

## ***The Process of Constitution Making in Pakistan: 1947-56***

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The birth of Pakistan and the events of 1947 and after, unprecedented in about every sense of the word, brought the fledgling government to confront a radically novel set of challenges which were substantively no different than faced by any newly born country. Therefore, the formidable yet imperative task, writing of the constitution, was delayed, that led to the rise of some basic controversial constitutional issues on which consensus became almost impossible to evolve. Two issues in particular caused an enormous delay in the constitution-making process. One was the place of Islam in the future constitution and the second issue was the definition of the nature and mechanism of east-west representation in the federal legislature.<sup>1</sup> The present article aims to look into the above issues that delayed writing of the first constitution of Pakistan between 1947 and 1956.

In regard to the place of Islam in the future constitution of Pakistan, the religious parties pressed hard for the establishment of an Islamic order in Pakistan because, in their view, Pakistan was claimed in the name of Islam. The critical political question that surfaced as part of the constitution-making process was that whether Pakistan would be an ideological (Islamic) state or a

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1. For an analytical study of the two issues see Ayesha Jalal, *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence* (Lahore: Vanguard Books, 1990), 278-94; G.W.Choudhury, *Pakistan: Transition from Military to Civilian Rule* (Essex: Scorpion Publishing, 1988), 10-18; H.Feldman, *A Constitution for Pakistan* (Glasgow: Oxford Univ. Press, 1955), 10.



predominantly Muslim country.<sup>2</sup> Hence the challenge that confronted the new state was which opinion would be embodied in the constitution.

On January 13, 1948, Jami'yyat 'Ulama'-i Islam demanded the establishment of Islamic political order in the country. It was also demanded that the 'ulama' should be assigned the task to write the constitution. To justify the involvement of the 'ulama' in the constitution making of the country, 'Uthmani stated that:

I say when people aspire for power for worldly ends, what is the harm if the *Mullah* also aspires for power to set up a truly Islamic state. The *Mullah* does not want to rule, he only wants the rulers to be somewhat like the *Mullah*.<sup>3</sup>

'Uthmani also moved a resolution to this effect in the Constituent Assembly demanding the appointment of an 'ulama' advisory committee to advise on the framing of constitution in accordance with the Islamic principles.<sup>4</sup> Mawlana Abul A'la Mawdudi also entered the movement for an Islamic order in Pakistan by delivering two speeches in early 1948 at the Law College in Lahore. But his concept of an Islamic state turned out to be repulsive to the modernist Muslims because of its authoritarian, anti-democratic and reactionary nature.<sup>5</sup> Thus the discomfort of modernists with Mawdudi's vision created an unbridgeable gap between the fundamentalists and the modernists on the place of Islam in the emerging political order in Pakistan. The Jami'yyat 'ulama'-i Islam organised a conference at Dhakkah in February

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2. The distinction between the two is of some importance: the former implies that the affairs of the state will be governed by the dictates of the Qur'an and the Sunnah of the Prophet of Islam; the latter suggests that the dictates of Islamic scriptures should not be the business of the state.
  3. Leonard Binder, *Religion and Politics in Pakistan* (Berkley: Univ. of California Press, 1961), 140. This book is one of the most detailed studies of the issues relating to constitution making in Pakistan during the first decade of the country's constitutional history, especially its focus on the Islamic aspect of the constitutional debate is unmatched.
  4. *Dawn*, January 3, 1949.
  5. Kalim Bahadur, *The Jama'at-i Islami of Pakistan* (Lahore: Progressive Books, 1978), 60. There were certain things in Mawdudi's prescription of an Islamic state with which even the traditionalist 'ulama' would not agree. Since the 'ulama's reservations with his views were minor and over details, the 'ulama' did not hesitate to share Mawdudi's image of an Islamic state that was based on the worldview that traditionalists zealously affirmed.



1949 as part of the countrywide movement launched by the religious parties and reiterated their demand for an Islamic order in Pakistan.

It was in this acrimonious climate that in 1949, after a period of more than 18 months, that the Constituent Assembly began the task of writing the constitution. The Assembly started its work with a debate on the constitutional issues on the Objectives Resolution, moved by the Prime Minister Liaquat Ali Khan in the Assembly on 7th March 1949. The presentation of the Resolution proved to be instrumental in bringing movement to the stalled process of constitution making. It laid down that "sovereignty over the entire universe belonged to God Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limit prescribed by Him is a sacred trust." According to the Resolution, Pakistan was to be a state "wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam shall be fully observed." The state was to enable Muslims to lead, individually as well as collectively, an Islamic way of life, "in accord with the teachings and requirements of Islam as set out in the *Qur'an* and the *Sunnah*." Adequate provision also was to be made to enable the minorities "to profess and practice their respective religions and develop their cultures." Judiciary was to be independent of the executive. Lastly, Pakistan was to be a "Federation wherein the units will be autonomous".<sup>6</sup> Thus the Resolution gave to the Assembly its guiding principles and the philosophy that was to permeate its task of constitution making.

The Prime Minister Liaquat Ali Khan's address on this occasion, a valiant effort to square the circle, was in fact a statement that laid out the position of the government. He asserted that the people of Pakistan had the courage to affirm, "that all authority should be exercised in accordance with the standards laid down by Islam so that it may not be misused .... [and that all] "... authority is a sacred trust, entrusted to us by God for the purpose of being exercised in the service of man".<sup>7</sup> But he immediately

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6. See the text of the Objectives Resolution in *Constituent Assembly of Pakistan Debates*, Official Report, Vol. 1, and No. 1, 1-2.

7. *CAP Debates*, Vol. V, No. 1: 2.



cautioned that this theory of all authority derived from God must not be confused with the "dead theory of Divine Right of Kings or ruler", since according to the "spirit of Islam" the people are the real recipients of power".<sup>8</sup> The Prime Minister also mentioned that Islam meant:

.... To build up a society for the purpose of good life — as the Greeks would have called it, with this difference, that Islamic "good life" is essentially based upon spiritual values. For the purpose of emphasising these values and to give them validity, it will be necessary for the State to direct and guide the activities of the Muslims in such a manner as to bring about a new social order based upon the essential principles of Islam, including the principles of democracy, freedom, tolerance and social justice.<sup>9</sup>

It was in this fashion of constructing the government's position on what an "Islamic" state means that the Prime Minister revealed the essence of the modernist position, and in what manner the 'ulama's vision of an "Islamic" state would be circumscribed. To talk about the "spirit" of Islam suggested that it was not necessarily congruent with the historical "form" of Islam preserved in its traditional practice by the 'ulama'; therefore, to construct a social order, Islamic in spirit, meant not to be necessarily constrained by the historical form as long as Muslims remained true to the irreducible vision of Islam.

But here the Prime Minister was retreating back to the time of the pre-partition period, when the strength of the Muslim League resided in seeking unity of Muslims by building a consensus upon the minimal agreement of what the meaning of Islam represented to the faithful. The differences among Muslims could be overridden simply because agreement on the fundamentals was firm. But in the post-partition period, the formidable differences in the interpretation of Islam in regard to Islamic political order put the modernist in a dilemma as to how to find a synthesis, which might appeal hopefully to all sections of Muslim opinion. Consequently, Liaquat sought by reaching back to the successful formula of the Muslim League in the pre-partition period to rise above the differences and construct a unity of opinion on the idea

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8. *Ibid.*

9. *Ibid.*, 4.



of the "spirit" of Islam being congruent with the equally important notion of the "good" life.<sup>10</sup>

It might be argued that in Liaquat's thinking, as expressed in his speech, one might discover the seed of innovative thought to give substance to the modernist vision of Islam. In vesting the people of Pakistan with authority, he had struck at the role of the 'ulama, the traditional guardians of Islamic law and, hence, Islamic social order. He echoed Quaid-i Azam Mohammad Ali Jinnah when he stated that Pakistan would not be a theocracy even while God is the sovereign. He explained:

It is true that in its literal sense, theocracy means the Government of God; in this sense, however, it is patent that the entire universe is a theocracy, for is there any corner in the entire creation where His authority does not exist? But in the technical sense, theocracy has come to mean a Government by ordained priests, who wield authority as being specially appointed by those who claim to derive their rights from their sacerdotal position. I cannot over-emphasise the fact that such an idea is absolutely foreign to Islam. Islam does not recognise either priesthood or any sacerdotal authority; and therefore, the question of a theocracy simply does not arise in Islam. If there are any who still use the word theocracy in the same breadth as the polity of Pakistan, they are either labouring under a grave misapprehension, or indulging in mischievous propaganda.<sup>11</sup>

The warning was unmistakably against the fundamentalists, the members of Jama'at-i Islami and traditional 'ulama', to whom theocracy essentially meant an Islamic social order governed by the 'ulama' — the traditional custodians of the Shari'yyah. But the words of the Prime Minister could not completely hide the uneasiness of the modernists in grappling with the difficult issues inherent in the idea of an Islamic state. Anyhow, the Prime Minister promised "we want to build up a truly liberal Government where the greatest amount of freedom will be given to all its members." Ironically, in this formulation Liaquat revealed the source of the irreconcilable problem of constructing a "modern" Islamic state. For if "modern" meant "liberal" then such a state, even when declared to be Islamic, could not be acceptable to the Shari'yyah as understood by the 'ulama' to be its legal foundation.

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10. W.C.Smith, *Pakistan as an Islamic State* (Lahore: Mohammad Ashraf, 1951), 67.

11. *CAP Debates*, vol. V, No. 1: 3.



Thus it might be legitimately construed that paragraphs 2 to 12 of the Objectives Resolution and the statement of Liaquat in the Constituent Assembly, wherein the glaring omission of any reference to the Shari'yyah stood out boldly, were an attempt to take back the concession to the 'ulama' given in the opening paragraph of the Objectives Resolution in terms of accepting the sovereignty of God as the source of all authority in Pakistan. And unfailingly it was construed as such by the 'ulama', and their traditional supporters inside and outside the Assembly.

The Objectives Resolution satisfied the traditionalists for whom the recognition of the sovereignty of God and all that it implied made all the subsequent paragraphs essentially redundant. But the same language discomfited the modernists. Relating the idea of "sovereignty" to the traditional Muslim thought, the modernists found it difficult to reconcile the religious meaning of this term with the precise legal definition of what it meant in modern political theory. Professor Binder has described this situation in the following words:

The Objectives Resolution, acknowledged the sovereignty of God, recognised the authority of the people derived from their Creator, and vested the authority delegated by the people in the Constituent Assembly for the purpose of making a constitution for the sovereign state of Pakistan. Thus God is sovereign, the people sovereign, parliament sovereign, and the state sovereign in Pakistan. It would indeed be a narrow-minded person who was not satisfied with such a compromise.<sup>12</sup>

The Resolution was severely criticized by the non-Muslim members of the assembly like B. K. Datta and S. C. Chattopadhyaya. The objection of the non-Muslim members of the Constituent Assembly was quite predictable. They pointed out the negative consequences of mixing religion and politics.

The main concerns of the secular opposition were with the meaning of the first paragraph of the Objectives Resolution, and

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12. Binder, 149. Iskander Mirza questioned the language of the Objectives Resolution because he felt that it opened the door to the *mullas* and Islamic fanaticism. Liaquat Ali replied that he needed to strengthen his position: "Some of these people regard me as an outsider." Humayun Mirza, *From Plassey to Pakistan: The Family History of Iskander Mirza, The First President of Pakistan* (Lanham: Univ. Press of America, 1999), 167.



the place of the non-Muslim minority in an Islamic state. The connection between the declaration of God's sovereignty over Pakistan and the fear that non-Muslims would become "second-class" citizens was a natural result of the ambiguity in the phraseology of the Objectives Resolution and the varying interpretations put on it by the government on the one side and the traditionalists on the other.

But, ironically, the debate and discussion on a future constitution for the state of Pakistan revealed the depth of divisiveness existing among Muslims in relation to what was meant by an Islamic state and how it was going to be constructed. The passage of the Objectives Resolution only created an illusion of the much-desired synthesis of Islamic thought as hoped for by the modernists. Behind the facade lurked the suspicion of the traditionalists regarding the intentions of the modernists, and their own deep conviction that since Pakistan had been created in the name of Islam, therefore, their traditional vision of Islam must be the foundation of the Islamic state of Pakistan based on the Shari'yyah.

Liaquat Ali Khan's vision of modern Muslim state vesting the people of Pakistan with authority coupled with the promise to "build up a truly liberal Governments where the greatest amount of freedom will be given to all its members, did not satisfy the non-Muslim members of the Assembly. They continued to allege that a system based on the principles highlighted in the Resolution would be discriminatory and "reactionary" that would deny them equal status with the Muslims.<sup>13</sup> Thus the Objectives Resolution, crafted with a certain measure of ingenuity to arrive at a desirable synthesis of perspectives, failed to obfuscate the essential tension between the outlook of the western-educated elite and the 'ulama'. This lengthy debate in the Assembly came to a close on March 12, when the Muslim League MCA's, including the 'ulama' fully supported the principles embodied in the Resolution. It was finally adopted as only a statement of intent, and a policy guide constituting the "aims" and "objectives" of what the constitution would eventually be, without any consequential alternations.

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13. *Constituent Assembly of Pakistan Debates*, vol. V, No.2, 13-4.



Representing the 'ulama' and the traditional minded members of the Assembly, 'Uthmani articulated the traditionalists' understanding of the meaning of "sovereignty" in the Objectives Resolution by stating:

It was to let mankind know what was sanctioned and authorised by Him that God sent prophets and gave revealed books unto them. And it is with the purpose of underlining this all-important fact that the expression "within the limits prescribed by Him" has been used ... and herein lays the fundamental difference between an Islamic State and a secular materialistic State.<sup>14</sup>

In other words, the traditionalists believed that the Islamic state meant a Shari'yyah state governed by the 'ulama' alone. Explaining this perception, 'Uthmani remarked:

The Islamic State means a State that is run on the exalted and excellent principles of Islam... Those who believe in those principles can only run it. People who do not subscribe to those ideas may have a place in the administrative machinery of the State but they cannot be entrusted with the responsibility of framing the general policy of the State or dealing with matters vital to its safety and integrity.<sup>15</sup>

Since the Objectives Resolution was only a statement of intent, a policy guide constituting the "aims" and "objectives" of what the constitution would eventually be, the traditionalists supported the document in its passage. But in their various statements they made it clear how they viewed an Islamic state.

It was from this stark image of an Islamic state that modernists recoiled. They could not argue against the worldview on which the structure of such a state rested, since they shared its fundamental assumptions. Their own sense of "democracy" as a society resting upon the participation and consensus of the people and their being governed through institutions patterned after those existing in the democratic West, they had inherited from the British. They wanted to protect this inheritance, build upon it, and thereby secure a balance by investing the institutions of modern government with the ideals of Islam. The horrible thought of where the 'ulama', and especially the fundamentalists and obscurantist among them, would lead Pakistan should they come to power or their demands

14. *CAP Debates*, vol.V, No.3: 44.

15. *Ibid.*, 45.



be conceded, must have been very much in the minds of the authors of the Objectives Resolution as well as in the minds of those in the government who shared their views while they worked on the document.

However, the attempted synthesis reflected in the Objectives Resolution was no more convincing nor was its politics successful. It could not be otherwise, since they viewed themselves and the world from within the traditional Islamic paradigm on the fundamental assumptions of religion and politics, their worldview being Islamic. The modernist's aversion to traditionalists was ultimately not with the substance of their worldview, which they shared. It was with their image and style, reflecting the inability of traditionalists, to bring about a synthesis between east and west that would vindicate the essential vision of modernists that Islam quintessentially is contemporaneous with all "progressive" movements and ideas.

The 'ulama', however, kept up their heavy pressure on the Assembly and eventually forced it to appoint a Board of Ta'limaat-i Islamia, consisting of some of the leading 'ulama', to formulate some concrete recommendations regarding Islamization of the country and advise on such matters as might be referred to it by various committees.<sup>16</sup> The suggestions put forward by the Board were, however, rejected by the Assembly and the country remained in the grip of an ideological stalemate.

Along with the issue of an Islamic order, the federal issue also remained in focus in constitutional deliberations. East Bengal, which had a larger population, demanded this fact to be reflected in the emerging democratic system of the country. At the source of this issue were to be found regional interests, ethnicity and linguistic sub nationalism. Thus various proposals regarding provincial autonomy surfaced and one such was made on December 9, 1949, when the East Bengal Muslim League Assembly party adopted a resolution that demanded representation in the federal legislature on the basis of population and full

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16. The Board, headed by Sayyid Sulaiman Nadvi, consisted of the following members: Mufti Muhammad Shafi', Abdul Khaki, Aftab Husain, Dr. Hamidullah, and Mawlana Zafar Ahmad Ansari.



provincial autonomy in all matters except defence and foreign affairs.

The pressure for accelerating the constitution making process increased when the opposition exploited the new constitution of India that was promulgated in early 1950. In order to give practical shape to the pressure, Husain Shaheed Suhrawardy started organising the fragmented opposition and also formed the All Pakistan Awami Muslim League. The Awami League under Suhrawardy, an experienced politician with a national stature, became a national forum for the dissident Muslim Leaguers to present their viewpoint. These developments naturally worried the Muslim League leadership especially because of the provincial elections, the first in the Punjab in March 1951. It had to do something on the constitution-making front before going to the electorate. Therefore, the Basic Principles Committee, appointed by the Assembly to work out the structure of the future constitution, submitted its Interim Report to the Assembly in September 1950.<sup>17</sup> The Interim Report recommended the incorporation of the Objectives Resolution as a directive principle of state policy in the constitution. It proposed that the constitution should make provision, in "many spheres of governmental activities", to enable Muslims to order their lives according to the *Qur'an* and the *Sunnah*, although it simultaneously noted that it was not possible to detail such activities in the constitution. On the federal issue, the Interim Report recommended a bicameral legislature with a house of units (upper house), with equal representation to the units, and a house of the people (lower house), elected directly by the people. The two houses would have equal powers and that a dispute between them was to be resolved in a joint session. Joint sessions of the two houses were also required for the election and removal of the head of the state, the budget, the money bills and votes of confidence.

The Interim Report was widely criticised. The religious parties and groups considered its Islamic clauses disappointing. It became quite obvious that the confrontation between the modernists and

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17. Mawlawi Tamizuddin Khan, President of the Assembly, chaired the Committee. The coopted members were the chief ministers of East Bengal, Sindh and NWFP and the Chief Justice of Federal (Supreme) Court of Pakistan.



fundamentalists was not going to be confined only to verbal sabre-rattling. The 'ulama' decided to go to masses and mobilise public opinion through public meetings, street processions, and sermons from the pulpits of the mosques. The Bengalis complained that its federal formula would reduce their majority into a minority and turn East Bengal into "a colony" of West Pakistan. The critics also included Muslim League leaders and members of its provincial branches as well. In response to this criticism, Liaquat announced the withdrawal of the Interim Report to consider any concrete and definite proposals that might be made by the people by 31 January 1951. A number of suggestions, focusing especially on its federal and Islamic aspects were received. On the federal issue, the proposals made by the East Bengal Awami Muslim League and the East Bengal Muslim League were more significant. The former proposed that a sovereign Islamic socialist state should be established in Pakistan outside the British Commonwealth consisting of two "autonomous and sovereign" regional units, with a unicameral legislature based on population and its jurisdiction confined to defence, foreign affairs and currency. The latter suggested a bicameral legislature elected on the basis of population with maximum autonomy to East Bengal due its geographical location, cabinet responsibility to the lower house, weightage to the smaller units and origin of the money bills in the lower house. Liaquat himself took the initiative on the federal issue. In 1951, he convened a meeting of the Muslim Members of the Constituent Assembly from East Bengal in which he proposed the principle of parity between East and West Pakistan at the centre.

Several proposals were sent by individuals and organisations to make the future constitution Islamic. The most important were those made by thirty-one 'ulama' representing different schools of thought and religious parties.<sup>18</sup> Keeping in view the volume of the constitutional proposals, the Basic Principles Committee appointed a suggestions subcommittee under the chairmanship of Sardar Abdur Rab Nishtar to examine these proposals. This subcommittee did a major part of its work in July 1951 session. But before the BPC and its subcommittees could finalise their work, Liaquat Ali

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18. For a detailed account of the demands see Altaf Gauhar, *Ayub Khan: Pakistan's First Military Ruler* (Lahore: Sang-e Meel Publications, 1993), 90.



Khan was assassinated in October 1951. This development slowed down the pace of the constitution-making process to a considerable extent. With his death the politicians lost their hold on government and the management of the affairs of the state passed into the hands of a group of civil servants.<sup>19</sup> The selection of Nazimuddin as prime minister and Ghulam Muhammad as governor-general, done in haste and in an atmosphere of intrigue and power politics, aggravated the feelings of provincialism and made a resolution of the problem of federalism difficult. The redrafting of the BPC's Interim Report was resumed some time after Nazimuddin assumed the new office. It took a year to redraft the report. The federal formula was evolved within the framework of parity between East and West Pakistan. A novel procedure was devised to persuade the Bengalis to surrender their majority and accept the principle of parity. Therefore, a federal formula was worked out that was incorporated in the BPC Report, which Nazimuddin presented to the Assembly in December 1952. The Report of the Committee, unlike the "Interim Report" presented by Liaquat, reflected the process of aggregation of recommendations on constitution making made in public, and the submission of reports by the sub-committees appointed by the BPC. The two main points of the Report were: (i) accommodation of the demand for an Islamic constitution, and, (ii) to fix the arithmetic of east-west representation in the federal legislature. In relation to the first, the innovation that Nazimuddin worked out was the idea of inserting a "repugnancy clause" which would stop the passage of any bill viewed as contravening the dictates of *al-Qur'an* and *al-Sunnah*; it was also proposed that a special "Board of 'ulama'" be constituted

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19. Ghulam Mohammad had just resigned as a Minister for Finance before becoming governor-general. Formerly he was a member of the Indian Audit and Accounts Service who had worked as Finance Minister in the Indian state of Hyderabad. He was also one of the directors in Tatas, a major industrial concern belonging to a Hindu family, just before independence. Ghulam Mohammad was abdicated by Iskandar Mirza who had been transferred from the army to the Indian Political Service. Mirza had served under the British as political agent in the North-West Frontier Province. He had also served as the Governor of East Pakistan. On becoming the governor-general, he appointed Ch. Muhammad Ali as Prime Minister of Pakistan. Muhammad Ali had served as Secretary-General of the Government of Pakistan. Like Ghulam Muhammad he also belonged to the Indian Audit and Accounts Service. He became Finance Minister before becoming Prime Minister of Pakistan.



that would act as an advisory body monitoring legislative activities. The secularists felt uncomfortable with the implications of Islamic provisions particularly the formation of a non-elected "Board of 'ulama'" to monitor legislative activities, which they attached during the debate in the Assembly.<sup>20</sup>

The arithmetical formula, which Nazimuddin presented in the Report on east-west representation, was based on the principle of parity between the two wings of the country. It envisaged a bicameral legislature in keeping with the suggestions of the "Interim Report", and allocated the number of seats as follows: the House of Units was to be constituted of 120 members, of which the legislature of East Bengal would elect members and the remaining were to be elected by the legislatures of the federating units in West Pakistan; the House of the people was to be constituted of 400 members, in which Bengal would elect 200 members and the remaining 200 members would represent the provinces in the Western half of Pakistan. This formula gave weightage to the smaller units of West Pakistan. The seats in the two houses could be reallocated without disturbing the principles of parity and weightage. Such a reallocation was to reflect the prevailing ratio of population. The lower house had all the real power on vital issues such as the budget, the money bills and motions of confidence. The upper house was merely a recommendatory body. The federal formula and the Islamic aspect of the Report came under severe criticism. The principle of parity as worked out by Nazimuddin ran into opposition of Punjab. It was the suspicion and fear of dominance of Bengal in perpetuity that kindled the opposition. But there was merit in the argument of those in Punjab who viewed the allocation of seats in both Houses as set forth in the Report as undermining the principle of federation. As G. W. Choudhury writes:

The critics saw no logic in treating a single unit, namely East Bengal, as of equal importance with all other units put together and regarded it as a violation of the federal principle under which all the units,

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20. Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford Univ. Press, 2001), 112-17.



large or small, should get equal representation in the Upper House as in the United States.<sup>21</sup>

It was in relation to the first that Nazimuddin felt a degree of personal achievement, and which reflected the general belief that he was both a deeply religious man and a friend of the 'ulama'. Chapters II (Directive Principles of State Policy) and III (Procedure for preventing Legislation Repugnant to the Qur'an and the Sunnah) of the Report were largely based on the "views" of the ulama and incorporated the suggestions of the Board of Ta'limat-i Islamiyah.<sup>22</sup> It was mainly through Nazimuddin, that the 'ulama' had gained important principles for which they had been privately lobbying and publicly demanding. By inserting the "repugnancy clause" and creating a "Board of 'ulama'" the Report provided an institutional framework for the functions of the 'ulama'. Even though the "Board" was to be provisionally constituted for a period of five years, the expectation entertained, however, exaggerated, was that this would be the transition period wherein the laws of the land would be effectively brought within the permissible limits of the Shari'yyah. The Islamic provisions in the Report favoured those who were asking for an Islamic constitution. It made both the modernists and the secularists unhappy with the implications of these provisions, particularly the formation of a non-elected "Board of 'ulama'" to monitor legislative activities.<sup>23</sup>

Nazimuddin however got very little time to devote to constitution making. His prime ministership lasted for only eighteen months. During his tenure he faced several crises.<sup>24</sup> Events surrounding the anti-Qadiyani agitation caught up with him in particular, and in less than four months after he presented the Report of the BPC to the Assembly, the Governor-General

21. G. W. Choudhury, *Constitutional Development in Pakistan* (London: Longman, 1969) 74.

22. *Ibid.*, 84-8

23. For instance, B.K.Datta's speech. *CAP Debates*, vol.XV, No.2.

24. He had to work extra hard to survive the problems like a serious food shortage within the country in the summer of 1952, followed by financial crisis as a result of a severe depletion of foreign exchange reserves, and had even been through the violent and chaotic anti-Qadiyani rioting. Ayesha Jalal, *The State of Martial Law* (Lahore: Vanguard, 1990), 172-79.



dismissed him from the office of the Prime Minister. The combination of the BPC Report, to which the provisional government of Punjab under Mumtaz Muhammad Khan Daultana took offence over the issue of parity between east and west, and the religious demands of the 'ulama', placed Nazimuddin in a bind.

It was amidst this turmoil that Nazimuddin tried to neutralise the opposition to his federal formula. The representatives from the Punjab opposed the principle of parity and the federal formula evolved by Nazimuddin. They felt that East Bengal, despite parity, would still easily dominate a fragmented West Pakistan, and that "denuding" the upper house of any real power was a "joke" on the federation.<sup>25</sup>

After the publication of the Committee Report, the Punjab branch of the Awami Muslim League, led by Nawab Iftikhar Husain of Mamdot, organised an All Parties meeting at Lahore on 29 December 1952, where he demanded the withdrawal of the Report.<sup>26</sup> There were critics in the Punjab Muslim League as well. Prime Minister Nazimuddin paid an official visit to the Punjab to convince the critics of the Report about the usefulness of his federal formula. During his visit, the provincial Muslim League delegations that met him presented views similar to those being voiced by the opposition. Their demands included equal representation for various units in the lower house and equal powers for the two houses. Nazimuddin returned without resolving the differences.<sup>27</sup> The stand taken by the Punjab evoked an equally strong reaction in East Bengal. There were demands within the provincial Muslim League for even a confederation of East and West Pakistan, the units providing funds for administering the three central subjects of defence, foreign affairs and currency. Similarly, the Awami Muslim League, along with other opposition parties, reiterated its demand for a unicameral legislature based on population, leaving only defence, foreign affairs and currency with the centre.<sup>28</sup>

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25. *Dawn*, December 27, 1952.

26. *Dawn*, December 27, 1952.

27. *Ibid.*, January 16, 1953.

28. *Ibid.*, January 22, 1953; *CAP Debates*, vol. 15. No.11, October 22, 1953.



In April 1953 the governor-general, supported by Ayub Khan and the defence minister Iskander Mirza ordered Nazimuddin to resign. The latter refused to do so and was therefore dismissed by the governor-general Ghulam Muhammad. With Nazimuddin's removal from office his formula was also shelved. Muhammad Ali Bogra, his undemocratically selected successor,<sup>29</sup> soon obtained a majority vote in the Assembly. He had entirely different views about the constitution. He decided to give the country an interim constitution. Since a constitution that accepted a Bengali majority in the legislature and included Islamic provisions was an anathema to powerbrokers, he planned to include only those constitutional provisions on which there was already agreement among the constitution makers.<sup>30</sup>

After improving the Federal (Nazimuddin) Report, the Prime Minister Bogra presented BPC Report to the Assembly. In other words the federal formula was made acceptable to the critics. The new formula, or the Bogra formula as it was now called, reduced the units in West Pakistan to four. West Pakistan had a majority in the upper house and East Bengal was given a majority in the lower house. Parity was provided in the combined houses, with distribution of seats. Each house was to have equal powers in all-important matters. The Bogra formula provided further safeguards to avoid apprehensions of one zone dominating over the other. For votes of confidence and in case of difference of opinion between the two houses, a voting strength of at least 30 per cent from each zone was required. It was also provided that the head of state and the head of government would belong to different zones of the country; but this provision was later dropped.<sup>31</sup>

The Assembly deliberated more seriously upon the Islamic provisions. The arguments that were given for and against these

29. The regime that required a quiescent replacement for Nazimuddin selected Mohammad Ali Bogra, a civil servant serving as Pakistan's ambassador to the United States, for the job. He was summoned from the US and made prime minister and also the president of the Muslim League. Bogra, who did not belong to any political party, was the personal choice of the Governor-General.

30. *Dawn*, July 8, September 26, 1953; "Pakistan: A Crisis in Constitution-making", vol. XLIV, No. 173, December 1953, 84.

31. G.W. Choudhury (ed.), *Documents and Speeches on the Constitution of Pakistan* (Dacca: N.p., 1967), 141-42, 206, 208-209; Hamid Khan, 122-24.



provisions were quite similar to those put forward during the debate on the Objectives Resolution, the only difference being that these were now presented in an elaborate and well-argued manner. The main opponents of these provisions were Professor R.K. Chakravarty and B.K. Datta. The Law Minister, A.K. Brohi, who emphasised the universality and finality of Islam, defended the Islamic provisions. He stressed that the directive principles in the constitution would serve as a "manifesto" of the state.<sup>32</sup> Some of the Islamic clauses were modified; for example, the power of adjudication in cases of repugnance was vested in the Supreme Court of Pakistan, rather than the "ulama board".<sup>33</sup>

In October-November 1953, the Assembly adopted a major part of the Committee Report. But before its final adoption, it adjourned to give time to the political parties and their candidates to prepare for the forthcoming provincial elections in East Bengal. The most important clauses that were left undecided related to provincial autonomy. Thus, the issue of autonomy for East Bengal became one of the major campaign issues. The Pakistan Muslim League with no clear stand on this issue gave the Bengali voters an impression that it supported a strong centre. Therefore, the Muslim League was trounced. It captured only 10 seats in a house of 309. Even its leader Nurul Amin suffered a humiliating defeat by a young student leader, Mujibur Rahman. In contrast, the United Front Party, a composition of four parties — the Awami League, the Krishak Sramik Party, the Nizam-i Islam Party and the Ganatantri Dal — had an uncompromising stand on the issue of complete provincial autonomy and only three subjects for the Centre as part of its 21-Point programme. The United Front Party gained 223 seats. It formed government in East Bengal on 3 April 1954 with Fazlul Haq as the chief minister.

The Front's landslide victory created a new situation for the Assembly. It changed the whole Electoral College in East Bengal, which had elected a majority of the MCAs. After the elections, the Front demanded the dissolution of the Assembly, or at least the resignation of its members from East Bengal and election of new

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32. *Ibid.*, 145-96. (A.K. Brohi's speech).

33. *Ibid.*, 199.



ones because of the change of the Electoral College. Thus, it wanted to share power at the centre and have a better bargaining position in the Assembly on the autonomy issue. On 3 April 1954, the Front parliamentary party made a demand to this effect, backed by a threat of resignation of its newly elected members of the East Bengal Assembly.<sup>34</sup> And to put pressure on the central government in support of the demand it observed a "Protest Day" on 4 April.

The Front victory augmented the fears of those in West Pakistan. They viewed in it its numerical and now almost monolithic majority confirmed East Bengal's domination at the centre. The victory had undoubtedly gone to the head of some East Bengali politicians, inducing them to make rather irresponsible statements. Suhrawardy went to the extent of boasting, "henceforth East Bengal would rule Pakistan via Karachi".<sup>35</sup> Wild statements such as these spoiled the political atmosphere all the more. Prime Minister Bogra rejected their demand for the election of a new Assembly or the replacement of its Bengali component on the plausible basis that the verdict in East Bengal was that of a unit and that in a federation no single unit could presume "to speak" for all the units.<sup>36</sup> Furthermore, Provincial Assemblies had been elected in the Punjab, NWFP and Sindh earlier, and no such demand had ever been entertained in their case. Above all, the Assembly was a sovereign body which had been assigned the primary task of framing a constitution, and till that objective was accomplished, it could neither be dissolved nor its composition be altered.

Despite the rejection of the Front's demand for the dissolution of the Assembly, its views on the autonomy issue could not be ignored. The central government was forced to negotiate, but the atmosphere for such negotiations were far from congenial. For one thing, the inauguration of the Front ministry was preceded by bloody racial riots between the Bengali labour and non-Bengali managerial staff at the Chandragona Paper Mills, which claimed

34. Richard L. Park and Richard S. Wheeler, "East Bengal under Governor's Rule", *Far Eastern Survey*, vol.23, No.9, September 1954, 130; Hamid Khan, 129.

35. *Dawn*, April 2, 1954.

36. *National Assembly of Pakistan Debates*, Official Report, vol.2, No.6, January 31, 1969, 316.



about forty-five lives. The ministry failed to proceed swiftly to alleviate the tensions; more serious racial riots erupted at the Adamjee Jute Mills near Dhaka in May, causing the death of more than six hundred persons.<sup>37</sup> Chief Minister Fazlul Haq further complicated the situation by a five-day (4-8 May) visit to West Bengal where he made highly controversial statements. In one such statements, he had reportedly observed that as "a country, India exists as a whole" and had hoped "to remove the artificial barriers" between the two Bengals with the help of the Indian people.<sup>38</sup> Then he gave an interview to the correspondents of the *New York Times* and the Reuters in which he favoured independence for East Bengal.<sup>39</sup> The Front's opposition to the US military aid to Pakistan also damaged its position. In a signed statement, 162 newly elected provincial Assembly members, opposed the US aid. The Front also observed an anti-US-Pakistan Military Pact Day in East Bengal.<sup>40</sup>

It was in this suspicious sadend and tense atmosphere that the Bogra cabinet held talks with Chief Minister Fazlul Haq on the federal formula. Fazlul Haq's insistence on the "ultimate long-term objective of complete independence" for East Bengal precluded any sort of agreement. Subsequent to the breakdown of the talks came the dismissal of the Front ministry in May 1954 and the taking over of the provincial administration by the Governor-General under Section 92A of the Provincial Constitution. Prime Minister Bogra publicly dubbed Fazlul Haq as a "traitor", attempting to wet up an independent East Bengal.<sup>41</sup> The provincial government was not restored for about a year. With the neutralisation of the Front the responsibility from framing the future constitution again devolved on the Assembly.

In the deliberations of the Assembly and its committees provincialism was now more conspicuous than before. The MCAs from the Punjab felt that the Bogra federal formula would not maintain a balance between East and West Pakistan when the East was united (as in the March 1954 elections) and the West was

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37. "Pakistan: Problems of Partition", 401.

38. *New York Times*, May 23, 1954.

39. *Dawn*, April 18, 1954.

40. *Ibid.*, May 31, 1954.

41. *Ibid.*, September 3, 1954.



divided. They came up with two proposals: (i) the merger of various units of West Pakistan into one unit, or one province, and (ii) the formation of a zonal subfederation in West Pakistan. According to the zonal subfederation scheme, ten subjects were to be placed under the jurisdiction of a zonal government in West Pakistan. The representation of the provinces in the zonal legislature should be divided in the ratio of 40 per cent of the seats for the Punjab and 60 per cent for the rest of West Pakistan. At the centre, Punjab and East Bengal were to have 80 per cent of the seats in the legislature, leaving only 20 per cent for the rest of Pakistan. With these modifications, the Bogra formula was to be retained without any other change.<sup>42</sup>

To both these proposal, the Bengali MCAs, who had a majority in the Muslim League Assembly party as well as the Assembly, were opposed. More important, they now asserted their majority as well, besides seeking the support of Abdus Sattar Pirzada, Sindh Chief Minister, and Khan Abdul Qayyum Khan, a federal minister from the NWFP. The sub-committee on the allocations of power voted down the one unit proposal but referred the zonal sub-federation scheme to the Muslim League Assembly party for guidance. The Muslim League Assembly party decided not to reopen constitutional issues already settled and directed the sub-committee to resolve the deadlock on the distribution of powers between the centre and the provinces in accordance with the Bogra formula and "without disturbing the federal structure".<sup>43</sup> Despite this directive, the sub-committee reconsidering the subcommittee's report, the Muslim League Assembly party resolved that the issue of zonal subfederation scheme could be reopened later, if the smaller provinces of West Pakistan agreed to take it up, and ten subjects were left open for this purpose.<sup>44</sup> Ignoring the party decision, Firoz Khan Noon again raised his zonal scheme in the Assembly, but failed to draw any support. Finally, on 21 September 1954, the Assembly adopted the

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42. *Ibid.*, September 11,15,16, 1954.

43. Z.A.Suleri, *Pakistan's Lost Years* (Lahore: N.p., 1962), 86.

44. *Dawn*, September 21,22, 1954.



constitutional report and then adjourned to meet on October 27, to take up the constitutional bill.<sup>45</sup>

The MCAs realised that their rejection of the proposals for one unit and zonal sub-federation West Pakistan would irritate Governor-General Ghulam Muhammad who happened to enjoy the support of the civil and military establishment. Therefore, they took some precautionary measures to stop him from taking any punitive action against them. There were rumours that, faced with the end to his monopoly of power, the Governor-General was intending to file PRODA charges against twenty-two Assembly members, including those involved in its repeal.<sup>46</sup> The Governor-General could use the same clause of the Provisional Constitution against Prime Minister Bogra himself as he had earlier done against Prime Minister Nazimuddin. Therefore, "the climax was reached when the governor-general hinted to the Prime Minister himself that he could become a victim of PRODA."<sup>47</sup> The Assembly responded hastily on 20th September and through "a legislative coup" repealed the Public and Representative Officers (Disqualification) Act (PRODA).<sup>48</sup> The following day the Assembly further curtailed governor-general's powers by amending the Government of India Act. The amendment precluded the Governor-General from acting except on the advice of his ministers. The Cabinet was made collectively responsible to the Assembly. All ministers were to be members of the Assembly at the time of their selection and could only continue to hold their offices so long as they retained the confidence of the legislature. This amendment was to come into effect with immediate effect. Analysing the importance of the amendment *Dawn* carried bold headlines announcing "Parliament made Supreme Body."<sup>49</sup> On 21 September, the Assembly also voted its approval of a draft constitution. The proposed constitution had adopted Choudhry Mohammad Ali's formula for parliamentary representation. It

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45. *Dawn*, October 21, 31, 1954.

46. Suleri, 92.

47. Binder, 357.

48. Allen McGrath, *The Destruction of Pakistan's Democracy* (Karachi: Oxford Univ. Press, 1996), 123.

49. *Dawn*, Karachi, 22 September 1954.



provided that the Lower House was to consist of three hundred members elected on basis of population, and the Upper House was to consist of fifty members equally divided among the five units, who would be elected by the legislatures of the units. East Bengal's majority in the Lower House, on the basis of its population, would be balanced by its minority in the Upper House. Provision was also made for a Prime Minister who was to appoint the other ministers in a Cabinet collectively responsible to Parliament and remain in office only so long as they retained the confidence of Parliament. Politically the most significant aspect of the draft constitution was that the power of the President was reduced to a mere figurehead. He could only act on the advice of his ministers.<sup>50</sup>

These precautionary measures could not, however, stop Governor-General Ghulam Muhammad from striking back. During the passage of the constitutional amendment, he was touring the NWFP. Enraged, he immediately cancelled his tour and returned to the capital to plan his countermoves. On his prodding, Ayub Khuhro filed a petition with him for the revocation of the disqualification order passed against him under PRODA. The Governor-General passed orders in his favour on 20 October. This was done in order to enlist the support of politicians against in favour of attitude towards the Assembly, the proposed amendment and the new constitution. He also pardoned several other politicians, including Daultana, who now became his allies.<sup>51</sup> Simultaneously, he enlisted the support of the Front whose ministry in East Bengal had been dismissed and whose demand for the re-election of the MCAs from East Bengal had been turned down. The restrictions on their activities were now withdrawn to enable them to express their opinion on constitutional issues. A press statement was obtained from Suhrawardy, one of their principal leaders, from Zurich, where he was undergoing treatment, urging the Governor-General to dissolve the Assembly and arrange the election of a new one through the existing

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50. Section 63, Draft Constitution of Pakistan, (Karachi: Confidential Manager of Government Press, 1954).

51. *Dawn*, October 25, 1954.



provincial Assemblies.<sup>52</sup> Dr. Khan Sahib, brother of Khan Abdul Ghaffar Khan and a close friend of Iskander Mirza, came out with a statement in support of one unit. Besides, the Army warmly supported his appeal for assistance although General Ayub Khan, the Commander-in-Chief declined to accept his offer of prime ministership of the country.<sup>53</sup>

After preparing the groundwork for a final showdown, the Governor-General recalled the Prime Minister Bogra from the US. On his return to Pakistan, a settlement was reached between Bogra and the governor-general. As a result on 24 October 1954, the governor-general proclaimed, "the constitutional machinery had broken down ... [and the] constitution Assembly had lost the confidence of the people and can no longer function."<sup>54</sup> Having effectively dissolved the Assembly, the governor-general announced the election to a new Assembly under a reconstituted cabinet. The elections were held in 1955 and an eighty-member Assembly was inaugurated in July 1955. The new Assembly presented on 8<sup>th</sup> January 1956 a draft constitution to the nation, which, with certain amendments was finally adopted on 29 February 1956. Thus, after "nine years of frustration and effort Pakistan was successful in framing a constitution which was implemented on 23 March 1956."<sup>55</sup>

## Conclusion

A review of the experience of Pakistan's writing its first constitution suggests that the main problem stemmed from the fact that the country's intelligentsia and the 'ulama' had two diametrically different visions of Islam. Soon after the inception of Pakistan, the conservatives and modernists were set on the course of a confrontation about the legal framework of the new state. The conservatives, who were led by 'ulama', wanted immediate and total Islamization of the social, economic, moral, and political life of the people. The modernists on the other hand believed that Islam

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52. Tamizuddin Khan, *The Test of Time: My Life and Days* (Dhaka: N.p., 1989), 152, 165-73.

53. Sir Ivor Jennings, *Constitutional Problems in Pakistan* (Cambridge: N.p., 1957), 34-5.

54. *Dawn*, Karachi, 25 October 1954.

55. Choudhury, 18.



being dynamic and progressive has nothing in its contents and principles that disallow the cause of democracy. It may not be wrong to emphasize here that the modernists were not against Islam. They acknowledge its moral and spiritual excellences, and have no doubt that as a religious doctrine it is superior to all other religions, but tend to be very sceptical about its utility as a code that could provide solutions to all the critical problems of the present day collective life of the Muslims. This caused a lot of confusion and ambiguity in policy-making chambers of the government. It was this divergence and diversity in the interpretations of the Qur'an and the Sunnah that delayed the drafting of the first constitution for nine long years.

The second issue was to determine form of federalism. East Bengal, which had a larger population with a complete ethnic, linguistic and cultural unity,<sup>56</sup> demanded this reality to be reflected in a democratic system in the constitutional framework. On the other hand, the West Pakistan's administrative units were conscious of safeguarding their ethnic, cultural and geographical independence. It was the accommodation of the above realities that caused much delay in the making of constitution. Thus the political tussle between East and West Pakistan blocked the way to writing of the constitution for about a decade.

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56. East Bengal had one-fifth of the area of West Pakistan and 56 per cent of Pakistan's population. Whereas the West Pakistan consisted of three provinces (Punjab, Sindh and NWFP), one Chief Commissioner's Province (Baluchistan) and ten princely states (Bahawalpur, Kairpur, Qalat, Malran, Las Bela, Swat, Dir, Chitral and Amb), and the Tribal areas of the North-West Frontier.