speech by underlining the fact that the division
of India and the partition of the Punjab and Bengal had been
agreed upon, hence, everyone must "loyally abide by it and
honorably act according to the agreement".159 Earlier, Mandal
had also expressed the wish that the people of all the commu-
nities should "now trust one another".160 In the same vein,
Kiran Sankar Roy, a Caste Hindu, promised "utmost cooperation"
for a secular Pakistan.161

Nature of Sessions

Unhappily, the Muslim-Hindu feud developed during the
years of political fighting had left wounds that nullified the
Quaid-i-Azam’s advice for all to forget the past and bury the
hatchet. On the second day of the opening session, Abul Kasem
Khan shattered Roy’s hopes for a secular state by saying that
the Constitution of Pakistan would be based on Islamic founda-
tions.162 This was further aggravated by the adoption of a flag
design in spite of the strong objection of the minorities. Even
the debates on the conferment of a title for the Father of the
Nation betrayed an undercurrent of Hindu-Muslim enmity.
In the course of the argument, parochial feeling broke out between Muslims and Hindus, between East Bengal and West Pakistan provinces, between the executive and the legislature, and between individuals of conflicting ideological persuasions. Religious differences erupted over the calling of Pakistan a Muslim State, the inclusion of Islamic provisions in the Objectives Resolution, on the issue of adopting joint or separate electorates, and on the organisation of the Board of Talimat-i-Islamia. The regional feeling of the East Bengal members reared its ugly head in the demand to hold Assembly sittings in Dacca, to make Bengali one of the state languages, and to transfer the Federal Court to Dacca. The passage of bills curtailing the powers of the Governor-General and the dissolution of the Constituent Assembly are incontrovertible proofs of executive and legislative friction. On individual animosities, any one perusing over the Assembly proceedings would not miss the differences between Iftikharuddin, a Communist leaning member, on the one side and most of the prominent Muslim League members on the other. Iftikharuddin traded barbs with Liaquat Ali Khan, Dr. Ghausi, Dr. Lumsden, Nurul Amin, Brohi, Firozda, Girdar Amir Azam Khan, and even with the President of the Constituent Assembly, Taimuruddin Khan. Opposition became an obsession to Iftikharuddin as the years rolled on.

Partisanship grew as discussions continued until the breaking point was reached on April 17, 1952 when the Hindu members staged a walk-out to express their resentment against Sir Zafrulla Khan's speech which, to their own viewpoint, ridiculed their society. Zafrulla assuaged their wounded feelings by pledging to take back everything he had said on the assurance that the Hindu scriptures he mentioned had already been repudiated. One and a half years later, another walk-out occurred during the debates on the provisions of the Basic
Principles Committee Report. On November 2, 1952, just after Chattopadhyaya, leader of the Congress Party, had formally stated in the House that it was useless for them to participate in the discussion since they had been outvoted on all issues, the Caste Hindus and two Scheduled Caste members left the chamber.\textsuperscript{179} Since that walk-out, Hindu absenteeism had become frequent. One Hindu member, Dhirendra Nath Datta, resumed regular attendance but he walked out again on September 7, 1954 together with Akshay Kumar Das, a Scheduled Caste member, in disgust over an issue ignoring the rights of the minorities.\textsuperscript{180} Returning in the succeeding session, he was joined by the rest of the Hindu members on September 20, 1954 when the debates on the Basic Principles Committee Report were in their concluding stages.\textsuperscript{181}

The walk-outs accelerated the tempo of constitution-making in direct contrast to the retarding effect of the delivery of extraneous speeches. To cite one incident: in the discussion on emergency powers, the Presiding Officer had to remind Begum Shah Humayun not to dilute on her subject to the point of irrelevancy.\textsuperscript{182} In several instances, Iftikharuddin’s speeches qualify the speaker as the foremost champion of irrelevancy. His consummate skill in establishing a link between his communistic ideas and any topic under consideration enabled him to say much before the President could declare him out of order.\textsuperscript{183}

To the problem of irrelevancy may be added the many violations of parliamentary procedure. In an assemblage of persons having varied training and education, errors in parliamentary procedure are bound to occur. It seemed paradoxical, however, to read from the records, a case of an experienced lawyer being reminded by a non-lawyer of his breaches of parliamentary procedure.\textsuperscript{184} Parliamentary courtesy was, at times, overlooked by members who disappeared from the chamber after delivering their speeches. So rampant was this practice that in several sessions only a few were left to debate on the issues.\textsuperscript{185} This lack of
interest and serious study was reflected in the rejection of a large number of amendments which were discovered to have been already provided for in the bill. 186

These violations of parliamentary procedure were handled by all the Chairman with fairness and tact. 187 Tamizuddin Khan, who presided in almost all the sessions dealing with constitution-making since his predecessor, the Quaid-i-Azam, had no chance to do so, did not hesitate to give a ruling when circumstances called for it. As an illustration: in a speech, Chattopadhyaya referred to "conversations" in the Steering Committee, an act which violated parliamentary procedure. Objection was instantly registered by Nurul Amin who demanded the "source of the information." The President ruled that Chattopadhyaya was not required to disclose the source but Nurul Amin could contradict it in a personal explanation. 188 In a second case, Pirzada took exception to amendments tabled by two Hindu members owing to the fact that the principle of joint electorate on which they were based had already been rejected. Dr. Mahmud Hussain requested a ruling and received one. The Chair "accepted the force of the objection but since that was not the question discussed at the time," allowed the amendments to be moved. While moving his amendment, Dwirenda Nath Batta persisted in discussing the question of joint electorate. The Presiding Officer ruled again that the speaker "should not enter into the details already discussed." 189

The first Constituent Assembly had two duly elected Presidents: the Quaid-i-Azam and his successor Tamizuddin Khan from East Bengal. When Tamizuddin Khan was elected on December 14, 1948, the acting Chairman was Dr. Omar Hayat Malik. 190 Since then Tamizuddin presided over the sessions except on a few occasions when a member of the Panel of Chairmen took over. Abul Hamid was Chairman on October 6, 1950 (whole day) and on April 11, 1951 (part-time); Ghulam Bhik
Nairang on November 25 and 28, 1950 (whole day); Chattopadhyaya on November 22, 1952 (part-time); Nurul Amin on July 13, 1954 (part-time); and Begum Shah Nawaz on September 21, 1954 (part-time) which was destined to be the last meeting. 192

Dissolution

The session scheduled on October 27, 1954 (later changed to October 28) was cancelled after the Governor-General issued Proclamation No. 94 dated October 24, 1954 declaring that "the Constituent Assembly as at present constituted has lost the confidence of the people and can no longer function." 193 The litigation that followed this announcement will be dealt with in the chapter that follows.

Altogether, the first Constituent Assembly held sixteen sessions totalling 116 days during a period of seven years, one month, and eleven days.
NOTES


2. Ibid., p. 129.

3. Ibid., p. 150.


5. Hushtaq Ahmad, Government and Politics in Pakistan (Karachi: Pakistan Publishing House, 1959), p. 97 gives the following figures for Parliament of Pakistan: 31 lawyers, 27 landowners, 9 businessmen, and 12 belonging to the liberal professions excluding law. He did not mention the fact that some members had multiple vocations. The Parliament and the Constituent Assembly had the same membership.

6. Data obtained from an interview with an Assembly member and Muslim League party whip in the House. The above figures should not be interpreted to signify water-tight compartments among the professions mentioned. Some of the members had more than one means of livelihood, e.g., Firoz Khan Noon was a non-practising lawyer and landowner; Sardar Shaukat Hayat Khan was a retired army officer and landowner; Iftikharuddin was a non-practising lawyer, landowner, and businessman.

7. Interview. See also "Members of the Assembly", Pakistan Times, dated July 5, 1955 for data on the re-elected members of the first Constituent Assembly to the second.


9. Ahmad, loc. cit. See list of members in Appendix "B".

10. Ibid.


12. Dr. Khalid bin Sayeed, Pakistan, the Formative Phase (Karachi: Pakistan Publishing House, 1966), p. 329. Kiran Sankar Roy had resigned before he died. The sixth has not been identified by name.

14. List of Members of the Constituent Assembly of Pakistan (Karachi: Asst. Secretary, Constituent Assembly of Pakistan, 1953), p. 3.


21. Ibid., pp. 5-9.

22. Ibid., pp. 5-6.


25. Ibid.


27. Ibid., pp. 13-19.

28. Ibid., p. 20.

29. Ibid.

30. Ibid.

31. Ibid., p. 21.


40. Debates, *op. cit.*, Vol. I, No. 2 dated August 11, 1947, p. 29. Iqbal Iqbal in his book said that the resolution was passed without dissent. This statement could be misconstrued as adoption of the resolution without opposition. The feelings of dissent are clearly set forth on pp. 23-29 of Debates, *ibid*.


45. Pakistan celebrates her Independence Day on August 14, the day Lord Mountbatten formally transferred power instead of August 15 as provided for in the Indian Independence Act of 1947.


48. War almost broke out two months later when Indian troops were flown to Kashmir on October 27, 1948 and the Quaid-


50. Ibid., dated August 10, 1947, Vol. I, No. 1, pp. 8-9. After the death of the Quaid-i-Azam, Taimuruddin Khan was proposed by six members and was proclaimed President after his lone opponent withdrew. See Debates, ibid., dated December 14, 1948, Vol. IV, No. 1, pp. 1-2.

51. Ibid., p. 10. The question was resolved by rule 12 which authorised the President to appoint members from time to time.


53. Ibid., pp. 30-32.


57. Ibid., numbering in the writer’s.


62. Ibid., pp. 2-3.


70. Ibid., dated May 18, 1948, Vol. III, No. 2, p. 44.


72. Ibid., pp. 32-37.

73. Ibid., pp. 19-22.


75. Ibid., dated April 14, 1950, Vol. VII, No. 4, p. 80. Membership was increased from four to eight on March 26, 1953. Ibid., dated March 26, 1953, Vol. XIV, No. 1, p. 25.


79. Ibid., see Appendix B, pp. 427-429.


83. Interview with the chairman of the Committee. The scientific way in which the inquiry was conducted showed the committee's concern for accomplishing a thoroughly reliable report. See "Baluchistan", Ibid., dated November 19, 1951, containing words of praise for the committee.


87. Ibid., dated November 14, 1953, Vol. XV, No. 28, pp. 749-753. The well-intentioned speech of Muvul Amin supporting the motion caused a minor argument when Begum Ikramullah gave a rejoinder to Amin's statement that she owed her membership in the House to the Muslim League. Muvul Amin reminded the lady member that it was parliamentary practice all over the world for a member who resigned from a party to relinquish the seat secured through the efforts of that party. Mohammad Abul Kassim pointed out earlier that she was elected on the Muslim League ticket. Begum Ikramullah cooled down and ended her arguments by saying that she was elected by the All-India Muslim League not by the Pakistan Muslim League. In this argument Amin had the last word. See Ibid., pp. 750-752.


90. Ibid., p. ii.

91. Ibid., Vol. IV, p. ii.


93. Ibid., pp. 1-2.

94. Ibid., pp. 7-11. See also "PM Nevus Objectives Resolution", Dawn, dated March 8, 1949, pp. 1, 5.


99. A similar argument was advocated by Gandhi to relieve Muslim fears of a Hindu raj; but this time, the shoe was on the other foot.


102. Debates, op. cit., pp. 43-49. See also "From the Gallery", Dawn, dated March 10, 1949, p. 5.

103. Ibid.


107. This statement was to be quoted by the Hindu members when the qualifications of the President came up for discussion later.


111. Ibid., pp. 3-11.

112. Ibid., dated October 6, 1950, Vol. VIII, No. 3, p. 166. The first part of the session had been devoted to deliberations on the fundamental rights. Seven hundred amendments were tabled by October 7, 1950. See "Report on Basic Principles Discussion Postponed", Dawn, dated October 8, 1950, p. 1.


114. "Report of the Basic Principles Committee", is found in Appendix to Debates, ibid., dated December 22, 1952, Vol. XII, No. 2, pp. 66-160. Zahir Husain was appointed to examine the financial allocation between the Centre and the Provinces. The problem of the acceding States was studied by a special sub-committee chaired by Khwaja Nazimuddin who became Prime Minister after the death of Liaquat Ali Khan on October 16, 1951.


121. Ibid., dated October 7, 1953, Vol. XV, No. 2, pp. 11-12. By October 28, 1953, out of the 350 amendments tabled, 30 were acted upon, 4 were accepted, 2 were ruled out of order, and the rest were not moved. See "CA Accepts Frame of BFCR", Pakistan Times, dated October 28, 1953, p. 4, 9.


123. Ibid., dated from October 7 to November 30, 1954.


127. Ibid., dated November 16, 1953, Vol. IV, No. 28, pp. 748-749; April 20, 22, 26, pp. 75-79; and May 7, 1954, pp. 81-83, Vol. XVI, Nos. 6, 7, 8, and 9. See "Urdu and Bengali Given Equal Status", Pakistan Times, dated May 8, 1954, and "Demonstration and Picket in Karachi", Dawn, dated April 23, 1954, p. 18. On November 16, 1953, the Muslim League lost a member in the following circumstances. "Then the provision regarding the relations between the Federation and the United won. In b. Laying up, I moved for a half-hour postponement for informal consultations with his colleagues in the Muslim League Parliamentary Party. No agreement having been reached, he moved for the adjournment of the House sine die, a move which was objected to by Begum Ikramullah who knew that the reason for the postponement was to enable the members to campaign for the East Bengal elections scheduled in March, 1954."
Deeply convinced that the constitution of Pakistan was more important than the elections, she preferred to tender her resignation from the Muslim League rather than bow to the party decision for postponement. See Debates, ibid., dated November 14, 1953, Vol. XV, No. 28, pp. 747-753.


129. Ibid.


132. While a large number of these amendments did remove difficulties, there were some which were passed as instruments in the struggle for political power. The rivalry between the executive and the legislative branches eventually culminated in the dissolution of the first Constituent Assembly.

133. They were published in the Gazette of Pakistan Extraordinary on various dates.


136. Ibid., dated January 6, 1949, Vol. IV, No. 5. Gendedor in asking for the repeal of the bill mentioned Chattopadhyaya and some other members as opposed to the bill. This is not borne by the facts in the January 6, 1949 debates.


139. Ibid., dated April 16, 1951, Vol. IX, No. 4, p. 69.


144. Callard, op. cit., p. 29.

145. Ibid.


154. Ibid., dated October 10, 1953, Vol. XV, No. 5, p. 91. The article was a faithful summary of Chakraverty's speech but the headline was misleading. See "Chakraverty Assails Islam", Times of Karachi, dated October 10, 1953, p. 5.


156. Ibid., dated October 9, 1955, Vol. XV, No. 4, pp. 78-80.


158. Ibid., dated January 18, 1950, Vol. VI, No. 4, p. 81.


161. See Note 22.


165. Ibid., dated April 15, 1952, Vol. XI, No. 4, pp. 64 ff.

166. Ibid., dated March 14, 1954, Vol. XVI, No. 1, p. 3.


186. Ibid., pp. 119 ff.

187. The Quaid-i-Azam could not implement his policy of "complete impartiality" as contained in his inauguration speech due to his illness and subsequent death.


189. Ibid., pp. 195-197, 200-203. One author remarked that as Speaker in the Federal Legislature, Tamizuddin was partial to the Muslim League in his rulings. See Ahmed, op. cit., pp. 111-112.


192. See Debates, ibid., on dates mentioned.

CHAPTER IV

THE LEGAL DISPUTE ON DISSOLUTION

The idea of dissolving the first Constituent Assembly had been bruited about as early as January 18, 1950 by some Opposition members who had become impatient with the apparently unreasonable delay in constitution-making. Iftikharuddin had been harping on dissolution so that the members could "seek again the verdict of the people" although he admitted that all his "efforts have proved to be fruitless". The only other Assembly member of Iftikharuddin's "party", Jardar Shaukat Ayat Khan, also suggested that if the Assembly were unable to fix a date for the passage of a constitution, all the members should resign. Of course, this was branded by the more optimistic delegates as irresponsible criticism.

The result of the 1954 elections in East Bengal gave Iftikharuddin sufficient ground to call for elections to a "new Constituent Assembly which will reflect the wishes of the people". This time he was supported by Khan Abdul Ghaffar Khan, a member from the North West Frontier Province who, like Iftikharuddin, felt that the continued existence of the Assembly for the last seven years had been "most unreasonable since it is put forward with a view to cling to office". His arguments were parried by several Muslim League members including Begum Shah Nawaz who recalled that the venerable gentleman (Khan Abdul Ghaffar Khan), having been in prison for six years, had lost "contact with the conditions of our country". Ignoring the talk on dissolution, the more dedicated members went on with their work until the Assembly adopted the Basic Principles Committee Report on
September 21, 1954 and the only task left unfinished was
the drafting and enactment of the constitution into law.
The Governor-General's proclamation dissolving the Assembly
undid seven years of constitution-making and brought to
Pakistan months of confusion and a grave constitutional
crisis which threatened its very existence.5

Background of Dissolution

This abrupt change in the political atmosphere
might be better understood by turning back the pages of
Pakistan's constitutional history and reviewing the events
that culminated in the downfall of Pakistan's constitution-
making body.

The first real indication that the nation's poli-
tics was bound to end in the failure of the parliamentary
system was the dismissal of Khwaja Nazimuddin as Prime
Minister and his replacement by Mohammed Ali (Bohra) in
April, 1953. The latter was the personal choice of Ghul-
am Mohammad who was elevated to the position of Governor-
General after the death of Liaquat Ali Khan on October
10, 1951.7 The dismissal of Nazimuddin was considered
strange because the Federal Legislature had shown their
confidence in him by approving his budget a few days be-
fore.9 In objecting to his dismissal, Nazimuddin maintained
that the Governor-General had erred since he was "purely
a constitutional Governor-General"9 but Ghulam Mohammad
insisted on the ground that "the cabinet of Khwaja Nazis-
muddin has proved entirely inadequate to grapple with
the difficulties facing the country".10

Rankling in the hearts of the affected politicians,
this feeling of resentment was aggravated further by the
fact that the new Prime Minister was neither a political
leader nor a party stalwart compared with Khwaja Nazimuddin who had been Chief Minister of East Bengal, and the cabinet ministers deposed with him (Sardar Abdur Rab Nishtar, Fazlur Rahman, and Abdus Sattar Pirzada) who had been members of the Old Guard of the Muslim League and ministers since the date of Pakistan's independence. Mohammed Ali (Bogra) had, prior to his designation as Prime Minister, been holding an ambassadorial appointment.11

Although relieved from their ministerial posts, the ex-ministers were still members of the Constituent Assembly. As events showed, they made use of such membership to introduce laws aimed at curtailing the powers of their political enemy - Governor-General Ghulam Mohammad. The first step taken along this line was the repeal of PORDA on September 20, 1954, an action calculated to deprive the Governor-General and the Governors of a potent weapon to eliminate opposition.12 This was followed the next day by the passage of a bill placing curbs on the Governor-General's powers by amending the Government of India Act of 1935.13 The reason behind Nazimuddin's waiting for many months before taking these drastic steps is not far to seek. He and his supporters needed correct timing to make their action more or less unassailable and avoid long debates. The opportunity presented itself after the House had finished discussion on provisions regarding the appointment of the Prime Minister and Ministers. When this bill, innocuously titled "Government of India (Fifth Amendment) Bill", was taken into consideration, Sardar who piloted it, merely stated that it had the purpose of incorporating what had already been adopted in the future constitution. With the principle underlying the bill already accepted,
most of the four-paged discussions in the Assembly debates merely centered on improving the language. The salient amendments to the Government of India Act of 1935 were as follows:

(1) The Governor-General shall appoint a member of the Federal Legislature who commands the confidence of the majority of the members of the Federal Legislature as Prime Minister. The other Ministers shall be appointed by the Governor-General from amongst the members of the Federal Legislature in accordance with the advice of the Prime Minister;

(2) The Council of Ministers shall be collectively responsible to the Federal Legislature and the Ministers, including the Prime Minister, shall cease to hold office on the expression of want of confidence by the Federal Legislature;

(3) Wherein in this Act the Governor-General is required to perform any function or exercise any power, he shall until the context otherwise provides be deemed to perform this function and exercise those powers in accordance with the advice of the Ministers.

Noting the "terrific speed" with which the bill was passed, one prominent Pakistani journalist described the events leading to its adoption as follows. On September 20, 1954 at four o'clock in the afternoon, Gazder gave notice of the bill and two hours later, the Steering Committee marked it "TOP PRIORITY" in the agenda. An hour later, it appeared in the Gazette Extraordinary. At midnight copies of the bill were inserted into the mail boxes of the Assembly members. The bare majority who heard the announcement of the session at nine o'clock in the morning of September 21, 1954 were the only ones in attendance when the bill was adopted. This journalist claimed that
the debates consumed less than ten minutes. Of great significance too was the taking up of the bill during the absence of the Governor-General who left Karachi for Rawalpindi on September 15 and was not expected to return until the end of the month. Having heard of the bill’s introduction on September 20, the Governor-General cancelled his visit to Gilgit, Kashmir and returned to the Federal capital the next day.

For one month, nothing in the papers mentioned any plans of the Governor-General to counter the moves of the Assembly. It seemed that nothing was wrong after all because a day after the passage of the Basic Principles Committee Report, Prime Minister Mohammed Ali (Bogra) expressed the hope ‘that Pakistan would be declared an Independent Sovereign Republic by December 25 this year’ before he left Karachi on a tour of the United States and Canada. The month-long publication of the progress of the Drafting Committee and some sort of opposition of prominent religious leaders to a purported dissolution of the Constituent Assembly evoked no official response from the Government.

Suddenly, on October 21, 1954, Mohammed Ali (Bogra) flew post haste to Karachi although he was still scheduled to visit Canada. This move meant that his presence was urgently needed in Pakistan’s capital. Drivin; straight to the Governor-General’s house upon arrival, he closeted himself there until the early morning hours. The outcome of this momentous conference was the issuance by the Governor-General of a proclamation on October 24, 1954 which 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.

The ultimate authority vests in the people who will decide all issues including constitutional issues through their representatives to be elected afresh. Elections will be held as early as possible.

Until such time as elections are held, the administration of the country will be carried on by a reconstituted Cabinet. He has called upon the Prime Minister to reconstitute the Cabinet with a view to giving the country a vigorous and stable administration. The invitation has been accepted.

The security and stability of the country are of paramount importance. All personal, sectional and provincial interests must be subordinated to the supreme national interest.

On the same day an eight-man new Cabinet headed by Prime Minister Mohammed Ali (Bogra) was sworn in to carry on the administration "in this hour of crisis".

The choice of the date for issuing the proclamation was dictated by the circumstances. Through the passage of the amendment to the Government of India Act of 1935 clipping his powers, the Governor-General was alerted to the danger that he would be thrown overboard in the selection of a new President of Pakistan unless he could regain the support of the majority of the Assembly members before the approval of the Constitution. To his discomfiture, he was unaided in this task by the Prime Minister who had left for a tour abroad. In the meantime, he kept himself posted on the progress of the Drafting Committee. The alarm was sounded when confidential copies of the Draft
Constitution were circulated to the Assembly members in preparation for the session scheduled on October 27. Before that fateful day should come, the Governor-General felt constrained to take measures calculated to strengthen his hand. The first move he made was to recall Prime Minister Mohammed Ali (Bohra) from his trip and to summon an urgent conference immediately after the Prime Minister's arrival. The outcome of this parley was the October 24 proclamation.

If the alleged people's loss of confidence in the representative character of the Assembly members was to be considered as the legitimate cause, the most logical date of dissolution would have been just after the March, 1954 elections in East Bengal when the Muslim League candidates were repudiated by a huge majority. Furthermore, the Governor-General could have imposed party discipline by dissuading his Law minister, Brohi, from opposing Khan Abdul Ghaffar Khan's move for dissolution of the Assembly during the April 6, 1954 session. Evidently, he had no idea of his sorry position until that portentous September 21 session.

Dissolution was the only recourse, short of physical elimination, open to the Governor-General to destroy his political opponents for if he were to allow the Constituent Assembly to finish their work and to voluntarily dissolve themselves thereafter, the Opposition would still be in power as members of the provisional National Assembly as provided for in Article 233 of the Draft Constitution. In fact, they could perpetuate themselves in their position by postponing indefinitely the elections to the permanent National Assembly on various pretexts.
The Tamizuddin Case

The action of the Governor-General in dissolving the Constituent Assembly led to the filing of a petition which raised constitutional law problems described by an eminent British jurist as of "interest throughout the Commonwealth". The writer of this study earnestly believes that the controversy should not only be considered a "must" reading for legal practitioners in Commonwealth countries but also for students of history in newly emerging nations in Asia and Africa whose political institutions have been transplanted from an alien background.

Having surrounded himself with handpicked ministers, the Governor-General took administrative action to prevent the meeting of the Assembly scheduled on October 28, 1954. As a consequence, the police locked the Assembly chamber, cordoned the area, and prohibited entry without passes. On that day, however, no session was held because Tamizuddin had postponed the meeting to January 3, 1955 after Major-General Iskander Mirza, newly-appointed Minister of Interior, and States and Frontier Regions, informed him that the Constituent Assembly had been dissolved. Four days later, the Estate Officer of the Government of Pakistan requested Tamizuddin Khan to vacate his quarters, Bungalow No. 3, Bath Island, Karachi, effective November 8, 1954 on the ground that he was no longer President of the Constituent Assembly.

On November 2, Tamizuddin Khan challenged the legality of the proclamation by declaring that "there is no authority whatsoever with anybody except the Constituent Assembly itself to dissolve that body". He pointed out that the proclamation itself did not cite any authority.
Making good his challenge, Tamizuddin Khan filed a petition in the Chief Court of Sind for a writ of mandamus or any appropriate writ against the Federation of Pakistan and all the nine ministers of the Central Government including their agents "from implementing or otherwise giving effect to the alleged Proclamation dated October 24 and also restrain [sic] them from interfering with, directly or indirectly, or obstructing the petitioner in the exercise of his functions and duties as the President of the Constituent Assembly". Furthermore, he asked the Court for a writ in the nature of quo warranto against all the Cabinet ministers. To support his petition, the President of the "defunct" Constituent Assembly cited the following reasons: (1) the power to dissolve the Federal Legislature (which was also the Constituent Assembly) under Sec. 19(2) of the Government of India Act of 1935 was omitted by the Pakistan (Provisional Constitution) Order of 1947; (2) according to the Rules of the Constituent Assembly, the President alone was empowered to summon, adjourn, or prorogue the Constituent Assembly and dissolution could be made only by a resolution approved by two-thirds of all the members; (3) the Governor-General had no control because the acts passed by the body did not need his assent; (4) the appointment of a new Council of Ministers was void because it was done through the alleged proclamation; (5) the appointments of Major-General Iskander Mirza, M.A.K. Ispahani, Dr. Khan Sahib, General Muhammad Ayub Khan, and Mir Ghulam Ali Talpur were illegal because they were not members of the Federal Legislature as required by section 10 of the Government of India Act, 1935, as amended on September 21, 1954. Docketed as No. 43 of 1954, the petition informed the Court that no other effective legal remedy
was available to the petitioner and furthermore, the letter asking him to vacate his bungalow was illegal.\textsuperscript{30}

In a 45-minute summary hearing held on November 12, 1954, the Sind Chief Court,\textsuperscript{31} just after admitting the petition, scheduled the trial on December 6. On the suggestion of the Court, the name of the Estate Officer was dropped without prejudice to the filing of a separate application.\textsuperscript{32}

The regular hearing on December 6 was opened by Fayyaz Ali, the Advocate-General of Pakistan, who presented the respondents' case\textsuperscript{33} before a full Bench. He continued his arguments on December 7 when the objections were elaborated,\textsuperscript{34} on December 9 when the Court refused to admit quotations from books written by living authors,\textsuperscript{35} and finally concluded on December 15 after thirty hours.\textsuperscript{36} The following day, Chundrigar, senior counsel for the petitioner, launched his rebuttal\textsuperscript{37} which continued for three days and ended on the 20th. J. N. Pritt, the British senior counsel, took over on the 21st and for the next three days argued against the objections presented by the Advocate-General. In observance of the winter recess, the hearing was postponed to January 7, 1955.\textsuperscript{38} This time, Chundrigar resumed his arguments which lasted two days.\textsuperscript{39} After eighteen days, the trial was finally concluded on January 13, 1955. On February 9, the Sind Chief Court handed the unanimous decision upholding the petition.\textsuperscript{40} On the same day, the Government and the ministers signified their intention to appeal before the Federal Court of Lahore.\textsuperscript{41} However, the time required to prepare the documents prevented the filing of the appeal earlier than February 17. Five days after the receipt of the papers, the Federal Court issued orders suspending the issuance of the writs of mandamus and quo warranto pending decision on the
appeal. The second round began on March 1, 1955 and was interrupted once on the third day by suggestions of a compromise from Chundrigar after Chief Justice Munir observed that the issue was political. Unfortunately, the chances of compromise were lost when Chundrigar "expressed his inability to produce the authority [to negotiate] for the members of the Constituent Assembly." On the other hand, the Government was apprehensive that if "once the Constituent Assembly were allowed to meet, where is the guarantee that they would pass the promised legislation and dissolve the Assembly." On March 21, fifteen days after the appeal trial commenced, the Federal Court handed down a decision which reversed the findings of the Sind Chief Court by a majority judgment with Mr. Justice Cornelius dissenting.

Before going further, a detailed discussion of the trial appears necessary for a thorough understanding of the case. On December 6, the Advocate-General opened his arguments at the Sind Chief Court by reading out a statement to a packed courtroom listing the following seventeen preliminary objections and seven objections to the application for writ:

1. Sec. 223A enacted by the Constituent Assembly has not become law as it has not yet received the Governor-General's assent;

2. Under Sec. 6(3) Indian Independence Act a Bill cannot become valid law until it receives the Governor-General's assent;

3. The Governor-General has powers to withhold assent;

4. Rule 62, Pakistan Constituent Assembly Rules, which provides that any Bill passed by the Assembly will become law as soon as it is signed by the President of the Assembly and published in the official gazette is illegal, ultra vires and void;

5. The petition is beyond the territorial jurisdiction of the Court;
6. The petitioner is not entitled to the writs of Mandamus or Quo Warranto against the Pakistan Government or any of its Ministers;

7. The present proceedings are wholly illegal and the Court is precluded by statute from entertaining it;

8. It would not be appropriate to include the respondents in the terms "Person or Authority" used in Section 225A;

9. As normal remedies under the ordinary law are available to the petitioner, the petition for writs does not lie;

10. Respondents are not enjoined by any law to maintain the President of a "dissolved" Assembly in his Chair;

11. As no demand for performance of a specific legal duty has been made and refused, petition for Mandamus does not lie;

12. First prayer of the petition is not covered by law of Mandamus;

13. As petitioner has lost office by "dissolution" of the Assembly and no one is at present holding that office, no writ of Mandamus can legally issue;

14. As respondents 1, 3, 5, 7, 8, and 9 (these are the numbers in the petition designating the ministers of the Crown) have usurped no office, no writ of Quo Warranto can legally be demanded or can issue against them;

15. In case of usurpation of any office under the Crown it is the exclusive right of the King to seek writ of Quo Warranto against the usurper;

16. As respondents 1, 5, 7, 8 and 10 (see note in No. 14 above) were appointed by the Governor-General representing the Queen no writ of Quo Warranto can legally issue against them;

17. As no personal injury has been caused to the petitioner by the continuance of any of the respondents 2 to 10, the petition for Quo Warranto is not maintainable in law.

On the merits of the petition itself, the following objections were submitted:

1. The Crown has the power to dissolve the legislature of any dominions except where the power has been superseded or regulated by legislation;
2. The Crown's power to dissolve the legislature of the dominion remains in full force and effect in the case of Pakistan;

3. The Governor-General is vested with all the powers of the Crown at common law;

4. Rule 15, Constituent Assembly Rules, which provides that the Assembly can be dissolved only through a two-thirds majority vote has no legal force and effect and is void and inoperative;

5. Respondents deny that the Governor-General has been deprived of his power to dissolve the Constituent Assembly under section 5, Indian Independence Act, 1947;

6. It is not within the Court's jurisdiction to decide whether the Governor-General had or had not good reasons for dissolving the Assembly on Oct. 24;

7. The Governor-General has power to revoke or vary the orders of the Governor-General of India to make further orders.

During the following six days, the objections were discussed in detail by the Advocate-General. On the seventh day of the hearing, Manzur Qadir, counsel for the respondent ministers, expanded the necessity for the assent of the Governor-General to the enactments of the Constituent Assembly and the validity of the proclamation and the appointment. After Qadir had sat down, Chundrigar replied, enumerating the following objections:

1. While other dominions were governed by constitutions framed by the British Parliament, Pakistan had a Constituent Assembly whose power to frame a constitution was not limited by the Independence Act itself;

2. The power to give assent does not imply the power to withhold such assent. Power to withhold assent is expressly mentioned not merely implied;

3. Under the Indian Independence Act of 1947, the Constituent Assembly is superior to the Governor-General because an order passed by the latter can be revoked by the former. The Governor-General is but a constitutional head;

4. The Courts had assumed as valid law although those had not received the assent of the Governor-
On the eleventh day of the trial, Pritt remarked that "the attitude of the Government as shown by the arguments advanced by the counsels of the respondents was that it was 'cheerfully willing to damn' all the legislations passed by the Constituent Assembly during the past seven years" and therefore was "not a case of cutting one's nose to spite the face but cutting one's hand to save the face". Referring to the argument on the validity of the appointment of the ministers although they were not members of the Federal Legislature on the ground that no Federal Legislature existed, Pritt said that it amounted to saying that "we cannot appoint a minister who is a member of Federal Legislature because we have just destroyed it and therefore we can appoint anyone".

On the merits of the petition, the British lawyer argued that: (1) the proclamation had no legal support; (2) whether the legislation of the Constituent Assembly was called an ordinance or a rule, it was still an expression of the assembly's will, and therefore, could not be held invalid; and (3) the other preliminary objections were either unimportant or so simple and clear that he would not aid anyone. After Pritt terminated his arguments, Chundrigar resumed his on the question of jurisdiction by maintaining that the proclamation was issued in Karachi and the office of the Assembly and the Government were there too, hence, the Sind Chief Court was the only Court having jurisdiction. Arguing on the writ of mandamus, Chundrigar observed that if the dissolution was a good order, the writ would not have arisen at all; if bad, then the petitioner should be restored to the office of the Constituent Assembly. He asserted that "it was not a rule of
law that a writ could not be granted in cases where other remedies were available.\(^{55}\)

In his rebuttal, the Advocate-General pointed out that the invalidation of the dissolution did not affect the old ministers who were reappointed after the re-constitution of the Cabinet.\(^{56}\) He also took exception to Priti’s assertion that every expression of the will of the Assembly was law because such expression, he emphasised, must pass through a specific procedure. As an example, he cited the fact that the Assembly had expressed their views on the Basic Principles but these principles had not become law. In his arguments, it was evident that he was unshaken in his belief that the power of dissolution was a prerogative of the Crown delegated to the Governor-General.\(^{57}\)

The hearing was concluded on January 14, 1955 with only four judges on the Bench after Mr. Justice Nisar Ali Khan retired in the last week of December.\(^{58}\)

Three weeks later, a packed court heard in silence the verdict of the Sindh High Court directing that a writ of quo warranto be issued against Major-General Iskander Mirza, M. A. H. Isphahani, General Mohammad Abd Khan, Dr. Khan Sahib, and Mr. Ghulam Ali Khan Talpur, prohibiting them from exercising the office of the Minister and a writ of mandamus restoring the petitioner to his office as President of the Constituent Assembly by restraining respondents from interfering with his duties and obstructing him in the exercise of his functions.\(^{59}\) The Court held that section 10 of the Government of India Act as amended by the Government of India (Fifth Amendment) Act and Section 223-A added by the Government of India (Amendment) Act, 1954 were valid.\(^{60}\)

The issuance of the writs was, however, suspended for fourteen days to enable the Advocate-General to file
an appeal with the Federal Court at Lahore.

The Federal Court heard the appeal on March 1, 1955 with a bench consisting of Chief Justice M. V. A. J. M. Khan, Justice Akram, Justice Cornelius, Justice Sharif, and Justice Rahman. M. F. A. Noor, the Advocate-General, presented the following points:

1. Whether the proclamation of October 24, 1954, made by the Governor-General, is legal and valid and that the Governor-General had constitutional and legal right to make it;

2. Whether for every law enacted by the Constituent Assembly the assent of the Governor-General is necessary and that Section 223-A is not an enforceable law for want of the assent of the Governor-General;

3. Even if Section 223-A is held valid law, it does not give jurisdiction to the Sindh Chief Court to issue writs of "mandamus" and "protection" against the Federation of Pakistan and the Central Ministers. The jurisdiction to issue writs is discretionary and the Sindh Chief Court should not have issued the writ in the circumstances of the case;

4. Whether any case has been made out by the petitioner for the issue of the writs.61

Among the forty-four points cited in the memorandum of appeal was a statement that the Sindh Chief Court did not pay attention to the "rapidly mounting opposition" against the continued functioning of the Constituent Assembly which has been expressed in the assemblies of the Punjab, North West Frontier Province, and in East Bengal where the United Front Party, as mentioned earlier, captured ninety-five per cent of the seats in the Provincial Assembly.62

Contending that the controversy was more political than legal and "fraught with the gravest possible consequences," the Advocate-General painted two contrasting pictures in his memorandum.
3. That the Pakistan Constituent Assembly has not only ceased to represent the vast majority of the people of Pakistan, but, as mentioned in detail in the grounds of appeal by the petitioners, has actually been acting in opposition to openly and widely expressed views, wishes and the best interests of the vast majority of the people;

9. That if the Pakistan Constituent Assembly is allowed to function again, your petitioners, judging from the previous conduct of the Assembly and its deliberate misuse and even abuse of powers, have every reason to apprehend that the Assembly under the respondent, is very likely to repeat its previous history and revengefully exploit its new opportunities in such a way as to completely upset the present administrative measures which the petitioners are taking and pursuing for the peace, good government, and stability of Pakistan.

It is also feared by the petitioners that merely to spite them the Constituent Assembly may try to commit such an abuse of its powers as to engulf the entire country in a welter of chaos, provincial conflicts, and political strife of such proportions and magnitude as to endanger the very existence of Pakistan.

10. That on the other hand, in the orders of the Srinivasa Chief Court for the issue of writs is stayed pending the decision of the appeal by the petitioners, which decision it is hoped may be given at the earliest convenience of this Honourable Court, no appreciable loss or injury of any magnitude is likely to be caused to the opposite party or to the members of the Constituent Assembly.

11. That the balance of justice as well as convenience is heavily in favor of staying the said order rather than in enforcing it against the petitioners.

In support of his points, the Advocate-General argued that there were certain restrictions on the Constituent Assembly one of which was the refusal of assent and the other was the power to dissolve the Constituent Assembly. The dissolution was authorized if the Governor-General had reason to believe that a law had been passed against the wishes of the people. This remark received the following rejoinder from the Chief Justice: "The
Governor-General is not supposed to know the wishes of the people. After the Advocate-General insisted that the Governor-General, the Chief Justice arrived at the conclusion that he was, therefore, not a constitutional Governor-General since the Constituent Assembly was not subject to any restriction.

In another instance, the Chief Justice voiced an opinion on the language of the Indian Independence Act of 1947 as follows: "... there is no mission in the Act, it is complete in every respect" but the framers of the Act "never thought the people whom they were entrusting the task of making a constitution will not make a constitution". He added, "these gentlemen thought of giving the country some big and grand constitution" but the Constituent Assembly "never gave any with the result that the country is going to the dogs".

From the above remarks, it was plain that both parties were blamed by the Court. A compromise was, therefore, not impossible. The opportunity came after the Chief Justice observed that the problem was political and "it would be better for the parties to sit together and decide it among themselves". Chandrisar appeared inclined but he set as a condition, the formation of a new Constituent Assembly through direct elections on adult franchise within a specified period. In the event his stipulation was accepted, he asked that the Constituent Assembly be allowed to convene at once to pass a resolution dissolving themselves.

Three days later, Chaudhri Mohammad Ali, the Finance Minister; Major-General Iskander Mirza, Minister for Interior; and H. S. Suhrawardy, Law Minister, arrived in Lahore. The three cabinet members were tight-lipped about their mission to such an extent that when Mirza was asked by a correspondent, the reply was: "... I have come to Lahore to see the roses".
The three-day compromise talks bogged down on the following issues. The ministers asked Chundrigar to produce a statement from the Constituent Assembly that he was authorized to do so. On the other hand, Chundrigar wanted agreement on the summoning of the Constituent Assembly to pass a law for the election of a new Assembly and for the establishment of an election machinery before he presented the consent of two-thirds of the members of the Constituent Assembly. 69

Meanwhile, Diplow continued his arguments on the necessity for the Governor-General to assent to laws passed by the Assembly including the law bestowing jurisdiction on the Sind Chief Court. 70 Chundrigar called the Court's attention to the uniqueness of the case in that the Governor-General dissolved the Constituent Assembly without statutory backing and the Government themselves were challenging the validity of their own legislation (confering jurisdiction on the courts) which was approved by the Governor-General on the floor of the Assembly by the Law Minister himself. 71 After two days of debate, Chundrigar fell ill and the trial had to be postponed. 72

Then on March 21, 1945, the Federal Court handed down the following decision:

Held, (All Justices except Cornelius agreeing).

The Constituent Assembly when it functions under sub-section (1) of section 8 of the Indian Independence Act, 1935 acts as the Legislature of the Dominion within the meaning of section 6 of that act and under subsection (3) of the latter section the assent of the Governor-General is necessary to all legislation by the Legislature of the Dominion. Since Section 223-A of the Government of India Act under which the Chief Court of Sind assumed jurisdiction to issue the writs did not receive such assent, it was not yet law, and that therefore that Court had no jurisdiction to issue the writs.

In view of this conclusion, the Court did not go into the other issues in the case. 74
Agreeing with the order allowing the appeal, Mr. Justice Akram cited the British constitutional theory that the Head of the State, being a part of the legislature, had the right to give or refuse assent to laws. Believing that such a theory was in mind when the British Parliament framed the interim Constitution of Pakistan, the learned Judge set forth his view that "in the absence of any express or implied provision in any enactment to the contrary, the assent of the Governor-General is necessary before any constitutional measure framed under section 8(1) of the Independence Act, 1947, can pass into law." 75

Mr. Justice Cornelius, dissenting from the majority decision, penned the following:

a. Indian Independence Act 47 extended greater freedom to dominions formed after 1931 by virtue of the Statute of Westminster, hence it circumstance justifies term "independent Dominion" to India and Pakistan;

b. Governor-General was nothing but British sovereign except appointment;

c. Though the Constituent Assembly was, as a body, not a creation of the British Parliament but in my opinion, it be regarded as a body created by a supra-legal power to discharge the supra-legal function of preparation of Pakistan. Its powers in this respect, belongs to itself inherently, by virtue of its being a body representative of the will of the people in relation to their future mode of Government.

The Constituent Assembly was a supra-legal body, not acting in its constitution-making capacity within the Constitution. It was not to be presumed that, in this capacity, its proceedings and decisions were subject to the qualified negative of the Governor-General, who was a statutory authority owing existence to the interim Constitution.

I place the Constituent Assembly above the Governor-General, the Chief Executive of the State, for two reasons, firstly, that the Constituent Assembly was a sovereign body, and secondly, because the statute under and in accordance with which the Governor-General was required to function, were within the competence
If the Constituent Assembly to amend. 76

On the basis of the above arguments, Mr. Justice Cornelius concluded:

There is nothing in section 6 (3) Indian Independence Act or in the status of Pakistan as a Dominion which creates the obligation that all laws made by the Constituent Assembly, if of constitutional nature, require the assent of the Governor-General for their validity and operation. 77

Mr. Justice Sharif and Mr. Justice Rahman agreed with the Chief Justice's opinion but while the former made no comments, the latter, after writing a few observations which appeared to him as the fallacities arguments of Tasimuddin's counsel reiterated that "the mere absence of an express provision included in the Indian Independence Act for Bills being presented to the Governor-General for assent, after being passed by the Constituent Assembly when sitting as the Legislature of the Dominion to frame the Constitution and the fact that discretion with 10th assent is not specifically mentioned, though provision that effect exists in the Government of India Act, 1935, r in the Constitution of other Dominions, strike me as of material significance." 78

It is interesting to speculate on what went on in the minds of the judges while the trial was going on. Nevertheless, it was obvious that "mental anguish" was underlined by all of them in the face of a perplexing situation. The Government was in command of all the executive forces and a decision adverse to themselves would have resulted in a "welter of chaos, provincial conflicts, and political strife of such proportions and magnitude as to endanger the very existence of Pakistan", Contrariwise, no "appreciable less or injury of any magnitude is likely to be caused to the opposite party r t. the members of the Constituent Assembly" with a judgment in favour of...
the Government. Only Mr. Justice Cornelius, a Pakistani Christian, was not influenced by such considerations and took a purely legal view of the matter.

**Consequences of the Decision**

The decision of the Federal Court meant to the legal advisors of the Government of Pakistan that all the forty-four acts passed by the Constituent Assembly since 1947 had no legal force. Hearing of the verdict, Begum Akbar Khan, wife of ex-Major-General Akbar Khan who was convicted under the Rawalpindi Conspiracy (Special Tribunal) Act of 1951, filed with the Chief Court of Lahore a petition for habeas corpus for her husband on the ground that the Rawalpindi Conspiracy (Special Tribunal) Act had not received the assent of the Governor-General. Officially, the Government had been advised of the invalidity of the forty-four acts.

Confronted by this unforeseen turn of events, the Governor-General issued on March 27, 1955, a proclamation of emergency wherein the "security of Pakistan is threatened by internal disturbance". As his authority, he cited section 102 of the Government of India act of 1935 which empowered him to make laws for a province or any of its components. On the same day, he promulgated the Emergency Powers Ordinance to validate thirty-five of the forty-four acts passed by the Constituent Assembly and not assented to by the Governor-General.

The validity of this ordinance was questioned not by Akbar Khan's case which was still pending in the Lahore Chief Court but by the Usif Patel case at the moment of appeal in the Federal Court. This case was tried under the Sindh Control of Goondas Act of 1952 which was claimed by Patel's counsel as invalid because its basis was Section 92-a inserted by the Governor-General in the
Government of India Act, 1935 on July 10, 1940. The insertion was effected after the Governor-General was no longer authorised to make such orders under section 9, sub-section 5 of the Indian Independence Act, 1947 which provided that "no order shall be made under this section by the Governor of any Province, after the appointed day, or, by the Governor-General, after the thirty-first day of March, nineteen hundred and forty-eight, or such earlier date as may be determined, in the case of either Dominion, by any law of the Legislature of that Dominion." The extension of this date for another year was also illegal since it had not been assented to by the Governor-General. Unable to solve the dilemma by themselves, the Government asked the Federal Court, in a special reference, as to the legality of validating the extension and giving assent with retrospective effect through the Emergency Powers Ordinance of 1935. Applying in the negative, the Court ruled that the Constituent Assembly alone had the power for the Governor-General "himself is not the Constituent Assembly and on its disappearance he can neither claim powers which he never possessed nor claim to succeed to the powers of that Assembly."  

Perhaps, the Federal Court could have issued a verdict in the Patel case favourable to the Government if the judges had been given the opportunity to hear the following arguments prepared by the Government's lawyers: (1) that the proclamation of emergency had given power to the Governor-General to validate laws retrospectively and (2) that section 5 of the Government of India Act (Governor-General had all the powers of the Crown) and the common law (the safety of the people is the paramount law and under this power the Crown could do everything necessary to maintain law and order even to the extent
of doing acts which would otherwise be unlawful) bestowed power on the Governor-General. Unluckily, these points did not reach the Advocate-General before the Federal Court had published their decision on April 12, 1955.91

The invalidation of the Emergency Powers Ordinance took the Government back to where they started. Still anxious to find a constitutional solution to the predicament, the Governor-General's battery of legal talents deduced five possible courses of action from which they hoped to select the most promising. First, to suspend the Constitution and vest all powers in the Governor-General while a Constituent Assembly was being formed. Second, to appeal to the British Parliament to enact a law validating all acts rendered void by the Federal Court's decision. For this method, the Indian Independence Act required the consent of the Federal Legislature which was non-existent at the time. Third, to refer Patel's case back to the court so that the arguments which were not received on time could be presented. Fourth, to allow the law to run its course and wait for the courts to provide a solution. Fifth, to convene a new Constituent Assembly at once, temporarily validate the laws in question, and request the Federal Court for an advisory opinion.92

After weighing out the pros and cons of each course of action, the Governor-General chose the last step. Accordingly, he issued Governor-General's Order No. 8 entitled "The Constituent Convention Order, 1955" on April 15, 1955 providing for election of members of a Constituent Convention and holding of their first session at Murree on May 10, 1955.93 On April 16, the 143 Acts passed under Section 92-A were validated retrospectively but only those laws whose subject matter remained unaffected by the decision in the Patel case were included. A similar ordinance was published to validate all provin-
cial acts whose provisions had nothing connected with the case. The Governor-General's assent activated most of the laws. To prevent the breakdown of the constitutional and administrative machinery, a proclamation based on common law was promulgated to temporarily validate and enforce laws pending decision from the Federal Court. By virtue of section 213 of the Government of India Act, 1935 (power of Governor-General to consult Federal Court), the Governor-General requested an advisory opinion on two questions, namely: "(1) What are the powers and responsibilities of the Governor-General in respect of the government of the country before the new Constituent Convention passes the necessary legislation? and (2) The Federal Court having held in Vallabhbhai Patel's case that the laws listed in the Schedule to the Emergency Powers Ordinance could not be validated under section 42 of the Government of India Act, 1935, nor retrospective effect given to them, and no legislature competent to validate such laws being in existence, is there any provision in the Constitution or any rule of law applicable to the situation by which the Governor-General can by order or otherwise declare that all orders, decisions taken and other acts done under those laws shall be valid and enforceable and those laws which cannot without danger to the State be removed from the existing legal system shall be treated as part of the law of the land until the question of their validation is determined by the new Constituent Convention?" Together with this reference was an application for authority to stop all lower courts from hearing cases in the meantime. After approving the application, the court suggested that the following additional questions should be included in the reference: "(3) Whether the Constituent Assembly was rightly dissolved by the Governor-General? and (4) Whether the Constituent Convention proposed to be set up by the
Governor-General will be competent to exercise the powers conferred by sub-section (1) of section 8 of the Indian Independence Act, 1947, on the Constituent Assembly."

After fifteen days of deliberating on the questions, the Federal Court rendered the following opinion on the 16th of May: "(1) That this question is too general and need not be answered; (2) That in the situation presented by the reference the Governor-General has during the interim period the power under the common law of civil or state necessity of retrospectively validating the laws listed in the Schedule to the Emergency Powers Ordinance, 1955, and all these laws, until the question of their validation is decided upon by the Constituent Assembly, are during the aforesaid period valid and enforceable in the same way as if they had been valid from the date on which they purported to come into force; (3) That on the facts stated in the Reference, namely, (i) that the Constituent Assembly, though it functioned for more than 7 years, was unable to carry out the duty to frame a constitution for Pakistan to replace the transitional constitution provided by the Indian Independence Act, 1947; (ii) that in view of the repeated representations from resolutions passed by representative bodies throughout the country the Constituent Assembly, in the opinion of the Governor-General, became in course of time wholly representative of the people of Pakistan and ceased to be responsible to them; (iii) that for all practical purposes the Constituent Assembly assumed the form of a perpetual legislature; and (iv) that throughout the period of its existence the Constituent Assembly asserted that the provisions made by it for the constitution of the Dominion under sub-section (1) of section 8 of the Indian Independence Act were valid laws without the consent of the Governor-General, the Governor-General had, under
section 5 of the Indian Independence Act, legal authority to dissolve the Constituent Assembly; (ii) that subject to this: (i) that the correct name of the Constituent Convention is Constituent Assembly; (ii) that the Governor-General's right to dissolve the Assembly can only be derived from the Indian Independence Act; (iii) that the arrangements for representation of States and Tribal areas can, under the proviso to sub-section (5) of section 19 of the Indian Independence Act, be made only by the Constituent Assembly and not by the Governor-General; and (iv) that the Governor-General's duty being to bring into existence a representative legislative institution he can only nominate the electorate and not members to the Constituent Assembly; the new Assembly, constituted under the Constituent Convention Order, 1955, as amended to date, would be competent to exercise all the powers conferred by the Indian Independence Act, 1947, on the Constituent Assembly including those under section 8 of that Act."37

In penning the Court's opinion, Chief Justice Muhammad Munir pointed out that "after experimenting for more than seven years with a constitution which was imposed on this country, with the consent of its leaders, by a statute of the Parliament of the United Kingdom, called the Indian Independence Act, 1947, we have come to the brink of a chasm with only three alternatives here us: (i) to turn back the way we came by; (ii) to cross the gap by a legal bridge; (iii) hurl into the chasm beyond any hope of rescue."38 The Chief Justice provided the legal bridge in the form of answers to the questions.

The period between the dissolution of the first Constituent Assembly on October 24, 1954 and the opening session of the second on July 7, 1955 marked the pinnacle
of Ghulam Mohammad's 'overpowering ambition'. From the position of a finance minister, he had risen within three years to the throne of "unmitigated dictatorship" never before experienced in the chequered history of Pakistan. For almost nine months, the people had no representation in the government and even the learned justices of the Federal Court expressed doubt over the Governor-General's intention to summon a fresh Constituent Assembly in the following words:

It might have been expected that, conformably with the attitude taken before us by responsible counsel for the Crown, the first concern of the Government would have been to bring into existence another representative body to exercise the powers of the Constituent Assembly so that all invalid legislation could have been immediately validated by the new body. Such a course would have been consistent with constitutional practice in relation to such a situation as has arisen. Events, however, show that other counsels have since prevailed. The Ordinance contains no reference to elections, and all that the learned advocate-General can say is that they are intended to be held.100

More far-reaching repercussions emanating from the decision of the Federal Court in the Tanizuddin case were to create a real emergency never contemplated by the planners of the dissolution. Mention had already been made of the forty-four acts which were declared invalid for lack of assent. Among these acts were three increasing the number of seats in the Assembly in 1949–50. Therefore, laws passed by the Assembly both as a constitutional body and as Federal Legislature after the passage of those acts were void because the lawmaking body was (after the increase) illegally composed. Whether or not the acts passed by the Federal Legislature had received the assent of the Governor-General became immaterial.101

The chain reaction extended to the Provincial
Legislatures which were also considered illegally constituted since the members were elected under laws enacted by the Constituent Assembly without receiving the Governor-General's assent. Legislation adopted by these legislatures became invalid after membership changes were undertaken by the Constituent Assembly.

On top of all these, the 33 orders issued by the Governor-General after his power was extended by one year were of no effect because the amendment act providing for the extension was itself invalid. One of these orders had inserted section 32-A to the Government of India Act which was the basis for the suspension of the Provincial Legislatures of Sind, Punjab, and East Bengal. The 143 acts released by the Governors of these provinces were without legal basis. In the same category was Governor-General's Order No. 1 of 1948 dated February 10, 1948 creating the State Bank of Pakistan. All bank notes circulated by the bank were, as a consequence, not legal tender. The Sind Government and Sind Provincial Legislature could, by virtue of the Federal Court's decision, legally assume the government and administration of Karachi because Governor-General's Order No. 14 of 1948 dated July 22, 1948 and its subsequent amendments establishing Karachi as the Federal Capital were illegal. Parsons convicted under laws made applicable to leased areas in Baluchistan under Governor-General's Order No. 3 dated October 5, 1950 could rightly petition for release since the powers exercised under that order was unlawful.

The judiciary itself was affected by the precedent-setting decision. The Federal Court had assumed jurisdiction over cases belonging to the Privy Council (England) by virtue of the Privy Council (Abolition of Jurisdiction) Act, 1950. Since the act did not receive the assent of
the Governor-General, all cases tried under its authority were illegally decided. Chief Justice Munir gave a summary of the effects of invalidating that act in the following words:

If we were to hold that the Abolition of Jurisdiction Act has not been properly validated and is not law today, the consequences would be: (i) that hundreds of persons will have lost their right of appeal to the Privy Council; (ii) that hundreds of judgments of this Court are void; (iii) that persons whose capital sentences were confirmed by the High Courts, but who were acquitted by this Court, will have to be hanged; (iv) that hundreds of persons whose sentences of imprisonment were set aside by this Court will have to go back to jail; (v) that judgments relating to property and other civil rights, by which this Court interfered with the judgments of the High Courts, are void, and that such property and rights have been illegally affected.

Conclusion

Faced with the absence of a Constituent Assembly, a Federal Legislature, and Provincial Legislature; the invalidation of acts passed by the legislative bodies and ordinances issued by the Governor-General; the prospect of criminals being freed; and the lack of jurisdiction of the local courts over certain cases, Pakistan, indeed, and arrived at a constitutional crisis. It is to the everlasting credit of the Federal Court in that it averted the implementation of the threat of chaos and political strife by the forces of the Government through initially evading the question of dissolution. By deciding solely on jurisdiction, the Federal Court gained the Government's acceptance of the verdict because it was favourable to them. Having attained respect for the judiciary, the Court felt thereafter that the ground was sufficiently safe to render opinions adverse to the remedial measures taken by the Governor-General. As events showed, the rule
of law prevailed when the Government exerted efforts to amend their orders in conformity with the guidance set by the Federal Court. The judiciary should be congratulated too for reminding the people, through remarks made by the Justices during the trial, of the late Constituent Assembly’s failure to accomplish their task for more than seven years. With such sobering influence, no agitator dared rouse the masses of Pakistan who like others in the Indian sub-continent were noted for short tempers, insofar as politics was concerned. No riots or other form of disturbance marred the tranquil though tense atmosphere of the Assembly dissolution.

With the judiciary lighting the way, the Government and the people obediently retraced their steps back to parliamentary government.

2. Ibid., dated November 22, 1950, Vol. XII, No. 1, pp. 41-42.


4. Ibid., dated April 6, 1954, Vol. XVI, No. 4, pp. 48-57. Democratic government would have ended on the day it was decided to dissolve the first Constituent Assembly if General Mohammad Ayub Khan had accepted Governor-General Ghulam Mohammad's offer to hand over the reins of the government to him as a way of eliminating the rule of politicians. See Mohammad Ayub Khan, Friends and Rivals (Karachi: Oxford University Press, 1969), pp. 51-52.

5. The plan for dissolution had not been a closely guarded secret because a member, a Constituent Assembly member, was reported to have said on early October 15, 1954 that 'there was a movement to sabotage the Constitution when it is about to be passed.' See "The anti-Islamic Against GA Dissolution," Dawn, dated October 15, 1954, p. 5. Four days later Iqbal Rahman Shafi, a religious leader, noted that 'certain elements have come out with the mischievous demand to dissolve the Constituent Assembly merely to serve their political ends.' See "Observe Islamic Constitution Day," Dawn, dated October 19, 1954, p. 1.

6. There is an interesting discussion reported by the Constitution Commission of Pakistan appointed in 1951 as to whether there was a real parliamentary government in Pakistan between 1947 and 1956. The commission concluded that there was and it was not ended successfully. See Report of the Constitution Commission (Karachi: Manager of Publications, 1952), pp. 5-6.


11. Mohammad Ali (Jinnah) proved an inept leader too when he was relieved by Chaudhry Liaquat Ali in August, 1955 just after the second Constituent Assembly started their sessions. See Callard, op. cit., pp. 23, 24.


16. The journalist was Sir Ali Muhammad Rashid, a political opponent of Pirzada, who was one of the supporters of the bill and one of the ministers dismissed by Governor-General Chulm Mohamed. See Callard, op. cit., pp. 167-168.

17. The period of less than ten minutes is exaggerated because the four-page discussion certainly takes longer. The opening of the session was rather hurried for the meetings during the XVIth session usually started at 11 o'clock or later as shown in the records of the debates. See "From Absolute Democracy to Absolute Destruct," The Times of Karachi dated September 27, 1954, p. 4.


27. Jennings, op. cit., p. 81.


30. Ibid.

31. The Court was composed of Chief Justice Sir G. B. Constantine, Justice C. Villani, Mohammad Bakhsh Memon, and Mohammad Bakhsh Memon.

32. "Court Admits Tanizuddin Petition," Dawn dated November 12, 1954. Petitioner was represented by Syed Sharifuddin Pirzada, Mr. Menzor-i-Abad, Mr. Nascom, and Mr. Hemi Nicolwala.


43. "Govt's Appeal Against Sind Chief Court Decision," Pakistan Times dated March 2, 1955, pp. 1, 2, 6.


48. Ibid.

49. The verbatim proceedings of the trial on December 9 are found in Re Moniryi Tanizuddin Khan versus Federation of Pakistan and


54. Ibid.


60. Ibid., p. 97.


62. Ibid.


64. Ibid. This time the government side engaged the services of a British lawyer, to address the court on behalf of the petitioners. See Pakistan Times dated March 2, 1955, p. 1.


69. "Chances of Compromise Paid," Pakistan Times dated March
9, 1955, pp. 1, 16.


73. Sub-section (1) of section 8 provides as follows: "In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this act to the Legislature of the Dominion shall be construed accordingly." The provision of sub-section (3) of section 6 reads: "The Governor-General of each of the new Dominions shall have full power to assent to His Majesty's name to any law of the legislature of that Dominion, and so much of any Act as relates to disallowance of laws by His Majesty or the reservation of laws for the signification of His Majesty's pleasure thereon or the suspension of the operation of laws until the signification of His Majesty's pleasure thereon shall not apply to laws of the legislature of either of the new Dominions." See "Indian Independence Act, 1947," Constitutional Documents (Pakistan) (Karachi: Manager of Publications, 1964), Vol. V, pp. 7, 9.

74. "Federation of Pakistan vs. Maulvi Taimuddin Khan," The All-Pakistan Legal Decisions, op. cit., Vol. VII, p. 241. The book-length decision penned by Chief Justice Munir began with a resume of the case from the attainment of Pakistan's independence to the rendition of judgment in the Taimuddin case by the Sind Chief Court. This historical background was followed by observations on general nature, touching on such diverse topics as democracy and English political institutions, position of the dominions, Statute of Westminster dominion, pre-independence India, Government of India Act of 1935, Indian Independence Act of 1947, Royal Assent, Legal Terms, Sovereignty of the Constituent Assembly, Allegiance to the Crown, and Prerogative of the Governor-General. These discussions were considered relevant in the appreciation of the "nature of the issues raised and the implications flowing from their determination." See ibid., pp. 240-379.

75. ibid.

76. ibid., pp. 240, 247.

77. ibid., p. 249.

78. ibid., pp. 249 fi.

79. On May 22, 1948, the Constituent Assembly amended their Rules of Procedure providing for a bill becoming a law upon the signature of the President of the Assembly and its publication in
the Gazette. The assent of the Governor-General was no longer considered necessary. See Debates, op. cit., dated May 22, 1948, Vol. III, No. 3, p. 46.


82. Gazette of Pakistan Extraordinary dated March 27, 1955, p. 661.


85. The Patel case was tried together with two similar cases because the constitutional question to be determined was common to all of them. See "Judgment in the Case of Usif Patel and Two Others v. the Crown," quoted in Jennings, op. cit., pp. 239-255.


89. During the period from August, 1947 to March, 1948, the President of the Constituent Assembly and the Governor-General were one person, the Quaid-i-Azam, hence, it was superfluous for the Governor-General to assent to what was approved by the President of the Constituent Assembly.

90. "Report on the Special Reference Made by His Excellency the Governor-General of Pakistan," quoted in Jennings, op. cit., p. 244-245.


92. Ibid., pp. 70-71.


96. Ibid.

97. Ibid., pp. 346-349.

98. Ibid., p. 256.
99. The two phrases quoted above were used by Hushtaq Ahmad in his book, *Government and Politics in Pakistan*, p. 27.

100. *Jennings*, *op. cit.*, p. 295.


102. Section 92-A provides that "if at any time the Governor-General is satisfied that a grave emergency exists whereby the peace or security of Pakistan or any part thereof is threatened, or that a situation has arisen in which the Government of a Province cannot be carried on in accordance with the provisions of this Act, he may by proclamation direct the Governor of a Province to assume on behalf of the Governor-General all or any of the powers vested in or exercisable by any provincial body or authority; any such proclamation may contain such incidental and consequential provisions as may appear to the Governor-General to be necessary or desirable for giving effect to the objects of the proclamation including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any provincial body or authority." See "The Pakistan Provisional Constitution (Third Amendment) Order, 1948," *Constitutional Documents*, *op. cit.*, pp. 1139-1140.


CHAPTER V

THE SECOND CONSTITUENT ASSEMBLY

On the day of the first Constituent Assembly's dissolution, the Governor-General had promised the holding of elections, as soon as possible, of members of a new constituent body that would function with the confidence of the people. Whether the head of the government was sincere or not became an academic question after Taimuzuddin Khan, President of the first Constituent Assembly, filed a writ petition two weeks after the dissolution.

As mentioned earlier, Governor-General Ghulam Mohammad proclaimed an emergency on March 27, 1955 to meet the requirements of section 42 of the Government of India Act, 1935 and to enable him to promulgate ordinances called by the situation. Thus, by virtue of the Emergency Powers Ordinance, thirty-five of the forty-four acts passed without assent were validated. To the chagrin of the Government, this ordinance was declared invalid by the Federal Court in its judgment on the Patel case. In unmistakable terms, the court held that only the Constituent Assembly were authorized to validate the acts. This decision was virtually an order to the Governor-General to set up at once a constitutional body to resolve the confusion.

Source of Authority

Accordingly, the Head of State issued a proclamation on April 15, 1955, three days after the Patel decision was published, summoning "a Constituent Assembly to be known as the Constituent Convention" to meet in Murree on May 10, 1955. Simultaneously, orders were issued for the holding of elections on April 23, 1955.
Fazlul Huq at 62 was the oldest followed by Dr. Khan Sahib who was nine years younger. Born in July, 1928, Mir Salakh Sher Mazari at 27 was the "Benjamin" of the House. As in the first Assembly, most of the members were middle-aged and experienced in politics. Although the pattern of education and professions did not deviate much from the previous body, the novelty of having women members to represent half of Pakistan's population was missing. There were more landlords than lawyers, and more retired officials than representatives from industry and commerce. A number from East Pakistan held various other professions. Some of the landlords in West Pakistan were at the same time rulers of Princely States or Tribal Chiefs. The greatest change was in party alignments. The Muslim League with 33 members out of 80 were no longer holding an absolute majority position. The second largest party, the recently organised United Front, had 16 members - the same strength held by the Congress Party in the first Constituent Assembly. The newly-formed Awami League with 13 members made better showing than the Congress which had only 4. Alignments of the smaller factions were as follows: Scheduled Caste Federation - 3, United Progressive Party - 2, Independents - 6. Firoz Khan Noon and two sympathisers formed an independent group.

Another substantial modification in composition was the presence of new faces. Out of the 74 MCAs (Members of the Constituent Assembly) in the "defunct" body, only 14 managed to return to their seats. One of the new members was Major-General Iskander Mirza who was destined to become the first President of the Islamic Republic of Pakistan. Many of the familiar figures from East Bengal were swept away after the March, 1954 elections. The champion of dissolution in the old House, Iftikharuddin, was to grace again the pages of the Debates with his
often-declared irrelevant speeches which Fate, this time, mercifully curtailed through his throat ailment.16

Throughout the life of the second Constituent Assembly, membership remained constant owing primarily to the fact that there was only one short session and the non-existence of the refugee problem in 1955. In the first Assembly, the millions of refugees from India occasioned increases in the number of seats. Only one change was officially recorded - the resignation of Major-General Iskander Mirza and his replacement by Ismael I. Chundrigar.

**Opening Session**

The second Constituent Assembly opening session commenced in the daily decorated Muree Club Hall at 11 o'clock in the morning of July 7, 1955 with a recitation from the Holy Quran by Mian Abdul Bari while the members stood in solemn silence.17

Just as Gurnani moved to sign the register as requested by the Secretary of the House, Iftikharuddin simultaneously suggested that the "most democratic and proper method" of electing a Chairman was that adopted by the first Constituent Assembly. But Iftikharuddin's voice was drowned by the protestations coming from the Muslim League benches. Ignoring the noise, the Secretary read the order of the Governor-General announcing the nomination of Gurnani as temporary Chairman. Even after Gurnani had taken the chair, Iftikharuddin continued to air his objections. At this moment, Suhrwardy, the Law Minister, reminded him (Iftikharuddin) that he was not yet a member of the House. Nevertheless, this did not deter this lone objector from citing the precedent set by Liaquat Ali Khan in nominating the temporary chairman of the earlier body. Suhrwardy's reply was interrupted by the Chairman who directed the Secretary to go on with.
the administration of the oath to the members. Prime
Minister Mohammed Ali's (Bogra) oath-taking was disturbed,
this time by Hamidul Huq Choudhary who cautioned against
the business of the House being conducted improperly. He
was pacified after the Chairman promised to allow the
members to have their say after the oath-taking.18

Thereafter, Gurmani delivered a brief inaugural
address expressing his desire to serve the House to the
best of his ability and his request for cooperation. As
soon as the speech was terminated, Hamidul Huq Choudhry
stood again to question the propriety of having a nominated
Chairman and to seek clarification on the agenda which
he thought was to be limited solely to oath-taking. At
this point, the Law Minister decided to regularise the
business of the day by moving for the approval of the
appointment of Gurmani as temporary Chairman without pay-
ing attention to Iftikharuddin's desperate intrusions.
As a compromise, Choudhry suggested that Subrwardy defer
his motion until the next meeting but Subrwardy explained
that with the volume of administrative work to be done
it was necessary to clarify the Chairman's position. The
rest of the Heletofore silent members joined in the dis-
cussion. Abdul Latif Kias was questioned the permissibility
of the temporary Chairman occupying the chair while his
appointment was under consideration. Fazlul Huq was for
postponement because, otherwise, the matter would be
brought to the Federal Court. against deformer, Baultana
appealed to the members not to make a party issue out of
such a small matter. The controversy was resolved only
after the House divided. Twenty-six were against and 40
were in favour of taking up Subrwardy's motion that day.19
As a gesture of magnanimity, the majority allowed the
Opposition members to table amendments by adjourning the
House until four o'clock that afternoon.
After the House had re-assembled, Fazlur Raiman moved a resolution designed to sidestep Suhrawardy's motion on Gurmani's nomination. In his arguments, he asserted that the Governor-General was not competent to nominate a Chairman to conduct the business of the House. This assertion was protested by Yusuf Haroon who noticed that no mention was made of any basis in law. To resolve the problem, Suhrawardy moved a compromise resolution which stated that the House approved the appointment of Gurmani and elected him temporary Chairman. No one opposed the motion.

The next item taken up was the temporary adoption of the rules of procedure of the dissolved Constituent Assembly. The motion was carried after Iftikharuddin's opposition was adroitly parried by Suhrawardy, the mover. This stormy opening session of the Assembly was hailed by *Dawn* as the restoration of the "rule of democracy".

**Organisation**

The precedent set by the First Constituent Assembly in electing the permanent President during the second meeting was impossible to maintain without violating section 12 of the Constituent Assembly Order, 1955 of the Governor-General which required the attendance of representatives from the States and Tribal Areas before that step was to be taken. On this account, Suhrawardy introduced the Representation of States and Tribal Areas Bill on the second day just after the Chairman had read the Governor-General's telegraphic message reminding the Assembly "of the responsibility we owe to those both of the present and of future generations".

In his sponsorship speech, Suhrawardy pointed to
the necessity of giving the States representation in the Constituent Assembly. He suggested the withdrawal of some amendments after reminding the authors that the method of representation, having been agreed upon, was not open to replacement or modification by the Assembly though they were sovereign. As stipulated, the bill allowed ten days after publication for the States and Tribal Areas to choose their representatives. Sooner than expected, Iftikharuddin rose to say that 70 or 80 lakhs of people were left unrepresented and the present Assembly was not representative. This statement was declared out of order by the Chairman.

The discussion proceeded to Mohammed Nurul Huq Choudhry's recommendation that the bill be referred to a select committee for a thorough discussion. The amendment was, for unexplained reasons, withdrawn although it might be surmised that the mover must have realised the unreasonable three-week delay that his recommendation would incur. After questioning the principle behind the parity of representation between East Bengal and West Pakistan, Hamidul Huq Choudhry estimated that ten days were too short for nominating the representatives from the States and Tribal Areas unless prior arrangements had already been made. Basanta Kumar Das followed with a suggestion that the Bahawalpur State representative be elected by the people. To Choudhry's question, Daultana replied that parity was not based on suspicion but on the principle of equality among the sovereign units since it had been decided that Pakistan's constitution would be of the federal type. Quite a number of speakers did not dwell on the point at issue but the Chairman allowed this irrelevancy for "it is customary to show such Honourable Members making their maiden speeches some indulgence". The bill was finally
adopted after. Suhrawardy refuted all the issues raised by the members and after all the amendments were either negated or withdrawn. 24

Election of Speaker and Deputy Speaker

The presentation of credentials on August 8, 1955 by the eight representatives from the States and Tribal Areas completed the Assembly membership and paved the way for the election of the Speaker and Deputy Speaker. 25 On the day set aside for the election, only two members were nominated for the Speakership. After Muhammad Abdul Khaleque withdrew his name on the advice of Suhrawardy, Abdul Wahab Khan, the only remaining candidate of the United Front, was declared elected. As a tradition, speeches congratulating the newly-elected Speaker were delivered by members representing parties or communities. After the Speaker had promised justice and impartiality in his reply, the House took up the election of the Deputy Speaker. The names of C.E. Gibbon and A. H. Deldar Ahmed were nominated but after the latter withdrew his candidature as suggested by Suhrawardy, the choice became unanimous for the former. 26

With the groundwork already laid by the first Constituent Assembly, the second merely formed a few committees when the need for them arose.

Committee on Validation of Laws

The first one to be organized was a select committee under the chairmanship of Suhrawardy to examine thoroughly the laws rendered void by Federal Court decision for the purpose of validation by the Constituent Assembly. 27 The efficient working of this group was to suffer from political manoeuvring. The committee meeting
scheduled on August 9 was cancelled and four days later, Suhrawardy who had been vying for appointment as Prime minister, resigned his chairmanship just two days after Chaudhri Mohammed Ali became the Prime Minister. The date for the submission of the report (August 15) elapsed with but a single meeting so that on August 23, Kamini Kumar Dutta had to move for an extension of the deadline to September 15.

Before the motion could be acted upon, Hamidul Huq Choudhury argued that Suhrawardy's withdrawal from the committee should be approved by the House. In reply, Suhrawardy pointed out that he had to resign because the situation had changed. He must have been alluding to the fact that he was no longer the Law Minister but the Leader of the Opposition. Without preliminaries, Iftikharuddin altered the tenor of the discussion by butting in to state that the President is the "illegal speaker" in the sense that no business should be transacted before approval of the Validation of Laws Bill as provided for in Governor-General's Order No. 12. Throwing all his weight on the validation of all laws passed by the first Constituent Assembly, he rationalised that it was an insult to the sovereign status of the Assembly to have some laws rejected by another "authority on earth". Agreeing with him, Firoz Khan Noon advocated the drafting of a new bill. Arguing against the extension of the committee's deadline, Abul Mansur Ahmad reminded the members that urgency was the prime reason for the Validation of Laws Bill. On the other hand, Dr. Sen spoke for extension as being justified by the circumstances. To end the debate, Rashid moved a closure which was approved only after another round of debates and division in the House. The motion for extension was finally adopted after another division. Kamini Kumar Dutta was nominated chairman to
relieve Suhrawardy.\textsuperscript{31}

In their report, the select committee recommended the validation of 39 acts which were deemed to have received the Governor-General's assent subject to the notes of dissent appended by two committee members, Ataur Rahman Khan and Abul Mansur Ahmad, who objected to the validation of the Government of India (Amendment) Act, 1948 which authorised the Central Government to levy and collect sales taxes. This act, in their view, deprived the provinces of the right to such taxes. Furthermore, they wanted section 92-A repealed instead of validated and the Rawalpindi Conspiracy Act to be validated only upon remission of the convicts' unexpired sentences. Both recommended the inclusion of the Government of India (Third Amendment) Act, 1954, Government of India (Fourth Amendment) Act, 1954, and Government of India (Fifth amendment) Act, 1954 among the acts to be validated because these acts, they stressed, have value particularly as important constitutional conventions. They noted too that the budget, being the work of the Federal Legislature, should not be validated.\textsuperscript{32}

Taken up on October 1, 1955, the committee report consumed hours of debates before the Opposition agreed to include the budget as one of the acts to be validated. Several amendments were incorporated before the Validation of Laws Bill was adopted on that day.\textsuperscript{33}

\textbf{Rules Committee}

On August 8, 1955, the appointment of the Committee to Draft Rules of Procedure and Business was recommended by Abdul Wahab Khan\textsuperscript{34} to review and modify the rules of the House which were embodied in a bill passed on July 14 last. It should be noted that the bill on the Rules
of the House was not the product of a committee as in the first Constituent Assembly but of a few members belonging to the Government side. Realizing the inadequacy and inapplicability of the provisions in the approved bill, the second Constituent Assembly directed the appointment of a 17-member committee to study the rules and to submit a report within two months. At the outset, only 9 members were recommended in the original motion but Rashdi pointed out the need of representing "all shades of opinion in this Honourable House, all schools of thought, and all groups" who could examine the rules from their standpoint. The time allotted to the committee to submit the report was extended from one week to two months again on the suggestion of Rashdi who wanted the rules studied thoroughly in the light of the previous Assembly's experience.

On the due date of the report, the committee through Sardar Amir Ahmad Khan asked for and was granted an extension to December 10 despite Fazlur Rahman's opposition. Through another motion, the House also approved a resolution reducing the quorum from 7 to 4. Bahruuddin's suggestion to form a new committee was turned down on the ground that an extension had already been granted to the original committee.

The committee eventually completed their report by December 7 but presentation was done on December 15 since no session was held on December 10, the deadline. The committee's recommendations were subjected to close scrutiny especially by the Opposition members who resorted to legalistic arguments on such superficial matters as the sponsorship of the bill before they were approved by the Assembly.

Panel of Chairmen and Finance Committee

Formed during the opening day of the first Consti-
tuent Assembly, the Panel of Chairmen of the second was organised on September 21, 1955, more than two months after the initial meeting. The Speaker of the second Assembly simply cited a rule of the body and nominated Gurmani, Abbas Sattar, Ataur Rahman, and Dr. S. K. Sen as members of the panel.

Another committee whose formation was delayed was that of the Finance Committee. All the six members nominated on December 5, being equal to the number of vacancies, were declared duly elected. The comparatively short duration of the session forestalled the election of a new set of members.

**Committee on Privileges**

The need for a committee to investigate breaches of privilege arose sometime on the 23rd of September when Zahiruddin questioned the special favour extended to the proponents of the One-Unit Bill to use public money in publicising their speeches without corresponding grant to members of the Opposition. He cited two cases—one concerning the speech of Daultana and the other that of Gurmani. This unfair practice, Zahiruddin concluded, edged off the speeches of the Opposition from the newspapers. Although Haroon's defence of the right of any member to furnish copies of his speech to the press seemed justifiable, this did not satisfy Suhrawardy who requested forthwith the constitution of a committee to examine the problem.

A few days later, a similar request was made by Fazlul Haq. In accordance with these suggestions, the Assembly created on October 12, 1955, the Committee on Privileges whose 9 members were instructed "to examine every question referred to it by the Assembly and determine with reference to the facts of each case whether a breach
of privilege is involved and if so the nature of the breach, the circumstances leading to it and make such recommendation to the Assembly as it may deem fit". The first important case, referred to the committee on November 29, concerned the arrests of Mahmud Ali and Sardar Fazlul Karim, both members of the Assembly. The significance of the issue might be gleaned from the fact that the Opposition walked out when the Speaker refused to heed their suggestion for the release of the two from Government custody.

An investigation report submitted on January 24, 1956 revealed that the Government of East Bengal ordered the arrest of Mahmud Ali and Sardar Fazlul Karim under the East Bengal Public Safety Act of 1954. The police arrested the former in Karachi and the latter while aboard an aircraft at Tejgaon airport, Dacca. These arrests were telegraphed to the Speaker of the Constituent Assembly by the Chief Minister of East Bengal. Although the arrests were found to be in order, the committee criticised the failure of the arresting officers to inform the Speaker immediately of the detention and its causes. The Committee also noted that a House inquiry received no reply from the Chief Secretary of the Government of East Bengal who was verified, later on, to have been ill. The committee recommended the condonation of the breaches of privilege and to prevent a recurrence, pressed for the wide dissemination of the rights of members.

Preliminary Activities

During the six days that the second Constituent Assembly met at Murree, nothing substantial was undertaken. On the first day only one member, Sardar Abdur Rashid Khan, was absent but a day later, six East Bengal
members suffered from the high altitude of Murree. P. Nazmul Huq's blood pressure went up and five others were reported sick. To avoid a worsening of the situation, the leaders of the three major parties (Muslim League, United Front, and the Awami League) decided to adjourn the Assembly and transfer their venue to Karachi on the 12th of July. Postponement of the movement was, however, inevitable on account of the heated three-day debate on the Proceedings and Privileges Bill. The Murree session was finally adjourned on July 14 and the session at Karachi subsequently scheduled on August 8. Barely 21 hours were spent by the Constituent Assembly's week-long session at the salubrious hill station.

The first meeting at Karachi lasted 90 minutes as no legislative business could be taken up pending the election of the Speaker. The two-hour session held on August 12 had to be adjourned to August 23 a few minutes after Abdul Wahab Khan's election as Speaker to permit the East Bengal members to visit their flood-stricken province. Before the August 23 session, the seats had to be rearranged in accordance with the formation of a Muslim League–United Front Coalition Government. Newly-appointed Prime Minister Chaudhri Mohammad Ali and the rest of the Muslim League and United Front members sat on the right of the Speaker. On the Speaker's left were the Awami Leaguers led by Suhrawardy who had resigned from his post as Law Minister. After the change of Cabinet, the Assembly got down to work.

**Major Accomplishments**

Although much of the spadework in constitution-making was performed by their predecessor, the second Constituent Assembly deserved praise also for bringing the work to completion in less than a year's time. Aside
from the Constitution, the one major accomplishment of the body was the passage of the Establishment of West Pakistan Act which solved the parity of representation problem between East Bengal and West Pakistan.

**Establishment of West Pakistan Act**

The first major piece of legislation that was tackled concerned the unification of all the provinces in West Pakistan into one unit. The Establishment of West Pakistan Bill, as it was then called, was introduced on August 23 by a 3,000-word statement and was debated on for approximately two and a half hours. The blueprint of this bill had been on the drawing boards as early as the time of the first Constituent Assembly but it was not seriously considered until the Muslim League was overthrown in East Bengal and the United Front party rose to power after the March, 1954 elections. To some Muslim Leagueurs, the danger of East Bengal's domination under the United Front over the provinces in West Pakistan had become a reality. As a defence measure, several members of the first Constituent Assembly drafted a three-tiered system of zonal federation wherein the provinces in West Pakistan would be grouped under one zone. However, the plan was temporarily abandoned after the dismissal of the United Front Ministry in East Bengal.

A few months later, discussions on integration were resumed but a proposal introduced in the Muslim League Parliamentary Party met disapproval. The idea was resurrected sometime in November, 1954 just a few weeks after the dissolution of the first Constituent Assembly when provincial leaders were invited to Karachi to push through the "One-Unit" Plan which was then considered to be the only means of preventing the disintegration of
Pakistan. Following the Prime Minister's broadcast on November 22 enumerating the advantages of merging all the provinces in West Pakistan, a campaign was launched for support from the Provincial Assemblies. Opposition to the plan's strategy as outlined in a secret document caused the relief of Sardar Abdur Rashid as Chief Minister of North West Frontier Province and Abdus Sattar Pirzada as Chief Minister of Sind.  

After resistance had died down and endorsement of the Provincial Assemblies secured, the Governor-General established an Inter-Provincial Council consisting of the Governors, Chief Ministers of the provinces, the Baluchistan Agent to the Governor-General, and Dr. Khan Sahib, then Central Minister of Communications. The group was entrusted with the mission of discovering means of constituting West Pakistan into a single administrative unit. After much discussion, the council submitted a report which became the basis for the issuance of Governor-General's Order No. 4 dated March 27, 1955 establishing the Province of West Pakistan. Eight days later the Chief Executive issued the West Pakistan (Appointments) Order, 1955 authorising himself to designate Gurnam as Governor of West Pakistan and Dr. Khan Sahib as Chief Minister. At this point, the Federal Court reminded the Governor-General of the law empowering solely a Constituent Assembly to form a new province. This ruling brought the integration problem to the second Constituent Assembly.

In the most heated session so far, the Establishment of West Pakistan Bill was introduced by Sardar Amir Azam Khan at the flag end of the August 23rd session thus enabling the Leader of the Opposition, Suhrawardy, to block its consideration. The following day, another attempt to stop the bill was made by Abul Mansur Ahmad based on the sponsor's failure to comply with the 15-day
period of notice required by the Rules of Procedure. The
objection was overruled by the Speaker on the ground that
the bill had already been published in the Gazette.²⁷
allowed to resume, Sardar Amir Azam Khan read a prepared
speech enumerating the benefits that would accrue in
uniting the provinces in West Pakistan. With the promise
that "Islamic concepts of nationhood are not based on
accident of birth and do not recognize the artificial
barriers of geography, race or language" but on "affinity
of thought and outlook," he reminded the audience that
the struggle for Pakistan was not based on group interests
of Punjabis, Bengalis, Pathans, or Sindhis. He warned
against vested interests who, in an effort to destroy
the spirit of unity, sowed the seeds of suspicion until
"fissiparous tendencies developed into a cankerous rot
in our body politic." Citing the United States as an
example, he maintained that the various national groups
in Pakistan, with many things in common, could join to-
gether in a "bigger society which offers a higher exis-
tence, greater economic and social development and all-
round progress".

Covering the tangible aspects, the sponsor argued
that geographically West Pakistan was united by a single
economic system; the existing divisions had been hatched
by the British to facilitate colonial rule. In his opin-
ion, an integrated West Pakistan would promote social and
large-scale economic development. After explaining the
proposed governmental set-up, the mover conjured a vision
"that the establishment of the Province of West Pakistan
will pave the way for resolving many constitutional prob-
lems as between East and West Pakistan which will greatly
facilitate the framing of our constitution based on a
larger measure of Provincial autonomy and equal partner-
ship at the Federal Centre".²⁸
A few minutes after Sardar Amir Azam Khan had spoken, Sheikh Mujibur Rahman raised a point of privilege to disallow the reading of speeches. When the Speaker, Abdul Wahab Khan, disregarded the rule, Suhrawardy stood up, tore the handbook of the Rules of Procedure, and threw it on the floor. The ensuing babble of myriad voices coming from both sides was stopped only after the Speaker promised to discuss the ruling in his chamber.53

After the motion for consideration was submitted, Mian Jaffar Shah from the North West Frontier Province, moved for the bill's circulation until April 1, 1956 to elicit public opinion. In registering his opposition, Jaffar called the One-Unit Plan a conspiracy plotted by ex-Servicemen (former members of the Civil Service). Turning his attention to Sardar Amir Azam Khan's example of unity (the United States), he asked: "Are there not 57 United States in America?"60

More moderate in his demands than Jaffar, Fazlur Rahman reduced the seven-month period for circulation to three months but at the outset he made it clear that he preferred the withdrawal of the bill because it would create two Pakistanis and the people would be divided into Bengali and non-Bengalis. In his viewpoint, the existence of only two provinces would promote provincial rivalries. Questioning the methods used in securing support of the bill, he stated bluntly that the reason for hurrying the bill was the desire of the Government to stay in power by forming an interim legislature before general elections were held. He promised Bengali support after a referendum had been held in West Pakistan.61

Another East Bengal speaker moved an amendment for eliciting opinion by the 31st of December on the ground that the bill involved constitutional changes such as the abolition of Provincial Assemblies and would circumvent,
future constitutional proposals. The abolition of provinces such as Sind was against the Lahore Resolution, he maintained. Refuting the argument that provinces were created to implement the British "divide and rule" policy, he cited the historical fact that the Sind people were the ones who fought for separation from Bombay. He predicted that the move to change the name "East Bengal" to East Pakistan would create an atmosphere of suspicion and hatred between the East Bengalis and West Pakistanis.  

Supporting Fauzur Rahman's amendment, Sheikh Mujibur Rahman recommended a method of conducting the referendum which was opposed by Sardar Amir Azam Khan who thought of it as a violation of parliamentary practice. Sardar Amir Azam Khan's comments were, in turn, questioned by Sukrwardy and Firoz Khan Noon. The meeting was adjourned after the Speaker committed himself to give a ruling the next day. At 11 o'clock the following morning, Abdul Wahab Khan decided that Sheikh Mujibur Rahman could move his suggestion for referendum only after the house had approved his motion for eliciting opinion. Forthwith, Mujibur Rahman accused the Government of manipulating things to stop opposition to the One-Unit Bill through the dismissal of Noon, Rashid, and Pirzaia as Chief Ministers of their respective provinces. Arguing against the inclusion of Karachi in West Pakistan, he pointed out that the capital was also developed by East Bengal funds. Mujibur Rahman's attacks were affirmed by Mohammad Abdul Khaleque and Abdul Rahman Khan who were both East Bengali Muslims.

The next speaker, Malik Mohammad Firoz Khan Noon expressed himself in favour of consulting public opinion before taking action. In supporting his stand, he mentioned President Roosevelt who could have committed earlier United States' participation during World War II, but instead,
waited until public opinion clamoured in its favour. Noon described the method used in Pakistan as follows: "You decide on a thing and then you expect the public opinion to agree with you and if nobody will agree with you then with a big stick you go hang on his head." 65

Daultana, the second supporter of the bill, gave the following reasons briefly touched on by Amir Azam Khan. First, the pattern of the economy in West Pakistan was similar and the people lived in close inter-dependence. With a common government, the distribution of water could be facilitated and the location of industries would be well-planned. Secondly, the people of West Pakistan were one historically for they "fought together the same enemies, faced the same problems, made identical adjustments, etc". He cited the unity in the acceptance of Islam and dismissed differences as "a variety of design; not a multiplication of fabrics". The British broke up the unity for easy management. Thirdly, integration would result in administrative economy. He could not see the reason behind maintaining ten administrations when there were other countries such as France, Spain, Mexico, and Brazil which were larger than West Pakistan yet controlled by only one administration. Progress would be achieved in integration because the "fresh air of freedom will circulate more freely and shake off the cobwebs of local tyrannies and local oppressions".

In the middle of his speech, Daultana mentioned the very important reason for the unification - the need for a "reasonable solution of the constitutional impasse which has strangled this country for so many years". 66

Having established that West Pakistan was one unit culturally, economically, geographically, and historically, Daultana surmised that fear of Punjab’s domination was the real motive of the Opposition. He admitted that the Punjab
contained 57 per cent of the population in West Pakistan; but, on the other hand, he also pointed out that the province had many races with neither an ethnic nor a cultural unity. To clinch his arguments, Daultana informed the assembly that Punjab was willing to accept forty per cent representation for the Punjabis to realise that "if we only live in narrow circles, we will not be able to give amplitude to our potentialities". In answer to the contention that smaller provinces would suffer, he countered that the people in those provinces should, on the contrary, welcome the reduction in the number of ministerial offices. While acknowledging the possibility that the rich provinces would lose in the sense that they would have to support the poorer ones, he felt that the former would eventually gain in the achievement of more potentialities. Touching on Fazlur Rahman's accusation that the formation of West Pakistan province was a counter-measure against East Bengal, Daultana hastened to explain that the One Unit Plan was "a deliberate attempt to meet the national demand of Bengal for provincial autonomy" and if Bengali members realise that the prosperity of a portion was the prosperity of the whole, then the progress to be achieved by West Pakistan would also redound to the benefit of Bengal. Finally, he denied that the people were not consulted by citing the approval of the Provincial Assemblies whose members actually represented the people. Daultana also dismissed the applicability of a plebiscite and demonstrated that a referendum would be cumbersome if applied to each of the provisions of the constitution.

An East Bengali, Abdul Mansur Ahmed, registered his opposition to the consideration of the One-Unit Bill not because he was against the integration of West Pakistan per se but because he was for the retention of the linguis-
tic and cultural character of the people. To drive home his point, he asked, "Why not integrate the entire Muslim world because geographically, culturally, in dress, custom and religion we are one?" 68 After repeating many of the objections discussed by his colleagues and digressing several times, he recommenced the creation of a three-tiered West Pakistan federation under one legislature. In a sarcastic vein, he appealed to the ruling party not to create more problems although they have attained success along this line. 69

Speaking in Urdu, Maulana Mian Abdul Bari asked pointed questions that caused discomfort to those concerned. For example, after mentioning Mian Jaffar Shah as having sponsored a resolution for the One Unit scheme in the North West Frontier Province a year before, he asked, "Why was he JaffarJ demanding the eliciting of public opinion on the same subject? Why was Shahrwardy who drafted the One-Unit Bill repudiating it now? Why was Firoz Khan Noon opposing the bill when a year before, the Punjab Assembly, under his leadership and at his instance, unanimously passed the One-Unit proposal?" He discoursed on the following measures for integration: (1) Not having attained strength during the last eight years, a divided Pakistan would not be able to defend herself against India; (2) integration would awaken the patriotism which had cooled down during the last eight years; (3) the people of all the provinces had identical needs; and (4) for the sake of national solidarity, such trivial things as names should be sacrificed. Citing the oft-repeated American model of solidarity despite the existence of so many states, he reminded the Assembly that after five years, the 13 original states were forced to federate for defence and economic development although unexposed to the danger of aggression at the time. With
more reason, he maintained, Pakistan should be the same in the face of two powerful hostile neighbors. Furthermore, the Lahore Resolution could be subjected to change since it was not a "gospel for all times to come".  

In defence of the bill, Khan Muhammad Jalaluddin of North West Frontier Province remarked that it "will bring about the patching up of the pieces, which our country represents at present into ONE solid block". Switching to Bengali after speaking in English, he pleaded to the East Bengali members not to oppose the wish of West Pakistan to unite into one province.  

Another advocate of the bill, Farid Ahmad, believed that the people's opinion had sufficiently asserted itself for the integration though unable to arrive at unanimity. Shmapendra Kumar Dutt, the first Hindu to speak on the bill, favoured it inasmuch as resolutions had been passed by provinces and legislatures. As a means of protecting the autonomy of the East Bengalis, he suggested the enumeration of the powers of each unit in the bill under discussion, a more radical proposal for withdrawal of the bill was presented by Ahmad Ali who looked at its provisions as a violation of the basic principles in the Lahore Resolution. This argument had been refuted earlier. Murz Ahmad, an East Bengali member, would not subscribe to Syed Ahmed's justification that the merger would develop the economy of the underdeveloped areas. In his opinion, conditions in such areas were ameliorated through separating them from the advanced ones and adopting special measures. To prove his point, he cited the case of the Muslims in India and that of Bengal. To disprove Dutt's idea of the sufficiency of the same topography, literature, art and architecture in integration, he pointed to the division of Bengal into two provinces. As a prerequisite to unity, he mentioned,
the will to live together which should be ascertained in forming one province in West Pakistan. In a tone of resignation, he voiced his belief that the landlords instead of the poor peasants would benefit from the merger. The last two speakers of the day, Sirsomal Kirpaladas of Sind and Chaudhari Aziz Din of the Punjab expressed themselves in favour of the bill.72

During the session of September 5, the members from the States and Tribal Areas were granted the opportunity to speak on the bill. Reading his Urdu speech with a Pashtu accent, Malik Wais Khan Malikdinkhel Afridi from the Tribal Areas of the North West Frontier Province considered the bill as the best way to solve the problems in his area and to end the British policy of segregation which denies the people the opportunities of education and better governmental administration. "So far," he said, "we have lagged far behind others in the race of life because we had been cut away from the main current of progress in the world. Now we would again be able to join this roaring current and go with the streams."73

Elucidating the injury that his state had suffered under the British policy of exclusion, Nawab Mir Bai Khan of the Baluchistan States Union welcomed the integration of West Pakistan as symbolic of progress in the economic, social, and educational aspects. He echoed the arguments presented earlier by Daultana. J. K. Das, a Scheduled Caste member, criticised the motion for eliciting public opinion as dilatory and attacked members who delivered irrelevant speeches. Probably without realising it, he himself digressed from the main topic by speaking about politics in East Bengal and the importance of Rigveda, a book of Hindu hymns.

An atmosphere of cynicism flowed from A. D. Beldar
Ahmed's speech severely criticising the One-Unit Bill. In his view, the bill would not remove political inequalities, would not effect savings because the three Governors would be replaced by eleven Commissioners, would not abolish provincialism and would delay the trial of cases when several High Courts would be replaced by one only. He hinted that the ruling party should make up their mind whether to circularise the bill or produce the long-awaited full-fledged constitution.\(^7\)

Contradicting the arguments of the One-Unit proponents, Sardar Abdur Rasheed Khan claimed that the water resources in West Pakistan had already been fairly allotted, the discovery of Sui gas would render obsolete the hydro-electric scheme, and the free passage of food supplies from one province to another had not been disturbed. He foresaw in the One-Unit Bill the standardisation of power rates which would be detrimental to the North West Frontier Province where cheap power had always been the life of industrialists. Deriding Bhutto's assertions on culture, he remarked: "a poor man cannot think of music or dances." On the existing provincialism, he deplored: "so long as a Pathan speaks Pashto he would regard himself a Pathan; so long as a Sindi speaks the Sindi language, he will think on the lines of a Sindi; so long as a Punjabi speaks the Punjabi language, he will regard himself as a Punjabi even if these geographical barriers and boundaries are obliterated."

Sardar Abdur Rasheed Khan stunned the House when he read extracts of a secret document which set forth the tactics to be followed in pushing through the One-Unit Plan. The proceedings were, in the meantime, diverted to queries as to the origin and contents of the paper but the speaker refused to disclose its author.\(^7\) Rasheed's action was encouraged by Ataur Rahman Khan who congratulated him for exposing
the strategy. With biting words, Ahtur Rahman Khan denounced the bill as the "outcome of a conspiracy, a plan well laid out for the purpose of vested interests, for the purpose of the benefit of the coterie which has been ruling or misruling the country for the last eight years". He stood behind the improvement of conditions in East Bengal before taking up the One-Unit Bill. Assailing Daultana's justification for West Pakistan unity, he insisted that Sind and Baluchistan were never parts of the Punjab and Harappa belonged to the Northern Kingdom while Mohenjodaro to the Southern. To knock the bottom out of the argument that geographical contiguity alone favoured unification, he referred to Pakistan's separation from India in 1947 although the whole sub-continent had been under one rule before. Submitting the factor of cultural and linguistic affinity, he reasoned that no such bonds existed when East Bengal was made a part of Pakistan. He expounded the indispensability of such cementing factors as goodwill, understanding, cordiality, and justice for building a strong edifice. In a tone dripping with sarcasm, he conceded the passage of the One-Unit Bill for "you have got the rule of democracy here which means 51 asses are better than 49 Arab horses".

The representative from Sahawalpur State, Chaudhri Abdul Salam, stated his people's inclination for the bill on the expectation of less taxes and more water. Offering Sahawalpur as a location of the capital of West Pakistan, he emphasised its central location, large buildings, and good climate. Salam's stand surprised the House because he, being a member of the Awami League, should have opposed the merger.

Although they approved of the unification, Qizilbash from the Punjab and Zainiraddin from East Bengal questioned the methods used in achieving the objective. Zainiraddin
admonished those who entertained the idea of East Bengal domination as the basis of the One-Unit Bill. With Daultana's speech in mind, Zahiruddin declared that one language and one religion did not make a nation, and as proof, he pointed to Great Britain and the United States as nations having one language and to the Middle East as having a common religion but apportioned into several countries. After mentioning Switzerland as an example of unity in diversity, he minimized the role of the Indus river in unifying Pakistan by naming the Rhine and Danube rivers which flow through several countries and streams flowing through India and Pakistan. 81

Expressing Karachi's desire to join West Pakistan province, Haroon quoted facts and figures to impugn the statement that hundreds of crores 82 were spent by the Central Government to develop the capital. Being a representative from Karachi, he reasoned that his city wished to have a voice in West Pakistan affairs. After underlining the reality that East Bengal was originally divided into three regions, e.g. Assam, Chittagong Hill Tracts, and East Bengal, he asked, "Did the people of West Pakistan ever raise any objection to the unification of East Bengal?" 83

Speaking to a full House, Iftikharuddin opened up with an attack on members who were against integration a year before but were now advocating unification. 84 Then turning to Daultana's speech, he named the countries under the Holy Roman Empire and those of Pakistan, India, and Afghanistan as evidence that unity in the past was inconclusive in attaining a "justified, natural, and scientific unity". After assuming that the resources of the provinces could be utilized without unification, he espoused an experiment on federal unity before implementing the One-Unit Plan to avoid the danger of having eleven commissioners whose powers would be unrestrained by an
elected local assembly. His touching on Bashid's secret document provoked another tedious debate which drew an admission from Prime Minister Chaudhri Mohamad Ali of his complicity in the earlier version. To cut short the exchange of views, the Speaker arranged a conference the next day (September 10) to examine the documents. 85

Continuing his speech, Iftikharuddin suggested an election or a round table conference instead of a referendum to settle the issues. To avoid delay, he proposed the declaration of Pakistan as a republic and adoption of the present constitution as the interim constitution. 86

In a sober vein, Dr. S. K. Sen of East Bengal sought a meeting of leaders to thrash out differences. "Let us give a chance to this One-Unit to work," he entreated, "if after working this One-Unit you really feel that it will not benefit, still you have the authority." He forecast the strengthening of East Bengal with the passage of the bill. 87

In a gallery packed to capacity, Saneewardy, Law Minister from December, 1954 to August, 1955 and author of the bill, explained his volte-face before stating his reasons against the One-Unit Bill. To neutralise Daultana's claim that provinces would remain undeveloped without integration, he merely referred to the development of roads and canals in Sind and the Punjab as proof. Even with unification, he doubted the achievement of progress because in a landowner-dominated legislature, no policy would be formed giving land to the landless. Despite his opposition, he suggested four principles to ensure success of the One-Unit Plan: (1) integration could be undertaken in forms other than unification; (2) parity between East and West Pakistan should exist; (3) the offices of Governor-General and Prime Minister should be divided between the two wings; and (4) regional
or zonal autonomy should be in existence. Of the six hours and two days spent by Suhrawardy, more time was devoted to personal attacks on Khuho and his administration in Sindh.

With a heart full of bitterness, Khuho dug into the past of Suhrawardy and made sinister reflections on his character. He deduced the primary reason for Suhrawardy's opposition to the One-Unit Bill as his (Suhrawardy) inability to secure the Prime Ministership. Finally touching on the merits of the bill, Khuho was certain that it would enable East Bengal and West Pakistan to reach an understanding on parity. Calling attention to the demand of the Opposition for a referendum, he stressed Suhrawardy's statement that public opinion was controlled by the landowners as a nullification of the referendum's reliability. Before closing his two-day marathon speech, Khuho appealed to the leader of the Opposition to adopt a constructive attitude towards the bill.

"It has been rather a sort of nightmare for me during the last three weeks' debate," was the opening statement of Hamidul Haq Choudhry when the Speaker acknowledged his turn to speak. After his introduction, he enumerated the very points that Suhrawardy presented in favour of the bill before he became the leader of the Opposition. Pleading for the early passage of the bill, he observed that all were in favour of the principle behind it. He was supported by Abdu Sattar who delivered a speech along the same pattern of argument.

As Governor-designate of the proposed province of West Pakistan, Gurjani showed strength and conviction in defending the bill by reminding the audience that Pakistan's claim to separate nationhood was not based on race, language, habitat, customs, and habits but on a "corporate
sentiment of oneness," and by warning of the dangers inherent in the exaggeration of minor differences at the moment for "while a full-grown tree can withstand heavy storms, a young plant may be damaged even by a passing gust of wind". Addressing those who argued that the Lahore Resolution was against the One-Unit Bill, Gurmani said that the resolution was not final and in fact, it was modified when it was realised that some provinces could not support themselves. Contained in the Delhi Resolution of 1946, the modification was moved, Gurmani emphasised, by Sukhrawardy himself.

In attempting to prove that the existence of numerous units would be a hindrance, he compared Pakistan's situation to the construction of a multi-storey building. While one wing of the ground floor had already been completed, the remodelling of the other wing had not even started. As a consequence, the second storey had to wait until the whole ground floor had been finished. He maintained that the division of West Pakistan into numerous units did not benefit the common man such as the traders, industrialists, and civil servants but only the feudal overlords, the political leaders, and the inefficient officeholders. After explaining the proposed structure of the province, Gurmani focused his attention on Sukhrawardy's proposal for eliciting public opinion.

By asking theoretical questions, he exposed the fact that Sukhrawardy as Law Minister did not advise the Governor-General to gather public opinion before issuing orders on March 27, 1955 establishing West Pakistan province. Gurmani reminded all the proponents of referendum that such a process was not provided for in the existing constitution. To offset the arguments of those who recommended the circulation of the bill, Gurmani stated that nearly all important political leaders had expressed
their views on the subject during the last nine months.
As further proof, he recited the following statistics:
(1) nearly 500 statements by prominent public figures
had been published; (2) more than 200 public associations
had passed resolutions; (3) over 370 editorials and more
than 700 articles and letters had appeared in the papers.
In comparison, the Basic Principles Committee Report of
the first Constituent Assembly mustered less than 500
opinions. In conclusion, he called on the members of the
assembly to "take note of the fact that the people in
this country are perplexed and despondent over the delay
in framing the Constitution".\footnote{32}

Prime Minister Chaudhri Mohammad Ali commenced his
speech with the observation that "the general discussion
on this Bill has been remarkable for its length and even
more remarkable for its irrelevance". Calling for an
early passage of the Constitution, he speculated that the
unification of West Pakistan would eliminate provincialism.
Exuding an intense feeling of optimism, he remarked:

We are undertaking a great experiment - an experiment
which will call for the wisdom, for the devotion, for the
unselfishness of our people. Any scheme, however
good, can be vitiated if worked wrongly. But if a
scheme is in the best interests of the people, it will
establish itself on its own merits. Inspite of the
of teething troubles, in spite of initial difficulties,
the overwhelming merits of the unification of West
Pakistan and the benefits that will flow from it,
will convince the people of those areas that it is
in their best interests.\footnote{33}

After twenty-five days, the "long-winded" debate
was dealt the coup de grace by Sardar Amir Azam Khan who
summarised the whole proceedings as consisting of "essays,
sermons, lectures, accusations, abuses, insinuations and
what not!" to a sparsely attended session.\footnote{34} On September
17, the House negatived all the amendments calling for
the circulation of the bill or sending it to a select
committee and approved the original motion to take it into consideration. 95

Immediately after the division, the Speaker gave the signal for a clause-by-clause consideration of the bill. This step was expected to consume much time due to the 230 amendments tabled by the members. Nevertheless, the atmosphere was filled with a general feeling of progress which found expression in an editorial that said in part: "the Assembly has already started making a Constitution, because the abolition of provinces and units in West Pakistan and forging an administrative as well as legislative pattern for the larger whole that is envisaged, is not of purely local but of all-Pakistan Constitutional import." 96

During the remaining days of September, the House tackled the amendments one by one, ruling out numerous irrelevant ones, debating on one clause for as long as three and a half hours, accepting several reasonable ones, disposing of as much as fifty amendments in one sitting, and allowing compromise when considered necessary. 97

With the Opposition members fighting to the end, the Assembly finally approved the One-Unit Bill during a seven-hour session by a vote of 43 to 13. 98 After the Governor-General assented to the bill, 99 West Pakistan Province became a reality on October 14, 1955. East Bengal was renamed East Pakistan instead of "Pak Bangla" as suggested by the Opposition. 100

The Constitution

Having jumped over the first major hurdle, the government concentrated their attention on the second major task of drafting the Constitution. Aware of the delay that would result in appointing a multi-party committee, the second Constituent Assembly gave a free
hand to the Ministry to formulate basic principles and prepare the draft. While the draftsmen were busy, the Assembly devoted the period from October to December, 1955 to deliberations on the Validation of Laws Bill, amendments to the Government of India Act and the Indian Independence Act, Rules of Procedure of the House, and other matters not directly connected with constitution-making. The similarity between the 1935 Constitution and the Draft Constitution of 1954 hinted that the Ministry referred extensively to the latter without discounting the borrowings from other documents produced by the first Constituent Assembly.

After a period of three months, the Draft Constitution was published in the Gazette of Pakistan Extraordinary on January 6, 1956. The following day, Chandrigar, then Law Minister, moved to introduce "The Constitution of the Islamic Republic of Pakistan Bill." This motion was instantly objected to by Zahiruddin on the ground that its introduction violated the House rule requiring a period of three days before the start of the debate. To settle the matter, the Deputy Speaker who was then presiding, allowed Chandrigar to deliver his speech before adjourning the House for three days to enable the members to study the bill. This had the effect of suspending the rules of the Constituent Assembly.

General discussion on the Draft Constitution began in earnest on January 16, 1956 with the Government side defending and the Opposition attacking many aspects of the bill. On the fourth day of the debates, Zahiruddin moved that the bill be referred to a select committee, an act which was branded by Jahangir as some sort of "delaying tactics." Another Opposition member, Ataur Rahman Khan, suggested the circulation of the bill after noting that some of the provisions were against the 21-Point Programme.
of the United Front, the party that defeated the Muslim League in the March, 1954 elections in East Bengal.\textsuperscript{103}

On February 1, 1956, after a fortnight's discussion, Chundrigar wound up the arguments of both sides so that voting could take place. As expected the motions to refer the bill to a select committee and to have it circulated for eliciting public opinion were negatived and the motion to take it into consideration was unanimously adopted.\textsuperscript{104}

For the next twenty days, the Draft Constitution was considered clause by clause with almost all of the 670 amendments to the 245 clauses tabled by the members of the Awami League.\textsuperscript{105} Dozens of amendments submitted later raised the number to 750.\textsuperscript{106} All sorts of strategy to delay the approval of the Draft Constitution were undertaken by the Opposition but these proved of no avail to the equally determined Government forces. To facilitate the early passage of the bill, non-controversial provisions were taken up first while the debatable ones were held over so that off-the-record discussions could resolve differences. To avoid interruptions in their constitution-making sessions, the Assembly adopted a measure extending the budget deadline of the Federal Legislature by one month; otherwise, they would have to suspend their sessions and meet as the Federal Legislature to pass the money measure.\textsuperscript{107}

Probably realising their inability to stop the passage of the Constitution Bill, twenty-one Opposition members staged a walk-out as a sign of protest - 20 from East Pakistan (12 Awami League, 7 Scheduled Castes, and 1 Guanantari Dal) and one from West Pakistan (Iftikharuddin). Despite this walk-out, the Government retained sufficient strength (52 members) to carry through the bill's approval on February 29, 1956.\textsuperscript{103} A newspaper played up the occasion with a cartoon entitled "The Coming of Dawn" and an editorial,
"This Great Day" whose lines echoed the feelings of millions of Pakistanis: "At last this country has a Constitution."

Taking note of the walk-out, the editorial added:

We do not think that Pakistan's final and permanent Constitution has yet been written because we are convinced that when the passions and prejudices of the present die down the vision of the GRAND CONCEPTION will become the clearer, and eventually the ideal of one country, one people and one and only one Government will prevail.\[109\]

On March 2, 1956, the members of the Constituent Assembly joined the motorcade from the Assembly building to the Darbar Hall of the Governor-General's House to personally request for the Governor-General's assent to the Constitution Bill. A few minutes earlier, the bill was signed by Speaker Abdul Wahab Khan and all the members present in the chamber. A cheering crowd garlanded the members at the doorstep of the Assembly building while the mounted bodyguard of the Governor-General lined the route towards Darbar Hall. Moments later, Governor-General Iskander Mirza arrived in a column amidst a blare of trumpets. The ceremonial signing of the Constitution Bill was accomplished after recitation from the Holy Quran by the Speaker himself. As the ceremony drew to a close, the Governor-General expressed his thanks for having extended the "honour and privilege of assenting to the Constitution Bill". Turning his gaze towards the Assembly members, he paid glowing tributes to the Prime Minister and others who worked hard to ensure the passage of the bill.\[110\]

In accordance with section 222 of the approved Constitution, the second Constituent Assembly held an election on March 5 to elect the President who would serve during the interim period. The Coalition Party's choice for the post, Major-General Iskander Mirza, was not challenged by the Awami League and Hindu members who had
decided not to participate in the presidential election. As a result, the Speaker announced the selection of the lone candidate who had been nominated by fifty Assembly members. It was Prime Minister Chaudhri Mohammad Ali's turn to pay orate praises to the first President whom he described as a "staunch friend, a forthright man, a great administrator" and a "sincere patriot" who might make Pakistan "rise to ever greater glory".

The second Constituent Assembly of Pakistan met for the last time on March 22, 1956, to vote on the resolution of Sardar Amir Azam Khan enabling the members to sign the Constitution so that it could be deposited in the National Museum. After speeches were delivered by several members representing both provinces and the minorities, the resolution was adopted unanimously. With a final stroke of the gavel, the Speaker adjourned the House sine die.

At seven o'clock the following morning, the swearing-in ceremonies were set in motion by a recitation from the Holy Quran followed by the reading of the proclamation announcing the inauguration of the Islamic Republic of Pakistan. The lawn of the Governor-General's House was filled by thunderous ovation from Heads of Governments of Pakistan and Turkey, Princes from Iran and Saudi Arabia, the Foreign Ministers of Turkey, Thailand, Iraq, Burma and New Zealand, the Deputy Premier of the Soviet Union, Vice Chairman of the People's Republic of China, and other high-ranking officials.

After silence was restored, Chief Justice Mohammad Munir read the oath which was repeated by President-elect Iskander Mirza. Soon thereafter, the new flag of the president was unfurled on the masthead and was saluted by the Presidential Guards. The national anthem was played simultaneously with the booming of the 31-gun
salute. As a fitting and to the ceremony, the President administered the oath of office to his Cabinet, to the Chief Justice and Judges of the Federal Court, and to the Auditor-General. Riding in a coach, he proceeded to the Polo ground to inspect, as the Commander-in-Chief of the Armed Forces, a ceremonial parade held in his honour by three services. After years of uncertainty, a chapter in Pakistan’s constitutional history ended with a note of jubilation.

Minor Accomplishments

Of lesser significance compared with the adoption of the Constitution, the passage of such acts as the Validation of Laws, Representation of States and Tribal Areas, Speaker and Deputy Speaker (Salaries and Allowances), and amendments to the Government of India Act, 1935 and Indian Independence Act, 1947 should be listed as accomplishments of the Second Constituent Assembly for reasons already mentioned in Chapter III on the same topic. Not to be forgotten also was the way the members conducted themselves in electing the first President of the Republic. The absence of confusion could be attributed to the fact that the Opposition had walked out earlier. The passage of the Validation and Representation Acts had been described in the previous pages.

Miscellaneous

Among the miscellaneous aspects of constitution-making, the obvious, needing some elucidation, were the absence of a majority party, membership stability, attitude of the press, and the qualities of the presiding officers.

With a mere thirty-three members out of an 80-seat
Assembly, the Muslim League had to join forces with the Awami League during the first voting. A drastic change in alignment came after Prime Minister Mohammed Ali's (Bogra) resignation in August, 1955 when Suhrawardy, the leader of the Awami League and strongest enemy of the United Front, was prevented from getting the Prime Ministership through a United Front offer of coalition with the Muslim League. The Muslim League had grabbed the alliance offer as the only chance to retain the Prime Ministership in their hands. By a twist of Fate, Suhrawardy became the Leader of the Opposition and remained in this position throughout the life of the second Constituent Assembly.

Insofar as stability of membership was concerned, the second was luckier than the first Constituent Assembly in the sense that no deaths occurred during the whole life of the House from July 7, 1955 to March 22, 1956. Had the period been longer, several members would have been lost. Dr. Khan Sahib was assassinated in 1958, Chundrigar died in 1959, A. K. Fazlul Haq and Iftikharuddin expired in 1962. Mohammed Ali (Bogra) and H. S. Suhrawardy both former Prime Ministers, passed away in 1963.

Except for committee deliberations, the sessions of the second Constituent Assembly were opened to the public. During the first few months, the relation between the House and the newspapers remained cordial. The first serious rift happened on September 19, 1955 when Mahmud Ali was described as a Communist by the Times of Karachi after he voted against the One-Unit Bill. Mahmud Ali's complaint obtained a promise from the Speaker that he would look into the matter very carefully and if necessity dictated, would "ask the House to set up a Privileges Committee to go into it". The second incident transpired two days later when Farid Ahmad was placed in an awkward position by the publication of the confidential minutes.
Zahiruddin invoked a point of privilege which occasioned another debate consuming fourteen pages and about an hour before the Deputy Speaker remanded the case to the Privileges Committee. 122

In the month of February, the Times of Karachi became the object of Suhrwardy's ire when it misreported a speech he delivered in the Assembly. Suhrwardy insisted on his having described the Islamic bond between East Pakistan and West Pakistan as "tenuous" instead of the word "fatuous" published in the paper. Again, it was referred to the Privileges Committee. 123

A few days before the adoption of the Constitution Bill, another complaint against the same paper was lodged by Peter Paul Gomez, a Christian member, who considered it an insult for the paper to publish his photograph and to label it as "one of the illustrious and noble sons of East Bengal". "I am a simple man," he said. 124

From the time complaints against the Press were aired in the House up to the final meeting on March 22, 1956, no one inquired into the results of the investigations. The members of the Privileges Committee were too engrossed in the debates to bother themselves about submitting any report. The questions became academic after the adjournment sine die of the Constituent Assembly.

The House elected only one set of officers: Speaker Abdul Wahab Khan and Deputy Speaker C. E. Gibbon. Before the election of the Speaker, Gurnani presided over the sessions in Murree from July 7 to 14 and in Karachi on August 8. He was relieved on the 12th of August just after he had declared Abdul Wahab Khan elected. His last opportunity to preside came on the 13th of February when he took the chair for a brief period. Speaker Abdul Wahab Khan assumed his post on August 12 and remained in it except during the period from January 9 to February 15,
1956 when he left Karachi for a month-long mission abroad. Deputy Speaker Gibbon had his first chance to preside on September 22 and soon thereafter on October 1, 4, and 5, and on November 9. He became a full-time Presiding Officer from January 9 to February 15 during the Speaker's absence. For short intervals, he relinquished the Chair to Abdus Sattar, a member of the Panel of Chairman, on January 25, February 4, 6, 8, 9, and 14. During the extraordinary long sessions held in February, the Speaker, Deputy Speaker, and Abdus Sattar sat alternately on the Chair while the members put the finishing touches to the provisions of the Constitution Bill. 125

Exhibiting qualities of a good presiding officer, Gurmani had been well trained in politics. Before the Muree session ended on July 14, the Prime Minister thanked him for having "conducted the proceedings of the House with dignity, decorum, impartiality and kindness". 126 Gurmani's drawback was his being the Governor-General's nominee which to some members, especially those belonging to the Opposition, smacked of dictation to a "supreme body".

Pleading for goodwill and cooperation from the members in his inaugural address, Speaker Abdul Wahab Khan announced his adoption of justice and impartiality as his motto. 127 Unluckily, a ruling he gave at one time contradicted a House provision prohibiting the readings of speeches which emboldened Suhrawardy to tear and throw on the floor the handbook on the House Rules of Procedure. 128 The Speaker was too weak to counteract this insult to the Chair which must have been very humiliating. Often, he appeared helpless in the midst of disorder and confusion.

On the other hand, Deputy Speaker Gibbon attempted to impose discipline in the House to expedite matters.
He forbade peons from crossing the floor of the House during the debates and issued commands such as "Carry on," "Move it," etc. which irritated and prompted Sheikh Mujibur Rahman to request that the Deputy Speaker should "address the Members respectfully". Without much ado, the Deputy Speaker just added the word "please" to his military phrases. 129

As pinch-hitter, Abdul Sattar was not beset by difficulties for most of the controversial topics had already been adopted when he took over; moreover, the periods during his chairmanship were of short duration.

Nature of Sessions

As in the first Constituent Assembly, heated discussions resulted in walk-outs. During the debates on the West Pakistan Establishment Bill, several Opposition members walked out of the chamber in protest against the ruling of the Speaker setting aside their demand for recording the votes in the minutes of the Assembly. 130 On September 15, Khurru left the chamber when Ghulam Ali Khan Talpur subjected him to personal attacks. 132 Three days later, another disgruntled member, Malik Firoz Khan Noon, stepped out in anger after the Speaker denied his request to speak on an amendment. 132

The first major walk-out occurred on February 7, 1956 caused by Sheikh Mujibur Rahman's remark that the Chair showed injustice to the Opposition by muzzling them. Stung by such a grave reflection on the Presiding Officer, the Deputy Speaker asked Mujibur Rahman to withdraw the accusation but the latter preferred to vacate the chamber. The rest of the Awami League members and a sympathiser, Mahmud Ali, left the hall. 133 The last walk-out was staged on February 23, 1956 when Suhreewardy voiced his party's opposition to Chundrigar's motion for
the passage of the Constitution Bill. When his suggestion to hold a round table conference to iron out some of the unsolved problems was frowned upon by the bill's supporters, Suhrawardy and his Awami League followers walked out. The rest of the Opposition delivered speeches and followed suit. B. K. Das left the chamber together with other Congress party members. B. K. Dutta's parting shot, "We reject the Constitution" was answered by Haroon's "We reject you". After calling the draft, a "sham constitution," Iftikharuddin withdrew from the hall. The exodus ended after Mahmud Ali, Dr. S. K. Sen, Rasa Raj Mandal, and Gour Chandra Jala had departed.

Aside from the walk-outs, the second Constituent Assembly had many other aspects in common with the first — intense partisanship as shown in the tendency to divide into Government and Opposition, inclusion of irrelevant matters such as personal attacks on political opponents, long-winded privilege speeches which consumed much time despite the setting of time limits, and violations of parliamentary procedure indicated in the prevalence of sarcasm and insults.

There was a major difference, however, in that the successor body authored the Final Constitution within a period of eight months and fifteen days by holding one continuous session consisting of 83 meetings and without sitting as the Federal Legislature even for a single day.
1. See the proclamation of the Governor-General dated October 24, 1954.


6. Ibid., pp. 936-939.

7. See Chapter IV, p. 170.


9. Gazette of Pakistan Extraordinary dated May 28, 1955, pp. 1025-1034. Before the opinion of the Federal Court was issued, the Government introduced amendments in the original Constituent Convention Order on April 21 and 27. Subsequently, all election arrangements had to be postponed while waiting for the verdict of the Federal Court on the reference submitted by the Governor-General on April 10, 1955. See "Governor-General's Orders No. 9, 10, and 11," Constitutional Documents, ibid., pp. 1397-1407.


13. The figures - 26 landowners, 23 lawyers, 14 retired officials, 7 from industry and commerce and 8 belonging to the other professions - were given by Fauzia Ahsan, Government and Politics in Pakistan (Karachi: Pakistan Publishing House, 1959), pp. 114-119. Note 6 of Chapter II of the League's report is equally applicable here.


15. Callard, ibid., p. 119. Subsequently, disqualified by the first Constituent Assembly for lack of residence, finally decided to
build his permanent home in East Bengal and was, therefore, eligible for membership in the second Constituent Assembly.

16. Iftikharuddin was for dissolution but not in the way it was done by Governor-General Ghulam Mohammed. He described the proclamation of October 24 as the "most undemocratic way that the world knows of". See Constituent Assembly of Pakistan Debates (Karachi: Manager of Publications, Government of Pakistan) dated February 29, 1956, Vol. I, No. 80, p. 3632.

17. Pir Ali Mohammed Raza was the first to arrive in the Assembly chamber and Sardar Ameer Azam Khan, then minister of State, was the last. Illness prevented Sardar Abdul Rashid from attending the opening ceremonies. See "G.A. Holds First Session in Murree", Dawn dated July 8, 1955, p. 1.


21. It is interesting to note that the Governor-General had not the slightest intention at the outset of sending a message to the Assembly. After hearing the trend of the debates during the first day, he must have been constrained to telegraph the following: "We must all remind ourselves of the responsibility we owe to those both of the present and of future generations on whose behalf we have assumed the trust of political authority. We must also constantly remind ourselves of our accountability in respect of all we may do as the Holy Prophet has admonished us: "kullekum re'ain wa kalalakum magoolum 'in r'alum (Every one of you is the guardian of the Nation and he will be responsible for it)." See Debates, op. cit., dated July 9, 1955, Vol. I, No. 2, p. 25. As a grim reminder to the second Constituent Assembly, section 3 of Governor-General's Order No. 12 specifically provided for the dissolution of the Constituent Assembly by the Governor-General "in exercise of the powers derived by him from the Independence Act".

22. One lakh is equivalent to 100,000. To Iftikharuddin's point of view, nomination did not really represent the will of the people.


24. The discussions on the introduction, consideration, and passage are in Debates, ibid., pp. 25-65. See also Gazette of Pa-

25. The Assembly created these positions in the form of a statute instead of a rule on July 13, 1955. See Debates, ibid., dated July 13, 1955, Vol. I, No. 5, pp. 123-126. The eight members sworn were Syed Ahmad Nawaz Shah Gardezi, Chaudhry Abuus Salam, Mirza Mumtaz Hasan Qizilbash, Nawab Mir Bai Khan, Major-General M. A.K. Jehan Zeb Khan, Khan Bahadur Naji Malik Mehrdar Khan Mehsud, Malik Waris Khan Malikdinkhel Afridi, and Malik Jehangir Khan Dadu Khel Wazir. They were supposed to report on July 19 but the Assembly was not in session between July 15 and August 7. Sardar Abdur Rashid Khan, who was absent during the first three meetings, was sworn in on July 12, 1955. See Debates, op. cit., dated July 12, 1955, Vol. I, No. 4, p. 97.

26. Ibid., dated August 12, 1955, Vol. I, No. 8, pp. 207-219. See also "Abdul Wahab Khan Elected C.A. Speaker", Pakistan Times dated August 13, 1955, p. 1. The term "Speaker" instead of "President" as in the first Constituent Assembly was chosen to prevent it being confused with the Head of State after the promulgation of the Final Constitution.


29. The speaker, Abdul Mansur Ahmad, must have forgotten that the deadline had elapsed eight days earlier.


32. The Government of India (Fourth Amendment) Act, 1954 concerned the insertion of section 223-A giving jurisdiction to High Courts on the issuance of writs. The Government of India (Fifth Amendment) Act, 1954 curtailed the powers of the Governor-General while the Government of India (Third Amendment) Act, 1954 transferred from the Governor-General to the Federal Legislature the power to create or change the areas of a province. See "Report of the Select Committee," in Debates, ibid., pp. 820-822.


34. The motion was made before Abdul Wahab Khan became Speaker.

36. Ibid., pp. 191-192.
38. The committee chairman was the Speaker who delegated the
job of sponsoring the bill to Sardar Amir Azam Khan. Meharuddin ob-
jected to this arrangement but his opposition was turned down. See
debates, Ibid., dated November 15, 1955, Vol. I, No. 47, pp. 1729-
1730.
39. Ibid., dated December 15, 19, and 27, Vol. I, Nos. 47-49,
pp. 1729-1784.
1093-1095.
43. Ibid., dated October 12, 1955, Vol. I, No. 43, pp. 1619-
1621.
44. "Report of the Committee on the Points of Privilege Re-
ferred To It by the Constituent Assembly on the 29th November, 1955." See
57, pp. 2107-2110. See also "Refusal to Produce Arrested MCA's in
45. "Hus Suffering from High Blood Pressure," Pakistan Times
46. "C.A. to adjourn Tomorrow," Dawn dated July 11, 1955,
p. 1.
47. "MCA's Privileges Bill Passed by C.A.," Pakistan Times
48. "Abdul Gaffar Khan Elected C.A. Speaker," Pakistan Times
dated August 13, 1955, p. 1. Soon after the appointment of Chaudhry
Mohammad Ali as Prime Minister, Shaukat Khanum took leave due to ill
health and was succeeded by Major-General Iskander Mirza.
p. 1.
16, pp. 488-489.
52. Ibid., pp. 187, 190.
53. "The Pakistan (Establishment of Council for the Adminis-
tration of West Pakistan) Order, 1954," Constitutional Documents,
vi. cit., pp. 1365-1385.
54. "The West Pakistan (Establishment) Order, 1955," Con-
stitutional Documents, Ibid., pp. 1385-1386.


38. Ibid., pp. 260-267.

39. Ibid.

40. Ibid., pp. 268-273.

41. Ibid., pp. 273-277.

42. Ibid., pp. 281-284.

43. Ibid., pp. 286-289.


45. Ibid., pp. 311-315.

46. Ibid., dated August 26, 1955, Vol. 1, No. 12, pp. 317-347. See also "Debate on the Bill in GA", Pakistan Times dated September 1, 1955 and "Dr. Iqbal Defends the Bill". Dr. Iqbal dated August 27, 1955, pp. 1, 2.


48. Ibid., p. 368.


50. Ibid., pp. 396-407. The two powerful hostile neighbors were probably India and China.


54. Ibid., pp. 463-465.


56. Ibid., pp. 515-516.
77. Harappa and Mohenjodaro are sites of historical cities in West Pakistan.


82. A crore is equivalent to 10,000,000.

83. Ibid., pp. 584-596.


85. Ibid., dated September 9, 1955, Vol. I, No. 20, pp. 605-628. The discussion on the documents was postponed to another day. See Debates, ibid., dated September 10, 1955, Vol. I, No. 21, p. 633. Finally, on September 24, the Speaker ruled that documents could be referred to without being laid on the table provided they were relevant. See Debates, ibid., dated September 24, 1955, Vol. I, No. 33, pp. 1170-1171.


87. Ibid., pp. 637-642.


93. Ibid., pp. 813-818.


103. Ibid., dated January 16 to 31, Vol. I, Nos. 51-60, pp. 1811-2254. The 21-Point Programme was the platform of the United Front. The Awami League sponsored a "Protest Week" in East Bengal from January 16 to 22 ostensibly against the "undemocratic provisions in the Draft Constitution." Demonstrators were asked to wear black badges and hold protest meetings. Students of Dacca University also struck to show their disapproval at the absence of full regional autonomy for East Pakistan. See "Dhakiani's Call for Protest Week," *Pakistan Times* dated January 17, 1956, p. 1. For statement defending the Draft Constitution as having fulfilled the 21-Point Programme see "Constitution Will be Passed Soon," *Pakistan Times* dated January 24, 1956, p. 1 and "Emergency in Dacca if Draft Not Accepted," *Pakistan Times* dated January 27, 1956, p. 1.


109. “This Great Day,” Dawn dated March 1, 1956, p. 5. Another paper minimised the significance of the passage of the constitution with a cartoon saying that it was not a house but merely a plan that took eight years to prepare. See “Pakistan Becomes Republic Today”, Pakistan Times dated March 23, 1956, p. 4.


112. Debates, op. cit., dated March 22, 1956, Vol. I, No. 83 pp. 3759-3775. Incidentally, Hashdi requested to be excused because “when the heart is full the words are few” and soon thereafter delivered a speech of three pages. For summaries of the speeches see “RICH TRIBUTES PAID TO PH CHAUDHURI”, Dawn dated March 23, 1956, p. 1.

113. The choice of March 23 was intentional since it was also the day the Lahore Resolution was passed.


117. Debates, op. cit., dated September 19, 1955, Vol. I, No. 26, p. 902. Actually, the newspaper did not mention any name but merely stated: “only one vote - and that a Communist from Bengal - has been cast against the motion to take into consideration the One-Unit Bill, against the 49 or it”. See “If a Proof Were Needed”, The Times of Karachi dated September 18, 1955, p. 1.


119. Ibid., dated January 22, 1956, Vol. I, No. 54, pp. 1923-1927. The article in the Times of Karachi merely implied punishment when it said: “If Mr. Abu Nasser wants partition of Pakistan, then surely he is in the wrong place. There is a law against talks about territorial dismemberment of the country which involves punishment up to 10 years of imprisonment. Is that law only applicable to people outside the four walls of the assembly. Does the Assembly provide immunity against treachery?” See “RUNNING AMUCK”, The Times of Karachi dated January 21, 1956, p. 1. The editorial of the
Morning News criticised the stand of the Awami League on distribution of power as encouraging the "centrifugal tendencies from which only the enemies of Pakistan will derive pleasure and profit". See the editorial in "Constitutional Controversy", Morning News dated January 21, 1956, p. 4.

126. C. E. Gibbon, being a Christian, did not join the Muslim prayers.


123. Ibid., dated February 4, 1956, Vol. I, No. 64, pp. 2415-2417. The controversial sentence was: "May be, to Mr. Suhrawardy, Islam is a 'futuristic' relationship but it cannot be denied that it clone brought about the partition of India." See "A Protest for Sabotage", The Times of Karachi, dated February 3, 1956, p. 1.


125. See the files of the Debates on the dates mentioned where the taking over of the Chairmanship had been indicated by italics.


September 20, 1955.


135. Ibid., pp. 3673-3680.

CHAPTER VI

SOURCES AND SALIENT FEATURES OF THE CONSTITUTION

The constitutional document that took effect on Constitution Day, March 23, 1956, contained 234 articles and 6 schedules written with such detail as to make the Constitution of the Islamic Republic of Pakistan the second longest in the world. Although the members of the two Constituent Assemblies spent nine years in its framing, they did not attempt to formulate new theories of government; instead, they laid more emphasis on establishing a political institution best suited to the country than on experimenting with a type never tried before. The purpose of this chapter is to examine the different laws from which the constitution drew inspiration and to analyse those features which bestowed on Pakistan's fundamental law a character of its own.

Sources of the Constitution


General Clauses Act of 1897

As provided for in Article 219 of the Constitution, the General Clauses Act passed on March 11, 1897 to consolidate and extend the acts of similar nature enacted in the years 1868 and 1887 was made applicable for purposes of interpretation. The influence of this piece of
legislation on the Constitution might be observed in the following illustration. Clause 4 of Article 193 of the Pakistan Constitution provided that a temporary law "shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation under this Article has ceased to operate, except as to things done or omitted to be done before the expiration of the said period". The meaning of the underlined phrase could be inferred from section 6 of the General Clauses Act of 1897 which defined with great clarity the scope of such temporary laws. In another instance, the case of a law whose date of effectivity had not been indicated could be interpreted in the light of a provision in the General Clauses Act which stipulated that "where any Central Act is not expressed to come into operation on a particular day then it shall come into operation on the day on which it receives the assent of the Governor-General".

Government of India Act, 1935

After a random perusal of the two legal instruments, one may state without fear of contradiction that the 1956 Constitution borrowed heavily from the Government of India Act of 1935 and in several respects, lifted full articles from the latter. The federal type of government, never enforced in the 1935 Act, was adopted by the Constituent Assembly although the component units had been reduced to two. The system of allocation of powers in both laws was identical. The Federal, Provincial, and Concurrent Lists in the Act of 1935 were also embodied in the Constitution. A change occurred in the transfer of residuary powers from the hands of the Governor-General of the pre-partition period to the Provincial Legislature of an independent Pakistan. The Constitution provided that the
Provincial Assemblies "shall have exclusive power to make laws with respect to any matter not enumerated in any list in the Fifth Schedule [List of Powers] including any law imposing a tax not mentioned in any such list; and the executive authority of the Province shall extend to the administration of any law so made." 7 Instances of these borrowings are discussed in detail in the succeeding chapters.

Muslim Law

After having heard the clamour of millions of Pakistanis, 8 the fathers of the Constitution decided to espouse a religious approach to nation-building by including Islamic provisions in the fundamental law. 9 One article stated that "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." 10 Thus, two sources of Muslim Law were specifically mentioned to guide legislators in the passage of laws.

The Holy Quran is, of course, the most important source although only a few verses in the Holy Quran concerned directly with law because "Islam is not proclaimed in the Quran as a new doctrine but as a continuation of the old religion brought by a long line of the Prophets who preceded Muhammad" such as Abraham, Israel, Isaac, Jacob, and Jesus. Many of the pre-Islamic customs and practices of the Arabs and the people of the conquered countries were recorded. 11

The Sunnah consisted of the deeds and utterances of the Holy Prophet and his unspoken approval, its evidence being the hadith which recorded the actions or sayings of Muhammad and his companions. 12 As a source of
Muslim Law, the hadith is a valuable document in the sense that its contents had been accepted as commentaries of a man who was God's choice although insofar as precedence over the Holy Quran was concerned, the Holy Prophet had dogmatized: "My words are not contrary to the words of God, but the word of God can contradict mine."\textsuperscript{13} The authenticity of the hadith had been diminished by various factors. Though some of the traditions were compiled during the lifetime of Muhammad, there were thousands which were written down only after nearly two hundred years of oral transmission. Moreover, the authorities during the reign of the Umayyads (661-750 A.D.) used to cite some alleged practices of the Holy Prophet which "could be so easily manufactured" to support their decisions. A third factor affecting its reliability emerged from the practice of at least one Muslim sect to "judge hadith from their own standpoint" and to select only those traditions that catered to their interests. It had been claimed that the hadith had value not in its admissibility as evidence but in its admissibility as authority on law.\textsuperscript{14}

Ijma or idjma, the third source of Muslim law, had been defined as an "agreement of the mujtahids ... (i.e. those who have a right, in virtue of knowledge, to form a judgment of their own), after the death of Muhammad, in any age, on any matter of the faith".\textsuperscript{15} The need for this particular source of law arose after social conditions became complicated by the spread of the Muslim faith all over the world. The changed circumstances in non-Arab countries necessitated an adaptation of the laws. To prevent the indiscriminate use of ijma, the Muslim jurists established limitations such as the types of subjects it was to be applied on, the person to be considered authorities, and the procedure to resolve conflicts among these
authorities. Only Muslim lawyers who were well-read in the Holy Quran and the hadith and who had led exemplary lives were to be recognised as possessing validity. Some Muslim sects rejected ijma in the belief that all the rules of conduct had been laid down in the Quran and the Sunnah so that the promulgation of new laws had been rendered not only superfluous but also risky. According to Maulana Abul Hasanat, President of the Jami'at-ul-Ulama-i-Pakistan, legislative bodies were never integral parts of an Islamic State because "our law is complete and merely requires interpretation by those who are experts [sic] in it". He believed that "no question can arise the law relating to which cannot be discovered from the Qur'an or the Hadith". Thinking otherwise, Maulana Abul A'la Maududi, head of the Jamaat-e-Islami, supported his contention by citing the existence of a body of persons whom the Prophet and the Caliphs consulted on matters pertaining to state affairs. Speaking on the scope of legislation in January, 1958 at Lahore, West Pakistan, Maududi remarked:

... one is apt to think that these fundamental facts [sovereignty of God and Prophethood of Muhammad] leave no room for human legislation in an Islamic state, because herein all legislative functions vest in God and the only function left for the Muslims lies in their observance of the God-made law vouchsafed to them through the agency of the Prophet. The fact of the matter, however, is that Islam does not totally exclude human legislation. It only limits its scope and guides it on right lines.

The framers of the constitution rejected Maulana Hasanat's view and followed Maulana Maududi's by providing for a unicameral legislature in the Federation.

The last source of Muslim law is termed Qiyas and is characterised as a "deduction of legal prescriptions from the Kuran and the Sunna by reasoning by analogy". It was Imam Abu Hanifa, a Muslim legist, who instituted
the regulations governing juristic deductions, one of which was the limitation of Qiyas to the clearing up of questions impeding the settlement of disputes.21

Perceiving the vital role of experts in the study and interpretation of Muslim law, the Constituent Assembly empowered the President to 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."22 This particular provision seemed to have been influenced by Maulana Maududi's ideas.

**Laws and Orders**

Also considered as sources of the Constitution are the laws passed by the Federal Legislature and the Constituent Assembly and orders issued by the Governor-General before and after Constitution Day including ordinances, regulations, rules, notifications, Letters Patent constituting a High Court, and other legal instruments subject of course to necessary adaptation.23 Whether these laws had been brought into operation or not was of no consequence. The President of Pakistan and Provincial Governors when directed by the President, were authorised by the Constitution to make adjustments in the form of amendments or outright repeal of any law within two years after Constitution Day with the approval of the appropriate Legislature.24 By virtue of the amending powers of the National Assembly, acts revising some provisions of the Constitution were deemed part and parcel of the fundamental law unfettered by court litigation so long as their passage conformed with the prescribed proce-
Citizenship provisions, as in some countries like the Philippines, were incorporated in the Constitution. In the case of Pakistan, the Constituent Assembly attempted during the early stages of constitution-making, to emulate the practice but the committee appointed to study the citizenship bill recommended its enactment in the Federal Legislature. As a result, the constitutional authority on citizenship could be found in the Pakistan Citizenship Act passed in 1951 by the Federal Legislature. Likewise, the administration of the provinces in Pakistan was regulated by the Establishment of West Pakistan Act adopted by the Constituent Assembly in 1955.

**Government Decisions**

Another source of the Constitution is the large number of decisions issued by the Executive. Proclamations of emergency by the President were virtually unchallengeable in courts because the sole judge of their ineluctability could only be the President himself. Brohi mentioned only one ground by which the validity of the proclamation could be questioned - the *mala fide* exercise of power. However, he qualified his statement by adding that "the proof of circumstances on which the *mala fides* of Government could be exhibited is necessarily a difficult matter".

**Court Opinions and Decisions**

As basis for subsequent interpretations, precedents set by opinions and decisions of the courts are as valuable as the articles in the constitution. The court decisions on the Tamizuddin case involving the power of the Governor-General to dissolve the Constituent Assembly and the Usif
Patel case requiring approval by a legislative body of all ordinances promulgated by the Chief Executive had carved their respective niches in Pakistan legal jurisprudence. As the highest court of the land, the Federal Court had been empowered by the constitution to decide questions involving constitutional interpretation. Writing on the implication of this prerogative, Brohi stated that "it is the consciousness of this burdensome responsibility of delivering the last word as to the meaning of the words used in the Constitution that ought to exert the greatest measure of wise and tardy self-restraint upon the judiciary of a country having a written Constitution and charged with the duty of interpreting the fundamental law".  

**Constituent Assembly Debates.**

As a further source of constitutional guidance, the records of the debates in the Constituent Assembly could be examined to throw light upon the intention of the constitution-makers. An aspect of the debates might be mentioned as an illustration. During the discussion on fundamental rights, Mahmud Ali objected to the ambiguity of the words "unions" and "associations" included in Clause 10; instead, he recommended "trade unions" and "political parties". Similarly, he disapproved of the phrase "subject to any restrictions imposed by law" for it allowed the ruling party to "put any restrictions they like". In support of Mahmud Ali's amendment, Abul Mansur Ahmad reasoned that "association, Sir, as one understands it in our country, relates generally to non-political associations". Ghauri, to clarify that "unions" and "associations" were general words embracing all types of associations including political parties and trade unions. Explaining the phrase "subject to any
restrictions imposed by law," he pointed out that it did not mean that the restrictions would be imposed by the executive but that the restrictions could be imposed only by law. With this interpretation, all the amendments were negatived.}

Conventions

In Pakistan as in the United Kingdom, there are numerous practices which had been religiously observed as to assume the status of conventions. These could be considered as the unwritten chapters of the Constitution. For instance, the British custom of installing the Speaker of the House as a non-party man had been strictly implemented in Pakistan's National Assembly. The resignation of the Prime Minister and his Cabinet for failing to command the confidence of the majority of the National Assembly had not been laid down in the Constitution, yet no Prime Minister had insisted on staying in his post when faced by such a situation. In Pakistan's constitutional history, some conventions landed in the printed page as an insurance against their violation by power-hungry politicians. Clause (6) of Article 37 of the 1956 Constitution was formerly a convention but the dismissal in April, 1953 of the Nazimuddin Ministry by Governor-General Ghulam Mohammad although the former enjoyed the confidence of the Federal Legislature resulted in its incorporation to guard against a future violation.}

Constitutional Influence of Other Countries

Notwithstanding the predominant influence of various acts passed by the British Parliament, the Constitution of Pakistan exhibited traces from the constitutions of other countries including that of India. This
mixture of somewhat heterogeneous provisions appearing in the first draft evoked the following remark from an author:

The Draft seems to have attempted a synthesis between the British Parliamentary Cabinet system, and the American Presidential system, but both of them appear to have been influenced by Turkish Unicameralism. All this seems to have been grafted upon the Government of India Act of 1935, and its successor, the Constitution of the Indian Republic. It is a moot point whether it is possible to combine in one charter the Presidential and the Cabinet forms of government which have been widely recognised as being both democratic but mutually exclusive. A

Salient Features

From a discussion of the sources, let us turn our attention to an equally significant aspect of this chapter, namely, the Constitution's salient features which, in some instances, were unique in a country with an Islamic ideology.

Length

The first striking feature is the constitution's length and bulkiness of detail. Its 156 pages were in sharp contrast to the twenty-seven pages of the Philippine Constitution. Its somewhat too comprehensive character might be attributed to the following factors: (1) the adoption of the federal system of government which necessitated the inclusion of a division of powers between the Federal and Provincial Governments, a description of the administrative structure of the Federation and the Provinces, and the relations between them; (2) the existence of semi-autonomous States whose accession required constitutional provisions to give representation in the legislative and governmental branches, to guarantee the agreements entered into between the Rulers of States
and the Government of Pakistan, and to prescribe a procedure for the expected accession of the State of Jamšu and Kashmir;\textsuperscript{35} (3) the presence of the Scheduled Castes and backward classes whose peculiar needs had to be attended to in the form of special provisions;\textsuperscript{36} and (4) the desire of the framers to define more clearly those aspects of administration which could easily be misinterpreted or utilised for partisan ends. The rules for administering the civil service were detailed in nine pages of the Pakistan Constitution while the same subject filled scarcely half a page in the Philippine Constitution.\textsuperscript{37} The lengthy provisions on the judiciary could, in the opinion of a writer, have been taken up by ordinary legislation.\textsuperscript{38}

No doubt, the framers of Pakistan's fundamental law were aware of the dictum, "Never put in anything which can safely be left out,"\textsuperscript{39} but as the trend of debates demonstrated, many things were considered by some members as too significant to be passed over. The Constitution would have been expanded further were it not for the acuteness of a few assembly debaters who foresaw the impracticability of some provisions suggested by unthinking oppositionists. For instance, Zahiruddin moved that "parity shall be achieved and maintained in all services between the people of the two provinces and equal number of people shall be appointed to all Services from provinces". The intention as Sheikh Mujibur Rahman put it was to stop the "stepmotherly treatment meted out to East Bengal".

It was Mushtaq Ahmad Gurnani who discussed the implication of such a provision with these words:

\begin{quote}
It means that even in those services in the provinces, take for instance, your policemen, take your chowkidars, take your postmen, even the smaller-paid servants in East Bengal, do you mean to say half the people should be appointed from West Pakistan there and my friend, Mr. Mujibur Rahman, has very rightly said that it is not economically possible for people to come on lower
posts and serve here even in Central Services. No one would like to come and serve here as chaprasi; it would not be worth his while. Does he want to say that the people in East Bengal, within their own province in the provincial services, should only get 50 per cent representation?40

Needless to say, Zahiruddin's motion never appeared in the pages of the Constitution's final draft.

The lengthy example set by the Government of India Act of 1935 might have been partly responsible for the Constitution's wordiness. It is difficult to disagree with a former Law Minister's statement that the fundamental law had "every appearance of having been drawn up by two verbose lawyers who have had to compromise upon the settlement of the rival claims of their highly sensitive and suspicious clients."41

Islamic Provisions

The second feature which could be considered unique in the annals of constitution-making was the declaration that the newly-born Federal Republic was to be known as the Islamic Republic of Pakistan.42 The motivation behind the demand to set up such a republic was expressed by the late Prime Minister Liaquat Ali Khan during his introduction of the Objectives Resolution. He said:

Sir, I consider this to be a most important occasion in the life of this country, next in importance only to the achievement of independence, because by achieving independence we only won an opportunity of building up a country and its polity in accordance with our ideals. I would like to remind the House that the Father of the Nation, Quaid-i-Azam, gave expression to his feelings on this matter on many an occasion, and his views were endorsed by the nation in unmistakable terms. Pakistan was founded because the Muslims of this sub-Continent wanted to build up their lives in accordance with the teachings and traditions of Islam, because they wanted to demonstrate to the world that Islam provides a panacea
to the many diseases which have crept into the life of humanity today. It is universally recognized that the source of these evils is that humanity has not been able to keep pace with its material development, that the Frankenstein Monster which human genius has produced in the form of scientific inventions, now threatens to destroy not only the fabric of human society but its material environment as well, the very habitat in which it dwells. It is universally recognized that if man had not chosen to ignore the spiritual values of life and if his faith in God had not been weakened, this scientific development would not have endangered his very existence. It is God-consciousness alone which can save humanity, which means that all power that humanity possesses must be used in accordance with ethical standards which have been laid down by inspired teachers known to us as the great Prophets of different religions. We, as Pakistanis, are not ashamed of the fact that we are overwhelmingly Muslims and we believe that it is by adhering to our faith and ideals that we can make a genuine contribution to the welfare of the world.

Islamic provisions could be found interspersed in the preamble, in the qualifications of the President, in the directive principles of state policy, and in the general provisions.

The preamble began with the phrase, "In the name of Allah, the Beneficent, the Merciful" and declared that "sovereignty of 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." This Islamic provision was opposed by a Hindu member, Prem Hari Barma, who recalled to mind the fact that the "State of Pakistan consists of peoples professing various religions" and therefore, members had "the sacred duty and trust imposed upon them to look equally to the rights and interests, whether political, social or religious, of all sections of the people of Pakistan". Barma's co-religionist, Chattopadhyaya, thought that religion and politics should not be "mixed up". He asked for more time to study the provisions.
particularly those concerning "principles of democracy, freedom, equality, tolerance and social justice as ununciated by Islam". However, these non-Muslim objections could not prevail over the Muslim majority who were determined to produce an Islamic document.

The non-Muslims tried their utmost to strike out the religious qualification for the President on the ground that it was practically impossible for a non-Muslim to become the Head of State in a country with a huge Muslim population. The Muslim majority, nevertheless, stuck to their decision to retain the provision for its symbolic value. In defence of the qualification, Brohi cited similar religious conditions in the constitutions of Ireland, Sweden, Norway, Denmark, Switzerland, Greece, Argentina, Afghanistan, Iran, Iraq, and Syria.

Being lodged in the Directive Principles of State Policy, several Islamic provisions were rendered judicially unenforceable. Article 24 enjoined the State to "endeavour to strengthen the bonds of unity among Muslim countries" while Article 25 promised the taking of steps to "enable the Muslims of Pakistan individually and collectively, to order their lives in accordance with the Holy Quran and Sunnah". In this connection, the State was expected to exert efforts to "(a) 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 the observance of Islamic moral standards; and (d) to secure the proper organisation of zakat, wakfs and mosques."

The Constitution directed the President to set up a body for "Islamic research and instruction in advanced studies to assist in the reconstruction of Muslim society on a truly Islamic basis", with expenses to be shouldered
by the Muslims alone.\textsuperscript{49} The limitation took cognizance of the fundamental right exempting non-Muslims from the payment of "any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own".\textsuperscript{49}

A principle of great import to the Muslims prohibited the passage of any law "which is repugnant to the Injunctions of Islam as laid down in the Holy Quran and Sunnah" and sought the bringing of existing law "into conformity with such injunctions". To give effect to such provisions, a special procedure prescribed the appointment, within one year after Constitution Day, of a commission to recommend measures to reconcile by stages, the existing laws with the injunctions. Apart from this primary function, the commission was expected to compile "such Injunctions of Islam as can be given legislative effect" for the guidance of the National and Provincial Assemblies. In addition to the optional submission of interim reports, the commission had to submit a final report within five years to allow sufficient time to the National Assembly to enact the pertinent laws. In deference to the feelings of non-Muslims, the article provided that "the personal laws of the non-Muslim citizens, or their status as citizens or any provision of the Constitution" were to remain untouched.\textsuperscript{50} President Iskander Mirza never established such an organisation of Islamic research nor did he take concrete steps to implement the Islamic principles enunciated during the time he was President.\textsuperscript{51}

**Democratic Character**

Another basic feature of the Pakistan Constitution was its democratic character. The declaration of the Father of Pakistan, Quaid-i-Azam Mohammad Ali Jinnah
that "Pakistan would be a democratic State based on Islamic principles of social justice" had been quoted in the preamble. Also, Pakistan was envisaged as a country wherein the "principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam would be fully observed". Admitting of no distinction as to race, religion, caste, or place of birth, the constitution further 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 morality". To allay their fears, the minorities living in Pakistan were assured freedom to profess their religion and develop their culture.

In fulfilling the objectives of these democratic principles, a system of representative government based on the rule of the majority was selected. The President was to be elected by an electoral college consisting of the members of the National Assembly and the Provincial Assemblies; the legislators, in turn, were to be elected by constituencies on the basis of adult franchise. Decisions in the Assemblies were to be reached by a majority of the members present and voting. The common practice was to allow the Presiding Officer to vote except when there was a tie was not disturbed. A Prime Minister, assisted by his Cabinet, administered the affairs of the Government and was made responsible to the National Assembly.

Pakistan's desire to affiliate itself with the democratic nations in the Commonwealth generated an interesting debate in the Constituent Assembly. During the session on March 2, 1956, Prime Minister Chaudhri Mohamad Ali moved a resolution to honour a Commonwealth
membership commitment made during the Prime Ministers' Conference in London on February 5, 1955. In clarifying the effect of such membership on the status of Pakistan as a democratic republic, he said: "We accept the Queen not as our sovereign but as the symbol of the free association of independent nations which constitute the Commonwealth and as such the head of the Commonwealth." He elucidated the absence of diminution in the country's independence or sovereignty, the benefits that could be derived from such affiliation, and the contribution which Pakistan could offer to world peace. In opposing the resolution, Mahmud Ali argued that such participation would be tantamount to the maintenance of slavery under Britain. Iftikharuddin bolstered Ali's contention by attacking British imperialism and insisting that the resolution meant "joining beyond the Constitution". In defence, Rashdi cited the impossibility of Pakistan's remaining in isolation. After making it plain that there was nothing to lose in joining, the Commonwealth since Pakistan could get out of it anytime, he concluded that "We are only trying to honour the word that our people have already pledged". The resolution was adopted with 42 votes in favour and two against.

The provisions discussed above reflect the desire of the constitution framers to extend the blessings of democracy not only to the Muslim majority but also to the rest of the people residing within Pakistan territory.

Rigidity

It should be noted that the amendment procedure of the Pakistan Constitution is less rigid in comparison with the system prescribed in the Philippine Constitution. In the latter, amendments may be proposed by the Congress but these changes become valid only if approved by the people;
in the former, modifications could be introduced by an act of Parliament without the necessity of a plebiscite. However, the Pakistan Constitution required that the amending bill should be "passed by a majority of the total number of members of the National Assembly, and by the votes of not less than two-thirds of the members of that Assembly present and voting, and is assented to by the President". As a precautionary measure, some provisions could be altered only by a more difficult process. Articles 1 (the Republic and its territories), 31 (provisions for equal participation in national activities by the people of Pakistan), 39 (extent of executive authority of the Federation), 44 (composition of the National Assembly), 77 (composition of the Provincial Assembly), 106 (subject matter of Federal and Provincial laws), 118 (National Finance Commission), 119 (inter-provincial trade), 199 (National Economic Council), and 216 (amendment of the Constitution) could only be modified or repealed after the amendments in question had been approved by a resolution of each Provincial Assembly, or if it applies to one Province only, of the Provincial Assembly of that Province.

In effect, the National Assembly of Pakistan was empowered to transform themselves into a Constituent Assembly for reviewing the Constitution. This body could change the Schedules other than the Fifth Schedule (Federal, Concurrent, and Provincial Lists) and Part IV of the Fourth Schedule (Remuneration and Privileges in the Provinces) by following the procedure formulated in ordinary law-making. Part IV of the Fourth Schedule could be altered by action of the Provincial Legislature. These amendments were not subject to litigation for clause (2) postulated that "a certificate under the hand of the Speaker of the National Assembly that a Bill has been passed in accordance
with the provisions of clause (1) [amending process] shall be conclusive and shall not be questioned in any court". 63

Fundamental Rights

Another salient characteristic of the 1956 constitution was the listing of a large number of fundamental rights for the country's citizens. The idea of a fundamental right was borrowed, not from the unwritten English constitution but from the American "Bill of Rights" which, incidentally, was also the pattern chosen by the framers of the Philippine Constitution.

The inclusion of fundamental rights in the constitution had been discussed as early as 1928 when Pakistan was still a part of undivided India. In that year, the Nehru Report recommended that the fundamental rights of the Indian people should be "guaranteed in a manner which will not permit their withdrawal under any circumstances". 64 This Indian demand was incessantly heard during the holding of the Round Table Conferences in the 1930's but the Statutory Commission rejected the incorporation of these rights on the allegation that such a declaration was useless without a corresponding "will and means to make it effective". 65 Nevertheless, the Government of India Act passed in 1935 contained constitutional guarantees in three sections although it was discovered later on that the legislation did not invalidate existing laws inconsistent with its provisions; moreover, the act was silent too on the measures to be taken to enforce these rights. 66

Although the constitution exhaustively enumerated the fundamental rights, Brohi noted the absence of a stipulation that such enumeration did not preclude other fundamental rights already possessed by the people as expounded in Amendment No. 9 of the United States Constitution. Therefore, he concluded that those rights found
in Articles 3 to 22 were the only rights. This lacuna could have been remedied but for the non-occurrence of a test case during the two-year life of the 1956 constitution.

Enforceability being guaranteed, appropriate proceedings could be instituted in the Supreme Court which was empowered "to issue to any person or authority, including in appropriate cases any Government, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and cartiorari, whichever may be appropriate for the enforcement of any of the rights". As an added protection, the suspension of the fundamental rights' applicability could occur only during a proclamation of emergency after the President had issued an order declaring that "the right to move any court for the enforcement of such of the rights conferred by Part II [Fundamental Rights] as may be specified in the Order, and all proceedings pending in any court for the enforcement of the rights so specified, shall remain suspended for the period during which the Proclamation is in force".

**Directive Principles.**

A salient feature of recent origin was the constitution's declaration of principles embodied in Part III and entitled, "Directive Principles of State Policy." These principles include Islamic injunctions and those dealing with the people's welfare particularly in the sphere of Federal administration wherein parity between East Pakistan and West Pakistan was to be achieved. Unlike the fundamental rights, these directive principles were meant solely to guide the State in the formulation of its policies and consequently, not enforceable in any court. Similar clauses were also embodied in the Constitution of India. Subjected to adverse criticism, these
articles were ably defended by a Scheduled Caste member of the Indian Constituent Assembly, Dr. Ambedkar as follows:

It is no use saying that the Directive Principles have no value. In my judgment the directive principles have a great value, for they lay down that our ideal is economic democracy. They are like the Instruments of Instructions which were issued to the Governor-General and the Governors of the colonies and to those of India by the British Government under the 1935 Act... The only difference is that they are instructions to legislature and the executive. Such a thing to my mind should be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise. Because we did not merely want a parliamentary form of government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideals, as to what our social order is to be, we deliberately included the directive principles in our Constitution.71

In the case of Pakistan, the constitution-makers not only gave instructions on economic and social welfare but also contemplated an Islamic flavour in legislation and administration.

Parliamentary in Form.

Although a President is the Head of State, Pakistan's 1956 constitution envisaged a parliamentary system of government wherein the real head of administration had to be selected from and made responsible to Parliament. Executive power rested in the Cabinet of Ministers headed by the Prime Minister who was appointed by the President in his discretion from among the members of the National Assembly.72 The Prime Minister was aided in his duties by Ministers, Ministers of State, and Deputy Ministers. A former Law Minister had noticed that while a Minister could be appointed for six months without becoming a member of the National Assembly, the Prime Minister, Minister of State and Deputy
Minister did not possess such privilege. 73

The structure in the Federal Government was duplicated on a smaller scale in the Provincial Government with but one exception — the President in the former was elected while the Governor in the latter was appointed.

The President of Pakistan was Head of the State only while the Prime Minister was Head of the Government unlike the presidential system adopted in the Philippines where the President is both Head of the State and the Government and his department secretaries (Cabinet members) are not members of the legislative body (Congress). 74

Consciously avoiding a clear-cut division of powers, the constitution’s parliamentary system established three distinct bodies to perform the legislative, executive, and judicial functions but "care has been taken to see that the due discharge of these functions by them combines a sense of responsibility with the due maintenance of an efficient system of administration." 75

In the early period of Pakistan's independence, the parliamentary system was opposed by some influential figures because of the absence of two strong and responsible political parties. It was feared that the formation of splinter groups would undermine the stability of the government. Favouring a strong government, one group suggested a return to the system which existed during the early days of Islam, more specifically of the Caliphate, but they were not strong enough to neutralise the influence of the British system. Both the first and second Constituent Assemblies voted in favour of parliamentary government. 76

**Federal Structure**

A feature of the 1956 constitution was its federal
structure of government, an organisation familiar to the politicians of the Indian sub-continent for the Montagu-Chelmsford Report of 1919, the Simon Commission Report of 1930,77 and finally, the Government of India Act of 1935 envisaged a federal union between British India and the Indian States.78 This political orientation coupled with Pakistan's unique geographical feature and cultural diversity appeared, in the minds of the constitution-makers, to point unerringly in the direction of a federal constitution. Geographic and cultural factors need no extended treatment here as they are discussed in detail in Chapter VIII.

That Pakistan's governmental machinery under the 1956 constitution was federal has been seriously questioned by some writers. One author opined that Pakistan like India, had a quasi-federal structure.79 Another writer maintained too that the Federal Republic of Pakistan of 1956-58 was "strongly central," the much vaunted full provincial autonomy was "tinkling cymbal," and the administrative framework had "external appendages of federation but little of substance".80 To resolve the question, a definition of the federal principle is believed necessary. Professor K. C. Wheare defined the term as the "method of dividing powers so that the General and Regional governments are each, within a sphere, coordinate and independent".81 In amplification of this definition, Brohi added that the question of coordination, the measure of authority in the two organs of power, the method of settling conflicts, and the repository of residual power being more details were not "the essential traits of a Federal Polity", therefore, the federal principle involved the supremacy of a written constitution defining the powers of the two governments. Pakistan had a written constitution which described the country as federal and affirmed that 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". 82

Using the above definition, Pakistan had indeed a federal set-up in the 1956 constitution. The conflicts arose from the distribution of powers. Shafqat claimed that the Pakistan Constitution had a "unitarian bias and in an hour of crisis it can frankly become so". 83 While it was true that the powers were enumerated in three lists, Shafqat called attention to the vast amount of power gathered in the Centre such as the "power of Parliament to legislate for the finances by consent, the predominant status accorded to Parliamentary legislation in the event of repugnancy between the two, the emergency provisions, and above all its power, after India, but contrary to the Government of India Act, 1935, to give effect to international agreements as well as political treaties irrespective of whether the subject-matter is otherwise within the legislative competence of Parliaments". This array of powers in the Centre, in his opinion, greatly undermined provincial authority, thus, making Pakistan's governmental set-up "quasi-federal". 84

The Presidential administration of the Federal capital had been criticized as anomalous for the constitution conferred legislative and administrative powers on the President without interference from Parliament. Grohi pointed to a provision authorising the President to allot funds for the Federal capital without being "voted by the National Assembly", and to another prohibiting Parliament to pass laws relating to High Courts in the Federal capital. He concluded that the representatives of the Federal capital in the Provincial Legislature of
West Pakistan had no power to legislate for their own High Court. These, Brohi emphasised, were pieces of evidence that some provisions in the 1956 constitution were clumsily drafted. 85

No Dual Citizenship and Courts

The absence of dual citizenship for the people of Pakistan might be considered another feature. The clauses in the Pakistan Citizenship Act of 1951 86 conferred single citizenship on a person without regard to the province he was resident of. This differed from the dual citizenship laws of the United States which provided that "all persons born or naturalised in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside". 87

Equally notable was the non-adoption of the dual system of courts. In this aspect, the constitutions of Pakistan and the Philippines possessed a striking similarity. 88 The parallel system of "administrative" and "ordinary" courts adopted in France did not exert any influence on the constitution-makers since Pakistan's single hierarchy authorises any court with the appropriate jurisdiction to take "cognizance of the Federally made or Provinceonly enacte laws and enforces them irrespective of any consideration based on questions like the nature of agency by which actions have commenced or offences have been committed etc." 89

Separate Judiciary

The last but not the least significant characteristic of the 1956 Constitution was the institution of an independent judiciary. 90 Conscious of the important role that the legal branch would play in the settlement
of disputes, the framers left no stone unturned to make it as impartial and independent as possible. Judges of the Supreme Court, other than the Chief Justice, could only be appointed after consultation with the Chief Justice\(^91\) and no judge of the High Court could be designated by the President without consulting the Chief Justice of Pakistan, the Governor of the province concerned, and the Chief Justice of the High Court of that province. The choice was further restricted by the requirement in the case of Supreme Court judges of five years experience as a judge of a High Court or fifteen years practice as an advocate or a pleader of a High Court in addition to citizenship qualification. In the High Court, a person could become a judge only if he possessed Pakistani citizenship and had ten years practice as an advocate or pleader of a High Court, or had been a member of the Civil Service of Pakistan for at least ten years with at least three years practice as a District Judge, or had been holding a Judicial Office in Pakistan for at least ten years.\(^92\)

To guarantee security of tenure, the constitution provided that a Supreme Court judge could not be "removed from his office except by an order of the President made after an address by the National Assembly, supported by the majority of the total number of members of the Assembly and by the votes of not less than two-thirds of the members present and voting, has been presented to the President for the removal of the Judge on the ground of proved misbehaviour or infirmity of mind or body".\(^93\) Furthermore, the address could not be presented unless supported by not less than one-third of the total number of members of the Assembly.\(^94\) Judges of the High Court were removable only by an order of the President on grounds of misbehaviour or infirmity of mind and body, "if the Supreme Court on reference being made to it by the President,"
reported that the Judge ought to be removed on any of those grounds". This somewhat difficult procedure shielded the judges from the vengeance of persons who might be adversely affected by their decisions.

The transfer of judges as a weapon of revenge was eliminated by requiring the judge's consent and consultation with the Chief Justice of Pakistan and the Chief Justice of the pertinent High Court before such a move could be effected. Judges were also safeguarded from attacks on the floor of the National or Provincial Assembly except when their removal was the subject of discussion. In addition, the constitution prohibited the reduction of a judge's remuneration to his disadvantage during his term of office.

To prevent their rendering decisions with the expectation of receiving favours, retired Supreme Court and High Court judges were disqualified for appointment as Governor of a province. Supreme Court judges were also barred from pleading or acting before any court or authority in Pakistan and before the pertinent High Court or any court or authority within its jurisdiction in the case of High Court judges.

The Supreme Court and High Courts were privileged to recruit their own staff subject to regulations approved by the President for the Supreme Court and the Governor's approval for the High Courts.

All the above provisions had one primary objective—to ensure that the decisions were given with complete impartiality.

The Supreme Court of Pakistan was granted the power of judicial review in matters involving a "substantial question of law as to the interpretation of the Constitution". A similar prerogative was also bestowed on the Supreme Court of the Philippines but not in the British
judiciary where no court could declare a law passed by the British Parliament null and void on any ground whatsoever. The importance, especially for Pakistan, in clothing the Supreme Court with this authority was highlighted by Brohi as follows:

The more so in our country, where the electorate is by far the more illiterate and the politician by far the less responsive to democratic forces, there is the need for the courts to exercise liberally their power of interference in order that the minimum requirements of the democratic processes are maintained by the executive and the legislature.102

The constitution of 1956 had expanded the scope of judicial review by providing that "references to any substantial question of law as to the interpretation of the Constitution shall include references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or the Indian Independence Act, 1947, including any enactment amending or supplementing the said Acts or any Order made under the said Acts".103 The litigation arising from the dissolution of the Constituent Assembly on October 24, 1954 was, in all probability, one of the primary factors that prodded the framers of the constitution into ensuring an independent judiciary.

The following chapter will touch upon the factors favouring inclusion, sources, and Constituent Assembly debates on the fundamental rights and directive principles of state policy – two parts of the 1956 Constitution that should not be overlooked in the study of constitution-making in Pakistan.
1. The Draft Constitution of 1956 consisted of 245 articles and 5 schedules. During its second reading, several articles particularly those on railways were deleted and a sixth schedule (Election of the President) was added.

2. The lengthiest and most complex constitution is India’s which includes 395 articles and 9 schedules running into 360 pages. See N. V. Pylee, Constitutional Government in India (Bombay: Asia Publishing House, 1960), p. 4.


17. Ibid.

18. Ibid.

23. Clause 3, article 224, ibid.
24. Clauses 2-4, article 224, ibid.
25. Article 216, ibid.
26. See discussion on the select committee on citizenship in Chapter III.
31. Clause 16 reads: "Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of morality, public order, and public health".
33. Clause (6), article 37 provides: "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."
36. See Chapter IV of Part XII, articles 244-247, ibid.
37. See Part X, ibid.
39. Ibid.
42. Article 1, Part I, Constitution of the Islamic Republic of Pakistan (1956).

44. Ibid., pp. 8-9.


47. See Part II, Constitution of the Islamic Republic of Pakistan (1956). Zakat is the alm-o-tax, one of the principal obligations of Islam. 'Urk is a legal process by which one creates such an endowment and in popular speech became transferred to the endowment itself which is properly called mawjund. See The Encyclopedia of Islam, op. cit., Vol. IV, pp. 1202-1204, 1936.


49. Article 21, ibid.

50. Article 198, ibid.


53. Ibid.

54. Ibid.

55. See articles 52, 44, and 77, ibid.

56. "Articles 54 and 68, ibid.

57. Article 37, ibid.


59. Ibid., pp. 3735-3736.

60. Ibid., pp. 3742-3750.


62. Ibid.

63. Ibid.

64. Brohi, op. cit., p. 318.

65. Ibid.


68. Clauses 1 and 2, article 27, Constitution of the
Islamic Republic of Pakistan (1956).

69. "Article 192, ibid."

70. "Articles 23 to 31, ibid."


73. Brohi, sp. cit., p. 65.


75. Brohi, sp. cit., p. 79.

76. Choudhury, sp. cit., pp. 95-96. Splinter groups appeared just after the 1954 elections in East Bengal when several political parties rose to power with the defeat of the Muslim League.


81. Quoted in Brohi, sp. cit., p. 56.


83. Sharafat, sp. cit., p. 60.

84. ibid., pp. 55-69.


86. See Appendix, Brohi, ibid., p. 859-863.

87. Quoted in Brohi, ibid., p. 61.

88. "Article VIII, Section 1 of the Constitution of the Republic of the Philippines provides that "the judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law.""

89. Brohi, sp. cit., p. 62.

91. "Article 14, ibid.

92. Articles 149 and 167, ibid.

93. "Article 151, ibid.

94. Ibid.

95. "Article 169, ibid.

96. "Article 172, ibid.

97. Clause 2, article 175, ibid.

98. Clause 1, article 175, ibid.

99. Articles 174, 150 (2), and 166 (3), ibid.

100. Third Schedule, Parts I and II, ibid.


CHAPTER VII

FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES
OF STATE POLICY

Evidence of the importance attached to fundamental rights and directive principles of state policy was their incorporation as Parts I and II of the 1956 constitution immediately following the definition of the territories of Pakistan.

Many of the listed rights were taken from the report of the Committee on Fundamental Rights of the Citizens and Minorities appointed during the first session of the first Constituent Assembly in 1947.\(^1\) This report was debated from August 19, 1954 to September 7 just a few weeks before the dissolution of the first Constituent Assembly. Inheriting the work of the committee, the second Constituent Assembly submitted on January 9, 1956 the Draft of the fundamental rights as a part of the Constitution Bill. Clause-by-clause consideration commenced on February 2, 1956 with the legal luminaries of the Government and the Opposition, the Muslim and Hindu blocs, and members belonging to the smaller minority groups pooling their knowledge to seal possible loopholes and to improve the phraseology. The last provision finally took shape on February 6.

Like the fundamental rights, most of the directive principles embodied in the final constitution were derived from the Basic Principles Committee Report of the first Constituent Assembly. Four days were spent in deliberating on the nine directive principles including the two-day debates on October 28 and 29, 1953. The seemingly fewer directive principles in the final list could be ascribed to the work of consolidation and elimination of redundant provisions undertaken by the drafters of the Constitution Bill.\(^2\)

In the subsequent pages, more space had been allo-
cated to the debates on fundamental rights and directive principles to focus the attention of the reader on the spirit that the framers intended to infuse into the first Pakistan Constitution.

**Fundamental Rights**

The inclusion of fundamental rights in the Pakistan Constitution followed the common practice of most modern states to insure legislative and executive non-interference in those conditions which Professor Laski described as "the necessary guarantees of individual happiness". Freed from British and Hindu domination, the Muslims of Pakistan found for the first time in centuries a homeland of their own wherein the "principles of democracy, freedom, equality, tolerance, and social justice as enunciated by Islam" were to be observed.

The presence of religious minority communities even after partition was a prime factor which compelled the framers of the constitution to list fundamental rights to prevent ill-treatment of the minorities. The years immediately before and after the grant of independence were characterised by communal hatred among the Muslims, Hindus, and the Sikhs which, in many instances, resulted in senseless killings of thousands of men, women, and children particularly in the Punjab where a large number of Hindus and Sikhs lived. It was thought that these safeguards would set the minds of the minorities at rest in a country which had decided to become an Islamic Republic.

Another factor was the desire of the constitution-makers to place these rights beyond the reach of the politician's whims and caprices. A despotic Government could easily undermine the democratic foundation of Pakistan by curtailing the freedom guaranteed to the
people. A glance into the chequered annals of the Indian sub-continent would show numerous examples of authoritarian excesses committed by the Hindu, Muslim, and British rulers. The rights had been made justiciable to enable the aggrieved parties to seek redress in the courts.

Unconvinced by the effectiveness of judicial enforcement, some countries such as France relied on strong public opinion to halt violations of fundamental rights. In England, guarantees of the people's liberty do not lie in the courts but in the "good sense of the people and in the system of representative and responsible government" evolved. In the case of Pakistan, however, the influence of public opinion on political behaviour had not been substantial on account of the very low percentage of literacy. The press had not fully succeeded in curtailing government harassment of persons whose trend of thought differed from that of the men in power.

Sources

The concept of fundamental rights could be traced to the Middle Ages when the subjects revolted against their rulers who deprived them of their fundamental rights. In England, the struggle between the feudal barons and King John led to the drawing up at Runnymede in June, 1215 of Magna Carta which ended such abuses as the arbitrary punishment of individuals and the expropriation of money in the form of heavy taxes. In December, 1689, continued agitation of the English people for more protection induced the passage of the "Bill of Rights" which imposed more limitations on the powers of the sovereign. The above documents, it is disheartening to mention, were only declaratory and did not authorise legal proceedings. Less than a century later, another revolution gave birth to the American Declaration of Indepen-
pendence of 1776 which paved the way five years later to the proposal and subsequent insertion of the "Bill of Rights" in the United States Constitution in the form of the first ten amendments.\textsuperscript{14}

After the French Revolution of 1789, Napoleon's armies spread the idea of individual rights to other countries. Eventually absorbed by the native-born leaders in the colonies, the "bill" became an essential chapter in the constitutions of the nations liberated after World War II. For Pakistan and the Philippines, in particular, the inclusion of these rights seemed to symbolise a triumph of the colony's libertarian aspirations over the mother country's repression although in reality, they were "meant to guide the public authorities in their dealings with the people".\textsuperscript{15} Constitutions drafted after 1948 benefited from the enactment of the Universal Declaration of Human Rights reaffirming the faith of the United Nations in "fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women" for the promotion of "social progress and better standards of life in larger freedom".\textsuperscript{16}

**Assembly Debates**

During the initial deliberations on the fundamental rights, Abul Mansur Ahmad moved for the inclusion in the constitution of citizenship provisions in the belief that the "right of citizenship is a fundamental right".\textsuperscript{17} Chundrigar opposed the motion in view of the existence of a law defining Pakistan citizenship unlike India which had no such act before the adoption of its constitution. Chundrigar considered as sufficient the constitution bill's article defining a citizen of Pakistan.\textsuperscript{18} A new clause introduced to delineate the nature of fundamental rights was rejected outright.\textsuperscript{19}
Sardar Amir Azam Khan's amendment exempting members of the Armed Forces from the operation of the provisions drew objections from the Opposition. Zahiruddin wanted equal treatment of all citizens including the military. Chundrigar responded with the explanation that the "Armed Forces are not being deprived of their fundamental rights but if there is any fundamental right which is in conflict with the maintenance of discipline among the Armed Forces then, the provision of this Article shall not apply to that law." 20 With the Opposition silenced by this explanation, the modification was adopted in toto.

Unsatisfied with the working of article 5 (1) (all citizens are equal before law and are entitled to equal protection of law), Zahiruddin suggested the addition of the phrase "and there shall be no discrimination against any citizen on grounds of religion, race, caste, sex, place of birth or any of them". He contended that the amendment "will enhance the prestige of the House and bring honour to our country" and will make a "contribution in the growth of democracy and human freedom". 21 Though supported by Doldar Ahmed, Mahmud Ali, Sheikh Mujibur Rahman, and Abul Mansur Ahmad, his arguments were neutralised by Chundrigar with these words:

The moment we use the words 'all citizens', it covers all persons whatever may be their religion, race, caste, sex, place of birth or any of them, and these words are not at all necessary in that sub-clause. On the other hand, if the amendment of the Honourable Member Mr. Zahiruddin is accepted, this addition will put a restricted meaning on the words 'all citizens' as used therein and the discrimination will be prohibited only on grounds of 'religion, race, caste, sex, place of birth or any of them'. It would be open to the State to say that we shall make a distinction between fair women and ugly women, between fat men and lean men, between tall men and short-statured men. 22

Zahiruddin was asked by Chundrigar to withdraw the
amendment because it would restrict the scope of the provision. The discussion ended after the former admit
ted his intention to widen the scope with his amendment.  

Clause 6 (protection against retrospective offences or punishment) was adopted despite several amendments
tabled by Abul Mansur Ahmed after Chundrigar, who as Law
Minister guided the drafting of the bill, pointed out
that some of the amendments were repetitions of clauses
already decided upon or were anticipations of matters
covered in subsequent provisions.  

Clause 7 (safeguards as to arrest and detention) was to be taken up on February 2, 1956 but inasmuch as
several recommendations were contemplated, it was held over for discussion on February 13. This particular
clause drew numerous amendments because many prominent
persons in Pakistan who had undergone arrest or detention
insisted on adequate precautions. Drawing on his ex-
perience as a detainee, Mahmud Ali stressed the need for
the judicial authorities to take action before the Gov-
ernment undertook detention, inspection, or personal
search. As an added measure, he urged punishment for
the commission of acts of physical and psychological
violence. He cited a similar provision in the Universal
Declaration of Human Rights and instances of misuse of
detention powers perpetrated by the East Bengal Govern-
ment through the harassment of political opponents or
jailing of persons who refused to rent their houses to
Government officers. Moving a similar amendment, Sheikh
Mujibur Rahman criticised the Karachi University authori-
ties for requiring students to accomplish a form pledging
that they (students) "shall not indulge in any activities
subversive to Pakistan".  

Attacking the clause, Delwar Ahmed pointed out that "instead of protectin; the citizens against arrest and detention we are making provision here
that the Government may make laws whereby they can detain a person without trial". 26 Siding with him, Zahiruddin recalled incidents to prove that preventive detention and detention without trial were not justified. Going back into the past, he reminded the Assembly members "of the fundamental rights which Islam granted to us 1,300 years ago, a period of history in which many civilized nations which claim themselves to be civilized today in this world were not civilized". 27 Suhrawardy summarised all the objections of the Opposition in one sentence - detention without trial was a crime against the rule of law. 28

In defence, Chundrigar proceeded to demolish the arguments against the original provision by emphasising the need for the police to possess the right to search an accused or suspect without waitin; for a judicial order because otherwise, the culprit would escape with the evidence. All the amendments were negatived after he elucidated the point that the original proviso did not enact a law on preventive detention but merely provided that "if any law about preventive detention is passed in future it shall be qualified by the conditions which are mentioned in this clause Clause 7". 29

Moving to the language aspect, Basanta Kumar Das wanted the phrase "as soon as may be" substituted by the words "at the time of his arrest" to fix a definite time. He mentioned cases wherein the Government, taking their own time, served the charges after several months. To demonstrate the impracticability of Das' recommendation, Chundrigar cited the arrest of a hundred people in Bombay which gave no time to draw up orders of detention and to inform the persons arrested of the grounds of detention. It would be more reasonable, he concluded, for the Government to furnish the charges as soon as possible which was the intention of the clause. 30 Further deliberation led to
the change of the phrase to a period of twenty-four hours. All amendments of the Opposition were rejected outright except Abul Mansur Ahmad's (no person except an enemy alien shall be detained without trial) which was refused after a division.

An interesting debate ensued on clauses 8 (freedom of speech), 9 (freedom of assembly), 10 (freedom of association), and 11 (freedom of movement and right to hold and dispose of property) when Abul Mansur Ahmad lumped them in a single clause on the supposition that it was "necessary that all cognate rights under fundamental rights clauses should be grouped together". His insistence that freedom of the press was distinct from freedom of speech and expression found a sympathiser in Zahiruddin who maintained that many legal decisions interpreted the word "expression" as separate from "press". Other Opposition members voiced their criticisms: Joldar Ahmed saw redundancy in the phrase "peacefully and without arms, subject to any restriction imposed by laws"; and Ataur Rahman Khan recommended deletion of the phrase "peacefully and without arms", on the ground that a person should be allowed at times to take up arms "in defense of private property, life and honour". In reply, Chundigar saw no difference between freedom of speech and freedom of expression since, to him, freedom of expression meant "the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or in any manner addressed to the eyes or the ears". To bolster his assertion, he stated pertinent cases in the Supreme Court of India, England, and the United States.31

Still intent on rendering clause 8 foolproof, Fazlur Rahman inserted the word "reasonable" before "restrictions" and deleted the phrase "friendly relations with foreign States". If the restrictions were reasonable,
he thought it likely the people would respect these laws and allow the Supreme Court to decide whether the restriction was abusive or not. The second phrase, he continued, "is so wide that it may prevent you even from discussing the foreign policy of your country". In his brief answer, Chundrigar referred to the country's legislative body as more in a position than the Constituent Assembly to determine whether the restrictions would be reasonable or not. Similarly, a wholly elected Legislature would not, in his opinion, impose restrictions on the rights of the people to criticise the foreign policy of the Government. Chundrigar had his way during the debates on February 3, 1956 but later, he accepted Fazlur Rahmán's view and moved the insertion of the word "reasonable" before "restrictions" not only in clause 8 but also in clauses 9, 10, and 11.

Drawing the attention of the House to the refusal of the administration to allow meetings, Mahmud Ali urged the deletion in clause 9 of restrictions to the right of assembly and the addition of the words "no previous notice shall be required for holding meetings". After concluding that "this right of the people must be unhampered and unrestricted," he hastily added, "I do not mean that the people should assemble and break the peace". In corroboration, Abdul Mansur Ahmad enumerated several incidents and Bodelar Ahmed read a similar article in the Italian constitution omitting previous notice of meetings.

Reacting to the Opposition's assertions, Hamidul Huq Choudhury underlined the necessity for imposing limitations in the interest of public order for "freedom is nothing but a bunch of restrictions". He read the third paragraph of the Italian constitution as proof that restraint was still imposed. His claim that the non-imposition of conditions would interfere with provincial autonomy extracted the following reply from Sheikh
Kujibir Rahman:

Sir, this question of fundamental rights is not a question for the province, or for the Centre; it is a question which relates to all the provinces, it is a matter which concerns all the citizens of Pakistan. I cannot understand how it is provincial autonomy.

Despite the strong arguments of the Opposition, the amendment was rejected by a vote of 37 to 12. Likewise, the amendment to delete the phrase "peacefully and without arms" was defeated by a vote of 36 to 12. 

Clause 10 of this part came up for discussion on February 4 with amendments introduced by Mahmud Ali to substitute "unions" by "trade unions" and to make "political parties" distinct from "associations". As mentioned earlier, Chundrigar's defence that the general words have a wider connotation and embraced those mentioned in the proposal convinced the Assembly members. A move to insert the word "reasonable" before "restrictions" in the same clause was initially rejected during the February 4 division of the House but it was accepted later.

Also scheduled for discussion on February 4, clause 11 was held over to permit changes in phraseology. The first amendment moved by Mir Jafar Shah to put "reasonable" before "restrictions" was accepted without debate to the disappointment of the mover who had planned to deliver a speech. Jasanta Kumar Das' proposal to insert the phrase "or a section of the public" after the words "general public" was justified by Shupendra Kumar Datta's remark that "the right of free movement is... being enjoyed and utilised by one section of the people at the cost of the non-Muslims of the State". In amplification, he mentioned an incident in which "fanatical" Mullahs and Maulanas used "violent or threatening language against the non-Muslims without being checked by the administration". On the right to hold and dispose of property,
he described an instance in which the lands of the non-Muslims in East Bengal had been forcibly taken by the Muslims and another in which forty families were attacked by bus owners for occupying a plot in Karachi. A third occurrence in Mymensingh District of East Bengal was recounted by Peter Paul Gomez. Still on the same clause, Sheikh Mujibur Rahman added "lawfully" before "acquire" to prohibit persons who had unlawfully obtained property from disposing it.41

Failing to receive a satisfactory reply to his question as to whether the forty families had the right to the land, Chundrigar took time to explain that the provision in question conferred right to hold property. In answer to Rahman's amendment, Chundrigar posed the query, "Does it require even the slightest knowledge of the basic principles of law or society to know that when you say 'acquire' property, it is supposed to refer to property acquired 'lawfully'".

To resolve the first amendment presented by Basanta Kumar Das, the phrase "in the interest of general public" was amended to read "in the public interest”. Rahman's amendment was rejected and clause 11 became a part of the bill.42

Clause 12 (freedom of trade, business or profession) had an easy sailing because the Opposition amendments were minor ones probably intended to delay the passage of the bill.43

In clause 13 (safeguards as to educational institutions in respect of religion), Abul Mansur Ahmad not only offered verbal changes but also combined several provisions to form a compact clause for, in his view, the "draft bill splits up the same subject into different clauses and spreads them throughout the bill". Objected to by Chundrigar as a case of anticipation, Ahmad's amend-
ment was ruled out of order by the Presiding Officer. 44 Zahiruddin opposed sub-clause 145 of clause 13 for its deviation from an Islamic principle on absence of compulsion in religion and moved for the deletion of sub-clause 3 to erase the "concept of divided nationality and divided people". 46 A less radical Opposition member, Fazlur Rahman requested Zahiruddin to withdraw his amendment to sub-clause 1 on the ground that education without religious instruction was incomprehensible. Although agreeing to the omission of sub-clause 3, Chunurigar registered opposition to the other modifications. Ahmad was for taking out the word "sex" from the provision regarding admission to educational institutions after realising the difficulty that would arise from forbidding the establishment of exclusive women's colleges or schools. The Assembly did not hesitate to accept the deletion. The House also incorporated several amendments designed to improve the language of clause 15. 47

The sole objection to clause 14 (non-discrimination in respect of places of public resort) was the negative approach of the original expression. The Opposition melted after Chunurigar clarified the intention of highlighting the absence of discrimination in the access to the places mentioned. 48 On February 28, the phrase "or to any place dedicated to the use of the general public and" was stricken out for redundancy. 49

In view of its controversial aspect, clause 15 was held over from February 13 to the following day - an arrangement which was mildly resented by Zahiruddin for the sponsor's failure to inform the members in advance. 50 On the day it was taken under consideration, Sardar Amir Azam Khan moved for the deletion of the portion providing that a law acquiring private property should not be "called in question in any Court on the ground that the compen-
tion provided by law is not adequate". This omission was vehemently fought against by Zahiruddin who felt that the Government would be restrained from abolishing Zamin-dari (landlordism). Somewhat irrelevant, Abul Mansur Ahmad recommended the outright acquisition of land by the Government without compensation. With greater irrelevancy, Mahmud Ali painted a picture of oppression of the tenant by the zamindar (landlord) who "passes his life in drinking, eating and merry-making". Presuming the motivation behind the alteration, Jasanta Kumar Das put it bluntly as a desire to pacify "the wealthy people of West Pakistan and in order to safeguard their interests". At this stage, Khuhiro stood to remind the Assembly that conditions in East Bengal were entirely different from West Pakistan's. In the former, he said, thousands of acres were awarded to zamindars for nothing; while in West Pakistan the landowners had invested thousands of rupees in the purchase and development of the land. Khuhiro's advice for the granting of adequate compensation for these investors received support from Gurmiani. After several hours of deliberation, the amendment was adopted in its original form. Two weeks later, discussion on the clause was reopened to allow the inclusion of a definition of the word "property".

Clause 16 which prohibited slavery and forced labour was adopted without any objection.

The consideration of clause 17 (safeguard against discrimination in services) occasioned another series of debates between East Bengal and West Pakistan members of the Assembly. Zahiruddin and his friends demanded parity between the two provinces to the extent of having an equal number of people appointed from each province. The implication of such clamour had already been discussed in a previous chapter and need not be repeated. Chundrigar
cautioned the Opposition to place future aspirations in
the chapter on "Directive Principles" instead of in the
"Fundamental Rights". Hoping to save face by asking for
a division, Zahiruddin lost by a vote of 34 to 12.\(^a\) A
similar amendment was ruled out of order by the presiding
Officer.\(^b\)

Clause 18 (freedom to profess religion and to
manage religious institutions) was deferred to allow the
tabling of an amendment submitted by Kamini Kumar Datta;\(^c\) However, when the article came up for discussion on Feb-

ruary 16, only the modification of Peter Paul Gomez was
introduced and later rejected for being irrelevant to
the subject.\(^d\)

An insignificant alteration in clause 19 (preserva-
tion of culture, script, and language) moved by Abdu
Sattar to substitute "section" by "class" for the sake
of "artistic English" was withdrawn after Abul Mansur
Ahmad remarked that no change in meaning was attained.
The Assembly adopted the deletion of the phrase "residing
in Pakistan or any part thereof" for its redundancy.\(^e\)

Basanta Kumar Das suggested the elimination of
clause 20 (abolition of untouchability) on the ground
that the problem of untouchability was "fast disappearing".
Should the House retain the clause, he wanted to include
the statement that the question concerned only the Hindus.
Defending the inclusion of the article, Chundrigar ren-
dered a lucid exposition as follows:

Sir, my submission is that it is necessary to have
a clause like this in the Constitution. One of the
gravest disabilities ever suffered by any people in
any country is the disability suffered by the so-
called untouchables in the Indo-Pakistan sub-continent
and that was not the view of non-Muslims only. I
shall now read a very brief passage to show that
Mahatma Gandhi himself was of that view. The complete
abolition of untouchability was one of the visions of
Mahatma Gandhi in his Non-Raj, and about the Indian
provision it is said, the present article adopts the Gandhian ideal, without any qualification. Untouchability, however, is not defined in the Constitution, presuming that it is known to all, but the word is understood to cover different acts in different context in different parts of India, the only common feature among them being said to be the humiliation of the person who is untouchable. Sir, under the circumstances, it would not be for the Caste Hindus to say that a provision like this should not be inserted. On the contrary, I admire those Caste Hindus like Mahatma Gandhi and the Honourable Mr. K. K. Dutta who realize the disabilities the untouchables were suffering from and who wanted these to be removed. So my submission is that it is necessary to have this clause, until we have rid the society of this evil.

Then, Sir, it has been suggested that we should not have the word "untouchable" amongst the Hindus. Though a question was put by the Honourable Fazlur Rahman as to what is the idea of confining it to untouchability amongst the Hindus, no definite ground was assigned but I would submit this that when we want to eradicate this evil, we do not want merely the Hindus to say that we shall not follow the principles of untouchability if there is any class or society which deems either the Hindu untouchables or any other persons who may belong to any other community, but even if they are treated untouchables, the law should be the same, for all those sections of the people who are treated as untouchables. There should be no discrimination either between the one or the other - one untouchable belonging to the Hindu community or any other community.62

After hearing this explanation, Basanta Kumar Das withdrew his amendment and clause 20 was made part of the bill. 63

During the discussion of clause 21 (safeguards against taxation for purposes of any particular religion), Zahiruddin moved for the cancellation of the phrase "other than his own". 64 He argued that the introduction of a special tax, being a bidat (innovation), would be against the teachings of Islam and would develop a feeling of inequality of taxation among the Muslim, Christians, Hindus, and Buddhists. Siding with him, Abul Mansur Ahmad stressed
that the collection of taxes for the Muslims by the publicly financed administration would be unfair to the non-Muslims. On the other hand, Moulana Mafiz Athar Ali remarked that "in my opinion it is quite necessary and proper to retain this clause because conditions may arise when, such as for saving the lives of the people or safeguarding the welfare of the country, the Government may have to acquire property from the rich in the vital interests of the poor or levy any tax on Muslims to protect the ideals of Islam". Arguing for total omission of the article, Jasanta Kumar Das could not think of any reason for the Government to levy a tax for the propagation of religion. He had to be reminded by Fazlur Rahman that the provision was for the protection of the minorities who, without such exception, could also be taxed for the propagation of Islam. Just as the discussion began to veer away from the main topic, Chundigar announced that the purpose of the article was to shift the burden of taxation exclusively on the Muslims who would be the beneficiary. Disagreeing with Zahiruddin's idea of non-collection of special taxes, he expected a person to pay for any special benefit he would receive without the element of compulsion. With Zahiruddin's expression of willingness to withdraw his recommendation after hearing Moulana Mafiz Athar Ali, the original clause was passed.

Bdider Ahmed's motion to include a new article providing that no citizen should be deprived of his right of citizenship fell through when Chundigar brought to his attention the obligation of the State to take citizenship away from traitors. Still in the mood for new ideas, Zahiruddin proposed the granting to all Pakistani citizens the right to food, clothing, shelter, education, medical relief, and employment whose implication prompted Jalaluddin to label the proposal as "unreasonable and
fantastic" for clearly, the supplying of eighty million people even for food alone was beyond the Government's capability. This suggestion together with another granting the right to protection and maintenance by the State of the old, infirm and disabled persons and destitute orphans was not taken seriously by the Assembly. Abul Wansur Ahmad's motion to include in clause 22 the High Courts as venue for the enforcement of the fundamental rights was rejected after Chundrigar pointed to provisions in other parts of the constitution empowering the High Courts to issue writs. The original version of article 22 as incorporated in an amendment to the report of the Committee on Fundamental Rights of Citizens of Pakistan on Matters Relating to Minorities submitted to the first Constituent Assembly sanctioned concurrent jurisdiction to both the High Courts and the Supreme Court. In connection with the discussion on the subject Shri Dhirenda Nath Datta asked for clarification in the event several cases became pending in the two courts. Brohi, then Law Minister, answered that he had "not the least doubt that some procedural conventions or method will have been adopted or enabling the Supreme Court or the High Court to take up the initial determination of the case". Further elucidation was given by Chaudhri Nazir Ahmad Khan, a lawyer member, who asserted that in practice, a conflict of jurisdiction never happened but just the same, the litigant might be required to produce a certificate that he had not moved another court for the same purpose. Shri Dhirenda Nath Datta's raising the possibility of the Government's abusing their power to suspend the operation of the fundamental rights received a rejoinder from Dastar that no constitution was capable of fully eliminating abuse of power. He suggested a living and organised public opinion as a remedy. Although this
committee report was referred to by the drafting committee of the Second Constituent Assembly, Chundigar dismissed the High Court's jurisdiction. 71

The Government side added a stipulation regarding the inapplicability of clause 22 to the Special areas which, according to Sardar Mir Azam Khan, had their own system of laws. Objecting to this supplement, Abdul Mansur Ahmad expressed the fear that abuses might be committed in those areas without relief from the courts. Ahmad's anxiety was, however, allayed by Chundigar who volunteered the information that the exception merely conformed with the desire of the people in the Special areas to be governed by their own customs and usages. The sub-clause was adopted without further debate. 72

**Directive Principles of State Policy**

Unlike the fundamental rights, the directive principles of state policy were not enforceable in any court; they were appended in the constitution to serve as a manifesto by which "the State shall be guided in the formulation of its policies." 73 The setting up of a standard of political morality would, it must have been fervently wished by the constitution framers, assist in the growth and development of a better society in Pakistan in which the national ideals permeating the directive principles could be pursued. 74

**Sources**

The notion of listing such principles in the Pakistan Constitution was derived from the 1937 Constitution of Eire which in turn, was inspired by the Constitution of Spain. 75 A glance at the contents of Part III of the constitution will disclose the dominating influence of Islamic ideas and Western philosophy. Also
discernible are the ideals of the United Nations in the promotion of international peace and security, the cultivation of friendly relations among all nations, and the peaceful settlement of disputes between them.

**Assembly Debate**

The nine directive principles of state policy were thoroughly examined before reaching the pages of the 1956 constitution. During the initial encounter, Zahiruddin moved to amend the first article (definition of State) by omitting the phrase "but such provisions shall not be enforceable in any court of law" to make all the principles justiciable. Indirectly chiding the Law Minister for not providing punishment for those who violate the directive principles, he said:

On this side of the house we have been claiming that these Islamic principles upon which they the [sic] so much banking to boost up the claim of framing an Islamic Constitution is obviously a bluff. Because, Sir, if we believe in certain Islamic principles and injunctions, it means that they are binding upon us. We cannot argue for even a moment's sake that these principles and injunctions of Islam will be followed and obeyed when they suit us. I do not agree with this principle and I am not prepared to accept it. Of course, a man may obey certain injunctions of Islam, but he has got no right to say that he will only follow certain injunctions of Islam and not the rest. For his disobedience he will be punished and he will have his own reward on the day of judgment.

Supporting Zahiruddin, Dildar Ahmed advised that "it would be better not to give promises at all than to give promises and then to refrain from ... fulfilling them". It was Fariid Ahmed who opened the eyes of the Opposition to the problems that would crop up in the event the principles were made justiciable. Specifically, he pinpointed the difficulty of removing illiteracy through free and compulsory primary education of the masses.
Refusing to go over the same ground for the second time, the Government side with its majority adopted the article with slight verbal amendments. 79

In the succeeding clause (promotion of Muslim unity and international peace), Shupendra Kumar Datta suggested the word "all" in place of "Muslim" so that the proviso would read thus: "The State shall endeavour to strengthen the bonds of unity among all countries,..." In pressing his amendment, he asked the following questions:

Do or do we not believe in the brotherhood of man? If we do, why put up this additional barrier between man and man? We have already more than enough of it. What does this clause envisage? Do we intend to create a third bloc, a Muslim bloc vis-a-vis the Western and the Eastern blocs? If we do, then we are going to create more enemies than we already have. Thirdly, how far can we afford to be eclectics in matters political and economic? 80

To drive home his point, Datta cited the cold relations between Pakistan and another Muslim country, Afghanistan; and the uncordial stance between Egypt and Saudi Arabia.

Taking the audacia for the previous speaker, Sheikh Mujibur Rahman denied that other constitutions contained a similar proviso promoting friendship with particular countries. To clinch his argument, he propounded another set of questions:

Afghanistan is a Muslim country, but how can you be friendly simply because it is a Muslim country, when that country is claiming our land? How can we say that simply because it is a Muslim country, it must be my friend? 81

A Christian proponent of Datta's amendment, Peter Paul Gomez enumerated the wars among Muslim and Christian countries to prove that "religion has hardly ever been a bond of unity in the international field between different countries". He recounted the help that Pakistan received from non-Muslim nations.
The misunderstanding was cleared by Mohammad Nurul Huq Choudhury who read the phrase "to foster goodwill and friendly relations among all nations" in the same article to substantiate his statement that what Dutta aspired for had already been provided. In defending the retention of the original phraseology, he underscored the real motive behind this particular principle:

Another thing my friends have forgotten that from Pakistan to the west coast of the Atlantic, those are all Muslim countries, except the pocket known as Israel, and our interest all the time lies in our having friendly relations with our Muslim neighbors. Mostly, we have got our common interests and for that also we must not only try to strengthen our bonds with the Muslim countries but also we shall extend our bonds with other countries. That does not mean that we want to quarrel with anybody. Therefore, Sir, I submit that the word "Muslim" which is there should remain there because we hope to be able to bring our friends from Morocco up to our frontiers and we can ask them to combine together if necessity and occasion at any time would arise. 82

Silenced by this exposition, Dutta and his supporters were unable to stem the approval of the clause.

Abdus Sattar's drafting changes to clause 25 (promotion of Islamic principles) were adopted together with the deletion of the sub-clause on prostitution, gambling and drinking of liquor. 83 Mian Jaffar Shah's verbal amendment for this clause was transferred to clause 28 (principles of social uplift) on Chundigar's suggestion. 84

Clause 26 (parochial and other similar prejudices to be discouraged) was made a part of the bill without debate upon Fazlur Rahman's and Moulana Hafiz Athar Ali's failure to move their amendments. 85

The inclusion of the word "legitimate" in clause 27 (protection of minorities) was opposed by Bhupendra Kumar Dutta who anticipated the confusion that would result in defining the term. In the ensuing discussion he extended his opposition to the whole clause on the ground that it
"reduces the non-Muslims in the State to gimmis". He considered it an insult to give special protection to any section of the people. Echoing Datta's arguments, Peter Paul Gomez remarked: "We are, Sir, suspicious of the word 'legitimate'. Whatever right or interest is legitimate for a Muslim is also legitimate for a non-Muslim". Abul Mansur Ahmad described the draft provision as a "bit obnoxious" for it could mean two things: "either the State shall not protect all the legitimate rights and interests of Muslim community in Pakistan; or that the State shall protect all the interests of Muslims - legitimate or illegitimate". Viewing the whole clause as discriminatory, he recommended its elimination. Also repudiating the article, Dr. Sen deemed sufficient the guarantees mentioned in the fundamental rights.

On the other hand, Raja Raj Mandal, a Scheduled Caste member, not only favoured the retention of the article but also pressed for the addition of the phrase "including their due representation in the Federal and Provincial Services". Brushing aside the problem of interpreting the word "legitimate" as of no immediate significance, he insisted that the "Constitution should give a directive to the future government so that they can protect the rights of non-Muslims". Although Mandal's amendment was short-notice in nature, Chundigar who was then piloting the bill, interposed no objection:

The Schedule Castes and others want provision like this. They further demand a provision regarding their due representation in the Services. It is with a view to help our less fortunate brethren who have not had sufficient opportunity to get their proper share in the past that we are accepting this amendment.

Amidst cheers from the members, Mandal's supplement found its way into the Constitution Bill.

A long amendment on clause 28 introduced by Mahmud Ali was ruled out of order not only for failing to comply with
the two-day notice but also for having been refused by
the sponsor of the bill. Ostensibly for the sake of
lucidity, Zahiruddin attempted but failed in his efforts
to change the words "The State shall endeavour" to "It
shall be the duty of the State". With better luck, his
fellow Opposition member, Dellar Ahmed succeeded in in-
serting in clause 28 the provision on prostitution, gam-
bling, and drinking of liquor. After several minor
verbal modifications were agreed upon, clause 28 was added
to the bill.

Mahmud Ali's short-notice amendment for clause 29
(promotion of social and economic well-being of the people)
was not taken up while Abdul Sattar's insertion of the
word "available" to modify "resources" in the same clause
met a better fate. As mentioned earlier, Mian Jaffer
Shah's amendment originally intended for clause 25 was
finally annexed to clause 29. The controversial phraseol-
ogy of this change had been resolved during the debate
on clause 28.

At the outset, Chaudhry suggested the holding
over of clause 30 (separation of the judiciary from the
Executive) but in due time, he relented after he was
assured of the opportunity to append new clauses later.
A minor clash occurred over Abul Mansur Ahmad's motion
setting two years for the separation instead of "as soon
as possible" as provided for in the draft. He delivered
a lengthy exposition on the urgent need to end what he
termed as the politically motivated control of the Exec-
utive over the judiciary. Probably realising the absence
of difficulty in separating the two branches, he changed
his former stand to "immediate" division. This action
prompted the Chairman to advise him to "make up his mind".
Another oppositionist, Zahiruddin, recommended three years.
After so much wrangling, the phrase "as soon as possible"
was substituted with "as soon as practicable". 95

The discussion on clause 31 (development of national language as originally set forth in the draft) 96 generated a lot of acerbating when some members of the Assembly gave vent to their regional feelings. Several East Bengalis advocated the adoption of Bengali alone as a national language for it had been the language of fifty-six percent of the people of Pakistan. The less narrow-minded endorsed the development of two State languages — Bengali and Urdu. During the voting, the Opposition members led by Zahiruddin pressed for a division but Gibbon ruled that it was uncalled-for. The upshot of the Presiding Officer's refusal to bulge from his decision despite requests for reconsideration was the unmediated walkout of the Opposition delegates. 97 To ease the tense atmosphere, Humidul Huq Choudhury, a Central Cabinet Minister from East Bengal, recommended the deletion of the clause. In explaining his move, he stated:

The original idea might have been that we might have a third language which will serve as a lingua franca for exchange of ideas between the two parts of this country, in which there will be spoken two languages. There might be a necessity for a national language. Now that we are thinking that there should be two official languages and either of them shall be understood by each part, the intention is that the State and its different organizations, namely, the provinces, shall take such part as to give full effect to developing these languages, and giving them the character of an official State language.

Choudhury's suggestion received the unanimous approval of the members left in the chamber. 98

To implement Chundrigar's promise elicited during the discussion on fundamental rights to provide representation in the services of the people from East Pakistan and West Pakistan, Choudhury moved for the insertion of the following clause:

30A. (1) Endeavour shall be made to enable people
from all parts of Pakistan to participate in the
defence of the country.

(2) Steps shall be taken to achieve parity in the
representation of East Pakistan and West Pakistan
in all other spheres of Federal Administration.

Denouncing the word "endeavour" as meaningless,
Abul Mansur Ahmad showed eagerness to make it a "duty of
the State". Sharing Ahmad's dim view of the proviso,
Muhammad Abdul Khaleque referred to cases of disparity
between East Pakistan and West Pakistan in the defence
services and in the dockyard at Karachi. To refute the
criticisms, Hamidul Haq Chowdhury pointed out that the
clause attempted to distribute State services between
East and West "to do away with the suspicions that are
now vitiating and eating into our body politic". Remind-
ing the assembly members that representation in the
defence services required preparation, he mentioned the
steps taken so far to put up military schools and a naval
base in East Pakistan. Despite this explanation, Mahmud
Ali expressed his dissatisfaction with the clause as a
whole for its failure to consider the United Front commit-
ment of East Pakistan and West Pakistan parity.

Adding more heat to the acrimonious debate, Sheikh
Mujibur Rahman accused the Deputy Speaker who was then
presiding of having been unjust to the Opposition from
the beginning. Despite the presence of proverbial cooler
heads, he preferred to leave the chamber rather than
withdraw his charge. Together with the rest of the Awami
League members and Mahmud Ali, a sympathiser, Mujibur
Rahman staged another walk-out. In the absence of the
Opposition, the Assembly adopted without further dis-
cussion the clause which became the 31st article (provisions
for equal participation in national activities by people
of Pakistan). This bitterness was to be intensified
as the days of constitution-making rolled by.
Worth recounting is the attempt by some Hindu members to lengthen the chapter on directive principles of the Basic Principles Committee Report of the first Constituent Assembly by including a new article prohibiting detention without trial. In support of this amendment, almost every member of the Assembly recited his experiences in jail. To make his arguments more convincing, Chattopadhyaya recalled a line in a Bengali poem which ran thus: "nobody will feel the pangs of poison if he has not been bitten by a snake". It was Dr. Mahmud Husain who invited the attention of all to the fact that the question was not the merits and demerits of the principle but whether it was "really a matter of directive principle". Dr. Husain's contention that it was not a directive principle was corroborated by Dr. Hi who cited concrete examples to prove the necessity at times of detention without trial. By a vote of 11 to 3, the amendment which was tabled by Professor Chakraverty failed of passage.

A modification moved by Kamini Kumar Batta to include a provision on the unenforceability of the directive principles was adopted by the first Constituent Assembly. This was the only major change that found its place in the final constitution passed by the second Constituent Assembly.

Comparison with Articles in the Philippine Constitution

A cursory reading of the "Fundamental Rights" in the Pakistan Constitution and the "Bill of Rights" in the Philippine Constitution would disclose a striking similarity in coverage. The twenty articles of the former and twenty-one of the latter shielded the citizen from discrimination, ex post facto laws, slavery, arbitrary arrest and detention; and granted freedom of speech, assembly,
association, and practice of religion. Conspicuous by their absence in the Philippine charter were the provisions regarding the definition of the state, voiding of laws inconsistent with fundamental rights, employment, preservation of culture, and remedies for the enforcement of rights. This divergence could be attributed to the following factors. First, Pakistan's federal structure called for a precise definition of the state and defence against discrimination in government employment. The unitary character of administration in the Philippines rendered superfluous such provisions. Secondly, the apprehension of the non-Muslim minority in Pakistan impelled the Assembly to set up elaborate safeguards. No such fear was harboured by the Filipino minorities during the drafting of the constitution. Thirdly, the Assembly of Pakistan was beset by regional demands for the preservation of culture by East Bengalis who inhabited one of the two major areas that make up Pakistan. This claim had no parallel in the Philippines although it is fragmented into approximately 7,000 islands with more than a hundred languages and dialects. Fourthly, the Filipino constitution framersensonced the remedies for the enforcement of rights in a chapter other than the "Bill of Rights".

Another significant variance was the Pakistan Constitution's marked tendency to particularise each proviso. To illustrate: where the Philippine Constitution merely prescribed that "no law shall be passed abridging the freedom of speech," Pakistan's postulated that "every citizen shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the security of Pakistan, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence". One could
easily conjure up Brohi's two "verbose lawyers" drafting the "Fundamental Rights" of the Pakistan Constitution.

The resemblance between Pakistan's "Directive Principles of State Policy" and the Philippines' "Declaration of Principles" lay in only one aspect - the concern of the state for the welfare of the people. In the rest of the provisions, the former centred its attention on the Islamic character of the State while the latter concentrated on its democratic functions. Such divergence would make sense if one would remember that Pakistan was founded to enable the Muslims to "build up their lives in accordance with the teachings and traditions of Islam". In contrast, the Filipino constitutionalists who represented an overwhelmingly Christian majority had not been imbued with a corresponding ideological orientation.

Casually mentioned in this chapter, the federal character of Pakistan's constitution will be discussed in greater detail in the pages that follow.
NOTES

1. See Chapter III for a discussion of the activities of this committee.


20. Ibid., pp. 2329-2330.

21. Ibid., pp. 2331-2332.

22. Ibid., p. 2337.

23. Ibid., pp. 2331-2339.

24. Ibid., pp. 2340-2343.


26. Ibid., p. 2891.

27. Zuhairuddin quoted from Hoududi's book to support his assertion that detention without trial was un-Islamic. Ibid., pp. 2893-2894.

28. Ibid., pp. 2891-2893.

29. Ibid., pp. 2895-2896.

30. Ibid., pp. 2910, 2936.


35. Ibid., pp. 2396-2402.

36. Ibid., pp. 2411-2412. See Note 23 on the insertion of the word "reasonable" before "restrictions".

37. See Chapter VI.


39. Ibid., p. 2428.


41. Ibid., pp. 2945-2948.

42. Ibid., pp. 2953-2954.

44. See sub-rule (2), rule 23, Rules of Procedure of the Constituent Assembly of Pakistan.

45. Sub-clause 1 of clause 13 Draft Constitution reads: "No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship if such instruction, ceremony or worship relate to a religion other than his own."

46. Sub-clause 3 of clause 13 Draft Constitution reads: "No educational institution maintained wholly out of the funds provided by any community or denomination shall be denied recognition by any public authority on the ground only that such institution refuses admission to persons other than those of that community or denomination."


48. Ibid., pp. 2452-2456.
50. Ibid.
51. See clause 15, Draft Constitution, op. cit.
55. See Chapter VI.
57. Ibid., p. 2480.
58. Ibid.
60. Ibid., dated February 6, 1956, Vol. I, No. 65, p. 2488. Article 19 Draft Constitution reads: "Any section of the citizens residing in Pakistan or any part thereof, having a distinct language, script or culture, shall have the right to preserve the same."

63. Ibid., p. 2493.
64. Clause 21 Draft Constitution reads: "No person shall be compelled to pay any special tax the proceeds of which are to be spent in the propagation or maintenance of any religion other than his own."
66. Ibid., pp. 2512-2515.

67. Ibid., pp. 2517-2527.

68. Article 22 Draft Constitution reads: "(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, certiorari, and amicus curiae, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this Article shall not be suspended except as otherwise provided by the Constitution."

69. See article 178 Draft Constitution.


71. See ibid., pp. 333-344.


75. Shafkat, op. cit., p. 73.

76. Article 23 (2) Draft Constitution reads: "The State shall be guided in the formulation of its policies by the provisions of this Part, but such provisions shall not be enforceable in any court of law."


80. Ibid., p. 2536. The succeeding paragraph pertained to the period in 1956.

81. Ibid., p. 2537.

82. Ibid., p. 2539.

83. Article 25 Draft Constitution reads: "Promotion of Islamic principles:- Steps shall be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Qur'an and Sunnah; and in particular the State
shall endeavour to - (a) provide facilities for the Muslims of Pakistan to understand the meaning of life according to the Holy Quran and Sunnah, and make the teaching of Quran to them compulsory; (b) promote and maintain the observance of Islamic moral standards; (c) secure proper organization of zakat, wakfs and mosques; (d) prohibit prostitution, gambling and consumption, except for medicinal purposes, of alcoholic drinks and other intoxicants."


85. Article 26 Draft Constitution reads: "The State shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens."

86. Clause 27 Draft Constitution reads: "The State shall protect all the legitimate rights and interests of non-Muslim communities of Pakistan."

88. Ibid., pp. 2543-2544.
89. Ibid., p. 2545.
90. Chundrigar has intimated earlier his acceptance of the transfer of the sub-clause from clause 26 to clause 28. Ibid., p. 2546.
91. Ibid., pp. 2545-2552.

92. H.M. Jeffer Shaw's amendment reads: "(f) to eliminate Riba as early as possible." Riba is the Arabic and Urdu word for "usury" and is defined in Muslim law as "an excess according to a legal standard of measurement or weight, in one or two homogeneous articles opposed to each other in a contract of exchange, and in which such excess is stipulated as an obligatory condition on one of the parties without any return." See Thomas Patrick Hughes, A Dictionary of Islam (London: W. H. Allen and Co., 1835), p. 568.

94. Article 30 Draft Constitution reads: "The State shall endeavour to separate the judiciary from the Executive as soon as possible." 

96. Article 31 Draft Constitution reads: "It shall be the duty of the Federal and Provincial Governments to take all possible measures for the development and growth of a national language."

97. The Opposition members returned a few minutes later to resume their participation in the deliberations.


102. See articles 3-22 of the Constitution of the Islamic Republic of Pakistan (1956) and Article III, Section 1 (1-21) of the Constitution of the Philippines.

103. Teodoro A. Agoncillo and Oscar M. Alfonso, A Short History of the Filipino People (Cebu City: University of the Philippines, 1960), pp. 1, 46.

104. Cf article 8 of the Constitution of the Islamic Republic of Pakistan (1956) and Article III Section 1 (8) of the Constitution of the Philippines.

CHAPTER VIII

THE FEDERATION

During the era of British paramountcy, all the Muslims of the Indian sub-continent united themselves in a common struggle to break the chains of bondage. That same spirit of unity was inculcated by the Quaid-i-Azam into the minds of his Muslim followers to escape from the clutches of a seemingly inevitable Hindu Raj in an un-divided India. Settled finally in a homeland of their own subjected neither to English rule nor to Hindu domination, the Muslims started their tortuous search for a system of government that would not only suit the conditions in their country but also reflect their ideals. While waiting for the ultimate pattern to emerge, the leaders of Pakistan adopted a British governmental innovation which they had tasted though not fully enjoyed for about a decade before independence.

Sources of the Federal System

On August 14, 1947, the Quaid-i-Azam issued the Pakistan (Provisional Constitution) Order otherwise known as Governor General's Order No. 22 which provided that "as from the appointed day [August 15, 1947], the Government of India Act, 1935, including the provisions of that Act which have not come into force before the appointed day, and the India (Central Government and Legislature) Act, 1946, shall, until other provision is made by or in accordance with a law made by the Constituent Assembly of Pakistan, apply to Pakistan".¹

The structure envisaged by the Government of India Act enacted by the British Parliament on August 2, 1935 was a federation consisting of autonomous provinces and the Indian States which had acceded or would accede later.² This arrangement was borrowed by Pakistan on the
basis of two major factors, namely, geographic influence and cultural diversity.

Geographically, Pakistan consists of two land masses separated from each other by approximately a thousand miles of Indian and presently hostile territory. As mentioned earlier, the west wing is larger in area but smaller in population compared to the east wing which is a mere one sixth in size but almost seven times bigger in population density per square mile.\(^3\)

This difference in geography had been further accentuated by cultural diversity. Although language had been a major factor of contrast (East Pakistan speaks Bengali while West Pakistan uses Urdu and certain other regional languages), there are other aspects which strike the eye of a foreigner.

The Bengalis are by far the largest ethnic group. They share the East Wing with a small group of Assamese around Sylhet and a few tribesmen in the Chittagong Hill Tracts. They are a thin, short, sentimental, and extraordinarily friendly people. The men routinely wear lungis (a sort of wraparound skirt) or loose white linen trousers. The women wear sarees. Their staple diet is rice. Vigorously, perhaps aggressively, they are committed to their language and cultural traditions. Across some one thousand miles of unfriendly Indian territory lies the West Wing. The people there are taller, calmer and somewhat more reticent. The men wear kamis and sherwani (long, high-collared coats) and the ladies kamis and shalwar (high-collared dress with pajama-like slacks). Their main staple is wheat.\(^5\)

To stress the differences between the two provinces, Abul Mansur Ahmad, an East Pakistani member of the second Constituent Assembly strongly asserted that except for the Muslim religion and a common struggle for independence, there was nothing in common between them.\(^6\)

**General Impression on Debates**

The members of the first and second Constituent
Assemblies were sold to the federal idea; it was in the distribution of powers, religious qualification of the Head of State, and what Dr. Choudhury termed as the quantum of representation that heated controversies arose.

With the fear of domination uppermost in their minds, the members from East Bengal fought for equality with the western wing. They were quick to point out instances nullifying their ideal of parity. During the discussion of the bill on the establishment of West Pakistan, Ataur Rahman Khan complained that there were few East Bengali officers and men in the armed forces, no military training was given to East Bengal people, and less than one per cent of East Bengalis were employed in the Central Services. On the basis of these grievances, he concluded that "far from considering East Bengal as an equal partner, the leaders of the Muslim League thought that we were a subject race and they belonged to the race of conquerors". No doubt, these words were calculated to fan the fire of bitter hatred among the people of East Bengal. Coupled with the demand for equality was the desire for more autonomy. This incessant agitation for less control from the Centre induced the following warning from a Muslim member of the Assembly: "If you decentralise it further . . . perhaps this constitution would become a unitary constitution".

Parochial feelings were also aroused among the Hindu members against the Muslim qualification for the Head of State for it deprived twelve million non-Muslims from aspiring for the office. Brohi's explanation that the position of the President was mainly for ceremonial purposes failed to assuage the hurt feelings of the Congress Party. On November 2, 1953, Chattopadhyaya who was leader of the Congress, articulated his pent-up emotions:

It has further been proposed that the Head of State
should be a Muslim. This tramples on the principle of equal rights of all citizens and implies an inferior status for the non-Muslims.12

The quantum of representation divided the Assembly into two hostile camps. The East Bengalis13 wanted at least half of the seats in the Central Legislature because their province had a majority of population. For several years no arrangement could satisfy them. The last attempt of the first Constituent Assembly to iron out differences which came to be known as the Mohammed Ali formula was never implemented due to the dissolution of the Assembly in 1954. The One Unit scheme and numerous other provisions embodied in the Constitution Bill of the second Constituent Assembly did not please the Opposition. During the third reading of the bill on February 29, 1956, Suhrawardy and the other members of his party walked out after his demand for a round table conference was refused.14 Following the example of Suhrawardy’s group, the Congress Party followers left the Assembly chamber too after Basanta Kumar Das delivered a speech prophesying trouble in the future.15

Notwithstanding the frequent exchange of hot words, the second Constituent Assembly should be credited for producing brilliant speeches such as those by Daultana who defended the One Unit Bill, by Abul Mansur Ahmad who voiced the complaints of East Bengal against the central government, by Professor Chakraverty who spoke on what he regarded as the outmoded laws of Islam, and a host of others.

Of course, the second Constituent Assembly, as in the case of their predecessor, had a share of irrelevant speeches heaping attacks against political opponents or introducing useless amendments. For some members, verbosity seemed to be a better choice than brevity. A British writer observed the prevalence of "unprofitable cut-and thrust on the floor of the House, the raising of points
of order and points of explanation and even interjections
that constituted no point at all". 16 Indirectly criticising
his colleague, Haroon let fall the statement that "no
member of this House objects to their speaking provided
they are relevant and keep within the scope of this bill". 17
A Congress Party member, Dr. Sen, picturesquely described
the speeches as having been delivered "with froth and
foam". 18

**Assembly Debates**

One of the issues that caused a major cleavage
among the members of both Constituent Assemblies was the
nature of the federation. The clash commenced during the
first Constituent Assembly deliberation on November 2,
1953 when the word "Pakistan" in the original Basic Prin-
ciples Committee Report was amended to read: "the Islamic
Republic of Pakistan". In supporting this amendment, Nur
ahmed argued that Pakistan, unlike other countries had an
ideology and a noble mission to fulfil. The ideology was
Islam and the mission was the establishment of a homeland
wherein the Muslims could demonstrate the application of
Islamic principles. The opposition of the Hindu members
to this amendment had been well-known and in fact, it was
one of the reasons for the walk-out on November 2, 1953.
Analyzing the conflict, Bhandara, a Parsi member, blamed
"undue emphasis on the title" as the cause of the "mis-
givings in the mind of the minorities". Gzader and Brohi
attempted to guide the minority thinking along the line
that the constitution would not be controlled by the
nomenclature but by the actual provisions and that the
reason behind the inclusion of the term "Islamic" was to
fulfil "the promises that we gave to our people". Un-
fortunately, this guidance could not be heard by the
Hindu members who had left the Assembly earlier. 19
In the second Constituent Assembly session of February 21, 1956, some Muslim members joined hands with the Hindus and the Christians in their objection towards the term "Islamic". Abul Mansur Ahmad wanted its elimination in the title for fear that it might lead to the establishment of a monarchy like Saudi Arabia. Mahmud Ali preferred the term "Democratic Federal Republic" for its emphasis on the democratic character of Pakistan. Seeing the term as a contradiction in view of the existence of millions of Pakistani non-Muslims, Bhupendra Kumar Datta predicted the growth of misconception in the minds of the common people that in an Islamic state, a non-Muslim had no place. Peter Paul Gomez, a Christian, posed the query, "Does Muslim religion say that in order to take something for yourself, you should hurt the feelings of others?" Presenting a broad point of view, Sheikh Mujibur Rahman cautioned against declaring Pakistan an Islamic republic so as not to arouse the fanatic Hindus of India into taking vengeance on the forty million Muslim residents in that neighboring country. In a sarcastic vein, Aftaur Rahman Khan remarked that the amendment meant that the ruling party had surrendered to a few ulama (men learned in Islam).

In defence of the amendment, Rashdi assured the non-Muslims that the adoption of the word "Islamic" would not relegate them to a lower status of citizenship. "State of Jordan is known as Hashemite Kingdom. Does it make impossible for Christians and Maronites to live there?" he asked.

Several other members attacked the amendment but in the end, the Government side triumphed by a vote of 47 to 22.

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20
Federal Government

The controversy on the Islamic nomenclature of the state was continued during the discussion on the Muslim qualification of the Head of State. Some objections aired during the first Constituent Assembly meetings were repeated in the second. Dr. Sen of the second Assembly registered his opposition on the ground that the Head of State was not supposed to act as an imam (spiritual leader). In clear logic, Bhupendra Kumar Dutta maintained that if Russia were Pakistan’s example for the nomenclature of an ideological state, then it followed that the Muslim qualification was not indispensable for the Soviet constitution had no Communist qualification for the Head of State. Despite the absence of a rebuttal from the Government side, the provision was incorporated in the final constitution by a vote of 37 to 17.21

The Congress members’ absence in the Assembly deliberations precluded the moving of several amendments concerning the Head of State and allowed the Government forces to secure passage of the draft provisions. However, substantial changes were introduced such as the abolition of the office of Vice-President and the naming of the Speaker of the National Assembly as the President’s successor. This modification was opposed by Zahiruddin who anticipated the possibility of a non-Muslim Speaker of the National Assembly occupying the Head of State position.22 Without waiting for the Government side to reply to Zahiruddin’s comments, the Speaker closed the debate with the statement, "I am afraid, those things were already mooted". Haroon’s amendment exempting the election of the President from lawsuits was accepted without opposition.23 Another change made it difficult for the National Assembly to impeach the President by
increasing the percentage of votes substantiating the charges from two-thirds to three-fourths. Moreover, instead of allowing a minimum of thirty members to prefer charges of impeachment, Khuhro suggested not less than one-third of the total membership on the ground that the original number was too small for arraigning an important personage such as the President. This recommendation was never questioned by the second Constituent Assembly members.24

During the life of the first Constituent Assembly, important changes were included in the Basic Principles Committee Report such as the two amendments tabled by Ghayasuddin Pathan. One required a vote of confidence within two months for a new Cabinet and the other disqualified a non-member of the Federal Legislature from forming a Ministry. In supporting these changes, Brohi pointed out that in the parliamentary system of government proposed for Pakistan, it is essential that the executive should be made responsible to the legislature as a form of constitutional safeguard. To meet this requirement, a newly-formed Cabinet had to obtain the vote of confidence within two months - an interval which the then Law Minister considered as sufficient for the members of the Federal Legislature living in distant places to attend the session summoned to consider the confidence motion. Brohi maintained that allowing a person who was a non-member of the Federal Legislature to lead a Ministry was an "abnormality which we should do away with". He concluded that these amendments were in consonance with the principles of "parliamentary democracy which we are pledged to establish in this country".25

Nur Ahmed added that the two amendments would bring in real democracy and were in conformity with the spirit of an Islamic Constitution. These changes received
the unanimous support of the members.

In the second Constituent Assembly, similar amendments were redrafted to accommodate a large number of suggestions. On February 28, 1956, a new provision was introduced in lieu of the original, which action raised a storm of protest from the Opposition particularly from Daulat Ahmed who noticed a "gap" in Sardar Amir Azam Khan's amendment requiring Ministers of State and Deputy Ministers but not Ministers to be chosen from among the 310 members of the Federal Legislature. Allowing a Minister to hold office for as long as six months without becoming a member of the legislative body was, according to him, a move that gave power to the ruling party to "appoint their favorites" and "would lead to practically an autocratic rule".

He objected too to the proviso allowing the ministers to continue in their office even after the dissolution of the National Assembly. Zahiruddin suspected that the purpose of the change was to legalise the Ministry in East Bengal. Rundly voiced by a sub-clause on the fresh appointment of ministers and other related matters, he exploded:

This is unheard of in any democratic Constitution of the world. It is unthinkable. It is nauseating.

Undisturbed by these diatribes, Haroon pointed to the necessity for the Prime Minister to have caretaker ministers until elections were held. He emphasised that no one could remain a member of a dissolved Assembly.

To lend support to Haroon, the Law Minister, Chundigar, reminded the Opposition members that the amendment merely followed the British convention of authorising the Prime Minister to appoint a non-member of Parliament despite the availability of 625 representatives in the House of Commons. In reply to Daulat Ahmed's comments, he asserted that "nobody can say that the British Government is not
run on democratic lines". 30

Chundrigar added that the sub-clause enabled the Prime Minister to remain in office after the dissolution of the National Assembly; otherwise, the President would be left alone to run the administration. After much wrangling, all the objections were negatived and the clause became a part of the bill. 31

The Opposition's desire to reduce the extent of executive power was satisfied by the information that amendments were being prepared. 32 Sardar's motion to include the Presidential power of command over the Armed Forces was accepted without debate. 33 Although the clause was found in the Basic Principles Committee Report, it was inadvertently omitted in the Constitution Bill.

The weakness of the Opposition became obvious when their amendments to the clauses concerning the conduct of business of the Federal Government were rejected outright without benefit of rebuttal. 34

A more lively debate erupted over the duties of the Prime Minister in relation to the President. With the objective of strictly retaining the President as a constitutional head, the Opposition put up amendments to curtail his powers. Chundrigar had to remind them that the clause under discussion merely prescribed a procedure for the supply of certain information. He cited the practice in Britain wherein the monarch had the prerogative "to be consulted, the right to encourage and the right to warn". 35 Needless to say, all Opposition amendments were rejected.

Parliament

The differences in point of view during the debates on the executive branch were carried to the deliberations on the legislature. The first issue that bothered the con-
stitution-makers was the method of electing the members of the Federal Parliament and the Provincial Assemblies. The background of this problem could be traced to the days of pre-partition India when the Muslims, then a minority community, were granted a separate electorate as a measure of protection. After achieving majority status in Pakistan, they still insisted on applying the same principle over the loud protestations of the Hindus who espoused joint electorates.

During the discussion of the report submitted by the Committee on Fundamental Rights and Minorities on August 19, 1954 to the first Constituent Assembly, most of the Hindus were united in their demand for one electoral roll. The proponents of separate electorate had presented the argument that separate electorates were a means of protection to the minorities. Datta took exception to this by asserting, "Hindus and Muslims are friends. So there is nothing to be protected". Abdul Hamid maintained that aside from the Hindus, there were other minorities who needed protection of their way of life as expressed by two minority members who favoured separate electorates. To allay the anxiety of the Hindus, he said, "There is no sinister motive of the majority in the House to divide minorities". As the last speaker of the day, Qureshi invited the Opposition's attention to the fact that the rule of majority had been a basic conception of democratic institutions in reply to Datta's charge that the minorities had been ignored.36

Eloquent evidence that the Hindus were unconvinced by the arguments presented by the majority was Chattopadhyaya's statement repudiating the principle of separate electorate:

I do not want any special rights. I do not want any privileges. I do not want reservation of seats in the legislature.37
Bearing in mind the intense parochial feelings awakened by this particular principle in the first Constituent Assembly, the draftsmen of the Constitution Bill in the successor body passed to Parliament the decision whether elections should be held on the principle of joint electorate or separate. This time an East Bengal Muslim, Sheikh Mujibur Rahman, favoured a joint electorate and the reasons were enumerated by Subrawardy, namely, (1) the desire to create a Pakistani nation; (2) a wish to achieve cooperation between the Hindus and the Muslims in solving the country's problems and development of confidence among the Hindus "that they are as much citizens of Pakistan as the Muslims;" (3) irritating the Hindus in Pakistan might endanger the equal citizenship status of the Muslims in India; and (4) refusal to grant joint electorate would encourage the exodus of Hindus from Pakistan which, in turn, would result in a counter-evacuation of Muslims from India, a situation that could "wash away Pakistan".

Viewing the problem from another angle, Abul Mansur Ahmad noted that the principle of parity would be disturbed without joint electorate because out of the 316 members of the National Assembly there would be only 127 Muslims from East Pakistan to West Pakistan's 153. Such disparity of representation was not commensurate with the four lakh (400,000) difference in Muslim population between the two wings. He was supported by a Hindu member, Basanta Kumar Das who cited an article in the Universal Declaration of Human Rights of the United Nations to strengthen his stand that the people should not be divided on the basis of religious faith. Gomez, a Christian, wished to rescue the minorities from becoming a bargaining factor in politics. After enumerating Egypt, Indonesia, Burma, and India as countries with joint electorates, Dr. Sen asked
why similar rights could not be granted to Pakistan's minorities. Going to India’s history, Raja Raj Mandel recounted that separate electorates were allowed before the partition of India because of the presence of the British to whom grievances could be elevated for an impartial judgment but after independence, majority decisions had rendered hopeless the desire of the minorities.

As a solution to the problem, Abdur Sattar brought in an amendment investing Parliament with the power to decide on the type of electorate after ascertaining the views of the Provincial Assemblies. This compromise provision was adopted by the second Constituent Assembly. 41

Another controversy more crucial than the conflict over the electorate principle involved the quantum of representation in the Federal Legislature among the four provinces and smaller units during the life of the first Constituent Assembly and between the two provinces during the tenure of the second.

In view of the existence of two geographical divisions, one of which had the majority of the population and the other the larger number of provinces and all the smaller units, the Franchise Sub-Committee of the first Constituent Assembly had a difficult time in the distribution of seats. Unable to wait any longer, their parent Basic Principles Committee submitted on September 7, 1950 an interim report which mentioned nothing about the apportionment of seats. The recommendation merely established a Central Legislature with an upper house to be known as the House of Units and lower to be designated as the House of the People. The former was to represent the provincial Legislatures with the seats equally divided among the provinces including Baluchistan while the latter was to consist of members directly elected by the people from the provinces and the centrally-administered
areas.\textsuperscript{42}

Serious objections not only from the Assembly members but also from a large section of the population forced Liaquat Ali Khan to request postponement of the interim report's consideration in the House on the lame excuse that some members "have not had time sufficiently to consider this Report..." As mentioned in Chapter III, the people were asked to voice their opinion for the committee's consideration. In December, 1952, the Basic Principles Committee presented a report embodying the following figures:

<table>
<thead>
<tr>
<th>Unit</th>
<th>Lower House</th>
<th>Upper House</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Bengal</td>
<td>200</td>
<td>60</td>
</tr>
<tr>
<td>Punjab</td>
<td>90</td>
<td>27</td>
</tr>
<tr>
<td>Sahawaiwalpur</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Sind</td>
<td>30</td>
<td>8</td>
</tr>
<tr>
<td>Khairpur State</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>NWFP</td>
<td>25</td>
<td>6</td>
</tr>
<tr>
<td>Tribal Areas</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>Baluchistan</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Baluchistan States</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Capital of the Federation</td>
<td>11</td>
<td>4</td>
</tr>
<tr>
<td>West Pakistan Total</td>
<td>200</td>
<td>60</td>
</tr>
<tr>
<td>Grand Total</td>
<td>400</td>
<td>120\textsuperscript{43}</td>
</tr>
</tbody>
</table>

Although the principle of parity was observed, the East Bengalis manifested dissatisfaction for the arrangement allowed West Pakistan to control the other wing by merely conniving with one or two independent-minded East Bengal members to achieve simple majority. Also, the Muslims and the Hindus in East Bengal would be constrained to form a united front in defence of their province's interests.\textsuperscript{44} The magnitude of the question was assessed by Prime Minister Mohammed Ali in the following words:

The Basic Principles Committee grappled with this
problem for four years and considered a number of proposals that would secure this result. Its final report which the House is now being invited to consider, was presented to the House in December last year. The proposals contained in the Committee's Report which deal with the composition of the Federal Legislature and the division of powers as between the Upper and the Lower House failed however to satisfy all Units. Progress with further constitution-making had therefore to be abandoned. There arose as regards the structure of the Federal Legislature a deadlock which defied solution. Strenuous efforts were made to resolve this deadlock. They all proved abortive. As this deadlock continued, provincial misunderstandings began to grow and threatened to undermine the solidarity of the nation. A sense akin to frustration began to spread among the people.45

To break the deadlock, the leaders of the Muslim League pooled all their efforts in an attempt to evolve a solution satisfactory to everyone. Finally, on October 7, 1953, Prime Minister Mohammed Ali (Jogra) presented the following acceptable formula to the House members who greeted it with an applause:

I. - Upper House - Membership 50 to be divided equally among five units which will be -(i) East Bengal, (ii) Punjab, (iii) N.W.F.P., Frontier States and Tribal Areas, (iv) Sind and Khairpur, (v) Baluchistan, Baluchistan States Union, Jhawalpur and Karachi.

II. - Lower House - Membership 300 to be divided among the five units in accordance with their population.

The two Houses will thus be constituted as follows:

<table>
<thead>
<tr>
<th>Unit</th>
<th>Upper House</th>
<th>Lower House</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) East Bengal</td>
<td>10</td>
<td>165</td>
<td>175</td>
</tr>
<tr>
<td>(2) Punjab</td>
<td>10</td>
<td>75</td>
<td>85</td>
</tr>
<tr>
<td>(3) N.W.F.P., Frontier States and Tribal Areas</td>
<td>10</td>
<td>24</td>
<td>34</td>
</tr>
<tr>
<td>(4) Sind and Khairpur</td>
<td>10</td>
<td>19</td>
<td>29</td>
</tr>
<tr>
<td>(5) Baluchistan, Baluchistan States Union, Jhawalpur and Karachi</td>
<td>10</td>
<td>17</td>
<td>27</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
<td>300</td>
<td>350</td>
</tr>
</tbody>
</table>
N.B.- In respect of Units No. 3, 4 and 5, distribution of seats as between the constituent parts of each of these Units shall be in accordance with their respective populations.

III. - Equal powers for both Houses.

N.B. - A vote of confidence/no-confidence/election of the Head of the State can be passed only if a majority of the two Houses sitting jointly vote for it, provided however that the members voting for it must include at least 30% of the members from each zone. Explanation.- For the purpose of this clause and the succeeding two clauses, the State shall consist of two Zones: (1) Eastern Zone consisting of East Bengal; and (ii) Western Zone consisting of 4 Units, namely, (1) Punjab; (2) N.W.F.P., Frontier States and Tribal Areas; (3) Sind and Khairpur; (4) Baluchistan, Baluchistan States Union, Bahawalpur and Karachi.

IV.- In the case of a difference of opinion between the two Houses in respect of any measure, the following steps will be taken:-

A joint session of the two Houses will be called; the measure may then be passed by a majority vote, provided the majority includes 30% of the members present and voting from each zone.

If the measure is not passed with the majority as provided in the preceding sub-clause, then (a) the measure fails, but (b) if the measure is of such a nature that the administration cannot be carried on unless it is passed, or that its failure will gravely imperil the security of the country or the financial stability or credit of the Federal Government, the Head of the State shall have the power in such an event to dissolve both the Houses and order fresh elections.

Explanation.- In doing so the Head of the State will act in and be bound by the advice of the Ministry.

V. - The Head of the State will be elected from a zone different to that to which the Prime Minister belongs.

The salient features of the formula were: (1) a Central Legislature with a Lower House membership directly elected by the people, and that of the Upper House
appointed by the respective Legislatures of the Units; (2) controversial measures could not be passed nor the Head of State elected without the vote of at least 30 per cent from each zone; and (3) parity in representation for the Eastern and Western Zones.47

The Muhammad Ali formula became obsolete when the second Constituent Assembly simplified the quantum of representation by enacting the Establishment of West Pakistan Act. Chundrigar and his drafting assistants set up a unicameral Parliament consisting of the President and the National Assembly with 150 members from each province.

Expecting amendments from the Opposition, the sponsors of the Constitution Bill postponed for a week the consideration of the composition of the National Assembly. On February 15, 1956, Abul Mansur Ahmad immediately moved to modify the distribution of seats by allocating 165 seats for East Pakistan and 135 for West Pakistan. In addition, 11 women were to be elected from East Pakistan and 9 from West Pakistan "for a period of ten years from Constitution Day or for two terms of the National Assembly, whichever period is longer",48 basing his allocation on population, he justified the increase in the reservation of women's seats to twenty by saying that the ten women's seats in the Constitution Bill was "an insult to the womenfolk of Pakistan" who composed fifty per cent of the population. This amendment obviously went against the grain on parity previously claimed by East Pakistan. In anticipation of such an argument, he offered the following elaboration:

Out [sic] leader, Mr. H. S. Suhrawardy, has categorically stated on the floor of this House that the parity of representation was agreed to and accepted by East Pakistan on the clear understanding that West Pakistan will in return agree to parity in all respects: In services, in industry, in commerce, in everything.
But as they have contemptuously and selfishly rejected the reasonable demands of East Pakistan people we are now free to go back to the original position which is based on democratic principles, i.e., representation on population basis.49

Khushdi had to refresh the memory of Ahmad that "it is only in a unitary kind of set-up that representation is given to various parts of the country on population basis. In a federal set-up it is very necessary, in order to ensure proper and harmonious working of the federal machinery, to give parity and equality to the various component elements". He recalled that Suhrawardy, the Leader of the Opposition, was himself responsible for this parity principle. With the problem of representation solved, he expressed the hope that "we would be embarking upon the second step along that path, namely, that of giving to East Pakistan full equality in various other fields of national life also, for example, in Civil Services, in economic development, and so on and so forth".50

Mahmud Ali's recommendation to elect one representative per 500,000 people fell on deaf ears. All the Opposition amendments were negatived and the original provision with minor verbal amendments, was added to the bill.51

The first Constituent Assembly approach of enumerating in the constitution itself all the qualifications and disqualifications of Federal Legislature members underwent a radical alteration. The second Constituent Assembly established the minimum qualifications and left to the Federal Legislature the burden of promulgating the dis-qualifications.52

A significant amendment on the legislative provisions tabled by the Opposition was Fazlur Rahman's motion to hold one National Assembly session each year in Dacca, East Pakistan. This had been provided for in the approved Basic Principles Committee Report. Wahiduzzaman, an East-
Bengal Muslim member of the first Constituent Assembly introduced this proviso to "enable the members of the Parliament to come in direct contact with the people of that part of the country". Only two members registered their objections. One was Iftikharuddin who, after saying that one session would be insufficient, recommended the setting up of a confederation with full-fledged powers to the Government at Dacca. The other was Bhandara whose objections hinged on two considerations: (1) the economy dictated against such luxuries, and (2) the promotion of unity and solidarity expected from such transfer was uncertain.

Replying to Iftikharuddin's recommendation, Brohi foresaw in the adoption of a confederation the complete disintegration of Pakistan on the basis of geography, the hostility of India, and Pakistan's inability, at the moment, to put up strong armed forces. Disagreeing with Bhandara, Jam Saneb Mir Ghulam Qadir Khan of Lasbela commented that expenditure should not "stand in the way of a wholesome measure which is in the best interests of both the wings of Pakistan". Brohi added that travel expenses could be minimised since a considerable number of the legislative members were residents of East Bengal. These arguments resulted in the inclusion of Wahiduzzaman's amendment in the final Basic Principles Committee Report. Fazlur Rahman's was also accepted by the second Constituent Assembly.

Provincial Government

In the first Constituent Assembly, the debates on the provisions regarding the provincial government were dull in the absence of the Congress Party members who sustained their boycott. The Muslim League members merely devoted their time to substitution or omission of the
articles they thought to be unnecessary, changing the nomenclature of proposed organisations, and improving the grammatical construction of some sentences. The deliberations on the relations between the Federation and the Units consumed barely two and a half pages. The entries consisted mainly of the routine presentation of the question and its adoption.

The corresponding session of the second Constituent Assembly was livelier although there were still a number of amendments left unmoved in the absence of the authors. One of these amendments recommended the election instead of the appointment of the Governor.

Sardar Amir Azam Khan's suggestion to improve the language of clause 68 (5) by stating that a "Governor shall not be a member of the National or Provincial Assembly" instead of the original clause: "The Governor shall be ineligible for election to the National Assembly, or a Provincial Assembly" generated confusion. Fazlur Rahman saw no necessity for such a change but Pir Mohyuddin Lal Badshah complicated the situation with his statement that the Governorship, being an office of profit, disqualified the Governor in running for elections. In an effort to straighten out things, Haroon pointed out that the post of Governor as defined in other provisions was not an office of profit. Badshah was convinced only after Chundrigar cited the Governor's eligibility to aspire for the Presidency. The clause was adopted.

Fazlur Rahman's modification on the powers of the Governor was rejected because it touched on aspects embodied in other clauses. Clause 68 (The Governors) was approved with Sardar's suggestion.

Discussion on the Provincial Cabinet was postponed for a week to permit changes in conformity with approved amendments in the Central Cabinet's powers. On February 14, 1956, Sardar Amir Azam Khan moved to authorise the
ministers to remain in office after the dissolution of the Provincial Assembly. Zahiruddin opposed the motion on the following ground:

I have to make a submission that a certain situation has developed in East Bengal wherein there is an apprehension that a certain Ministry will not be in a position to maintain itself so far as the confidence of the House is concerned. By this clause, if it is passed and if this idea is accepted, the net result will be that this Ministry will be dismissed and the House will be suspended or dissolved and the same persons will be again called during this period through this power which has been mentioned in this clause (9)61 and the work will merrily go on.62

In reply to the Chairman's query, Zahiruddin admitted that during the period of dissolution, there would be a small caretaker ministry as a matter of convention but he feared that all the forty-two ministers of the Hossain Sarkar would continue in office like "Ali Baba and the forty thieves". The unparliamentary comparison, on the advice of the Chairman, was withdrawn. All amendments counter-proposed by Zahiruddin were rejected by the House.63

Clauses 71 (Extent of executive authority of a Province) and 72 (Conduct of business of the Provincial Government) were accepted without debate.64

Fazlur Rahman's contention that the constitution should not contain an enumeration of the duties of the Chief Minister to furnish information to the Governor to avoid irresponsibility and unnecessary work failed to win over to his side the rest of the members.65

Provincial Legislature

After another week of postponement, deliberations were resumed this time on the composition of the Provincial Assembly. Both sides had offered amendments but no one volunteered to open the debate despite the Speaker's prodding. Precious minutes were wasted on a discussion as
to who should speak first before Sardar's threat to put the question to a vote aroused Delvar Ahmed to defend his amendment stipulating parity in whatever changes were contemplated in the membership of the Provincial Assembly. The intention of Ahmed's suggestion became clear when Muhammad Abdul Khaleque said that "it may be that the number of members of the West Pakistan Legislative Assembly be increased to the great disadvantage of East Pakistan people and in that case no East Pakistani can ever aspire to be the President of Pakistan". Khaleque had in mind clause 32 of the Constitution Bill establishing an electoral college for the Presidential election to consist of the members of the National and the Provincial Assemblies. Equality of representation between East Pakistan and West Pakistan had already been assured in the National Assembly. Khaleque desired a similar assurance in the Provincial Assembly. Delvar's amendment was adopted with minor grammatical alterations.66

With an eye on forestalling future Punjab domination, Zahiruddin proposed a delimitation of the constituencies. Still urging women's representation, Abul Mansur Ahmad recommended an increase in the number of seats for women from ten to twenty for "education among the girls is increasing more rapidly than in the boys" and besides, the present Provincial Legislature of East Pakistan "have got already 12 seats in a membership of 303". To allay Zahiruddin's apprehension, Sardar Amir Azam recalled that the Punjab had already been limited to forty per cent (120 members) representation in the West Pakistan Assembly as provided for in the Establishment of West Pakistan Act. Refuting Ahmad's rationalisation, Abus Sattar stressed the fact that aside from the ten seats, all the general seats were open to women. All amendments of the Opposition were voted out.67
Most of the remaining provisions in Chapter II, Part V (The Provincial Legislature) were pushed through on February 7, 1956 when the Awami League members staged a walk-out in protest against a ruling of the Deputy Speaker. This unique haste exacted its toll in the approval of provisions which were discovered later to be defective. Steps had to be taken to re-open these provisions to admit revisions. Although a large number were verbal ones, two amendments were substantial, namely, (1) a new clause requiring the Governor's recommendation before a financial measure involving the expenditure of provincial funds were to be introduced or moved in a Provincial Assembly; and (2) an addition to the legislative power of the Governor to "promulgate an Ordinance authorizing expenditure from the Provincial Consolidated Fund". These amendments were not challenged by the Opposition.

Relations between the Federation and the Provinces

When the relations between the Federation and the Provinces were under consideration, the Opposition attempted to secure maximum autonomy for the units by limiting the extent of Federal and Provincial laws. Without even bothering to counter the arguments, the Government side foiled the plan by force of majority.

With renewed vigour, Zahiruddin strove to reduce the scope of Federal legislation to defence, foreign affairs, and currency only, with a rider postulating the location of army headquarters in West Pakistan and the naval headquarters in East Pakistan. Sheikh Mujibur Rahman supported the amendment by drawing the attention of the House to a United Front pledge that "if we come to power and we are to frame the Constitution of the country, then only three subjects will be given to the
Centre, namely, Foreign Affairs, Currency and Defence, and the rest of the subjects will go to the East Bengal Province and West Pakistan Province." An East Bengali Minister of Foreign Affairs, Hamidul Huq Choudhury, describe the unfavourable outcome to the provinces of Zahiruddin's amendment:

If it is accepted, Provinces will be deprived of most of the powers that we are now proposing to give them. Take for instance Defence. Defence does not actually mean defence when there is a war. Defence is preparation for defence; Defence means training; Defence means education, scientific research and all sorts of things, chemicals and physical; all kinds of education come under Defence. Defence means preparation of the people for defence as well as material and moral. Then take Foreign Affairs; everything which has got the slightest connection with Foreign Affairs will come under it. Then Sir, Currency. Currency is such a complicated subject that all affairs connected with it, controlling, or managing will be considered to come under it. 71

Choudhury's speech backfired when Abul Mansur Ahmad retaliated with the statement that if defence, foreign affairs, and currency covered such a big field then the United Front of which Choudhury was a member had made "a false promise to the people and secured votes under false colours". In amplification of his previous suggestion, Zahiruddin demanded one Federal List containing the three enumerated subjects; all other subjects would be retained by the provinces. All these labours to persuade the majority to change their stand ended in failure. A bid to prevent the passage of a provision allowing Parliament to legislate for the provinces by consent proved futile after Choudhury exposed the ludicrous consequence.

Still intent on the acquisition of more provincial powers, Abul Mansur Ahmad introduced an amendment requiring the consultation of the Provincial Legislature instead of the Governor before the enactment of a law implementing
international agreements. He voiced the suspicion that the Governor, being an appointee of the President, would be acting not in the interest of the Provincial Government but in the Central Government. On second thought, he expressed his willingness to authorise consultation through the Provincial Government. Sardar Amir Azam Khan made it clear that the clause (Power of Parliament to give effect to international agreements, etc.) was not intended to deprive the provinces of their autonomy. Provision would be included in the constitution defining the word "Governor" as the Provincial Government and not the Governor in his discretion. Another provision would be inserted requiring the Central Government to lay copies of treaties entered into by the Government on the table of Parliament. He stressed that the interest of the provinces would still be protected because Parliament would be composed of an equal number of representatives from East and West Pakistan. Ahmad's amendment, together with similar changes from other members, was negatived. 72

A verbal amendment on clause 106 (residuary power of legislation) was opposed on grounds of superfluity and failure to give previous notice although Chundrigar explained that it was tabled for the sake of clarification to avoid waste of time and money in unnecessary litigation. 73

Claiming that it was an inroad into the residuary power of the provinces and an insult to the President, Zahiruddin stood against a proviso designed to avoid inconsistency by allowing Parliament to legislate over a matter passed by the Provincial Assembly. Chundrigar premised his reply with the fact that the Opposition had already agreed to giving an act of Parliament priority in case of conflict with an act of the Provincial Assembly and they also accepted the clause empowering the
President to override an act of Parliament if he had assented to a law passed by the province. But a situation might arise which could be resolved only by granting precedence to an act of Parliament over an act of the Provincial Assembly assented to by the President. This clarification silenced the Opposition. A new clause regarding requirements as to recommendations made by the President and the Governors was added without any debate.

Speaking on the financial provisions between the Federation and the provinces, Abul Mansur Ahmad and Zahiruddin suggested the deletion of the provision exempting the Federal Government from taxes on their property, business, and consumption of electricity to increase the revenues of the provinces. Choudhigar pointed out that the province was also freed from taxation. He advised the two against assuming that the Federation was an entity separate from the provinces for it "consists of two provinces and, therefore, if the Federation carries on any trade or business in any of the provinces, it is carrying on business within the territories of the Federation itself".

Zahiruddin's attack on the provision restricting borrowing by the provinces was carried by Sardar's amendment authorising such action by the Provincial Government. An objection aired by Abdur Rahman Khan to the setting up of a tax ceiling on professions, trades, callings and employment for its restriction on the provincial income was overruled when Choudhury, a former Finance Minister of East Bengal, submitted the information that the taxpayers of the province were in no position to pay more than the amount stipulated.

The Opposition called for the deletion of the clause prohibiting the imposition of restrictions to inter-provincial trade to neutralise a "minister" plan which Zahir-
uddin described as follows:

The motive behind this clause is that no development of industries will be allowed in those places where they have not been developed so far.... Let us take the different industries: cotton industry; the textile industry. Today we are dependent upon foreign countries for our requirements. My submission is that supposing today we demand that textile mills and other industries may be set up in East Bengal. What will be the position? We will not be in a position to set up our industries even if permission is granted to import machinery because in some other parts of the country the capitalists have managed to develop certain industries. The result will be that goods manufactured by these capitalists will be dumped in our part of the country and we shall not be able to develop our industries.... 77

Supporting Zahiruddin's allegation, Sheikh Mujibur Rahman particularised:

When I went to East Bengal with this Draft Constitution I had conversation with people of all shades of opinion. The intelligentsia remarked that formerly East Bengal was a colony and by this Constitution they want to make East Bengal still greater colony and a market of the industrially developed areas of West Pakistan. 78

Haseen answered the charges by citing not only the absence of a ban on interstate trading in Australia but also the help that the provision could extend to alleviate food scarcity in East Bengal. The clause was retained without amendment. 79

Most of the provisions on audit and accounts were accepted by the Opposition but objections were registered against some clauses on the administrative relations between the Federation and the provinces on the oft-repeated grounds of interference with provincial autonomy. Abul Mansur Ahmad's amendment supposedly aimed at the prevention of encroachment of Federal authority in the quelling of an internal disturbance was lost when only nine members voted for its incorporation while thirty-three were against. 80
Though the first Constituent Assembly’s Basic Principles Committee Report was silent on the operation of railways in the provinces, the Constitution Bill of the second included thirteen clauses. However, the consideration of these provisions was held over pending the settlement of the question as to whether the operation of railways should be transferred to the provinces or retained by the Central Government. A few days later, the Coalition Party in the Constituent Assembly agreed to keep railways as a provincial subject. In line with the decision, Sardar moved for the deletion of clauses 128 to 140 (provisions on railways) and the drafting of a new article handing over the railways to the provinces. At first, Dedar Ahmed saw no need for the provision as according to him, the Fifth Schedule had already included railways in the Provincial List; but after being reminded by Abius Sattar that such a schedule had not been taken up as yet, Dedar Ahmed suggested a period of six months for the turnover. Prime Minister Mohammed Ali advised the appointment of an expert committee to study such problems as assets and liabilities, employee problems, and strategic role of railways in war. Dedar Ahmed’s amendment was shelved and the Prime Minister’s was adopted.

Analysis of the Federal Structure

An essential feature of federation is the distribution of powers which, in the case of the Pakistan Constitution of 1956, is contained in three lists: Federal, Concurrent, and Provincial with a discernible concentration of powers in the Central Government despite the fact that the Federal List embraced only 30 subjects while the Provincial List had 94 excluding the residuary powers of legislation which were allotted to the provinces. The Federal List included defence, foreign affairs, citizenship,
posts and all forms of telecommunication, shipping, air-
ways, and currency which, in the words of Choudhury,
covered a very wide field. On the other hand, the Pro-
vincial List contained entries concerning police, railways,
agriculture, administration of justice, and education.
Items of lesser import such as civil and criminal laws,
maries and divorce, trade unions, and price control
were enumerated in the Concurrent List for dual legis-
lation.

During the debates on the Fifth Schedule, the
Opposition wanted to limit the subjects under the Federal
List to defence, foreign affairs, and currency alone and
the rest would be included in the Provincial List except
those "that may be enumerated for the Concurrent List" by a majority vote of the total number of members of a
Provincial Legislature sitting in session. In supporting
these changes, Abul Mansur Ahmad emphasised that the
Opposition was just redeeming a pledge in the 21-Point
Programme of the United Front Party to give the Centre
only the above three subjects. Zahiruddin tried to win
the West Pakistani members to his "regional autonomy"
line of thinking by telling them that the amendments
restricting the Federal subjects would benefit West Pak-
istan too. Refusing to swallow the bait, the West Pak-
istan members voted for the adoption of the original
Federal List in the Fifth Schedule. Apparently dis-
satisfied by the outcome of the deliberations, Zahiruddin
compared the list of central subjects to a "tin of con-
densed milk containing so many other subjects". Less
imaginative than his Opposition colleague, Abul Mansur
Ahmad commented:

So far as the preparation of Federal List is
concerned, they have added together as many as 11
subjects under one head taken from the Government
of India Act, 1935 and have been shown as one figure
and in the matter of Provincial List they have split up one item of the Government of India Act, 1935, into 4, 5, 3 and 2 to augment the number in the Provincial List. Now, Sir, can you support this dishonest method? 68

By his calculation, one came up with 77 subjects in the Federal List and 73 in the Provincial. 39

The granting of residuary powers to the provinces was a distinct departure from the Government of India Act of 1935 which conferred on the Governor-General the prerogative to allocate a subject not included in three lists to either of the legislatures. 90

Priority of powers was allotted to the Federal Executive and Parliament over the objection of the East Pakistani members. The Federal Government could interfere in the administration of the provinces in cases of external aggression and internal disturbance, violation of the provisions of the Constitution, implementation of laws passed by Parliament, acquisition of land, dismissal and appointment of the governor, and control over the senior civil servants in the provinces. 91

As discussed earlier, in case of conflict between the acts passed by Parliament and the Provincial Assembly, the former was to prevail. An exception provided for in clause 110 (2) 92 was in reality temporary in nature because ultimately, Parliament could supersede at any time any law passed by the Provincial Assembly.

A unique feature of the federal structure of Pakistan was the provision authorising the President to establish a bridge between the Federation and the provinces or between provinces. Once formed, this link officially termed the "Inter-provincial Council" could investigate and discuss subjects of common interest and recommend measures "for the better co-ordination of policy and action". The only condition that could obstruct the forma-
tion of this body would be the withholding of consent by the Governments of the provinces concerned. 93

In concluding this chapter, it is tempting to endorse the primary reason behind the 1956 Constitution's centripetal tendency as adduced by a Pakistani advocate as follows:

A depression in the Wall Street closes banks in Lahore and Delhi; a devaluation of the pound brings a headlong financial crash. If that be true of countries lying thousands of miles apart, it is idle to insist that the units are entitled to be masters in their own houses. 94


5. Karl von Veyss, Political Development in Pakistan (Princeton: Princeton University Press, 1965), p. 28. President Ayub Khan made a speech on October 4, 1956, congratulating the Pakistani people and the leaders of the Pakistan People's Party. According to von Veyss, the statement was extremely important because it was not true to事实 to him. His speech referred to the following statement: "It would be no exaggeration to say that up to the creation of Pakistan, the [West] Pakistanis have not known any real freedom or sovereignty." (See Statement of Veyss's book, pp. 299-301.


7. These instances had been mentioned in numerous pages in Debates.


10. See the speech of Dr. Schaus in Debates, ibid., dated October 13, 1953, Vol. XV, No. 6, p. 155.

11. Kamini Zakerin, Parliamentary Government in Pakistan (Here:


13. Dr. Ishtiaq Hussain Qureshi and Dr. ishna Hussain were
elected as representatives from East Bengal but, strictly speaking,
they were not native East Bengalis but former residents of the United
provinces now known as Uttar Pradesh. Interview.

pp. 3647-3672.

15. Ibid., pp. 3673-3680. See also "Constitution Bill Passed

16. Mubert Feldman, A Constitution for Pakistan (Karachi: Ox-

p. 583. Haroon’s statement is verbose too.

The quoted phrase appears redundant too.

19. Ibid., dated November 2, 1953, Vol. XV, No. 20, pp. 660-
661. See also "C.A. Decision on Nomenclature", Down dated November 3,
1953, pp. 1, 5.

20. Ibid., dated February 21, 1956, Vol. I, No. 76, pp. 3358-
3361. See also "Pakistan Names Islamic Republic", Down dated February

21. Ibid., pp. 3415-3429.

22. Ibid., dated February 28, 1956, Vol. I, No. 79, pp. 3535-
3536. See also "Constitution Bill's Adoption Likely", Pakistan Times

23. Ibid., pp. 3534-3537.

24. Ibid., dated February 13, 1956, Vol. I, No. 70, pp. 2956-
2959.

25. Ibid., dated November 4, 1955, Vol. XV, No. 22, pp. 673-
674. See also "C.A. Defines Powers of Cabinet, Head of State", Down

26. Clause 37 as rounded by Sir Zafar Ali Khan had "cleared
the air and is stated in a language that cannot be misunderstood".
For additional discussion on the implications of the change see K. J.
Hawkin, Essays on the Constitution of Pakistan (London: Pakistan Co-

p. 3618.

28. Ibid., p. 3619.

29. Ibid., p. 3620.
30. Ibid., p. 3622.
31. Ibid., pp. 3622-3624. These discourses are given in detail to shed light on Brohi's question cited in Chapter VI regarding the difference in the conditions for appointment of ministers and other types of ministers.
40. Ibid., p. 3452.
41. Ibid., pp. 3459, 3452-3467. A discussion of the hidden motives of the Muslims and the Hindus is found in Gallard, op. cit., pp. 240-250.
47. Ibid., pp. 15-16.
49. Ibid., pp. 3105-3106.
50. Ibid., pp. 3120-3121.
51. Ibid., pp. 3121-3125.


56. Ibid., dated November 12, 1953, Vol. XV, No. 27, pp. 729-734.


58. The complete text of clause 68 (5) of the Draft Constitution of 1956 reads: "The Governor shall be ineligible for election to the National Assembly, or a Provincial Assembly, and if a number of any such Assembly is appointed Governor his seat therein shall, on his assumption of office as Governor, become vacant."


60. Ibid., p. 2628.

61. Clause 71 (9) of the Final Constitution reads: "Nothing in this Article shall be construed as disqualifying the Chief Minister or any other Minister, or a Deputy Minister or Parliamentary Secretary, for continuing in office during any period during which the Provincial Assembly stands dissolved, or as preventing the appointment of any person as Chief Minister or other Minister, or as Deputy Minister or Parliamentary Secretary, during any such period."


63. Ibid., pp. 3096-3098.


65. Ibid., pp. 2632-2633.


67. Ibid., pp. 3220-3224. This clause was re-opened on February 28, 1956 to allow the representation of territories that may be included after Constitution Day and an amendment was subsequently made changing the number 120 to 2/5 of the Assembly numbers. Another attempt by Zahiruddin to increase the number of seats for women to twenty was frustrated. See Debates, ibid., dated February 28, 1956, Vol. I, No. 79, pp. 3552-3555.

68. Ibid., dated February 7, 1956, Vol. I, No. 66, pp. 2634-2642. Forty-two clauses were adopted after the walk-out; 170 amendments were not moved due to the Women's League's absence in the house. See "Opposition Walks Out Twice", Pakistan Times, dated February 8, 1956, p. 1.
69. Ibid., dated February 28, 1956, Vol. I, No. 79, pp. 3555-3563. The clauses pertaining to the excluded end special areas were not taken up on February 8 but on the 13th and 16th of February because, contrary to the claim of the Government of Bengal, there was an excluded area in Chittagong Hill Tracts. Minor amendments were incorporated in the pertinent clauses in conformity with the prevailing condition. See Debates, op. cit., dated February 8, 1956, Vol. I, No. 67, p. 2653; dated February 13, 1956, Vol. I, No. 70, pp. 2970-2976; and dated February 16, 1956, Vol. I, No. 73, pp. 3159-3162. The slow political development of the excluded areas was presented by Brohi as the prime factor for the inclusion of special provisions in the Constitution governing the administration of those areas. See Debates, ibid., dated June 26, 1954, Vol. XVI, No. 16, pp. 181-182.


71. Ibid., pp. 2658-2659.

72. Ibid., pp. 2669-2676.

73. The phrase, "Subject to the provisions of Article 107 and 108" was added before the original clause. Article 107 of the Final Constitution concerned the power of Parliament to legislate for provinces by consent while article 108 authorised Parliament to give effect to international agreements.

74. Debates, op. cit., dated February 18, 1956, Vol. I, No. 67, pp. 2676-2687. Article 110 of the Final Constitution reads: "(1) If any provision of an Act of a Provincial Legislature is repugnant to any provision of the Act of Parliament, which Parliament is competent to enact, or to any provision of any existing law with respect to any of the matters enumerated in the Concurrent List, then subject to the provisions of clause (2), the Act of Parliament, whether passed before or after the Act of the Provincial Legislature, or, as the case may be, the existing law, shall prevail and the Act of the Provincial Legislature shall to the extent of the repugnancy, be void. (2) Where an Act of a Provincial Legislature with respect to any of the matters in the Concurrent List contains any provision repugnant to the provisions of an earlier Act of Parliament or an existing law with respect to that matter, then, if the Act of the Provincial Legislature, having been reserved for the consideration of the President, has received his assent, the Act of the Provincial Legislature shall prevail in the Province concerned, but nevertheless Parliament may at any time enact any law with respect to the same matter, amending or repealing the law so made by the Provincial Legislature."

75. See article 111 of the Constitution of the Islamic Republic of Pakistan (1956).


77. Ibid., pp. 2704-2706.

78. Ibid., p. 2707.
79. Ibid., pp. 2704-2709.

80. Ibid., pp. 2719-2720. Several of these clauses were reopened a day before the passage of the Constitution Bill for improvement of the language and other minor alterations. See Debates, Ibid., dated February 28, 1956, Vol. I, No. 79, pp. 3564-3572.


84. For a definition of the word "Federation" see Dr. Saiyid M. Ahmed, The Federation of Pakistan (Hyderabad: Educational Book Depot, 1956), pp. 11-13.

85. See Note 70 above.


87. Ibid., pp. 3180-3213.


89. Ibid., p. 1864.


92. See Note 74 for the provision of this clause.


CHAPTER IX

THE JUDICIARY

Although a central judiciary is invariably established in both federal and unitary constitutions, the need is greater in the former because of the tendency for the central administration to encroach on the powers of the subordinate units. How important a role the judiciary would play in Pakistan's governmental affairs could be deduced from the nature of the proceedings in the first and second Constituent assemblies particularly during the debates over the division of powers between the Centre and the provinces. The emotional outbursts that could be multiplied many times presaged the occurrence of disputes that would call for an impartial arbitrator. Moreover, in a country with sizable minorities, separatist tendencies could be easily curbed through the protection of individual rights by the judiciary which the ordinary citizen regards as the "custodian of rights" of the masses and the intellectual thinks of as a "guide in the path of evolution of free institutions in the country".  

Sources of the Single System of Courts

Pakistan inherited the single system of courts from the Government of India Act of 1935 which functioned as the interim constitution from 1947 to 1956. In fact, some of the judicial provisions of this law found their way into the Constitution of 1956. The nomenclature of the courts in the provinces was retained but the jurisdiction of the highest court was modified to conform with the independent status of the country through the elimination of the United Kingdom's Privy Council in the jurisdictional structure. Since the promulgation of the 1956 Constitution, the Federal Court has been renamed the
Some features of Pakistan's judiciary were borrowed from other countries such as the United States. Notable among these is the judicial practice of refusing to render a judgment or an opinion unless a case or an appeal is brought before the courts following a prescribed procedure. In this sense, the judiciary could be considered the weakest among the three main branches of the governmental machinery.

General Impression of Debates

Most probably, this weakness was the primary reason for the mildness and brevity of the deliberations compared to the usual "rhetoric and fume" and protracted speeches characterizing the debates over the other aspects of the constitution. Aside from the inability to decide unless a case had been filed, the court was dependent on the executive to enforce its judgments and on the legislative to pass the laws. For the power-hungry politician, the judicial branch was a barren sphere where the chances of picking were meager. Although men of comparatively lower qualifications could garner positions in the legislative and executive departments through political manoeuvres, no one except highly-respected lawyers of tradition, proved judicial competence, and vast experience could sit in the highest court of the land.

Noticeable too was the absence of bitterness between the opposing forces and the walk-outs regularly staged either by the religious minority members or by the Opposition parties. The non-delivery of name-calling speeches seemed to imply the existence of a truce between political adversaries. At one point, the Government's going out of their way to frame amendments in conformity with the suggestion of the Opposition evoked an expression of thanks.
from Zahiruddin, the Awami League's most bitter critic of the Draft Constitution Bill. Amendments were introduced not to obstruct constitution-making but to improve the language or clarify the sense of the provisions. In only one instance was there an attempt to disrupt the proceedings but this action was not generated by irreconcilable differences over the judicial clauses. As touched in a previous chapter, Abdul Ghaffar Khan had called for the dissolution of the Constituent Assembly on the ground that the Muslim League members had ceased to be representative after the 1954 East Bengal elections but Brohi's opposition was upheld by the majority.

**Assembly Debates**

These general impressions were apparent during the deliberations of the first Constituent Assembly on 5, 6, 8, and 13 April, 1954 and of the second on 8, 9, and 14 February, 1956.

**Supreme Court**

In the first Constituent Assembly, an amendment regarding the appointment of puisne judges of the Supreme Court by the Head of State was introduced by Ghayasuddin Pathan to substitute the phrase "after taking into consideration the recommendations made by the Chief Justice" with the words "on the recommendation of the Chief Justice". In support of this modification, Nur Ahmed argued that the recommendation of the Chief Justice should be made binding on the Head of State to ensure the independence of the judiciary. Malik Shaukat Ali proposed the granting to the Head of State of discretionary powers similar to the appointment of the Election Commission members purportedly to avoid Cabinet interference. Pirzada, being the chairman of the Judiciary Sub-Committee, informed
the Assembly members that a verbal error was committed when the recommendation of his sub-committee was incorporated in the Basic Principles Committee Report. He explained that the intention to ensure the judiciary's independence was to be found in the phrase "on the recommendation" which meant that the persons to be appointed must be recommended by the Chief Justice. The Head of State could disagree with the recommendation but the authority to recommend another person would still rest with the Chief Justice so that "ultimately only that person will be appointed who will be recommended by the Chief Justice of Pakistan".6

Favouring the amendment of Ghayasuddin Pathan, Jrobi who was then Law Minister, cited the danger should Malik Shaukat Ali's proposal be followed. Acting on his discretion, the Head of State could ignore the choice of the Chief Justice and endanger the independence of the judiciary. The motion was adopted without further opposition.

In the second Constituent Assembly, however, the phrase "on the recommendation of" was changed to "after consultation with" without any debate.7

In considering the qualifications of judges of the Supreme Court, the first Constituent Assembly increased the number of years' experience required by an advocate or pleader of a High Court to 15 years from the original 12 recommended by the Basic Principles Committee.8 This number was accepted by the second Constituent Assembly in disregard of Zahiruddin's move to reduce it to 10. His suggestion for the appointment of distinguished jurists as judges of the Supreme Court even without meeting the minimum number of years' experience was also objected to by Chundigar who foresaw the problem of ex-law professors ignorant of the practice of the courts. After a minor
verbal alteration, the proviso was made a part of the bill. 9

Gazder's objection to the high salaries allotted to the judges occasioned a debate that consumed a good part of the April 5, 1954 session of the first Constituent Assembly. After citing the fact that the Objectives Resolution included a provision securing the independence of the judiciary, he suggested the drafting of a clause prohibiting the reduction of salaries of judges of the Supreme Court as a precautionary measure against possible legislative or executive reprisal. Instead of the Constituent Assembly fixing the salary of the Chief Justice of the Supreme Court at Rs. 5,000 and that of a Puisne Judge at Rs. 4,000, he preferred the Legislature to determine the amount subject of course, to the limitation that such emoluments should not be varied during the tenure of a judge. A constitutional provision would make it difficult, he warned, for Parliament to reduce the emoluments should necessity arise in the future. Moreover, he thought it rather exorbitant to pay high salaries aside from a rent-free residence and other allowances on the ground that Pakistan is a "very poor country and our national income is the lowest in the world". 10

Although in agreement with Gazder that the average income of the Pakistanis was not high, Abdul Hamid maintained that it was desirable to attract the very best men to the judiciary for at the moment, it was probable that some private legal practitioners earn more than what was being provided for judges in the Basic Principles Committee Report. He called the Assembly's attention to the higher rates that the Puisne Judges were receiving at the time compared with the salaries being proposed. Although admitting the small income of Pakistan, he maintained, nevertheless, that the need for able men neces-
situated "some sort of compromise so that we may not be left with third-rate or fourth-rate members of the bar".  
He disapproved of the Legislature's adjusting the judges' salary from year to year for fear of a reduction in pay. Gazder gave the assurance that the conditions of service would not be changed during the judges' term of office.

Expressing surprise at Gazder's opposition, Jegum Shah Nawaz attacked the question from the point of view of standard of living. She felt that the purchasing power of the people must be raised and yet, the policy of reducing the salaries of the covenanted services had been continued. "How can we possibly expect them to maintaining \[sic\] a standard of living which would be in consonance with the positions which they are to occupy?" she asked. She elaborated on Abdul Hamid's arguments on higher salaries for judges by volunteering the information that outstanding lawyers in the provinces and in the capital earn not less than ten thousand rupees per month and there were cases where the fees reach thirty thousand. The "paltry sum of Rs. 5,000 with a few amenities" was, in her opinion, insufficient to attract the leading practitioners, hence, she proposed higher rates so that the services of eminent jurists such as Mr. Salim, Mr. Manzoor Qadiri, and others could be availed of. In addition, she wanted the rates to be stated in the constitution together with a clause forbidding undue reduction.  

Malik Shaukat Ali reminded the Assembly that in the event the lower rates set in the proposed constitution would be approved, a situation will arise in which the new judges would be receiving less than the old ones whose salaries as embodied in the Government of India Act of 1935 could not be varied to "their disadvantage during their tenure of office".
Speaking in Urau against Gazder's stand, Jam Sahab of Lasbala prophesied that a reduction in salaries of the judges would "open the door to dishonesty, and the evils of corruption and nepotism, against which so much has been said on the floor of the House...". 14

The next speaker, Ahmad E. H. Jaffer, was so carried away by his enthusiasm that he exclaimed in mock seriousness, "Down with Gazder!" 15

Touching on new ground, Mishtar arrived at the conclusion that a constitutional provision disqualifying retired judges of the Supreme Court from practising after retirement practically punished them for "entering into the profession of law". 16

The last speaker on the topic, Brohi commented extensively on the salaries of judges. Talking from experience as a practising lawyer before his appointment as Law Minister, he asserted that the fat fees drawn by advocates were considerably reduced by the Government in the form of income taxes. 17 He came to the conclusion that the real inducement was the belief that the call to the judgeship was a "roll call of honour". To support his contention that a high salary was not a guarantee against corruption, he alluded to cases of men making "tons and tons of money" but at the same time, they "soil their hands by corrupt practices". The best safeguard against anomalous practices, according to him, was character which could enable the judges to "keep themselves above the corrupting trait of favouritism and intrigue". 18

Touching on the problem that would arise should the salaries of judges be fixed in the constitution and be subjected to a difficult amending procedure, he described a hypothetical situation wherein a salary revision occasioned by a change in the purchasing power of the
rupee would adversely affect the judges in the sense that "whereas all other public servants will have got the revision of their salary by a mere stroke of the pen, Legislature will have to go through the cumbersome and complicated procedure for the purpose of securing the revision in the quantum of their salary". The Law Minister described the system adopted by India in which the salary of the judges of the Supreme Court could be changed by an ordinary law-making process with the provision that it could not be varied to the prejudice of a judge. He suggested that this aspect could be taken up in the provision regarding amendments. Gazder's suggestion was rejected and the original provision was adopted.

Instead of following the salary rates in the Basic Principles Committee Report, the second Constituent Assembly raised the pay of the Chief Justice from Rs. 5,000 to Rs. 5,500, and of the Puisne Judges from Rs. 4,000 to Rs. 5,100. Corresponding increases were given to the High Court Judges, too. These figures were accepted without debate.

The simple procedure set by the Basic Principles Committee for removing Supreme Court judges by a Bench of three judges did not satisfy the constitution-drafters of the second Constituent Assembly. A more complicated system was evolved as follows:

A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by the National Assembly, supported by a majority of the total number of members of that Assembly and by a majority of not less than two-thirds of the members present and voting, has been presented to the President for the removal of the Judge on the ground of misbehaviour or infirmity of mind or body:

Provided that no proceedings for the presentation of the address shall be initiated in the National Assembly unless notice for the motion to present the address is supported by not less than thirty members.

Parliament may by law prescribe the procedure
for the presentation of an address and for the investigation and proof of misbehaviour or infirmity of mind or body of a Judge.23

Several amendments on this proviso were tabled not by the Opposition but by Chundriar, then Law Minister and pilot of the Constitution Bill. He wanted to improve the draft by changing the words "a majority of the total number of members of that Assembly and by a majority" with the shorter phrase "the votes". Instead of requiring thirty members to suggest the motion for the judge's removal, he proposed one-third of the total number of members. The applause following the Opposition's acceptance of the amendment24 indicated the rarity of such instantaneous agreement.

During the deliberation on the Basic Principles Committee report, an amendment moved by Gazard to prohibit a former judge of the Supreme Court "to plead or act in any court or before any authority in Pakistan" was enthusiastically supported by Malik Shaukat Ali who saw it as a restraint to ex-judges from influencing the decision of subordinate courts and by Nur Ahmed who realised its "salutary effect" on public life. Favouring the amendment in general, Jam Saheb Mir Shulam Qadir Khan of Lasbela warned that "to lay down this restriction in sweeping terms would not only be inequitable, unjust and unwise but also unbefitting a document which is intended to form the basis of an Islamic Constitution for this country". He said that it was unfair to a former judge of the Supreme Court who resigned due to illness to be prevented from earning a living by resuming practice at the bar. The provision would also deprive the country of the services of able and efficient but retired jurists. Furthermore, "it would lead to a situation where-in the members of only a few rich families would find it possible
to aspire for the office of a judge because men of ordinary means would not find it worthwhile" to work with uncertain tenure of service.25

Countering the assertion of Jam Saheb, Brohi pointed out that the proviso was included to advise a prospective judge of the limitations of his position. In amplification of Malik Shaukat Ali's arguments, he showed that the provision promoted the independence of the judiciary since the "high and mighty officers of the Supreme Court of Pakistan may not by their very presence in subordinate courts create an atmosphere in which the conduct of judicial proceedings may be prejudiced". A minor amendment was added by Nishtar to make the proviso apply only to permanent judges.26 The same clause was incorporated in the Final Constitution with neither question from the Opposition nor amendments from the sponsor of the Constitution Bill.

A Basic Principles Committee recommendation authorising temporary appointments of a High Court judge to the Supreme Court was opposed by Gauder who expressed anxiety over the inconveniences that would be undergone by a judge appointed during such a limited period. Brohi hastened to elucidate that the provision was needed to meet emergencies and was not designed to perpetuate the appointment of additional judges.27 A similar clause was added to the Final Constitution without debate in the second Constituent Assembly.28

Questioning the Basic Principles Committee's suggestion that Karachi alone should be the Supreme Court seat, Abdul Monem Khan tabled an amendment calling for a Supreme Court sitting in Dacca at least once a year. Wholeheartedly supporting this modification, Ahmad E. H. Jaffer reminded everyone that the House had already agreed on the inclusion of Dacca as a seat of the future Parliament;
Furthermore, the Federal Public Service Commission had made it a practice to interview candidates in Dacca too. For greater convenience, a suggestion of Muhammad Abul Quasem allowed East Bengal litigants to file cases with the Registrar of the Dacca High Court. After praising the soundness of the principle behind the amendment, Brohi informed the House that steps had already been taken to permit the filing of cases not only in Dacca but also in all cities with High Courts.29

A bigger concession was given to the East Pakistanis by the second Constituent Assembly through the increase of the number of Supreme Court sittings in Dacca from once to twice a year.30

The Opposition was amenable to the proviso on the jurisdiction of the Supreme Court so long as five judges at least should decide on substantial questions of law. Chundrigar replied that Supreme Court rules would consider such aspect. He added, "As a matter of fact, our Supreme Court shall sit in a bench of five judges when hearing constitutional cases". Abul Ansur Ahmad's insistence on incorporating such a provision in the Constitution was frowned upon by the House.31

A minor amendment to reduce the value of the subject matter to be appealed to the Supreme Court from not less than 20,000 to not less than 15,000 rupees was adopted without discussion.32

High Courts

In compliance with a promise made by the Government side during the general discussion of the Constitution Bill,33 the following sub-clause was introduced:
The President may transfer a Judge of a High Court from one High Court to the other High Court but no such Judge shall be transferred except with his consent and after consultation with the Chief Justice of the High Court of which he is a Judge. 34

This addition was accepted with an expression of thanks from the Opposition.

Seeing a defect in a Basic Principles Committee recommendation on the same topic, Dr. Mahmud Husain 35 moved to substitute the words "with the concurrence" by the phrase "on the recommendation" on the ground that such an amendment would secure a more independent judiciary. The original clause, he noticed, gave the initiative in transferring judges to the Head of State who could abuse the power for various considerations. To obviate such possibility, he recommended the change in phrasology which, in effect, transferred the initiative to the judiciary. He deemed it wise to allow transfers "if the administration of justice in the country requires that a High Court Judge should be transferred and not because the executive so wants". 36

The amendment was accepted with Hamid's precaution that the power granted should be exercised only under exceptional circumstances and not in all cases. He warned of the possible increase in the number of High Courts that a permanent Judge would be debarred from as provided in the rules if transfers were frequently resorted to. 37

Before the whole clause was put to a vote, Brohi explained that the Judge himself might desire a transfer on grounds of health or need for experience in another High Court. In these particular instances, he concluded that the action would promote the "interests of the administration of justice". 38 Before taking his seat, he expressed hope for the establishment of a convention that would prevent the abuse of such powers. Gazder also
emphasised that the purpose of the proviso was not to place the High Courts in a subordinate position. The debate was closed by Nishtar who described the clause as a "necessary evil" which might become innocuous after profiting from experience. 39

In the second Constituent Assembly, Zahiruddin wanted to know the reason behind the dropping of the amendment concerning the prohibition of the appointment of judges of High Courts as acting Governors. Briefly, Chundrigar justified the deletion in the absence of a clause in the proposed constitution providing for the post of acting Governor. He defined the word "Governors" as including "a person who has been appointed as Governor for a term of five years and also a person who may be appointed a Governor ... for two or three months during the leave period of the former". 40

Unsatisfied with the explanation, Zahiruddin suggested a definition of the word "Governor" but Abul Sattar dismissed his doubts by saying: "I do not think there will be any difficulty." The amendment was carried. 41

General Provisions

During the deliberations on the general provisions, the East Pakistani members remonstrated against a proviso excluding the special areas from the jurisdiction of the Supreme Court and High Courts because it deprived the inhabitants of their fundamental rights. Obviously, they were thinking of the people in the Chittagong Hill Tracts, which Malik Muhammad Firoz Khan Noon believed to be a special area. This misgiving was assuaged after Chundrigar pointed out that the region, not being a special area, would still be within the jurisdiction of the courts. The clause, he clarified, was applicable solely to the tribal areas situated in West Pakistan. 42
In the first Constituent Assembly, Gazder disapproved of a clause in the Basic Principles Committee report empowering the Chief Justice to appoint court employees. He cited the occurrence of many injustices because "some persons happened to incur the displeasure of the Chief Justice of some Court". Joining hands with him, Quasem presumed that the Chief Justice would be unable to select the best possible talent available because he would be busy in his judicial work. In the absence of a rebuttal, Gazder's amendment for the Supreme Court to frame rules on the appointment of the staff was passed. A similar amendment was embodied in the chapter pertaining to High Courts. The second Constituent Assembly adopted these provisions in the Third Schedule instead of in the main body of the Constitution.45

Perceiving the insufficiency of clause 225 of the Basic Principles Committee report for preserving the independence of judges, Mörhö recommended that all administrative expenses of the court such as salaries, allowances, and pensions of its employees should be charged to the revenues of the Federation and excluded from discussion in the legislative body for without these safeguards, the "Judiciary will become, in effect the hand-maid of the Government". Admitting the praiseworthy of the principle, Quasem noted the impossibility of assigning all the staff's expenses to the Federal revenue without knowing the exact amount. He was anxious too to ascertain the restraints on the courts' overspending. On the other hand, Nur Ahmed lauded Mörhö's amendment as "in keeping with the fundamental principle of Islam". In reply, Mörhö mentioned the rules of the Supreme Court, the, fiscal regulations to be enforced by the Ministry of Finance, and the Government's audit system as deterrents to overpayments. He recalled the fiscal provisions of the Gov-
ernment of India act, 1935 which contained innumerable items of expenditure charged to Federal revenues without stipulating the actual amount. Since the amounts would be variable, Brohi acknowledged the difficulty of setting up guarantees against unnecessary expenses. Brohi's motion was adopted. An identical amendment was appended under the chapter on High Courts.

In the second Constituent Assembly discussion, the above provisions were not embodied in the Constitution Bill. Instead, a provision was drafted allowing the Supreme Court and the High Courts to formulate rules for the conditions of service of their officers and servants subject, insofar as remuneration and leave were concerned, to the approval of the President.

The inclusion of subordinate court provisions in the constitution was opposed by Abdu Sattar who felt that these courts could be controlled by acts of the legislature. Although embodied in the Basic Principles Committee report, these provisions were omitted by the second Constituent Assembly without further debate.

**Analysis**

The constitution that was finally adopted on March 23, 1956 provided for only two types of courts, namely, the Supreme Court and the High Courts. The former had been placed at the apex of the judicial pyramid above the two provincial tribunals— one each for East and West Pakistan.

Directly under them were the inferior courts whose terms and conditions were to be governed by laws promulgated by the National Assembly. In the absence of such laws, they would have to be regulated, in the meantime, by laws existing before Constitution Day.
The lower court system had been divided into two categories: the civil subordinate courts and the subordinate criminal courts. As their nomenclature implied, the former type had "jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred". The latter category handled criminal offences.

The civil subordinate court set-up had a District Court immediately below the High Court and a Civil Court under the District Court. The lowest rung of the ladder was occupied by the Court of Small Causes. Jurisdiction of each of these tribunals was determined by the pecuniary value involved in each case.\(^5\)

The system of subordinate criminal courts included five levels in descending order: Courts of Session, Presidency Magistrates' Courts (replaced by Adaptation Order 1949), Magistrates of the First Class, Magistrates of the Second Class, and Magistrates of the Third Class. Jurisdiction of each of them was defined by the Code of Criminal Procedure and the nature of a crime was determined by the Pakistan Penal Code.\(^6\)

Running like a thread through all these courts was the concept of an independent judiciary which, as indicated in the debates, was of great concern to all the members of both Constituent Assemblies. The Tamizuddin Case and all the cases connected with it had demonstrated the power of the legal branch to wean the people away from violence in the midst of a crisis.

Having been discussed in detail in this chapter and elsewhere, the pertinent provisions need not be repeated. Suffice it to say that all of them were aimed at establishing a court system that would serve as a reliable interpreter of Pakistan's fundamental and ordinary laws.\(^7\)
NOTES


2. At this time, the Hindu members were still boycotting the sessions. Even if they were present, the less controversial nature of the provisions on the judiciary as compared to those on religion and fundamental rights precluded the occurrence of heated verbal exchanges. It is, however, interesting to speculate on the effect of the unrecorded amendments tabled by the absent Hindu members on the character of the judiciary of Pakistan taking into account the unusual receptivity of the Government side during this particular period.


5. The original provision in the BPC Report read: "The appointment of the Puisne Judges of the Supreme Court should be made by the Head of the State after taking into consideration the recommendations made by the Chief Justice."


10. Ibid., dated April 5, 1954, Vol. XVI, No. 2, p. 20. During the April 5 meeting, Abdul Ghafer Khan was the sole occupant of the Opposition benches. See "Full Independence to Supreme Court," Dawn dated April 6, 1954, p. 3.

11. Ibid., pp. 20-21.

12. Ibid., pp. 21-22.

13. Ibid.

15. The unparliamentary remark was withdrawn after Dr. Guroshi invited the attention of everyone to it. See ibid., pp. 24-25.

16. ibid.

17. Ibid., p. 28.

18. ibid.

19. ibid.

20. ibid., pp. 28-29.


27. ibid., p. 39.


32. Ibid., p. 2749. Several other clauses were adopted after a few verbal amendments. Ibid., dated February 9, 1956, Vol. I, No. 63, pp. 2752-2753.


34. Ibid.

35. The BPC provision reads: "The Head of State may, with
the concurrence of the Chief Justice of the Supreme Court, transfers a Judge from one High Court to another within the territory of Pakistan."


37. Ibid., pp. 67-68.

38. Ibid.

39. Ibid., pp. 69-70.


41. Ibid., p. 2760.

42. Ibid., pp. 2762-2763.


44. Ibid., dated April 8, 1954, Vol. XVI, No. 4, p. 64.


47. Ibid., dated April 8, 1954, Vol. XVI, No. 4, p. 65.

48. See the Third Schedule of the Draft Constitution of 1956 and the Final Constitution, Parts I and II.


51. Ibid., p. 710.

52. Ibid., pp. 710-713.

CHAPTER X

CIVIL SERVICE, EMERGENCY AND GENERAL PROVISIONS

This chapter encompasses the deliberations on the remaining important aspects of the constitution, namely, the civil service, emergency provisions, and the general provisions which include such diverse topics as Islamic provisions, appointment of special councils and boards, provisions relating to states and Rulers, Scheduled Castes and Backward Classes, location of Federal capital, State languages, and amendment of the constitution.

Sources of Provisions

The constitutional history of Pakistan has demonstrated that the various ruling groups whether merchants as in the early days of the East India Company, or politicians of the British Crown after the War of Independence of 1857, or citizens after the republic was established, had found a competent and independent civil service as the best means of accomplishing the multifarious tasks of administration.

Unorganised and undisciplined in the beginning, the servants of the East India Company were coerced by Lord Clive to sign covenants not to receive presents, which action probably resulted in the coining of the term "Covenanted Civil Service". During the years of British rule, the unprecedented expansion of the civil service called for the enactment of new regulations and the appointment of various commissions to achieve efficiency. The last Government of India Act passed by the British Parliament shaped the federal pattern of the civil service by establishing a Public Service Commission for each province with duly prescribed duties such as the conduct of examinations, enforcement of discipline, re-
crucial, and settlement of claims.²

The Government of Pakistan inherited the system but not the personnel. After the partition only a few civil servants opted for Pakistan while the rest chose to remain with India.³ The system was a heritage in the sense that its rules set up by the Government of India act of 1935 were borrowed freely by the constitution framers.

In the same manner, the emergency powers of the President were copied after similar provisions in the same act. Briefly touched in the previous pages, they will be discussed in detail here.

Many of the topics included in the general provisions were without precedent for they involved problems that did not crop up during the colonial period. Bereft of a model, the Assembly, perforce, had to initiate provisions on the organisation of a body for Islamic research and instruction in advanced studies, procedure to determine and avoid laws repugnant to the Holy Quran and Sunnah, location of the Federal capital, and adoption of a State language.

**General Impression on Debates**

The issues that aroused intense regional feelings among the West Pakistanis and the East Bengalis concerned the choice of a State language and grant of extraordinary powers to the President during emergencies. The problem of determining a bill's repugnancy to the Holy Quran and Sunnah divided the Assembly members into Muslims and Hindus while the selection of Karachi as the capital of the Federation was opposed by a Sindhi. The tense atmosphere was eased somewhat when the Assembly proceedings touched on such comparatively minor items as the civil service, establishment of councils and boards, accession
of States, and other less controversial provisions.

Assembly Debates

The debates of the first Constituent Assembly on the civil service, emergency powers, and general provisions were started as early as the months of October and November, 1953; postponed during the campaign for the East Bengal elections of March, 1954; and resumed in May, June, and July, 1954. Examining these topics for seven days during the month of February, 1956, the second Constituent Assembly applied the finishing touches on the 28th, only a day before the passage of the Constitution Bill.

Civil Service

The Basic Principles Committee of the first Constituent Assembly had recommended a separate article to discourage any member of the Federal Legislature from introducing bills intended to persecutes public servants. Avoiding such an ironclad proviso, the second Constituent Assembly accepted a clause which allowed either the National Assembly or the appropriate Provincial Assembly to enact rules on this subject.

The Basic Principles Committee also authorized the dismissal of a civil servant or members of the armed forces without a hearing if the "dismissing authority is satisfied that in the interest of the security of Pakistan it is not expedient to give to that person such an opportunity". Jinnah opposed the inclusion of this clause on the following grounds: First, should the clause be retained, the dismissing authority may unjustifiably refuse to grant trial using the security of the country as a convenient excuse. In the second place, information prejudicial to
security could be kept confidential during and after a hearing by prohibiting its publication. Thirdly, the provision would expose public servants to unreasonable dismissals and the civil servant "who has very independently and honestly performed his duties may be thrown overboard by an unscrupulous authority" by merely citing the danger to Pakistan's security. He emphasised the possibility of "grave abuse" as the strongest argument for deletion of the clause. 7

M. M. Shah Nawaz gave her full support to the amendment after citing the great service that the civil servants performed since partition. Although not disagreeing with Bhui's stand, Abdul Hamid wanted the persons employed in the civil service to "raise themselves up to (sic) the highest (sic) standard which the public of Pakistan expects of them in the discharge of their duties". Bishwar reminded the Assembly members that a similar provision existed in the Constitution of India. In making the recommendation, the Basic Principles Committee had nothing in mind but effective protection of the permanent services. Nevertheless, he suggested the omission of the clause in question on the supposition that "it is liable to be abused". The paragraph was deleted after Bhui discussed the difficulty of imposing in practice conformity to one set of moral standards. 8

Refusing to subscribe to the arguments of their predecessor, the second Constituent Assembly incorporated this particular proviso without debate. 9 An entirely new clause was introduced by Zahiruddin and Abul Manaur Ahmad to recruit personnel for all the services on the basis of parity between East Pakistan and West Pakistan but it fell through after the sponsors of the Constitution still recalled a decision made on this aspect during the discussion on fundamental rights. 10
In the first Constituent Assembly, Brohi worried over the vagueness of the clause on the tenure and conditions of service of a Government servant. For the benefit of the draftsmen, he suggested the substitution of another word for "emergency" to avoid confusion in interpretation. Nishtar elucidated on the objective of the provision:

What is laid down here is this that if conditions of service are to be changed to the disadvantage of Government servants then it can be done only if the change relates to a class of Government servants and not individuals. The idea is to give protection from victimization; not protection against national requirements. If national interest demands - if a certain emergency occurs which necessitates taking some action - then in that case everybody is expected to face hardships.

Concurring with Brohi's observation, Begum Shah Nawaz reminded the assembly that the Constitution of India carried no such safeguard for civil service personnel. After citing hypothetical cases of harassment by the ruling party, Jum Sindh of Dhi�&l#2; shared the inclusion of a constitutional guarantee prohibiting dismissal except during an unprecedented national emergency or financial crisis.

This Basic Principles Committee provision was discarded by the second Constituent Assembly in favour of a clearly-worded one which forbade a change of tenure and conditions to the employee's disadvantage with the further stipulation that if the President or Governor orders salary reductions, "the person affected shall have no right of appeal, but may apply for review of that order".

The Opposition attempted to amend the provision on tenure of office of public service employees by adding the following:

Provided that no person belonging to the Civil
Service of Pakistan or to any All-Pakistan Service shall be posted in the Province without the consent of the Provincial Government, and any such person serving in any province shall be recalled by the Federal Government if so desired by the Provincial Government concerned; provided further that the preceding proviso shall not be applicable to any member of the Defence Services.\(^{16}\)

In his arguments, Zakiruddin maintained that the amendment was "one of those salutary \([\text{sic}]\) suggestions that we give to make success of whatever scent of Federation that may be found in the Constitution itself". He complained against the air of superiority that Central Government officers exude when deputed to the provinces. This attitude, he analysed, was generated by a belief that the Provincial Government had no power to take action against them.

(...) this clause, if it is passed without this amendment, would mean that the provincial governments will not have any control over the officers who go to serve in their place. I am not, as I have submitted, referring to the condition of service; I am only referring to the position wherein a certain officer may become persona non grata with the provincial government, but, Sir, in such circumstances, the provincial government will not be in a position to get rid of the services of that officer, because there is a clause which provides for a certain amount of transfer but that transfer is even within the provinces. I have suggested that if, God forbid, any situation arose wherein an officer deputed by the Central Government becomes persona non grata in a province, that province should have the right to recall this officer.\(^{17}\)

To strengthen Zakiruddin's stand, Sheikh Mujibur Rahman pointed to an instance of a Chief Secretary sending fortnightly reports to the Central Government about the activities of ministers in the province. He foresaw disciplinary action against disobedient officers only if the same party was in power in the Centre and in the provinces.

Choudhury objected to the amendment on the ground
that the ministers were already empowered to discipline their subordinates through transfer, non-promotion, or suspension. He mentioned Dr. Khan Sahib's suspending one of his senior officers for violating his order. On the example cited by Rahman, he blamed the minister concerned for failing to protest against his Chief Secretary's questionable activities. In reply, Abul Mansur Ahmad invited Choudhury's attention to the impossibility of filing a protest when the minister was unaware of such confidential reports. On the other hand, Abdul Latif Biswas took to task the Provincial Government for accepting the assignment of such disloyal officers.

Subjected to a closure motion to save time, the amendment was rejected without division.\textsuperscript{19}

The rest of the amendments could not be acted upon for non-observance of the prescribed period for submission.\textsuperscript{19}

In view of the controversy that arose over the promotion and transfer of persons employed in public services, discussion was postponed for about two weeks. Finally, on February 20, 1956, the provision was taken up. This time Sardar Amir Azam Khan recommended a substitution by incorporating the original provision and adding the statement continuing the All-Pakistan Services existing before Constitution Day.\textsuperscript{20} In line with their concept of full provincial autonomy, the Opposition disapproved of the establishment of All-Pakistan Services whose members would serve both the Centre and the provinces. In his eagerness to eliminate the Centre's interference in disciplinary problems in the provinces, Zahiruddin exclaimed, "If we are going to have a federation, let federating units be free to act and administer their own part of the country".\textsuperscript{21}

Sardar Amir Azam Khan had to remind him that civil service officers needed protection too. In addition, he
pointed to the injudiciousness of a Governor's dismissing an officer appointed by the President. He informed the Assembly that nothing new was being organised since the clause merely continued the existing All-Pakistan Services. The protection provided for in the amendment would also benefit employees who had been appointed before the partition by the Secretary of State and had been allowed to remain in the service as agreed upon. Sardar's explanation paved the way for the adoption of the provision.

The creation of bodies to be known as the Public Services Commissions for administering the All-Pakistan Services in the Centre and in the provinces was approved without opposition during the session of the first Constituent Assembly after Boreh supplied the following explanation: "It is of the essence of good administration that the public servants should be assured that the incidence of their service, the question of their promotion and matters affecting their discipline, are dealt with by an expert and independent body which has the courage and the capacity of acting beyond party politics".

Amplifying further, he mentioned the difficult role that the services would play to prevent the breakdown of the administration when provincial ministers were dismissed.

Although all the second Constituent Assembly members were for the establishment of these commissions for the Federation and the provinces, they disagreed on the details. Ostensibly to achieve parity between the two wings, Zahiruddin moved an amendment calling for an equal number of members from each of the two provinces in the Federal Public Service Commission. Refusing to listen to this old tune, the Government side rejected his amendment. Two Opposition amendments pertaining to the Provincial Public Service Commission were, however, accepted.
without much trouble. The first one, moved on February 9, 1956, simplified the procedure to be followed by the Governor in removing a member. The other approved on February 28, 1956, eliminated the ambiguity in the provision on the removal of a member through Supreme Court action. Abdul Mansur Ahmad's suggestion fell through when the sub-clause it was supposed to amend was omitted. Various verbal amendments merited merely brief discussion.

In the first Constituent Assembly, the Basic Principles Committee failed to specify the reasons for and the manner of removing members of the Public Service Commissions. Discovering the lacuna, Sardar Amir Azam Khan voiced his apprehension but it was Gazder who suggested the taking of steps to obviate the possibility of the ruling party's influencing the Commission's decision. To prove that the danger was real, Ahmad Jaffar cited an instance wherein a minister requested the Public Service Commission for a quota on the appointment of trade commissioners. In consonance with the suggestions, the first Constituent Assembly appended Brohi's draft provision which allowed the removal of Public Service Commission members only "in the manner and for reasons that a Judge of the High Court may be removed". Another clause forbade the appointment of commission members in the Government except in the Public Service Commission of the Federation or the province. Similar articles were approved by the second Constituent Assembly without discussion.

A proposal for deletion of a Basic Principles Committee recommendation which made the advice of the Public Service Commission binding on the executive head of the Centre or the province puzzled Gazder who asked, "Will the recommendations of the Public Service Commission be accepted or they will not be accepted? The position
remains very dark and we do not know what might happen."

In an attempt to clarify, Abdulla-al Mahmood presented a hypothetical case which allowed the Public Service Commission to dictate to the Government through recommending the appointment of three persons for the same number of vacancies. In this particular instance, Mahmood claimed that the Public Service Commission practically "became the appointing authority and the Government has to issue the appointment letters only". Although several other members supported the proposal for the omission of the clause, it was Jrohi whose line of thinking dismissed all doubts:

The Public Service Commission is an advisory body and as such its advice cannot invariably be binding. To do that would be to make it an appointing body. In fact the advice of Public Service Commission itself may be fraught with favourism [sic]. After all the members of the Public Service Commission are not paragons of virtue. They are not angels; earthly considerations sometimes do dominate their thinking. There may occur therefore cases where the injustice may be done and the executive may have no remedy. As the executive is the appointing authority and as it is responsible to the Legislature it should not invariably be bound by the advice of the Public Service Commission. Somewhere the area of ultimate responsibility has to be located and it has been fixed in the executive.31

This particular provision was also discarded by the second Constituent Assembly.

With the termination of the deliberations on the services of Pakistan, the Assembly members focused their attention on the emergency provisions.

**Emergency Provisions**

The Opposition concentrated their attack on the clause authorising the proclamation of emergency on account of war, external aggression, or internal disturbance.32 The initial salvo was fired by Mahmud Ali who complained.
that proclamations of emergency had been made during the last eight years without sufficient grounds. Although he admitted the clarity in the meaning of war and external aggression, he could not say the same thing for internal disturbance. He cited incidents in the past wherein the Government considered opposition to a particular measure and the defeat of the Muslim League in the March, 1954 elections as internal disturbances that justified such a proclamation.

He believed that the Assembly should not "place such powers in the hands of the Government" notwithstanding the example set by other countries in the light of the experiences already mentioned.

Before concluding his speech, he suggested the definition of the phrases "security of Pakistan" and "the security of the economic life of Pakistan" in the "clearest possible terms"; and furthermore, appealed to the rest of the Assembly members to "rise to the occasion and forget party politics" in preventing the Head of the State from misusing his powers.33

To forestall a main line use of this article, Mahmud Ali tabled an amendment limiting the reasons for a proclamation of emergency to war and armed rebellion.34 Sheikh Mujibur Rahman spoke against the term "internal disturbance" which he felt was the allegation behind the proclamation of an emergency and the suspension of the East Bengal Government.35 Pursuing an identical trend of thought as Mahmud Ali's, Muhammad Abdul Khaleque moved to omit "economic life" and to substitute "rebellion" for the word "disturbances". He limited the duration of the proclamation and pressed for restrictive action of the National Assembly36 on the assumption that the original clause gave sweeping prerogatives which permitted a "despotic and dictatorial" executive to "misuse those
powers" as corroborated by the declaration of an emergency in East Pakistan for an indefinite period. Lending support to his partymen, Abul Mansur Ahmad claimed that even war was not a sufficient reason for suspending the constitution. He referred to the British Parliament which met daily during World War II despite the incessant German bombing of London. Nurur Rahman preferred Mahmud Ali's amendment for the original clause was an "entire negation of democracy". After summarising the arguments of his colleagues, Zahiruddin pleaded for the submission of the proclamation of emergency to the National Assembly within thirty to sixty days on the ground that if "you can trust one man, the President, why not trust 300 members of the National Assembly".37

To appease the opponents of the clause, the Government side moved an amendment to sanction the proclamation of an emergency only when the internal disturbance proved beyond the control of the Provincial Government. Another amendment directed the President to lay the proclamation before the National Assembly as soon as conditions make it practicable.38 Elucidating the points objected to, Sardar Amir Azam Khan emphasised that the terms "rebellion" and "internal disturbance" were not really vague because they were found in every constitution of the world. Furthermore, he mentioned the check on the President's powers:

One thing more which we must not forget that these powers are not to be exercised by the Head of State in his discretion. They are to be exercised by a representative Government responsible to the legislature which will be under the control of the legislature and they will have to come and explain their actions to the legislature because they will be responsible to the legislature and they will exercise this power very cautiously.39

Sardar reminded the Opposition members that the sponsors of the Constitution Bill were as much anxious as they were.
"to make it almost impossible for anybody to misuse" the powers under deliberation. The clause was passed without the inclusion of a single amendment from the Opposition. The deliberation on the succeeding clauses was held over to allow the sponsor of the bill to draft amendments. When it was taken up on February 20, 1956, the amendments were accepted without debate by the Opposition.

The clause entitled "Proclamation of assumption of power by the Federation in case of failure of the constitutional machinery in the provinces" was considered on condition that changes would be permitted in conformity with the amendments in the clauses left over. Although Zahiruddin's first amendment to the article was declared out of order, his second was accepted by the Chairman. The Opposition leader allowed Presidential interference in the affairs of the provinces only on three occasions, namely, war, external aggression, or armed rebellion. He expressed his anxiety over the President's misusing his authority to curtail provincial autonomy particularly if the "provinces and the Central Government will not be governed by the same political party". He was bold enough to assert that the extraordinary powers mentioned in the clause had been used recently as weapons to subdue the Provincial Government. Without mincing words, Mahmud Ali recalled the removal of the United Front party from power in East Bengal after the March 1954 elections through the implementation of section 92-A of the Government of India Act whose terms bore a close resemblance to the clause under discussion. Abul Mansur Ahmad denounced as ineffective the laying before the National Assembly of the proclamation should a Provincial Government fail to obtain majority support. In his view, the best protection was to authorise a proclamation solely in the event of war and rebellion.
Another amendment introduced by Zahiruddin set a 30-day limit to the laying of the proclamation before the National Assembly purportedly to force the executive to summon the National Assembly within such period. Visualising the danger of the President's misusing his powers, Nurul Hakan called for the deletion of the whole clause unless Zahiruddin's amendments were approved. To halt the useless repetition of arguments, Sharoon presented a closure motion. Zahiruddin's first amendment was rejected with only 14 in favour and 34 against. The same fate befell his 30-day limit amendment. Before the whole clause was put to a vote, Hamidul Huq Choudhury took pains to underscore its importance:

"Unless this provision is there you may create a vacuum in respect of administration of large territories. We have kept it in the hope that there will be no abuse and if there is any abuse the public opinion is the proper check."

Sheikh Mujibur Rahman's feeble rejoinder that the clause militated against the federal principle failed to dissemble the majority.

In the provision entitled "Proclamation in case of financial emergency", Zahiruddin recommended the deletion of the clause, "all money bills to be reserved for the consideration of the President after they are passed by the Provincial Assembly" since it took away the financial powers of the provinces which worked, in his opinion, like a "financial 92-A". The intention of the clause, as Abul Mansur Ahmad put it, was to punish the province for an offence committed by the Centre. Chunurigar corrected Ahmad's impression by explaining that the Centre would also suffer in a financial emergency for salary reductions would also affect persons serving the Federal Government. Touching on the improbability of the abuse of this prerogative, Chunurigar remarked:
The proclamation can be issued only on the advice of the Cabinet, which Cabinet will be responsible to the National Assembly in which both the provinces will be equally represented. There is, therefore, no cause whatsoever for any apprehension that it can be used against any province. After the incorporation of minor amendments, the clause was made a part of the constitution.

Being non-controversial, the last clause on the revocation of the proclamation was accepted without discussion.

The Basic Principles Committee embodied similar emergency provisions in their report but the first Constituent Assembly, in the absence of the Opposition, did not initiate a paragraph by paragraph deliberation.

**Islamic Provisions**

The Assembly debates on the provisions relating to the Quran and Sunnah commenced in 1954 although as early as 1952, the Basic Principles Committee had recommended the non-passage of laws repugnant to the Holy Quran and the Sunnah and a procedure was prescribed by which a bill challenged for its repugnancy would be sent to a board composed of five persons known to be masters of Islamic law. The establishment of this board was vigorously objected to by the Hindus because it affected the supremacy of Parliament. Subsequently, an amendment was adopted granting to the Supreme Court alone jurisdiction to determine the bill's repugnancy. Professor Chakraverty spearheaded the move for the deletion of the clause. The first point he dwelt on was the inapplicability to modern times of some of the principles in the Quran and the Sunnah as stated by a Muslim author and Secretary of the First Constituent Assembly at the time:

It goes without saying, that a State is an ever-changing, ever-growing organisation and just as a
dress made for an infant child, however, well-made, cannot be expected to fit him as he advances in years, so a statecraft and social order conceived by our fore-fathers a thousand years ago cannot be expected to answer our 20th century needs, without stretching it to a tearing point.52

As further proof, he referred to Turkey's abandonment of the Sheriat administration in favour of the Swiss Civil Code. He cited the provision to exempt money bills from being declared repugnant as "an admission by itself that some of the injunctions of the Quran are not practicable today". He warned of the confusion that would arise in the interpretation of the Quran and the Sunnah by each of the numerous Muslim sects. To highlight the intolerant attitude of these denominations, he related the case of a Muslim religious leader who, during an enquiry, intoned that "out of the 73 sects among the Muslims, 72 sects will go to hell".53

Among the Quranic verses considered inconsistent by Chakraverty were one which forbid women from becoming legislators and another discouraging friendship between Muslims and non-Muslims.54 He stressed the superfluity of the provision for "in the future legislature of the country, eighty-five per cent of the members in the provinces, and in the centre will be the Muslims" who "will be loyal to the Quran and the Sunnah".55 In concluding his speech, Chakraverty described the un-Islamic state of things in Pakistan:

When I look around me, I find the reality like this: there is detention without trial, which is absolutely un-Islamic; I find many of my friends are not giving Zakat; I find that there is a want of social justice all around me; I find our Honourable Ministers are not following the life of the Khalifas - the simple life of the Khalifas of old. So in these circumstances, please do not blame me if, as a member of the minority community, I am full of fears and apprehensions about the proposed paragraph. Sir, when I look around me, I find, to my sorrow and dismay,
that there is an absence of brotherhood, an absence of equality, an absence of social justice, and all these are said to be the cardinal virtues of Islam. I find that there is a clash between a Mussalman and a Mussalman as it was witnessed in Lahore some time ago. I find there is a clash between an Islamic country and another Islamic country. So, in these circumstances, my mind is full of fears and apprehensions about this clause and I would be less than human if I did not express these fears and apprehensions.  

Aware of the improbability of the clause's deletion, Chakraverty exerted efforts to neutralise its effect by presenting another motion rendering its inapplicability to the personal laws of the non-Muslim citizens.

The next speaker, Iftikharuddin, began by introducing an amendment whose redundancy he admitted himself. Nevertheless, it served as a preliminary to a speech about a pre-partition agreement giving freedom to all citizens of the state. Listening for a while, the President later on called Iftikharuddin's attention to the irrelevancy of his remarks.

Arguments similar to Chakraverty's were brought out by Kamini Kumar Datta who took the stand that it was "a term [repugnancy] which is very difficult to enunciate and which is very difficult in the matter of application" because "even the courts have differed as to what is really repugnant and what is not". Viewing the issue from a different angle, Dhirendra Nath Datta, another Hindu member, demanded the separation of religion from politics. A word of warning came from Bhupendra Kumar Datta who diagnosed the clause in question as "fraught with numerous untoward consequences particularly in a country inhabited by so many religious minorities, non-Muslims as well as Muslims".

Disagreeing with Dhirendra Nath Datta's proposition to isolate religion from politics, Abdul Hamid, a Muslim, recalled the role that religion had been playing in every
walk of life. The Opposition's objection, he reiterated, arrived "too late in the day" since they had already agreed to previous Islamic provisions. Speaking in Urdu as usual, Jam Saheb of Lasbela endeavoured to pacify the non-Muslims by assuming that "no Muslim citizen of Pakistan harbours any design of making life difficult for the minorities in this country or harming their interests in any way whether they are Christians, Parsis, or Hindus". He asked the Hindu members to repose their confidence in the Muslim majority.

Jam Saheb's pacification efforts seemed futile when Bhabesh Chandra Nandy, a Hindu member, specified instances of Muslim fanatics adopting hostile attitudes towards the activities of non-Muslims. He feared a retaliation by Hindu zealots against the Muslims in India. Although he acknowledged the inseparability of religion from politics, he foresaw danger in awarding a dominant role to the former.

Revealing the real reasons behind the clause, Sardar Amir Azam Khan explained that its retention will not only make the constitution Islamic but also would create confidence in the masses that the constitution-framers meant what they promised. Reading passages from documents, he refuted the argument that an agreement was entered into by the Quaid-i-Azam regarding the safeguarding of the legitimate rights of the minorities. Nur Ahmed tried assuaging the feelings of the Hindus by describing the clause itself as "the charter of the minorities rights in Pakistan" since the Quran and the Sunnah actually allow the non-Muslims to practice their own religion and their own personal laws.

Incensed by Sardar's assertion that Jinnah was coerced into accepting the agreement concerning the partition of India, Chattopadhyaya, the Hindu leader of
the Congress Party, hurled the following challenge: "I would ask him [Sardar Amir Azam Khan] to read the entire speeches of Mr. Jinnah on this point - exchange of population." Carefully prefacing his speeches with the statement that the Age of Science had replaced the Age of Revelations of Muhammad's time, Majumdar, a Hindu, advised the Assembly to "adopt ourselves to the circumstances and not always look to Quran and Sunnah".

Nishtar strove to rescue Sardar Amir Azam Khan who committed a faux pas with his denial of the existence of an agreement regarding the minorities by assuring the non-Muslims that the Pakistanis had no intention to break Jinnah's promise to safeguard the legitimate rights of the minorities. In refuting the arguments for divorcing religion from politics, he mentioned Gandhi, the "greatest Hindu of modern age", who subscribed to religion's influence on politics. Repudiating Majumdar's advice, he described Islam as a "living religion, a dynamic religion, a religion for all times and climes", which gives liberty to the people to "frame various laws and pass various orders in accordance with the exigencies of time". The exclusion of financial matters from the repugnancy clause, he amplified, was merely a temporary measure enabling the administration "to survey the whole position and to find out as to whether there is any conflict between Islamic principles of economy and the present day economy".

The last speaker, Dhoi, sought to answer Chakraverty's question on the conflict between personal law and the Quran by quoting a saving clause in the Fundamental Rights which ran as follows: "Save with regard to matters governed by the personal law of a Community or otherwise expressly provided in this Constitution, any law in force in any part of Pakistan at the time
of commencement of this Constitution shall be void in so far as it is repugnant to any provisions of this part, and any law made hereafter which contravenes any of the provisions of this part, shall to the extent of such contraventions, be void."\(^{67}\) he reminded the House members that a paragraph in the Objectives Resolution declaring God's sovereignty had made it imperative that the legislative competence of the Federal Legislature should be subjected to limits set out in the Holy Quran and Sunnah. Instead of a Board of Experts on Islamic Law or the Federal Legislature, the Supreme Court would decide on repugnancy which could be advantageous to the non-Muslim members because they would have a forum to challenge the legality of the law in question. Denying the Holy Quran's and Sunnah's incompatibility to science and the scientific spirit, he recalled that science and the scientific spirit were themselves the contribution of the Holy Quran to the world. To safeguard the personal laws of the non-Muslims, he suggested the incorporation of guarantees on the assumption that the pertinent statement in the Directive Principles of State Policy was insufficient.

Nevertheless, doubt still prevailed in the minds of the Hindus. Kamini Kumar Datta insisted that the issue of repugnancy would spring up "if there is a conflict between injunction of the Quran and personal law of non-Muslims". He continued:

Of course, according to your interpretation there is another injunction in the Quran that the personal law should prevail. But unless it is in the Statute Book, it has no value. Even if it is redundant and unnecessary, it is necessary that such a provision should be included there to remove all apprehensions from the mind of minority community.\(^{68}\)

Tired of the seemingly interminable arguments, Brohi described Datta's point as befitting children. The President closed the debate by putting the amendment to
vote. Chakravarty's motion was supported by 12 members but opposed by 33. Iftikharuddin's amendment was rejected without division, while Kamini Kumar Datta's was negated by a vote of 34 with only 12 in favour. The same number voted for the adoption of the original clause.

The following day, Kizilbash moved that "the Holy Quran and the Sunnah, wherever these expressions occur, shall mean, when applied to any sect, such interpretation thereof, as is recognised and accepted by that particular sect". Admitting the existence of different schools of Fiqah in Islam, he undertook to allay the apprehensions of each of these schools by quoting a portion of former Prime Minister Khwaja Nazimuddin's speech:

I want to make it clear in this connection that the interpretation of the Holy Quran and the Sunnah by one sect shall not be imposed upon another and that endeavour shall be made to organize this education in a way that it does not militate against the beliefs and traditions of any particular sect but that its own views in these matters are given the fullest recognition.

Obviously unconvinced, Nandy could only anticipate the people's confusion from various contradicting interpretations. On the other hand, Shaikh Sadiq Hasan looked at the amendment as a means to avoid conflict and bloodshed among the sects. Digging deeper into its implications, Nur Ahmed augured the advent of sectarianism arising from the difficulty of deciding the repugnancy of a bill. Chattopadhyaya considered the amendment as out of order on the ground that a provision on repugnancy had already been passed wherein the interpretation was to be given by the Supreme Court. Rightly thinking otherwise, the President put the question before the House. A large majority adopted the motion.

Another clash between the Hindus and the Muslims occurred during the deliberations on Quasem's amendment calling for the setting up of an organisation financed
by a special tax to propagate the teachings of Islam and for "Aar-bil-maruf" and "Maki-anil-munkar". Without wasting time, Dhirenda Nath Datta branded the motion as an attempt to convert the masses to Islam with government funds. He did not relish the idea of compelling non-Muslims to know the tenets of Islam. Fazlur Rahman made it clear that no compulsion was involved. However, he felt that it was the duty of Pakistan, being an ideological state, to spread the contents of its ideology to all its citizens irrespective of religion to remove distrust and suspicion. The inclusion of the Hindus as targets of an implied Muslim proselytisation aroused an emotional outburst from Nandy who threatened:

We know how to create agitation; we know how to defy law .... I say this openly that we will be forced to ask for separate territory within Pakistan for our own ideology .... We have not accepted Pakistan as an ideological state based on Islamic ideology.

With the topic of conversion occupying the minds of the Assembly members, Arshi was obliged to present concrete illustrations to prove that "making known" was not the same as "to convert". His explanation that only the Muslims will be required to pay the special tax failed to satisfy Chattopadhyaya who incessantly demanded for the withdrawal of the amendment. The Muslims were equally adamant. Mishtar asserted that every one should be interested in the campaign to root out evil, since the law had general application. Nursing the same idea, Shahood-ul Haque urged all citizens to master the teachings of the Holy Quran and the Sunnah for they were all authorised to challenge the repugnancy of a bill. With the Hindus' failure to limit the propagation of the Islamic doctrine to Muslims alone, the amendment became part of the approved Basic Principles Committee Report.

Quasam's motion proved to be the proverbial straw that broke the camel's back. Outvoted in all Islamic
provisions, the Congress Party members walked out of the session on November 2, 1953 after Chattopadhyaya delivered a speech explaining the futility of their participation. Two Scheduled Caste members followed suit.\textsuperscript{77}

The objection of Jhandara, a Parsi member, was too puny to prevent the adoption of the title, "Islamic Republic of Pakistan". In the absence of the Hindu members, the remaining paragraphs were made a part of the approved basic Principles Committee report.\textsuperscript{78}

During the deliberation of the second Constituent Assembly on the above provisions,\textsuperscript{79} Zahiruddin pointed to the superfluity of imposing the special tax in view of Parliament's existing authority to levy it. Pressing his objection further, he labelled the imposition of such a tax as a bid'at (innovation) forbidden by Islam. Bhupendra Kumar Datta opposed the provision for a different reason - that it should be made applicable only to a backward community. Although Choudhury touched on it earlier, it was Sardar Amir Azam Khan who pinpointed the necessity of the proviso by reading a clause under the fundamental rights which prohibited the imposition of special taxes on any person to propagate or maintain any religion other than his own. Haroon's clarification that the Hindus were not to be taxed in this particular case\textsuperscript{80} led to the adoption of the clause with only slight amendments.

Discussion on the provisions relating to the Quran and Sunnah had to be postponed for almost two weeks in anticipation of serious objections from the Opposition. Finally considered on February 20, 1956, the article with but verbal amendments moved by Sardar Amir Azam Khan was accepted.\textsuperscript{81} Zahiruddin's suggestion to make the possession of Muslim law degrees as an additional qualification for members of the commission was rejected after Gurmani reminded him that the unavailability of Muslim law degree
holders would prevent the commission's activation. 82

The termination of the debates on the Islamic provisions signalled the taking up of the next chapter - the appointment of special councils and boards.

Special Councils and Boards

Although the first Constituent Assembly bestowed power on the Head of State to appoint councils with the consent of the parties concerned, they merely stated the councils' functions in a general way, i.e., "to deal with matters of common interest between more than one Unit or the Units and the Federation". 83 With an eye on a possible conflict in the economic field between the provinces as shown in the debates on the Basic Principles Committee Report, the draftsmen of the Constitution Bill in the second Constituent Assembly included a proviso for the establishment of a National Economic Council.

At the outset, Zahiruddin wanted to postpone the discussion by claiming that the atmosphere was "not suitable" but Haroon's insistence convinced the Chairman to take up the clause. Spearheading the assault, Abul Mansur Ahmad moved several amendments to change the composition and mode of appointment of the Council and limited the term of office to six years. After Ahmad sat down, Zahiruddin submitted the following recommendations: (1) the organisation of the Council within sixty days after Constitution Day; (2) reduction of the number of ministers from the Provincial Government from three to two; and (3) withdrawal of the right to vote from the Chairman. 84 A few minutes later, Ahmad added an amendment to make the Council's advice binding on the Federal Government. He was followed by Zahiruddin who moved that any committee or expert body appointed by the Council...
should be representative of both provinces and the phrase "uniform standards" should be substituted with the word "uniformity". Unsatisfied with the submission of the Council's annual report to the National Assembly alone, Sheikh Mujibur Rahman suggested the inclusion of the provincial assemblies.

Describing the clause on the National Economic Council as a symbol of betrayal of East Bengal by the United Front Party, Zahiruddin mentioned what he termed the injustices committed against East Bengal. Pointing to the absence of a definite date for setting up the Council, he said:

So far as this phrase "as soon as may be" is concerned, we have seen enough of it. We know what it means. It may mean the next day; it may mean the next year; and it may mean the Day of Judgment. He expressed the fear that the people of East Pakistan would not be fully represented if the four ministers to be appointed from the Federal Government would be from West Pakistan. The reason behind his suggestion for taking away the vote from the Chairman was the preservation of equality in representation between the two provinces. He emphasised the waste of money in not making the Council's advice binding on the Federal Government. His arguments in favour of the word "uniformity" were as follows:

Here is a textile mill in East Pakistan and there is another mill in West Pakistan. They will say that the development of these two mills has not been uniform and the products of one is [sic] better than the products of the other. There must be "uniformity of standards", they will argue - the words chosen are very good for the purpose of deceiving the people of East Bengal. They will say - this textile mill has produced a fine variety of cloth. The Economic Council will say that there must be some improvement there. For the purpose of "improvement" they will make a "plan". You put new spindles and do this and do that
so that the "standards" are uniform. Then they will say here is the product of East Bengal and here is the product of West Pakistan; the standards are equal! What I have suggested in my amendment is that there will be uniformity in the development of these things. 88

Fully endorsing Zahiruddin's speech, Abul Mansur Ahmad warned that "if this disparity is not removed, it may not bring ruination of East Pakistan alone, it may have adverse reaction upon the whole of Pakistan". 89

Mahmud Ali and Sheik Mujibur Rahman were one in opposing the clause although the latter had earlier introduced an amendment.

Dismissing some of the Opposition's reasons as propaganda, Hamidul Huq Choudhury defended the original clause by mentioning the fact that the burden of economic development had been shifted to the provinces with the reduction of subjects under the control of the Centre. However, East Pakistan's inability to develop its industries due to lack of funds and absence of private and foreign capital had necessitated the Federal Government's assistance in raising foreign loans or obtaining foreign aid. He felt that the State, being ultimately responsible for the overall economy of the country, should be assisted in continuously examining the problems of the provinces and in planning for their solution. This was the purpose, he explained, for the creation of the National Economic Council which was to be composed of the executive authorities of the Provinces and the Centre. After the body had completed the plans, the Provinces would become responsible for their implementation. To drive home his point against Zahiruddin's recommendations, he asked: "Therefore, to say that this body shall be given the authority to make its decision binding, does it not encroach into the very field on which my friends have been building up an argument, about Provincial autonomy?" 90
Allaying the doubts of the Opposition concerning the representative composition of the body, Choudhury opined that the ministers of the Central Government and the provinces were the highest authorities and the most responsible persons whose scrutiny eliminated the "chance of anything being neglected for lack of public knowledge".91

In the end, all the amendments moved by the Opposition were rejected and the original provision, with minor amendments, was passed.92

The amendments tabled by the Opposition members to the article pertaining to advisory boards for the Posts and Telegraphs Department were all aimed at ensuring parity of representation or eventual control by the Provinces. Briefly, Choudhury made it plain that the postal and telegraph service was really an international activity and it was impossible to divide its functions into two separate units. Moreover, the parity formula was inapplicable since West Pakistan, being seven times larger in area than East Pakistan, needed more post offices and more employees. Without amendment, the clause was made a part of the Constitution Bill.93

States and Rulers, Scheduled Castes and Backward Classes

When the discussions shifted to the subject concerning the Princely States and their Rulers, Zahiruddin voiced the suspicion that the phrase, "by Order" would be used by the President to decrease the ratio of representation of former provinces in West Pakistan to accommodate the representatives from the States.94 Sardar Amir Azam Khan invited his attention to the relevant clause wherein the representation in the National Assembly instead of the West Pakistan Legislature was involved; hence, the representation of former provinces such as Sind and Punjab remained
unaffected. 95

All the clauses relating to the Scheduled Castes and Backward Classes were adopted except one which defined the term, "Scheduled Castes." 95 After a revision, the clause embodied the definition in the Government of India Act of 1935 subject to modifications by Parliament. A new proviso authorised the appointment of a special officer to look into the conditions of the Scheduled Castes and Backward Classes. 97

All the clauses of the Basic Principles Committee Report pertaining to States and Rulers were no longer applicable after the second Constituent Assembly approved the Establishment of West Pakistan Act in 1955. Instead of creating a chapter for Scheduled Castes and Backward Classes, the first Constituent Assembly merely appended the recommendations of the Committee on Fundamental Rights of Citizens of Pakistan and on Matters Relating to Minorities in the approved Basic Principles Committee Report. 98

Miscellaneous

Among the miscellaneous provisions, those on laws of indemnity, location of the Federal capital, and the adoption of an official language evoked heated arguments both in the first and second Constituent Assemblies. 99

The first provision merely authorised Parliament to pass laws "indemnifying any person in the Federal or a Provincial Government, or any other person, in respect of any act done in connection with the maintenance of restoration of order in any area in Pakistan, where martial law was in force, or validating any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area." 100 However, as the debates in the second Constituent Assembly progressed it became evident that the criticisms were concentrated
on martial law and its possible misuse. All Opposition amendments were negatived and the clause under question was embodied in the Final Constitution.

The first Constituent Assembly spent a whole day on the Basic Principles Committee article making Karachi the capital of Pakistan. In requesting the House to take up the consideration of this particular clause, Irohi reviewed the circumstances leading to the adoption of Karachi as the capital of the Federation. Aware of the Constituent Assembly's participation in the choice, he entertained the idea that the debates would centre on whether or not the provision should be included in the constitution.

Nur Ahmed advocated the acceptance of the article not only "out of respect to the hallowed memory of our dear Quaid-i-Azam" but also for its being the birthplace of the founder of Pakistan. He argued further that Karachi was the best choice because of its large population and numerous industries although he did not discount objections such as the oppressive climate and the presence of big capitalists who might influence the policy of the government. On the climatic aspect, he recommended Dacca as the summer capital of the Central Government during the months of June and July.

Serious protests came from Gazder, a Sindhi engineer, who enumerated the following disadvantages of making Karachi the capital: (1) the seacoast location was unsuitable for defence; (2) the water supply was seventy miles away and water had to be pumped twice before reaching the city; and (3) the people of Karachi would have no participation in the administration. Knowing fully well the financial problem that would arise in creating a new capital, he was amenable to the inclusion of an easily repealable provision making Karachi a temporary capital. Opposing Gazder's views, Quasem contended that (1) the question of
strategic location had become immaterial with the invention of atomic weapons; (2) the transfer of capital would nullify the investments in Karachi during the last seven years; and (3) Karachi was linked with East Pakistan by steamer service which was the cheapest means of travel. Quasem concluded:

Sir, another redeeming feature is that today Karachi is inhabited by people from all provinces of the Indo-Pakistan sub-continent. Hence there is no provincial feeling or jealousy. This is almost an international city and the people have very good feelings towards each other. But if this capital is taken to some other province there will be provincial feelings and probably provincial domination.105

Thinking of probable alternative capitals, Sheikh Sadiq Hasan found as unsuitable Lahore for its proximity to the Indian border and Rawalpindi for its nearness to occupied Kashmir. On the financial side, he mentioned possible losses in house rentals with the shifting of the capital. Jaffer recollected that "Karachi came to be the Capital of the Federation after it was selected by the Quaid-i-Azam and the All-India Muslim League Working Committee of the time which consisted of many of our leaders who are present in this House today". From the defence point of view, he relied on Pakistan's "very good Navy and Air Force". After praising Karachi's healthful climate, he voiced the belief that the people could endure the shortage of water so long as Karachi remained the capital. Although favouring Gauzdar's inclusion of a provision for the temporary capital in the constitution, Hamid was against making it easy to amend. He doubted the ability of the navy to protect the nation's capital.

As some sort of compromise, Jam Sahib of Lasbela suggested postponement of the decision though he endorsed the plan to move the capital away from commercial magnates so that government officials could devote more time to
work rather than to parties. 106 Jinnah was against post-
ment because of the urgent need to give representation
in the Central Legislature to the capital. Admitting the
occurrence of emergencies, he favoured Gaddar's recommenda-
tion which could be appended by the Drafting Committee.
The clause was added to the approved Basic Principles Com-
mittee report without amendment. 107

The third controversial aspect was the adoption of
a state language for Pakistan. The Quaid-i-Azam and
 Liaquat Ali Khan, it might be recalled, had exhibited
their approval of Urdu despite murmurs of dissent. 108
Violent opposition erupted in East Bengal when Prime Minis-
ter Khwaja Nazimuddin, an East Bengali himself, spoke in
favour of Urdu as a state language. On February 21, 1952,
the students of Dacca University staged a demonstration
endorsing Bengali. One student was killed and many were
injured when the police retaliated with guns, tear gas,
and lathi charges against the rioters who threw stones at
them. The following day, several students lost their lives
when the police fired to disperse a student procession.
The office of a Dacca newspaper owned by Nazimuddin's
brother-in-law was burned. 109 A similar demonstration
favouring Urdu observed in Karachi on April 22, 1954 had
already been described in Chapter III.

Bitterness prevailed for two years before Prime
Minister Mohammed Ali (Jogra), an East Bengali too, could
present an amendment to the Basic Principles Committee
report providing that "the official languages of the Re-
public shall be Urdu and Bengali and such other provincial
languages as may be declared to be such by the Head of the
State on the recommendation of the Provincial Legislatures
concerned". 110 A technical difficulty was raised by Chattopadhyaya on the ground that Prime Minister Mohammed Ali's
motion was not an amendment for no language clause was
embodied in the Basic Principles Committee Report itself. When the President admitted the motion "from a wider point of view", Chattopadhyaya called for another point of order. A few minutes later, he relented after realising that what was presented was a compromise resolution. Dwelling on the multiple language theory, the Prime Minister mentions several countries including the Philippines where two or more languages were recognised. To assuage the feelings of the regionalistic-minded, he dwelt lengthily on the need for unity:

Language is an issue on which our people naturally feel deeply. It is an issue also on which passions can be easily aroused. It is essential therefore that this matter should be calmly and coolly considered. A very heavy responsibility thus rests on leaders of public opinion throughout the length and breadth of Pakistan. In the name of the solidarity, in the name of the cohesion and unity of Pakistan, I appeal to the press and public opinion to help us to go through with this formula without any opposition or without any agitation. I submit that the formula which I have put forward answers to those basic and fundamental requirements and I am sure that our countrymen will have the wisdom to welcome and accept it and thus demonstrate to the world the intrinsic cohesion and solidarity of Pakistan and the various units that comprise it. I humbly pray to God that he will in his benign mercy grant us vision, the courage and the strength to continue to strive for the greater unification and glory of this great land of ours - Pakistan.

Shondara, on the other hand, thought that solidarity could be achieved by the "adoption of a common vehicle for the conveyance of our thoughts and feelings". Describing Bengali as a dialect understood only in Bengal and was merely an "offspring of Urdu or Hindi", he argued that population should not be made the sole basis for choosing a language but also easy adaptability which was found in Urdu. Foreseeing dire consequences, he remarked:

Some non-Bengalis who advocate the cause of Bengali as one of the State languages do so out of a policy of
 Appeasement and due to the preponderating influence of the Bengalis in this House. This undue pressure may achieve result which posterity may lament. 113

In a more sober vein, Sardar Shaukat Hyat Khan favoured the compromise formula because the question of language "is too small a thing for which we should break Pakistan". The assembly adjourned after the Prime Minister's amendment was approved in toto. 114

In the second Constituent Assembly, the language controversy divided the members for the first time on February 7, 1956 when a directive principle on the development of a national language was discussed. The relevant details of this clash had already been summarised in Chapter VII and need not be repeated here. As mentioned earlier, Choudhury's suggestion to delete the clause was approved by the majority. 115

The language issue appeared for the second time when the provision on official languages was taken up for consideration. This time radical changes were recommended by the Opposition. Mahmood Ali argued not only for the development of Urdu and Bengali but also Punjabi, Sindhi, Pashto, and Baluchi. Zahiruddin wanted the reduction of the grace period for the use of English from twenty to ten years. Showing his regional colours without disguise, he insisted on Bengali's preceding Urdu in the provision. The worn-out arguments presented in the first Constituent Assembly found their way into the second. 116 Choudhury explained why English had to be retained for some years:

Sir, English has been our official language, whether we willed it or not, for more than 200 years. It is the language of our education up to today and the language of official work. It is the language in which all laws are written, in which science subjects are taught and recorded. Therefore, it is not so easy to immediately replace English. 117

A provision in the fundamental rights, he pointed out,
gave all the local languages the same support and encouragement. It was therefore, unnecessary to mention them all over again. Sceptical about the replacement of English in the future, Nurur Rahman preferred to discard this "legacy of slavery" within ten years. Despite the valiant efforts of the Opposition members, Urdu and Bengali were retained as State (no longer official) languages and the grace period of twenty years remained unchanged.\(^{118}\)

The last clause under this chapter entitled "Amendment of the Constitution" had been discussed in Chapter VI. In retrospect, the problem besetting the first Constituent Assembly was whether to lay down a rigid procedure or a less rigid one. The Basic Principles Committee combined the two characteristics but did not specify the paragraphs to be included in each. So many speeches were delivered on the subject that another day had to be set aside for the continuation of the deliberations.\(^{119}\)

On May 27, 1954, Jinho moved to substitute the original Basic Principles Committee recommendation with one that specified the paragraphs to be subjected to a difficult amendment procedure. The new proposal met the approval of the ranking Muslim League members who found it a satisfactory change. Amendments tabled by the Congress Party members could not be moved by the absent sponsors. Jinho's motion was carried.\(^{120}\)

The second Constituent Assembly did not spend much time in the consideration of the amendment procedure. It merely inserted a sub-clause in the Draft Constitution enumerating the articles subject to repeal only with the approval of the Provincial Assemblies\(^{121}\) and transferred the whole clause to the chapter on miscellaneous provisions.\(^{122}\)

The foregoing discussion covers the constitution-making history of Pakistan during the period from 1947.
to 1956 as recorded in the Constituent Assembly debates, Government documents, press, books, and in the minds of the dramatic personae. The final chapter endeavours to assess the work of the constitution framers with particular emphasis on the factors which delayed the completion of the nation's first constitution.
NOTES


5. Article 179 (2) of the Constitution of the Islamic Republic of Pakistan (1956).

6. This clause reads: "(2) No such person as aforesaid shall be dismissed or removed from service, or reduced in rank, until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him; provided that this clause shall not apply - (c) where the President or the Governor, as the case may be, is satisfied, for reasons to be recorded by him, that in the interest of the security of Pakistan or any part thereof, it is not expedient to give to that person such an opportunity." Emphasis is the writer's.


10. Ibid., pp. 2763-2775.

11. The Basic Principles Committee provision reads: "The said rules should be so framed as to secure - (c) that the tenure and conditions of service of no Government servant should be varied to his disadvantage during his term of office except when it becomes necessary to take action with respect to a class of Government servants in pursuance of national policy resulting from national emergency."


13. Ibid., p. 142.

14. Ibid., pp. 142-143.


17. Ibid., p. 2777.

18. Ibid., pp. 2777-2783. No such amendment was presented during the consideration of the Basic Principles Committee Report in 1954.


22. Article 10 of the Indian Independence Act of 1947 had assured the members of the civil service of pre-partition India of the same conditions of service. The Basic Principles Committee did not recommend the inclusion of such assurance in their report.


26. Ibid., p. 2791.

27. Ibid., dated February 28, 1956, Vol. I, No. 79, p. 3592. On this topic the Draft Constitution of 1956 reads: "In the case of a member of the Provincial Public Service Commission, if the Governor has reason to believe that there is cause for the removal of such member, he shall direct the Advocate-General for the Province to move the Supreme Court to appoint a Bench of three Judges to inquire into the question and to submit a report to the Governor, and if in the report removal is recommended, the Governor shall remove the member accordingly." The approved amendment reads: "(1) a member of a Public Service Commission shall not be removed from office except on the ground of misbehaviour or infirmity of mind or body. (2) a member of the Federal Public Service Commission shall not be removed from office except in the manner applicable to a Judge of a High Court. (3) a member of a Provincial Public Service Commission shall not be removed from office except by an order of the Governor of the Province made in a case where the Supreme Court, on reference having been made to it by the Governor, has reported that the member ought to be removed on a ground such as is mentioned in clause (1)."

28. Ibid., dated February 9, 1956, Vol. I, No. 68, pp. 2790-
2791. The provison affected was clause 196 (2) of the Draft Constitution which reads: "Where an examination is held for more than one class of service, the Public Service Commission shall make separate recommendation for appointment to each class of service for which such examination has been held, and each recommendation shall be treated by the Government as recommendation for the service to which it relates."

29. Ibid.


32. Clause 196 (1) of the Draft Constitution reads: "If the President is satisfied that a grave emergency exists whereby the security or economic life of Pakistan, or any part thereof, is threatened by war, external aggression or internal disturbance, he may issue a proclamation of emergency, in this Article referred to as 'proclamation.'"


34. Ibid., p. 3252.

35. Ibid., pp. 3256-3257.

36. Ibid., p. 3252-3257.

37. Ibid., pp. 3257-3264.

38. Ibid., pp. 3252-3254. Clause 191 (1) of the Final Constitution is similar to clause 196 (1) of the Draft Constitution with the exception of the phrase "beyond the power of a Provincial Government to control" inserted between the words "disturbance" and "he may issue". Clause 191 (6) of the Final Constitution reads: "A Proclamation shall be laid before the National Assembly as soon as conditions make it practicable for the President to summon that Assembly, and if approved by the Assembly, shall remain in force until it is revoked, or if disapproved, shall cease to operate from the date of disapproval."

39. Ibid., p. 3265.

40. Ibid., p. 3263.

41. Ibid., pp. 3265-3267.


44. Ibid., pp. 2795-2799.

45. Ibid., pp. 2799-2800.
46. Ibid., pp. 2801-2805.
47. Ibid., pp. 2805-2808.

48. The clause as finally adopted reads: "(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of Pakistan, or any part thereof, is threatened, he may after consultation with the Governors of the Provinces or with the Governor of the Province concerned, as the case may be, by Proclamation make a declaration to that effect, and while such a Proclamation is in operation, the executive authority of the Federation shall extend to the giving of directions to any Province to observe such principles of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary for the financial stability or credit of Pakistan or any part thereof. (2) Notwithstanding anything in the Constitution, any such directions may include a provision requiring a reduction of the salary and allowances of all or any class of persons serving in connection with the affairs of a Province. (3) While a Proclamation issued under this Article is in operation, the President may issue directions for the reduction of the salaries and allowances of all or any class of persons serving in connection with the affairs of the Federation, including the Judges of the Supreme Court and High Courts."

49. Ibid., pp. 2803-2816. The clause reads: "(1) A Proclamation issued under this Part may be revoked by a subsequent Proclamation. (2) The validity of any Proclamation issued under this Part shall not be questioned in any Court."


51. Details of the system of examining the repugnancy of a bill are found in Keith Callard, Pakistan: A Political Study (London: George Allen and Unwin, Ltd., 1957), p. 220.


53. Ibid., pp. 589-590. See also "Upper Amendment Voted Down", Pakistan Times dated October 30, 1954, p. 1. This statement was taken from the Joint Committee which investigated the Ahmadiyeh disturbances of the Punjab in the early months of 1953. The root cause of the riots was the hatred of the orthodox Muslims who believed that Muhammad was the last Prophet against the Ahmadi who maintained that Mirza Ghulam Ahmad was also a Prophet. Starting in February, 1953, the wholesale rioting and demonstrations culminated in mass arrests, and the declaration of martial law on March 6, 1953 restored peace and order. A total of eleven persons got killed and no fewer than forty-nine were wounded. See Callard, op. cit., pp. 204-207. For the abolition of the Caliphate, see M. J. Ahmad, op. cit., Vol. 1, p. 4.
54. Mr. Mahmud Hussain's attempt to elucidate that friendship was a matter of preference was cut short by Chakreverty with the assertion that the report of the Board of Talim-i-Islamia "does not say that." See Debates, ibid., p. 591.

55. Ibid., pp. 590-591.
56. Ibid., pp. 591-592.
57. Ibid., pp. 592-594.
58. Ibid., p. 595.
59. Ibid., p. 600.
60. Ibid., pp. 601-602.
61. Ibid., pp. 602-603.
63. Ibid., pp. 607-610.
64. Ibid., p. 611. See also "Law Repugnant to Quran and Sunnah", Pakistan Times, dated October 31, 1953, p. 1.
65. Ibid., p. 612.
66. Ibid., pp. 612-614.
67. Ibid., p. 617.
68. Ibid., pp. 617-622.
69. Ibid., pp. 622-624.
70. This is the Urdu term for "thought".
72. Ibid., pp. 626-627.
73. "Lam-bil-muruf" is an Urdu term for "good" and "Mahi-anil-munkar" means "bad". Ibid., p. 651.
74. Ibid., pp. 656-657.
75. Ibid., pp. 640-642.
76. Ibid., pp. 642-656.
77. Ibid., dated November 2, 1953, Vol. XV, No. 20, pp. 658-659.
79. The clause as adopted in the Final Constitution reads:
"(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 for 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.”


85. The clause as adopted in the Final Constitution reads: “(2) The Council shall review the overall economic position of the country and shall, for advising the Federal and Provincial Governments, formulate plans in respect of financial, commercial and economic policies; and in formulating such plans, the Council shall aim at ensuring that uniform standards are attained in the economic development of all parts of the country.” Emphasis is the writer’s.


87. Ibid., pp. 2981-2984.

88. Ibid., pp. 2985-2986.

89. Ibid., pp. 2988-2992.

90. Ibid., pp. 2992-2994.

91. Ibid., p. 2995.

92. Ibid., p. 2997.

93. Ibid., pp. 2997-3004.

94. The clause reads: “Notwithstanding anything in the Constitution, the President may, by Order, make provision for representation in the National Assembly of the territories mentioned in sub-clauses (b), (c) and (d) of clause (2) of Article 1, provided that equality of representation between East Pakistan and West Pakistan is preserved.” Emphasis is the writer’s.


96. Ibid., pp. 2824-2825.

97. Ibid., dated February 16, 1956, Vol. I, No. 73, pp. 3162-


100. See article 214 of the Draft Constitution of 1956.


111. Filipino, English, and Spanish are the official languages of the Philippines.


117. Ibid., p. 3172.

118. Ibid., pp. 3176-3177.


CHAPTER XI

APPRAISAL

Amidst the joyous atmosphere pervading the advent of independence, no ordinary Pakistani would have paid more than scant attention to a Cassandra's prophecy that the Ship of State of the then most populated Muslim nation in the world would not only be navigating in a sea fraught with danger but would also be considerably delayed in its search for a constitution.

Leaving its moorings in August, 1947 with inadequate provisions and the Government of India Act, 1935 as a makeshift chart, the ship sailed for one and a half years before the officers and the crew could outline the general course in the form of the Objectives Resolution, and spent another five and a half years before detailed guidance as embodied in the Basic Principles Committee Report could be finally agreed upon.

At the precise moment when the objective hose in sight, the ship's Captain, sensing mutiny, obstructed further progress by relieving the officers and the men of their duties. For almost ten months, the work of constitution-framing stood at a standstill. It was only after a court battle that the Captain was coerced into proceeding with the selection of a new set of personnel who, benefiting from the work of their predecessors, accomplished the task more swiftly.

The voyage was officially terminated after eight years, seven months, and eight days - a new record in the annals of constitution-making established by the sixth largest state in the world.²

Favourable Aspects

With the foregoing paragraphs as a metaphorical
summary of the work done, this chapter seeks to assess the performance of the first and second Constituent Assemblies with special attention devoted to the unveiling of the *raisons d'etre* behind the seemingly unjustifiable delay in the framing of the 1956 Constitution.

**Members' Qualifications**

Following the dictum that a book is only as good as its author, it is advisable to consider at the outset the members' qualifications. Although small in number for framing the nation's fundamental law, the first Constituent Assembly had four constitutionalists who held doctorate's degrees from European schools. Dr. Begum Shaista Suhrawardy Ikramullah earned her Ph.D. degree from London University, Dr. Ishtiaq Husain Qureshi from Cambridge, Dr. Mahmud Husain from Heidelberg, and Dr. Omar Hayat Malik from Gottingen. Among a score that completed master's courses, the most prominent were Tamizuddin Khan, the President of the first Constituent Assembly; Liaquat Ali Khan, who obtained his degree from Oxford; Khwaja Nazimuddin, a Cambridge graduate; N. S. Suhrawardy (disqualified in 1948) who was Liaquat Ali Khan's co-alumnus; A. K. Bari, Fazlul Huq, Fazlur Rahman, and Professor Chakraverty. Though a large number of the college-trained were lawyers, there were some like Dr. A. M. Malik, a University of Vienna alumnus who represented the medical profession, Maulana Akram Khan and Shupendra Kumar Datta who were newspaper editors, and Gazder, an engineer by profession. Maulana Shabbir Ahmed Usmani guarded the interests of the *ulema* while Begum Ikramullah and Shah Nawaz looked after the welfare of the female population. From the business sector, the most active were Sardar Amir Azam Khan, Ahmed E. H. Jaffer, and Seth Sukhdev. A large number belonged to the land-
owning class. Altogether, about a dozen members completed their college education in universities abroad. There were a few who were described as of little education though as one writer put it, "it does not follow that an uneducated man is necessarily foolish or incompetent". Many of the articulate members were seasoned politicians who learned the political ropes even before the partition of India.

Although not a single Ph.D. graduate graced the chamber of the second Constituent Assembly, there were fourteen "old-timers" from the predecessor constitutional body who managed to get re-elected. The most energetic among less than a dozen master's degree possessors were M. S. Suhrwardy whose residential disqualification had already been lifted, Fazlul Huq who led the Congress party, Sardar Amir Azam Khan who rendered able assistance in piloting the bills, Daultana who fought for the Establishment of West Pakistan Act, Firoz Khan Noon who was a Punjabi political stalwart, and Prime Minister Chaudhri Mohammad Ali. Of the handful who obtained their degrees from foreign universities, Iftikharuddin, an Oxford law graduate, attained the distinction of being a consistent oppositionist in both Constituent Assemblies. No less able than Bhuiyani was Chundrigar who as Law Minister, sponsored the Constitution Bill and defended it until its adoption in 1956. Dr. Sen from East Pakistan and Dr. Khan Sahib from West Pakistan were physicians; Moulana Athar Ali and Moulana Abdur Rashid Tarkabadgish were learned religious scholars. The sphere of journalism was represented by two newspaper editors, Pir Ali Mohammad Rashdi, and an "old-timer", Shupendra Kumar Dutta. At one time or another, some members were connected with schools and colleges either as founders or as professors. As in the first Constituent Assembly, the field was
ominated by landowners and lawyers.

Although it can be rightly claimed that the Ship of State was launched without a full complement, it cannot be denied that the "seamen" were well-equipped in educational background and experience to guide it to its destination.\(^5\)

**Well-Prepared Speeches**

In defence of this contention, no better proof can be cited than the well-prepared introductory speech of Liaquat Ali Khan on the Objectives Resolution, the rebuttal speeches of Shupendra Kumar Datta and Professor Chakraverty, and the defence of Dr. Qureshi, Dr. Husain, Nishtar, and Zafrullah Khan. The speeches delivered during the second reading of the Basic Principles Committee Report were no doubt, products of intensive research. This description equally applies to the introductory speech of Sardar Amir Azeem Khan on the Establishment of West Pakistan Bill; the opposition discourses of Firoz Khan Noon and Sardar Abdur Rashid Khan; and the defence of Daultana, Gurmani, and Chaudhri Mohamad Ali. In their earnest desire to disprove the points of their opponents, they pored over tomes upon tomes dealing on the political, economic, religious, and social fields to produce lines that make pleasant reading for those who normally expected a purely legalistic argumentation in the chamber of the Constituent Assembly.

**Source of Intellectual Treasures**

Anyone gifted with the patience of going over the seventeen volumes and thousands of pages of the Assembly's Official Record without being bored by the plethora of "puerile and vulgar elements which are inseparable from political discussion everywhere",\(^6\) will be rewarded by
gems of wisdom in the form of quotations or anecdotes which became relevant because they were offered to drive home a debater's point. Although some are a commonplace, there were a few which may be considered novel to Western eyes and ears.

Several examples may serve as evidence. The term "scapegoat" has a Jewish explanation but Firoz Khan Noon's original version of a monkey eating the flour and rubbing a handful on the innocent goat's mouth seems unsurpassable for its lucidity. On the baneeful effects of association, the same assembly member remarked: "If you tie a horse and a donkey in the same stable, the horse will not become a donkey but it is sure to pick up a few of its bad habits." Nazir Ahmed Khan quoted Maulana Rumi to illustrate his fear of the PRODA being abused: "Knowledge is a friend when it feeds the heart; it is a foe when it feeds the appetite". When the Hindus refused to believe the thesis on the nature of an Islamic constitution, Syed Khalil-ur-Rahman concluded with a precept: "Silence is the best answer to the unreasonable". Along the same lines, Abdullah ul-Mahmud quoted an Urdu saying, "A man who pretends to sleep cannot be awakened". On giving vent to one's complaints, Muhammad Akram Khan recited an Urdu couplet dwelling on "arrows renting the heart but it is good because it provides outlets to suppressed yearnings". While speaking of the problem of distributing power to the provinces, Jauhi told the story of a dying father who bequeathed seventeen elephants to his three sons on the stipulation that the eldest should receive one half, the second one third, and the third one ninth. Prohibited from selling or butchering a single elephant, the brothers consulted a Qazi (Judge) who, after promising to divide the inheritance that evening, brought one of his elephants to the sons' corral. After counting eighteen elephants,
he gave one half or 9 to the oldest, one third or 6 to the second, and one ninth or 2 to the youngest, and took away his own elephant which was left after the allocation. A product of Eastern thought, it certainly is a match to the renowned wisdom of King Solomon.

Sense of Humour

Both Constituent Assemblies were fortunate in having in their rolls, members whose humorous quips and anecdotes relieved many tense situations or enlivened an otherwise dull atmosphere by inducing laughter not only from their fellow members but also from the gallery audience. To exemplify, during the heated debate over an amendment to empower the Central Legislature to control prices of foodstuffs and other essential commodities, Abdulla al-Mahmud's complaint - "I went to buy Black and White cigarettes and it cost me Rs. 6. Previously I used to pay Rs. 5/8" - received a gibe from a member: "Give it up!" When the One Unit Bill was under discussion, Firoz Khan Noon, an inveterate story-teller, made fun of people who are slow in seeing through things by citing the danger of telling a Scotsman a joke on Saturday because he would see it the next day and start laughing in church. In another instance, while Chaudhri Aziz Din was attacking the Awami League, the electric power was accidentally shut off, whereupon, Jalaluddin Khan remarked that one of the Awami League members "did something". Noticing the clock's malfunctioning, he exclaimed in mock accusation, "Some Sikh gentleman has tampered with them."

The same Assembly wit recommended the inclusion of "photos" when Sardar Amir Azam Khan asked the Assembly members to affix their signatures to the Constitution Bill to be kept in the National Museum. When the Deputy Speaker who was then presiding, promised to give a long rope (mean-
ing more time) to Abul Mansur Ahmad for his speech, Abul Ameen queried: "To hang him, Sir?" A practical joker, Rashdi took Iftikharuddin's picture taking a nap on a sofa in the Assembly lobby during a recess and in the discussion on the proposed membership of Pakistan in the Commonwealth of Nations, he presented a copy of this photograph to the Speaker as "proof" that Iftikharuddin's opposition to such membership should not be given much weight for his lying "in that pasture" showed his disinterest in Assembly deliberations. Needless to say, this evoked guffaws from the rest of the assemblage.

Accomplishment of Mission

Profiting from the dissolution of the first Constituent Assembly, the successor body resolved not to antagonise the Governor-General under any pretext whatsoever. This policy paid off in eighty-three uninterrupted sittings (116 in the first) covering a period of eight months which ensured the passage of the Constitution Bill. As mentioned in previous chapters, this remarkable accomplishment was made possible by the preliminary spadework undertaken by the first Constituent Assembly. The elation felt by the fourteen who were members of both assemblies was expressed by Kamini Kumar Dutta in the following comment: "As an old member of the Constituent Assembly, it[sic] is a very happy day because for the last eight years I failed but in 8 months I have succeeded. I am optimistic of the future success of Pakistan."

Unfavourable aspects

Apart from the enactment of the Constitution, these merits appear trivial in comparison with such entries in the debit side of the Constituent Assembly ledger
as the (1) extraordinary length of the Constitution, (2) ungentlemanly conduct and unfamiliarity with parliamentary procedure of some assembly members, and (3) inordinate delay in the drafting of the final constitution. These factors will be taken up seriatim in the succeeding pages.

**Extraordinary Length**

To keep the study within its scope, the writer has included a commentary, not on the legal aspect, which is not germane to the subject, but on the extraordinary length of the provisions. That the 1956 Constitution is too lengthy cannot be denied; its 234 articles and 6 schedules are exceeded only by India's 395 and 9 respectively. The reasons behind the inclusion of so much detail which, at times, looked unnecessary have been enumerated in Chapter VI and need not be repeated here.

**Shortcomings of Members**

The second undesirable feature of constitution-making was the incidence of ungentlemanly conduct and unfamiliarity with parliamentary procedure of some members who were supposed to be honourable members of such an august body as the Constituent Assembly of Pakistan.

The official record of the debates attest to the members' hurling sarcastic remarks and insults against each other. Although some of these diatribes were expunged, several, escaping notice, leave a bad taste in the mouth of the sensitive reader. A few may be mentioned to illustrate the assertion. When Chaudhri Nazir Ahmad Khan referred to Iftikharuddin as "all peasants and labourers above 21 years of age are immature as he is," Iftikharuddin riposted, "Some like you are immature even after 50." Exasperated with Iftikharuddin's impolite interruptions, Liaquat Ali Khan was constrained
to say, "Those of us who have had privilege of listening
to Mian Saheb have found that confusion is not an unusual
thing with him". Zahiruddin's remark of an absence of
a quorum elicited the following jeer from Sardar Amir
Azam Khan, "Perhaps Hon. member is dreaming!" Zahir-
uddin had his chance to counterattack by uttering the
following rude reproach to Foreign Minister Hamidul Huq
Choudhury's speech: "Islam is as foreign to the Foreign
Minister as his policy is foreign to me". He also em-
barrassed the then Food Minister Abdul Latif Viswas who
wrongly used the word "culmination" by his caustic state-
ment that he was fully convinced as to the reason behind
"much bungling in the food situation in the country".

Perhaps the greatest insult ever addressed to the
Chair was Suhrawardy's tearing and throwing the handbook
on the Rules of Procedure as an expression of disgust
over Speaker Abdul Wahab Khan's ruling on the reading of
speeches. The Speaker was too much of a gentleman (or
was it plain weakness?) to be drawn into an unparliamentary
squabble.

Most of the affronts centred on the intellectual
capacity of the members as demonstrated by Chaudhri Abdul
Salam's suggestion (withdrawn later) that Chaudhri Aziz
Din be examined in a mental clinic for "derangement",
Zahiruddin's referring to the "empty brains" of the people
sitting "on that side", Sardar Shaukat Hyat Khan's
alluding to the "dull brains" of the Government side, and
Sardar Amir Azam Khan's banter that "some of the
members require mental treatment".

Another form of unparliamentary conduct was the
technique of not fully quoting the passage under consulta-
tion resorted to by some members in an effort to sway the
thinking of the House. During the debate on the Islamic
provisions, Professor Chakraverty cited a verse in the
Quran pertaining to the cutting of a thief's hands but he failed to add the succeeding line which granted forgiveness upon the culprit's repentance. While specifying a Quranic prohibition about women's display of beauty, he omitted the phrase "consorts of the Prophet" so that to the uninitiated the restriction would apply to Muslim women in general. Abul Mansur Ahmad's failure to quote completely Madison's discourse on international agreements was corrected byFarid Ahmad who discovered the omission. Similarly, Hamidul Huq Choudhry called the Opposition's attention to their silence on the paragraphs of the Italian Constitution which worked against them.

Still another unconscientious practice was the airing of parochial and personal animosities on the Constituent Assembly floor. This was aggravated by the arranging of the seats according to the loyalties of the members - either belonging to the Government side or to the Opposition. Chattopadhyaya's advice to abolish this artificial division in a constitution-making body fell on deaf ears. As a result, the spirit of constructive criticism was lost in the intoxicating climate of intense partisanship. Several members of the Opposition introduced hundreds of amendments some of which were so superficially studied that they would have worked against the intention of the movers. Evidently aiming to harass rather than to improve the work, Iftikharuddin alone tabled 75 amendments to the Interim Report of the Committee on Fundamental Rights of Citizens and Minorities.

When the cleavage became so wide, the minority members resorted to their ultimate weapons - walk-outs and boycotts of the Assembly sessions. Deprived of the Opposition's close scrutiny, several defective provisions eventually found their way into the pages of the approved bills.
It cannot be said that the members were ignorant of the basic rules of parliamentary procedure for a large number of them were members of the legal profession, parliamentarians, or academicians, but the records contain incontrovertible proofs of unnecessary bickering over divisions and adjournment motions, irrelevant or repetitious speeches, unauthorized departures from the Assembly chamber, outbursts of temper, discourteous interruptions, and utterances of unparliamentary words which cast doubt on the high level of urbanity of the violators and set an objectionable standard for the younger generation.

**Delay in Constitution-Making**

The most serious indictment that can be levelled against the constitution framers is the failure to produce a constitution within a reasonable period of time. Even if the first Constituent Assembly had been permitted to pursue their primary function without interruption, the accumulation of more than seven years would still be beyond the Quaid-i-Azam's calculation of eighteen months or two years and Tamizuddin Khan's "a year or two".

Two Oppositionists of the first Constituent Assembly, Iftikharuddin and Sarfaraz Shaukat Hyat Khan had maintained that the framing of the constitution had been intentionally delayed because "we want to make our seats secure" before risking an election. In fairness to the rest of the Constituent Assembly members, one has only to examine the record to prove that there was a genuine desire to complete the work but somehow problems arose which defied immediate solutions. Having been expelled from the Muslim League, the two clearly took advantage of any issue they thought would mar the public image of the Muslim League leaders responsible for their expulsion.

To parry the indictment, Dr. Mahmud Husain ex-
explained that a "new kind of constitution" was being evolved but "a task like this is bound to take time" in the absence of "definite models before us". Perhaps, the argument would have been more convincing if said earlier but it was presented on November 17, 1951, when the most unique feature — the Islamic provisions — had already been resolved by the passage of the Objectives Resolution and the guideposts of the constitution had been previously outlined in the form of the Interim Report of the Basic Principles Committee. The scramble for power pointed out by Dr. G. U. Chaudhury as having seriously hindered constitution-making assumed dangerous proportions only after the submission of the second draft of the Basic Principles Committee Report in December, 1952 — a full five years after the first Constituent Assembly's opening session. The problem that baffled the Basic Principles Committee for four long years involved the structure of the Federal Legislature. What was needed at the time was a skillful arbitrator to reconcile the quantum of representation differences between East and West Pakistan. This, it should be borne in mind, was not the sole factor responsible for the nine-year delay because the deadlock came later in October, 1950 — three years after the initial session of the First Constituent Assembly.

In any case, just as the root causes of a rushing torrent may be evaluated more thoroughly by examining not only the rainfall but also the lay of the land and the conditions of the tiny streams and hidden springs, so it is with the factors responsible for the deferment. For surely, a single hour in an Assembly session devoted to business other than constitution-making can only mean loss of time in the attainment of the coveted goal.

The first fact worth noting is the inclusion of
such extraneous matters in the Assembly deliberations as
the conferment of a title for Mohammad Ali Jinnah, dis-
cussion of the refugee problem, resolutions on deaths of
leaders and members, Corruption Jill (PRODA), Rawalpindi
Case, and other subjects remotely connected with
constitution-making.

Precious hours would not have been lost and the
Quaid-i-Azam could have been saved from embarrassment
had the Muslim League leaders taken the trouble of re-
solving the question of conferment of title with the
Opposition outside the chamber of the Constituent Assem-
bly. The same thing can be said about the problem of
refugees which could have been taken up in a cabinet
session.

Occurring several times was the adjournment of
meetings without having considered any other business
except the expression of condolence for the deceased.
Quite surprisingly, the death of a prominent Muslim
leader like Liaquat Ali Khan was not similarly honoured.
The Constituent Assembly session on November 17, 1951
simply offered prayers for his departed soul and soon
thereafter went to work in earnest by deliberating on
two amendment bills, the report of the Committee on Con-
stitutional and Administrative Reforms in Baluchistan, and
the Assembly budget. Sympathies expressed by the Federal
Legislature could not take the place of the Constituent
Assembly's since the latter was a separate body maintain-
ing a different record and following different rules of
procedure although admittedly possessing identical member-
ship as the former.

The bill to punish corrupt activities (PRODA) sliced
a significant portion of the Assembly sessions. Introduced
on January 3, 1949, debated on three days later, amended
on November 22, 1952, it was eventually repealed on Sep-
tember 20, 1954.

In the same manner, the Rawalpindi Conspiracy (Special Tribunal) Bill was submitted on April 13, 1953, consumed forty-five pages of debate three days later, and was declared illegal by the Federal Court in 1955.

Some members were so conscious of their importance that even such trifling incidents as not being allowed to pass through a one-way street had to be ventilated on the assembly floor. The phenomenon of irrelevant orations can be multiplied many times in both Constituent Assemblies.

A second important cause of the delay was the practice of assigning additional duties to the Constituent assembly members as Federal and Provincial legislators, Chief Executives, Cabinet Ministers, and Ambassadors. The Quaid-i-Azam was Governor-General and President of the first Constituent Assembly; Liaquat Ali Khan, Khwaja Nazimuddin, Mohammad Ali (Bagra), and Chaudhri Mohamad Ali were MCAs and Prime Ministers; and a host of other MCAs who held jobs as Ministers, Ministers of State, Deputy Ministers, Governors, or Chief Ministers of the provinces. Dr. Omar Aujat Malik was an MCA and ambassador at the same time. The more conscientious Ispahani resigned from the Constituent Assembly upon his appointment as ambassador.

The effects of such multiplicity of work were considerable. As Prime Minister, Liaquat Ali Khan had to stay in Lahore for four months from August to December 1947 to supervise the restoration of peace and order. No sessions were held during those months. The Assembly session on December 23, 1948 lasted barely thirty minutes because the Prime Minister wanted the work in the Federal Legislature completed before the end of the month. On September 22, 1953, Chattopadhyaya suggested the adjourn-
ment of the Assembly session on the ground that some members were still tired from the preceding Federal Legislature meetings. 48

Some members gave priority to missions other than constitution-making. After presenting his arguments, Bhattacharjee left for Hyderabad on routine duty as Law Minister. 49 Some members failed to attend the December 22, 1952 session because they were still in Japan. 50 A month earlier, then Prime Minister Khan Nazimuddin requested for postponement of the Basic Principles Committee Report's consideration so that he could depart for the United Kingdom. 51 Gazder and Qaiyum Khan were in Nairobi, Africa when the controversial issues of the Basic Principles Committee Report were being decided. 52

A third problem plaguing the two Constituent Assemblies was the prevalence of too many adjournments resulting from holidays including half-day sessions, party conferences, transfer of venue, flood, daily prayers, lack of quorum, failure to prepare for the day's agenda, and delayed printing of constitutional documents.

On October 10, 1953, the Presiding Officer expressed his desire to adjourn the session to allow "a large number of members" to go to Mohenjodaro. Although the others insisted on continuing the discussion over the Basic Principles Committee Report, the House had to adjourn after the departure of the Mohenjodaro "excursionists" for lack of quorum. 53 An invitation to a function was the unavoidable business behind the interruption of the meeting on September 21, 1954. 54 During the October 12, 1955 caucus of the second Constituent Assembly, Shupendra Kumar Dutta suggested a month-long adjournment to enable the Hindu members to attend puja ceremonies in East Pakistan. 55 Thus, from October 13 to November 6, 1955, a recess was declared. In the absence of the Hindus in the November 7, 1955 sitting,
the quorum of the House was reduced from 27 to 20 to avoid the suspension of Assembly activities.66

The frequency of adjournments was aggravated by the short duration of the sessions and long intervals between them. Some of the half-day sessions were not exactly half a day because business was transacted in an hour or two. This practice obliged Chattopadhyaya to complain that the members "work for two hours only a day".57 It is to be acknowledged, however, that the Assembly did not hesitate to work overtime when vital issues were at stake. But the records disclose that out of 2,596 days between August 10, 1947 and September 21, 1954, the first Constituent Assembly laboured for only 116 or less than one twentieth of the whole period. Even if the 244 meetings as the Federal Legislature and the official holidays were deducted, a considerable interval of inactivity would still be outstanding. Although some NCAs may claim that they had been busy in committee operations and in deep study of constitution-making enigmas, the fact remains that they did not "deliver the goods" within a reasonable period of time. The second Constituent Assembly did better with 83 sessions in eight months with not a single Federal Legislature plenum.

A contributory factor to the frequency of adjournments was the holding of party conferences by the Muslim League to iron out differences58 in the case of the first Constituent Assembly and transfer from Murree to Karachi and the East Pakistan flood in regard to the second.59 Assembly operations were suspended from July 15 to August 7, 1955 to permit the transfer and from August 12 to August 22, 1955 to allow the East Pakistan members to attend to their flooded homes.

At various times, the irritating question of lack of quorum prompted the Presiding Officer to defer a sitting.
The sessions scheduled on October 10, 1953; April 22, 1954; and April 26, 1954 were cancelled when only a few members appeared. The bell had to be rung during the October 13, 1953 and October 19, 1953 conferences as a summons to members who were outside the chamber. The session scheduled on September 26, 1955 was delayed for fifteen minutes while waiting for the latecomers. The Deputy Speaker then presiding, had to adjourn on January 26, 1956 after seeing the empty seats.

On several occasions, Assembly meetings were adjourned not because of the absence of a quorum but because the members were unprepared to speak on the agenda. To illustrate, the meeting on November 16, 1950 was called off for the committee concerned was not ready to report on the Pakistan Citizenship Bill. In 1950, 1952, and 1953, the consideration of the Basic Principles Committee Report had to be put aside just because the sponsors felt that they were not in a position to defend their recommendations.

On September 21, 1954, the first Constituent Assembly decided to take a well-earned rest after a four-month session while awaiting the completion of the printing of the Draft Constitution. This month-long delay gave sufficient time to the Governor-General to plot retaliatory moves which culminated in the Assembly's dissolution.

A fourth count against the constitution framers was the abundance of speeches and debates which were not only long and repetitious but also flimsy at times. To produce the 156 pages of the 1956 Constitution, the members of both Constituent Assemblies used more than three million words which filled 6,477 pages of the Constituent Assembly of Pakistan Debates. The deliberations on joint and separate electorates, the nature of the Islamic provisions, the adoption of a State language, the Basic
Principles Committee Report, the Establishment of West Pakistan Bill, and the Constitution Bill of 1956 occupied most of the pages in the seventeen volumes but there were also topics such as the replacement of a committee chairman, payment of hospital bills for the President of the Constituent Assembly, sponsorship of a committee report on the floor, and the manner of addressing a woman Presiding Officer which are too superficial to merit drawn out polemics.

The Presiding Officer's time limit and Dr. Mahmud Husain's counsel to his colleagues to avoid long discourses and to "adopt a business-like attitude" were followed more in the breach than in the observance.

A fifth factor was the prevalence of irrelevant verbal battles between political adversaries, platitudinous congratulatory addresses, unwelcome personal explanations, and tedious privilege speeches which wasted golden hours while the nation fidgeted for the constitution. In long-winded talks, Abdul Menem Khan attacked Fazlul Huq for being a traitor to the Muslim League, Suhrawardy criticised Khuhr, Khuhr attacked Suhrawardy in turn, and Abul Mansur Ahmed condemned the activities of the Muslim League. Calculated to denigrate the image of political opponents these uncalled-for discourses transformed the floor of the Assembly into a platform for election harangues.

Moreover, the conclusion of every election in the House never failed to gather a bountiful harvest of congratulatory speeches. It appeared that the ceremony would be incomplete unless at least a representative of every faction of consequence had sung his alleluias to the newly elected. For example, the selection of Abdul Wahab Khan as Speaker of the Second Constituent Assembly was an occasion for the delivery of complimentary remarks that ate up
ten pages of Assembly Debates. Some members seemed not to care whether their declamations were a waste of time or not so long as they could exonerate themselves from the charges of their colleagues or the press in the form of personal explanations or points of privilege. Thus, the debate over an article of the Karachi Times criticising Abul Mansur Ahmad took thirteen pages to conclude. A privilege speech as construed by some of the Assembly members appeared to be one that permitted them to speak on any subject under the sun.

The ineluctability of these developments may be traced in part to the additional function of the Constituent Assembly as a Federal Legislature. Instead of electing persons who possess the talent for constitution-making to represent the various sectors of the population regardless of political affiliation, the Provincial Legislatures of Pakistan selected a large number of professional politicians who were chosen primarily to protect their party's interests not only in the Constituent Assembly but also in the Federal Legislature. That politics was placed on a pedestal above constitution-making was made evident by Begum Ikramullah's resignation from the Muslim League in opposition to the party decision to postpone the sessions of the first Constituent Assembly to enable the professional politicians to campaign in the East Bengal elections of 1954.

Although it may be argued that India with a similar set-up finished its constitution very much earlier than Pakistan, one must not forget that the former, having the advantage of stability, had problems much less in magnitude than the latter. The most ideal set-up would have been to establish a Constitutional Convention whose main task would be constitution-making alone with members of the Federal Legislature, Provincial Assemblies and Cabinets.
disqualified from participation. Thus, the problems involving the accession of princely States including the Kashmir question, the share of assets from India, the canal waters, refugees, internal peace and order, economy, and even those remotely connected with ensuring the viability of the new state could have been given full attention by the legislative and executive branches of the administration while the Constitutional Convention concentrated on the framing of the constitution. It cannot be said that Pakistan had an acute shortage of talent for the second Constituent Assembly succeeded in their task with only fourteen members from the predecessor body. The writer, however, concludes the fact that his suggestion had been thought of with the advantage of hindsight. Even the Quaid-i-Azam with his keen analytical mind admitted that there were "difficulties which we had no way of anticipating"\(^{79}\) and this inability to foresee the future hindered constitution-making for almost a decade.

The sixth ground that contributed immensely to the delay was the seemingly interminable process of amending the Government of India Act of 1935, Indian Independence Act of 1947, rules of the Constituent Assembly, and their amendments, and other matters having no direct bearing on constitution-framing. In a sense, the existence of the Government of India Act of 1935, in reality a working constitution, was a cause of temporisation on the part of the constitution framers who, by adopting transitory administrative arrangements, maintained the smooth functioning of the governmental machinery. The members appeared to have adopted the attitude that the building of a permanent bridge can wait so long as traffic could pass over the provisional one. Unfortunately, this viewpoint gave rise to a vicious cycle - the longer the
delay, the greater would be the number of amendments. At times, the original amendments became the subject of another amendment. Also, the failure of the authors to study their wills thoroughly resulted in amendments. As an example, the Establishment of West Pakistan Act was modified a few weeks after its passage because of an error. This drew an icy remark from Zahiruddin: "It is a sad commentary [that] before [the] ink [has] dried on the One Unit Bill amendment comes up". The discussion of an amendment to the Proceeding and Privileges Bill lasted one day and consumed twenty pages. The Validation of Laws Act was a bundle of amendments approved by the first Constituent Assembly and debated on for days by the second Constituent Assembly.

Seventhly, one can assert without fear of contradiction that the deaths of the Quaid-i-Azam and Liaquat Ali Khan were a staggering blow to constitution-making for the demise of the former meant the loss of the guiding hand of the Creator of Pakistan and the assassination of the latter hastened the disintegration of the Muslim League.

In one of his speeches, the Quaid-i-Azam confessed that the framing of the constitution was a "stupendous task" but at the same time he felt that it could be accomplished within 18 months or two years. Knowing his achievements, one can say that he could have made good his estimate had he been allowed to live longer. No doubt, he had a solution to the protracted communal controversy in the House between the Muslims and the Hindus for a perusal of his short presidential address to the Constituent Assembly would reveal his mentioning thrice one point - that politically, all the citizens whether Muslims or non-Muslims had equal rights. The Hindus often quoted his statement that religion had "nothing to do with the business of the State". The implicit faith of the Hindus
in the Great Leader was articulated by Basanta Kumar Das who said that if the Quaid had not died the discord over the Islamic nature of the State and the Muslim qualification for the Head of State would not have arisen. 33

Although not as pre-eminent as the Quaid-i-Azam, Liaquat Ali Khan possessed sufficient political influence to maintain the Muslim League's unity for more than four years. Pakistan's political history records the frequency of cabinet changes after his untimely end. It is true, however, that he failed to discover the formula on the quantum of representation but it stands to reason to expect his finding if he had been granted sufficient time.

Dissolution was the last factor which admittedly was the maneuver that embittered the members of the first Constituent Assembly. Work on the Basic Principles Committee Report had been completed and the Draft Constitution, then undergoing printing, needed only a few finishing touches. The history conscious among the constitution-makers could have suggested the choice of December 25 as Constitution Day as a fitting birthday present to the Quaid-i-Azam, for the next significant date (March 23 was the day the Lahore Resolution was adopted) was a good many months away. With the enactment of the constitution, the date for the election of an interim President could have been fixed and the political enemies of the Governor-General would have been free to nominate a person of their choice. By then, it would have been too late for Ghulam Mohammad to dissolve the Constituent Assembly on the allegation that the constitutional machinery had broken down.

The nomination and possible election of another politician was the danger that the Governor-General dreaded. He was not against the amendments per se for as early as November 4, 1953, the first Constituent Assembly had
adopted similar amendments to the Basic Principles Committee Report without incurring his ire. The hurried approval of the September 21 amendments merely served as the first tangible manifestation of Ghulam Mohammad's waning support in the House.

It is always a source of astonishment for a group as seasoned in politics as the planners of the September 21 amendments to exhibit a high degree of amateurishness by committing the blunder of curtailing the Governor-General's powers in unusual circumstances described in an earlier chapter. Were they unacquainted with the fact that any brazen attempt at forcing issues usually arouses the curiosity of the innocent and the suspicion of an enemy? As it happened, Governor-General Ghulam Mohammad cut short his tour of West Pakistan's northern areas and returned post-haste to Karachi after being informed of this particular Assembly development.

The Assembly members uninvolved in the plot should blame themselves too for missing the authorship of the Final Constitution by a hair's breadth through inaction. When GAZDER gave notice of the amendment bill the afternoon before its passage, they should have flushed the danger signal by reminding the sponsor that a few months before, Khan Abdul Ghaffar Khan had accused all of them of clinging to office and such denunciation could very well serve the Governor-General, in retaliation, as a pretext for a dissolution of the Constituent Assembly. To dampen the schemers' desire for revenge, they could have pointed to the superfluity of the amendments since these were already embodied in the future constitution. At most, the changes would be effective only during the few weeks between September 21, 1954 and the promulgation of the constitution. Unfortunately, these non-professional politicians, as borne by the Assembly records, did nothing to oppose the passage of
the amendment bill. Claiming absence from this fateful September session would not exculpate them from their omission for their primary function being the framing of the constitution, any other duty was obviously secondary. They missed this first opportunity to shorten the delay by a year and three months at least.

A second chance offered itself during the Federal Court hearing of the Tamizuddin Case when the Chief Justice suggested to both parties that they should settle the issue between them. A compromise would not only cut down the delay but would also benefit the Constituent Assembly members, the Government forces, and the Federal Court judges.

Chief Justice Munir's advice for an out-of-court settlement on the ground that the problem was political was a hint to the Constituent Assembly members that the purely legal decision handed down by the Sind Chief Court might be reversed or modified by a political decision. All that was required by the Governor-General's negotiators was a written proof that Chundigar was duly authorised to negotiate, an easy thing to do since the signatures of two-thirds of the Assembly members could have been secured in no time at all. Furthermore, the stigma attached to the decision legalising the Assembly dissolution would have been avoided.

The Assembly members should have considered too that the Governor-General had been toying with the idea of imposing martial law as evidenced by an offer made to then Commander-in-Chief of Pakistan's Armed Forces, General Mohammad Ayub Khan. The rejection of the proposal did not discourage the Governor-General from appointing General Ayub Khan to a Cabinet position on the day of the dissolution. Though it is difficult to ascertain whether this was planned beforehand, the fact
is that this appointment implicated the General in the Tamizuddin Case. In the event of a Federal Court's affirmation of the Sind Chief Court's decision, it is not far-fetched to expect Ghulam Mohammad's success in securing General Ayub Khan's acceptance of his previous offer, through the sending of an experienced pleader such as Advocate-General Fayyaz Ali to work on him with two principal weapons - (1) drumming on General Ayub Khan's humiliating experience of having been an "illegal Minister" for several months, and (2) appealing to his patriotism to assist in arresting the spread of the cancer of "intrigue and incompetence" afflicting the country at the time. Unawareness of the offer would not be a valid excuse on the part of the Assembly members to ignore this probable course of action of the Governor-General.

Finally, Tamizuddin and his supporters should have realised that a Constituent Assembly upheld by the Federal Court would be powerless against a de facto government bent on making good the threat of "chaos, provincial conflicts, and political strife of such proportions and magnitude as to endanger the very existence of Pakistan".

On the Government side, a rapprochement would have eliminated the anxiety over the outcome of the appeal. With the loss of the first round in the Sind Chief Court, the one strong argument they could muster was the threat of revolution that would result in the activation of a vengeful Constituent Assembly. In addition, the Governor-General could have evaded the still unforeseen ramifications of the Federal Court decision such as the invalidation of the acts passed by the Constituent Assembly and the Provincial Assemblies, of the ordinances issued by the Governor-General and
Governors, and of the decisions of the courts. All that the Government negotiators were asked to present was an agreement to summon the Constituent Assembly so that a law could be passed authorising the election of a new Assembly and the establishment of an election machinery.

In the case of the Federal Court judges, Justice Munir could only drop cues that the court was not keen on deciding the case because of the fear that a judgment adverse to the Government side would bring about the shedding of blood. He revealed five years later the "judicial torture" that the judges underwent while the Tamizuddin Case was being tried. 87 This mental anguish could have been lifted earlier and the Federal Court saved from rendering judgments that were not "truly judicial" 88 had the conciliation move materialised.

Unfortunately, the talks failed because the litigants doubted each other's sincerity. During those trying times, it was hard to believe that the honourable men who entrusted their lives to one another in the common struggle for Pakistan were unwilling, less than a decade later, to trust one another's word of honour over the comparatively minor task of constitution-making.

The discussion of the hardship factors would be incomplete unless Prime Minister Chaudhri Mohamad Ali's impressions which the writer considers as the "rainfall" among the causes are quoted:

Constitution-making in Pakistan has presented peculiar problems, unique of their kind. It is perhaps not realized that if there has been a delay of eight years in constitution-making there were certain circumstances inherent in the very structure of Pakistan which led to difficulties. Constitution-making anywhere for any State in the world is a difficult enough problem. A federation presents more difficulties because of the distribution of functions and powers between the federating units and the Federal Centre, but in the case of Pakistan,
on top of these difficulties, was piled a supreme difficulty created by geography — the fact that Pakistan is divided into two parts more than a thousand miles away from each other — East Pakistan and West Pakistan. Again, as if that by itself was not enough, there are complicating factors; the population in the two parts is not equal; nor are their resources equal. In population East Pakistan is more than West Pakistan. In extent of area, in resources, etc., West Pakistan is more than East Pakistan. The level of development at the time of Partition was not the same. The number of administrators and civil servants available at the time of Partition were not the same. These additional difficulties created fear, mistrust and suspicion and added to the political difficulties of reaching an agreement. These are objective factors which one has to take into account. Constitution-making in Pakistan, therefore, required the highest degree of statesmanship, of wisdom and skill and an intense desire for maintaining the unity of the country and a firm resolve to overcome all these difficulties by united action. Sir, we are all small men struggling with big problems, problems that would tax the highest qualities of statesmanship anywhere in the world. It is not surprising, therefore, that for quite a number of years these problems defied solution and when this Coalition Party set out bravely on this task, it had to cope not merely with the inherent difficulties of the task, but also those added complications which the bitter controversies of the past had added.89

As the curtain falls, it is meet to focus the spotlight on the twenty-one Constituent Assembly members, comprising more than one fourth of the 80-man body and representing nearly 21 million Pakistanis, who staged a walk-out on the day the Constitution Bill was passed for the action of this rebellious group was a symptom of the malady that was to snuff out, barely two and a half years later, the life of the first Constitution of the Islamic Republic of Pakistan.91
NOTES

1. The claim was valid before Indonesia, another Muslim country with a bigger population, became independent in December, 1949. See Keesing’s Contemporary Archives (London: Keesing’s Publications Ltd.) Vol. XIV dated September 26 - October 3, 1964, p. 20314.

2. Ibid.

3. With merely a quarter of Pakistan’s population, the Philippines had 202 delegates to the Philippine Constitutional Convention unsaddled by additional functions as a National Assembly.


5. Illness and subsequent death prevented the Quaid-i-Azam from active participation in constitution-making.


9. Ibid., dated January 5, 1949, Vol. IV, No. 4, p. 46.
26. See Note 128, Chapter V.
29. Ibid., dated November 22, 1952, Vol. XII, No. 1, p. 11.
30. Ibid., p. 36.
32. Ibid., pp. 254-255.
43. Members, Constituent Assembly. The decision to make the Constituent Assembly function at the same time as the Federal Legislature in a parliamentary system rendered inevitable this multiplicity of tasks.
44. See the list of Central and Provincial Government Officials in Keith Callard, Pakistan: A Political Study (London: George Allen and Unwin Ltd., 1957), Appendix II, pp. 342-346.
45. Ibid., p. 81.
49. Ibid., dated October 23, 1953, Vol. XV, No. 12, p. 376.
Fujia is a Hindu religious festival.
See Appendix "AI".
59. Ibid., dated July 14, 1955, Vol. I, No. 6, p. 188.
64. Ibid., dated November 16, 1950, Vol. VIII, No. 5, p. 179.
65. Computed at 500 per page, the number of words would be 3,238,500.
66. Records of the first Constituent Assembly totalled 2,704 pages while those of the second reached 3,773. These pages include the committee reports appended to the Debates except the final Basic Principles Committee Report and the Draft Constitution of 1956.
78. See Note 127 of Chapter III.
79. Ahmad, op. cit., p. 446.
82. Ahmad, op. cit., p. 449.
86. Ibid., p. 70.
88. Ibid., p. 37.
90. Only 52 members voted in favour of the Constitution Bill. Suhrawardy, the Leader of the Awami League, claimed that three absent members (Yusuf Ali Choudhury, Syed Hussain Misbahuddin, and Sardar Fazlur Karim) were also against the bill. See "Constitution Bill Passed by C.A.", Pakistan Times dated March 1, 1956, pp. 1, 10.
91. On October 7, 1958, the first President of Pakistan, Iskander Mirza, issued a proclamation abrogating the 1956 Constitution on the following grounds: "The Constitution which was brought into being on 23rd March, 1956, after so many tribulations, is unworkable. It is full of dangerous compromises so that Pakistan will disintegrate internally if the inherent malaise is not removed. To rectify them, the country must first be taken to sanity by a peaceful revolution. Then, it is my intention to collect a number of patriotic persons to examine our problems in the political field and devise a Constitution more suitable to the genius of the Muslim people. When it is ready, and at the appropriate time, it will be submitted to the referendum of the people." See the provisions of the Proclamation quoted in Feldman, op. cit., pp. 212-215. The quoted paragraph is on page 214. The task of drawing a second constitution fell on General Mohammad Ayub Khan who relieved Iskander Mirza as President of Pakistan on October 27, 1958.
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APPENDICES
APPENDIX "A"

CONSTITUENT ASSEMBLY SESSIONS AND PAGING OF DEBATES

1. First Constituent Assembly

<table>
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**RESUME**

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NOTES

1. The number of the session is also the volume number of the Constituent Assembly of Pakistan Debates (Karachi: Manager of Publications, Government of Pakistan) 1947 - 1956.

2. This column is a fairly good indication of the duration of the deliberations. It is to be noted, however, that the system of paging adopted by the Constituent Assembly Secretariat would at times show two pages of discussion when actually, the printed portion may cover merely half a page or even less. Some of the last pages of the day's debates, although blank, were counted in the consecutive paging. In addition, one has to consider the variations in the speed of speaking among different members of the Constituent Assembly. A page in the Debates has been estimated to contain an average of 500 words.


6. Includes an appendix (Basic Principles Committee Final Report), pp. 50 - 168.


8. This is an error in paging in the original Debates.

9. Ibid.

10. Ibid.

11. Includes an appendix (Report of the Select Committee on the Bill to Provide for Validation of Laws), pp. 820 - 826.

APPENDIX "B"

MEMBERS OF THE FIRST CONSTITUENT ASSEMBLY
(As of September 21, 1954)

<table>
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<th>East Bengal</th>
<th>Remarks</th>
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<tr>
<td>1. Abdulla al-Mahmood</td>
<td>Joined August 10, 1947</td>
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<tr>
<td>2. Abdul Hamid</td>
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<tr>
<td>3. Abdul Monem Khan</td>
<td>Joined April 12, 1950</td>
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<tr>
<td>4. Abul Kasem Khan</td>
<td>Joined August 10, 1947</td>
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<tr>
<td>5. Akram Khan, Moulana Mohammad</td>
<td>Joined February 24, 1948</td>
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<tr>
<td>6. Asadullah</td>
<td>Joined March 27, 1950</td>
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<tr>
<td>7. Azizuddin Ahmed</td>
<td>Joined August 10, 1947</td>
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<tr>
<td>8. Bahar, Mohammad Hafibullah</td>
<td>-do-</td>
</tr>
<tr>
<td>9. Barua, Prem Hari</td>
<td>-do-</td>
</tr>
<tr>
<td>10. Chakraverty, Raj Kumar</td>
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<tr>
<td>11. Chattopadhyaya, Bis Chandra</td>
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<td>12. Choudhury, Murtaza Raza</td>
<td>-do-</td>
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<td>13. Chowdhury, Zabeeruddin Noazzem, Hossein (Lalmia)</td>
<td>Joined March 21, 1950</td>
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<td>14. Das, Akshay Kumar</td>
<td>Joined August 11, 1947</td>
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<td>15. Datta, Bhupendra Kumar</td>
<td>Joined August 10, 1947</td>
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<td>16. Datta, Kamini Kumar</td>
<td>Joined December 14, 1948</td>
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<td>17. Datta, Dhirenda Nath</td>
<td>Joined August 10, 1947</td>
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<td>18. Ebrahim Khan, Moulavi</td>
<td>Joined February 25, 1948</td>
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<td>20. Fazlul Rahman</td>
<td>Joined August 11, 1947</td>
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<td>21. Ghayasuddin Pathan</td>
<td>Joined August 10, 1947</td>
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<td>22. Habibullah, Kwaia Nawab Bahadur</td>
<td>Joined September 22, 1953</td>
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<td>23. Ikramullah, Begum Shaista Suhrawardy</td>
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<td>24. Mafizuddin Ahmad</td>
<td>Joined August 10, 1947</td>
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<td>25. Mahmud Hussain Dr.</td>
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<td>26. Majumdar, Jnanendra Chandra</td>
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<td>27. Malik, A. N. Dr.</td>
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<td>28. Mandal, Birat Chandra</td>
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<td>29. Mandal, Jogendra Nath</td>
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4. Nur Ahmed

5. Nurul Amin

6. Qa'iyum Khan, Abdul

7. Qureshi, Ishtiaq Hussain Dr.

8. Roy, Dhananjoy

9. Shaheedul Haque

10. Sur, Narendar Kumar

1. Syed Abul Basher Mahmud Husain

2. Syed, Shamsur Rahman

3. Tarizuddin Khan

4. Wahiduzzaman

5. Abdul Hamid Khan

6. Amir Azam Khan, Sardar

7. Bhendara, P. D.

8. Chaudhri Mohamed Ali

9. Chaudhri Ali Akbar Khan

10. Daltona, Mian Mutaza Mhammod Khan

11. Iftikharuddin, Mian Mohammad

12. Khalil-ur-Rehman, Syed

13. Khan, Iftikhar Hussain Khan of Mumdot

14. Mushtaq, Ahmad Gurmani

15. Nazir Ahmad Khan, Chaudhri

16. Mishtar, Sardar Abdur Rab Khan

17. Moen, Malik Mohammad Firoz Khan

18. Omar Hayat Malik, Dr.

19. Qureshi, Shumib

20. Ram, Rollin B. L.
1. Sadiq Hasan, Sheikh
   Joined April 14, 1950
2. Shah Nawaz, Begum Jahan Ara
   Joined August 10, 1947
3. Shaukat Ali Malik
   Joined November 17, 1951
4. Shaukat, Hayat Khan Sardar
   Joined February 25, 1948
5. Zafrulla Khan, Mohammed
   Joined March 7, 1949
6. Vacant

North West Frontier Province
7. Abdul Ghaffar Khan
   Joined May 15, 1948
   -do-
8. Sardar, Asadullah Jan Khan
9. Sardar, Bahadur Khan
8. Sind
10. Abdus Sattar Abdur Rehman Pirzada
    Joined August 10, 1947
1. Erohi, Allahbuksh K.
   Joined September 22, 1953
2. Gazder, Mohammad Inshim
   Joined August 10, 1947
3. Jaffar, Ahmed E. M.
   Joined April 12, 1950
4. Seth Sukhdev
   Joined January 6, 1950
5. Baluchistan
6. Jogeza, Sardar Bahadur Nawab Mohammad Khan
    Joined August 10, 1947
7. Khairpur State
8. Gizilbash, Mumtaz Hasan
   Joined January 18, 1950
9. Bahawalpur State
10. Nasen, Mahmud Makhdomzada Syed
    Joined April 11, 1951
11. States of Baluchistan
12. Ghulam Qadir Khan of Lasbela, Jam Schab
    Joined March 31, 1950

States of North West Frontier Province
13. Brigadier Miangul Abdul Haq
    Jahan Loh
    Joined May 7, 1954

FORMER MEMBERS
1. Quid-i-Azam Mohammad Ali Jinnah
   Joined August 10, 1947;
   Died September 11, 1948
2. Liaquat Ali Khan
   Joined August 10, 1947;
   Died October 16, 1951
3. E. S. Suhrawardy
   Joined August 10, 1947;
   Disqualified May 18, 1948
4. Kiraun Senkar Roy
5. Maulana Shabbir Ahmad Osmani
6. Hazimuddin Quo Choudhury
7. K. A. H. Ispahani
8. Maulana Mohamad Abdul Rashid
9. Khwaja Shahabuddin
0. Abul Nasir Abdul Hamid
1. Sochindra Narayan Senyal
2. Bhim Sen Sacher
3. Ghaconfer Ali Khan
4. Ganga Saron
5. Lala Avtar Gujral
6. Sheikh Nemat Ali
7. N. A. Khusro
8. Abdul Motin Choudhury Sylhet
9. Serajul Islam
0. Ghulam Mohamad
1. Syed Ghulam Bihik Koirang

Joined August 10, 1947; Resigned and died later
Joined August 10, 1947; Died December 13, 1949
Joined August 10, 1947; Disqualified under PRODA
Joined August 10, 1947; Resigned to accept ambassadorial appointment
Joined August 10, 1947; Died December 22, 1952
Joined August 10, 1947; Resigned to accept appointment as Governor
Joined August 10, 1947; Died April 1952
Joined August 10, 1947; Resigned
Joined August 10, 1947; Resigned to accept ambassadorial appointment
Joined August 10, 1947; Resigned
Joined August 10, 1947; Resigned
Joined August 10, 1947; Disqualified under PRODA
Joined August 11, 1947; Resigned and died later
Joined May 15, 1948; no data on resignation but name not found in 1953 list
Joined December 23, 1948; Resigned to accept appointment as Governor-General
Joined April 12, 1950; no data on resignation but name not found in 1953 list
22. Abdul Wahid Khan

23. Malik Khuda Boksh

24. Maulvi Fazle Husain

25. Maulana Abul Kalam Azad

NOTE

1. Data on dates of joining were taken from the Constituent Assembly of Pakistan Debates dated correspondingly. Those on resignations and deaths were gathered from other sources.
APPENDIX "C"

MEMBERS OF THE SECOND CONSTITUENT ASSEMBLY
(As of March 22, 1956)

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<td>Mandal, Rasa Raj</td>
<td>-do-</td>
</tr>
</tbody>
</table>
Misbahuddin Hussain, Syed
Mohammed Ali (Bogra)
Moslem Ali Molla
Mujibur Rahman, Sheikh
Muzaffar Ahmad
Nurul Rahman
Sen, Sailendra Kumar Dr.
Suhrwardy, M. S.
Tarkabagish, Maulana Abdur Rashid

Zahiruddin

EAST PAKISTAN
Abdul Bari, Mian
Abdul Hamid Khan, Soofi
Abdur Rashid Khan, Sardar
Abdus Salam Chaudhry
Abdul Hussain Shah, Syed
Amir Azam Khan, Sardar
Amir Mohammad Khan, Malik
Aiz Din, Chaudhri
Shahid, Chaudhri Mohammad Hussain
Thundirger, Ismael I.
Vasti, Sardar Abdul Kameed Khan
Paultana, Mian Mumtaz Mohammad Khan
Kardezi, Syed Ahmad Nawaz Shah
Hussain, Chaudhry Abdul Ghani
Ibbon, Cecil E.
Ilani, Syed Alemdar Hussain Shah
Urmani, Ahmad Mushtaq
Aroon, Yusuf A.
Akhbaruddin, Mian Mohammad
Umar Shah, Mian
Umar Zeb, Mian Gul Abdul Haq Maj Gen
Mauluddin Khan, Mohammed
Shamir Khan, Malik Madan
Sudir Yezi
<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Date</th>
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<tbody>
<tr>
<td>64.</td>
<td>Krynani, M. R.</td>
<td>Joined July 7, 1955</td>
</tr>
<tr>
<td>65.</td>
<td>Kuhuro, Mohammad Ayub</td>
<td>do</td>
</tr>
<tr>
<td>66.</td>
<td>KirpalDas, Siroomal</td>
<td>do</td>
</tr>
<tr>
<td>67.</td>
<td>Kizilbash, Mozaffar Ali Khan</td>
<td>do</td>
</tr>
<tr>
<td>68.</td>
<td>Mamdot, Khan Iftikhar Hussain Khan of</td>
<td>do</td>
</tr>
<tr>
<td>69.</td>
<td>Mazari, Mir Balakh Sher</td>
<td>do</td>
</tr>
<tr>
<td>70.</td>
<td>Mehrdad Khan Naksud, Khan Bahadur Haji Melik</td>
<td>Joined August 8, 1955</td>
</tr>
<tr>
<td>71.</td>
<td>Mir Dai Khan, Nawab</td>
<td>do</td>
</tr>
<tr>
<td>72.</td>
<td>Mohammad Ali, Chaudhri</td>
<td>do</td>
</tr>
<tr>
<td>73.</td>
<td>Mohiyuddin Lal Badshah, Syed</td>
<td>do</td>
</tr>
<tr>
<td>74.</td>
<td>Mumtaz Hasan Qazilbash, Mirza</td>
<td>Joined August 8, 1955</td>
</tr>
<tr>
<td>75.</td>
<td>Noon, Malik Mohammad Tiroz Khan</td>
<td>do</td>
</tr>
<tr>
<td>76.</td>
<td>Rashdi, Mir Ali Mohammad</td>
<td>do</td>
</tr>
<tr>
<td>77.</td>
<td>Sahib, Khan Dr.</td>
<td>do</td>
</tr>
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<td>78.</td>
<td>Soomro, Haji Moula Baksh</td>
<td>do</td>
</tr>
<tr>
<td>79.</td>
<td>Talpur, Mir Ghulam Ali Khan</td>
<td>do</td>
</tr>
<tr>
<td>80.</td>
<td>Waris Khan, Malikdinkhel Afridi Malik</td>
<td>Jioned August 8, 1955</td>
</tr>
</tbody>
</table>

**FORMER MEMBER**

1. Major-General Iskander Mirza

Resigned on August 24, 1955 after his appointment as Acting Governor-General; replaced by Ismael I. Chundrigar

**NOTES**

1. Dates on dates of joining were taken from the Constituent Assembly of Pakistan Debates dated correspondingly.