



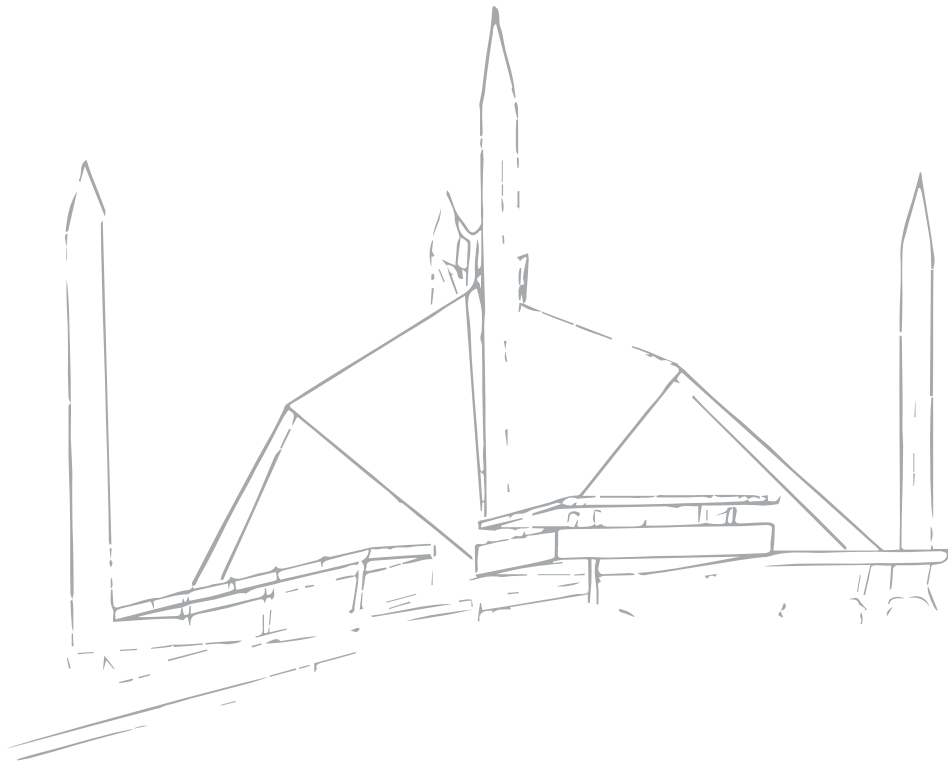
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## Islamization of the Constitution of 1956: The role of Religious, Political Parties

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### Abstract:

*After the birth of Pakistan, the most important assignment before the Constituent Assembly was the framing of Constitution for an embryonic State. Soon after the birth of Pakistan, the question of Islamic Constitution was raised as promised by the founding father in the course of Freedom Movement. The Religious, Political Parties and some sections within the ruling Muslim League demanded Islamic Constitution. The leaders of the Religious, Political Parties within and out of the Constituent Assembly of Pakistan played an active role in the Islamization of Constitution of 1956. This article is an endeavor to disclose the possible struggle of Religious, Political Parties regarding Islamization of the Constitution of 1956.*

**Key Words:** Pakistan, Islamization of Constitution, Religious, Political Parties, Objective Resolution.

### 1. Introduction:

Islam played a pivotal role in the birth of Pakistan. The founding fathers of Pakistan Movement appealed the religious sentiments of the Muslims of British India which proved instrumental in gathering the Muslims of India under the banner of All India Muslim League. Although the creation of Pakistan out of the yoke of British India was the result of multiple factors, e.g. political, socio-cultural and economic, but, the fact remains that the *raison d'eter* of the emergence of Pakistan was Islam.<sup>1</sup> Islam was the only cementing force which bonded the Pashtuns, Punjabis, Sindhis, Bengalis, Balochis and many small groups from different parts of

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<sup>1</sup> Abdullah Adnan. "Pakistan: Creation and Genesis." *The Muslim World* 96, no. 2 (2006): 201-217.

India under a single umbrella for the creation of Pakistan.<sup>2</sup> Muhammad Ali Jinnah, the founding father of Pakistan during the course of Freedom Movement promised the Muslims about the Islamic Constitution of Pakistan. The main sources of his inspiration and guidance for the national effort were Islam and the Holy Prophet Muhammad (Peace Be upon Him). About Islam the Quaid said:

“It is not only a religion, but it contains law, philosophy and politics. In fact, it contains everything that matters to a man from morning to night. When we talk about Islam, we take it as an all-embracing word. We do not mean any ill will. The foundation of our Islamic code is that we stand for liberty, equality and fraternity”.<sup>3</sup>

In his message on the occasion of ‘Id-ul-Fitr in October 1941, he explained:

“Islam lays great emphasis on the social side of things. Every day, the rich and the poor, the great and the small living in a locality are brought five times in a day in the mosque in the terms of perfect equality of mankind and thereby the foundation of a healthy social relationship is laid and established through prayer. At the end of Ramazan comes the new moon, the crescent as a signal for a mass gathering on the ‘Id day again in perfect equality of mankind which affects the entire Muslim world.”<sup>4</sup>

In an ‘Eid message in September 1945, the Quaid-i-Azam pointed out; The Quran is the general code for the Muslims, a religious, social, civil, commercial, military, judicial, criminal and penal code. It regulates everything, from the ceremonies of religion to those of daily life, from the salvation of the soul to the health of the body, from the rights of all to those of each individual from morality to crime; from punishment here to that in the life to come, and our Holy Prophet Mohammad (Peace by

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<sup>2</sup> Fakhr-ul-Islam and Muhammad Iqbal. “Islamizing the Constitution of Pakistan: The Role of Maulana Maudoodi.” *Al-Īdāh* 27 (2013): 58-59.

<sup>3</sup> S.M. Burke, and Salim Al-Din Qureshi, *Quaid-I-Azam Mohammad Ali Jinnah His personality and His Politics*, (Karachi: Oxford University Press, 1967), p. 367.

<sup>4</sup> Ibid., P. 367.

upon Him) has enjoined on us that every Muslim should possess a copy of the Quran and be his own priest. Therefore, Islam is not merely confined to the spiritual tenets and doctrines or ritual and ceremonies. It is a complete code regulating the whole Muslim society, every department of life, collective and individual.<sup>5</sup>

He once said, "Our religion, our culture and Islamic ideals are our driving force to achieve independence."<sup>6</sup>

Muhammad Ali Jinnah, the father of the nation after the birth of Pakistan several times expressed his views about the characteristics of the future Constitution of Pakistan. Some of his speeches are reproduced here. Addressing the Karachi Bar Association on the eve of the 12 Rabi-ul-Awal, the Quaid-e-Azam said:

"I fail to understand why some people indulge in the misleading propaganda whether or not the Constitution will be in accordance with the Islamic *Shari'ah*. Islam today is as much practical religion as it was 1300 years ago. It is a standard bearer of democracy. It is Islam which guarantees justice, fair play, and equality. And the whole World will see that we will frame our Constitution in accordance to it"<sup>7</sup>

In February 1948, in a broadcast speech to the people of the USA he declared:

"The Constitution of Pakistan has yet to be framed by the Constituent Assembly of Pakistan. I don't know what the ultimate shape of the constitution is going to be but, I am sure that it will be a democratic type having the essential features of Islam. Islam and its idealism have taught us democracy; it has taught equality of man, justice and fair play to everybody. We are inheritors of these glorious traditions and are fully alive to responsibilities and obligations as framers of the Constitution of Pakistan."<sup>8</sup>

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<sup>5</sup> Jamil-ud-Din Ahmed, *Speeches and Statements of Mr. Jinnah*, (Lahore: M. Ashraf, 1968), pp. 208-209.

<sup>6</sup> Ibid., p. 242.

<sup>7</sup> Ibid., p. 250.

<sup>8</sup> Fakhr-ul-Islam and Muhammad Iqbal, p. 60.

Soon after the emergence of Pakistan on the map of the world on August 14, 1947, a controversy over the nature of the State began. The traditionalists and modernists were trying to make it as per their wishes. The views and speeches of Muhammad Ali Jinnah before and after the creation of Pakistan were interpreted differently both by ulema and modernists. The modernists explained that Jinnah wanted a Muslim State while the traditionalists were of the view that he wanted an Islamic State.<sup>9</sup>

## **2. First Constituent Assembly of Pakistan:**

The foundation of every system of Government is raised on its constitution. Every state must have its constitution; even a state governed by a dictator has a constitution. A state having no constitution cannot be called a state but a regime of anarchy. It is a body of rules according to which government is an agent of the state is carried on. These rules deal with the form of government, the structure and the functions of the various organs of the government and relations between the same.<sup>10</sup> The First Constituent Assembly of Pakistan came into existence as a result of transfer of power under the Indian Independence Act, July 18, 1947.<sup>11</sup> The inaugural session of the first Constituent Assembly of Pakistan was held in Karachi from 10 to 14 August, 1947 at the building of Sind Provincial Assembly. Mr. Jogandar Naath Mendal, a Hindu member from the East Pakistan was unanimously elected as temporary Chairman of the first session of the Assembly.<sup>12</sup> On August 11, 1947, Muhammad Ali Jinnah, the founder of the nascent nation was elected as the President of the First Constituent Assembly. Under Article 8 of Indian Independence Act of 1947, the Constituent Assembly adopted the Indian Act of 1935 as an Interim Constitution with certain alterations, till the Constituent Assembly of Pakistan frame its own Constitution. The Assembly had to perform dual function:

### **(a) Framing of Constitution**

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<sup>9</sup> Mazhar UlHaq, *1973 Constitution of Pakistan*, (Lahore: Bookland, 1999), p. 15

<sup>10</sup> Ibid., p. 17.

<sup>11</sup> Ibid., p. 18

<sup>12</sup> Ibid., p. 19

(b) Day to day legislation<sup>13</sup>

Soon after the emergence of Pakistan the religious political parties began to struggle for making Pakistan an Islamic state. The more important among these were Jamiat al - Ulama- i- Islam (JUI), the Jami at al - Ulama- i Pakistan (JUP) , the Jammat e Islami Pakistan (JIP) , and a section of the Pakistan Muslim League (PML). On October, 26-29, 1945, the pro League *ulema* formed JUI and Maulana Shabir Ahmad Usmani was elected its *Amir* to counter the rising propaganda of pro- Congress Jamiat Ulama-e-Hind.<sup>14</sup> After independence the JUI was reorganized to struggle for establishing an Islamic order in Pakistan with Maulana Shabir Ahmad Usmani as its president and Maulana Ihtishamul Haq Thanvi as the general secretary.<sup>15</sup>

The Bareilvi Ulema under the banner of the All-India Sunni Conference formed in 1925 had mobilized support for the Pakistan demand and they had always been in close touch with the Muslim masses, especially in the rural areas. After the birth of Pakistan, the Bareilvi Ulema and Mashaikh from different areas of Pakistan met in Multan and established Jamiat Ulama-i-Pakistan on March 28, 1948. After its birth, the JUP participated in the poetics to introduce an Islamic order in Pakistan.<sup>16</sup> The most well organized and well-disciplined religious political party was Jamaat e Islami, established by Sayyid Abul Ala Maududi on August 26, 1941. Although it did not support the All-India Muslim League's demand from for Pakistan, but, after independence it felt no reservations or hesitation in starting a moment for transforming Pakistan into an Islamic State.<sup>17</sup> Beside these religious political parties, the PML had a strong contingent in its ranks striving to establish an Islamic state in Pakistan. Among these people the more prominent were Sardar Abdul

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<sup>13</sup> Ikram Rabbani, *Pakistan Affairs*, (Lahore: Carvan Press, 1999), PP. 1-2

<sup>14</sup> G.W. Choudhury, *Constitutional Development in Pakistan*, p. 15.

<sup>15</sup> Ibid., p.30.

<sup>16</sup> Riaz Ahmad. "Pakistan's First Constituent Assembly's Efforts for the Making of Constitution, 1947-1954." *Pakistan Journal of History & Culture* 23: 1, (2002).

<sup>17</sup> M. Rafique Afzal "Pakistan: Struggle for an Islamic State, 1947-1971." *Islam in South Asia*: P. 502.M.

Rabb Nishtar, Pir Amin al-Hasanat of Manki Sharif, Mian Abd al-Bari. Maulana Akram Khan and Maulana Abdullah al-Baqi.<sup>18</sup>

The early years of Pakistan's history were a period of constant struggle for survival. The fluctuations in the intensity of the demand for an Islamic State were coincident with the political crisis in Pakistan. In the beginning, the demand was two-pronged: implementation of the *Shari'ah* laws and framing of an Islamic Constitution for the state. The JUI, JIP and JUP observed separately *Shari'ah* Days 'and weeks 'to press the demand and some Leaguers made an abortive attempt to establish a *Shari'ah* Group in the reorganized council of the PML.<sup>19</sup> The Punjab Assembly passed the Muslim Personal Laws Act to enable women to inherit property according to the *Shari'ah* and the provincial chief minister promised to introduce Islamic laws in every sphere of life. The revival of the Zakat as a State institution was also raised many a time in the constituent Assembly of Pakistan but its implementation involved restructuring of the whole economic system of the country which could be done only when an Islamic Constitution was seriously enforced.<sup>20</sup> The leaders of the religious parties soon realized that they could not achieve their objective unless the country had a truly Islamic Constitution. In 1948, Sayyed Abu -Ala Maududi, head of JI delivered a speech in Law College Lahore and presented a resolution which was passed by the people and was sent to the then Governor General, Prime Minister and the President of the Constituent Assembly. The resolution stressed on the following four points:

1. That the sovereignty of the State of Pakistan vests in Allah Almighty and that the Government of Pakistan shall be only an agent to execute the Sovereign's will;
2. That the Islamic Shari'ah shall form the inviolable basic code for all legislation in Pakistan;
3. That all existing or future legislation which may contravene, whether in letter or in spirit the Islamic

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<sup>18</sup> Rafique Afzal, *Political Parties in Pakistan 1947-1958*, (Islamabad: National Institute of Historical and Cultural Research Islamabad, 1998), p.57.

<sup>19</sup> Mujeeb Ahmad, *Jam'iyyat Ulama-i- Pakistan* (Islamabad: National Institute of Historical and Cultural Research, 1993), p. 2.

<sup>20</sup> M. Rafique Afzal, p. 503.

Shari'ah shall be declared null and void and be considered ultra-virus of the Constitution; and

4. That the powers of the Government of Pakistan shall be derived from, circumscribed by and exercised within the limits of Islamic Shari'ah alone.<sup>21</sup>

Unfortunately, the movement for an Islamic State was blurred by the mass migration of refugees, its rehabilitation, the war in Kashmir, canal water dispute, the illness and death of Muhammad Ali Jinnah for some time. In 1949 the movement again gained momentum when the JUI organized a conference at Dakhha on 9-10, February 1949, where not only the Islamic system was demanded but, also warnings were issued that any attempt to introduce an un-Islamic order would be resisted.<sup>22</sup> Soon after the birth of Pakistan, the religious, political parties inside and outside of the Constituent Assembly acted as a pressure group to press the ruling elites to accept their demand for the enforcement of *Shari'ah*. Only representative of Ulama in the Constituent Assembly was Maulana Shabbir Ahmad Usmani, the president of Jami'at al-Ulama-i-Islam that politically supported the Muslim League. Maulana Usmani himself was a Muslim League member of the Constituent Assembly of Pakistan (CAP). Jamaat e Islami having no representation in the Constituent Assembly focused attention on Usmani to get a help for the demand of the Islamic constitution. In April 1948, a delegation of Jamaat comprising of Maulana Maududi, Ameen Ahasn Islahi, Mian Tufail Muhammad and Chaudhri Ghulam Muhammad met Usmani to exert pressure on the government inside the constituent Assembly for Islamic order of the State.<sup>23</sup>

## 2.1 Objective Resolution:

The campaign launched by the religious, political parties was so forceful that the government had to take decisions relating to the introduction of Shari'ah and an Islamic Constitution. Succumbed to the pressure of these parties, Liaquat Ali Khan, the then Prime

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<sup>21</sup> M. Rafique Afzal, p. 503.

<sup>22</sup> Israr Ahmad, *Jamaat-i-Islami aur uska Kirdar*, (Lahore: 1966), pp. 120-124.

<sup>23</sup> M. Rafique Afzal, p. 504.

Minister of Pakistan presented a bill in the Constituent Assembly on March 7, 1949 and was passed on March 12, 1949 which is popularly known as Objective resolution in the Constitutional annual of Pakistan.<sup>24</sup>

Before examining the parliamentary debate on the resolution, the text of the Objective Resolution is hereby re produced;

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

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

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

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

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

- Wherein adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures;
- Whereby the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;
- Wherein shall be guaranteed fundamental rights including equality of status, of opportunity before law, social, economic and political justice, and freedom of

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<sup>24</sup> Dr. Fakhr-ul-Islam and Muhammad Iqbal, p. 62.

thought, expression, belief, faith, worship and association, subject to law and public morality;

- Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;
- Wherein the independence of the Judiciary shall be fully secured;
- Wherein the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded.

So that the people of Pakistan may prosper and attain their rightful and honored place amongst the nations of the world and progress and happiness of humanity'.<sup>25</sup>

The Bill was discussed in five successive sessions of the Constituent Assembly. The members from the treasury benches Liaquat Ali Khan, the then PM of Pakistan, Maulana Shabir Ahmad Usmani, Sardar Addur Rab Nishtar, Dr. Ishtiaq Hussain Qureshi, Omar Hayat Malik, Nazir Ahmad, Dr. Muhammad Hussain. Begaum Shaista Ikram Ullah and Choudhury Zafar Ullah Khan spoke in favor of the resolution.<sup>26</sup>

The members of Pakistan National Congress, the Opposition party in the assembly, Sirs Chndra Chattopadhyya, Bhupendra Kumar Datta, Prof. Raj Kumar Chakraverty, Prem Hari Barma, Kamini Kumar Datta and Birat Chandra Mendal vehemently opposed the resolution and proposed seventeen amendments in it. Most of the amendments were about the Islamic status of the Constitution and the non-Muslim members of the assembly stressed on the separation of religion from politics.<sup>27</sup>

In response to all these amendments Liaquat Ali Khan as a leader of the house said, "Pakistan was born because the Muslims of India desired to have a piece of land where they could live according to the teachings of Islam" He assured the minorities

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<sup>25</sup> Ibid. p.62.

<sup>26</sup> Muhammad Nawaz Khan, *An Evolution of Muttahida Majlis-i-Amal's Government in the light of its Election Manifesto* (M.Phil Thesis) (Peshawar: Pakistan Study Centre University of Peshawar ) p. 11.

<sup>27</sup> Syed Mujawar Hussain Shah, *Bhutto, Zia and Islam* (Larkana: Created Publisher, 2014), p. 44.

that in Islamic State their rights and interest would be fully protected. Most of the members of the assembly referred to the first speech of Jinnah to the Constituent Assembly and opined that this speech was a clear indication that Pakistan would be based on the eternal principles of equality and democracy and the minorities deemed that speech as guarantee against the enforcement of Islamic State on them.<sup>28</sup>

Maulana Shabbir Ahmad Usmani, the president of JUI while answering to the objections raised by the non-Muslim members of assembly, referred to a letter of Quaid-i-Azam written to Pir Sahib of Manki Sharif, in November 1945, in which he assured him that "it is needless to emphasize that the Constituent Assembly which would be predominantly Muslim in its composition would be able to enact laws for Muslims, not inconsistent with the *Shari'ah* laws and the Muslims will no longer be obliged to abide by un-Islamic laws."<sup>29</sup> Sardar Abdur Rab Nishtar member from the treasury benches replied to most of the amendments tabled by non-Muslim members of the CAP. He explained, "the concept of Divine Sovereignty was a mere statement of fact to indicate that the Almighty is the sovereign of the whole universe. It also implied the principle of brotherhood of men all over the world. He pointed out that the political sovereignty of the people was not in any way limited by the provision. He told the House that more emphasis was placed on terms like 'the people', 'the right of the people', and 'the representatives of the people and the authority of the people in the Objectives Resolution'.<sup>30</sup>

The amendments proposed in the draft resolution by the non-Muslim members of the assembly were put to vote on March 12, 1949. 11 votes were in favor of the amendments and 21 votes went against of the amendments. After the amendments were rejected, the resolution was placed before the House and was

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<sup>28</sup> The Constituent Assembly of Pakistan Debates Official Report Vol. V, 1949 (7th to 12th March. 1949).

<sup>29</sup> Naushad Khan, *Pakistan Studies and Pakistan Affairs*, (Peshawar: Department of Pakistan Studies, Islamia College University, Peshawar, 2015), P. 271.

<sup>30</sup> Ibid., pp. 271-270.

passed on March 12, 1949 which is popularly known as the Objective Resolution in the Constitutional history of Pakistan.<sup>31</sup>

### 2.3. Basic Principles Committee:

Objective Resolution was not the entire constitution, but it laid down the fundamental principles of the future constitution of Pakistan. To incorporate the Objective Resolution in the future constitution of Pakistan, the Constituent Assembly on March 12, 1949 appointed 24 members committee (21 Members were Muslims and 3 were non- Muslims) called Basic Principles Committee headed by Mulavi Tamizuddin, the then president of the Constituent Assembly.<sup>32</sup> The BPC further subdivided its assignment and assigned it to three sub-committee

- 1) The Sub-Committee on federal and provincial Constitutions and the distribution of powers;
- 2) The Sub-Committee on franchise; and
- 3) The Sub-Committee on judiciary.<sup>33</sup>

On the suggestion of Shabbir Ahmad Usmani, the CAP also set up a Board of Ta'limat-e-Islamia, composed of well-versed scholar Syed Sulaiman Nadvi, Syed Shabbir Ahmad Usmani, Mufti Mohammad Shafi, Professor Abdul Khaliq, Mufti Jafar Hussain, a Shiah Mujtahid, Dr. M. Hamid Ullah". Syed Sulaiman Nadvi and Maulana Zafar Ahmad was appointed president and secretary of the Board respectively. However, the Board started its functioning without its Chairman as Syed Sulaiman Nadvi could not join the Board till after 1950. The Board submitted the following recommendations to the BPC on certain points, referred to it by various sub-committees of the BPC.<sup>34</sup>

1. The Board interpreted the concept of *Khiliafat* in the context of the theoretical structure of modern state.

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<sup>31</sup> Riaz Ahmad, p. 155.

<sup>32</sup> Sayed Wiqar Ali Shah, *North-West Frontier Province: History and Politics* (Islamabad: National Institute of Historical and Cultural Research, 2007), p. 137.

<sup>33</sup> Ibid., pp. 55-56.

<sup>34</sup> Naushad Khan, pp. 272.

2. It recommended a presidential form of government in which the president shall be elected indirectly by the learned and pious representatives of the people.
3. The house of the representatives shall be empowered to depose the president, pass the national budget, and keep watch over the executive and to declare war and conclude peace.

The Board also recommended a committee of experts on *Shari'ah* to advise the president, federal and provincial governments on different issues regarding *Shari'ah*.<sup>35</sup>

Prime Minister Liaquat Ali Khan submitted the interim report of the BPC to the CAP on September 28, 1950. It was claimed that the report was drafted in the light of recommendations of Board of Ta'limat-e- Islamia, but the report did not bear any traces of the Board of Ta'limat-e- Islamia. The report simply recommended that the new constitution should incorporate the Objective Resolution as directive principle of the State policy which was mere eyewash.<sup>36</sup> The supporters of the Islamic constitution were shocked by the first report of BPC. Realizing the intention of the government, Sayyid Sulaiman Nadwi who had just arrived in Pakistan refused to join the Board and Dr. Hamid Ullah resigned in protest and left for Paris. Mufti Shafi stated that the reports of the constitution making committee are totally void of any provision for the positive requirement of Islam and many of their contents are even against Islam and the Objective Resolution. The Bengalis as a whole stood against the federal structure of the first report of the BPC as it had converted their numerical majority to minority.<sup>37</sup> The agitation launched by the Religious Political Parties and Bengalis led the Constituent Assembly to postpone further debate on the report. As a result, on 21 November, 1950 Liaquat Ali Khan moved in the CAP for the withdrawal of the interim report to enable the BPC to consider any

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<sup>35</sup> Fakhr-ul-Islam, *Constitutional Development in Pakistan: Past Profile and Future Prospects*, (Peshawar: Pakistan Study Centre, University of Peshawar, 2018), p.33.

<sup>36</sup> Riaz Ahmad, p. 2.

<sup>37</sup> M. Rafique Afzal, p. 506.

concrete and definite proposals that might be made by the ulema and people.<sup>38</sup>

After the creation of Pakistan, the secular forces launched a poisonous propaganda that the Ulema were so divided on sectarian lines that they were unable to agree on one concept of Islamic system. They opined that the Ulema of different school of thoughts were incapable of giving a rational and systematic Constitutional plan which could be acceptable to the Muslims of Pakistan. Accepting the challenge of the secular elements, the Ulema and the religious, political parties showed a unique sense of solidarity for an Islamic Constitution in this critical juncture. They united on one platform to propose common demands. Many factors led the unity among the ulema of different school of thoughts. The most important was the common feelings that their inactivity might deprive the people of an Islamic Constitution. The release of JI Amir, Maulana Maududi in May 1950, the JUI with the arrival of Sayyed Sulaiman Nadvi and the JUP under the new leadership had reactivated their parties with new zeal and vigor. A meeting of 31 leading and eminent Ulema and scholars of various sects and school of Islamic Jurisprudence were summoned in Karachi at the head of Sayyed Suliman Nadvi from January 21-24, 1951. After four days close door talks, they came out with a consensus on "Twenty two principles of an Islamic state" which was sent to the BPC for consideration.<sup>39</sup>

## **2.4. Second Report of the Basic Principles Committee:**

After the withdrawal of the first report from further deliberation in Constituent Assembly, Liaquat Ali Khan appointed a Suggestion Committee under the chairmanship of Sardar Abdur Rab Nishtar to analyze the constitutional proposals received from different walk of people. The suggestion committee was busy in finalizing of the second report of the BPC when an assassination bullet came and took the life of Liaquat Ali Khan on 16 October, 1951, while addressing a mammoth gathering in Liaquat Bagh

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<sup>38</sup> Ibid., p. 507.

<sup>39</sup> G. W. Choudhry, *Documents and Speeches on the Constituent Assembly*, (Dacca: 1967,) p. 32. Mushtaq Ahmad, "Government and politics in Pakistan," *Pacific Affairs* 33: 2, (1960): 204.

Rawalpindi.<sup>40</sup> Khawaja Nazimuddin who was stepped down from Governor General to become the Prime Minister was well known for his religiosity and close contact with Ulema stepped down from Governor-Generalship to the Premiership of the country. Malik Ghulam Mohammed, the then Finance Minister, was moved upstairs as the Governor-General on the recommendation of the Nazimuddin Cabinet. Temperamentally, these two men were diametrically opposed to each other. Ghulam Mohammed was a sharp man with a raging temper and believed in imposing his will on everyone. On the other hand Nazimuddin was a simple man of sober temperament and was tackling problems in a gentle way.<sup>41</sup> After taking oath as Prime Minister, he constituted a committee including Khwaja Nazimuddin, Sardar Abdur Rab Nishtar, Fazalur Rahman and Dr. Muhammad Hussain to negotiate with the Ulema for providing the Islamic clauses for the future constitution.<sup>42</sup> After the installation of Nizamuddin's government, there came a silence in political arena and nobody ever heard even a whisper about the constitution. The people of Pakistan became impatient and suspicious about the intention of ruling elites. To offset any hostile moves, the Religious Political Parties decided to keep up the political pressure. Maulana Maududi once again stood up and severely criticized the dilly-dallying policy of the Constitution makers. He warned the ruling elites that the Constitution should be framed before the end of 1952 and that it should be based on the following points:

1. That the Islamic Shari'ah shall be the law of the land;
2. Whereas there shall be no such legislation which would be repugnant to the principles of the Shari'ah;
3. Wherein all such laws repugnant to the principles of the Shari'ah shall be abrogated;
4. That it shall be obligatory upon the State to uproot the voice which Islam wants to be eradicated and to uphold and enforce the virtues which Islam requires to be upheld and enforced ;

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<sup>40</sup> Ibid., p. 43.

<sup>41</sup> Ibid., p.44.

<sup>42</sup> Riaz Ahmad, "Pakistan's First Constituent Assembly's Efforts for the Making of Constitution.1947-1954," *Pakistan Journal of History & Culture*, Vol. XXIII/1, 2002: 12.

5. Whereas the basic civil rights of the people such as security of life and property, freedom of speech and expression, and freedom of association and movement shall be forfeited except when a crime has been proved in an open court of law after providing due opportunity of defense ;
6. Wherein the people shall have the rights to resort to a court of law against transgressions on the part of the legislative or the executive machinery of the State ;
7. Whereas the Judiciary shall be separated from executive branch of the government.
8. Wherein it shall be the responsibility of the state to see that no citizen remains un-provided for in respect of the basic necessities of life such as food, clothing, shelter, medical aid and education.<sup>43</sup>

The JI organized an “Islamic Constitution Week” throughout Pakistan from 14 to 21 November, 1952 and JUI held Nizam-i-Islam conference at Decca on 14-15 November, 1952 which was attended by a large number of people, demanded the Islamization of Constitution.<sup>44</sup> The demand for Islamic Constitution was raised by the people of different shade of opinion. The demand got momentum on each passing day. The Suggestion Committee made its report to the Basic Principles Committee in July, 1952 and on the basis of its findings, recommendations and the mounting pressure from public, Khawaja Nazim Uddin, the then Prime Minister of Pakistan presented the Second Report of Basic Principles Committee in Constituent Assembly of Pakistan of on December 22, 1952.<sup>45</sup>

The committee incorporated the following Islamic provisions in its second report:

1. The report recognized the Objectives Resolution as an integral part of the constitution of Pakistan and the legislative process, suggesting that the resolution should

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<sup>43</sup> Manzoor Uddin Ahmad, “The political role of the ‘Ulama’ in the Indo-Pakistan sub-continent.” *Islamic Studies*, 6(4), 1967: 327-354.

<sup>44</sup> Manzoor Uddin Ahmad, p. 355.

<sup>45</sup> Ibid. p., 360.

be incorporated into the constitution as "a Directive Principle of state policy"

2. The state of Pakistan shall take the steps to enable Muslims to order their lives, individually and collectively, in accordance with the Quran and Sunnah, with due safeguards for sectarian interests.
3. The report recommended the compulsory teaching of the Quran, prohibition of drinking, elimination of riba, promotion and maintenance of Islamic moral standards; and proper organization of Zakat, Auqaf and the Mosques.
4. The existing laws shall be brought into conformity with Islamic principles, and injunctions.
5. It was proposed to set up an organization to instruct people in Amr bil Maroof wa Nahi 'anil Munkir.
6. The recommendations of the BPC also laid down the procedure to prevent legislation repugnant to the Quran and Sunnah. The head of the state shall set up a Board comprising of not more than five persons well versed in Quran and Sunnah. If a board with majority declared any bill passed by the parliament repugnant to Quran and Sunnah, the bill shall be returned to the joint session of the bicameral federal legislature for reconsideration. However, if the joint session disagreed with the opinion of the board, it could still pass the bill by a simple majority, provided such a vote included a majority of the Muslim members. In case of differences of opinion among the members of the Board, the head of the state himself shall have the power to approve or disapprove the bill. A similar procedure was recommended for the units.<sup>46</sup>

#### **2.4. Proposed Amendments in Nizamuddin's Report:**

The Ulema were generally satisfied over the Islamic characteristics of the Nizamuddin Report. Maulana Zafar Ahmad Usmani, leader of JUI described it 18 percent Islamic. The draft constitution embodied most of the articles of 22 Articles of Ulema and 8 points of Maulana Maududi. On 11 to 18 January 1953, the Convention of Muslim Scholars was convened in Karachi, and after a lengthy

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<sup>46</sup> Sayyid Abul A'la Maududi, *The Islamic Law and Constitution*, (Lahore: Islamic Publications (Pvt.) Ltd), p. 53-54.

deliberation on the issue, the ulema accepted the Report with following amendments.

1. Regarding the "Directive Principles of State Policy" the Ulama demanded that teaching of the Holy Quran and Sunnah should be made compulsory. Intoxicants, gambling, prostitution, and other evils should be banned in the light of the injunctions of the Holy Quran and Sunnah. The state should provide the basic necessities of life such as food, shelter, water, and education to all citizens of Pakistan irrespective of caste, creed, or religious background;
2. The Ulema demanded that the clause "No legislature should enact any law which is repugnant to the Holy Quran and the Sunnah" was not enough. They suggested that the Holy Quran and the Sunnah should be the main source of the law of the land;
3. The ulema demanded that a candidate for the Assembly should be a person who observed the *Faraz* (obligatory things) and desisted from *Fawahish* (Sinful deeds); non-Muslim members shall be exempted from it; and
4. That judges should be appointed on the basis of their *Taqwa* (piety) and knowledge of Shari'ah.<sup>47</sup>

The Nizamuddin's Report was scheduled to be discussed in the Constituent Assembly on January 1, 1953, but, on the demand of various political parties its consideration was postponed. The brief period of the Prime Minister'ship of Khwaja Nazimuddin was marred by Language issue in East Pakistan. Nizamuddin's report once again declared Urdu as a National Language and ignored the demand of Bengalis of also declaring Bengali Language along with Urdu as a National Language. The Parliamentarians and politicians from East Pakistan severely criticized the Nizamuddin's report and started agitation against the central government. Army was called to control the situation. The law and order was restored but irreparable damage was done to the national integration. Language issue was followed by foot shortage and the people gave Nizamuddin the title of Quaid-i-

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<sup>47</sup> Safdar Mehmood, *The Constitutional Foundations of Pakistan* (Lahore: Jang Publications, 1990), p. 52.

Qillat, the leader of shortage. In 1953 Anti-Qadiani Movement led by the ulema engulfed the whole country in general and the province of the Punjab in particular. The ulema demanded the government to declare the followers of Mirza Ghulam Muhammad as non-Muslim minority and removal of Qadabis from high posts including Chaudhry Zafar Ullah Khan, the then Foreign Minister of Pakistan.<sup>48</sup> The Anti-Qadiani Movement getting momentum on each passing day brought Lahore, the center of the movement to chaotic paralysis. On March 6, 1953 Major General Azam, the area commander imposed Martial law in Punjab. Mumtaz Muhammad Khan Daultana, the Chief Minister of Punjab was replaced by Firoz Khan Noon. The agitation was crushed with ruthless manners and its leading leaders were arrested. Many *Ulema* were arrested. Maulana Maududi, the *Amir* of Jalandhar Maulana Abdu Satar Niazi were both sentenced to death by a military court at Lahore. Maududi was sentenced to death because he had "promoted feelings of enmity or hatred between different classes in Pakistan by writing a pamphlet titled *Qadiyani Maslah* (The Qadiyani Problem) while Maulana Niazi was charged for inciting a mob in Lahore mosque when a police official was murdered just outside its walls.<sup>49</sup>

The situation further complicated due to slashing of defence budget by 1/3 because of weak financial position of the country. This annoyed the military establishment, and the time was ripe and mature for action against Nazimuddin government.<sup>50</sup> Khawaja Nizamuddin government was held responsible for all these crises. On April 17, 1953 he along with his cabinet was summoned by Malik Ghulam Muhammad and was ordered to resign. Enjoying the confidence of the Constituent Assembly, Nazimuddin refused to comply with the order of Governor General. The Governor General exercised his powers under section 10 of the Indian Act 1935 (Amended) and dismissed the Ministry of Khawaja Nizamuddin on April 17, 1953 on the following ground:

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<sup>48</sup> Ibid., p. 73.

<sup>49</sup> M. Rafique Afzal, p. 509-510.

<sup>50</sup> Fakhr-ul-Islam and Muhammad Iqbal, p. 68.

The cabinet of Khawaja Nazimuddin has proved entirely inadequate to grapple with the difficulties facing the country. In the emergency which has arisen I have felt it incumbent upon me to ask the cabinet to relinquish office so that a new cabinet fitted to discharge its obligations towards Pakistan may be formed.<sup>51</sup>

## 2.5. Muhammad Ali Bogra Formula:

On the dismissal of Khawaja Nizamuddin, Malik Ghulam Muhammad appointed Muhammad Ali Bogra, the then ambassador in Washington as the Prime Minister of Pakistan.<sup>52</sup>

After the removal of Khawaja Nizamuddin, there was a change in the general political atmosphere. Sensing this change, the *Ulema* were severely criticized by the government dignitaries. The appointment of Mr. Brohi as minister of law and parliamentary affairs was taken as an ill-omened event by the 'ulama' and other proponents of an Islamic constitution. This man, who had outraged the feelings of all the religious conservatives and romantics throughout Pakistan, was now suddenly charged with the major responsibility for seeing the draft constitution through the Assembly. The apprehension of the 'ulama' was increased as a result of statements issued by Prime Minister Muhammad Ali advocating the abolition of the 'ulama' boards." The Prime Minister also expressed his personal opinion that any person who called himself a Muslim and recited the Kalima (creed) was in fact a Muslim.<sup>53</sup>

Chaudhury Khaliq u Zaman stated that the threat to Pakistan came from Communists and theologians. Firoz Khan Noon, the then Chief Minister of Punjab opposed the Islamic Constitution. Sardar Abdur Rashid, the Chief Minister of the North West frontier Province favored a secular state instead of Islamic State.

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<sup>51</sup> Rafi Ullah Shehab, *Fifty Years of Pakistan*, (Lahore: Maqbool Academy, 1990), p. 94.

<sup>52</sup> Janaat-i-Islami: *Trial of Maududi*, (Karachi: Jamaat-i-Islami Pakistan, n.d.), p.20.

<sup>53</sup> Hamid Khan, *Constitutional and political History of Pakistan*, (Karachi: Oxford University Press, 2nd ed. 2009), p. 71.

These government officials launched an anti-ulama and pro - secular constitution campaign.<sup>54</sup>

Under the changing political scenario, Muhammad Ali Bogra came out with an idea of an "Interim constitution" which excluded the Islamic provisions from it.<sup>55</sup> Sensing the intention of the Prime Minister, the Religious, Political Parties resolved to keep continue the pressure on the ruling elite for the Islamization of the Constitution. On 7 July, the working committee of JUI expressed disapproval on the interim report. Later on, in a joint statement on 26 September, 1953, the President of JUI Syed Sulaiman Nadvi, the acting Amir of JIP, Maulana Abdul Ghafar Hassan, members of BTI and some members of Constituent Assembly declared Muhammad Ali Bogra attempt a clear deviation from Objective Resolution. On 28 September 1953 JUI called a conference which was attended by the leaders of different political parties, which condemned the idea of a secular constitution. Pressure was also mounted from within the Muslim League against it.<sup>56</sup> Realizing the gravity of situation, the idea of the secular constitution was dropped. Muhammad Ali Bogra came out with a revised report and submitted it to the Constituent Assembly on 7 October 1953 and was adopted on 6 October, 1954 after lengthy and illuminating discussion on the different aspects of an Islamic State. This third draft of the constitution is popularly known as Muhammad Ali Bogra Formula in the constitutional history of Pakistan.<sup>57</sup> In the third draft of the Constituent Assembly most of the Islamic provisions of the Second draft of the Constitution were incorporated. Although the draft had not proposed a fully Islamic Constitution, yet the Ulema were satisfied with the report.<sup>58</sup>

The Central government has announced elections for East Pakistan Provincial Assembly to be held between 8 March to 12 March, 1954. Therefore, the session of the CAP adjourned after adopting the constitutional report to provide time to the political

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<sup>54</sup> Syed Munawar Hussain Shah, p. 55.

<sup>55</sup> Rafi Ullah Shehab, p. 95.

<sup>56</sup> Leonard Binder, *Religion and politics in Pakistan*, (Berkeley and Los Angeles: University of California Press, 1963), p.303.

<sup>57</sup> Ibid., p. 304.

<sup>58</sup> Hassan Masud, *The Constitutional History of Pakistan* (Lahore: Abdu Sattar Press, 2001), P.60.

parties to campaign for the election in East Pakistan. Awami Muslim League led by Hussain Shaheed Suharwardy, Krishak Sramik Party led by Abul Kaseem Fazli Haq, Nizam-i- Islam Party led by Maulana Athar Ali and Ganatantri Dal led by Mehmud Ali and Haji Muhammad formed pre-electoral alliance, United Front. The Muslim League started its electioneering campaign on the basis of Islamic provisions ensured by its Central government in the future constitution of Pakistan while United Front focused its attention of the policies of the Central government and the regional grievances. Despite the efforts to avoid electoral defeat, the Muslim League was routed by the United Front. The former captured only 10 seats in the Assembly of 309 members while United Front secured 237 seats out of 309. After gaining electoral victory, the United Front elected A.K. Fazli Haq as its parliamentary leader who took the oath as a Chief Minister of East Pakistan on April 3, 1954.<sup>59</sup> The election results in East Pakistan further complicated the political situation in Pakistan. All the League members of the Constituent Assembly were defeated in the provincial elections of East Pakistan. The United Front demanded either the dissolution of the Constituent Assembly or the resignation of the members from East Pakistan, but, this demand was rejected by the Prime Minister.<sup>60</sup>

The Constituent Assembly met on September 15, 1954 and assumed parliamentary debate on the BPC report. The Constituent Assembly finally adopted the Constitutional report on September 21, 1954 and the adjourned to meet on October 27, 1954.<sup>61</sup> In addition to the constitutional report, the Constituent Assembly in the same setting passed two important bills.

1. On the motion of M.H. Gazdar (From Sindh), the PRODA under which the ministers and politicians could be disqualified was repealed.

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<sup>59</sup> Mahboob Hassan "Islamization of the Constitution: The Role of Religious Parties. See at <http://pu.edu.pk/images/journal/history/PDF-FILES/7%20Mahboob%20sahib.pdf>.

<sup>60</sup> Syed Jaffar Ahmed, *Overview of the Constitution of Pakistan* (Lahore: Pakistan Institute of Legislative Development and Transparency), p.12.

<sup>61</sup> Fakhr-ul-Islam and Muhammad Iqbal, p. 68.

2. Amendments in Articles 9, 10, 10A to the Government of Indian Act, 1935 to curtail the dismissal powers of the Governor General.<sup>62</sup>

After the above mentioned Amendment in Articles 9, 10, 10A to the Government of Indian Act, 1935, now the Governor General required to act upon the advice of the PM and his cabinet.<sup>63</sup> As the Bogra Formula was according to the wishes of the Bengali leadership, so they made several moves to save the report, while the Punjabi leadership backed by the Governor General tried to set ground for the dissolution of Constituent Assembly in order to kill the report.<sup>64</sup> A forceful campaign was launched by the Religious Political Parties was launched to countermove the pro dissolution group. On October 9, 1954 Syed Murid Hussain Hashmi expressed his full satisfaction over the Islamic Provisions of Bogra Formula while addressing to the annual conference of JUP. The Central Executive Committee of Jamaat e Islami declared that "the proposed constitution of Pakistan was to a very great extent Islamic in character" and also demanded for its adaptation with immediate effect. Mufti Muhammad Shafi, in a statement to the press, called upon the people of Pakistan to celebrate "Islamic Constitution Day" on October 22, and to demand for the enforcement of the draft constitution.<sup>65</sup> When the Assembly was busy in Legislation to cut the wings of the Governor General, the latter was in official tour of the Punjab and NWFP. When he learnt about it, he rushed to Karachi to plan his countermoves.<sup>66</sup>

Taking into confidence the Chief Minister of Sind, Ayub Khuhro, majority of the members of United Front, Dr. Khan Sahib, the Chief Minister of NWFP, Hussain Shaheed Suharwardy and

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<sup>62</sup> Ghulam Mustafa. "Alliance Politics in Pakistan: A Study of the United Front." *Pakistan Journal of History and Culture* 31, no. 1 (2010). p. 109-110.

<sup>63</sup> Ibid., p. 112.

<sup>64</sup> Mujeeb Ahmad, *Jami at al - Ulama- i Pakistan, 1948-1979*, (Islamabad: National Institute of Historical and Cultural Research, 1993), p. 10.

<sup>65</sup> M. Rafique Afzal, *Political Parties in Pakistan 1947-1958*, (Islamabad: National Institute of Historical and Cultural Research, 1998), 1: 246.

<sup>66</sup> Rafiullah Shehab, *Fifty years of Pakistan*, (Lahore: Maqbool Academy, 1990), p. 90.

Army Chief Muhammad Ayub Khan<sup>67</sup>, the Governor General on October 24, 1954 issued the following proclamation;

“The GG having considered the political crises with which the country is faced has with deep regret come to the conclusion that the constitutional machinery has broken down. He therefore has decided to declare a state of emergency throughout Pakistan, The Constituent Assembly as at present constituted has lost the confidence of the people and can no longer function. The ultimate authority vests in people who will decide all issues including constitutional issues through their representatives to be elected a fresh. Elections will be held as early as possible. Until such time as elections are held, the administration of the country will be carried on by a reconstituted cabinet. He has called upon the Prime Minister to reform the cabinet to give a country a dynamic and stable administration. The invitation has been accepted. The security and stability of the country are of paramount importance, all personal, sectional and provincial interests must be subordinated to the supreme national interest”.<sup>68</sup>

Following the dissolution of the First Constituent Assembly, a reconstituted cabinet was announced on October 26, 1954 headed by the previous Prime Minister, Muhammad Ali Bogra.<sup>69</sup> The new cabinet, the cabinet of talent included the following ministers:

1. Chaudhry Muhammad Ali
3. Dr A.M Malik
4. Ghiyyasuddin Pathan
5. Sardar Amir Azam Khan
6. Murtaza Raza Chadhury
7. M.A.H.Isphani
8. Mir Ghulam Ali Talpur
9. Dr Khan Sahib
10. Major General Skindar Mirza

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<sup>67</sup> Ibid., p. 90.

<sup>68</sup> M. Rafique Afzal, p. 246-247.

<sup>69</sup> Ibid., p. 247.

### 11. General Ayub Khan Commander in Chief of Pakistan Army.<sup>70</sup>

The cabinet of talent could be viewed as the beginning of military taking over of civilian responsibility as it is clear from the appointment of Major General Iskandar Mirza as interior minister and Muhammad Ayub Khan, C-in- C as a Defense Minister.<sup>71</sup>

### 2.6. Moulvi Tamizuddin Khan Case:

The dissolution of the First Constituent Assembly was challenged by Maulvi Tamizuddin Khan, the then President of the Constituent Assembly in Chief Court of Sind.<sup>72</sup> He challenged the proclamation of unconstitutional, illegal and *ultra-virus*, without jurisdiction, inoperative and void and asked for a writ of mandamus to restrain the government from interfering with the exercise of his functions as President of the Assembly and for a writ of *quo warranto* with a view to determining the validity of certain ministers appointed by the Governor General in so called Cabinet of Talent.<sup>73</sup>

Full bench of Chief Court of Sind headed by Chief Justice, Justice Constantine on February 9, 1955 by its unanimously judgment declared the dissolution of the Constituent Assembly illegal, *ultra virus* and of no legal effect and issued a writ of mandamus restoring Moulvi Tamizuddin Khan as President of CA by restraining the Federation of Pakistan from interfering with his duties.<sup>74</sup> The Court issued the verdict that the GG had no power to dissolve the CA as it was a sovereign body created for a special purpose and it was to function till the completion of that purpose. The court also issued the writ of *quo warranto* against M.A.H. Isphani, Mir Ghulam Ali Talpur Dr. Khan Sahib, Major General Skindar Mirza and General Muhammad Ayub Khan, prohibiting them from exercising power as Ministers.<sup>75</sup> This

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<sup>70</sup> Ibid., p. 248.

<sup>71</sup> Ibid., p. 249.

<sup>72</sup> Sayed Samin Ahmad, *The judiciary of Pakistan and its role in political crises*, (Karachi: Royal Book Company, 2012), P. 1-2.

<sup>73</sup> Rafiullah Shehab, p. 104.

<sup>74</sup> Ibid. p. 105.

<sup>75</sup> Hamid Khan, p. 79.

historic judgment of the Chief Court of Sind in favor of Moulvi Tamizuddin Khan was a great victory of the nation and the nation as a whole saluted our judiciary.<sup>76</sup> An appeal to the Federal Court against the decision of the Chief Court of Sind was made by the federal government. The federal bench headed by Chief Justice of Pakistan Justice Munir by a majority of four to one decided on March 21, 1955 in favor of the government and declared the decision of Chief Court of Sind null and void on the following technical grounds.<sup>77</sup>

1. The section 223A of the Government of Indian Act, 1935, amended on July 6, 1954 which empowered the High Courts to issue writ of mandamus and writ of *quo warranto* was not received the assent of the GG, it was not a law and therefore, the Chief Court of Sind has no jurisdiction to issue writs.<sup>78</sup>
2. Under Section 10-A of Indian Act, 1935 which imposed on the members of the Council of Ministers the qualification of being members of the Federal Legislature, which was inserted in the Act, under Fifth Amendment in 1954 was not law because the Fifth Amendment had not received the assent of the Governor General.<sup>79</sup>

The verdict of the Federal Court not only justified the proclamation of October 24, 1954, but also ruled that all the legislation made by the CA since its birth in 1947, were invalid because these were not assented by the GG. This part of Court decision created legal crisis in Pakistan<sup>80</sup>. Malik Ghulam Muhammad, the GG in consultation with the Department of Law in order to avoid total breakdown and chaotic conditions, promulgated the Emergency Power Ordinance IX of 1955 ON April 16, 1955. The ordinance not only validated the Acts passed by the CA but, also setup an unelected Constituent Commission to

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<sup>76</sup> Ibid. p. 81.

<sup>77</sup> Amanullah Memon, *Political & constitutional development in Pakistan* (Compiled), (Islamabad: Allama Iqbal Open University, 2nd Ed, 1999), p. 114.

<sup>78</sup> Sayed Samin Ahmad, p. 3-4.

<sup>79</sup> Ibid., p. 4.

<sup>80</sup> Ibid., p. 9.

frame constitution for the country.<sup>81</sup> The Federal Court in *Usif Patel and 2 others vs The Crown* (PLD 1955 FC 387) prohibited the GG from framing the Constitution through a Constituent Convention and issued the verdict that the Governor General should convene the New Constituent Assembly to frame the constitution.<sup>82</sup>

### 3. Second constituent assembly:

The Second Constituent Assembly was elected by the members of provincial Assemblies under on 28 May 1955. Since no single party was in a position to command a majority. A coalition government of Muslim League and United Front was formed with Choudhry Muhammad Ali as the Prime Minister.<sup>83</sup> The first session of the newly elected Constituent Assembly was held at Murree on 7 July, 1955. The first and highly controversial tasks done by the Constituent Assembly was the enactment of the One Unit bill, which merged four provinces and states of West Pakistan into one province on 30 September, 1955.<sup>84</sup> After this, the coalition government appointed a subcommittee to prepare a constitutional draft. The work for an Islamic constitution had to be done afresh since the hostility to the demand had not diminished. A substantial number of MCAs in the coalition, especially those belonging to the Nifaz-i-Islam Party led by Maulana Muhammad Athar Ali, pressed the demand for an Islamic constitution from inside the Constituent Assembly and other religious-political parties JI, JUI and JUP outside of the Assembly mobilized public opinion in its favor with new enthusiasm. The first draft of the coalition subcommittee did not include the Islamic provisions of the 1954 constitutional report. The NIP members boycotted the meeting called to re-consider this draft. The leaders and workers of JUI -JIP met or wrote to the Prime Minister, Chaudhry Muhammad Ali, and the law minister, Ismail Ibrahim

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<sup>81</sup> Amanullah Memon, p. 115.

<sup>82</sup> Sayed Samin Ahmad, p. 11.

<sup>83</sup> Ibid., p. 11

<sup>84</sup> Zarina Salamat. "Pakistan, 1947-58: An Historical Review".  
*National Institute of Historical and Cultural Research*, 1992.

Chundrigar, impressing upon them the importance of an Islamic Constitution.<sup>85</sup>

The constitutional draft was prepared during November – December 1955, and these two months witnessed an unprecedented activity in support of the demand for an Islamic constitution. Hardly any day passed without a meeting being organized to voice the demand. The major events were sponsored by JIP, JUI and the JUP. The Jamaat e Islami led by Maulana Maududi continued its demand for Islamic Constitution at its annual conference in Karachi on 22 November 1955, where Jamaat Amir warned “if anything un-Islamic was enforced, it would separate the Muslims East Wing from the Muslims of West Pakistan”. The JUI launched a “constitution week” on 19 December during which similar demand was made in the mosque and public meetings. The JUP sponsored an All-Pakistan Sunni conference in Lahore on 11-12 December 1955 where the constitution-makers were warned that an un-Islamic constitution would not be accepted by the people.<sup>86</sup>

The constitutional bill that was presented to the CAP on 9 January was welcomed by the religious-political parties. Syed Maududi, on 12 January, commented that the draft constitution met the requirements of Islam as well as democracy to a considerable extent. In order to channelize public opinion Maulana Maududi along with Mian Tufail visited East Pakistan addressed public gatherings and appealed the people to lend their support for Constitutional Bill. He also attended the meeting of Ulema, Mashayakh and Peers organized by All Pakistan Constitution Committee at Decca on 8 February, 1956 and delivered a thought provoking speech to the gathering.<sup>87</sup> Maulana Ihtisham Ul Haqq Thanwi of the JUI described the draft “commendable on the whole”. The Constitutional bill was welcomed by JUP. On 10 January, 1956 JUP appointed a sub-committee to review and improve the draft, which suggested

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<sup>85</sup> Sayed Samin Ahmad, p. 37.

<sup>86</sup> Paula R. Newberg. *Judging the state: Courts and Constitutional Politics in Pakistan*, (Cambridge University Press, 2002), p. 59.

<sup>87</sup> Rizwan Malik, *The politics of One Unit, 1955-58*, (Lahore: Pakistan Study Centre, University of the Punjab, 1988). p. 50.

some amendments in the draft to make the center strong, to provide legal guarantees to the basic human rights and Islamic Character of the Constitution. A twelve-member deputation of the JUP led Maulana Abul Hassanat Qadri congratulated the Prime Minister and submitted a memorandum suggesting amendments in the draft which called for separate electorate; Arabic as the official language; a board of ulama to interpret the injunctions of Islam and establishment of a ministry of religious affairs; and direct election of the President.<sup>88</sup> A few days later, leaders of five parties (Mufti Muhammad Shafi, acting president of the JUI, Maulana Syed Muslihuddin, general secretary of the East Pakistan NIP, Mian Tufail Muhammad general secretary of JIP, Maulana Sayyid Abu'l-Hasanat Ahmad, president of the JUP and Dawud Ghaznavi president of the East Pakistan Jamiat-I AHL-I Hadith proposed "an agreed" list of seventeen amendment to the draft constitution to remove the defects from the Islamic and democratic standpoint.<sup>89</sup> The opposition to an Islamic constitution was expected from East Pakistan where the Hindus and a majority of the secularists were active against it. But the NIP, the East Pakistan JIP, the Jami'at-Ahle Hadith and the Anjuman-i-Muhajirin mobilized the public support for the Islamization of the Constitution. Maulvi Tamizuddin Khan played a vital role who had established All-Parties Islamic Front to successfully fight the secularist in achieving the Islamic constitution.<sup>90</sup> At last after nine years of efforts, the CAP was successful in adopting of the Constitution bill on 29 February 1956 which was signed by the Governor General on March, 2 1956 and was promulgated on 23 March 1956 proclaiming Pakistan an Islamic Republic of Pakistan.<sup>91</sup> Although Islam was not declared the state religion, the head of the state, the president, was required to be a Muslim. However, there was a possibility of non-Muslim becoming the head of the state. The speaker of the national assembly, for whom no condition of religion was laid down, was to function as

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<sup>88</sup> Muhammad Waris Awan et al., "Jama'at-i-Islami: Movement for Islamic Constitution and Anti-Ahmadiyah Campaign." *Asian Culture and History* 5: 2, (2013): 181.

<sup>89</sup> Waheed- U zZaman and Saleem Akhtar, p. 517.

<sup>90</sup> Kalim Bahadur, *The Jama'at-i-Islami of Pakistan* (Lahore: Progressive Books, 1978), p.22.

<sup>91</sup> Mujeeb Ahmad, *Jam'iyyat Ulama-i- Pakistan* (Islamabad: National Institute of Historical and Cultural Research, 1993), p. 11.

president if the latter was absent from the country or was unable to discharge the duties of his office due to illness or other reason.<sup>92</sup>

The objective resolution after minor modification was retained as the preamble of the Constitution. Some important provisions were also incorporated in the directive principal of state policy. In these the state was to enable the Muslims, individually and collectively, to order their lives in accordance with the Quran and *Sunnah*.<sup>93</sup> The state was to endeavor (i) to provide facilities to enable them to understand the meaning of life according to the Quran and *Sunnah*; (ii) to make the teaching of Quran compulsory (iii) to secure the proper organization of zakat, Awqāf and mosque, in addition, it was to prevent prostitution, gambling, the taking of injurious drugs and the consumption of alcoholic liquor otherwise than for medicinal, and, in the case of non-Muslims, religious purposes, and eliminate Riba as early as possible. Pakistan was enjoined to strengthen the bonds of unity among the Muslims counties.<sup>94</sup>

Article 197 empowered the President of Pakistan to establish an organization for Islamic Research and Instruction in advanced studies to assist in the reconstruction of Muslim society on truly Islamic basis. Article 198 provided that no law shall be elected which is repugnant to the injunctions of Islam as laid down in the Holy Quran and *Sunnah* and the existing laws shall be brought in conformity of such injunctions. Whether the laws repugnant to Islam or not shall be decided by the National Assembly.<sup>95</sup>

The religious-political parties welcomed the 1956 constitution, although they were not fully satisfied with its provisions. They expected to amend it through the process provided in the constitution. Syed Maududi, commenting on the constitution passed by the CAP, in a public meeting in Dhaka on 2 March 1956, "neither fully Islamic nor fully democratic but its flexibility would pave the way for evolving in course of time a fully Islamic

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<sup>92</sup> Ibid., p. 15.

<sup>93</sup> Ibid., p. 20

<sup>94</sup> G. W. Chaudhary, *Constitutional Development in Pakistan* (Lahore: law Inn Publisher, 2005), p. 118.

<sup>95</sup> Hamid Khan, p. 100.

Constitution.” Later, the Majlis-i-Shura of JIP welcomed the constitution and appealed for unity “ to make its working passible”.<sup>96</sup> The JUI subcommittee prepared a comprehensive report proposing amendments in the constitution.<sup>97</sup> It was soon realized that those in power were not serious about implementing even the Islamic provisions of the constitution. After a great deal of pressure and with much reluctance, President Iskandar Mirza did appoint a law commission headed by Justice (R) Muhammad Sharif. It was constituted to fulfil requirements of the 1956 constitution for the recommendations to bring the existing laws in conformity with the injunctions of Islam. The commission ceased to function when General Ayub Khan imposed Martial law in 1958 and it could not accomplish its assignment.<sup>98</sup>

#### 4. Conclusion:

This piece of study is about the role of the then Religious Political Parties and *Ulema* from different schools of thought to tailor Islamic Constitution for the newly born Pakistan which had promised by the founding father of the country during the course of Freedom Movement. In this study, the researcher focuses on the voices raised by the Religious Political Parties to frame the first constitution of Pakistan which should have the incorporation of all Islamic values and principles comprehensively. The analysis of the *Ulemas'* struggle indicates that they explore significant foundation for the Islamic Constitution of Pakistan. The religious, political parties inside and outside of the Constituent Assembly voice for the implementation of *Shari'ah* in the country. Consequently, they were successful to approve the bill of **OBJECTIVE RESOLUTION** from the Constituent Assembly on March 12, 1949 and the bill presents the comprehensive shape of Islamic values. After the creation of Pakistan, the secular forces launch a poisonous propaganda that the *Ulemas* have no consensus on single concept of Islamic system. The *Ulemas* want to discourage the publicity of disagreement, therefore, all the eminent *Ulemas* from different schools of thought get together in

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<sup>96</sup> Ibid., p. 100

<sup>97</sup> Gul Shahzad Sarwar, *Pakistan Studies* (Karachi: Qamar Kitab Ghar, 1999), p.166

<sup>98</sup> Ibid. p. 166.

Karachi under the chairmanship of Sayyed Suliman Nadvi on January 21-24, 1951. They were agreed upon on “Twenty two principles of an Islamic state” which was sent to the BPC for consideration and the 22 principles were the all-inclusive list of Islamic and *Shari’ah* values. The Nifaz-i-Islam, JI, JUI, JUP and Jamaat e Islami led by Maulana Maududi struggle unparalleled during the span of November –December 1955 for Islamic Constitution. Accordingly, they were effective to incorporate Islamic laws in the Constitution of Pakistan which is passed from the CAP in February 1956.