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*"... the reasoning and understanding of the early jurists reflected only the socio-economic conditions of their particular times. It was extremely unwise to hold and pursue their juristic positions in the modern Muslim society. The changed conditions necessitate change in institutions which at one time might have served successfully."*

## METHODOLOGY OF ISLAMIZATION IN PAKISTAN (1948-1977)

Dr. Abdul Ghafur Muslim

*Assistant Professor, National Institute of Pakistan Studies, Quaid-i-Azam University, Islamabad*

### INTRODUCTION

**A**CLOSER analysis of the history of the Muslim society in India reveals that it had predominantly been involved in defending and safeguarding its culture against the challenges posed by non-Muslims. These challenges came mainly from Western liberalism and Hindu nationalism. The Western liberalism imposed as the will of the colonial rulers, was a process of western acculturation in India,<sup>1</sup> while the Hindu nationalism was a seemingly utilitarian concept based on a single motherland and a unified civilization incorporating the Muslim community in its fold without its separate identity.<sup>2</sup>

From eighteenth century onwards the Muslim intelligentsia had come to be divided into two sections: (a) the Westernised Elites and (b) the Ulema. Both sections struggled in their own way for their socio-cultural and economic survival. The former, however, compromised with the Western liberalism welcomed a number of Western institutions and, by and large, got assimilated into that system.<sup>3</sup> By doing so, they probably for the first time in history, introduced the concept of liberalism in Muslim History.<sup>4</sup> The Hindu unitarian utilitarianism was, however never accepted by them, because they thought it aimed at annihilation of the Muslim identity and culture in India. They viewed the Indian civilization as a composite multi-communal form of political system. On the contrary, the Hindu nationalism struggled for the fusion of different communities

into one nation being mindful of numerical majority of the Hindus. It was under the same totalitarian ideology that the Congress party refused to take the Muslim League into coalition governments in the provinces in 1937. When the Congress took office, in two of the five Hindu majority provinces, no Muslim was made a minister. The services of the Muslim minister in a third province were shortly dispensed with. In the remaining two provinces there were only one and two Muslim ministers, respectively.<sup>5</sup> Thus, a great majority of the Muslim became highly agitated and revolted against this policy, which, they believed, was aimed at establishing a Hindu Raj.<sup>6</sup>

The Congress perceived that the agitation was started by a small group of upper class "selfish" Muslims. To counter them, it launched a "mass contact" campaign among the Muslims, which emphasized economic rather than cultural and political issues. The Muslim League leaders countered the Congress propaganda by raising the cry that the Congress was out to "buy Islam with bread."<sup>7</sup> The result of the mass contact campaign, was a total failure. It consigned the possibility of an all-India federation to obsolescence. As a consequence, the Muslims demanded an independent state of Pakistan where they could fully realize the ideals of their own culture and civilization. The nationalist ulema who subscribed to the Congress programme, refused to accept the Muslim League ideology or side with those who were even remotely associated with it. They began to label such

Muslims as "the arch enemies of Islam" and "spineless imitators of the West," who "will never succeed to establish a truly Islamic State."<sup>8</sup> These ulema opposed the Muslim League tooth and nail when it demanded Pakistan. But the Pakistan movement was able to achieve its objective within a relatively short period of years. Pakistan was achieved in 1947.

## THE EMERGENCE OF PAKISTAN

With the establishment of Pakistan, the Muslim League leadership started establishing modern democratic institutions according to their beliefs and commitments. The elected representatives formed a Constituent Assembly, and despite various socio-economic and administrative problems facing them, they began to take steps for the revival and safeguarding of their culture. In March 1949, the Constituent Assembly passed the Objectives Resolution with an overwhelming majority. The text of the Resolution goes as follows:

Whereas sovereignty over the entire universe belongs to Allah 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 sphere in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah;

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

Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation;

Wherein the units will be autonomous with such boundaries and limitations to their powers and authority as may be prescribed;

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

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and

backward and depressed classes;

Wherein the independence of the judiciary shall be fully secured;

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

So that the people of Pakistan may prosper and attain their right and honoured place amongst the nations of the world and make their full contribution towards international peace and progress and happiness of humanity.<sup>9</sup>

The Objectives Resolution endeavoured to combine federation, parliamentary government, a bill of rights and the rule of law, with the principles of Islam. It envisaged a federal State governed by elected representatives of the people with an independent judiciary. Though interests of minorities were to be safeguarded, Muslims were to be enabled to order their lives in accordance with the principles of Islam. It called for equality of status and opportunity, equality before law; and morality, freedom of expression, faith, worship and association. It also demanded observance of the principles of democracy, freedom, equality, tolerance and social justice as enunciated in the Holy Quran and *Sunnah* of the Prophet.

It was, perhaps, the solitary example in history after the fall of the *Khilafat-i-Rashidah*, when the representatives of an independent Muslim State – (called *Ahl al-Hal wa'l-'Aad* in Islamic polity) had expressed their free will for the determination of their future socio-economic affairs. The Objectives Resolution was a manifestation of their deep sense of understanding of Islamic principles. Each clause of the Resolution was either derived from the Quran or the Constitution of the City State of Madinah, signed in 622 A.D. by the Prophet and the other units of the federation. The Prophet had established the first Islamic State in Madinah. It had a federal structure. It was established by the free will of the people where all citizens enjoyed equal rights before law.<sup>10</sup> The non-Muslim citizens of the State were given constitutional guarantees of the security of their lives, property, honour, freedom of faith and religious practices.<sup>11</sup>

The Muslim citizens were advised to follow the examples of the Prophet which had been described as the noble paradigm by the Quran.<sup>12</sup> Thus it is obligatory for Muslim to follow the

traditions of the Prophet in all aspects of life.

While moving the Resolution in the Constituent Assembly, the Prime Minister Liaquat Ali Khan declared that Pakistan was founded because the Muslims of the Subcontinent wanted to fashion their lives in accordance with the teachings of Islam.<sup>13</sup> The Resolution aroused a storm of protest from the Opposition composed mainly of the Hindu members of the Assembly. They objected to the Islamic provisions as being contrary to the expressed intentions of the Founder of Pakistan to establish a secular state.<sup>14</sup> S.C. Chattopadhyaya, the leader of the Congress party, in particular, claimed that the Quaid-i-Azam had given assurances in the Constituent Assembly that religion and politics would not be intermingled.<sup>15</sup> He demanded the separation of religion from politics contending that references to Islamic principles paved the way for the creation of a *herrenvolk* in the new State.<sup>16</sup> Another member, B.K. Datta, ventilating the same general criticism of the Resolution, expressed the fear that "some day an adventurer might arise and arrogate the authority of the State to himself and find a justification of his action in the clause of the preamble relating to delegation of the Almighty's authority to the State through its people." In such a case, he said "he has to forge a further link and get it delegated through the State to himself and declare that he is the ruler of Pakistan appointed by his Maker."<sup>17</sup>

The League members of the Assembly, Dr. I. H. Qureshi, Maulana Shabbir Ahmad Usmani, Dr. Mahmood Ahmad, Sardar Abdur Rab Nishtar, Sir Zafrullah Khan and others, repudiated the arguments and accusations of the Opposition in detail.<sup>18</sup> In the end, the Prime Minister Liaquat Ali Khan categorically repudiated any suggestion of making Pakistan a theocratic State governed by ordained priests. He assured the non-Muslims that they could head the administration of an Islamic State and welcomed them into the government services of Pakistan.<sup>19</sup> On 12 March, 1949, the Resolution was finally adopted.

The apprehensions expressed by the non-Muslim members of the Assembly were not entirely unfounded. In fact, Islam is interpreted in two different ways: (a) the traditional interpreta-

tions of Islam by the ulema, and, (b) the modern interpretations made by the modernists. According to the ulema interpretations:

- a) Islam recognized supra-national Islamic concept of State (the *Hukumat-i-Ilahiyyah*) which transcends all ethnic and geographical considerations. It directly opposes the modern concept of state based on nationalism;
- b) Western democracy and political parties are incompatible with Islam;
- c) *Shari'ah* is immutable. It does not change with the change in circumstances;
- d) Legislation in the modern sense does not exist in Islam. Islamic law is complete and merely requires interpretations through *Ijtihad*.
- e) Persons entitled to *Ijtihad* are the ulema alone, who possess outstanding knowledge of the Quran and *Sunnah*, and of the Islamic jurisprudence and its methodologies introduced by the Muslim jurists of the early age;
- f) The school of law professed by the majority of Muslims should be enforced as public law of the country;
- g) The *Shari'ah's* penal provisions, such as the amputation of a hand for theft and stoning to death for adultery, should be enforced without giving consideration to the socio-economic conditions of the society;
- h) Participation of women in elections militates against Islamic injunctions;
- i) Non-Muslims living in an Islamic State do not hold full citizenship like Muslims, and as such, are not entitled to equal rights;
- j) Non-Muslim can change their religion but for the Muslims, it is an offence and the punishment for the offender is death;
- k) For the purposes of Islamization, autocracy suits more than democracy.<sup>20</sup>

The notion of sovereignty held by the ulema, is different from the one prevalent in International Law or in Political Science today, which indicates

that the ulema's concept of Islamic State to some extent, if not entirely, closely resembles the concept of theocracy.

In 1944, the Majlis-i-Ahrar-i-Islam, mainly consisting of the Deoband-educated ulema adopted in their manifesto the concept of the *Hukumat-i-Ilahiyyah* (Divine State), originally put forward by Maulana Abu'l Kalam Azad in 1913. The Majlis had offered its support to the leadership of the Muslim League in its struggle for Pakistan, provided it adopted in its policy the establishments of the *Hukumat-i-Ilahiyyah* in the future state. The Quaid-i-Azam, however, had refused to accept this conditional support.<sup>21</sup> It appears that the Quaid-i-Azam considered such a concept theocratic. He had categorically made clear to all that Pakistan would not be a theocratic State. Even Liaquat Ali Khan at the time of passing of the Objectives Resolution had repudiated any suggestion of making Pakistan a theocracy.<sup>22</sup>

The modernist makers of Pakistan entertained entirely different ideas as compared to those held by the ulema. They believed that:

- a) Nationalism can be a basis of an Islamic State;
- b) Democracy and parliamentary form of government do not contradict Islamic principles of state and sovereignty;
- c) Evolution in human society effects legislation;
- d) Islam does not prohibit new legislation which should be carried out through the institution of *Ijtihad* (reasoning) and *Ijma* (consensus);
- e) The people's representatives are entitled to exercise *Ijtihad* and legislate through consensus;
- f) *Fiqh* of the majority sect cannot be enforced blindly as public law of the country;
- g) Punishment of the medieval period cannot be adopted without the approval of the legislative assembly;
- h) Women are entitled equally to participate in the national elections;
- i) Non-Muslim citizens are entitled to equal rights to those of the Muslim citizens of the State;
- j) No capital punishment can be given to a Muslim who changes his/her religion.<sup>23</sup>

The institutions of *Ijma'* was established by the Prophet himself. He was under the Quranic obligation that in order to run the State and settle the society's affairs, he must consult his followers.<sup>24</sup> Thus he never imposed his preference on his followers. He declared that "my followers can never agree on a wrong decision"<sup>25</sup> He also declared that "whatever is considered right by the Muslims is right according to Allah, and whatever is considered wrong by the Muslims is wrong according to Allah."<sup>26</sup> On the basis of the traditions of the Prophet, the Muslim jurists hold that *Ijma'* engenders a positive knowledge. It is a force as binding as the Quranic injunctions.<sup>27</sup>

Unfortunately, after the fall of the *Khilafat-i-Rashidah* – the Rightly Guided Caliphate – the autocratic rulers relegated the institution of *Ijma'* to a secondary position of theoretical discussions.<sup>28</sup> For practical purposes, it was abandoned and was replaced either with the decision of the ruler or the decision of the chief judge appointed by the ruler.<sup>29</sup> The passing of the Resolution by the representatives of the Muslims with mutual consultations was, in fact, the revival of the most important institution of Islam – the institution of *Ijma'*. This is perhaps the reason that the Objectives Resolution has assumed the status of a document of most fundamental nature in the history of Pakistan. It has been taken as preamble of all Constitutions, and in 1985 it was incorporated as Article 2-A in the operative part of the 1973 Constitution. The provision that "the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the *Sunnah*", asked the authorities to institutionalize the teachings of the Quran and *Sunnah*, and help create an atmosphere for the Muslims to order all aspects of their lives according to the Quran and *Sunnah*. It was a remarkable provision which was going to effect not only the legal system but also the social, economic and educational aspects of life in the country. It determined the Quran and *Sunnah* as the supreme sources of Islamic social order in the country. It attempted to forge unity among the

shaking off the medieval sectarianism, and the grip of the dead hand of the early jurists. It opened the doors of *Ijtihad* for all to whom the Muslim assign the responsibility of their representation. It was adopted in the 1956 Constitution and was also retained in all subsequent Constitutions.

The Resolution, however, remains an issue so far as the mechanism to achieve the goal of Islamization is concerned. Perhaps, the latter task was left to the framers of the Constitution. The first Constitution of Pakistan which came into force on 23 March, 1956, declared that steps shall be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Quran and *Sunnah*. This meant that the State shall endeavour:

- a) to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and *Sunnah*;
- b) to make the teaching of the Holy Quran compulsory;
- c) to promote unity and observance of Islamic moral standards; and
- d) to secure the proper organization of *Zakat*, *Wakf* and mosques.

The Constitution also confirmed that the State shall endeavour to:

- a) prevent prostitution, gambling and the taking of injurious drugs;
- b) prevent the consumption of alcoholic liquor; and
- c) eliminate *riba* as early as possible.<sup>30</sup>

The Constitution assigned the responsibility to the President of Pakistan to set up an organization for Islamic research and instruction in advanced studies to assist in the reconstruction of the Muslim society on a truly Islamic basis.<sup>31</sup> The Constitution also declared that no law shall be enacted which is repugnant to the injunctions of the Holy Quran and *Sunnah*, and existing laws shall be brought into conformity with such injunctions.<sup>32</sup> The President of Pakistan was authorized to appoint a commission to make recommendations:

- a) as to the measures for bringing existing laws into conformity with the injunctions of Islam; and

- b) as to the stages by which such measures should be brought into effect.<sup>33</sup>

The commission was also assigned responsibility to compile injunctions of the Quran and *Sunnah* which could be given legislative effect by the National and Provincial Assemblies and to submit its final report to the Assembly within five years of its appointment.<sup>34</sup>

The Constitution explained the meaning of the expression "the Quran and *Sunnah*" as mentioned in the repugnancy clause. It specified that in the application of the expression to the personal law of any Muslim sect, the Quran and *Sunnah* shall mean the Quran and *Sunnah* as interpreted by the sect concerned.<sup>35</sup>

The explanation created an impression that in respect of the matters relating to personal law, new interpretations of the injunctions of the Quran and *Sunnah* were not permitted and the ulema would continue to have their respective interpretations of the Quran and *Sunnah*. The legislature was denied the right to introduce any change in the existing sectarian positions. The rest of the body of laws, however, was allowed to be developed on a non-sectarian Islamic basis and the law-making organs in the country were empowered to consider the new interpretations of the Quran and *Sunnah*.<sup>36</sup>

For the purpose of the enforcement of the repugnancy provisions, the Basic Principles Committee for drafting a constitution for the country, had recommended in its report, a comprehensive mechanism. It had recommended that the President of the country should be authorized to constitute a Board of five ulema for a period of five years. Any Bill objected to by the members of Parliament, of either of the Houses, was to be referred, along with the objections to the Board by the Head of the State. If the Board's opinions were divided the Head of the State could give his assent to the Bill or withhold it. On the contrary, if the Board was unanimous that the Bill was repugnant to the injunctions of Islam, it could be returned to a joint session of the Parliament, and could be passed by a simple majority of the Muslim members present and voting. An emended Bill was then to be forwarded to the Head of the State for his assent. Similar Boards were also recom-

mended to be set up in the provinces.<sup>37</sup>

When this recommendation was moved in the Constituent Assembly, non-Muslim, as well as some of the Muslim members, opposed it. They condemned the idea of the Board of ulema on the ground that it would be appointed undemocratically by the Head of the State or heads of provinces, and as such would not be responsible to the people. B. K. Datta of the Congress party, for instance, asked whether God was "incapable of working through the will of the chosen representatives of the people of Pakistan? If not, then why make God or His words or His special agents intervene at every stage of our state affairs? Why should a third house a Mullah House – of nominated people be interposed in matters of legislation and curtail popular sovereignty."<sup>38</sup> Besides the Hindu speakers, thirty nine members of the Assembly spoke and criticized the proposal. After hearing the arguments of the speakers, A. K. Brohi, the Central Minister for Law, promised to move an amendment so as to abolish the Board. Accordingly, the Board was replaced with the establishment of a Commission.<sup>39</sup>

D. N. Datta moved an amendment regarding the enforcement of the Islamic provisions. He suggested that these should not be enforceable in a court of law.

The Assembly accepted this proposal and after its acceptance the Islamic provisions, except the repugnancy clause, no longer remained a binding constitutional law.<sup>40</sup>

Thus the 1956 Constitution excluded the supremacy of ulema in the process of Islamization in Pakistan except in the matters relating to personal law of the Muslims. It was argued that Islam acknowledges the importance of the participation of Muslims in the affairs of the State. It does not acknowledge any person or a group of persons as a privileged class possessing exclusive rights to legislate. It was against Islam to curtail or compromise in any manner the basic right of the people as a whole to organize and run their affairs. The Constituent Assembly refused to give an authority to anyone however knowledgeable he may be, to pass judgement and exercise a power of veto over the Legislature and the Judiciary.

The ulema insisted that the principles of

Islam had already been interpreted, defined and institutionalized by the early jurists for all times to come. They must be enforced at once without giving consideration to the socio-cultural conditions. The Assembly naturally did not agree with this point of view. It maintained that the reasoning and understanding of the early jurists reflected only the socio-economic conditions of their particular times. It was extremely unwise to hold and pursue their juristic positions in the modern Muslim society. The changed conditions necessitate change in institutions which, at one time might have served successfully. The ulema, it was argued, were divided irreconcilably and forging a unity among them was an uphill task. Their ideas were utopian. They wanted to turn the clock backwards even at the expense of the modern institutions, and they ignored the hard realities of the contemporary world.<sup>41</sup>

The ulema refused to accommodate their critics. They launched counterattacks. They held that the modernists: a) intended to fuse the life of the Muslim into the mainstream of the Western culture; b) lacked any background or a genuine interest in Islamic learning; c) maintain a secular orientation and therefore had no interest in the purpose of Islamization; and d) in order to keep the ulema out of the process of Islamization in the country, had deliberately introduced the repugnancy clause, and suggested that all laws should be based upon or derived from the Quran and *Sunnah*.

There was a world of difference in the demands of the ulema and the repugnancy clause. The adoption of the latter by the makers of the Constitution, would have amounted to the acknowledgment of the importance of the ulema, because without their expertise it would have been very difficult to derive laws from the Quran and *Sunnah*. The modernists, however, were unwilling to give such a recognition to the ulema. They looked at the latter as wedded to the concept of *Taqlid* (blind imitation). This concept was good as long as it remained a servant, but as soon as it assumed the status of a master it became a bad concept. It was introduced by the medieval jurists as a rule to deter further disintegration of the ulema.<sup>42</sup> It has grown into an immutable concept,

detrimental to legal and political development. The ulema employ the concept blindly without taking cognizance of the prevailing situations. The modernists rejected *Taqlid* and declared that no system of law can be workable if it had not been subjected in advance to a thorough scrutiny. They contended that the *Taqlid* leads to rigidity, rigidity to fanaticism, fanaticism to anarchy and anarchy to disintegration. These were the steps leading to a wrong direction. On the other hand, the *Ijtihad* (independent reasoning) leads to the understanding of the Quran and *Sunnah*. It is both an attainable and a viable solution. The *Taqlid* was regarded at best to be superfluous and at worst to be misleading. It was not accepted as a policy for legislation. It was, however, realized that the people must be able to gain from the knowledge of the ulema in dealing with their day to day questions. For this an Institute of Islamic Research and Instructions in Advanced Studies was established. So far as the participation of the ulema in the Commission was concerned, it was yet in the process of shaping when in October 1958, Martial Law was proclaimed and the 1956 Constitution was abrogated.

To sum up, the 1956 Constitution called for the establishment of a democratic state which should be based on Islamic principles of social justice. It provided for the setting up of an organization for Islamic research. It also provided that no law repugnant to the injunctions of Islam would be enacted and that the existing laws should be brought into conformity with those injunctions. However, it left undecided the question as to how the existing laws were to be brought in conformity with the Quran and *Sunnah*. Identification of a cognitive approach for Islamization was among the problems left unattended by the Constitution. The personal laws, civil status of the non-Muslims and the Constitution itself were exempted from the application of the repugnancy clause. The President was empowered to set up a commission to consider other questions left undecided, and also to compile injunctions of the Quran and *Sunnah*. And the ulema were kept outside the function of Islamization. Nothing was specified to create a conducive atmosphere to enable the Muslims to order their lives according to the Islamic values or

to inculcate these values in their daily lives. Islamic symbols, such as *riba* and *zakat* were inserted here and there in the Constitution as pieces of decoration. It mentioned egalitarianism and socio-economic justice, but did not determine any cognitive and systematic methodology to achieve these Islamic ideals and purposes.

### F.M. MUHAMMAD AYUB KHAN

Field Marshal Muhammad Ayub Khan, the first chief Martial Law Administrator was the sole framer of the Constitution of 1962. The achievement of Pakistan was in effect regarded by him as the end of the struggle. At the outset he made deliberate efforts to introduce some kind of secular changes in his Constitution. Article 1 of the 1956 Constitution designated Pakistan as an Islamic Republic whereas Ayub Khan considered the word "Islamic" as an empty slogan. In his Constitution he omitted the word "Islamic" from the official designation of the State and called it the "Republic of Pakistan." He also omitted the Islamic provisions of the 1956 Constitution altogether, and instead, simply said that "no law should be repugnant to Islam." The law-making organs of the State were to decide the questions whether a law was repugnant to Islam. The personal law, which was allowed to be decided on the basis of Islamic *Fiqhi* schools in the 1956 Constitution, was also declared to be decided by the National and Provincial Assemblies, thus was subjected to modern reforms. In fact, he had already promulgated the Muslim Family Laws Ordinance in 1962, and had gone beyond all *Fiqhi* interpretations of the early jurists. The Ordinance restricted polygamy, tightened the law of divorce, made compulsory the registration of marriages, provided inheritance share for orphaned grand children.<sup>43</sup> All these changes were declared by the ulema repugnant to the injunctions of Islam. Muhammad Ayub Khan rejected the objections of the ulema stating that any decision against the authority of the early jurists did not necessarily mean a verdict against the injunctions of the Quran and *Sunnah*. He refused to equate the decisions of the early jurists with the injunctions of Islam. These measures indicate that he did not believe in the revival of Islam as the earlier leadership of the country had in its mind. He did not like the ulema, probably

because of their constant pressure to establish their hegemony in a state they had opposed.<sup>44</sup> He, therefore, refused to allow them any responsible role in the field of Islamic legislation in the country. On the other hand, he took definite steps to rehabilitate the disintegrating clout of modernists. He provided all kind of support to the Institute of Islamic Culture at Lahore in order to popularize modernists' interpretations of Islam, at the expense of the traditional religious forces.<sup>45</sup> In 1960, he established a Central Institute of Islamic Research (later renamed as the Islamic Research Institute). He appointed Dr. Fazlur Rahman, an able modernist scholar, as its Director. The 'Ulama' Academy was set up at Lahore for the purpose of exposing the ulema to modern interpretations of Islam. These institutions published some popular works on Islam with a modernist's point of view<sup>46</sup>. He also formulated an Advisory Council of Islamic Ideology, to answer the questions in the process of legislation, whether a proposed law was repugnant to the teachings and requirements of Islam.<sup>47</sup> The Council was to consist of some 5 to 12 members appointed by the President from among the relatively "emancipated" ulema "having regarded to their understanding and appreciation of Islam and of the economic, political, legal, and administrative problems of Pakistan."<sup>48</sup> He always ignored the *traditional* ulema. In 1963, however, his government found itself in a grave situation when support of the ulema in the National Assembly was required most urgently. In fact, in his Constitution, he published a long list of the fundamental rights of citizens, but contrary to the 1956 Constitution, they were not enforceable in a court of law. As soon as the Constitution was made public, there was a vehement criticism and violent protest against it. The public made persistent demands to make the fundamental rights enforceable by the courts. President Ayub Khan responded to the public demand and in March 1963, a Bill on fundamental rights was introduced by the Government in the National Assembly, to amend the Constitution. The Government, however, did not have on its side the two thirds majority for the passage of the Bill. Therefore, it was forced to a compromise with the members of a religious political party; and it agreed to change the name of

the state from the Republic of Pakistan to the Islamic Republic of Pakistan. It also agreed to bring back all omitted Islamic provisions in the Constitution. Ayub Khan also restored the repugnancy clause but he was not ready to sacrifice his Muslim Family Laws Ordinance, which was protected through a qualifying clause, properly known as the "rider clause" in the first amendment.<sup>49</sup> After the amendment, it was provided in the Constitution that "the validity of a law or an executive act cannot be questioned in a court for failure to accord with a principle of policy but any Assembly, the President or Governor may refer to the Advisory Council of Islamic Ideology the question for its opinion and recommendation whether a proposed law was repugnant to the teachings and requirements of Islam".<sup>50</sup>

The Council of Islamic Ideology was to consist of 5 to 12 members appointed by the President having regard to their understanding and appreciation of Islam and of the economic political, legal and administrative problems of Pakistan. Thus the new Constitution excluded the *traditional* ulema from exercising *Ijtihad* even if it was of recommendatory nature. Article 204(1) of the Constitution entrusted the Council with the following three functions:

- a) to make recommendations to the Central Government and Provincial Governments as to the means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam;
- b) to examine all laws in force immediately before the commencement of the Constitution (First Amendment) Act 1963, with a view to bringing them into conformity with the teachings and requirements of Islam as set out in the Holy Quran and *Sunnah*; and
- c) to advise the National Assembly, the Provincial Assemblies, the President or a Governor on any question referred to the Council under Article 8, that is to say, a question as to whether a proposed law is or is not repugnant to the teachings and requirements of Islam as set out in the Holy Quran and *Sunnah*.<sup>51</sup>

In the event of such a reference being made,



the Council must, within seven days, intimate when it is expected to be able to answer. If the authorities or the Assembly which had referred the questions, considered that the public interest demanded it, the law could be enacted before the advice was received. No later than 15 January each year the Council was required to submit a report on its proceedings, during the preceding year to the President for presentation before the National Assembly.<sup>52</sup>

It is evident that Ayub Khan openly helped the cause of the modernists and kept the ulema out of the Government agencies. Instead of harmonizing the prevailing bitterness by bringing about some kind of a rapprochement between the warring groups, his policies enhanced differences among them. There were some ideas common among both the groups which the author of the Constitution should have used to establish some sort of integration. The ulema and the modernists demanded that the Muslims must go back to the original and definitive sources of Islamic law and exercise *Ijtihad*. There were, however, points where the two groups stood apart and there was no meeting ground. The modernists represented progressive ideas of *Ijtihad* to face the changing situations, while the ulema followed *Taqlid* and were rooted in the tradition. They clung to their medieval thinking, and showed little contact with the realities of contemporary life. They did not accept the benefits of modern science and technology. The modernists, however, believed in the speedy economic growth and wanted to follow Western model even if it affected their traditional values. The ulema studied medieval Muslim sources and were possessed of a wealth of material and a highly sophisticated heritage which produced thousands of personalities with original and creative thinking and were encyclopaedic in their scope of learning. They produced understanding of Islam among Muslims, and at least, gave them enough intellectual and spiritual food to keep their cultural and religious identity. They were still intellectually capable of producing something in depth within their permitted jurisdiction. They had sound reason to oppose the acquisition of modern knowledge. They thought it was going to create doubts in the minds of the young genera-

tion. It was not only posing a threat to the Islamic ethics but was also a medium of maintaining the Western political domination, economic aggression and intellectual hegemony over the Muslims. The ulema called the modernists "bloodless pale shadows of the West," and "cultural-intellectual bastards."<sup>53</sup>

The modernists studied Islam which remained extremely peripheral. They wanted the revival of Islam through modernism. They advocated the exercise of *Ijtihad* through a methodology that the ulema refused to recognize as Islamic. The modernists remained most reluctant to accept uncritically any medieval authority. They tried to give Islam a liberal interpretation, and advocated changes in medieval institutions which had been inherited unaltered since the medieval times.

The new Constitution had though tried to help the modernists but they could not cash on this advantage and failed to formulate a viable and systematic methodology of interpreting the Quran and *Sunnah*. This happened because they were not rooted in tradition. The moment they decided to shake off the bonds of tradition, they became baseless. Their insistence on the revival of Islamic order proved to be a catchy slogan. The modernists talked of *Ijtihad* but their actual performance remained considerably poor and negative. They expressed egalitarianism but when it came to practical utilization while reconstructing the socio-economic institutions immediately after the partition of India, they proved to be highly ineffective. They did nothing in terms of eradicating socio-economic evils and injustices in the society, although, they were eagerly expected to re-establish the Muslim society torn by individual, national, racial and communal rigidity and bigotry. They believed in the socio-cultural norms of the West. They openly adopted an apologetic approach on some crucial matters such as the *Jihad*, *Tabligh*, *Hudud* and *Ta'zirat*. They also believed that to run the State and society the Western doctrines might have guided them better than the Muslim scholars, although the Muslim scholars had many a time expressed ideas far more radical and advanced than those advanced by the West.

The Constitution still promoted the hollow verbalism of the modernists and slammed the

doors on the utilization of the expert services of the ulema. Rather it crushed the ulema with repression. The author of the Constitution depended on the support of the modernists, ignoring the fact that the majority in the country was in full control of the ulema, and they would never reach the standard of education to understand and follow the principles and values of modernism. How a government could survive, let alone prosper, with such an antagonizing atmosphere and without the support of the majority of its people?

The Constitution negated medievalism but failed to create any dynamic methodology for a positive link between the Quran and *Sunnah* and the modern thought. It should have provided some mechanism for the integration of modern intellectualism and Islamic traditionalism. During the period of the Abbasids, Islamic society faced a similar threat from the Greek philosophy. In spite of the fact that the Greek philosophy of the medieval age was dead and forceless, and the Islamic philosophy alive and dynamic, Islam absorbed and synthesized the Greek philosophy successfully without damaging its own basic principles.<sup>54</sup> Now Islam was confronted with the West which was politically, economically and intellectually dominant and aggressive.

The ulema refused to acknowledge the supremacy of the West and were not ready to sacrifice "their culture at the altar of the West."<sup>55</sup> The ulema stood up against the author of the Constitution, the people supported them; protests and street violence forced Ayub Khan to step down.<sup>56</sup>

### GENERAL MOHAMMAD YAHYA KHAN

With the fall of Ayub Khan and the abrogation of his Constitution, the modernists holding key posts also took refuge into exile. Ayub Khan surrendered perforce the power to the Army. The new Chief Martial Law Administrator, General Mohammad Yahya Khan (1969-71), announced his Legal Framework Order and declared his full support for the cause of the ulema. He decided to hold elections hoping that the ulema and their religio-political parties would win. Contrary to his wishes and expectations, when the modernists achieved a landslide victory over the ulema, he

refused to hand over power to the winning party. This caused dismemberment of Pakistan into two separate States and also the fall of Yahya Khan. The Army transferred the power to Zulfikar Ali Bhutto, the elected modernist and leader of the winning political party in West Pakistan.

### ZULFIKAR ALI BHUTTO

Bhutto (1971-77) took a fresh start and framed a new Constitution (1973), retaining all the Islamic provisions as provided in the earlier Constitutions.<sup>57</sup> In addition, he declared Islam as "the State religion" – a step that secured him the blessings of the ulema. Similarly, the declaration of the Qadiyanis to be non-Muslims and the revitalization of the Advisory Council of Islamic Ideology earned him their goodwill. These substantial provisions made the ulema more than satisfied as they had accorded their sanction to the Constitution. Bhutto was a leader of unusual abilities. He won an absolute majority in the elections in the western part of the country in the name of Islamic socialism. He pledged himself to provide socio-economic justice and to execute general egalitarianism in accordance with the Islamic principles. In fact, he perceived Islam as an important motivating force. Its symbolic usage, he reckoned, could be a source of strength, though its practical application was seen by him as obstructive. He considered the ulema and their literal interpretations of Islam to be inhibitive. Nevertheless, the Council of Islamic Ideology made a number of recommendations for Islamization of laws and the society. These were based on literal interpretations of the Islamic principles.<sup>58</sup> The Bhutto Government refused to implement them to the displeasure of the ulema and left them to wonder if he really contemplated the revival of Islamic social order. To them, Bhutto seemed to be utilizing Islam to further his self-interest; and they failed to see any inclination towards Islam in his personal behaviour. Even political compromise reached earlier between him and the ulema was also seen with suspicion by some of the leading ulema.<sup>59</sup>

In fact, a permanent compromise between the two groups – the ulema and the modernists – appears to be an impossibility. The ulema spoke of Islam's concern with justice, its high moral stand-

immediately by the dissolution by the President of the National Assembly and the legislative assemblies of the provinces, and the resignation of Muhammad Khan Junejo's cabinet. The gesture was intended to get over the dissatisfaction caused by his actions in respect of the representative bodies, to split the Opposition and to consolidate his position, but its pragmatic aims were so obvious that it failed to win the support even of the religious communal parties.

In conclusion, it may be said that although the political role of Islam is currently weakening in Pakistan, it is still very strong. It is no doubt stronger than before the beginning of the "Islamic boom". Correct and complete assessment of many phenomena of Pakistan's domestic life and foreign policy is out of the question without understanding this role. As to Bangladesh Islamic revivalism there has not probably reached yet its acme.

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ards, its cultivation of learning; and the modernists responded by noting the corruption, political instability and illiteracy in Muslim societies. The ulema saw their society as spiritually superior to the West and the modernists called it an excuse for continued poverty. The ulema recalled Islam's medieval splendour while the modernists pointed to its contemporary plight and misfortunes. The ulema selected the most attractive ideals of Islamic history while the modernists chose the autocratic rulers. The ulema disagreed with the modernists' viewpoint. Hence, it was not surprising that they fully backed the anti-Bhutto agitation in 1977 and contributed to his downfall and the rise of General Mohammad Zia-ul-Haq.

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Islam's concern with justice, its high moral stand-

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(Continued from page 46)

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26. Among them were: Nawab Sir Mohi-ud-Din Furoqui, Khan Bahadur Aziz-ul-Haque, Sir B.P. Singh Roy, Dr. Naresh Chandra Sen Gupta, Khan Bahadur M. Abdul Momin, Fazlul Huq, Shaheed Suhrawardy, Sir Abdulla Suhrawardy and Moulvi Abdul Kasem. *Ibid.*
  27. A.H. Ghuznavi in his letter to the Raja of Burdwan claimed that the meeting was attended, among others, by Shaheed Suhrawardy and Sir Abdur Rahim. But after the publication of the letter, Sir Abdur Rahim in a statement issued on 11 January, 1937, said, "I have absolutely no recollection of any such meeting and if it is sought to be conveyed that the said proposals met with my approval, it is wholly unfounded". The reason behind this disclaimer might have been his election to the 'Chair of the Indian Legislative Assembly.' In the same statement he himself said, "Since my election to the Chair of the Legislative Assembly, I have made it a rule not to participate in a discussion of any controversial, constitutional or political matter and I refuse to be drawn into any such controversy on the present occasion". See *C&MG*, 12 January, 1937.
  28. *Ibid.*
  29. A.H. Ghuznavi to Zetland, 7 January, 1937. Also see P.N. Chopra, *op. cit.*, p. 23.
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