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A B S T R A C TINFLUENCE OF RELIGION ON POLITICSIN PAKISTAN 1947-56M.A. Thesis (New Regulations)by Saeeda Riaz Ahmad

Pakistan came into existence as the result of Muslim belief that within the Indo-Pakistan Sub-Continent there lived two distinct nations, the Hindus and the Muslims. It was understood that the Muslims would be relegated to a permanent minority group if a separate political entity such as Pakistan was not created. However, the strife for Pakistan was not led by the men of religion but the westernized intelligentsia. However, once Pakistan was created the 'Ulamā began to voice the opinions that Pakistan has been specifically created for the purpose of creating a State based on Islam.

When the Constituent Assembly sat down to frame a constitution for Pakistan a controversy ensued within it and outside. The main questions which came under discussion were: Should Pakistan be an Islamic State based on Shari'a? If so what is an Islamic State and what political and social institutions should be created to set it up and preserve it? How should the position of 15 % non-Muslims living within the political boundaries of Pakistan be resolved and what should be their legal and social position? What should be the qualifications and powers of the Head of the State and how should he be elected and finally what steps should be taken to ensure that no laws repugnant to Islam are enacted?

The 'Ulama such as Maulānā Shabbir Ahmad 'Uṣmānī, and Maulānā Abul A'la Maudūdī were actively involved in Politics and along with other 'Ulama began to put pressure on the Constituent Assembly to create a Constitution based on Islam. This Thesis is mainly a study of influence of the men of religion on Constitution

making up to the framing of the 1956 Constitution.

The first Chapter discusses the political background of the creation of Pakistan. The second Chapter comprises firstly the development of Islamic political thought and secondly the concept of Islamic state as envisaged by some of the contemporary Pakistan Authorities on Islam. The Third Chapter then endeavours to trace the influence of religion on the process of constitution making. This is followed by a Conclusion.

INFLUENCE OF RELIGION

ON

POLITICS IN PAKISTAN 1947-1956

SAEEDA RIAZ AHMAD M.A. (PUNJAB)

M.A. THESIS (NEW REGULATIONS).

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INFLUENCE OF RELIGION ON POLITICS

IN PAKISTAN 1947-1956

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PREFACE.

Behind the creation of Pakistan was the Thesis that the Muslim minority in the sub-continent would become permanently subservient to the Hindu majority if the country was not divided. The men who led the political campaign for Pakistan were not men of religion. They were Muslims mostly educated in the West who had imbibed the spirit of democracy. They believed, however, that democracy could not work in India because within its political boundaries lived two distinct nations.

The ^Strife for Pakistan was a purely political strife, the majority of the influential 'Ulamā did not support it. However as soon as Pakistan came into being voices for Pakistan becoming a State based on Shari'a began to be heard and soon the Assembly which was charged with making a constitution for Pakistan became an arena of opposing views on the nature of the State which Pakistan should adopt for itself. 'Ulamā became polarised on one side and the Westernized intellegentia on the other. The minorities like the Hindus and the Christians also became involved in this political fight. From this complex of views arose the constitution of the 'Islamic Republic of Pakistan',.. However the subsequent history culminating in the abrogation of this constitution proved that it was unsuitable.

In this thesis I have endeavoured to study the ideas of the 'Ulamā in Pakistan and their interpretations of Islamic Constitution as the Constitutional Assembly of Pakistan saw them in the years 1947 - 1956.

It must however be understood that not only religious matters were of vital importance . There were other issues and factors which sometimes acted alone, sometimes combined to form a new pattern, either by interaction between themselves or in combination with religious issues. Studying these problems I have felt that looking at the history of Pakistan during these crucial years, the religious question on its own is an oversimplification of the real pattern which history adopted. That is why in certain places I had to bring purely political issues to illustrate certain conclusions.

I wish to record my obligation and extreme gratitude to Mr. John A. Haywood, Director of Centre of Middle Eastern and Islamic Studies, University of Durham who supervised this research. His deep understanding of Islam and the Arabic Language and interest in Pakistan helped me to understand many a problem. He looked through each draft with friendly care. The fact is that this thesis would not have been what it is without his help,

understanding and advice.

I wish also to thank my husband Mr. Riaz Ahmad whose help was most invaluable. He allowed me to use the manuscript of his thesis on Maulānā Maudūdī for which I am deeply indebted to him.

I should also express my gratitude to Rev. Anthony Spurr Rector of Chester-le-Street who selflessly gave his valuable time to guide me in ^{the} intricacies of the English Language.

SAEEDA RIAZ AHMAD

August, 1968.

TRANSLITERATION OF ARABIC

hamza

not shown, when initial

otherwise, ˆ

| | | | |
|---|-----------|---|---------------------------|
| ب | b | ص | s |
| ت | t | ض | ḏ (z in Persian and Urdu) |
| ث | <u>th</u> | ط | ṭ |
| ج | j | ظ | ẓ |
| ح | ḥ | ع | ‘ |
| خ | <u>kh</u> | غ | <u>gh</u> |
| د | d | ف | f |
| ذ | ḏ | ق | q |
| ر | r | ك | k |
| ز | z | ل | l |
| س | s | م | m |
| ش | <u>sh</u> | ن | n |
| | | ه | h |

(Consonants) و w, o

ي y

Vowels:

Short damma و u

fatha / a

kasra و i

Long.

و̄ ū

ا̄ ā

ي̄ ī

Diphthongs

و̄ / ا̄ au or aw

و̄ / ي̄ ai or ay

URDU TRANSLITERATION

پ p

ط rhط t

ن when nasal ñ

چ chد d

CHAPTER ONE

GENESIS OF PAKISTAN

CHAPTER ONEGENESIS OF PAKISTAN

Pakistan came into existence on the 14th of August 1947 as the result of the Muslim feeling that they comprised a separate nation distinct from the majority of the Indian population who were Hindus. The aim of this chapter is to explain to the historical and religious background which led them to realise that they possessed a distinct culture and, therefore, ought to form a separate state.

The first important historical event was the Mutiny of 1857, which had proved disastrous for the Indian

Muslims. It was a serious set back for the Muslims in the sense that the British authority began to consider them their main enemies and for the rest of that century their education and political and administrative participation began to dwindle. They became the target of deliberate neglect on the part of the British Indian Government. W. W. Hunter in his book "The Indian Musalmans"⁽¹⁾ has made an admirable study of the situation and the plight of the Muslims after the Mutiny. He writes "they found themselves plunged into an unimaginable humiliation and impoverishment."⁽²⁾ They

(1) W.W. Hunter Indian Musalmans, are they bound in conscience to rebel against the Queen. (Trubner London, 1871).

(2) Ian Stephens, Pakistan (Earnest Bern, London, 1964, p.69.

were lumped together with their former subjects, the Hindus, in a non-Muslim empire. They were held responsible for the abortive effort to end the British rule and were treated with suspicion, and were made to bear the brunt of the reprisals.

From the literature on the Mutiny and its background ~~it~~ can now be assessed that the British opinion at the time was to a great extent lopsided and their apportionment of the blame unjust. But the British power at the time believed it to be the correct assessment. In 1835 ~~under~~ the direction of Macaulay, the court language had already been changed from Persian to English. For the simple reason that the Hindus had already come into wider contact with the English, in the South and East of India, and had acquired a working knowledge of the language before the fall of the Mughals in the North, This meant that the Muslims began with a disadvantage.

For the Hindus it was only a matter of changing Masters and so the re-adaptation had come more readily in their case. ~~(E)~~

It was under the influence of these factors that the job opportunities for the Muslims became restricted, giving the Hindus a very clear lead. In the north, along with the lack of opportunities of learning the English language, the Muslim stubbornness in resisting the European cultural impact also made their plight worse. The belief that their language and their culture on the whole was superior to what the English could offer them was widespread. It was also believed that after teaching the younger generation their own knowledge and language the English meant to convert them to Christianity and away from Islam. It was at this stage that Sayyid Ahmad Khān (later knighted) began his solitary crusade in favour of bringing the Muslim community

out of their plight. The first significant work which he performed was to write two short booklets Asbāb-i-Baghāwat-i-Hind (Causes of the Indian Mutiny 1859), and The Loyal Muhammadans of India (1861). In these two pamphlets he made a study of the antecedents and nature of the Mutiny and revealed the activities of those Muslim families who had supported the British and without whose moral and active help the result of the Mutiny would probably have been far from favourable to the British. He realized that unless a well planned reform movement was launched to educate the Muslims on Western lines it would be impossible for them to reach a stage where they could compete with the Hindus in commercial, business and administrative life on an equal basis. His crusade was thus mainly directed towards the conservative traditionalism of the Muslim religious teachers of the time. The British in India generally held the view that

Islam by its very nature was anti-Christian and that Muslims considered it their religious duty to establish Muslim rule. The ideas of Shāh Waliullah and his famous invitation⁽¹⁾ to Aḥmad Shāh Abdālī of Afghanistan to end the British Raj in India had in fact been instrumental

- (1) Shah Waliullah a famous religious leader had written in a letter to Aḥmad Shāh Abdālī the Afghan King, "In short Muslim Community is in a condition thoroughly pitiable, all control of power is in the hands of the Hindus because they are the only people who are industrious and adaptable. Riches and prosperity is theirs while Muslims have nothing but poverty and misery. At this juncture you are the only emperor who has the audacity, the foresight, power and capability to defeat the enemy, to free the Muslims from the clutches of the infidels. God forbid if their domination continues Muslims will ever forget their religion and will become undistinguishable from the non-Muslims." Translated from Khaliq Ahmad Nizāmī, (ed) Shāh Waliullah Kay Siyāsī Maktūbāt, (Aligarh, India 1951) p. 106.

in the formation of these views. Sir Sayyid explained that the Wahhābī Movement in India under the leadership of Ahmed Shāh Barālvī was not Anti British but anti-Sikh.

He was instrumental in creating the Muslim College at Aligarh. His other efforts included the demand and ultimate achievement of a separate electoral system for Muslims in the Municipal Councils in 1882. He also tried to keep Muslims out of involvement with the All-India National Congress because of its plea for a representative government on the same pattern as that of Britain involving the rule of the Majority. He realized that the rule of the majority as implicit in democratic principles is unsuited to India, because it contained many nations. Above all, he said that Hindu society was ridden with the Caste System and unless these bases of the social structure were either reformed or removed altogether nothing could ensure a

successful transplantation of a democratic system.

During the 1880's some important publications came out which have had a lasting effect on the subsequent political happenings in India. The first of these was Annandmath of Bankam Chandra Chatterjee. Linked with Chatterjee's ideas were the extremist Hindu rivalist movements the Arya Samaj and Tilak's fanatical agitation during the 1890's in the Maratha regions.

This period also saw the beginnings of the Muslim apologist movement of which Amīr 'Alī's History of Saracens was the outstanding example. The Ebb and Flow of Islam, generally known as the "Masaddas of Hālī" an epic poem regarding the glory of the past history of Islam and its present degeneration was another literary piece planned to point out to the Muslims that it was entirely their own indolence which was responsible for their degradation.

The next key peak period which affected the position of the Indian Muslims and their attitude towards the Indian Nationalism was the period 1901 to 1912, and began with the announcement by the Indian Viceroy that the province of Bengal would be partitioned to make two provinces. Curzon's motives were primarily administrative, as it was said that the province had become too populous for efficient management. The Eastern part which was predominantly Muslim, had become neglected. When the partition was ultimately effected in 1906 Muslim India generally and the Bengali Muslims in particular welcomed it. The Hindu business community of Calcutta, however, considered it an affront because they would lose all the business to the Muslims if the Eastern part developed its own sea port as an alternative to Calcutta. The partition of Bengal was thus made an affair of Hindu national interest at the expense of the Muslims. They took it as

an attack on their freedom and an extraordinary clamour ensued. This was supported by extremist Hindu movements who committed terrorist outrages against both Muslims and British Officials. These riots brought home once again that until and unless the Muslims became vigilant and made the British accept constitutional safeguards against the Tyranny of the Majority, their future lay in jeopardy. It also confirmed the opinion that the Hindus would leave no stone unturned to prevent any advancement in the position of the Muslim community. At this stage the assurances that the partition would not be annulled were asked from the British. These were repeatedly given until the eve of the announcement in December, 1911, of the actual annulment by Hardinge.

It was under the influence of the initial resistance of the Hindu community and the Congress party to the partition that the Muslim League, potentially a rival

political organization to the Congress, was formed in 1906. In the same year a number of Muslim notables under the leadership of the late Āghā Khān had met the Viceroy with the demand that their interests as a separate community should be taken into consideration when framing the coming constitution of 1909.

After the partition of Bengal was annulled a few years of confusion and embitterment followed to be succeeded by the period 1916-22 in which, due to reasons which may seem irrelevant now, the two communities came together. In 1911 Italy had started an onslaught against Turkey. The Balkan States had followed suit and now Britain was at war with her. All these were not only European powers but were non-Muslim while Turkey was not only an Asian country but the seat of the Ottoman Caliphate, the very symbol of the world of Islam. Consequently Muslim loyalties in India were divided, and Mr. Gandhi, recently back from

South Africa, stepped in to help the Muslim cause. This was followed by a complete accord between the Muslim religious leaders and Congress. From this accord emerged an anti-British non-cooperation movement favouring the cause of Turkey. This movement came to be known as the Khilāfat Movement and continued long after the fall of Turkey and rise of Mustafa Kamāl Pāshā.

This accord may have been responsible in its earlier stages for what ensued in 1916 in the form of Mr. Muḥammad 'Alī Jinnāh's pact with the Congress leaders (the Lucknow Pact) in which Congress accepted the Muslim demand for separate (Lucknow) electorates. The pact, however, did not come into ~~effect~~ ^{effect} because Congress under the influence of its extremist leaders soon changed its mind. Thereafter Hindu Muslim relations never gained the same friendliness. The intense precariously based enthusiasm of these years and

its non-co operation campaign was followed by such disilluisionment that much of the sensible cool headed work at Lucknow was destroyed for ever.

The years 1922-37 began with the Hindu Muslim rioting. The Simon Commission visited India in 1928 to consult the Indian leadership about a future constitution of India. The Hindus and the Muslims failed to agree because Congress asserted that she would not consent to any constitutional safeguards for the Muslims and other racial and religious minorities. The Simon Commission was followed by the Round Table Conferences in London. These followed the same pattern and no agreement could be reached. The two impressive non-cooperation movements of Mr. Gandhi ensued. These were impressive affairs but the Muslims generally kept aloof from them. They had partly realised that their interests as a community conflicted

with the opinions of the Congress. It was in these conditions that the Act of 1935 was passed by the British Parliament to serve as a new constitution for India.

Thus it was that at the historic All India Muslim League Conference Sir Muḥammad Iqbāl came out with his proposal of a loose confederation of India which foreshadowed the Pakistan idea. He wrote to Mr. Jinnāh " our political institutions have never thought of improving the lot of the Muslims generally the problem of bread is becoming more and more acute. The Muslims have begun to feel that they have been deteriorating during the last 200 years "(1) He was of the opinion that apart from economic aspects of the involvement in politics the Muslims

(1) Letters from Iqbal to Jinnah (Ashraf Lahore) p.17

would be wiped out culturally and religiously if they did not carve out a political entity separate from that of the Hindus for themselves. He wrote to Jinnāh ".... it is absolutely necessary to tell the world both inside and outside India that the economic problem is not the only problem in the country. From the Muslim point of view the cultural problem is of much greater consequence to most Indian Muslims." (1)

These letters show how the Muslim Community, which was until this stage only striving for economic safeguards, began to have a positive purpose to create a separate political entity.

It is, however, interesting to note that as late as 1946 the Muslim League accepted the Cabinet Mission plan for a three-tier Federation of India while Congress refused it.

The final breaking up of all hope for an amiable settlement came about in the period 1937-40, and this is

(1) Ibid p.13

connected with a episode related to provincial ministry making, particularly that of the United Provinces.⁽¹⁾

Mr. Jinnah had come back from London after a period of legal practice there in 1934. He soon found himself the leader of the Muslim League. The Muslim League up to now had remained a discussion club for the upper middle classes and upper class Muslims and had not attempted to make any contact with the masses. At Jinnāh's return, however, for the first time attempts were made to make the party a political organization in the real sense. Three years later elections were held under the Indian 1935 Act. Because the Muslim League had not yet had time to improve organizationally, they entered into an accord with the Congress to fight the elections and campaign jointly with the Congress in return for a promise that a coalition government would be formed in

(1) Now renamed Uttar Pradesh.

the United Provinces, and that the ministerial posts would be distributed according to the parliamentary percentage of both the parties. After the elections, however Congress repudiated their promise and announced that a coalition ministry would be formed only if the Muslim League's elected members joined the Congress Party and if the local Muslim League Parliamentary Party was dissolved permanently. This resulted in widespread resentment among the Muslim League members throughout India and the Muslim Community in general. Sir Sayyid Ahmad Khān had long before pointed out that western style majority rule was not suitable for India due to its religious and racial groupings Muslims had now come to realise that this was so, and that Congress was bent upon introducing majority rule which was detrimental to the interests of the Muslims.

After the framing of the government, United Provinces Congress ministry did nothing to bring about a more congenial

communal atmosphere. The fact is that they did everything to harden the point of view which had generally been accepted by the Muslims. To aggravate the situation Mr. Nehru toured the province conducting a vigorous 'mass contact' campaign on his party's behalf among the Muslims to swing the loyalties from the Muslim League. Mr. Gandhi's slogan of 'Ram Raj' (1) was adopted by Congress and used extensively. Bande Matram a national anti-Muslim song taken from the Bankam Chandra Chatterjee's Annandmath was made the official anthem and was ordered by the ministry to be sung in schools every morning. At the primary school level the Urdū script was replaced by Devanagri. Beef eating was actively discouraged and the best government appointments also went to Hindus. (2)

(1) Denoting a kingdom controlled by the Hindu Godhead.

(2) See Pirpur Report also Ian Stephens, op.cit p.77

It was under the influence of these political and cultural onslaughts on the Muslim Community that the Pakistan Resolution was passed in Lahore by the Muslim League on the 23rd March 1940.

From this time onward a total transformation occurred in the organization of the Muslim League. A goal had been set and the Muslim League became as the days went by, the only party which satisfied the Muslim aspirations. Their slogan became the call to carve out their lives in accordance with their own cultural and social heritage. Finally Pakistan came into being on the 14th August 1947 after a long struggle.

CHAPTER TWO

THE CONCEPT OF THE ISLAMIC STATE

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Islam has from its earliest days made no distinction between politics and religion. Islam, by its adherents was not only considered to regulate the relations of the individual with God, to make it an ethical system, but also with the community making it a political system. It combined the state with the Society and equated it with religious ideals. It was claimed that God had revealed a code of life to his prophet, Muhammad for

tranquility and peace on earth and for the achievement of a better life in the hereafter in the shape of the Qur'ān. But because the person of this prophet was rightly guided his actions and speech also began to be considered an important part of the Muslim Law (Shari'a). Consequently a system of jurisprudence (fiqh) evolved. Its sources apart from the Qur'ān the revealed book, were the Sunna (the record of the prophets life and actions) and the Hadith (the sayings of the prophet). Sunna literally means a way or rule or manner of acting or mode of life and Hadith a saying conveyed to man either through hearing or through revelation.

As time went on and new situations arose Umma (Muslim Community) evolved the Shari'a the way leading to the will of Allah out of these three sources with the help of qiās (Analogy). Only in this could the Universal validity of the divinely revealed law be preserved. Over the years, however, four schools of jurisprudence evolved wherein the interpretations

of law were collected and codified. These schools of jurisprudence are generally named after their founders and are known as Hanafī, Mālikī, Shāfi and Hanbalī.⁽¹⁾ It is from the works of these schools of fiqh along with the treatises devoted to the nature and practice of the Khalāfa (the Caliphate) especially of the first four rightly guided Khalīfas that the nature of the Islamic constitutional Law can be ascertained.

- (1) (i) Hanafī after Imām Abu Hanīfa, 80-150 AH (699-767 AD).
- (ii) Mālikī after Imām Mālik, 95-179 A.H (714-798 AD).
- (iii) Shāfi after Imām Shāfi, 150-240 A.H. (769-895 AD).
- (iv) Hanbalī after Imām Aḥmad bin Hanbal 164-242 A.H. (780-855 AD).

I The Wahhābiyya Movement

Any study of the nature and ideals of Modern Islam must begin with the ideas of 'Abd-al-Wahhāb (1703-1787). His movement is generally considered to be the first in the modern age in favour of the simplicity of early Islam. The Wahhābiyya was a protest movement against the deterioration which affected Islam from within.

The movement brought a message of an Islam simple and uncomplicated. It was a puritanical movement in favour of returning to classical Islamic Law by rejecting all the philosophical, theological, and mystical traditions which had found their way into the Islamic framework during the middle ages. Wahhābiyya insisted solely on Law, and classical law to them was the real essence of Islam. Islam, Muḥammad ibn 'Abdal Wahhāb proclaimed, is not a mere matter of interpretation and blind following of what others have said. We must

find out what the Islam is: it is above all a rejection of all gods except God, a refusal to allow others to share in that worship which is due to God alone.

‘Abd-al-Wahhāb drew his thought and attitudes entirely from the first generation of Islam and repudiated all the philosophical, legal or theological changes brought about during the later years of Islam. He was in vehement opposition to the Persian tradition and ^{Cism} mysterieism and believed that they had corrupted Islam by making it a personal affair. The movement had found in Ibn Saūd (died 1765) a prince who was willing to let these simple principles of pristine Islam find a practical manifestation.

It is from the thought and attitudes of this movement that the new voice of back to Qur'ān and back to Sunna had come through to our own time.

II Shāh Waliullah

The penetrating voice of the Wāhhābīs had been influential among the Muslims who found themselves perplexed by the inadequacies of their community in the modern world. Like the Wāhhābīs other men also began denouncing the History of the Muslims in the years after 'Ali's Khalāfa and began to reconstruct what Islam originally taught and inspired. One such man was Shāh Waliullah (1703-1781) of Delhi. He did not belong to any particular school of fiqh, and embraced many attitudes towards Muslim Law into his own system. His refutation or acceptance of any particular legal matter was based on his own judgement.

He writes "An idea has brought itself to my mind that the religion of Abū Hanīfa and Shāfi are the most well known among the Umma the tenets of both these schools should be brought together ... Both their systems should be examined, and a single system evolved. Whatever should find a parallel

among the sayings of the prophet should be retained and what ever is found in these systems, but has no support in the Qur'ān should be discarded. (1)

The prominent men in the religious field in India have, since Shāh Waliullah mainly worked on this basis, the basis that truth does not necessarily lie in any one school of fiqh but has to be derived from all of them according to our own judgement.

III Jamāluddīn Al-Afghānī

Any piece of writing on the subject of the Islamic State would not be complete without a mention of Jamāluddīn al-Afghānī. Jamāluddīn Afghānī was the first of the modern authorities on Islam who began to think that the future of

(1) Shāh Waliullah of Delhi, Al-taf himāt al-alahīyya 211
 quoted from Maudūdī, Abul 'A'la, Tajdīd-o-Ahyā'i-Dīn
 (Islamic Publications Lahore 1963) p.107-108

Islam lies in the political awakening of its adherents. He favoured political nationalistic movements in Muslim countries and after a substantial awakening had occurred he envisaged a collective movement on the part of Islam as a whole to end the Western dominance.

His pan-Islamic movement failed because the national counter-currents within the Muslim countries were stronger than he had realized. Pan-Islam was the first attempt in modern times to emphasize the uniting forces of Islam. Unfortunately the negative factor in it was strong; it only endeavoured to rally the Muslims against the West. At its roots was the resentment against Western domination. It was a negative not a positive impulse and it failed because of this negativism.

IV Muhammad Iqbāl

But an unsuccessful movement can sometimes serve as the foundation of a greater objective. After the World War-I when the whole of the Middle East was moving towards self determination the Muslims of India began to think in terms of Islam. It was out of this movement that the poet philosopher Muhammad Iqbāl arose, and to him Islam once again became a religion which could be saved only by political self determination of the Muslims of India and the rest of the world. He thought in terms of the Millat (the community of believers) which he believed transcended in natural political boundaries uniting and realizing their identity, (Khūdī) or "ego" by living their lives in accordance with the tenets of the Qur'ān, the message sent by God to his vice-regent the Man, through his Prophet Muhammad. Later on when the idealistic character of his theories became evident to him and he became more and

more involved with the Indian Muslims and their plight, he began to concentrate his attention on Indian politics and asserted as in his famous Presidential Address at the Annual Conference of Muslim League at Allahabad that a separate state of the Muslims of India would be a microcosm to a macrocosm which is the Islamic Millat. This was the way by which he attempted to harmonize his ideas of Millat and the Muslims Nationalism of the Indian sub continent. Iqbāl is generally considered to be the father of the idea of Pakistan.

With the creation of Pakistan the important authorities have, however, begun to put a greater emphasis on the political aspects of the religion of Islam. Terms like Islamic State, Islamic Law, Islamic Education, sovereignty of God etc. have come into wide use in contemporary writings. There has been a constant barage of literature on the subject and different learned men both in the affairs of religion and modern

jurisprudence have been occupied in finding a generally accepted interpretation of the Concept of Islamic State. Among those, Muhammad Asad⁽¹⁾ and Maulānā Abul A'la Maudūdī have been prominent. The influence of Maulānā Maudūdī and Muhammad Asad has been considerable both among the Westernised intelligentsia and the 'Ulamā.

(1) Leopold Weiss.

V Muhammad Asad

It will be of some value to give the ideas of both Muhammad Asad and Maulānā Maudūdī in slightly greater detail because both these men have been in one way or another, actively involved in the problems of Constitution making in Pakistan.

Muhammad Asad elaborated his ideas about what shape the Islamic State should take in Pakistan first in an essay published in Arafat Lahore (March 1948) entitled 'Islamic Constitution Making'. In this he elaborated 14 points. These have now come out in his book "The Principles of State and Government in Islam."⁽¹⁾

- (1) That the State holds power in Trust from God so that the people may live in accordance with the Laws of Islam.
- (2) That the laws of Shari'a bearing on matters of public concern form the inviolable basic code of Public Law.

(1) Muhammad Asad, The Principles of State and Government in Islam (Berkley and Los Angeles, 1961),

- (3) No temporal legislation, mandatory or permissive, shall be valid if it is found to contravene any stipulation of the Shari'ah.
- (4) The Head of the State (Amir) shall be a Muslim, he shall be elected to this office by the community; and on being elected, he shall declare that he will govern in obedience to the Law of Islam.
- (5) The Legislative powers in the State are vested in the Majlis-i-Shura, the members of which shall be freely elected by the community. The Majlis is entitled to legislate in respect of all matters not covered by the Shari'ah and is presided over by the Amir or a delegate to be chosen by him from among the members of the Majlis. The laws passed by the Majlis are binding on the Executive.
- (6) Self-canvassing by any person desirous of being appointed to an administrative post or of being elected to a representative assembly, shall automatically disqualify that person from being elected or appointed.

- (7) The Head of the State (Amīr) shall be head of the Government as well, and he alone shall be responsible to the Majlis-i-Shūra for the activities of the government. He shall appoint and dismiss his ministers at his discretion: they shall act as his secretaries of state and shall be responsible to him alone.
- (8) Guardianship of the constitution shall be vested in the supreme Tribunal, the members of which shall be elected by the Majlis-i-Shūra on the advice of the Amīr. The Tribunal shall have the rights
- (a) to arbitrate on the bases of "Nass" ordinances of the Qur'ān and Sunna in all cases of disagreement between the Amīr and the Majlis-i-Shūra referred to the Tribunal by either of the two parties.
- (b) to vote on the Tribunal's own accord, any legislative act passed by the Majlis-i-Shūra or any administrative act on the part of the Amīr which in the Tribunal's considered opinion offends against the "Nass" ordinances of the Qur'ān or Sunna; and

- (c) to order the holding of referendum on the question of the Amīr's deposition in case the Majlis-i-Shūrā prefers, by a two third majority, an impeachment against him to the effect that he governs in flagrant controvention of the Sharī'a.
- (9) Every citizen has the right to express his opinion, in speech and in writings on any matter of public concern, provided that such an expression of opinion (a) does not aim at undermining the peoples belief in Islam, (b) does not amount to incitement against the law of Islam or to sedition against the established government, and (c) does not offend against common decency.
- (10) Whereas non-Muslim citizens shall be free to preach their religious beliefs within their own community and within communities belonging to other non-Muslim religions, all missionary activities directed at converting Muslims to another religion shall be deemed an offence and shall be punishable by law.
- (11) The State guarantees to all its citizens full freedom and protection in the expression of their religious beliefs, and in the exercise of their religious practices, as well as the

persuance of all their legitimate cultural interests. No non-Muslim citizen, shall be compelled, directly or indirectly to embrace Islam against his will and conscience; and forcible conversion of the non-Muslims to Islam shall be deemed to be a cognisable offence and shall be punishable by Law.

- (12) Education shall be free and compulsory for all citizens from the age of ⁽¹⁾ to the age of ⁽¹⁾ years and the Government shall make suitable provisions for the establishment and running of schools. Islamic religious instructions shall be an integral compulsory part of the curriculum insofar as Muslims are concerned; while in all schools controlled by the Government, arrangements shall be made for the instruction of non-Muslims in the tenets of their religions, provided that the communities concerned so desire.
- (13) The lives, persons and possessions of the citizens are inviolable and none shall be deprived of his life, freedom or property except under the law.

(1) He leaves the ages to be fixed by law later.

(14) It falls within the responsibility of the state to ensure to every one of its citizens (a) productive and remunerative work while of working age and in good health, (b) free and efficient health service and (c) a provision by the state of adequate nourishment, clothing and shelter in case of disability arising from illness, unemployment due to circumstances beyond his control, old age etc. No citizen shall suffer undeserved want while others have more than they need; and every citizen shall be protected against this by means of a free and compulsory State Insurance carrying an equitable subsistence, minimum to be determined by law in accordance with the conditions prevailing" (1)

(1) Adapted from Muhammad Asad "Islamic Constitution Making" Arafat 1948, Lahore, and quoted from Riaz Ahmad The Concept of Islamic State as found in the writings of Abul A'la Maudūdī (Ph.D. thesis submitted to Durham University 1968) pp 79-84.

Rosenthal has called Muhammad Asad's plan "radical and deceptively simple",⁽¹⁾ on the grounds that among other things who will stop the legislatures making an Islamic Law, and the Amīr and others endorsing them? Muhammad Asad's ideas are so radical that it is very difficult to distinguish the Islamic state from the western Democratic System.

VI Abul A'la Maudūdī

Opposed to Asad's is Sayyid Abul A'la Maudūdī's conservative and fundamentalist solution. He has been a very influential writer on Islamic and political matters in Pakistan and has stayed in the middle of debate about whether or not

(1) E.I.J. Rosenthal Islam in the Modern National State
(Cambridge U.P. 1965) p.137

Pakistan should be an Islamic State and if it is going to be a state based on Islam what shape it is going to take. His ideas on the Islamic State in general and their applicability in Pakistan are included among a number of other works in The Islamic Law and Constitution⁽¹⁾ a collection of his writings and speeches spread over a number of years. A prolific writer, his other works of importance include:-

Jihād fil Islām (Lahore 1962) first published 1930, Tajdīd-o-Ihyā-i-dīn (Lahore 1963) first published 1940, and Khalāfat-o-Malūkiyyat (Lahore 1966).

Maulānā Maudūdī heads a political party the Jamā'at-i-Islāmī, which is the most effective instrument of the propagation of the idea that Pakistan as a state should be based on the tenets of Islam; that the constitution of

(1) Sayyid Abul A'la Maududi, Islamic Law and Constitution (Translated and Edited by Khurshid Ahmad (Islamic Publications, Lahore 1955)).

Pakistan should be based on the principles of the Qur'ān and the Sunna. It is a party actively involved in politics and endeavouring to come into power by means of gathering support, among the masses and the intellectuals and through taking part in country's elections. It forms a major part of opposition in the legislature.

Maulānā Maudūdī's political party has much in common with the Ikhwān-al-Muslimūn of Egypt whose strategy and propaganda the Jamā'at-i-Islāmī has adopted. The Jamā'at is a closely knit organisation on authoritarian lines holding opinions on matters of law, administration, government and state.

Maulānā Maudūdī begins with the promise that the sovereignty over the whole universe belongs to God alone that man's position on earth is as his agent or Vice-regent to administer his Kingdom in sacred trust, that God has made

known his wishes regarding administering his Kingdom to mankind from time to time, through his Prophets. Muhammad was the last of his messengers and he brought a complete code of life which covers the whole activity of man, including a constitution, laws, morality, prayer, government, in fact a complete set of rules governing the relations of man with man and man with God. The life hereafter is inevitable and the final judgement will be on the basis of man's activity in this world and his acceptance of the rules promulgated by God. To say as we do when dealing with the modern concept of state that Sovereignty belongs to people or to any other institution is blasphemy. He says that "Pakistan was demanded and established in the name of Islam" and "for the sake of the revival of its glory." This in itself suggests that "it is potentially an Islamic State."⁽¹⁾

(1) Maudūdi op cit. p.107

It was in his Law College Lahore speech on March 19th, 1948 that Maudūdī came out with his Four Demands and other matters regarding his long crusade in favour of an Islamic State of Pakistan. In this speech he suggested practical steps which if taken would discard the secular and unGodly State based on Western ideology and establish a state based on Islam. He said that the first step should be for the Pakistan Constituent Assembly to declare:

- (i) That the sovereignty in Pakistan belongs to God Almighty alone and that the Government of Pakistan shall administer the country as his agents;
- (ii) That the basic Law of the land is the Islamic Shari'a which has come to us through our prophet Muhammad (peace be upon him);
- (iii) That all those existing Laws which may be in conflict with the Shari'a shall in due course be repealed or brought into conformity with the basic Law and no law which may be in any way repugnant to the Shari'a shall be enacted in future;

- (iv) That the State, in exercising its powers, shall not be competent to transgress the limits laid down by Islam."⁽¹⁾

Maudūdi went on to explain that once this declaration was made it would have "far reaching effects on all departments of our material life."⁽²⁾ He asserts that once people know what purpose the state is going to serve they would begin to elect people who are most god-fearing and virtuous.⁽³⁾ The second step would then be to transfer the power into the hands of those who are capable of using it for the realization of the above mentioned objective through the democratic procedure of general elections.

(1) Maudūdi, Islamic Law and Constitution, op.cit p.107

(2) Maudūdi, Islamic Law and Constitution, op.cit p.107

(3) Ibid

The third step then would be to draft a comprehensive plan for a national life for which all the resources of the state will have to be utilized. Thus the educational system will be re-orientated all the means of propaganda - the press, the platform, the cinema and the radio - will be used for the purpose of creating a new Islamic consciousness, a new healthy outlook; and a incessant and systematic effort will have to be made to mould the society and its culture into the Islamic pattern. (1)

This stage would involve among other things the establishment of an Academy of Law. (2) To this academy will be given the task of translating important legal literature on Islam from Arabic into our own language, including Islamic jurisprudence fiqh and Law. But their more important

(1) Ibid

(2) Ibid pp.115-116

work should be to study the Four Classical schools of fiqh and to derive the most applicable to our times and circumstances from these systems, and finally to codify all law section and clause-wise according to modern pattern⁽¹⁾

He asserts that everything included in the books of fiqh does not constitute Islamic Law and while formulating the principles of Law it should be understood that only following things constitute Islamic Law.

- (i) ~~Explicit commandments~~ of God laid down in the Qur'ān or
- (ii) Qur'anic commandment or an explicit order or prohibition from the Holy Prophet (peace be upon him) or;
- (iii) An interpretation, inference, Qias (analogy), or istihsān (juristic preference) on which there has been consensus (ijmā') of the Umma (community of believers); or it may be a majority decision of the 'Ulamā (the learned) which has been accepted by an overwhelming majority of our own people; or

(1) Maudūdī, Ibid.

- (iv) an ijmā' or a majority decision of the nature discussed in (iii) above arrived at by our own men of learning and authority. (1)

The first two constitute the immutable part of Islamic Law; and form the nasus. Qiās, Istihsān and ijtihād form that part of Islamic Law wherein if necessary, on non-prohibited matters Laws can be formulated within the Spirit of the Islam.

A legislature would be formulating the laws only in this field. He sees the legislature as the God-fearing, Pious collection of men deeply conscious of God and learned in the matters of Islamic Law. He expects that in an Islamic society only people of this kind will be elected into this institution of responsibility.

The Amīr or the head of the state will be a Male Muslim citizen and will exercise full authority in all respects and will command complete obedience as long as he follows the

(1) Ibid pp. 115-116

Shari'a. Amir may be criticized, sued in the judicial or ^{e i} ~~terminal~~ courts and even deposed. The Amir will consult his advisory council (Cabinet) which may be initially elected (as in England) or may not (as in U.S.A) be elected at all. The decisions of this council will not be binding on the Amir⁽¹⁾. There can be no party divisions in an Islamic State. The ideology of Islam is a unity.

The position of the non-Muslims will be based on the rights given to them in the Shari'a and they would be considered as Zimma, meaning the protected. They will have complete rights of citizenship as long as they pay the Jizya^{*} or the poll tax. This will be a protection tax which those who fight the enemy, or are children or aged or dependents will not be asked to pay. They will have equality

(1) Maudūdi, Political Theory in Islam (Pothakote) 1939

with the Muslims in legal courts and their personal laws and religious interests will be protected. The only bar on them would be that the highest office, that of the Amir and other offices of responsibility would not be open to them. There was at the time a controversy on the rights of the minorities. This, will be discussed with all its political implications in later chapters. Maudūdi believes in separate electorate constituencies for minorities whereby they would return their own members to the legislature to protect their rights. (1)

Maulāna Maudūdi envisages an Islamic state where women will be segregated from men. He assures us that to protect what is Godly from what is evil this is necessary. Women and Men have been given different tasks to perform

(1) Joshua Fazluddin, Separate Electorates the Life Blood of Pakistan, Maudūdi's contribution entitled "Psychological basis of Separate Electorates." (Lahore 1956)

in a harmonious society. To protect their rights we may have a separate legislature for them.⁽¹⁾

To conclude, his concept about the Islamic state can be summarized, thus

- (1) That the sovereignty of state lies in God Almighty and man serves as his vice regent.
- (2) That the Islamic Shari'a shall form the law of the land.
- (3) That all laws which are not in accordance with the Shari'a shall be abrogated
- (4) That there shall be no new legislations that would be controversial to the dictates of Shari'a
- (5) That it shall be incumbent upon the state to abrogate by law all such vices as are considered thus by Islam and to promote, uphold and stabilize all such virtues as are upheld by Islam.

(1) Maudūdi, Islamic Law and Constitution p.107

- (6) That none of the basic civic rights of the people - security of life, freedom of speech and freedom of movement and association shall be interfered with unless a crime has been proved in an open court of law after affording due opportunity of defence.
- (7) That the people shall have the right to resort to a court of Law against transgression on the part of executive and legislative machineries.
- (8) That the judiciary shall be separated from the Executive .
- (9) That it shall be the responsibility of the state to provide for the citizens the basic necessities of life, namely food, shelter, clothing medical aid and education.
- (10) That the minorities shall be free to worship in their own places of worship which shall be protected by Law. They will have equal rights with Muslims in a court of law. They will not be allowed to convert any Muslim to their religion.

- (11) The Amīr shall be a Muslim
- (12) Women shall be segregated and will perform tasks
in the home.

Having explained the Concept of the Islamic State as held by some of its more influential exponents in Pakistan we can now deal with the controversy which faced the Constitution makers .

The main issues here were:

- (1) Should an Islamic state be set up on Pakistan ?
- (2) If so what is an Islamic State, and what institutions should be created to preserve it ?
- (3) How should the position of the 15% of minorities residing in Pakistan be resolved? What should be their legal and social positions ?
- (4) What should be the powers and qualification of the Amīr?
How should he be elected and,
- (5) What steps should be taken to ensure that no laws repugnant to Islam are constituted ?

CHAPTER THREE

THE 'ULAMĀ AND CONSTITUTION MAKING

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THE 'ULAMĀ AND CONSTITUTION MAKING

I The Early Phase

As has been explained earlier Pakistan has been created as the result of the Muslim League's claim that the Muslims of India formed a separate Nation. This claim was advanced after the Muslim League realised that the All India National Congress was not willing to allow constitutional safeguards to the minority communities including their own. The Muslim League's political activity had throughout been concentrated upon some sort

of a Confederation in which the constitution would preserve their religious and cultural interests. Their political fight was thus in favour of a separate electoral system by which they would be able to elect their own members to the legislatures. The plan for Pakistan only came out when these constitutional safeguards were found to be un-acceptable to the Hindu majority. It is significant that the Muslim League accepted the Cabinet Mission plan for the creation of a three tier Federation for the Indian sub-Continent as late as the early months of 1947.

In other words the Muslim stand was that India is inhabited by two major nations, the Hindus and the Muslims, while the Congress held that the two nation theory was sectarian and communal and therefore it was un-acceptable to them.

The first readjustment which the newly created Pakistani Nation had to make after the partition of India

was to abandon the two-nation theory. In spite of the fact that Pakistan had at the time of Partition over 14% non-Muslims living in the new state, the readjustment of policy was found necessary. The break down according to the 1951 Census Report was as follows:-

| | | | | | | | | |
|----------------------------|-----|-----|-----|-----|-----|------------|--------|-----|
| Muslims | ... | ... | ... | ... | ... | 64,959,000 | 85.9 % | |
| Hindus (Upper Castes) | .. | ... | ... | ... | ... | 4,359,000 | 5.7 % | |
| Hindus (Scheduled Castes) | .. | ... | ... | ... | ... | 5,421,000 | 7.2% | |
| Christians | ... | ... | ... | ... | ... | 541,000 | .7 % | |
| Others | ... | ... | ... | ... | ... | 366,000 | .5 % | |
| Total Religious Minorities | | | | | | | 14.1 % | (1) |

The Leaders in Pakistan gave out that the need for any constitutional safeguards for minorities had now disappeared

(1) The Census of Pakistan Report 1951 p. 6-2

because Pakistan had come into being for the specific purpose of removing the very need for these safeguards. In the first meeting of the Constituent Assembly of Pakistan Mr. Muhammad 'Alī Jinnāh declared "Every one first second and last is a citizen of this state with equal rights, privileges and obligations" and that in the new democracy (Pakistan) "Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense because that is the personal faith of the individual, but the political sense as citizens of Pakistan."⁽¹⁾

This was a simple liberal statement of a westernised politician but it was not received well either by the men of religion or by the minorities. The men of religion were of the opinion that Pakistan had been created for the specific

(1) Constituent Assembly of Pakistan Debates Vol I

purpose of bringing back the lost glory of Islam in the shape of the ^{introduction} imposition of the Shari'a which stipulates that the minorities may be considered as Ahl-al-Zimma and asked to pay Jizya a protection tax, and that not making Shari'a the basis of law would be a repudiation of the very purpose of Pakistan's creation. A greater section of the minorities on the other hand demanded that they should be allowed constitutional safeguards and a separate system of electorates to preserve their sectional interests. They also hoped that what the Muslims were striving for when they were in the minority they would not deny to the other communities when these are in a minority. An attempt to legitimise the stand of the men of religion came from Maulānā Abul A'la Maudūdī on the 6th February 1948 in the shape of his Four Demands, ⁽¹⁾ regarding the creation of an

(1) Quoted in chapter 2.

Islamic State in Pakistan. With these Maudūdī began a crusade in favour of the Islamic State by public speeches. With his supporters he visited and addressed public meetings in remote towns and important cities.

In April he lead a delegation from his party to meet Maulānā Shabbīr Aḥmad 'Usmānī to explain the Four Demands. Maulānā Shabbīr Aḥmad 'Usmānī was at the time an outstanding figure among the 'Ulamā and was the President of the Jamī'at-ul-'Ulamā-i-Islām. This was an organization of the 'Ulamā created to oppose the Jamī'at-ul-'Ulamā-i-Hind who had given unbridled support to the Congress. The Jamī'at-ul-'Ulamā-i-Islām had supported the Muslim League in the pre-partition era and subsequently Maulānā 'Usmānī was appointed on the Constituent Assembly. Other important members of this organization were the Pīr of Mānkī Sharīf, Maulānā Akram Khān who was the president of the provincial Muslim League of East Pakistan and Maulānā 'Abdullah al-Bāqī.

Although it was said in the Jamā'at-i-Islāmī's journal (Turjumān-ul-Qur'ān) that Maulānā 'Usmānī did not disapprove of the Four Demands, subsequent press shows that at no time did he openly support them as Four Demands and as Maudūdī's. Soon after, Maulānā Maudūdī was arrested by the Punjab Government under the allegation that he had declared that the Kashmir war was not Jihād and those who died fighting would not die in the path of Allah and therefore fire awaits them in Hell. Maulānā 'Usmānī seems to have protested against Maudūdī's arrest.⁽¹⁾ From Maudūdī's arrest it became clear that the Government would not tolerate unbridled and unlimited criticism from the 'Ulamā. Maulānā 'Usmānī who had direct access to the Prime Minister Mr. Liaquat 'Ali Khān and to ^Mr. Jinnāh

(1) Leonard Binder, Religion and Politics in Pakistan (California U.P. 1963) pp. 138-139

must have had discussions with these men and his hopes must have been frustrated for him to declare that the Muslim League was desirous of getting rid of the 'Ulamā. (1) He had also said that Pakistan had come into being for the purpose of becoming an Islamic state and cited numerous statements from Mr. Jinnāh and Liaquat 'Ali Khān to this effect. (2) He also declared:

"They want the mullā to converge his whole attention to reformation of society while they can go on and spoil society. If the term 'unsuitable environment' is to mean that the environment of those who rule us is unsuitable then the community will have to reconsider who is to govern them it is also said that the mulla wants power ... I say when

(1) Shabbir Ahmad 'Usmānī. Khutba-i-Sadārat (Presidential Address) to Jamī'at-ul-'Ulamā-i-Islām, East Pakistan Branch Conference. (Dacca February 10th 1949) Urdū.

(2) Ibid p.51

people can aspire for power for worldly gain
 what is the harm if Mullā aspires for power
 to set up a state based on Islamic principles.

The mullā does not want power he only wants
 those who are in power to be somewhat like
 himself." (1)

In this speech he also suggested that a committee consisting
 of well known 'Ulamā should be set up by the Constituent
 Assembly to prepare a draft Constitution and present it to
 the Assembly. (2) In this demand he was reiterating the
 opinions of Maulānā Maudūdī that only the 'Ulamā and those
 learned in the intricacies of Islamic Law are qualified to
 frame an Islamic Constitution. After this speech direct and
 indirect pressure was put on the Muslim League leadership
 for a clear statement of intention in regard to the nature

(1) Ibid pp. 39-40

(2) Ibid p. 42

of the coming constitution. Consequently within three weeks of this demand the Muslim League Parliamentary Party met to consider this and came out with what came to be known as the Objectives Resolution. This was introduced in the Constituent Assembly on March 7th, 1949, and the Resolution embodying the main principles on which the Constitution was to be based was finally adopted on March 12th, 1949.

II The Objectives Resolution.

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

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

Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

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

Wherein 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 Qur'ān and the Sunna :

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

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

Wherein shall be guaranteed fundamental rights including equality of status, of opportunity 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 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 the progress and happiness of
humanity." (1)

The Objectives Resolution was not the Constitution
but merely a statement of intentions, and it was on the
principles based on these intentions that the Constitution

(1) Constituent Assembly of Pakistan Debates, Volume V,
No. 1, (March 7th 1948) pp. 11-2

was to be based. The press, the 'Ulamā and the Muslim League were generally delighted with the statement that the new Constitution was to be based on Islamic principles. The Resolution was in a way a compromise. The words of the Resolution spoke differently to different people. The westernizing elements considered it merely as a statement of fact. Mian Iftikharuddīn said "I see that a section of the press gave out as if they had scored a journalistic scoop by reporting that the authority is derived from a higher power. It does not lie in our power to change the law of nature's God. In saying that we have not done anything extraordinary." (1) Some on the other hand gave it the interpretation that now that recognition had been given to the sovereignty of Allah over the whole universe,

(1) C.A.P. Debates, Vol. V. No. 4 (March 10th 1949) p.51

this would give more play to morality in the political sphere. Dr. Mahmūd Hussain declared "the question is whether we propose to bring back morality to the sphere from which it has been banished - namely the political sphere."⁽¹⁾

The 'Ulamā on the other hand were of the opinion that the acceptance of the Sovereignty of God implied that the intention was to base the whole structure of Law on the provisions of the Qur'ān and the Shari'a. To them God as Sovereign meant that man's position on earth was that of a Vice-regent (Khalīfa) and thus man would only have freedom within the limits prescribed by the Qur'ān and the Sunna, and once that had been established the State would be Islamic. For those who were conscious of the intricacies of Muslim Law it also meant that the politicians at last

(1) Ibid p.55.

had recognised the right of the 'Ulamā to frame a constitution. The Jamā'at-i-Islāmī declared in their annual conference at Lahore 6th to 8th May 1949 after the Objectives Resolution the interment of Maulānā Maudūdī was no longer valid and appealed to the Government for his release. (1)

The only people who did not take part in the general praise of the Objectives Resolution, quite understandably, were the minorities. Mr. B.K. Datta and Mr. Chattopadhyaya the Hindu members of the Constituent Assembly and both members of the Pakistan Congress objected to the Sovereignty clause. They asserted that if the Sovereignty belonged to God and not to the people of Pakistan the state created would not be a democratic State. (2)

(1) Qarārdād-i-Maqāsid Kay Ba'd Hukūmat ki Na'i Zimadāryān
(Shu'ba-i-Nashr-o-Ishā'at Jamā'at-i-Islāmī Lahore, 1949)p.2

(2) C.A.P. Debates Vol. V No.2, p.13 and No. 5 p.89

A long discussion then ensued to assure the Congress and the minorities in general that their right will be guaranteed. Dr. Ishtīāq Hussain Qureshī explained that the Islamic Principles were not in conflict with the United Nations Charter on Fundamental Rights. (1)

Liāqat 'Alī Khān said that the Islamic Democracy was "distinguished from both the democracy of the west and the democracy of the Soviet Union; it was in fact more democratic than both. (2) A number of other assurances and explanations came from the other members of the Muslim League.

After the adoption of the Objectives Resolution a committee was formed with a membership of 25 and with Maulavi Tamizuddin the President of the Constituent Assembly as its chairman to draw up in greater detail the principles

(1) Ibid Vol. V. No.3 p.42

(2) Ibid Vol. V. No.1 p.3

of the constitution. This Committee came to be known as the Basic Principles Committee. It is to this that we must now turn.

III The Basic Principles Committee and the Board
of Ta'limāt-i-Islāmiya.

After the creation of the Basic Principles committee its twenty five members met to decide what practical steps could be taken to draw up the basic principles of the Constitution. The Basic Principles Committee then decided to split up into three sub-committees to report (a) on matters regarding the Provincial and Federal Constitutions and their powers. (b) on franchise with special reference to the nature and structures of electorates in respect of provinces and

minorities and (c) on the Judiciary. From our point of view however, the decision to create a Board consisting of 'Ulamā and other experts on Muslim Law to discuss and refer to the Sub-committee on Constitutions and powers matters arising from the nature of an Islamic Constitution was the most important one. The powers of the Board were, however, limited in the sense that their position was merely advisory and they could only give opinion on matters referred to them by the Basic Principles Committee. The board came to be known as the Board of Ta'limāt-i-Islāmiya. After the decision was reached to create this Board a committee comprising the Prime Minister, the Governors of East Bengal and Punjab, the Minister of Finance, Maulānā Shabbīr Ahmad 'Usmānī and the President of the Constituent Assembly Maulavī Tamīzuddīn was formed to appoint the membership to the Board. The creation of such a Board had been suggested by Maulānā 'Usmānī only a few months earlier

in a speech given at Dacca. Although the position of the Board was to be advisory, it appears that the 'Ulamā were generally satisfied with the decision to appoint the Board. It is however strange that the 'Ulamā did not protest about its membership when it was announced. Apart from 'Usmānī himself, a Shī'a 'Ālim and two others the Board was thoroughly secular. In other words it seems that the Board was a compromise and the appointed members seemed to have been chosen for the purpose of dividing and weakening it. The following appointments were made:-

1. Maulānā Shabbir Ahmad 'Usmānī
2. Maulānā Muḥammad Shafi' (1)
3. Maulana Sayyid Sulaiman Nadvi (2)
4. Professor 'Abdul Khāliq (3)
5. Mufti Jāfar Hussain (4)
6. Dr. Hamīdullah (5)
7. Maulānā Zāfar Hussain Anṣārī (Secretary) (6)

(1) Maulānā Muḥammad Shafi' was the leading follower of 'Usmānī and his right hand man. He was one of the important authorities on Hadīth.

The Board's views were asked by the parent Sub-

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- (2) Maulānā Sayyid Sulaimān Nadvī, acknowledged as the leading authority on Muslim Law and History, was the only non-Pakistani member of the Board. He was invited from India to come and serve on the Board. Although he accepted the position he was not able to come from India until 1950.
- (3) Professor 'Abdul Khāliq was an academician and an authority on the Arabic Language. He had been a Professor of Arabic at the Presidency College Calcutta. Later he was elected a member of Legislative Assembly of East Bengal.
- (4) Mufti Jāffar Hussain was the only Shī'a 'ālim on the Board. Although Pakistan is predominantly Sunni it was unavoidable not to give the the Shī'a group some representation. Shi'ite political theory is based on hereditary legitimacy of the Khalāfa. However, until their twelfth Imām arrives to re-establish the Imamate, the Shī'a community is willing to work under any form of constitution provided they

Committee on the 2nd of February 1950 and submitted to the

as a community are not maltreated or discriminated against, and their personal status law is maintained. Thus it appears that the Mufti's presence in the Board was mainly for the purpose of making sure that those matters of personal status law were not interfered with.

- (5) Dr Ḥamīdullah's appointment was probably to add the respectability of western knowledge to the Board. He is the author of a very important work on Muslim International Law "Muslim Conduct of State". He is at present teaching at the Sorbonne.
- (6) Maulānā Zafar Ahmad Anṣārī, formerly Office Secretary of All India Muslim League and at the time the Secretary of Pakistan Muslim League. He had recently come under the influence of Maulānā Maudūdī. Ansari was one of the few men of religion who had supported the policies of the Muslim League in respect of creation of Pakistan before the partition. Anṣārī was presumably appointed because of his experience in Secretarial jobs.

sub-Committee on the 11th April, 1950. The views of the Board can be classified under three heads:

(a) The Head of the State

The Board based their views on the matters regarding the Office of the Head of the State upon the traditional Islamic Political theory. It is interesting to see that at no time did they make any departure from the tradition and draw entirely on medieval views on Khalīfa. The members of the Board state very clearly that they are contemplating the recreation of the classical caliphate.

"The method adopted for performing these multifarious functions is that the Musalmans elect the wisest and most God fearing person from amongst themselves as their Head to discharge these duties and responsibilities on their behalf and in

consultation with pious and sagacious members of the Millat enjoying their confidence.⁽¹⁾

The discourse that the Board submitted began with the qualifications of the Head of the State, and these were based on Traditional theory. They included requirements such as having a sound mind, not being totally deaf, blind or dumb, being wise and sagacious, being composed and poised and not being in control of a foreign power. All these qualifications occur in detail in Al-Māwardī's 'Aḥkām-as-Sultānīa'⁽²⁾. Over and above those mentioned by al-Māwardī the Board prescribes that the Head of the State should be a

- (1) Report on Constitutions Appendix I, containing Views of the Board of the Talimat-i-Islamia on certain Items referred to them by the Sub-Committee on Federal and Provincial Constitutions and Distributions of Powers. Hereafter referred to as the Views of the Board p.65.
- (2) Haroon Khan Sherwani, Studies in Muslim Political Thought and Administration (Ashraf Lahore 1959) pp.116-117

Muslim. This apparent addition is not really an innovation because it was taken for granted by the writers such as al-Māwardī that the Khalīfa of Islam would be a Muslim. He could have been none but a Muslim if he was to work for the glory and consolidation of Islam, propagate virtues and eradicate vice prescribed by Islam. Above all the medieval philosophers were endeavouring to draw up the qualifications of the Khalīfa of Islam. Therefore to them it was not necessary that his religious applications be mentioned specifically. The need for specifying that the Head of State has to be an adherent of the religion of Islam only arose when the modern notion of the separation of religion and state came into being and secondly when the widely accepted concept of giving complete equality to minorities in a modern state had to be argued against. Another qualification which is not included in the main body but is mentioned in passing is that the Head of the State has to be

the citizen of the State. The fact that this is not mentioned as a qualification brings out the inability of the 'Board' to make any major departure from the classical theory. And the fact that it was mentioned at all signifies that the Amīr of Pakistan as one of the Islamic States and its citizens, are different from Muslims in other Islamic States. Thus the report admitted that the whole of the Muslim Community no longer forms a Millat, Jamī'a or Umma. It also admits that the institution of Khalāfa, in its modern national setting, would not be a single office, bringing the whole of the Islamic world under one political and religious authority, but would be distributed in different nations each having its own Head of the State, and thus basically separate and distinct from each other. They were in this way admitting ibn-Khaldūn's view that it is possible as well as permissive to have more than one Khalīfa in Islam existing at the same time in different parts of the world,

directing and guiding the community of believers.⁽¹⁾

The ideological State the Board conceived was not to be dissimilar to Soviet Russia in that those people who subscribed to its views and ideology were to be responsible for policy making.⁽²⁾ They envisaged a complete unification of 'Church' and the State. The view that religion and the state are two distinct faculties of man's life on earth was un-Godly and un-Islamic to them. This meant that the political activities of the non-Muslim minorities in the State would be very restricted. Women were given the right to vote but the office of the Head of the State was denied to them along with members of the minority communities.

(1) See Anwar Saeeda, Political Philosophy of Ibn Khaldun

(M.A. Dissertation Punjab University 1962) p.29.

(2) Views of the Board op cit. p.58

(b) Method of Election:

The method of election of the Khalīfa in the classical theory is based upon the mode of election of the first four caliphs of Islam. Abu Bakr the first Khalīfa had taken office after ‘Umar as a member of the community had suggested his name and taken oath of allegiance to him. He was followed by other people who took Ba‘t (oath of allegiance). The election of the Second Khalīfa ‘Umar came about after his name was suggested to the community by the first Khalīfa. The Third Khalīfa ‘Uthmān was elected by a body of the important members of the community who had been asked by the second Khalīfa to elect one from among them. This was followed by the community offering their allegiance. From these instances the theorists and legalists have concluded that the legitimacy depends on the fact that the important or pious members of the community should be willing to accept his Headship. The Board was of the opinion that modern institution

of election would amply satisfy legitimacy. But they suggested that the Umma should first elect an electoral College⁽¹⁾ constituting the most pious and learned and this body should then go on to elect the Head of the State by a process of elimination.⁽²⁾

This body of the pious and the learned were also empowered to remove the Head of the State basing their opinion on the maxim that a body which can do can also undo. But it was made clear that removing the Head of the State would not be a matter merely of losing confidence but a strict legal affair and would only be brought about if the Head of the State either loses the essential qualifications or fails to conduct the affairs of the state in strict accordance with the spirit of Islam.

(1) Boards Views p.65

(2) Ibid p.63

"If his conduct of the Government business generally and the measures adopted by him are considered to be detrimental to the best interests of the country of Millat and the members voting for his removal declare it on oath that in their well considered opinion the continuence of reins of Government in his hands is likely to prove a grave menace to the State or the ideology which it stands for" he (1) can then be removed.

(c) The idea of Contract:

The Board suggested that the Head of the State should take an oath of Office and the form of this oath they also prescribed. From this arises a strict idea of contract. This contract seems to be based as much on the political ideas of Hobbes and Locke as on Islam. The idea seems to be that

(1) Ibid p.64

there is a contract between the Head of the State and the Umma through its representatives. It is only after the Head of the State takes an oath to uphold the Constitution that the representatives offer their allegiance. If at any time the Head of the State fails to abide by his contract either through his losing the qualifications or through actions the contract can be revoked. The Umma thus, once more becomes free, to create a fresh contract with another person.

IV The Sub-Committee of Constitutions and Powers.

When the views of the Board went to the Sub-Committee of Constitutions and Powers they did not find sympathy there. The Sub-Committee's proposals were in no way parallel to the views of the Board, although in its own report almost all the

provisions suggested by the Board were dropped the Sub-Committee was polite enough to attach the views of the Board to its own proposals and left the final decision to the full Basic Principles Committee.

The Sub Committee proposed a Parliamentary form of government as opposed to the Presidential form suggested by the Board. The Board had been of the view that Presidential form was more in accordance with Islam. The Head of the State was to be elected by the Central Legislature for five years rather than life. He was to act according to the advice of his ministry except under special circumstances e.g when acting under emergency powers or supervising elections.⁽¹⁾ The sub Committee also disagreed with the notion of Contract and said that the Head of the

(1) Report on Constitutions and Powers. pp. 8, 9,

10 and 30.

State should take an oath of office pertaining to allegiance to the Constiution of Pakistan. They also suggested that he should take another oath of office of secrecy.⁽¹⁾ The Head of the State was to appoint as Prime Minister a person who in his opinion commanded the confidence of the Legislative Assembly. Other ministers were then to be appointed on the recommendations of the Prime Minister. They were hoping to create a Head of the State who would be a nominal Head and would stay above and out of practical politics.⁽²⁾ It is clear from this that the Sub-Committee had the British Constitutional System before them as an ideal rather than Islam. So much then was their faith in the Western concepts that they suggested that the Head of the State should be above law and should not be answerable for any of his acts in a court of Law.⁽³⁾ In Islamic Political Theory

(1) Ibid p.9

(2) Ibid p.14

(3) Ibid p.11

the Head of the State has always been considered as a part of the Umma and thus as much subject to the Shari'a as any other member of the Umma.

The Sub Committee also ignored the Boards recommendations regarding the Committee of Experts on Shari'a.⁽¹⁾ This was a very important issue in the eyes of the Ulamā because if the Sovereignty over the State lay with God and the position of man on earth was merely of his Vice-regents, power of interpretation of law could only rest with those among the Umma who understood the intricacies of Islamic Law namely the Ulamā. Under these circumstances the interpretation of law could not be left to those who were not motivated by Islam and are ignorant of the teachings of the Qur'an and the provisions of the Hadith.

(1) Ibid p.9

V The Interim Report and the 'Ulama's Reaction

After India had promulgated her Constitution in January 1950 the press in Pakistan began to get very nervous and started to blame the Constituent Assembly for deliberate dilatoriness. Three years had already passed without any frame work of the Constitution having been worked out. It was thus under a great deal of political pressure that the Basic Principles Committee prepared the Interim Report. The report was prepared in a hurry. Two of the sub-Committee's (Franchise and Judiciary) had not completed their reports yet. The full Basic Principles Committee had only had the proposals of the Board of Ta'limāt-i-Islāmiya attached to the recommendations of the Sub-Committee on Constitutions and powers before them.

The Interim Report was a cross between the 1935 Act and the Indian Constitution prefaced by the Objectives

Resolution and appended by the suggestion that all Muslims should have a religious education. The report was quite understandably found to be inadequate and disappointing by the men of religion and the onslaught from them was instantaneous. Maulānā Maudūdī lead the way, and spoke at a public meeting in Lahore, before a large gathering on the 14th of October, 1950.

In his speech he postulated six principles of a State based on Islam, and then set out to criticise the Interim Report by showing that none of these principles were incorporated in the Report. These basic Principles according to him were:-

- (1) That Allah should be accepted as the final authority. "In a state in which God's word (The Qur'ān) is not the ultimate authority cannot be Islamic."⁽¹⁾

(1) Abul A'la Maudūdī, "Dastūrī Safāriḡhāt par Tanqīd, Islām aur Jamhūrī Nuqtā-i-Nazar say" (Jamā'at-i-Islāmī, Lahore 1950) pp.12-13.

- (2) That the law of the land should be based on
 the provisions of the Shari'a.⁽¹⁾
- (3) That any existing laws found to be in conflict
 with the Shari'a should be abrogated and no
 such new laws should be promulgated.⁽²⁾
- (4) That the rights dealing with honour, person and
 property are irrevocable. The institution of
 Preventive Detention pre supposes that these
 rights emanate from the State, while Islam
 asserts that they are bestowed on man by God
 and thus are under no circumstances to be
 interfered with.⁽³⁾
- (5) That in the eyes of law all individuals are
 equal and are answerable for their acts (both
 the rulers and the ruled) to God.
- (6) That the State should establish and encourage
Ma'rūf (righteousness) and destroy Munkar
 (wrong).

(1) Ibid p.13

(2) Ibid p.14

(3) Ibid p.14

Examining these principles, he pointed out firstly, that the report did not accept that the sovereignty lies with Allah [✓] not does it suggest that the law of the land will be based on the Shari'a. Secondly, it does not give out that the existing un-Islamic Laws will be declared null and void and new laws will be created in accordance with the Shari'a. Thirdly it accepts that the Amir or the President will be above the Law and not subject to the Law of Allah like every other individual member of the Umma. Fifthly the report provides that the government will have the power to introduce Preventive Detention, implying thereby that rights of the individual emanate from the State rather than from God. He was also critical of the fact that the Head of the State as well as other high officials of the state have been asked in the Report to take an oath to be faithful to the Constitution rather than to God. This he found as objectionable both from the constitutional as well as personal point of view. Thus for

Maudūdī and most other ‘Ulamā the whole foundation on which the edifice of the Report was built was un-Godly and un-Islamic.

It was mainly through the efforts of the Jamā‘at-i-Islāmī and some members of the Ta‘līmāt-i-Islāmiya Board that a Convention of the ‘Ulamā met at Karachi to plan their own suggestions regarding an Islamic Constitution on 21st of January 1951. Within four days they came to agree on 22 principles which they thought must be incorporated in a constitution to make it Islamic. The convention was called firstly for the purpose of bringing about an agreed alteration to the Interim Report and secondly to show the secularists that the ‘Ulamā although of different views could agree upon general principles regarding a constitution.

Thirty-one ‘Ulamā took part in these deliberations. Apart from Maudūdī and four members of the Ta‘līmāt-i-Islāmiya Board representation was given to Shi‘a, Wāhhābī, Ahrār and other

schools of thought. Maulānā Sayyid Sulaimān Nadvi acted as the Chairman. The suggestions were sent to the Constituent Assembly where they went before the 'Suggestions Sub-Committee' specially created by the B.P.C.⁽¹⁾ to examine public criticism on the Interim Report "to be examined by the sub Committee along with suggestions from the public."

It appears from subsequent deliberations of the Constitution makers that 'Ulamā's Convention and the ability of the 'Ulamā to declare an agreed formula had impressed them to a great extent. The Suggestions Sub-Committee called upon Maulānā Sayyid Sulaimān Nadvī to come in person to the sub-Committee meetings to elaborate on certain views of the 'Ulamā. Although he was not an official member of the sub-Committee his views seem to have been incorporated in the Suggestions sub-Committee Report.

Before a full consideration the Sub-Committee eliminated seven of the twenty two suggestions because they lay outside the

(1) Basic ~~Principles~~ Principles Committee

scope of their terms of reference. Four more were dropped with the approval of Maulānā Saulaimān Nadvī. This meant the 15 of recommendations finally came to be considered.

The 'Ulamā gained on the requirement that the Head of the State be a Muslim and that the function of the 'Ulamā be recognised,⁽¹⁾ and also accepting that the oath of office shall include that the Head of the State will "... endeavour to fulfil the obligations and duties enjoined by the Holy Qur'an and the Sunna, and to perform his duties in such a manner that the requirements laid down in the Objectives Resolution and the Directive principles of State Policy⁽²⁾ could be fulfilled in the best possible manner."⁽³⁾

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- (1) Report of the Sub-Committee to Examine Suggestions Received from the Public on the Basic Principles Committee (Interim Report p. 25.
- (2) Directive Principles of State Policy were drawn up by the Suggestions Sub-Committee as the guiding principles to be always considered by the State. These were later included in the 1956 constitution.
- (3) Suggestions Sub Committee Report p.58

The sub-Committee also agreed that a law which is in conflict with Islamic Principles should be declared null and void. It is said:

" If not less that one tenth of the Muslim members of the House raised objection that any bill or part thereof is opposed to the Qur'an and the Sunna after the second reading is completed, the speaker should as early as possible refer the bill or the part to which objection is taken, to the Standing Committee of 'Ulama, elected by the Muslim members of the legislature, for this purpose, for their advice. The Standing Committee of the 'Ulama, should send their advice to the Speaker of the House concerned within seven days of the receipt of the reference ... the decision of the House in this respect should be final for all purposes so as to include the jurisdiction of the courts."⁽¹⁾

(1) Suggestions Sub-Committee Report p.41

When these recommendations of the Suggestions Sub-Committee reached the full Basic Principles Committee they found a sympathetic consideration. The Basic Principles Committee accepted the major part of these recommendations with some minor changes. For instance they accepted that 'Ulama should be given the authority to decide whether or not a law was Islamic but suggested that the Committee of 'Ulama should be appointed by the House and should have the same life span as that of the House. It should consist of five members who may or may not be members of the legislature. That there should be only one Committee of 'Ulamā for the central legislature elected by a joint session of the two houses of the legislature.

VI The Nature of the Legislature and the 'Ulama

Although religion has been considered the only basis of Pakistan by the Muslim League the subsequent history shows that in regard to the nature of the legislature other political matters had a greater influence on the views of the makers of the Constitution. Even today when religion seems to be the only basis of the legitimacy of East and West Pakistan to be under a single political organization these ultra-Religious issues continue to influence politics in general.

Medieval Muslim writers have mainly been concerned with powers and functions of Khalifa, and Legislature as we know it in the western sense had never been in existence in the Muslim World. Its evolution, where ever it has come into being has been under the direct influence of the West. The legislature assumes that the Sovereignty lies in the hands of the people and that through their elected or appointed representatives they have firstly the right to formulate the laws to govern themselves and

secondly to tax themselves in order to meet the expenditures of conducting matters of the State.

Islam, on the other hand assumes that God has directed man both in the affairs of this world as well as in the life hereafter through prophecy which God sent to man through his messenger. The message included in the Qur'ān carries the outline of a complete code of life. The outline created by the Qur'an and the Sunna (the chronicle of the God-directed life of the Prophet) becomes the immutable law of Islam. This law cannot be changed by a body of men because it does not lie within the power of man to make changes in that law. The activity of a corporate legislature in a modern Islamic State would thus be restricted in its activities. If the basic Laws of Islam, *nasus* (injunctions of the Qur'ān and the Sunna) can be termed Constitutional Law then the Constitutional Law would become an unchangable base. The legislature would be free to legislate in matters outside it in the spirit of the Qur'ān, in other words they would be free to effect ijtihād.

The concept of electing by popular suffrage those who oversee the recommendations in matters regarding ijtihād has never been opposed by the 'Ulamā in Pakistan because the community has been regarded as the Vice-regents of God and thus the real Mujtahid. The 'Ulamā have thought that to elect representatives to suggest ijtihād to the Amīr who symbolises the vice-regency of the community is not un-Islamic. The difficulty however may arise when the community may not elect in the true spirit of Islam and the people who are sagacious and wise and motivated with the true spirit of Islam may not be elected because the community itself was motivated with other political factors rather than Islam.

The constituent Asembly of Pakistan, it would be clear from the ensuing discussion, was not concerned with the religious questions relating to the Legislature, but was predominantly motivated by factors which were completely outside religion. I think it is necessary to give an account of this because, although the 'Ulamā were so concerned with the

powers and qualifacations of the Amīr they did not take an equal care in providing a solution for the nature of the legislature which the Islamic Constitution they had in mind would bring into being. On the one hand it showed the failure of the 'Ulamā to realize the importance of the matters involved in the nature of the Legislature and on the other hand it showed that the Muslims will become divided and concerned with matters of representation which lies completely outside the scope of Islam. It also showed that political factors which would be completely outside Islam could divide a nation and Islam could stand impotant and helpless.

Although the thesis is about influence of religion on politics, I am going to discuss this political matter at some length to illustrate how Islam failed to provide a solution in these and many other matters arising from political motives.

The problem was basically this:

The Panjabi politician was worried in case Bengal was given an overall majority in the Central Legislature. The Bengali

politician was of the view that considering that Bengal's population was more than the whole of the Western wing they should have a majority in the Legislature. The smaller provinces like N.W.F.P., Sindh and Baluchistan held the view that if they got their share of representation by population percentage their regional interests would suffer at the hands of the two majority provinces - Bengal and Punjab. In other words there was an atmosphere of general mistrust among the provinces. This meant that the general fear was that even Islam and the Islamic Constitution they were creating would not be able to remove the political differences which could arise due to a system of representation which gave more votes to certain regions over the others in the legislature. For these and other reasons constitution making became an interminable trial for the makers. Sir Zafarullah Khān, the Minister of Foreign Affairs and a member of the Constituent Assembly admitted this in a speech delivered to the Students in London. He said,

"The problem of Constitution making has become the nightmare of Pakistan something which is blocking up everything of positive character and giving rise to worst form of political rivalry and political jobbery."⁽¹⁾

Every member of the Constituent Assembly was agreed that Pakistan, in view of its geographical division, should be a Federation. A Federation according to one of its most important writers, establishes "an association of states so organized that powers are divided between the Central Government which in certain matters, for example the making of treaties and coining money - is independent of the associated states, and on the other hand state Governments which in certain matters are, in their turn, independent of the central Government."⁽²⁾

(1) The Dawn Karachi, August 30th 1955.

(2) K.C. Wheare Federal Government (Oxford U.P. London 1956) p.2.

In the formation of a Federation, it is then necessary that the governments of the Units give up certain powers to the central government, which they will create, but which will have more authority than their own governments.

In Pakistan the Constituent Assembly was a National institution but its members closely connected with interests of their own provinces could not agree upon what powers they were willing to surrender to the central authority. Pakistan was created under high ideals but as the process of constitution making progressed the individuals became more and more conscious of more earthly political matters. The other problem, apart from that of the nature of powers to be surrendered to the centre was a mistrust of the dictum that majority rules, and from these problems arose the question of representation. Although their motives were different each province was trying to turn the political tide in such a way as to have a higher number of representatives at the Central legislature.

The Basic Principles Committee's Interim Report

1950 had provided that:

- (a) "there should be a central legislature - the House of Units representing the legislatures of the Units and the House of the People to be elected directly.
- (b) "in the upper House equal representation should be given to each state.
- (c) "in the lower House each wing should be treated on the basis of parity." (1)

The Basic Principles Committee Interim Report had come under serious criticism both in Bengal and from the Bengali members at the Constituent Assembly. They had opposed it "on the ground that it did not provide the province with an overall majority on the basis of population." (2) The Pakistan Observer

(1) Report of the Basic Principles Committee 1950 Part III
Chapter 2.

(2) G.W. Chaudhri, Constitutional Development of Pakistan
(Longman Green. Karachi 1959) pp. 108-109

(Dacca) wrote at the time "... the citizens of Dacca and most East Pakistan were shocked when the local dailies carried to them the full text of the Basic Principles Committee Report... They came from all walks of life, high officials, professors, teachers, lawyers, students mendical men, police personnel etc. Their first shock was that of bewilderment." (1)

A bitter controversy followed with the consequence that Liqat 'Alī Khān the Prime Minister had to call upon the Committee on November 21st, 1950 to reconsider their decision and make such changes as would be acceptable to the people of East Bengal. (2) The amendment did not however come until the second draft on December 1952.

(1) Pakistan Observor (Dacca) October 7th, 1950.

(2) Pakistan Times, Lahore, November 22nd 1950.

This draft established a parity between the two wings of Pakistan rather than the provinces. The distribution of seats recommended was as follows:

The House of the Units (Upper House)

| | | |
|---------------------------------|----|-----|
| East Pakistan | 60 | |
| Punjab | 27 | |
| Sindh | 8 | |
| N.W.F.P. | 6 | |
| Tribal Areas | 5 | |
| Baluchistan | 2 | |
| Khairpur | 2 | |
| Baluch States | 2 | |
| Bahawalpur | 2 | |
| Karachi (Federal Area) | 2 | |
| West Pakistan (Total) | 60 | (1) |

(1) Pakistan Report of Basic Principles Committee 1952 p.11

The House Peoples (Lower House)

| | |
|---------------------------|---------|
| East Pakistan | 200 |
| Punjab | 90 |
| Sindh | 30 |
| N.W.F.P. | 25 |
| Tribal Areas | 17 |
| Baluchistan | 5 |
| Baluch States | 5 |
| Khairpur State | 4 |
| Bahawalpur State | 13 |
| Karachi(Federal Area).... | 11 |
| West Pakistan Total | 200 (1) |

Although it was claimed that this draft would bring about a constitutional balance of power and responsibility between the two wings of Pakistan "it was put to even a more varied criticism. This time the criticism came from both the

(1) Ibid p.14.

wings. This form of parity was unacceptable to the Bengalis because it would make West Pakistan, with the aid of one or two Bengalis to turn the tide in their favour. Moreover it would only make it possible for East Pakistan to have an effective voice in the Central Legislature if both the Hindu and the Muslim representatives always formed a common ground. The West Pakistani Press was of the opinion, that the parity formula would result in the domination of one province over four others. (1)

The next attempt to bring about a mutually acceptable formula came from Muhammad 'Alī (Bogra) (Prime Minister from April 1953 to August 1955) in May 1953. This was designed so that none of the wings would have an effective power in the Central legislature. The plan was that in the upper house each of the major provinces would be represented on the basis of parity. The House would comprise 50 members

(1) The daily Nawā-i-Waqt, Urdu, Lahore. Editorial
December 23rd, 1952.

10 from each of the four major provinces, Bengal, Punjab, N.W.F.P. and Sindh. The remaining ten seats were then divided between the princely states, Baluchistan and Karachi Federal Area. The Lower House was to have 300 seats distributed on the basis of population East Pakistan having 165 and West Pakistan sharing 135 among its provinces. This distribution made sure that the two wings in a joint sitting would have 175 representatives each.

Before the constitution was passed the provinces of West Pakistan came to be consolidated into one unit, and therefore it was understood that the need for a bicameral legislature was no longer there. The Second Constituent Assembly thus agreed on creating a single house legislature at the centre with a membership of 300 divided equally between the wings. This was ultimately incorporated in the Constitution. The Constitution also specified that for the first ten years there should be 10 seats for women over and above the three hundred. ⁽¹⁾

(1) The Constitution of the Islamic Republic of Pakistan
clause 44 sections 1 and 2.

Apart from these there were problems connected with the One Unit in west Pakistan which did not become readily acceptable to the West Pakistanis, the problem of Kashmir, resettlement of Refugees which were still coming in large numbers from across the Indian borders the language problem, the stoppage of irrigation water from India and the shortage of food. All these affected the actions and politics of the Pakistani politicians. Although it will be an over simplification of the political problems of Pakistan without a study of these, they lie outside the scope of this work and therefore I have just mentioned them in passing.

VII Anti-Ahmadiyya Controversy

The Controversy against the Ahmadīs began in Karachi and resulted in riots and disturbances in the Punjab in 1963. Because it was a religious controversy and some of the most important 'Ulamā were involved the central government avoided any positive action until the conditions became very serious.

The Ahmadiyya is one of the newest of the Islamic sects distinguished from the main body of Muslims by some doctrinal differences. The Ahmadiya follow Mirza Ghulam Ahmad (died 1908) of Qādiān (now in East Punjab) who is said to have claimed prophethood as well as to be the promised Messiah. The Ahmadiya have been the target of bitter attack from the 'Ulamā on the ground that the Prophet Muhammad had been the last of the prophets and therefore if any person claims prophethood after him he is outside the pale of Islam. The Ahmadiya also reject Jihād bis-Saif the concept that war

taken in furtherance of Islam is legitimate and believe that the time for Jihād as a concept of war is inevitable. This has also brought them into conflict with the 'Ulamā who were mostly anti-British and congress-motivated before the partition of India and were connected with the militant Khalāfat Movement in the earlier decades of this century.

The anti-Ahmadiyya movement in fact began as early as 1949 when (may 1st) one of the Ahrār leaders made his first suggestion that the Ahmadiya should be declared a minority and its adherents in important government posts should be removed. (1)

The Ahrār was a politico-religious movement which, before the partition had been an ally of the Congress. The

(1) The Pakistan Times May 2nd 1949.

Ahrār were noted for their spellbinding speakers and anti partition ideals. (1)

The agitation was in its early days led by the Ahrār but when other 'Ulamā began to join it, it became more respectable and thus its support began to be more widespread. Maulānā Maudūdī and his political party the Jamā'at-i-Islāmī seems to have stayed out of direct political action in the early days and according to Maudūdī himself supported the Ahrār policy only half-heartedly. (2)

The object of the campaign was to have the Ahmadiya declared a minority and to have Zafarullah Khān a prominent member of the Ahmadiya and Foreign Minister of Pakistan

(1) Wilfred Cantwell Smith, Modern Islam in India (2nd Ed., London 1946) pp. 297-302

(2) Punjab Disturbances, Court of Enquiry Report p. 40.

removed from the Cabinet. It was also demanded that the Ahmadiya should be removed from prominent government position because their loyalty was doubtful. Special meetings were held in the mosques and other public places and the masses were worked up by fiery speeches and resolutions. The leaders included two members of the Ta'limāt-i-Islāmi Board who attended the Muslim parties Convention which appointed an Action Committee to plan a militant programme of action. In its meeting at Karachi it was resolved that because the Prime Minister had failed to act on earlier resolutions declaring the Ahmadiya a minority and had failed to remove Zafarullah Khān from his Cabinet, they will have to resort to direct action as the only way to have their demands accepted. And "since the demand for the removal of ~~the~~ Sir Zafarullah Khān, the Mirzāi (the Ahmadiya) Foreign Minister, has not yet been conceded the convention demands resignation of Khwāja

Nāzimuddin (the Prime Minister) so that the Muslims of Pakistan should be able to follow and preserve their religious beliefs and Islamic traditions."⁽¹⁾

The Court of Enquiry findings were that the Punjab Muslim League had taken an active role in creating and aiding these disturbances, and that the Punjab Government under the Chief Ministership of Mīān Mumtaz Daulatānā was in many ways responsible for the situation. The Report said that the Panjab Education Department was giving subsidies to certain newspapers involved in the controversy and went on fanning the agitation during the days when they were receiving payments. The majority of the members of the Department of Islāmīyat of the Panjab Government were prominent leaders of the
(2)
agitation.

(1) Court of Enquiry Report p.131-132

(2) Court of Enquiry Report p.83

In spite of growing unrest the government did not take any positive action. The central government was too weak and the provincial government sympathised with the views of the 'Ulamā. By now the city of Lahore had been completely lost to the rioters, there was looting and intimidation and murder of some Ahmādīs. Civil government had ceased to exist. After the matters were completely out of hand Miān Mumtāz Danlatānā issued a statement to the effect that after peace is established he and his government would be prepared to meet the 'Ulamā and place their demands before the central government with the recommendation that

(1)

they be accepted.

A few hours after this statement was issued the central government authorised the Army Commander in Lahore to declare Martial Law and assume power. Martial Law

(1) Ibid. p.167

remained in Lahore until May 1953. This ended the Daulatānā Government.

These disturbances illustrated that on a small issue relating to religion the 'Ulamā could still wield tremendous power and sway over the masses but it also destroyed the weight of the 'Ulamā's opinion over more important matters among the westernised politicians who still controlled the political power in the country. It took the 'Ulamā some time to re-establish their position as supporters of the Islamic Constitution.

After the Martial Law some of the prominent members of the Ahrār and some prominent 'Ulamā including Maulānā Maudūdī were arrested. A Martial Law court was established to deal with these. Maulānā Maudūdī was sentenced to death for writing and publishing Qādiyāni Mas'ala an article (Published March 6th, 1953). This sentence was later commuted to first 14 years and then to two years imprisonment.

VIII The Hindu Reaction to the Basic Principles

Committee Report.

Apart from lowering the prestige of the 'Ulamā in the eyes of the more intelligent public the anti-Aḥmadiya movement created a void in the efforts of the 'Ulamā as a pressure group working for the formulation of an Islamic Constitution. While most of the important 'Ulamā including Maudūdī were imprisoned in the Punjab and their voice in favour of the Islamic Constitution was quietened the government at the centre planned for an Interim Constitution. The plan was that an Interim Constitution be formulated to replace the 1935 Act. It was understood that this would be based on the Act of 1935 and would not include any Islamic provisions. This meant that none of the provisions based on the Directive Principles, acceptability of the Sharīd'a or the 'Ulamā's right to advise on the nature of the laws created would be set aside. It was on this matter that those not

imprisoned began to voice their opinion and the Jamī'at -ul-'Ulamā-i-Islām decided to act quickly. They resolved at a meeting in Karachi that the plan for an Interim Constitution be dropped and a permanent Constitution be created based on the provisions of the Shari'a. It is significant that the arguments regarding the provisions of the Constitution were once more set aside and were once more, like those from 1947-1949 replaced by the argument that there should be an Islamic Constitution. It is however not possible to find out how far the 'Ulamā were really instrumental in having the plan for Interim Constitution dropped.

At this stage the Constituent Assembly began to discuss the Basic Principles committee Report. The Constituent Assembly's activities and debates received full reportage from the press. While those pressing for an Islamic Constitution began to press their point of view

the Westernizing influences and the minorities came out with their full criticism. Mr. A.K. Brohi the Law Minister was able to get through most of the provisions of the Basic Principles Committee Report.

From our point of view the points which came under discussion were firstly whether or not the Pakistan Constitution be called an Islamic Constitution; secondly whether or not the Headship of the State be reserved for a Muslim; thirdly whether or not Islam should be declared the State Religion and finally who should be responsible for over-seeing that no laws repugnant to the Qur'ān and the Sunna be promulgated, the two alternatives being a body of the 'Ulamā or the Supreme Court.

Among the Hindu members of the Constituent Assembly Mr. Bhupendra Nath Datta and Professor Chakravarty were most vocal. They argued that the Islamic and the Parliamentary

forms of government were irreconcilable and referred to the Board of 'Ulamā as the 'Third House' which would prevent the introduction of a true parliamentary or democratic spirit in the working of the Constitution. (1)

The fear that Pakistan would become a theocratic State was uppermost in their minds and therefore quite justifiably they were sceptical of the Islamic bias of the report of the Basic Principles Committee. They were also of the opinion that under such a constitution all the minority groups would become secondary citizens. The repugnancy clause (by which any laws repugnant to the Shari'a would be declared null and void) also received prominence from eight members of the Congress party. (2) However, when the opposition were certain that they would not make any substantial changes in the Basic Principles Committee Report they decided to walk out at the final vote.

(1) Constituent Assembly of Pakistan Debates Vol. XV No.2 (October 7th 1953) p.25 and p.23

(2) Ibid. Vol. XV, No.2 October 7th 1953 p.28.

After the failure of the Prime Minister to take immediate action in respect of the Anti ~~Am~~adiya agitation, he began to be blamed for many other political matters. After a year and a half of being in office he had not been able to have the constitution framed, the country was in the midst of the worst food crisis and was generally facing an economic crisis because of the end of the export boom which the Korean war had brought about. At this stage (April 17th 1953) the Governor General had taken the decision to dismiss him and create a new cabinet under Muhammad Ali (Bogra) who was at the time Ambassador in Washington. Although Bogra and his colleagues were able to get through a formula for ^{re}presentation which became generally acceptable and were also able to manage substantial wheat aid from the U.S.A the solution to the constitutional problem and the other economic problems was not forthcoming. The problems arising from provincialism and Kashmir were also becoming magnified and the constitutional machinery had

completely broken down. At this stage the Governor General took another important decision. He declared a state of emergency in the country and dissolved the Constituent Assembly. The plan was then to create a Constitutional Commission to frame the Constitution but the Federal Court ruling that although the Governor General had the Constitutional power to dissolve the Assembly he should create another Assembly and that the creation of a Commission was not legal.

Now that the Constitution Assembly had been dissolved the Governor General was free to make controversial decisions. The plan for unifying the whole of the Pakistan into one political unit came through. There had been dissatisfaction with the working of the Federal system in West Pakistan. The existence of separate legislatures in the provinces had given "opportunity for local politicians to engage in intrigue, chicanery and outright

coercion."⁽¹⁾ However there was more opposition than expected and a number of political manoeuvres followed, among them the dismissal of Pīrzāda 'Abdus Sattar, Chief Minister of Sind and the appointment of M.A. Khurshid in his stead. Finally the Province of West Pakistan came into existence on October 14th, 1954. The province was created to bring about a situation in which the problems of representation between the two wings would be solved. From the point of view of administration the previous divisions had also been wasteful.

(1) Keith Callard , Pakistan a Political Study

(Allan and Unwin, London 1957) p.186.

IX The Islamic Constitution.

After the dissolution of the first Constituent Assembly a second was created which framed the Constitution of the Islamic Republic of Pakistan. The ground work done by the Basic Principles Committee was however used to the fullest extent, therefore it cannot be said that the work of the first Constituent Assembly was wasted. In fact the Constitution was rushed through the Assembly with little change or improvement of the Basic Principles Committee report. The Objectives Resolution was retained as the preamble, and the Directives Principles of State Policy which had been a part of the Basic Principles Committee Report were also retained in entirety. In the Constitution they are stated under part III. Its nine clauses were to be the guiding principles for the purpose of establishment of the State. The State was to endeavour to strengthen bonds

of unity among Muslim Nations⁽¹⁾, it was to enable the Muslims of Pakistan to order their lives according to the Qur'ān and the Sunna by providing facilities whereby they may be able to understand the meanings of Holy Qur'ān and the Sunna; to promote observance of Islamic Moral Standards and to secure organizations of zakat, waqfs and Mosques.⁽²⁾

The clauses, 26 to 31 dealt with provisions for communal harmony safeguarding rights of minority, providing equal opportunity employment, and provision of basic necessities of life to each individual. Unlike the Basic Principles Report here the Directive Principles of State policy became prefaced with a clause that in case of failure of the State to observe these the matters arising from them will not be enforceable in Law Courts.

"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."⁽³⁾

(1) 1956 Constitution clause 24.

(2) Ibid clause 25

(3) Constitution of the Islamic Republic of Pakistan
Part III Clause 23 (2)

The Constitution provided that the Head of State be a Muslim.⁽¹⁾ and that:

"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⁾ and again,

"No new law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Qur'an and the Sunna, ... and existing laws shall be brought into conformity with such injunctions."⁽³⁾

The Constitution also provided that the President shall appoint a commission to look into such existing laws as they find repugnant to the injunctions of Islam and give a report. This report was then to go to the National Assembly who "... after considering the report shall enact laws in respect thereof."⁽⁴⁾

(1) Ibid Part IV clause 32 (2)

(2) Ibid Part XII clause 197 (1)

(3) Ibid Part XII clause 198 (1)

(4) Ibid Part XII clause 198 (3)

It was also stipulated in the same clause that nothing in this clause would effect the status of the non Muslims residing in the State. (1)

The Constitution did not create a body of 'Ulamā to review laws to see whether they were Islamic or repugnant to Islam. This matter was left to the Supreme Court. Any citizen had the right to question any law made by the legislature. The Court could then review it and declare it unconstitutional in the same way as the American system gives its supreme court the power of judicial review.

It was in this way that Qīās (opinion of jurists and judges) was given predominance over Ijmā' (consensus of opinion by the learned representatives of the Umma). How far this was in consonance with the traditional theory is doubtful. Traditionally ijmā' has always been considered more final than qīās.

(1) Ibid Clause 198 (4)

X "Theocracy", "Democracy" and "Theodemocracy"

The most outstanding feature of the creation of the Islamic Republic of Pakistan was that it sought to base a constitution on the Islamic principles as its adherents understood it. The preamble of the constitution which had appeared as early as 1948 in the shape of the Objectives Resolution had recognised the sovereignty of God and declared that all authority must be subservient to God's.

From this arises one of the most important problems of Islamic political thought. Does the idea of the sovereignty of God which the constitution recognized come into conflict with the idea of popular sovereignty which is one of the most essential hallmarks of democracy? G.W. Chandhari asserts that Pakistan under the 1956 Constitution was a theocracy in as much as it recognized the sovereignty of God. However he says "There are no special agents of God recognized and hence

(1) G.W. Chandhari Constitutional Development in Pakistan (Longman, Karachi, 1959).

theocracy in the ordinary sense has no place in Islamic Statecraft. The right to rule is not necessarily associated with any special form of Government ; either one form or another may be assumed provided it be such as to ensure the general welfare." Moreover, it may be argued, the sovereignty to God ensures that civil authority must not be subservient to the advantage of one or of a few for it is established for the good of all; and if those who are in authority should rule unjustly; or if they should err through arrogance or pride; if their measures should be injurious to the people - then let them know that hereafter an account must be rendered to God."⁽¹⁾

In this rather simple statement of Islamic attitude there is nothing that may be incompatible or out of tune with the spirit of democracy as we know it. The 1956 constitution was finally based on simple principles of this nature except the

(1) Ibid p.52

provision that the supreme court would have the power to declare a law, made by a majority of representatives of the community and assented to by the Amīr, nul and void on a plea by any citizen that it was against the spirit of Islam. Our concern here, basically is whether or not the creation of this third house would be considered democratic? One must not forget that the constitution of any nation is in fact an agreed list of principles by the majority of its people, setting limits to the powers they themselves command. If the Pakistani nation, by the majority of its representatives adopted the principle that they would only have freedom in matters of framing laws written limits prescribed by God in a certain book than according to any definition the outcome would be democratic.

A European observer instinctively feels that the concept of a nation and a state whose legitimacy depends on religion is an anomaly, and a reactionary anomaly. For

Muslims, however Islam has always been a socio-political religion. It has been a single indivisible reality. Thus when the choice came the Indian Muslim rejected independence under a secular state of India and chose an entity where they would be able to reassert the principles incorporated in the Qur'ān.

Leading spokesmen for an Islamic State in Pakistan have throughout asserted that the Islamic system does not need to be, and in fact cannot be, a theocracy in the sense of rule by priestly class. Men of such varied opinions as Liaquat 'Alī Khān, and Maulānā Abul A'la Maudūdī have been anxious to prove this point. Liaquat 'Alī Khān had said, "Islam does not recognize either priesthood or any sacerdotal authority; and therefore, the question of theocracy simple does not arise in Islam."⁽¹⁾ Maulānā Maudūdī also

(1) Quoted from M.M. Siddiqui Islam and Theocracy
 (Lahore^{n.d.}/p.31).

speaks in the same strain when he says that "...A theocracy is a state run and overlorded by the clergy and because Islam is, by its very nature against such an institution the Islamic state in which we accept the Sovereignty of God as a source of law is not theocratic but theo-democratic."⁽¹⁾

He suggests the term theo-democratic because although there are restrictions on man as to the divine limits on the activity of man in regard to law making these limits are accepted by the Umma by their acceptance of the ideology of Islam. Dr 'Umar Hayāt Malik a prominent member of the Constituent Assembly and a westernized intellectual also endorses this view. He said in the Constituent Assembly "..... it will be a limited democracy. The people will have some power but they will not have all the power certain things will have to be resolved by God and are in his own personal sphere. The remaining sphere has been left to the people to deal with. The principles

(1) Abul A'la Maudūdī, Islamic Law and Constitution (Islamic Publications, Lahore 1960) p.

of Islam and the laws of Islam as laid down in the Qur'ān are binding upon the State. The people or the State cannot change these principles or these laws but there is a vast field besides these principles and Laws in which people will have free play it might be called by the name "theo-democracy", that is democracy limited by the word of God, but as the word "theo" is not in vogue so we can call it by the name "Islamic democracy."⁽¹⁾

(1) Constituent Assembly of Pakistan Debates, Vol v. No.5
(March 12th 1949) p.78.

CHAPTER FOUR

CONCLUSION

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The Parliamentary form of Government created by the Islamic Constitution of Pakistan worked rather precariously due to the fact that it failed to provide for the basic needs of a new country i.e. political stability. The activities of the politicians were directed towards making personal riches and political parties did not exist in the true sense. They were only parliamentary parties formed from time to time for

the purpose of political gains. The Muslim League had been by now thrown out of power, both in East and West Pakistan. The republican party created out of existing members of the West Pakistan came into power in the West under Dr. Khan Sahib who was assassinated soon afterwards. Government began to topple one after another when politicians changed sides as political manoeuvres. In two years the country's reserves went down to a most dangerous level. At one stage a political party began to recruit private armies.⁽¹⁾ It was in these circumstances that Martial Law was declared by the

(1) Khan Abdul Qayyum Khan built the 60,000 strong Muslim League National Guards. Carrying rifles they began to parade the cities and had public meetings. The then government then had to ban the wearing of uniforms and carrying of arms by associations or individuals.

See Muhammad Ayub Khan, President of Pakistan, "Friends not Masters", (Oxford U.P., London 1967).p.57

President Iskandar Mirzā and Field Marshal Ayūb Khān was named as the Martial Law Administrator. Soon he was to take the reins of his country into his own hands, in his own words to "clear up the mess in which the politicians had left the country." It is finally in 1962 that a new constitution was given to Pakistan.

Constitutionally speaking one thing was significant in the abrogation of the 1956 Constitution. If it can be said that the constitution was Islamic then it was obvious that it did not work and if it did not work can it be said then that Islam as a constitutional force and a political system had spent itself and therefore it was no longer valid in the twentieth century. An ardent spokesman of the 1956 Constitution Mr. A.K. Brohi at one time Law Minister holds that it is not so and that the constitution was never given a chance to work. No elections took place under the constitution and therefore to say that

it failed and that it was against the genius of the people is not justified.

The creation of the One Unit in West Pakistan had solved some problems of representation and provincialism within its boundaries but it created two units on either side of a balance precariously holding each other in position. Although the argument about the nature of the Islamic Constitution has somewhat less under Ayūb Khān's government, realising the precarious situation and relationship between the two wings he does not dissociate his policy from Islam. The constitution created by him retains some of the Islamic provisions of the first Constitution, although no authority on Constitutional Law would call the constitution Islamic.

Not unlike the 1956 constitution the Ayūb Constitution of 1962 asserts the Sovereignty of Allah, but

the phrase of the Objectives Resolution "within the limits prescribed by Him" has been left out.

Fundamental Rights are guaranteed by both constitutions although some of the related provisions of the latter constitution make them non justiceable. The Rights of the minorities are also safeguarded as in 1956 constitution. Then there is the question of nomenclature. The 1956 Constitution provided that the State constituted will be known as the Islamic Republic of Pakistan while the Ayūb Constitution provided that it would be the Republic of Pakistan. In a separate Statement he had said that if the people wish to call it Islamic they might amend it. And so this was subsequently achieved by an amendment.

Supremacy of the Legislature over the Judiciary is asserted with the provision that the Supreme Court has no power of Judicial Review both in case of ordinary laws

and the provisions relating to Islam. The former is outside the scope of this discussion, but in cases where the latter is involved and Advisory Council of Islamic Ideology is created. Its very name, however suggests that it has no power as the Supreme Court had in the earlier Constitution to declare a law un-Islamic but to advise the Legislature only when its advice is sought. Even there the advice may or may not be acted upon.

The Constitution provides:

"There shall be an Advisory Council of Islamic Ideology. The Council shall consist of not less than five and not more than twelve members as the President may determine. Members shall be appointed by the President on such terms and conditions as the President may determine. The President shall, in selecting a person for appointment to the Council have regard to the persons' understanding and appreciation of Islam and the legal and administrative problems of Pakistan...."

"The function of the Council shall be - (a) to make recommendations to the Central Government as to means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam; and (b) to advise the National Assembly, and Provincial Assemblies, the President or a Governor on any question referred to the Council under article 6, that is to say, a question as to whether a proposed law disregards or violates, or is otherwise not in accordance with the Principles of Law Making.

(2) When under Article 6, a question is referred by an Assembly, the President or a Governor to the Council for advice, the Council shall, within seven days thereafter, inform the Assembly, the President or Governor, as the case requires of the period within which the Council expects to be able to furnish the advice. (3) Where the Assembly....

considered that in the public interest the making of the proposed law in relation to which the question arose shall not be postponed until the advice is furnished, the law may be made before the advice furnished."⁽¹⁾

The Constitution is thus very clear that the position of the Council is merely advisory and the legislatures are not by any means obliged to take cognisance of its findings. On the other hand the 1956 Constitution provided that a law, if it was found in conflict with the provisions of the Qur'ān and the Sunna it could be declared null and void by the Supreme Court.

The new Constitution has created a strong central power which is embodied in the President. The Presidency is even more powerful than the President of the U.S.A. This

(1) Constitution of Pakistan 1962 articles 202-206.

has been done for the sake of stability, to facilitate economic progress. In spite of this certain bodies of 'Ulamā among those the Jamā'at-i-Islāmī more notably have not stopped their crusade for an Islamic Constitution. Although the great majority of the 'Ulamā have been quietened there is no evidence that once the desired economic progress it achieved the religious groups will not become more vocal. The fight for an Islamic Constitution has hardly ended. The new constitution has been successful only in silencing it to a certain degree. At the mement due to the dominance of other factors the strife is in the background.

Up to now Nationalism in Pakistan has been a synthesis of two factors, cultural and economic. On the one hand the goal has been the attainment of a homeland for the Indian Muslims. This has been achieved. The idea that they should carve their lives in accordance with the Qur'ān and the Sunna, however lies in abeyance. This has some how meant that the theory that the

problems of the Muslims will be over once they come nearer to Islam has been abandoned and a more realistic theory of solving the more immediate problems of economics and development has become predominant. The general theory seems to be that a country such as Pakistan striving to develop its natural resources and industrialise to maintain its identity, to eliminate poverty and maintain its independence cannot afford to be distracted in its aims by disputes between the forces of materialism and forces of nostalgia.

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