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GOVERNMENT AND PUBLIC IN PAKISTAN
THE PROBLEM OF PROMOTING POSITIVE
ATTITUDE TOWARDS GOVERNMENT

BY
SARFRAZ HUSSAIN ANSARI

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS
IN THE
DEPARTMENT OF POLITICAL STUDIES AND PUBLIC ADMINISTRATION
AMERICAN UNIVERSITY OF BEIRUT
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PREFACE

Government in modern times besides keeping internal order and defending society from external threat has, by direct and indirect intervention (through canalisation of society's activities) come to play much greater role than in the past. However, it alone cannot carry out the increased responsibilities; it should be able to get the support of the people. In this respect, the situation in Pakistan is not encouraging. Often, even the government officials may not feel with the laws which they are required to administer. This phenomenon frustrates all efforts at progress and, therefore, is the object of reflection of many.

This study posits that government in Pakistan will command obedience and respect only when it conducts its activities to promote religious and moral well-being of the Muslims. This is because the State in Muslim community is established to enforce and uphold the law understood to have been given by God and to which Muslims owe their allegiance and obedience. Thus we will not consider minorities in the study. There are other important reasons: Pakistan has been carved out of the previous Indian Sub-continent against the partition of which Indian National

Congress, primarily an Hindu organisation, worked hard but did not succeed. The Caste Hindus now living in Pakistan find it difficult to reconcile themselves emotionally to the existence of Pakistan. They have moral support of India in the same way as Muslims in India have that of Pakistan. This is further complicated by the as yet unsolved problem of Kashmir. Any movement by the Kashmiri Muslims to liberate themselves from Hindu domination is bound to have repercussions on the relations of minority groups - Hindus in Pakistan and Muslims in India, Another reason is that if Muslims are asked not to apply the principles of their religion in socio-political life, then there is no meaning in having a separate territory.¹

The first chapter of the study states the existing pattern of public attitude towards government and considers some approaches to understand that pattern. The second chapter illustrates how, in history, Muslim community in general, and that living in India in particular, strove

¹Application of Islamic principles, however, does not automatically imply bad treatment of the minorities. On the contrary, some Hindu scholars have considered the communal-democratic system of politics as a most remarkable phenomenon of political evolution. They have a lot of praise for "the democratic spirit of the Islamic administration". See Radhakamal Mukherjee, Democracies of the East: A Study in Comparative Politics (London: P.S. Kings & Sons. Ltd., 1923), p. 174.

hard to preserve Sharia against encroachment by the rulers. The third one considers the nature of government in Pakistan and the extent to which it conforms to the Sharia. The fourth one surveys the intensity of the ideal of organising government on the principles of the Sharia and suggests that adoption of the Quran as the constitution will promote positive attitude towards government. The fifth one emphasises that Ulama (men of Islamic Law and learning) should form a vital part of governmental process.

To approach this problem in a correct way I am deeply indebted to Professor Yousuf K. Ibish of the Department of Political Studies and Public Administration at the American University of Beirut. His course on the nineteenth century Islamic and Arab political thought and advice during actual work on the problem were indispensable for proper understanding of it.

I am also indebted to Professor Adnan Iskandar and Dr. Iskandar Bashir for their advice and encouragement which a student so much needs from his teachers. Thanks also go to Professor Keith M. Henderson for his personal interest in my work.

Finally, I have been afforded great moral encouragement and material help by Salim Muhammad Kabbani of Lebanon and this little study is sincerely dedicated to him as a token of brotherhood and gratitude.

S. Hussain Ansari

TABLE OF CONTENTS

	Page
PREFACE.....	iii
Chapter	
I. INTRODUCTION.....	1
The State of Pakistan	
The Role of the Government	
The Role of the People	
The Problem of People's Attitude Towards Government	
Some Approaches to the Study of the Problem	
II. THE BACKGROUND TO THE ISLAMIC REPUBLIC OF PAKISTAN.....	17
The Early Muslim Community	
Islam in India: The Sultanate of Delhi	
The Mughul Empire	
The British Administration	
III. THE GOVERNMENT OF PAKISTAN.....	43
Presidential Government: Personal Dynamism	
The Legislative Behavior	
The Tutorial System of Local Government	
The Administrative Class	
The Judiciary: Guardian of Liberty	
The Military: A Political Force	
The Islamic Character of Pakistan Government	
IV. THE QURAN AS THE CONSTITUTION: THE PROSPECTS OF PROMOTING POSITIVE ATTITUDE TOWARDS GOVERNMENT.....	63
V. ORGANISING AN ISLAMIC GOVERNMENT IN PAKISTAN.....	82
VI. BIBLIOGRAPHY.....	91

CHAPTER I

INTRODUCTION

The State of Pakistan

"Politically the idea is absurd...the idea of a Muslim nation is a figment of a few imaginations only and...would...vanish at the touch of reality".¹ This was a considered opinion of a prominent Hindu leader and was shared by all Hindu leaders upto early forties of the twentieth century. Yet Pakistan became a reality at midnight, on August 14, 1947. The British Empire in India came to an end, The 'discovery of India' was in the long run, a division of 'the Greater India'.² The end of the Empire as well as the partition of India were mourned by few Muslims.³ On the other hand, they were proud of a 'pure homeland' to live in, to preserve their own way of life and to rule themselves according to their own standards and norms. The response of the Muslims in India to the idea of a separate Muslim State, Pakistan, was phenomenal; the idea claimed their deepest

¹Jawaharlal Nehru quoted by Gamal-Eddine Heyworth-Dunne, Pakistan: The Birth of a New Muslim State ("The Muslim World Series, No. 7", Cairo: The Renaissance Bookshop, 1952), p. 2.

²Jawaharlal Nehru, The Discovery of India 3d ed. (London: Meridian Books, 1951).

³Keith Callard, Pakistan, A Political Study (London: George Allen & Unwin Ltd; 1957), p. 270.

loyalties.¹ A negative factor contributing to this phenomenon was the fear of Hindu domination in a rapidly democratising nationalist India but positive one (which was responsible for the former) was the urge for the application of Islamic principles in socio-political organisation.² Karachi became the capital of the new State and, immediately, government was organised to perform its functions.

The Role of the Government

There is a tendency towards a growth in activities of all governments. This is specially true of developing countries which have recently attained, or are in process of attaining, their independence from colonial control.³ In the post-independence period, the goal of economic development usually becomes the dominant goal, at least, with the top leadership. A considerable expansion in services is also considered important and these two goals give rise to a continuous growth in administrative apparatus. The growth of governmental power which thus results is naturally not similar at all levels. Some political and administrative groups which spring up tend to supervise the activities of other professional, economic and cultural groups in society.⁴ Claims to social importance come not only from

¹L. F. Rushbrook Williams, The State of Pakistan (London: Faber & Faber, 1962), pp. 18-19.

²Leonard Binder, Religion and Politics in Pakistan (Berkeley Los Angeles: University of California Press, 1963), pp. 3-4.

³S. N. Eisen Stadt, Essays on Sociological Aspects of Political and Economic Development (The Hague: Mouton & Co; 1961), p. 23.

⁴Ibid.

the active political top-circles but also from the top and middle strata of bureaucracy.¹ Reasons for the increased role of public administration are not hard to find: politicians are not always competent to deal with complex issues which come before them. Public administration assumes a decisive role in judging the correctness or incorrectness of given political choices.²

The government of Pakistan, besides control over law and order, has established its control over political participation, economic activities and social conditions.³ For example, the government does not only directly intervene in education but also through setting up curricula, grants to colleges and universities and inspection of schools, etc., controls the educational activities of private institutions.⁴

¹ Ibid.

² Robert E. Ward and Roy C. Macridis, eds., Modern Political Systems, Asia (Englewood-Cliffs, New Jersey: Prentice-Hall, Inc; 1963), p. 282. Also, "Social reform movements in the newly emerging nations will be largely conceived within governmental bureaucracies where the educated are concentrated". Jack D. Mezirow, Dynamics of Community Development (New York: The Scarecrow Press, Inc; 1963), p. 3.

³ Robert D. Campbell, Pakistan: Emerging Democracy (Princeton, New Jersey: D. Van Nostrand Company, Inc; 1963), pp. 33-102.

⁴ The first Prime Minister emphasised that the State was "not to play the part of a neutral observer wherein Muslims may be merely free to profess and practice their religion". The State was to play a positive part in the effort of building up an Islamic Society. Liaqat Ali Khan quoted by Wilfred Cantwell Smith, Islam in Modern History (A Mentor Book; New York: The New American Library, 1957), pp. 217-18.

In the economic field, though the proclaimed policy of the government is the encouragement of private enterprise, in practice, there is a tight control over private economic activities. This is reflected in public undertakings and direct and indirect control of private decisions industrial as well as non-industrial. Conscious government action in decreasing allotment of foreign exchange for private investment causes absolute decline in that sector. Effective import controls influence (or even determine) private decisions on size, location and scale of operation of plants, the raw material to be used and output produced. There exist powerful levers to influence decisions in non-industrial private economic activities. They are, for example, codes and permits, route permits, acquiring land for government purposes and detailed regulations in many other fields. Important decisions are in the hands of a few government officials and ministers. In case of economic decisions, power rests primarily with the Ministry of Finance and, within the Ministry, with a very small number of individuals, all of them civil servants.¹

The Role of the People

Political innovations of recent times may be taken to "signify nothing less than political domination of the masses".²

¹Gustave F. Papanek "The Location of Economic Policy Decisions in Pakistan", in Public Policy Vol. IX (Cambridge: Massachusetts: Graduate School of Public Administration, Harvard University, 1959), pp. 127-35.

²Ortega Y Gausset, The Revolt of the Masses ("Unwin Books"; London: George Allen & Unwin Ltd; 1961), p. 13.

Muslim India following Islamic tradition in an environment of Hindu majority built up a system where rulers did not stand above law and where Sultans and Emperors could hold their sway only with the help of the Muslim people. The imposition of British rule in India disturbed the order; the very basis of it was the "consent of indifference"¹ and the British could retain their rule only until the masses remained indifferent. In fact, today, no government can afford to ignore its people. Even the totalitarian states have established highly organised programs of propaganda aimed at 'political education'.

The role of the Muslim masses was decisive for the creation of Pakistan. In its efforts at socio-economic modernisation the government has undertaken comprehensive planning for rural, agricultural and industrial development, agrarian reforms as well as various regulatory activities. Such tremendous tasks assumed by the government demand a great measure of positive support and active participation on the part of the people.² In fact, any government can be more effective if it can get the governed to act positively in support of its activities.³ The Government of Pakistan is aware of the crucial role of the people in the implementation of any of its plans. The Five-Year Plans have underlined the importance of the "mobilisation of the peoples' imagination and energies".⁴

¹Michael Edwardes, The Last Years of British India (London: Cassel, 1963), p. 10.

²Eisenstadt, op. cit.; p. 25.

³Campbell, op. cit.; p. 50.

⁴Government of Pakistan Planning Commission, The Second Five Year Plan 1960-65. (Karache: Manager of Publications, 1960), p. 105.

The Attitude of the People Toward the Government

Pakistan as a Muslim land commands the deepest loyalty of Muslim community in Pakistan but peoples' attitude toward government ranges from passivity and indifference to active resistance.¹ The people regard government as a vague, monolithic and omniscient organ which acts according to its whims.² They respect law not because of willing cooperation, something morally binding, but out of fear. The moment symbols of fear are removed, respect for law ceases to exist. More important than that, few feel a violation of conscience when they break government laws. There is rather a sense of heroism in defying the government. Anti-government talk in railway trains, private gatherings and social functions is a common phenomenon. In fact, "there is one topic which arouses the deepest interest and that is anti-government talk".³ Government circles as well as top citizens have deplored passivity, non-cooperation, indiscipline and non-acceptance of public authority on the part of the people.⁴

¹Government of Pakistan, Ministry of Education, Report of the Commission of National Education (Karachi: Manager of Publications, 1956), pp. 5-6.

²Callard, op. cit; p. 267.

³Binder, op. cit; p. 293.

This condition prevailed before the outbreak of religious demonstrations in 1953 but this has been a fairly common phenomenon except perhaps during the first years after the creation of Pakistan and the first few months of martial law in 1958.

⁴Government of Pakistan, Ministry of Education, op. cit; p. 6.

Administrative machinery arouses a sense of awe and fear rather than respect and love. Even if it is capable and efficient it is admired but not liked and whenever possible hindered in its activities. Some State functionaries, for example, policemen and revenue and tax collectors are hated. People have come to evolve double standards of conduct in relation to the State functionaries.¹

In view of the role which people are expected to play to facilitate the implementation of activities of a modern government, the importance of peoples' attitude towards it cannot be overemphasised. In a State like Pakistan which relies heavily on government to initiate program of developing physical and human resources; passive acceptance of government by the people is not really acceptable while opposition to it is intolerable. Yet efforts at reform in the government have focused on administrative apparatus and transplantation of non-indigeneous political

¹ A research survey indicated that there was an apparent discrepancy between data gained through questionnaires and those through informal discussion with the people. "When replies were to be recorded in black and white ... great restraints were exercised in answering the questions". Aquila Kiani, "Public Image of Bureaucracy" in Inayatullah, Bureaucracy and Development in Pakistan (Peshawar: Pakistan Academy for Rural Development, 1963), p. 391.

institutions.¹ But changes in formal processes of public administration can hardly be relied upon to rectify problems directly connected with political ideals of those who are to be governed.² Our study proposes to give proper attention to the gap which exists between the people and their government.

Some Approaches to the Study of Peoples' Attitude Towards Government

1: Nationalist Interpretation

The Report of the Commission on National Education is perhaps the first attempt to analyse the problem of peoples' negative attitude towards government.³ The commission holds that paternalistic attitude of British administration, encouragement

¹Several reports on the mechanism of administration and proposals for reforms in the Government of Pakistan are available. See, for example, Government of Pakistan, Planning Board, First Five Year Plan 1955-60 (Karachi: Manager of Publications, 1957), pp. 91-123. Government of Pakistan, Planning Commission, op. cit., pp. 105-125. Rowland Egger, The Improvement of Public Administration in Pakistan, a report to the government (Karachi: 1953); Report of the Provincial Administration Commission (Lahore, 1960) and Barnard Gladiux, Reorientation of Pakistan's Public Administration for Economic Development (Karachi: 1955). (The latter was not officially released). A notable practical reform has been made by the introduction of the system of Basic Democracies. At the surface, it looks people-centered but it is mainly governmental tutorship. How far it will go in promoting civic responsibility, is hard to judge at its infancy. For discussion about this institution, see chapter three of this study.

²Many a study concerned with reform in government has emphasised this point. See, for example, Iskandar Bashir Shalhub (now Shalhub dropped), "Planned Administrative Change in Lebanon" (Unpublished Ph.D. dissertation, Maxwell Graduate School of Public Affairs, University of Syracuse).

³The Commission was set up to suggest reorientation and reorganisation of the educational system in order, inter alia, "to develop among the people a sense of public duty, patriotism and national solidarity". Government of Pakistan, Ministry of Education, op. cit., p. 339.

of peoples' passive submission towards it and unrelenting criticism of it by people during its last years are responsible for the present phenomenon of negative, uncooperative attitude towards government in Pakistan.¹

The keynote of British rule in India was paternalism.² The real power at the local level was held by the representatives of British raj and central and provincial government. It is also true that people gave passive submission to the British rule but only to the extent to which the latter was "prepared to interfere in the life of the people outside the essential superficialities of law and order and the limits necessary to economic exploitation".³ The people did not acquire a tradition of opposition to government during the nationalist upsurge. The factual power of the British simply did not have an inherent validity for the society. It was a foreign body and the antibody produced as a defense mechanism reflected itself, in the beginning, in aloofness from any contact and, later in active opposition. The opposition to the British rule illustrates the problem of negative attitude towards it more than it explains the same in Pakistan.

¹ Ibid., pp. 5-7.

² Callard, op. cit., p. 267.

³ Michael Edwardes, A History of India (London: Thames & Hudson, 1961), p. 273.

2: An Adventure in Self-criticism

The Commission on National Education puts equal blame on the top political leadership and the public services. With the exception of some dedicated men and women who labored with integrity and indefatigable effort for the building up of Pakistan and took genuine interest in the problems of the people, the political leadership and public administration helped perpetuate the concept of ruling oligarchy in the minds of the people even after the achievement of Pakistan. While the politicians practised instability in government, the civil service attempted "to create an impression that the routine performance of their normal duties was, in reality, a personal favour towards anyone who benefited from them".¹

However, the disservice of the top political leadership does not mainly consist in their practice of governmental instability as such. In the eyes of the public, the political leadership has been guilty of not fulfilling the mandate given to it at the time of the creation of Pakistan. Similarly, though many public officials have "exhibited no sense of duty, no mark of efficiency, no concept of the sacred trust of public office"², we have to understand what 'duty', 'efficiency' and 'sacred trust of public office' mean in the context of Pakistan's ideals.

¹ Government of Pakistan, Ministry of Education, op. cit., p. 7.

² Ibid.

3: Economic Class Consciousness

A majority of the people of Pakistan are depressed. They are illiterate, ill-clothed and inadequately housed. In East Pakistan, for example, population pressure, fragmented holdings, declining bullock power, poor yields, low incomes and the lack of a fair marketing system and good communications are some of the important factors leading to mass unemployment and mass poverty.¹ Situation is not any better in the rural areas of West Pakistan. Not only poverty has low social prestige but it is a handicap which renders even the right of franchise a feeble weapon in the hands of the masses.² On the other hand, the privileged few have always controlled most of the property and income and enjoy all of the "status".³ On the other, they live their lives with little regard for the under-privileged.

There seems to be a good deal of truth in the proposition that in developing countries inequalities of economic structure create a gulf which separates the most powerful, wealthy and ruling elements from the least powerful and the poor and that the mass of population is led to "believe that the government acts almost exclusively on behalf of the wealthy".⁴ Issues of

¹ Government of Pakistan, Ministry of Food and Agriculture, Report of the Food and Agricultural Commission (Karachi: Manager of Publications, 1960), p. 39.

² Report of the Land Reform Commission for West Pakistan (Lahore: Superintendent, Government Printing, West Pakistan, 1959), p. 20.

³ Campbell, op. cit., p. 92. The post 1958 period, however, has seen great corrective social measures, a most important being land reform.

⁴ John J. Johnson, ed., The Role of the Military in under-developed Countries (Princeton, N.J.: Princeton University Press, 1962), p. 16.

strictly economic nature in Pakistan, however, have been of little popular concern and their role in public political life has been surprisingly small.¹ More importantly, the question of social justice in Pakistan is related to the general question of place of Islam in socio-economic life of the community.² As such, the concept of economic class consciousness will not carry us far to explain peoples' attitude towards government.

4: Regionalist Interpretation

Pakistan's two main territorial constituents are East Pakistan and West Pakistan, about a thousand miles apart from each other. The seat of government is located in the West wing and it is generally understood that East wing has played less important role.³ In administration, particularly the higher echelons, the number from East Pakistan has been low.⁴ An easy conclusion (which has served the purposes of propaganda, internal or external) has been drawn that West wing dominates East wing and plays the role of an exploiter.

¹Papanek, op. cit., pp. 140-41.

²"Islam stands for the unity of worship and work, of faith and worldly activity, of spiritual and material realities, of economic and moral values, of this world and the afterworld. From this pervasive unity there issue all Islamic laws, political and economic theories and allocation of rights and obligations." Sayyid Qutb quoted by Hazem Zaki Nuseibeh, The Ideas of Arab Nationalism (Ithaca, New York: Cornell University Press, 1956), p. 167.

³New Pakistan has two capitals, one in Islamabad, the seat of the executive and one in Dacca, the seat of the National Assembly.

⁴Walter Wallbank, A Short History of India and Pakistan ("A Mentor Book"., New York: The New American Library, 1963), p. 280.

The charge of economic discrimination has drawn frequent attention and not without justification. In spite of the wish that economic opportunities should be moved to the people and that average standard of living in the two wings should become approximately equal, the performance fell considerably short.¹ A serious attempt to eliminate disparity between the two wings has been made, as in many fields, by post - 1958 government. The economic grievances, however, "have been only a part of a complex amalgam of issues". They have "sparked fewer serious demonstrations or riots than language, religion, regional autonomy and other non-economic issues".²

The people of the two wings participated together in demonstrations connected with religion and foreign policy but the questions of language and regional autonomy have been powerful centrifugal forces mainly in East Pakistan. It is difficult to determine the extent to which they have been genuine issues expressive of public feeling and to which they have been incited by selfish politics; they have been, definitely, fully exploited. Caste Hindus have worked consistently for encouragement in East Pakistan of centrifugal tendencies.

¹R. Sobhan "Problem of Regional Imbalance in the Economic Development of Pakistan", Asian Survey II (1962).

²Papanek, op. cit., p. 141.

Provincial autonomy and provincial rights has been their slogan.¹ The elections of 1954 which were fought mainly on the regional autonomy platform attracted only 37% of potential voters in East Pakistan.² That a sizeable portion of at least urban population went to demonstrations is explained by the fact that higher echelons of government administration in East Pakistan were manned by a group of haughty administrators from the Panjab who failed to develop proper relationship with the public. As Islam remains a very strong motive of social and political conduct among the Muslims of East Pakistan, all government activities and conduct of the civil services must stand up to Islamic standard.³

5: Towards a Proper Study of the Problem

The problem of peoples' attitude towards government in Pakistan should be approached with reference to the Muslim politico-administrative institutions. This approach seems more plausible because people of Pakistan are primarily Muslims. Islam is the most vital force, a glaring example of which is the creation of Pakistan itself. The glorious Muslim past whether Indian or non-Indian continues to exert its influence

¹A National Convention of minorities "demanded that only three powers, namely defense, foreign affairs and currency should be given to the Centre and the rest should be vested in the Provinces." G.W. Choudhury, Constitutional Development in Pakistan (Lahore: Ilmi Printing Press, 1959), p. 119.

²Mushtaq Ahmad, Government and Politics in Pakistan (Karachi: Pakistan Publishing House, 1959), p. 184.

³Heyworth-Dunne, op. cit., p. 73.

and nourish the ideals of Muslims in Pakistan.¹ It is difficult to understand the growth of Pakistan movement, the astonishing rapidity with which the idea spread among the Muslims and the intense emotional attachment which it commanded unless we understand that it was inherent in the history of Muslim community in India.

More important than the sheer weight of tradition (which, no doubt, limits the use of experimentation in any society) is the fact that principles of Islam have been upheld, even in modern times, as ideal for reconstructing the socio-economic and political life. Islamic ideal is the most creative and integrative force in Pakistan. As Smith says "without the stamina and morale generated by religious fervour, the new dominion would hardly have survived the devastations of its first disorders. Pakistan by virtue of being Islamic (in an as yet undefined sense) could call on a morale and integration

¹"That Muslim politics should have run a parallel course and should never have merged in the Hindu current of politics is a strange fact of modern Indian History. In so segregating themselves the Muslims were influenced by some mysterious feeling, the source of which they could not see but which was all the same directing them to keep apart from Hindus. This mysterious feeling and this hidden hand was no other than their pre-appointed destiny, symbolised by Pakistan, which, unknown to them, was working within". Ambedkar quoted by Ishtiaq Husain Qureshi The Muslim Community of the Indo-Pakistan Subcontinent (The Hague: Mouton & Co; 1962), p. 304.

that proved of prime significance not only in creating the nation but in sustaining it in hardship and in impelling it forward to energetic construction".¹

Nazmul-Karim rightly emphasises that Pakistan movement was aimed at establishing an Islamic state and for all the problems of Pakistan we must seek and find solutions in that context and by that criterion. The concept of Islamic State is not only the one which interpreted circumstances under which the new state of Pakistan was inaugurated but it is also the one "which will shape and determine its future course".² There can be no stronger justification than this to study the development of the Muslim concept of state as a background to the government of Pakistan and understanding and promoting public positive attitude towards it.

¹Smith, op. cit., p. 214.

²A. K. Nazmul-Karim "Pakistan and Islamic State", Muslim World 43 (1953), 248.

CHAPTER II

THE BACKGROUND OF THE ISLAMIC REPUBLIC OF PAKISTAN

The Rise of Islam

Whatever reasons might be advanced for the rise of Islam, to a Muslim, Islam is a religion of God communicated through the Prophet Mohammad in whom the series of Apostles reached its culmination. The Quran is the final revelation of the Divine Will, superseding all previous ones.¹ The Prophet, at the age of forty, directed his efforts towards preaching, first among his family and then at public fairs, the unity of God, submission to His Will and abomination of idolatory.² Antagonism at Mecca and favorable response from a handful of persons from Medina made him migrate to the latter.³ At Medina he founded the Muslim Community, "an umma in distinction from the rest of the people".⁴ Members of the community were Muslims (i.e., had submitted to the Will of God communicated to them through the Prophet) and were "bound by common obligation to a superior divine authority".⁵

¹H. A. R. Gibb, Mohammadanism ("A Mentor Book"; New York: The New American Library, 1955), pp. 11-12.

²T. W. Arnold, The Preaching of Islam (Lahore: Shaikh Muhammad Ashraf, n.d.), p. 11.

³William Spencer, Political Evolution in the Middle East (Philadelphia: Lippincott, 1962), p. 6.

⁴Majid Khadduri, War and Peace in the Law of Islam (Baltimore: Johns Hopkins Press, 1955), p. 4.

⁵Ibid.

The pre-Islamic political unit was a tribe and members owed their allegiance to the head of the tribe; the basis of allegiance was common descent. Recent researches indicate that the Arab tribe during the time of the Prophet was not a simple kinship group of common descent but due to inter-tribal marriages, had developed a complex structure. "This structure, however, was thought of in terms of kinship"¹, and thus, for all practical purposes, blood ties were paramount. In the newly-founded community, kinship was rejected as basis for membership. All Muslims were equally members of the umma; all were brothers. No social distinctions were imposed upon the members of the brotherhood. God recognised no differences among them save on the basis of 'piety' and 'God-fearing'.² The new loyalty was loyalty to the umma charged with the mission of 'instructing men in the ways of God, persuading them to do good and dissuading them from evil'.³

The Muslim community conceived as a single indivisible organisation to uphold the true faith was to be guided in its activities by the Law of God, the Sharia, the first source of which is the Quran.⁴ The Sharia is considered immutable and valid for all times. This conception of law is based on the

¹Montgomery W. Watt, Islam and the Integration of Society (London: Routledge and Kegan Paul, 1961), p. 146.

²Quran, 49:13.

³Ibid., 3:110.

⁴For the development of Sharia, see Gibb, Mohammedanism op. cit., pp. 72-84.

inability of human reason to perfectly comprehend the intricate problems of social life and on human aptitude to do evil. The Sharia "by virtue of its character as the expression of God's will, and by the common acceptance of its prescriptions and their implications on the part of all Muslims, supplies the authority, sanctions and moral basis for the unity and constitution of the umma as a political entity".¹

In the conception of the Sharia is implied the nature of the Muslim State. The State in Islam is not an institution which can legislate as such and impose its laws on individuals or groups. It exists in order to uphold the Sharia and to lead the community in accordance with it for the interpretation of which there is room.

The Prophet, who transmitted the Law of God, was also the executive head of the community. After his death, the link between God and the community was removed. However, the religion was completed.² What was needed in the first place, was a leader to safeguard the Law. A number of influential persons agreed that there should be a leader, one leader, and they chose Abu Bakr for that. A general baya was accorded to him. The baya was a contract with him that he would uphold the Sharia.³

¹H. A. R. Gibb, "Constitutional Organisation", in Majid Khadduri and Herbert J. Liebensy, eds., Law in the Middle East Vol. I. (Washington, D.C.: Middle East Institute, 1955), p. 4.

²Quran, 5:4.

³Khadduri, War and Peace...op. cit., p. 11.

It is maintained that this step had two important consequences for future developments in constitutional theory:¹

- 1: The election had to be reconciled with, and justified by, the principles of the Sharia.
- 2: The person of the Prophets' successor, the Caliph, was set for the jurists as the focus of constitutional theory.

The Caliphate was rationalised along the line that the Will of God may be manifested in the Will of the umma. However, the popular element (of electing the Caliph) did not confer authority on the umma in regard to the Caliph; he derived his authority from the Sharia. The later developments emphasised the person of the Caliph because it was thought that "the ruler of the umma possessed, under God, the sole responsibility for ruling. In the last resort he was responsible to God and his own conscience alone."² While the ideal Caliphate was identical with the rule of the Sharia, the historical Caliphate developed into a strong military institution. The disregard of the stipulation that Caliph's authority was bound up with the maintenance of the Sharia on the one hand, and insistence upon the obligation of submission to him by the people on the other, resulted in a situation in which the jurists "emptied

¹Gibb, Loc. cit.

²Albert Hourani, Arabic Thought in the Liberal Age 1798-1939 (London, New York, Toronto: Oxford University Press, 1962), p. 5.

the 'contract' of all moral content and left only the factor of power operative in the political organisation of the Community".¹

Schismatic Views of the Caliphate

The election of Abu Bakr does not seem to have gone unchallenged. In the first century of Islam, a part of Muslim community held Ali, the Prophet's son-in-law, to be his rightful successor. In time, there developed a whole doctrine in support of this claim. Caliphate to Shia was fundamental, lutf of God to His people. It was to be instituted by the Prophet himself and then continued to be instituted by the outgoing (dying) Imam.² However, the type of government is not spelled out; in practice, it resembled the Sunni type.

Another group which refused to accept orthodox principle of succession was the Kharijite. To them Caliphate as such was not a matter of religious obligation and that the community could fulfill the demands of the Sharia within the framework

¹Gibb, op. cit., p. 16. He argues that jurists failed to build upon the foundation of moral duty to depose an evil-doer imam a doctrine of civic duty mainly because of two reasons. The first was the excesses committed by the Kharijites in the name of egalitarianism and the second was the rigid division of the subject population into classes, namely, military, official, religious, mercantile and masses each confined to its proper function and status. This was due to the influence of Persian theories, he holds. (See pp. 14-16).

²For a concise discussion of the doctrine, see Hasan b. Yusuf b. Ali Ibnu'l Mutahhar Al-Hilli, Al-babu l-hadi ashar; a treatise on the principles of Shute Theology translation by William McElwee Miller (London: The Royal Asiatic Society, 1928).

of civil administration.¹ People could elect an Imam if they could not settle their problems equitably, this view of Imamate was purely utilitarian.²

The rise of independent principalities by the middle of tenth century under the de facto control of local military commanders who owed only theoretical allegiance to the Caliphate led to the addition in the Muslim political thought of the institution of Sultanate. The concern of the jurists to find a formula to fit actual historical circumstances in the framework of the Sharia, manifested itself in the elaboration of what may be called a "theory of usurpation of power".³ According to this theory, the investiture of a Sultan by Caliph after former's control of power, and his allegiance to the Caliph, left a semblance of legitimacy to Sultan's power. Al-Ghazzali puts it in the following words:

An evil-doing and barbarous sultan, so long as he is supported by military force, so that he can only with difficulty be deposed, and such an attempt to depose him would create unendurable civil strife, must of necessity be left in possession, and obedience must be rendered him."⁴

He has sought to justify his position on the basis that necessities make allowable even that which is prohibited.⁵ Thus he vindicated the rule of the Sharia in the community. Temporal

¹H. B. Sharabi, Government and Politics of the Middle East in the Twentieth Century (Princeton, N.J., Toronto: D. Van Nostrand Company, Inc., 1962), p. 15.

²Elie Adib Salem, Political Theory and Institutions of the Khawarij (Baltimore: Johns Hopkins Press, 1956), p. 51.

³Sharabi, op. cit.

⁴Ibid., p. 16.

⁵Gibb, "Constitutional Organisation", op.cit., p. 19.

power as such did not carry any authority. Until the Sharia was obeyed in daily activities, the community had not fallen in error. The Caliphate in Baghdad came to an end in 1258 A.D. but was revived in Cairo. It was, however, not effective at all and in the post 1258 period the problem became one of finding a new basis for the association of the State with the Sharia in order that temporal power could be validated.

The Hanbalite Ibn Tamiya born five years after the end of the Baghdad Caliphate made a significant departure from the previous theory. The realities of power convinced him that unity of the umma was essentially one of minds and hearts. The coercive power of the Sultan if complemented by that of the Ulama to interpret the Sharia which was to be applied in the sphere of human relationships would save the community from falling into error. The Ulama to him, were the "natural representatives of administration and legislature in the Muslim state".¹ This type of government was called Siyasa Shariya. Speaking in the context that Muslim community would be divinely guided so long as it adhered to the Law of God, Binder says that "to the extent that this group (of Ulama who took from the government its responsibility for the moral well-being of the Muslims) is sprung from the heart of the community itself, a large measure of individual moral responsibility was returned to ordinary believers".²

¹E. I. J. Rosenthal, Political Thought in Medieval Islam (Cambridge: University Press, 1962), p. 56.

²Binder, op. cit., p. 25.

Summing Up

The Prophet founded a community which survived the onslaught of doctrinal differences as well as those of power struggles.¹

The great cementing factor was the Sharia which developed into a comprehensive system of ideal morality. The Sharia which comprehended men's relations with each other as well as with God could not be denied unless on the peril of apostacy. The devotional acts such as prayer and fasting had their social aspects too: getting together and feeling a corporate life on the occasions of celebrations. It is rightly said that "the religion of Islam created not only a structure of rights and duties, but also a moral solidarity to support it, Muslims believed themselves obliged to keep their neighbour's conscience as well as their own, not only to do right but to exhort and help others to do so."² The Muslims did not let go their moral unity out of hand. In spite of differences between Sunnis and Shiis - and between various divisions of each - there always existed a sense of community. It was based on the "profound

¹The sense of community among the Muslim persists even now. "The third circle...the circle of our brethren in faith... The pilgrimage should be a great political power...a regular political congress wherein the leaders of Muslim states...draw up in this universal Islamic Parliament the main lines of policy for their countries and their cooperation together until they meet again". Gamal Abdel Nasser, The Philosophy of the Revolution ("Economica Books", Buffalo: Smith, Keney & Marshall, 1959), pp. 76-77.

²Hourani, op. cit., pp. 2-3.

conviction of Muslims that to live together in unity was more important than to carry doctrinal disputes to their logical conclusions".¹

During the time of the growth of strong Sultanates, sufi organisations were spread across the whole Muslim world. By the 12th and 13th centuries, they had their networks of tariqas which transcended geographical and linguistic barriers. Their contribution in maintaining the unity cannot be over-emphasised. They maintained not only unity but also, and primarily, faith which was the real basis of unity among diverse linguistic, racial and geographically separated groups.

Islam In India: The Sultanate of Delhi

The first Muslim conquest of Sind introduced Islam as a religion into one frontier tract of India.⁴ Modern researches emphasise the role of traders, travellers and, most importantly, of Sufi missionaries in spreading Islam in India.⁵ The mystic leanings of the missionaries appear to be one of the great weapons of conversion but they instructed the converted ones

¹ Ibid., pp. 3-4.

² Hamilton Alexandar Rosskeen, Gibb, An Interpretation of Islamic History (Lahore: Orientalia Publishers, 1957).

³ Ishtiaq Husain Qureshi "The Background of Modern Trends in Islamic Political Thought" in Ralph Braibanti and Joseph J. Spengler, eds. Traditions, Values and Socio-economic Development (Durham: Duke University Press, 1961), p. 201.

⁴ Wdiseley Haig, The Cambridge History of India Vol. III Turks and Afghans (Cambridge: The University Press, 1928), pp. 8-9.

⁵ Arnold, op. cit.

in such Islamic duties as prayers and fasting. To many of the missionaries, not even those who attain the highest degree of holiness and communion with God are exempt from the obligation of obeying the religious law.¹ Political control of Islam over India was established in 1210 A.D. under Delhi Sultans.

The Sultanate of Delhi (1210 - 1526 A.D.) was a Muslim Sultanate. The Muslim Sultans conquered India on their own initiative but their rule was legitimised by the recognition of the suzerainty of the Abbasid Caliphs, first in Baghdad and then in Cairo. The Sultans were autonomous in the internal affairs of the Sultanate. The theory of usurpation of power applies here also. The administration of the Sultanate, however, was closely associated with the Sharia.² Non-Muslims classify the Sultanate period as a theocratic rule.³ The formal recognition given to the Caliph impressed upon the Muslims immigrants as well as the native converts that they were a part of the larger Muslim community.

¹Ali B. Uthman al-Jullabi al-Hujwiri The Kashf Al-Mahjub new ed. translation by Reynold A. Nicholson (London: Luzac & Company, Ltd; 1959), p. 12.

²I.H. Qureshi, The Administration of the Sultanate of Delhi (Karachi: Pakistan Historical Society, 1958).

³Sri Ram Sharma, "The Nature of the State in Medieval India", Islamic Culture XXVII, No. 2 (1953), 89-97. This view of Islamic State is fallacious because it is not God but God's law which precedes the State and governs it. As such, Islamic State is nomocracy "a system of government based on legal code; the rule of law in a community", and not theocracy. See Khadduri, War and Peace, op. cit., p. 16.

An important feature of the Delhi Sultanate was the development of 'benevolent administrative institutions'.¹ Learned Ulama exerted their influence not only in the department of justice and hisbah but in all the major activities of the State. The establishment of madrassas dominated by the Ulama gave rise to a powerful class of administrators, well-versed in the Sharia and having base among the general public.²

We can depict the Alim-administrator in India, no less than in China,

"as a scholar-gentleman, with his roots in society, sensitive to the varied complexities of individual social and family situations, and adapting the law and his own behavior to fit them, accommodating himself to state power, ...but checking it simply by being what he was".³

Justice and continuity in administration within the framework of the Sharia helped produce conditions in which intra- and inter-dynastic intrigues and political struggles for control of the Sultanate left the public undisturbed.⁴

An important characteristic of the Sharia is that nobody is above it. It applies equally to the ruler and the ruled. This fact was recognised in India by the general public.

¹I. H. Qureshi, "Introductory" in A History of the Freedom Movement. Vol. I 1707 - 1831. (Karachi: Pakistan Historical Society, 1957), p. 31.

²M. W. Mirza, "Muslim Religion and Society" in The Delhi Sultanate, Vol. VI of The History and Culture of the Indian People, ed. R.C. Majumdar (Bombay: Bharatiya Vidya Bhavan, 1957), p. 613.

³David S. Nivison and Arthur F. Wright, eds., Confucianism in Action (Stanford, 1959), p. 17 cited by Manfred Halpern, The Politics of Social Change in the Middle East and North Africa (Princeton: New Jersey: Princeton University Press, 1963), p. 18.

⁴Qureshi, Loc. cit.

There are cases on record in which people have sued the Sultans and got their redress.¹ Not only that, Muslims have a right to depose an evil-doing Imam. Although no specific means have been devised to this effect, yet in India People have, more often than not, revolted against the Sultans of whom they disapproved.²

Muslim's right to revolt was complicated in India by another important factor. India was a Muslim Sultanate in which majority of the people were non-Muslims and Muslim minority ruled in the framework of its own legal system. The Muslim community in India adopted many Hindu customs (some of them quite alien to Islam) but the community as a whole was moral and deeply religious. Most of the Sultans and many nobles were noted for their piety. The middle and lower classes of the Muslim society in India have always remained free from corruption and staunchly loyal to the Islamic way of life. Powerful moral and religious discipline has enabled the Indian Muslims to preserve their unity in a land of many cultures and religions.³

¹I. H. Qureshi, "Islamic Political Theory, Administrative Organisation, Law and Legal Institutions" in Ibid., p. 453.

²S. Moinul Haq "Barni's History of the Tughlugs (II): Sultan Muhammad bin Tughlug", Journal of the Pakistan Historical Society VII, Part II (1959), 73.

³Mirza, op. cit.

Elsewhere, this view has been stated even more emphatically.¹ The Muslim community in India "was faced for the greater part of its history with the colossal task of maintaining its separate entity".² Intra and inter-dynastic struggles among the Delhi Sultans never involved the non-Muslim help.³ Against the Hindu majority the Sultans had to depend upon the Muslims who were willing to support only that government which was closely identified with Islam. Any Sultan morally corrupt or disinterested in the maintenance of the Sharia did not stay long in his office.

Another important factor of complication regarding the attitude of the people toward government was the unimaginable influence of Sufi missionaries on the minds of the people. Sufism in its social character was directed against the Caliphate and the official Ulama who seemed to condone the ills of this institution as it developed during the Muslim history.⁴ India had a bewildering variety of orders. An order peculiar

¹ Qureshi, The Muslim Community in the Indo-Pakistan Subcontinent 612-1947, op. cit.

² Ishtiaq Husain Qureshi, "Islamic Elements in the Political Thought of Pakistan" in Braibanti & Spengler, op.cit., p. 215.

³ Riazul Islam, "Symptoms of Decline" in A History of the Freedom Movement, op. cit., p. 66.

⁴ Gibb, An Interpretation of Islamic History, op. cit.

to India is the Chishtī order the Sufis of which believe in the spiritual value of music and they "patronised professional singers of talent whatever their caste or religion might be".¹ Their hold on the popular mind sometimes made the Sultans and the official Ulama submit before the people as well as the Sufis.

India was always a scene of intra and inter-dynastic intrigues for the control of the throne; the Chishtī saints were very abhorrent of all this struggle. They were very critical of the government and the officials in high positions. The struggle of the ruling families was termed as purely worldly and, therefore, un-Islamic. While peaceful missionary methods of the Sufis had soothing effect on the overwhelming Hindu populace,² their critical attitude toward government contributed to perpetuate the widely-held belief among the Muslims that government could command allegiance only when it was closely identified with Islam.

The Suhrawardiyya order, on the other hand, participated in governmental activities and public life positively; many of them were fine administrators. They laid more emphasis

¹Yusuf Hussain Khan, "Sufism in India" Islamic Culture XXX (1956), p. 242 and 248.

²This discussion is based on Khaliq Ahmad Nizami, "Early Indo-Muslim Mystics and Their Attitude Towards the State", Islamic Culture XXII, (1948), 387 - 98 and XXIV (1950), 60 - 71.

upon the Sharia and disapproved of music and dancing. Often, their influence upon the people was used in aiding the government machinery to perform its jobs when the people defied the government officials.

The Mughul Empire

The energies of the Sultanate of Delhi had been dissipated by the beginning of the 16th century. There appeared many independent principalities within the Sultanate.¹ Babur defeated the last Sultan and founded the Mughul Empire. By that time the theory of the unity of Imam had given place to that of the plurality of Imams. The Mughuls could, and they did, style themselves as Caliphs in India. In history they are known as emperors.

Ibn Tamiya's Siyasa Shariya had made its impact and found full expression in the Ottoman Empire. During the time of the Suleiman, the Magnificent, Ulama trained in a superbly-planned educational system, taught, interpreted and enforced the all-embracing Sharia. Lybyer sums up the place of what he calls 'Moslem Institution' in the system of government as follows:

There was an aspect in which the Moslem Institution, based upon the Moslem population of the Empire, fitted the government as hand fits gloves. This figure, moreover, can be pressed beyond the mere comparison of shape; the hand is of much the same efficiency with or without glove, while the glove is useless without the hand; furthermore, the hand may live to wear a succession of gloves".²

¹S. M. Imam-ud-Din, "The Nature of Afghan Monarchy in India", Islamic Culture XXXII (1958), p. 275.

²Albert Howe Lybyer, The Government of the Ottoman Empire in the Time of Suleiman the Magnificent (Cambridge: Harvard University Press, 1913), p. 26.

In India, on the other hand, the importance of the Sharia as the all embracing code of life declined and it was particularly marked during Abbar's period. He attempted to create a new type of loyalty by centralising the religious symbols of Islam.¹ He introduced some changes in the Kalimah and the practice of prostration in which every visitor coming to the court would have to bow before the emperor. He reduced the powers of the Sadr-us-Sudur of distributing grants to the needy in the empire.² He broadened the base of his political support by bringing in the non-Muslims. (He removed Jizya). His concessions against the Sharia undermined the Muslim character of the empire. Also, the Ulama occupying official positions were suspected of latitude. The process of concessions went so far that some have described it as a big move towards founding a national empire.³

Muslim's reaction to the emperor's measures was very strong and "fed the flame of widespread rebellion in Bihar".⁴ The qadis and Imams issued fatwas against the emperor, declared him

¹S. N. Eisenstadt elaborates on the difficulties involved in using religious symbols in centralised empires. See his "Religious Organisations and Political Process in Centralised Empire", The Journal of Asian Studies XXI (1962), 271 - 294.

²Shaikh AbdurRashid, "Madad-i-ma'ash Grants under the Mughuls", Journal of the Pakistan Historical Society IX (1961), 98 - 108.

³K. M. Panikkar, A Survey of Indian History (Bombay: Asia Publishing House, 1954). See 4th Chapter "Toward a National Empire".

⁴Iftikhar Ahmad Ghauri, "Ideological Factor in the Mughul War of Succession, 1657 - 58", Journal of the Pakistan Historical Society 8 (April, 1960), 98.

heretic and enjoined the people to rise against him. "For a moment the foundations of the Empire were shaken by the simultaneous outbreak of troubles in the East and the North-West and Akbar overcame this danger by an ostentatious display of orthodoxy for the time being and also with help of his Rajput and Persian supporters".¹

The social milieu created by the political atmosphere dimmed Muslim's vision of the fact that Islam, to be able to live in a Hindu majority, must be on its guard all the time. The margin between tolerance and apathy being always thin for the average man, real indifference could be created by a continuous propaganda in favor of the doctrine that all religions were the same. This attitude might well have been encouraged by the activities of the Chishti mystics on the one hand, and the Bhakti movement whose preachers believed in the oneness of God and preached that all religions were the same, on the other. Akbar himself had Sufi tendencies and had frequented the tomb of Muin-ud-Din Chishti.

The absorptive power of Hinduism was matched by Islam's resilience to protect itself. "Whenever it (the Muslim community in India) felt that its entity or beliefs were in danger of being absorbed in the local milieu, it reacted strongly and threw up movements to counter such a possibility".² Islam found

¹Ibid.

²Qureshi, "Islamic Elements", op. cit., p. 215.

its defender in the person of the Majaddid to whom "the criterion of a true vision is its accordance with the tenets of Islam and that all visions in a state of 'intoxication' are not trustworthy".¹

It seems that the period of Jahangir and Shah Jahan was that of a transition in which Muslim community exerted itself on the central authorities to see to it that the Mughul Empire was not an Hindu-Muslim national empire but a Muslim Empire and that it should exist to uphold, preserve and promote the cause of Islam. Akbar's tradition of pantheism and heterodoxy, however, continued here and there in the inner circles of the imperial headquarters. In the 1657-58 War of Succession, heterodoxy and orthodoxy appeared in the persons of Dara Shukoh and Aurangzeb. The victory of Aurangzeb had ideological significance; it was victory of Islam over deviations.²

The British Administration

Political confusion and decay set in Muslim community in India following the death of Aurangzeb. Powerholders became morally corrupt.³ The story of the ruling elements during the

¹Qureshi, The Muslim Community, pp. 157-158.

²Ghauri, op. cit. In his struggle against Dara, Aurangzeb was backed by Sufis and Ulama. The Ulama pronounced Fatwas against Dara and cursed him during Friday prayers. "Shaykh Nizam Fadil...performed an enormous task in making the people understand the religious character of the struggle". Ibid., p. 113.

³Islam, op. cit., p. 73.

decline of the empire "is a story of men throwing away successively in the heat of that passion (of power) everything that could make that power worth having..."¹ There were, nonetheless, many individuals and sections even at the upper level of the society who did resist the virus of corruption. Shah Wali Ullah was the trenchant critic of the powerholding circles.² An important result of this situation was the disintegration of the empire into small principalities. A still more one was the weakening of defense of the Muslim community.

Out of the debris of the Mughul realm sprang new powers. One such power was the East India Company which, by 1757, established "a military and political position in India comparable with that of the Indian rulers who had divided up the heritage of the Great Mughuls".³ It proceeded to strengthen its power within the framework of the sovereignty of the Mughul emperors.⁴ While fiction of legal sovereignty of the Emperor was maintained, it enjoyed actual power and proceeded to institute 'reforms' in areas under this control. The most important field of reform was thought to be the law but an Hindu scholar

¹Percival Spear, Twilight of the Mughuls (Cambridge: The University Press, 1951), p. 12.

²Khaliq Ahmad Nizami, "Shah Waliullah (II): His work in the Political Field" in A History of the Freedom Movement, op. cit., pp. 512 - 41.

³R. Coupland, Britain and India ("Longmans Pamphlets on the British Commonwealth", London, New York, Toronto: Longmans, Green & Co., n.d.), p. 6.

⁴Edwardes, A History of India. pp. 210 - 11.

contends that it made any improvement in the content of the existing law which was the (Islamic) Sharia.¹ A significant consequence of changes in law was the loss of the powers of the Muslim qadis.² Persian and Arabic were replaced by English which became official language. The awareness to the Muslim's of the fact that Mughul emperor was emperor in name, was slow to come but it did come. The cumulative effect of various measures led the Muslims "finally to believe that the ultimate intention of the British rulers was to subvert their faith".³ The Muslims reacted strongly but in a confused manner and lack of organisation to face a disciplined enemy could result in nothing less than a crushing defeat. By 1858 India was incorporated as a part of the British empire.⁴

¹Ram Gopal, British Rule in India: An Assessment (New York: Asia Publishing House, 1963), p. 153. Some contemporary Englishmen held that Muslim law exercised "a powerful though unknown influence on the administration of justice even by the English judges". Bailie quoted by U.C. Sarkar, "some Important Features of Justice as Administered During the Muslim Rule in India", Islamic Literature V (1953), 34.

²B. B. Misra, The Central Administration of East India Company 1773-1834 (Manchester: Manchester University Press, 1959), especially, fifth and sixth Chapters.

³Coupland, op. cit., p. 33.

⁴The immediate impact of the takeover had disturbing effect upon the economic, educational and political life of the Muslim community. "The establishment of British rule crushed them (Muslims) and inflicted such injuries upon them that even after freedom they will take long to recover from them. Illiteracy, poverty, the loss of skills, and cultural stagnation cannot be wiped off easily or within a short time. The body of Islam in India and Pakistan must bear these scars for many a year to come". I. H. Qureshi "The Impact of the British Rule upon the Muslims", A History of the Freedom Movement Vol. II, Part II. (Karachi: Pakistan Historical Society, 1961), pp. 364-65. About the British impact on education, see Muhammad Shamsul Huq, Compulsory Education in Pakistan (Studies in Compulsory Education, No. 12", Neatherland: UNESCO, 1954), p. 24.

The Muslim community in India was made subject to what it considered an 'infidel' rule after its rule over India for more than six centuries. The new rulers did not owe even theoretical allegiance to the Sharia. While the upper Muslim classes either were debarred or did not participate in government,¹ the Ulama who had all-important influence on the Muslim public withdrew "from all association with the infidel rulers".² On the authority of a fatwa, the "Muslims agreed that British left them alone to practise their own religion without any interference and, as a result, they might continue to live as loyal subjects".³ However, the question whether India was a Dar-us-Salam (House of Peace) or Dar-ul-Harb (House of War) never ceased to agitate the Muslim mind.⁴

Two main lines of thought with political implications as to the place of the Muslims in India developed. Syed Ahmad Khan (b. 1817), an uncritical student of the West, made an ambitious effort at rapprochement between the British rulers and the Muslim subjects.⁵ His efforts were directed to achieve two goals:

¹Heyworth-Dunne, op. cit., p. 6.

²Richard S. Wheeler, "Pakistan" in Helen G. Mathew, ed., Asia in the Modern World ("A Mentor Book", New York: The New American Library, 1963), p. 194.

³Heyworth-Dunne, op. cit., for the text of fatwa see, A. Aziz, Discovery of Pakistan (Lahore: Sh. Ghulam Ali & Sons, 1957), Appendix I.

⁴In 1920, a good number of Muslims proceeded to Afghanistan and Iran so as to live in a country ruled by Muslims and not infidels. See Williams, op. cit., pp. 18-19.

⁵S. Moinul Haq "The Aligarh Movement (educational)" in A History of Freedom Movement. op. cit., pp. 472 - 73.

(i) removal of suspicion entertained by the British about the Muslims and vice versa (ii) facilitating Western education, specially scientific education, among the Muslims.¹ He was sincere to himself and passionate in his efforts and played a great role in helping the Muslims recover their political influence.²

He was opposed to increased representative government in India and advised the Muslims not to join Indian National Congress which was overwhelmingly Hindu in composition and nationalist in character. He exhorted Muslims to stick to Islam without indicating Islam's role in socio-political and economic life of the community. He interpreted Islam to show that it was not opposed to science nor to a rule by Christians.³ The Indian National Congress gained influence in Britain and Syed's ideas "were no more than a drop in an ocean".⁴ A notable service to the Muslim case in Britain was made by Ameer Ali alone.⁵

¹ Sir Syed's movement was strongly reacted against by Ulama and he was termed as naturalist and atheist. See Muhammad Al-Bahiyy, Modern Islamic Thought and Its Connection with Imperialism (in Arabic) (Cairo: Maktaba Wahbeh, 1957), p. 27.

² K.K. Aziz, Britain and Muslim India (London: Heinemann, 1963), p. 29.

³ Haq, op. cit.

⁴ Aziz, op. cit., p. 31.

⁵ Ibid. Unfortunately, Ameer Ali is not given the place he deserves for his contribution towards the creation of Pakistan. There is not even mention of his name in A History of Freedom Movement. In a survey of Islamic literature carried out in 1946, it was found out that the most quoted book was Ameer Ali's Spirit of Islam (1st ed. 1891). See Wilfred Cantwell Smith, Modern Islam in India (London: Victor Collanz Ltd., 1946), p. 51.

Ameer Ali's greatest service lies in his efforts at the revival of Muslim thought. Well read in Islamic as well as Western law, he presented Islam in a positive way and invited the West to embrace it. This was in great contrast to Syed's approach who wanted to prove that Islam was a respectable religion and should not be disdained and attacked.¹ Ameer Ali's books went into repeated publications and the Muslims who were under the stress not only of military power but non-Islamic missionary attacks, gained confidence in their history.²

In 1906, Muslim League was established on the model of Sir Syed's thought: "an independent organisation (perhaps, independent of Hindus) to secure independent political recognition from the British Government as a nation within a nation".³ During struggle for independence it stressed politico-economic rights of the Muslims within all-India framework. It remained a league of Muslim aristocrats. The single movement which expressed the desires and, therefore, caught the imagination of the Muslim public as a whole, was the Khilafat Movement. It

¹ Ibid.

² In his preface to 1927 edition of A Short History of Saracens (1st ed. 1899) he wrote:

"The work is not a mere chronicle of wars and conquests, or the rise and fall of dynasties. It is a record of the copious contributions made by the Sarcenic race under the flag of Islam, to human knowledge in all departments of science and literature; of their marvellous system of administration; of their economic and cultural development and remarkable position held by women in the social and legal system of Islam". See vi.

³ Aziz, op. cit., p. 62.

was the embodiment of Pan-Islamism aimed at the unity of the whole Muslim community.¹ More than that, it implied Muslim yearning to reinstate the Sharia in socio-political conduct of the community.

The confused situation of Muslims' demands was given a clearer expression by a poet-philosopher, Muhammad Iqbal. In his presidential address to the Muslim League in 1930 he said:

"The nature of the prophet's religious experience...is individual experience creative of a social order. Its immediate outcome is the fundamentals of a polity with implicit legal concepts whose civic significance cannot be belittled merely because their origin is revelational. The religious ideal of Islam, therefore, is organically related to the social order which it has created".²

He proposed that in order that Muslims could live according to their own law, they should be given a separate state or states where they could further develop this law according to modern needs.³

¹Afzal Iqbal, ed., Select Writing and Speeches of Maulana Muhammad Ali, Lahore: Shaikh Muhammad Ashraf, 1944), esp. pp. 155-193. Hindus have tried to conceal it. See Ramgopal Indian Muslims; a political history 1858-1947 (New York: Asia Publishing House, 1959), p. 205. "An unhappy exchange of attacks between Muhammad Ali and some others, who all happened to be Hindus...sent him also into their (Muslims' opposing Congress) camp and once again revived his Islamic zeal".

²Muhammad Iqbal, Presidential address delivered at the annual Session of the All-India Muslim League on December 29, 1930 available in Shamloo (psed?), Writing and Statments of of Muhammad Iqbal, (Lahore: Shaikh Muhammad Ashraf, 1952), pp. 8-9.

³Ibid., pp. 12-13.

Iqbal's scheme of organic institutional growth, however, did not make immediate impact on League's thinking, nor did League's program of politico-economic rights for the Muslims impress the mass of the Muslim population.

Just before his death, Iqbal made a successful effort to impress upon Jinnah that socio-political problems of the Muslims could not be solved by applying parliamentary democracy and socialism.¹ The only solution was return to the Islamic Law which in turn involved a free state (for the Muslims) for its further development to suit the modern conditions. This line of action, he emphasised, was not only the only solution to the problems of the Muslims but also the only method to get the support of the masses who had been supporting other Muslim religious groups opposed to the Muslim League on one ground or another. Jinnah finally accepted Iqbal's views and they "found expression in due course in the united will of Muslim India adumbrated in the Lahore resolution ... popularly known as the 'Pakistan Resolution'".² Conversion of Muslim League elite group into a mass organisation is adequately dealt in the existing literature.³ It is, however, important to quote a few lines from Jinnah to show the image of Pakistan he conveyed to the Muslims.

¹ Iqbal's Letters to Jinnah (Lahore: Shaikh Muhammad Ashraf, 1956).

² Muhammad Ali Jinnah in the forward, op. cit.

³ See Williams, op. cit., and Ian Stephen Pakistan (London: Ernest Benn Limited, 1963), pp. 69-79.

Speaking on an Islamic festival he said:

"Everyone except those who are ignorant, knows that the Quran is the general code of the Muslims. A religious, social, civil, commercial, military, judicial, criminal, penal code; it regulates everything from the ceremonies of religion to those of daily life; from the salvation of soul to the health of the body; from the right of all to those of each individual; from morality to crime, from punishment here to that in the life to come, and our Prophet has enjoined on us that every Musalman should possess a copy of the Quran and be his own priest".¹

¹ Jamal-ud-Din Ahmad, ed., Some Recent Speeches of Mr. Jinnah Vol. II (Lahore: Muhammad Ashraf, 1947), p. 404.

CHAPTER III

THE GOVERNMENT OF PAKISTAN

The President: Personal Dynamism

By 1956, political leaders could produce a constitution which confirmed the already existing parliamentary form of government but only to be suspended in 1958. The new constitution of 1962 creates a presidential form of government, president being head of the government as well as the State.¹ His ministers who are to serve at his pleasure, assist him in the performance of his functions. He can be removed by impeachment on the charge of violating the constitution, being guilty of gross misconduct or on the medical ground of physical or mental incapacity. If, however, motion for removal is supported by fewer than half of the members of the National Assembly, then original movers are automatically unseated.

¹The question as to which of the two constitutions is better is not settled as yet. Muhammad Ali during whose premiership the constitution of 1956 was promulgated is the leading defender of that constitution and the parliamentary form of government. See his "Reply to Questionnaire (of the Constitution Commission of 1960)" Pakistan Times, June 13, 1960, p. 8. Ayub Khan's defense of presidential form of government does not need documentation; it has become a mission with him.

The president's power to dissolve the national assembly, is limited only by the fact that he has to go to electorate within four months of dissolution.¹ The first presidential election was only a legitimisation of actual power; there was only one candidate and the electoral college composed of basic democrats had to express its opinion about him.

The emergency provisions place unlimited powers in the hands of president who, when satisfied that grave danger exists regarding the security of Pakistan, can promulgate laws which the national assembly cannot question even when it is in session.² "Article 30 (containing emergency provisions) is a form of constitutional dictatorship under which all forms of political activity can be controlled by the central government and the liberty of the citizen can be restricted without means of redress".³

The presidential powers are enhanced by prevailing political situation. Politics is made up of leading persons forming loose agreements to achieve and maintain power. Adherence of a politician to a policy means no office. Money or influence can bring prosperous political life. Given this situation a

¹ Arts. 13 and 14.

² Art. 30.

³ Keith Callard and Richard S. Wheeler in George McTarnan Kahiz, ed., Major Governments of Asia 2nd. ed. (Ithaca: N.Y.: Cornell University Press, 1963), p. 457.

president can mobilise tremendous powers, not necessarily unconstitutional, so much so that Ayub Khan's period has been described as constitutional autocracy.¹

This shift towards strong executive is not hard to explain against the historical background whether Muslim or British. However, in Muslim period, the executive head was limited by the Sharia and this was not only in theory but also in practice. During the British administration absolute rule was backed by military and police powers. It is held, that present powers of the executive are direct influence of the latter tradition. The presidential form of government assures stability.²

The Legislative Behavior

Pakistan did not see any election for the legislature upto 1962 when the national and provincial legislatures were elected in indirect way by an electoral college. Direct or indirect elections may not make much difference because people, in general, have been indifferent to election business.³ Money and influence have played their part. In the pre-1958 period in West Pakistan, influential landlords have controlled the

¹Khalid B. Sayeed "Pakistan's Constitutional Autocracy" Pacific Affairs XXVI (1964), 365-377.

²K. Sarwar Hasan "The New Constitution of Pakistan", Parliamentary Affairs XVI (1963), 178.

³In the pre-1958 period percentage of actual to eligible voters in various provincial elections never rose above fifty-five; in case of 1954 elections of East Pakistan it was only thirty-seven; see Ahmad, Government and Politics in Pakistan (Karachi: Pakistan Publishing House, 1959), p. 184. The situation improved considerably under 1959-60 elections of basic democracies.

political life, in East Pakistan demogogy and vain promises.¹ Right of franchise if exercised at some levels (there were provincial elections) has remained an idle weapon.² No wonder operation of parliamentary institutions represented a confusion to the illiterate masses and ultimately the system collapsed.³

There has been no concept of serving the public. Money spent and effort put in during elections have been regarded as investment from which dividends have been expected and earned. Misappropriation of public funds was not an uncommon phenomenon during the pre-1958 period when politics operated on the basis that 'big men provide big money and have big say in the selection of candidates and in the parties programs.'⁴

Legislature in Pakistan has tended to fortify existing bitter inequalities. Land reforms were merely proposed and discussed in legislative circles and were never carried out. In fact, no such law could be passed by the legislators who in that case, would be bringing serious changes in the socio-economic structure to their own material disadvantage. The

¹ Report of the Constitution Commission, Pakistan, 1961 (Karachi: Manager of Publications, 1962), pp. 11-12.

² Report of the Land Reform Commission For West Pakistan, op. cit.

³ G. W. Choudhury, "Parliamentary Government in Pakistan", Parliamentary Affairs XI (1957-58), 90 and Khalid Bin Sayeed, "Collapse of Parliamentary Democracy in Pakistan", Middle East Journal VIII (1959), 389-406.

⁴ Hugh Tinker, Ballot Box and Bayonet: People and Government in Emerging Asian Countries ("Chatham House Essay", London, New York, Toronto: Oxford University Press for Royal Institute of International Affairs, 1964), p. 70.

portion concerning land reform in the first five-year Plan was deliberately expunged in the interest of a dominant landlord party.¹ When the politicians were divorced from the people and were concerned mainly with the selfish requirements of the few, many pinned their hope on the army to establish social justice. The civilian breakdown and the military take-over of 1958 did not come as surprise.² The land reforms of 1959 and 1960 have constitutional safeguards against any action by the legislature.³

The open pursuit of power and office pushed the political parties into such activities as were clearly harmful to public interest. The parties in power became habituated to withdraw criminal cases against their own members, appoint officers on purely political considerations, and to write off loans against political supporters. Often, vigorous actions were not taken to realise government rents and cesses.⁴

A greater disservice to the welfare of the people by the parliamentarians has lain in their personal and party rivalries. This had serious effects in East Pakistan. As the parliamentarians did not compose their differences and remained divided, a section of the minority community (with its loyalties to India) came to hold the balance.⁵ People can be really disillusioned

¹ Ahmad, op. cit., p. 115.

² J. L. J. Wilson, ed., "Pakistan Under Ayub", Current Affairs Bulletin XXX (1962), 162-63.

³ Art. 225.

⁴ Report of the Constitution Commission, op. cit., p. 11.

⁵ Ibid.

by parliamentarians pinning scandals upon one another in their wrangling.¹ The politicians displayed an uncontrollable ambition to obtain and retain office no matter at what cost.² Ministers expended most of their time and energies in finding means to maintain themselves in power, while members of central and provincial assemblies were engaged in changing their party loyalty with a view to securing the best possible price for their support.³ Future behavior does not seem difficult to predict. The split of the Muslim League into Convention and Conference Muslim League has given rise to bitter acrimony among the two.⁴ The fact that no fundamental alterations have been made in the socio-economic structure coupled with the increasing politicisation of present regime, is very likely to lead to a situation not different from the one prevailing before 1958. Experience of the past has been no guide to the politicians. The Martial Law of 1958 which was acclaimed by the people, sounded that corrupt politics could not integrate the public with the government. Sincerity, honesty and moral uprightness could bring miraculous results. But alas, even the leaders of

¹In this analysis, I was given insight by Hamilton A. R. Gibb, "Social Reform: Factor X, the Search for an Islamic Democracy", Atlantic Supplement (Perspective of the Arab World), pp. 137-141.

²Mohammad Ahmad, My Chief, (Lahore: Longmans, Green & Co., 1960), Passim.

³Latif Ahmad Sherwani, "The Constitutional Experiment in Pakistan", Asian Survey II, No. 6. (1962), p. 9.

⁴In his campaign against Fatima Jinnah, Ayub Khan describes her as "An old recluse and weakminded". He tells the people "If you vote for her, you will be inviting chaos". Time (Atlantic Edition), October 30, 1964, p. 28.

martial law government do not appear to the public the same as they did in the first phases of the martial law.¹

The Tutorial System of Local Government

Pakistan is trying to evolve a system of local government called basic democracies. It is based on the assumption that democratic institutions can work effectively when they are on a scale comprehensible to the electorate. The system is a first step in the fulfillment of Ayub Khan's promise "to restore democracy but of the type which people can understand and work".²

The system of basic democracies is a hierarchy of interlinked councils: union council (town committee in case of urban areas), thana council (tehsil council in case of West Pakistan), district council, divisional council and provincial council.³ Chairman of a union council (and its counterpart in non-rural areas) is elected by members of that council. Above that level, chairman is a government official usually a member of the Civil Service of Pakistan. A union council has been assigned executive, judicial and many social functions.⁴ There seem to

¹Ibid., p. 29.

²Mohammad Ayub Khan, Speeches and Statements Vol. I (Karachi: Pakistan Publications, n.d.), p. 3.

³Provincial Development Advisory Council was deleted by President's order no. 22 of 1962. See Government of West Pakistan, Basic Democracies and Local Government Department, op. cit., p. 24.

⁴G. W. Choudhury, "Reshaping of Democracy in Pakistan", Parliamentary Affairs XIII (1960), 230.

be a great measure of local autonomy. As the level of councils rises, functions increase. Apart from these functions, each higher council has to supervise the work of its lower councils under its jurisdiction.

The basic democracies system has been hailed as fundamental for building up "infrastructure" for the working of democratic institutions particularly, when it is accompanied by efforts at such basic reforms as in land tenure, etc.¹ Moreover, regular elections can be utilised to generate civic responsibility and sense of participation.²

Local governments usually provide foci of resisting tyranny if and when it be established at the center.³ The basic democracies system, however, is 'tutorial' in nature. It is a kind of symbiosis of civil servants and elected and nominated officials.⁴ It is hoped in some circles, that the system envisages control of officials by people's representatives.⁵ This is not tenable on two grounds. Firstly, the elected members are to be trained by government officials. They will, therefore, receive the kind of training (for participating in

¹ Ibid., p. 228.

² Callard and Wheeler, op. cit., p. 466.

³ Leslie Lipson, The Great Issues of Politics 2nd. ed. (New York: Prentice-Hall, 1960), p. 320.

⁴ K. J. Newman, "Basic Democracies as an experiment", Political Studies X (1962), 50.

⁵ Abdul Qayyum, "The Role of the Deputy Commissioner in Basic Democracies" in M.R. Inayat, ed., Perspectives in Public Administration (Lahore: Society for Public Administration, Civil Service Academy, 1962), p. 140.

public affairs) which the government thinks is desirable.¹ Secondly, the government officials are not well-disposed to the new system. They have better education, better means and better social status. More importantly, they are invested with substantial powers which they will hardly like to relinquish. They are prone to resist the very idea of popular local leaders being entrusted with control of administration.²

The Administrative Class

Customarily, public service neutrality as to governmental policies has been something assumed. The concept of neutrality was a product of policy-administration dichotomy in Public Administration literature on the one hand, and administrative reform movement in the United States, on the other. In recent years the concept of policy-administration dichotomy has been altogether discarded.³ The concept of neutrality "is being rapidly transformed, without a conscious realisation, from a negative doctrine of political sterilisation and neutrality to a positive non-partisan participation in the management of country's affairs".⁴ Governmental decisions in advanced countries of the West increasingly mean administrative decisions.⁵ In underdeveloped countries public services are designated as professional governors.

¹ Ibid.

² Ibid.

³ Paul Henson Apply by, Policy and Administration University: University of Alabama Press, 1949).

⁴ S. Lall, "Civil Service Neutrality", The Indian Journal of Public Administration IV (1958), p. 1.

⁵ William Dunk, "The Role of the Public Servant in Policy Formation", Public Administration (Sydney) XX (1961), 104.

Pakistan is an administrative state in the full sense of the word in which public services play a vital role. The government of Pakistan like many other governments is the biggest employer in purely public sector as well as semi-public sector. As such, a consideration of the values, the qualifications and the attitude of the public servants towards the people is in order.¹ But not all of them make significant decisions, and more importantly, not all of them are politically significant.² Public service in Pakistan is quite sharply divided into 'decision-makers' and 'decision-acceptors'. The former are elite corps within the public services. They are the members of the Civil Service of Pakistan and their ex-officiis associates.³

The Civil Service of Pakistan (CSP) has been and continues to be a subject of great interest among scholars as well as practical reformers in the field of administration.⁴

¹ Joseph Lapalombara, ed., Bureaucracy and Political Development (Princeton, New Jersey: Princeton University Press, 1963), pp. 6-7.

² Ibid.

³ This point was also made by Gladiuex in his report, op. cit.

⁴ M.A. Aslam, Deputy Commissioner ("Problems of Pakistan, No. 1", Lahore: Department of Political Science, University of the Punjab, 1954); Ralph Braibanti, "The Civil Service of Pakistan: A Theoretical Analysis", South Atlantic Quarterly 58 (1959), 258-304; his "Public Bureaucracy and Judiciary in Pakistan", in Joseph Lapalombara, ed.; op. cit., pp. 360-440; Muzaffar Ahmad Chaudhuri, "Organisation and Composition of Central Civil Services in Pakistan", International Review of Administrative Sciences XXVI (1960), 279-292 and reports on public administration submitted to the government. For the latter, see p. 8 above.

This class is heir of the famous Indian Civil Service (ICS). The latter was a group of carefully selected and trained persons and constituted the main agency of maintaining ultimate British control over Indian affairs. The group consisted mainly of British officers trained as general administrators but the post 1919 period saw increasing incorporation of Indian element into this group. This element, however, was thoroughly Anglicised in the manner suggested by Macaulay: "We must at present do our best to form a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste and opinions, in morals, and in intellect".¹

No matter of what origin, the ICS officers were bound to feel that they were guardians. As such, the Indian became British. Mostly graduates of fashionable public schools, their pre-entry training was carried on during "most impressionable years of his life at Oxford or Cambridge, with their oligarchic traditions".² The administrative machinery would only reinforce their authoritarian and unsympathetic attitude toward the masses. When in their offices they were asked to submit reports on new proposals, they cared more for the convenience of higher authority than influence of these proposals "on the life and progress of the people".³

¹ quoted by Braibanti in "The Civil Service of Pakistan...", *op. cit.*, p. 265.

² Bernard Houghton, Bureaucratic Government (London: P.S. King & Son, 1913), p. 28.

³ Ibid., p. 32.

The Civil Service of Pakistan, an elite corps of executives, exercises most important policy-making functions in central and provincial secretariats.¹ In a district the CSP officer is personification of the government. (He is generally known as deputy commissioner in West Pakistan and district magistrate in East Pakistan). After enumerating the substantial powers of a deputy commissioner, a member of the CSP says:

In short, unless (sic) you are a man who has no earthly needs or requirements and who lives fairly high above the earth not attached to land or subsisting in water on land, you cannot possibly ignore the existence of the deputy commissioner and refuse to reckon with his qualities, good, bad or indifferent".²

Being in key position approximately 400 members of the CSP control the whole apparatus of the government. "The CSP, with the aid of the higher police officials ... are able to govern the country by themselves - hence the ease with which the army and the permanent services took over the country in 1958".³

Its members are selected from among the best university graduates. The recruits are trained for two years. Training abroad, in Oxford and Cambridge, was discontinued only recently. Now training is concentrated, insofar as a particular institution is concerned, in the Civil Service Academy, Lahore.

¹Braibanti, "The Civil Service of Pakistan..."op. cit., p. 269.

²Qayyum, op. cit., pp. 135-36.

³Callard and Wheeler, op. cit., p. 469.

"Certainly the academy succeeds in stamping each of the probationers with its mark ... Its reliance on Anglicisation to accomplish this purpose (inculcating a concept of guardianship) widens the hiatus which already exists between the Islamic-oriented public mass, ... and the ruling elite".¹

The pre-1958 chronic instability in government, virtually placed the country under the rule of the CSP.² The post-1958 changes do not seem to have altered its position. Expansion in government programs has rather enhanced the powers of the government and consequently, of the CSP. It seems to have adjusted itself to the new President and has emerged more powerful than before. It has very successfully withstood a serious onslaught by the Pay Commission 1959-62.³

The Judiciary: Guardian of Liberty

The judiciary in Pakistan is part of the public services.⁴ It has been regarded with pride and respect specially, its

¹Braibanti, "The Civil Service of Pakistan...", 281.

²A civil servant who rose to the positions of Governor-General and President held that it was "he and the civil servants who determine the tempo of transfer of effective power to politicians". The latter were abhorrent of the administrators as king-makers. See K.B. Sayeed, "The Political Role of Pakistan's Civil Service", Pacific Affairs XXXI (1958), 146.

³This Commission attacked the elitist position of the CSP. The report submitted was circulated on a limited basis and was quoted somewhere. It was immediately withdrawn from the limited circulation. New pay scales recently promulgated do not seem to have taken account of the commission's recommendations.

⁴According to a recent report, twelve members of the CSP are judges of various courts including the Supreme Court and the High Courts.

higher branches have upheld the rights of the people against the executive¹. Its members have always stood above politics among various classes in the public services and have upheld the larger interests of the country.² Its defense of constitutions has been fearless.³

The original 1962 constitution curtailed the powers of the judiciary to protect individual liberties of the citizen. The constitution and its framers were widely criticised. According to an amendment of the constitution power of the legislature in legislating against what have been called fundamental rights has been limited and the power of the judiciary has been extended to protect them.

The Military: A Political Force

The so-called Rawalpindi Conspiracy in which some military commanders sought to overthrow the government, was the first sign of military's intervention in politics. It failed because authorities discovered it before any action could be taken. The 1958 revolution does not appear to have any exclusive planning on the part of the military. The

¹Recently, the High Court of West Pakistan decided against the government's abolition of Jama'at-i-Islami.

²The Pay Commission which has recommended the abolition of the CSP was headed by the chief justice of Pakistan who is the top member of that class.

³By the beginning of 1964, six President's Order had been declared ultra vires of the 1962 constitution.

military also seems to have no ideological conflicts, rather the military men who have become public figures betray a great bias of Islamic orientation - a commitment to its ideals. New constitution has tried to arrange a sort of marriage between the civil and the military; each year four military persons were to be recruited in the civil service but this has been abandoned.¹

While such an arrangement may give the army a commitment in the political status quo, it may generate competition among the military officers for prized jobs in the civil service and the spirit de corps and cohesion of the military may be undermined. Perhaps some such thing has already happened which has warranted discontinuation of taking army officers into the civil service. The present regime has military backing; a coup, when it is thought necessary by young officers, cannot be ruled out especially when the government is too much politicised and becomes less efficient.

The Islamic Character of Pakistan Government

The first constitution gave Pakistan the name of Islamic Republic of Pakistan. The second constitution has been

¹About fourteen people have been recruited to the Civil Service of Pakistan before the abandonment of the arrangement. See Gradation List of the Civil Service of Pakistan Corrected up to the 1st January, 1964 (Karachi: Government of Pakistan Press, 1964).

amended to restore that name after the word Islamic had been deleted in the original second constitution. In the first constitution it was just a name; it had no legal significance at all; the only significance it had was that of symbolic value.¹

Sovereignty, according to the second constitution, belongs to Almighty Allah alone and authority is to be exercised by the people.² Authority in Islam does not lie with the people, it lies with the Sharia and people can interpret it to suit various conditions without letting go the spirit of the Sharia.³ Also, it is not the authority exercisable by the people which is a sacred trust but it is the upholding of the Sharia which is a trust.

No law can be enacted which is repugnant to the teachings and requirements of Islam as set out in the Holy Quran and sunna and all existing laws are to be brought in conformity with the Holy Quran and Sunnah. This was the principle of law-making but has been shifted to 'principles of policy' which also contain some stipulations regarding the Islamic

¹A.K. Brohi The Fundamental Law of Pakistan (Karachi: Din Muhammdi Press, 1958), p. 736.

²Preamble to the 1962 Constitution.

³According to an amendment, authority is to be exercised "within the limits prescribed by Him". It has thus been brought theoretically, at least, in conformity with Islamic view.

way of life'. There are many other stipulations which betray Islamic character; e.g.; elimination of riba, discouraging prostitution, gambling and drug-taking and strengthening bonds with the Muslim world.¹ (The last one is half of a phrase which also includes 'promoting international peace'). However, validity of an action or of a law cannot be called in question on the ground that it is not in accordance with the 'Principles of Policy'. The responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the principle of policy is that of the organ or authority of the State, or of the person, concerned.²

That the head of the State will be a Muslim does not automatically ensure the Islamic character of the Republic especially when an acting president can be at least theoretically, a non-Muslim.³ On practical level, it is difficult that a small minority divided into further sections can institute a president. The provision, however, has symbolic value and can assure many of the 'Islamic character of the Republic of Pakistan.'

¹ See in "Principles of Policy", Art. 7 of the unamended (1962) Constitution.

² Art. 8

³ Art. 10 & 16.

The constitution provides what it calls Islamic institutions.¹ They are Advisory Council of Islamic Ideology and Islamic Research Institute. The council is to consist of members numbering between five and twelve.² The president in selecting a member shall have regard to person's understanding and appreciation of Islam and of the economic, political, legal and administrative problems of Pakistan.³ Wide discretionary power of the president can bring any person, perhaps, non Muslims, included; many non-Muslims have an appreciation of Islam. The functions of the council are purely advisory.⁴ There is no guarantee that its recommendations to central and provincial government as to the 'means of enabling the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam. According to an amendment the council has been empowered to examine all laws in force immediately before the commencement of the amendment with a view to bring them in conformity with the teachings and requirements of Islam as set out in the Holy Quran and Sunna. But the matter remains ambiguous. It is difficult to determine who will bring these laws so examined into conformity. The council is to advise the national assembly, a provincial assembly, the president or a governor

¹Part X of the Constitution.

²Art. 199.

³Art. 201.

⁴Art. 204.

when a question is referred to it. First of all, this advice is purely advisory as to whether a proposed law disregards or violates, or is otherwise not in accordance with Islamic principles. Secondly, it is hedged in by an important limitation called 'public interest'. A law can be made before advice is furnished if the authority concerned considers this law in the 'public interest'. That is quite easy to do.

The other institution is the Islamic Research Institute. The Constitution states that it has to undertake Islamic research and instruction for reconstructing Muslim society on Islamic basis.¹ Nothing could be vaguer. This research could be undertaken in universities. There is no commitment as to whether research findings of the institute will be utilised and how. It is also not explained whom the institute will instruct. The only thing which the institute can accomplish is to accumulate literature which job could be performed by universities. It has, of course, a propaganda value.

A look at the Islamic provision of the constitution can tell that Islamic law is not to play an important role in the practical life of the people. Efforts will be made not to trespass Islam but also not to positively adopt it. The Sharia remains only inspiration. The framers of the constitution

¹Art. 207.

have welded 'spiritual ideals into the business of statecraft' in their own way. The basic duty of every citizen of Pakistan, it is declared, is his loyalty to the Republic of Pakistan.¹ The nationalistic sound which this declaration produces is obvious.

¹Art. 3.

CHAPTER IV

THE QURAN AS THE CONSTITUTION: THE PROSPECTS OF PROMOTING POSITIVE ATTITUDE TOWARDS GOVERNMENT

There should be no doubt about the fact that credit for the creation of Pakistan goes to Muslim community in India as a whole. The leadership headed by Muhammad Ali Jinnah worked very hard but the mass of Muslims responded only when Islamic character of the State-to-be was expressly promised.¹ The situation faced by the Muslim community at the turn of mid-twentieth century was in a vital sense, similar to the one faced by early Muslim community after the death of the prophet. The community in India needed to establish a state so that it could apply the Sharia in order to save itself from the situation in which it found itself. Iqbal is very eloquent on this point:

"After a long and careful study of Islamic Law I have come to the conclusion that if this system is properly understood and applied, at last (sic) the right to subsistence is secured to everybody. But the enforcement and development of Shariat of Islam is impossible in this country without a free Muslim state or States."²

¹"The secret of the success of Jinnah's leadership of Muslim India lay in essence in exactly the opposite of what appears to be the situation. He did not lead, but was led by the Muslim consensus. His role was that of a sincere and clear-headed lawyer who could formulate and articulate in precise constitutional terms what his client really wanted". Aziz Ahmad, Studies in Islamic Culture in the Indian Environment (Oxford: Clarendon Press, 1964), p. 276.

²Iqbal's Letters to Jinnah, op. cit., p. 18.

It was specifically this image of Pakistan upholding the Shariat of Islam which attracted the masses who gave their lives and properties to achieve this state. The concept of a secular state is completely unacceptable to an overwhelming majority of Pakistanis.¹ For them, "no morality exists which does not find its ultimate sanction in Islam".² They have always insisted that to press them to accept a constitution which disregards their innermost convictions is no less than asking them to commit suicide.³

It has been rightly observed that those who have actually participated in drawing up constitution (or constitutions) for Pakistan have been ulama, politicians, jamma'at-i-Islami, civil services and military. Popular writers did not have any success in calling attention to their ideas of an Islamic State.⁴ The first constitution was definitely influenced by three classes, namely, the ulama, the politicians and the jama'at-i-Islami. The role of the civil services and military is not clear. In drawing the second constitution (of 1962), the services and the military worked without any influence on the part of politicians or ulama. They framed a constitution of their own liking. However, the latter

¹Campbell, op. cit., pp. 7-9.

²Dr. Ishtiaq Husain Qureshi quoted by Callard, Pakistan: A Political Study, op. cit., p. 231.

³Ibid.

⁴Binder, op. cit., ix.

introduced important modifications and changed the spirit of the constitution as originally promulgated. Ordinary laymen have been completely ignored.

A constitution commission was set up by Ayub Khan in 1960 to submit its recommendations 'in the form of a report'. The commission issued a questionnaire in which out of forty questions two related to Islam.¹ It is hard to determine which of the above groups participated in answering to the questionnaire; nevertheless, returns to the questions relating to Islam are important as they reveal the place of Islam in the society.

The commission found out that a preponderance of opinion (96.64%) was in favor of incorporating the preamble to the first constitution in the new one.² The most relevant

¹"Q.34. Do you think it necessary to incorporate any provisions in the new Constitution to assist the Muslims in the study of the basic values of Islam and of their application to the changing conditions of life? If so, what special measures do you suggest in this regard? " Report of the Constitution Commission, Appendix I.

"Q.39. What other suggestions would you make for "establishing a democracy adaptable to changing circumstances and based on the Islamic principles of justice, equality and tolerance". Ibid.

²"A minority opinion did not consider it necessary to adopt this preamble, not because they disputed any of the propositions mentioned in it, but because, the majority in the country being of Muslims, an Islamic way of life is naturally expected of them. Some of them wondered if it was practicable to come up to the standard envisaged in the preamble, while others stated that as its provisions cannot be enforced by law, it has only a sentimental value." Ibid., p. 114.

propositions in the said preamble are: sovereignty over the entire Universe vests in Allah alone; the authority to be exercised by the people of Pakistan within limits prescribed by Him is a sacred trust; the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, should be fully observed and the Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam as set out in Holy Quran and Sunna.

According to the commission, the man has two obligations, namely, to develop oneself spiritually and to discipline oneself to perform common civic responsibilities. The commission interprets Islam as combining both and argues for the majority opinion to promote the Islamic way of life in Pakistan.¹

In the same way, a majority of 97.23% favored the adoption of the provision in the 1956 constitution that no law should be enacted which is in conflict with the injunctions of Islam and that existing laws should be brought into conformity with the Sharia. It is important to note that this opinion is generally of urban, literate population; the village population is much more strict in its allegiance to the Sharia and it is most probable that if the questionnaire was spread in rural areas, the percentage favoring adoption of

¹Ibid., pp. 115-120.

the provision would rise. The commission notes the difficulties arising out of the multiplicity of schools of thought but it respects the majority opinion and recommends appointment of a commission to evolve unanimity with regard to traditions. It recommends that such a commission must draw the help of Muslim experts from outside Pakistan in this matter.¹

Not only is the general public anxious to see their State as an Islamic State, but also, according to a social psychologist, the only answer to what he calls "problem of national character" (meaning civic responsibility) among the students, is Islam. To an overwhelming majority of University students Islam is the satisfactory guide to face the problems of modern world. They are no doubt exposed to many anti-religious temptations, ignorance, prejudices and frustrations but in the inner-most recesses of their minds there is still something basically stable. It is the hope that religion will guide them one day. This, Dr. Jilani emphasises, is a "deep-seated basis on which the wedding of individuals into a nation could be done".²

The role which people cherish Islam should play and which it does play in the society, not necessarily at the

¹Ibid., pp. 123-24.

²Jilani, "Problems of National Character: A Psychological Approach", Pakistan Philosophical Journal III (1959), 15. It is interesting to note that the Voice of Islam is published by a student body spread over the entire Pakistan.

government level, at present, is pictured by a Western student of Pakistan's politics:

"The demand for Pakistan, and its realisation are not to be understood unless it is clearly perceived that, to the Muslims of India, Islam was more than a religion in the Western meaning. It was, and is, an outlook upon life that embraced social, political and cultural aspects of human behavior. Islam has guidance to offer in the production and distribution of wealth, in the maintenance of social services, in international relations, and in the structure of family life, in public finance and proper position of the hands during prayer. All of these and much more, are integral parts of Islam, not mere deductions from general moral precepts. Islam therefore speaks as plainly to the statesman or the business-man in his professional capacity as it does to the individual conscience or to the man of religious learning".¹

This pervasive role of Islam and consequently of the Sharia in the socio-economic and political life of the Muslim community, has important implications concerning public attitude towards government. The situation becomes specially acute when this role of the Sharia is not only believed but actively sought. No modern government can overlook the feelings of its people.² Short-falls on the part of the government lead to an attitude of disloyalty towards it. It is, however, important that in the case of the State of Pakistan, as a whole, the question of loyalty is a complicated one. Overwhelmingly, people are loyal to it, not because they love the territory embraced by it, but because it has been achieved after great sacrifices rendered in the name of

¹Callard, Pakistan : A Political Study, op. cit., p. 197.

²Tinker, op. cit., p. 103.

God and the Sharia. It is a place where their religious ideal is to be realised, where they want "to demonstrate to the world that Islam provides a panacea to the many diseases which have crept into the life of humanity to day."¹ To the extent that Pakistan to the Muslims in Pakistan, is a 'laboratory of Muslim renaissance', they are prepared to defend it against an enemy whatever the nature of their government. However, during a period of peace, the government does not enjoy the same loyalty.

Muslim's acceptance of precedence of law over State requires of political organisation a certain perfection; if this is lost the obedience which they owe to it is also lost.² Historically, they developed institutions to counter-balance the power of state and to express their distinctive Islamic ideals. In Pakistan today no concrete, strong and genuine organisation exists which can help Muslims keep their conscience.

Various sections of society adopt their own methods to convince (or force) the government that it uphold the Sharia. Ulama are unorganised and by and large prefer individual lobbying.³ The political parties committed to establish

¹Liagat Ali Khan as quoted by Callard, Pakistan: A Political Study, op. cit., p. 197.

²Claude Cahen, "The Body Politics" in Gustave E. Von-Grunebaum, ed., Unity and Variety in Muslim Civilisation (Chicago: The University of Chicago Press, 1955), p. 133.

³Campbell, op. cit., p. 59.

Islamic Law prosecute their activities in constitutional framework.¹ Some powerful groups directly resort to threat of force.² The case of ordinary people is more serious. They have not been accustomed to regarding themselves as voters; it is hard to accustom them to regard themselves as citizens in the Western sense. The violation of man-made laws does not prick their conscience. Obedience to them is given under explicit or implicit threat, of actual use, of force. Constant vigil and threat of force, however, is not always feasible or even possible and if and when over-dosed and popular feeling is seriously aroused, people also resort to force.³ "The accepted means of mass agitation is to take out a procession which goes to demonstrate in front of public buildings. It is harangued at intervals by orators who use the most impassioned language. They induce the crowd to chant slogans which have an hypnotic effect."⁴

People's positive attitude towards government is intimately connected with the notion of legitimacy, the rightful title to rule. Legitimacy is a measure of agreement on, at least, one fundamental: the kind of rule which people believe is right and the sort of ruler who is entitled to rule.

¹However, Jama'at-i-Islam was banned on the charge of covert and open attempt to "subvert the loyalty of the people of the State and the Government". Asian Recorder, January 29-February 2, 1964.

²The Objective Resolution was a response to ultimatum by a big group of pathan soldiers who are indispensable in Pakistan army. See M. Hamidullah, Islamic Quarterly IV (1957), 93.

³Callard, Pakistan: A Political Study, op. cit., p. 52.

⁴Ibid., pp. 52-53.

legitimacy maximises what Friedrich calls 'political obligation' and which designates the "conviction on the part of the ruled that they should obey the rulers, that is, to conduct themselves in accordance with the rules made by those who do the ruling". Maximising such a conviction means the ruled feel 'obliged' or 'bound' to render obedience".¹ Another proposition advanced by Friedrich regarding legitimacy is that it enhances consensus and consent and as consent facilitates rule, legitimacy assumes pivotal importance for effective rule.²

Such being the case, rulers seek to maintain or become legitimate. Many totalitarian governments have retained democratic voting procedures albeit under conditions which make these procedures sham. Friedrich notes two ways by which rulers may attempt to make their rule legitimate. One is to assimilate their conduct to the prevalent belief. The other is to attempt to change the view concerning the title to rule which prevail in the society.³

In modern democracy the question of legitimacy is settled in a constitution (written or unwritten). To Friedrich, basis of legitimacy of modern constitutions is religious:

¹Carl Joachim Friedrich, Man and His Government: An Empirical Theory of Politics (New York, San Francisco, Toronto, London: McGraw-Hill Book Company, Inc.; 1963), p. 240.

²Ibid., p. 239.

³Ibid., pp. 239-40.

the belief in the dignity of man and the belief in the corruptibility of all men entrusted with power.¹ Brohi also affirms the same when he says that "it is impossible to escape the logical necessity of affirming a transcendental grounds in terms of which sanctions for the due exercise of all earthly authority could be imposed."² To him every constitutional government in the world owes, in some significant sense, its inspiration to the teachings of persons deeply imbued with sense for religious values.³

Legitimacy is peculiarly related to authority defined by Friedrich. Authority is a "quality of communications rather than persons".⁴ It is the capacity to enlarge upon what is being communicated in terms meaningful to those who are being addressed; i.e., in terms of opinions, values and beliefs of the community. As such, authority is capable of creating legitimacy whenever it provides good reasons for the title to rule.

It is in the context of the authority of even non-personal entities such as law and constitution that we can understand the question of legitimacy, of legitimate rule in a Muslim community in which real authority after the death

¹Friedrich, op. cit., p. 271.

²Brohi, op. cit., p. 736.

³Ibid.

⁴Friedrich, op. cit., p. 224.

of the prophet lies with the Divine Law. Rule is legitimate when exercised to uphold that law; ruler, known as Caliph in early Muslim terminology, is merely to administer and enforce this law. Whatever the methods of electing him during the early Muslim period, Caliph was theoretically chosen by Muslims and had a contract with them that he would enforce the Sharia and in return, would enjoy their obedience.¹ By virtue of its character as the Divine Law, the expression of God's Will, the Quran "supplies authority, sanctions and moral basis for the unity and constitution of the Umma as a political unity."² To Muslims, the only legitimate rule is the one which is exercised to enforce, uphold and protect the Divine Law. Obedience must be rendered to it; disobedience to it entails moral rapprobation.

The study of the Quran in early age creates an attitude of reverence toward religion. This attitude persists in later life and is responsible for acts of courage and sacrifice in defence of Islam.³ To the extent that the study of Quran is universal phenomenon among Muslims throughout Pakistan, people defend Quran to which they have their basic loyalties.⁴ Many may not know its meanings but they build

¹ Khadduri, War and Peace, op. cit., p. 11.

² Gibb, "Constitutional Organisation", op. cit., p. 4.

³ Jilani, op. cit., p. 11.

⁴ Mr. Jilani notes a gradual decrease in the study of the Quran in early age. This may be true so far as urban homes are concerned but this function being taken up by schools in cities.

up a conviction, a deep and personally meaningful one, about the truth of the Holy Book. Generally, they understand the things contained therein and in that case literal meanings may not be necessary. In case of doubt they can consult a near-by Imam of mosque.

Two concepts regarding constitutions as developed by Blanksten, are particularly useful in analysing the situation in Pakistan. He distinguishes a "real" constitution from a "written" one. The former is the "existing system of power relationships operating within a political community, or the 'arrangement of the inhabitants of a state'". The latter refers to that document which has been declared as the law of the land.¹

In an Islamic country like Pakistan the definition of "real" constitution has to be modified but its spirit remains the same. In Islamic theory of government, God is the sovereign and authority is to be exercised for the application of the Law of God. Authority is a 'sacred trust'. The 'written' constitution of Pakistan is a document framed and promulgated by the President on the basis of a self-assumed mandate ratified by an electoral college chosen by adult franchise. The first National Assembly has modified

¹George I. Blanksten "Constitutions and the Structure of Power" in Harold Eugene Davis, ed., Government and Politics in Latin America (New York: The Ronald Press Company, 1958), p. 227.

certain articles, confirmed some of President's Order and has passed new acts. It is basically insecure as yet. There have been many amendments to it. A most dramatic and spontaneous amendment was introduced to rename it as the 'Constitution of the Islamic Republic of Pakistan' at the very first day of the opening of the National Assembly of Pakistan in 1962.

The so-far-promulgated two constitutions (1956 and 1962) of the Islamic Republic of Pakistan have made only some 'provisions' for Islam and as such, are not Islamic. The only difference between the two seems to be that the first one envisaged an advance towards the British Parliamentary system while the second one envisages a return to the British Indian Act of 1935. In both cases, State undergoes an essentially superficial change while the purpose for which it was established was to bring about basic changes. The "real" constitution of the Muslims in Pakistan is the Quran to which most of them renew their allegiance every day after their morning prayer. The "written" constitutions borrow Western patterns not rooted in the tradition of the people and command practically no inner loyalty of the people.

Not only have those who have proceeded to weld spiritual ideals with the 'business of statecraft' framed constitutions in their own way but also religiously oriented political parties and groups have not pushed the claim that the Quran be the formal

constitution of Pakistan because informally it is the constitution and that constitution of a Muslim society cannot be other than the Quran.¹ Ulama were not against the framing of a constitution, rather, they officially and actively participated in the first one. What they were against was the anti-Islamic character of it.² The Jama'at-i-Islami approved of the 1956 constitution³, although, as Brohi has rightly argued, there was nothing particularly Islamic except some Islamic terminology here and there.⁴

It may be argued that it is better to establish definite procedures of government and, therefore, there is a need of writing a constitution. It is admitted Quran does not provide any procedures but this does not mean to go ahead and 'write' a new 'fundamental law' which is neither meaningful to the people nor does it, therefore, carry any authority. Framing a constitution in place of the Quran is to invite moral irresponsibility on the part of the people; Man-made laws will be taken as good to frame as to break them. Keeping Quran as

¹ During the struggle for framing the 1956 constitution, Maududi identified "an unwritten constitution to be transformed into a written one" as the core of the problem of Islamic constitution. The constitution was to be evolved from four sources, namely, the Quran, the Sunna, the conventions of Khilafat-e-Rashida and rulings of great jurists. See Abulala Maududi, Islamic Law and Constitution (Dacca, Karachi, Lahore: Lahore: Islamic Publications Ltd: 1960), pp. 217-19.

² Hamidullah, op. cit.

³ Free land Abbot, "The Jama'at-i-Islami of Pakistan", Middle East Journal XI (1957), 47 and Maududi, op. cit., p. 407.

⁴ Brohi, op. cit., pp. 742-51.

as the 'fundamental law', procedures can be devised to support the law which the people most respect. In fact, renowned jurists of Pakistan have demanded the introduction of Islamic law in Pakistan to check crimes, to speed up justice and remove lack of recognition of authority in public life. "I say adopt the Islamic jurisprudence and all the laws of Islam and you will see what great advance you have made towards the laudable objective (of speedy justice)".¹ Mr. Ahmad supports his views by those held by the present chief justice (a Christian by faith) who, according to him, has ably "made a case for the introduction of Islamic Laws in Pakistan which will be more respected and, therefore, more effective".² (Emphasis is added).

Quran, by virtue of its revelational character, when recognised as the fundamental law of the land, makes Pakistan a State perfectly in accord with religion. View, however, is held by some that it be a secular nation-state. Most of those who are inclined to this view have tried to justify it on the basis of a statement from the Qaid-i-Azam who said:

"...we are starting with this fundamental principle that we are all citizen and equal citizens of one State. You may belong to any religion or caste or creed - that has nothing to do with the business of the State ... I think we should keep that in front as our ideal and you will find that in course of time Hindu would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense because that is the

¹Nazir Ahmad, "The Judicial System of Pakistan", Pakistan Times (Independence Day Supplement), August 14, 1964, p. 3.

²Ibid.

personal faith of each individual, but in the political sense as citizens of the State".¹

A historian of Pakistan's constitutional development puts the statement in proper context and argues that it was intended to calm down 'communal frenzy' which had overtaken the sub-continent at the time of partition and to stress that no distinction would be made on the ground of religion, caste or creed. He did not make any reference to the future constitution of Pakistan.² The demand for an Islamic State has its roots in the Pakistan movement itself and if Pakistani Muslims are asked about kind of government Pakistan should be, the majority of them are likely to answer 'Islamic'; there is overwhelming 'accord on this'.³

The view that Pakistan be a secular nation-state is committed to pen only by one public figure, Sahrawardy. In an international periodical (not circulated in Pakistan except perhaps in Universities' libraries and in English language not understood by the majority), he stated that "on the one side

¹Choudhury, Constitutional Development in Pakistan, op. cit. pp. 63-64.

²Ibid., p. 64. One of the several quotations which Choudhury gives from the Qaid-i-Azam to support his argument is this: "The Constitution of Pakistan has yet to be framed by the Pakistan Constituent Assembly ... I am sure that it will be a democratic type, embodying the essential principles of Islam... Islam and its idealism have taught us democracy; it has taught equality of man, justice and fair play to everybody. We are inheritors of these glorious traditions and are fully alive to our responsibilities and obligations as framers of future Constitution of Pakistan". Ibid.

³Ibid., p. 65.

are ranged the advocates of segregation of our voters into religious communities ... on the other side are those who see Pakistan in terms of a nations state". The former, he says, "would keep alive within Pakistan the divisive communal emotions by which the subcontinent was riven before the achievement of independence".¹ (independence from whom? Hindus or British or from both and for what purpose?)

The well entrenched traditions of Muslim society limit the use of experimentation. The official, ruthless secularisation of Turkish Muslims began to crack under Islam's reassertion in Turkish society, and has attracted the attention of many scholars.² Events have been interpreted to show that "secularisation was never complete".³ It is also held that there was no secularisation in the sense that actions were rationalised on Islamic bases.⁴ To many, Ataturk's program appears too naive. While it has been strongly reacted against by the masses, it has put administrators in an

¹Huseyn Shaheed Suhrawardy, "Political Stability and Democracy in Pakistan", Foreign Affairs XXXV (1957), 426. It is interesting to note that he mentions independence but not partition of India.

²Howard A. Read "Revival of Islamic in Secular Turkey", Islamic Literature VII (1955), 166-67; Bernard Lewis "Islamic Revival in Turkey", op. cit., 235-46 and Emile Marmorstien, "Religious Opposition to Nationalism in the Middle East" op. cit., p. 331-48.

³Lewis, op. cit., p. 236.

⁴F. Rahman "Internal Religious Developments in the Present Century Islam", Journal of World History II (1954-55), 876.

ambivalent position.¹ What Watt says of Muslims in general is true of the Turkish: "at the deepest level even irreligious men think in Islamic terms and categories. In so far as the lower classes are a factor in politics - and this is perhaps not so much at the ballot-boxes as in staging mass demonstrations - appeals to them, if not on anti-foreign basis, must be directed towards Islamic sentiments".² In fact, the apparent dominance of secularist mode of thought "has no more substance than the fragile and changing human nature from which it derives its being".³

In Pakistan, Islamic pressure is not covert but overt. Two political parties, namely, Jama'at-i-Islami and Nizam-i-Islam, specifically aim at the introduction of Islamic Law. In other cases it is unanimously agreed that "if the Quran has clear guidance to offer, then that guidance must be followed".⁴ Binder discerns a tendency among certain groups "toward the development of secular Pakistani nationalism".⁵

¹A. T. J. Matthews, Emergent Turkish Administrators (A Publication of the Institute of Administrative Sciences, Faculty Political Science, University of Ankara, Publication No. 1", Ankara: Turk Tarih Kurumu Basimevi, 1955), pp. 57-58.

²W. Montgomery Watt, "The forces now moulding Islam", Muslim World 43 (1953), 168.

³Seyyed Hossein Nasr, "Religion and Secularism, Their Meaning and Manifestation in Islamic History", Islamic Quarterly VI (1961), 126.

⁴Callard, Pakistan: A Political Study, op. cit., p. 230.

⁵Binder, op. cit., p. 380.

Attempts at the glorification of pre-Muslim civilisation of the areas now constituting Pakistan may indicate this.¹

But the religious pressure is strong and secularist views tend to "merge with the ijma' modernist group".² In fact, a Pakistani holding secularist views, says Callard: "...has seldom arrived at the total abandonment of the Islamic tradition which often dominates his emotions, while the Western standards are intellectually accepted rather than deeply felt".³

¹R.E.M.Wheeler, Five Thousand Years of Pakistan (London: Royal Indian & Pakistan Society, 1950). A Pakistani, who has written the preface, is careful to point out that the book is "a brief sketch of imposing material heritage of Pakistan". (Emphasis is added). See p. 5. There is also thinking that Pakistan "began as a society, a largely unintegrated social whole consisting of smaller social wholes. It achieved statehood in 1947. It could now become a nation". Q.M. Aslam "Development of National Sentiment in Pakistan", Pakistan Philosophical Journal VIII (1963), 80.

²Binder, op. cit., p. 379. The Ijma modernist group is that which, in the tradition of Syed Ahmad Khan, views Islam, with its emphasis on brotherhood, equality and justice, as a moral philosophy of (parliamentary) democracy.

³Callard, Pakistan: A Political Study, op. cit., p. 230.

CHAPTER V

ORGANISING AN ISLAMIC GOVERNMENT IN PAKISTAN

The very first problem which the Muslim community faced immediately after the death of the Prophet was that of instituting leadership to ensure the observance of the Sharia in the life of the community. For Muslims in Pakistan the Sharia has the same validity and importance even to day and they are seeking its application in the conduct of their sociopolitical and economic life. Recognising the Quran as the fundamental law of the land, the problem of instituting leadership arises again. The problem assumes greater dimensions when it is realised that life has become much more complicated than it was in the early centuries of Islam. The Quran and the Sunna of the Prophet and later juristic rulings may not contain clearcut answers to new problems. The Muslims have, nevertheless, to avoid doing anything against the Sharia. Therefore, alongwith the necessity of devising procedures for instituting leadership they have to make sure, as far as possible, that it (leadership) does not err in making decisions which have to become binding on the society.

The present legislature in its structure and composition is not capable of interpreting the Islamic law. The legislature may contain non-Muslim and anti-Islamic members. The president and members of the central and provincial legislatures may be devout Muslims, personally, but not a single executive has shown interest to apply the Sharia. They are motivated, if not by their ambition, by their concern to eliminate economic underdevelopment and military weakness and not to promote moral and religious well-being of the community. The present leadership by itself is incapable of making Pakistan an Islamic State.¹

That Islam remains the ideal of the Muslim community in Pakistan cannot be overemphasised but it does not have any concrete organisation to check any non-Islamic activities on the political level. There are some well-developed social organisations but they are few and are mainly concerned with providing social services; trade unions are practically nonexistent.² True, the 1962 constitution provides for an Advisory Council of Islamic Ideology but its composition is

¹Smith, Islam in Modern History, op. cit., pp. 224-25.

²Khalid Mahmud, Trade Unions in Pakistan ("Problems of Pakistan"; Lahore: Department of Political Science, University of the Punjab, 1958), esp. the last chapter. In fact, existing political and administrative leadership hinders the development of voluntary associations. See Masihuzzam, "Administrative Obstacles to voluntary Organisations in Pakistan" in Inayatullah, ed; op. cit., pp. 57-78. The new institution of basic democracies is also supervised by government officials and its democratic nature will be determined by the extent to which elected members (and given the political conditions it is not certain that they will represent the people) can assert themselves. See R.L. Mellema "The Basic Democracies System in Pakistan", Asian Survey (1961), 10-15.

determined by the president; moreover, as the name indicates, its function is to furnish advice on matters referred to it. The legislators, good-intentioned and bad-intentioned, join together in demanding re-interpretation of Islam.

The past of any society conditions its present. To undertake reform of old institutions, traditions and particularly, the interpretation of law, is a task not to be taken lightly. In case of Pakistan, the weight of tradition is heavy not simply because Muslim community there has, well-entrenched tradition but because the past is the only creative force. The very raison d'etre of Pakistan is the reconstruction of society in the image of the past involving return to the Sharia after it had been dislocated for several years. Islamic institutions have been conceived on non-territorial and universal basis and, therefore, "the responsibility of the reformer assumes a far more serious aspect".¹ Any tampering with the universal spirit of Islam to suit national-territorial considerations may work havoc.

It is encouraging to note that Pakistan assemblies, however unrepresentative, have not tampered with Islam's universality; they have, on the other hand, emphatically asserted it. The first constitution, for example, provides that "no law shall be enacted which is repugnant to the

¹ Mohammad Iqbal, The Reconstruction of Religious Thought in Islam (London: Oxford University Press, 1934), p. 158.

injunctions of Islam as laid down in the Holy Quran and Sunna ... and existing law shall be brought into conformity with such injunction".¹

Muslim institutions as they developed in history served the Muslim society well and "perhaps the very fact that these trends (democratic trends in social, legal and religious matters) found an outlet in other institutions did not make them strong enough to break through political barriers".² The consciousness among Muslims of decline in military power against the West provided the reformers with, among other things, a strong impetus to work for modernisation of politico-administrative institutions. The first specific agitation came from Jamal-ud-Din al-Afghani who advocated a form of constitutional government. The process took many forms and after many major deviations (particularly nationalism in some countries) is not complete as yet.

The question of modernisation of Muslim political institutions is bound up with the functions of State in Islam. The major function of Muslim State, as we have noted in the second chapter, is to uphold the Sharia; law in Muslim

¹Government of Pakistan, Ministry of Law, The Constitution of the Islamic Republic of Pakistan (Karachi: Department of Advertising, Films and Publications, 1956), art. 198.

²Qureshi, Islamic Elements..., op. cit., p. 215.

society is given; State as such cannot legislate. To meet new situations, Muslims are permitted to interpret the Sharia. State is an institution devised by the community as an instrument for safeguarding the Sharia and applying it into its daily activities and in the process of application it also becomes a major agency for interpretation.

The upholding of the Sharia is, nevertheless, the collective responsibility of the community. As such, any person to whom the duty of upholding the Sharia (and therefore, the rights so accruing) are delegated is ultimately responsible to the community. The actual historical experience, however, did not confirm to it. Taking lesson from history, Rida rightly emphasises the need for proper procedures for installing and deposing leadership if it does not perform its functions.¹

Some have tried to identify something like legislative body during the first four Caliphs but it is known that Caliph was the dominant figure.² The powers of such a body are not known, nor was their membership fixed. Individuals had their influence which they, because of their motivation by considerations of Sharia, were justified in exerting on the Caliph but there was no guarantee that their proposals would be

¹Rashid Rida quoted by Nuseibeh, op. cit., pp. 125-26.

²Maududi, op. cit., p. 242.

accepted. (It is known about Abu Bakr that he sent armies to Syria in spite of suggestions to the contrary). The organisation of an Islamic government can take several forms and it is for this reason that no hard and fast rules can be set. We shall, however, offer a few remarks in connection with organising one in Pakistan.

Due to the complexity of modern problems, interpretation of Islamic Law cannot be left to the wisdom of one man. To give him power to pick up persons to assist him in his duty is a dangerous business. Working at his pleasure, such persons are likely to be subervient and this will hamper in furnishing objective suggestions. There is a need of an independent body well versed in the Sharia and modern affairs to guide the supreme executive.¹ It is preferable that it act as guardian of the constitution on behalf of the community and have a final say in constitutional matters.²

¹There is a tradition of strong executive in past as well as in modern times. Afghan advocated to same. But we should make a distinction between a strong executive and a non-responsible executive. A responsible executive is not necessarily weak.

²While discussing Ijma, Iqbal speculates that "it was ... favourable to the interest of the Omayyad and the Abbaside Caliphs to leave the power of Ijtihad to individual Mujtahids rather than encourage the formation of a permanent assembly which might become too powerful for them". Iqbal, op. cit., pp. 164-65.

In so far as Ulama spring from the heart of the community, they are the natural members of such a body. The formation of Advisory Council of Islamic Ideology has been envisaged in the same manner but not in the same spirit; it does not have final word regarding constitutional matters. The question of deciding what is Islamic or otherwise is left to the politicians' struggles and strategies. There is a general tendency that "high-level personnel in the Muslim Governments ... out wordly at least, ... prefers to be modernist ... By rejecting a priestly class in Islam, the modernist seeks to relegate the Ulama from the scene, and in their stead, substitutes the authority of another class viz. himself and his fellow lay legislators".¹

In case legislative assembly is composed of members who are not well-versed in the Sharia, Iqbal recommends that final verdict on their decision be given by Ulama. But he is more inclined to a kind of set-up in which the Ulama "from a vital part ... helping and guiding free discussion on questions relating to law".²

The importance of Ulama in a Muslim polity is evident; they may be the sole members or may form 'vital part' of legislative assemblies or may use veto, they are indispensable.

¹Rahman, op. cit., 877.

²Iqbal, op. cit., p. 167.

In fact, "the future of Islam rests...on the insight of the orthodox leaders and their capacity to resolve the new tensions as they arise by a positive doctrine".¹ But "their education ... is still bound up with authoratarianism, rote learning, and a rigid devotion to ancient authorities..."² However, the leading Ulama in Pakistan are remarkably well aware of public affairs although not much of international affairs.³ Their appreciation of the value of procedures and techniques is evidenced by their active participation in framing the first constitution. The introduction of modern subjects in al-Azhar University is likely to have its impact on other centers of Islamic learning.

The Ulama are even more important on practical level. Their support is politically important; "They provide an important link between the government and the people. A political appeal to Islam remains an appeal to the Ulama."⁴ So long as religion is the only genuine emotional bond among Pakistanis, the interpreters of Islamic law will be looked to for political wisdom.⁵ Administrators of middle and lower

¹Gibb quoted by Halpern, op. cit., p. 122.

²Ibid. "However, the work of a small number of outstanding young Moslem scholars trained in modern science and history, and inspired both by their faith and their critical mind may well be creating new foundations for Islamic reform. Among these university scholars may be mentioned Dr. Seyyed Hossein Nasr, an Iranian Shia Moslem, and Dr. Yusif Ibish, a Syrian Sunni Moslem". Ibid. Iqbal may be considered a pioneer in this respect.

³Binder, op. cit., p. 378.

⁴Binder, op. cit., pp. 377-78.

⁵Campbell, op. cit., p. 59.

echelons, who have first hand knowledge of the conditions, have pressed on the officials of higher echelons to enlist the support of local Ulama and mullah (less educated than an alim) to overcome resistance to change in villages.¹

¹Proceedings of the Seminar on Welfare Administration
(Karachi: Ministry of Health and Social Welfare, 1960),
Passim.

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