

## **Islamising Pakistan: The Constitutional Contours**

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There had been a lot of debate in Pakistan over the nature of its constitution when it got independence from the British rule in 1947. Islamic parties such as JamiatUlama-i-Islam and Jamat-i-Islami demanded that the constitution of Pakistan should be an Islamic one. However, there existed ambiguity over the form of Islamic constitution as there was no pre-existing model. This article show what an Islamic constitution meant for them and how did their idea of Islamic Constitution evolve? It has taken up the Islamisation of the constitution of Pakistan in three phases i.e., period of concessions and compromises for the first constitution (1956), strategic retreat of the Islamic Parties in the second constitution (1962) and sharpening the pencils again for the third constitution (1973).

**Keywords:** Islamisation, Constitution, *Sharia*, *Ulama*, JamiatUlama-i-Islam (JUI), Jamat-i-Islami (JI)

### **Islamic Parties and the Concept of Islamic Constitution**

The partition of India in 1947 put an end to the British Indian Empire and resulted in the establishment of a new state called Pakistan. Muhammad Ali Jinnah (1876-1948), the founder of Pakistan during the road to independence had canvassed support on the basis of Islam. He tried to win over *Ulama* and *Mashaikh* during the election campaign of 1945-6, had made various promises and had implied that Pakistan would be made an Islamic State (Shah, 1999). He succeeded in getting support from a faction of JamiatUlama-i-Hind (JUH) (Mian, 1945) who founded JamiatUlama-i-Islam (JUI) in 1945 with MaulanaShabir Ahmed Usmani(1887- 1949) as its first president(Duliphala, 2015).

Another political party was Jamat-i-Islami (JI) which was staunchly against the creation of Pakistan. It was established in 1940 by AbulA'alaMaududi(1903-1979) (Nasr, 1996). He believed that Muslims were not just a nation rather they stood for a single ideology and principle. Therefore, if they struggled for their ideological livelihood instead of national safeguard and interests then not only, they could survive but it was possible that they could turn Hindustan into *Dar-ul-Islam* (Maududi, 2014).

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This article investigates the role of two religio-political parties JUI and JI in Islamising the constitutions of Pakistan. It further sheds light upon the respective understandings of Islamic constitution by both the parties and how their different approaches towards constitution making have been harmonised. For this study, primary data has been utilized extensively both in Urdu and English. Indigenous sources have been incorporated in order to have an idea of the Islamic constitution from the perspective of both JUI and JI.

After partition Jinnah left it to the constituent Assembly to draft the constitution for the country (Debates, 1947). This set the stage for the future constitution making process. When the debate on the constitution making process began, both JUI and JI demanded that the future constitution of the country should be Islamic. They premised their argument on the basis that India was partitioned because Pakistan was created in the name of Islam (Rauf, 2020).

As there was no pre-existing framework of an Islamic Constitution, therefore, they presented their own model of an Islamic Constitution (Maududi, 2002). Their model was comprised of nine broad sections. Namely, Sovereignty should belong to Allah, obedience to Prophet Muhammad (PBUH) should be in word and spirit, 'no law should be against the Quran and Sunnah', the form of government should be Khilafat (Maududi, 2002). The objective of the government should be to enforce '*Amr bilma'rufwanahia'nilmunkar*' (command what is right and forbid what is wrong), there should be a *Shura* (parliament), the principle of election should be adopted, the head of state should be assigned with the administrative powers and can only be among Muslims and should be male as female cannot become the head of state (Maududi, 2011). Lastly, they listed the fundamental rights which included the right to life, property, honour and freedom of religious practices, education and the independence of Judiciary.

This was the model of the Islamic Constitution which both JUI and JI espoused and demanded that the Constituent Assembly should work on and frame a constitution keeping in view the above-mentioned points.

### **Concessions and Compromises**

It took two years for the Constituent Assembly of Pakistan to start working on formulating the constitution and it did so only when at the end of 1948 it was reported that the Indian constitution was presented to its Parliament (Binder, 1961). On 25 February 1949, the Muslim League Parliamentary Party met in complete secrecy to discuss the basic aims and objectives of the future constitution of Pakistan (Binder, 1961). The draft of the Objectives Resolution was prepared by Maulana Shabir Ahmed Usmani and Maulana Zafar Ahmed Khan Ansari and was then sent to Multan jail for consultation with Abul'ala Maududi (Tufail, 2014) and on 7 March 1949 submitted the Objectives Resolution to the Constituent Assembly, which stated that the sovereignty belongs to Allah, exercise of State power through chosen representatives, enabling of Muslims to order their lives in... accord with... Holy Quran and the Sunna, the freedom to profess and practice the religion by minorities, protection of fundamental rights and independence of the judiciary (Debates, 1949).

## ISLAMISING PAKISTAN

Both JUI and JI were happy enough that they had secured enormous success and it was a great leap forward in the formulation of an Islamic constitution. Maulana Shabir Ahmed Usmani in his speech staunchly supported the resolution and said, 'This Objectives Resolution is not a challenge to the world', he refuted the idea of a theocratic state (Debates, 1949). It meant to him that the state was neither theocratic nor despotic or autocratic but it had the delegated powers of God and was run by man but would use its powers within the limits prescribed by Him (Debates, 1949). About minorities he expressed that they might have a place in the administrative machinery but could not be entrusted with the policy making authority (Debates, 1949). However, he was of the opinion, 'It is the duty of an Islamic State to fully safeguard the lives, property, honour, religious freedom and civic rights of all loyal non-Muslims within its jurisdiction' (Debates, March, Vol. 5. No. 03, 1949, P.6). The debate concluded on 12 March 1949 and the resolution was passed.

Jamat-i-Islami on the same day summoned its session of its central executive committee and passed the resolutions in favour of the Objectives Resolution. In these resolutions, Jamat 'thanked God' that the Constituent Assembly of Pakistan had ultimately passed the Objectives Resolution (Ahmed, 2011). By that resolution, according to the central committee, Pakistan had acquired the qualification to be called an Islamic State. The committee demanded that on the basis of the Objectives Resolution an Islamic Constitution should be established and *Ulama* and intellectuals should be taken onboard in this regard (Ahmed, 2011).

The Objectives Resolution was considered as the achievement of JUI and Jamat-i-Islami as it had somehow accepted the basic demands of both Maududi and Usmani. However, in reality, the words of the resolution were ambiguous and its interpretation varied among the religious class and the secular leadership of that time. For instance, the word 'Islam' was large enough to be understood by modernists and traditionalists in different ways. Secondly the term '*Sharia*' was non-existent in the resolution and instead 'Quran and Sunnah' were to be used as the sources through which the lives of Muslims were to be ordered in individual and collective spheres. It is quite interesting that Quran and Sunnah are thought to be comprehensive sources yet they need interpretation thus it meant that both the sources were aimed to provide the directive principles (Ahmed, 2011).

After the adoption of the Objectives Resolution, the Basic Principles Committee was formed and in April 1949 this committee met and came to the conclusion that it would be further divided into sub-committees that would report back to the parent committee (Binder, 1961). The main problem which the committee faced was that whether the Objectives Resolution was to be included in the main clauses or should it serve a 'general guide' in the working of the government. Resultantly Board of *Talimat-i-Islamia* (BTI) was established to 'advise on matters arising out of the Objectives Resolution' (Binder, 1961, P. 156).

The BTI was asked to give its opinion on Head of the State and its election, powers, constitution and function of the legislature, on the question how to enable Muslims to order their lives according to Quran and Sunnah and the Emergency Laws (Binder, 1961).

The BTI in its 'preliminary observations' outlined the basis of its views. Those overture reflections were comprised of three points. Firstly, the Board declared Pakistan as an Ideological state, however, different from a 'National State'. The main purpose of that declaration was to emphasize the importance of the ruling elite i.e., no one could be entrusted with the authority who did not believe in the ideology of Islam. Secondly, the Board showed its readiness to change or alter its views once a complete picture of the constitution was presented to the Board and thirdly, any law, bill or ordinance was to be rejected by the committee of experts on *Sharia* if it militated against *Sharia* (Binder, 1961).

The qualifications for the Head of State proposed by the BTI were that ahead of the State of Pakistan should be 'a Muslim male', of sound mind, 'not blind or dumb or deaf', of '40 years of age', 'learned and virtuous in terms of *Sharia*', 'wise and sagacious', 'got mental poise and was not a captive of a foreign government' (Binder, 1961). The Board suggested that 'the head of state should be elected for life time', if necessary for five years, however; with the condition that 'he could be removed at any time in accordance with the principle of *Sharia*'. For the election of the Head of state, the Board suggested that he could be elected by the representatives of people and in that case, the federal houses could do that job. The best suited process of election, suggested by the Board was the process of elimination of names (Binder, 1961).

On legislature, the BTI argued, 'the real function of any properly constituted legislature is to enact and enforce the commands and injunctions of Allah and His Prophet' (Binder, 1961, P. 406) The members were required to be learned in the laws of Islam, had Islamic character, were morally sound and were of 25 years of age. While for the non-Muslims it was mandatory that they must have not repudiated the ideology of Pakistan and for women the role was minimized as only a woman of 50 years of age and observing *purdah* (veil) were suggested to be eligible to the membership of the legislature (Binder, 1961).

The propositions of the Board of *Talimat-i-Islamia* (BTI) clearly reflected the endeavour of *Ulama* to transform the state of Pakistan and its constitution into a model of early Caliphate which they called the *Rashidoon* (Rightly Guided 632-660 A.D) but at the same time tried to adjust it to the needs of modern times. The major focus on the Head of state indicates that during the early Caliphate, the Caliph of Islam was the centre of power. The qualifications for the head of the State were taken from the medieval sources that looked towards the early days of Islam. The BTI had further proposed the 'Committee of Experts in *Sharia*'. The purpose of this committee was to operate superior to parliament and define the boundaries of *Sharia* and its advice was supposed to be binding.

The Interim Report of BPC came as shock to the religious section of the country. There was nothing as Islamic in the 'Memorandum on Federal and Provincial Constitutions and Distributions of Powers'. Furthermore, the enabling clause of the Objectives Resolution was treated as non-practical as the report stated, 'It is not possible to enumerate the details of such activities in the Constitution' (Debates, BPC Report 1,

## ISLAMISING PAKISTAN

1950, P. 16)i.e., ‘of ordering the lives according to Quran and Sunnah’. However; the teaching of the Quran was proposed to be made compulsory.

Reacting to the interim report Jamat-i-Islami, on 5 October 1950 Maulana Maududi issued a statement that the Constituent Assembly was even not competent enough to formulate a democratic constitution least an Islamic one. He further demanded that a new directly elected Constituent Assembly should be established based on adult franchise that would formulate an Islamic Constitution (Ahmed, 2011). In order to pressurize the government, Jamat-i-Islami decided to hold public processions and in his speech on 14 October 1950 Maududi said; ‘in these recommendations...there is not a single word that would mean that in this country the commandments of Allah and his Prophet, are accepted as a Final Authority’ (Saulat, 1987).

JUI also protested against the interim report of BPC and vigorously criticized it. Mufti Shafiq said, ‘the People of Pakistan rightly felt perturbed to find that these reports are totally void of any provision for the positive requirement of Islam and many of their contents are given against Islam and against the Objectives Resolution’ (Dawn, 1950.).

After confronting severe opposition, the consideration of the BPC report was postponed and Liaquat Ali Khan asked to offer suggestions for ‘the basic principles of the constitution’ (Debates, Vol. VIII, No. 6, 1950) to submit their recommendations. As a response to the invitation of the Prime Minister to submit suggestion to the BPC, JUI convened a *Ulama* conference from 21 to 24 January 1951 and declared that the BPC report did not concur with the Islamic Principles (Maududi, 1950). The convention prepared a draft of the twenty-two fundamental principles of an Islamic state. The purpose of this draft was to provide a general framework for an Islamic constitution while on the other hand it was aimed to show that there was unanimity among the different sects over an Islamic Constitution.

The twenty-two points mainly revolved around three main aspects. The first section included salient points regarding the Sovereignty of Allah, the clause of repugnancy, Islamic Ideology against territorial nationalism and establishing *Millat-i-Islamiah* (the nation of Islam) by making bonds with the Islamic world. The second part of the rights of the citizens included the basic necessities of life i.e., ‘food shelter security and property’, equality before the law, religious freedom according to their respective sects and religious and personal freedom to non-Muslims. The third portion relating to governance largely focused on the head of State and its powers. Judiciary was to be independent, civil servants were not to be given extra privileges and rights and lastly ‘no interpretation of the constitution in conflict with Quran and Sunnah was to be accepted as valid’ (JUI, 2013).

After taking the recommendations from various groups the BPC submitted its second report to the Constituent Assembly on 22 December 1952 (Debates, 1952). The report embodied the Objectives Resolution as its preamble to future constitution. The directive principles of State Policy were more elaborate and had Islamic content in it. It elaborated specifically the steps ‘to enable Muslims to order their lives in accordance

with Quran and Sunnah'. That included the facilities for the 'teaching of the Holy Quran', 'prohibition of drinking', 'gambling', 'prostitution', 'elimination of *Riba*' (usury), and 'promotion of Islamic moral standards and organization of zakat', 'waqf and Mosques' (Debates, 1952). It ensured that 'steps would be taken for bringing the existing laws into conformity with Islamic Principles'. It had the repugnancy clause i.e. 'No Legislature should enact any law which is repugnant to the Holy Quran and the Sunnah' (Debates, 1952).

In response to the second BPC report, *Ulama* who had participated in the conference of 1951 convened again on 11 January 1953 to propose certain amendments and suggestions (*Ulama's Amendments to BPC Report, 1953*). *Ulama* demanded that the teaching of Quran and the subject of Islamiyat be made compulsory, and proposed the amendment that all intoxication would be eliminated within three years. *Ulama* exacted that all laws should be brought in to conformity within five years and arrangements should be made to codify all the commandments of Quran with respect to the different schools of thought. The Convention also demanded that 'the propagation of atheism and infidelity and the insulting or ridiculing of the Holy Quran or the Sunnah be prohibited through legislation'. *Ulama* further stressed that not only no legislation should be against Quran and Sunnah but also Quran and Sunnah must be accepted as the chief source of legislation (*Ulama's Amendments to BPC Report, 1953*).

They demanded that five *Ulama* well versed in Islamic Law should be appointed to the Supreme Court who would decide 'whether or not the law in dispute is in conformity with Quran and Sunnah'. Similarly, money bills were required to be brought under that condition within five years and the name of Pakistan should be *Jamhuriya-i-Islamiyah Pakistan* (*Ulama's Amendments to BPC Report, 1953*). They also demanded that Ahmadis should be declared as non-Muslims and one seat in the central legislature should be reserved for them.

Meanwhile, on 17 April 1953 Governor General Ghulam Muhammad dissolved the ministry of Khwaja Nazim-u-Din (1951-53) on the Pretext that 'it had lost the confidence of the people'. The Constituent Assembly took almost another year to finalize the constitution making process and on 21 September 1954 adopted the third report of Basic Principles Committee (Debates, 1954).

BPC in its third report accepted making the teaching of only Holy Quran compulsory. It suggested that the Quran and Sunnah could be given Legislative effect 'duly safeguarding the personal laws of non-Muslims'. The Quran and Sunnah were not accepted as the chief sources of law but it was conceded that where ever the expressions Quran and Sunnah occurred it would be accepted according to that particular sect in relation to which the expressions were used. Supreme Court was entrusted with the interpretation of the Islamic law, to be decided by full bench of five judges not necessarily Muftis. The financial matters were to be decided by a commission after 25 years in order to be brought under the repugnancy clause. In the third report the name of

## ISLAMISING PAKISTAN

the state was proposed as the 'Islamic Republic of Pakistan'. The declaration of Ahmadis as non-Muslims was not accepted (Debates, 1954).

From the above discussion it is clear that there was huge difference between the Interim Report and the adopted report of the Basic Principles Committee. The former did not debate Islam in detail while the later had incorporated much of the Islamic content proposed by the unified religious section that included almost all sects and religio-political parties of the country. Jamat-i-Islami in its party meeting held on 9-12 October 1954 reiterated that they considered a constitution an Islamic one in which the sovereignty of God and, in principle, the standard verdict of Quran and Sunnah had been recognized. Therefore; the *shura* of JI requested the public to pressurize the government to pass the constitution draft timely and enforce it within that year (Ahmed, ed., 2014). Mufti Shafi, the president of JUI also called upon the public to celebrate 22 October 1954 as the Islamic Constitution Day and pressed that the constitution be enforced without any delay (Dawn, 1954).

The constituent Assembly, before the adoption of the constitution was dissolved on 24 October 1954 by General Ghulam Muhammad. When the Constituent Assembly was dissolved there was a short period of judicial struggle in which Maulana Tameez-uddin speaker of the dissolved assembly filed a case against the dissolution of CAP in Sindh High Court that ruled in favour while the federal court ruled against and upheld the decision of the dissolution of the Constituent Assembly of Pakistan. When the assembly was dissolved and its legislation was considered as null and void it caused legal turmoil in the country and when the Governor General tried to handle the issue through emergency decrees, the Federal Court overruled it thus the Governor General had to appoint a new Constituent Assembly thus in this way the second Constituent Assembly was set up on 28 May 1955.

The newly elected Prime Minister Chaudhry Muhammad Ali (1955-56) worked for formation of the constitution and presented its draft in the Constituent Assembly was adopted on 29 February 1956 and was enforced on 23 March 1956.

When the Constitution of 1956 was adopted, it was hailed by the religious groups with some criticism as there were following major gains i.e., the Sovereignty of Allah, 'the name of the country to be Islamic Republic of Pakistan', 'Head of State to be a Muslim', 'promotion of Islamic principles', 'Organization for Islamic Research and instruction' and the 'Repugnancy Clause' (Mahmud, ed., 1975). When the constitution was adopted in its statement JI thanked God that after long period the future constitution of Pakistan was settled and it was announced that the constitution was accepted by Jamat-i-Islami (Ahmed, 1964).

JUI declared the adoption of the 1956 Constitution as a 'great victory' against the secularists (Kamal, 2006). However; JUI also criticized the Constitution of 1956 as, 'an Islamic State which embody the Islamic injunctions, Islamic way of life and Islamic Ideology, in it the right to vote, the right to legislate and the right to the membership of ministries can only be awarded to those who are Muslims and have the veracious desire to run the affairs of the state according to it' (Qureshi, ed., 2017, P. 135).

The whole process of Islamising constitution that spread over nine years after independence shows a pattern of continuous concessions by Muslim League to the Islamist parties along with compromises made by the religio-political parties. As the state of Pakistan had little common in national and cultural values so the only factor remained that could tie up the whole country was Islam. That's why the Muslim League Parliamentary party despite of being modernists, gave way to the Islamic rhetoric and Maududi learned that the Islamic Parties could play the role of power broker (Nasr, 1994). On the other hand JUI was in alliance with Muslim League; Shabir Ahmed Usmani was in the Constituent Assembly and 'did not want to see the modernists conduct their experiments unsupervised in what Liaquat Ali Khan had referred to as a laboratory' (Zaman, 2018). Since, in general terms, all the Islamic parties wanted an Islamic Constitution, therefore, their interests aligned and it was easy for them to cooperate with each other. Thus, they joined hands and responded collectively to the complete constitutional process. When the unity was shown by the religious section the pressure on the government rose and it can be seen that the amendments proposed by *Ulama* after the second BPC report were incorporated in the third report and later on in the constitution of 1956.

### **Strategic Retreat of *Ulama***

There was continuous political instability in Pakistan after the assassination of Liaquat Ali Khan in 1951. This, however, did not end after the promulgation of 1956 constitution. Power remained in the hands of the then President General Iskandar Mirza (1955-58) and the overtly powerful Commander in Chief General Ayub Khan. On 7 October 1958 General Iskandar Mirza called the armed forces, declared martial law and appointed General Ayub Khan as the Chief Martial Law Administrator. All political activities were banned and political parties were not allowed to function till Martial Law remained imposed. On 27 October 1958 Ayub Khan pushed Iskandar Mirza out and assumed undisputed power.

The imposition of martial law was a blow to the efforts of the Islamic Parties which they had undertaken for an Islamic Constitution. It was so because Ayub Khan shared much with the modernists in his understanding of Islam (Zaman, 2018). Pakistan, according to Ayub, was divided on many issues but more than anything it was the 'irreconcilable nature of the forces of science and reason and the forces of dogmatism and revivalism' (Khan, 1967).

In his speech to the *Ulama* in Dar-ul-UlumIslamiyah, TandoAllahyar Sindh, Ayub said that Islam was a 'progressive religion' but a great distance had come to separate religion and life (Zaman, 2018). Therefore; the constitution envisaged by Ayub for Pakistan was to be 'democratic' and in that, Pakistan according to its own circumstances, had to work out for the application of the Islamic principles. For that purpose, *Ijma* was the only method to be adopted (Khan, 1967). President Ayub wanted a constitution to be based on his 'enlightened' ideas.



## ISLAMISING PAKISTAN

President Ayub announced on 17 February, 1960 of setting up a commission for the constitution under Justice Shahabuddin (Khan, 1967). The commission after consultation submitted its report to the president, who did not agree with its recommendations therefore, he came up with his own plan which was drafted by ManzurQadir and was implemented on 1 March, 1962.

The new constitution clearly reflected the mind of Ayub Khan who was not ready to entertain any religious group by accepting their claims. He left the question of ideology to be discussed and interpreted by the members of the legislature (Gauhar,1993). In the preamble, sovereignty belonged to Allah...and the authority was exercisable by the people as sacred trust...Muslims were to be enabled to order their lives according to Islam (Mahmud, ed., 1975). In it the words 'within the limits prescribed by Him' and 'as set out in the Holy Quran and Sunnah' were omitted. The Constitution named the country as the Republic of Pakistan (Mahmud, ed., 1975. the word 'Islamic' was dropped.The president was required to be a Muslim.Advisory Council of Islamic Ideology and the Islamic Research Institute were established. The Advisory Council was required to make recommendations to the central and the provincial governments as means to enable the Muslims of Pakistan to order their lives in accordance with the basic principles of Islam.The research Institute was to conduct Islamic research 'for the purpose of assisting in the reconstruction of Muslim Society on truly Islamic basis' (Mahmud, 1975).

The constitution faced severe criticism when it was promulgated. There was a ban on all kinds of political activities yet there were agitations. Therefore, as soon as the political activities were restored both JI and JUI took no time to criticize the government and the constitution. Maududi in his speech at MauchiDarwaza Lahore stated that in the present constitution all regressive elements are included and those terms are avoided that may reflect the meaning of freedom and democracy (Tufail, 2014).Jamat-i-Islami passed the resolution on 6 August, 1962 in which it declared the constitution with the perspective of Islam as a 'disappointment'. The party criticized the government that it had dropped the word Islamic from the name of the country, *Ribawas* interpreted as usury and laws were not to be against Islam and the use of the words of Quran and Sunnah were evaded (Ahmed, 2014). It was not mentioned in the constitution, the resolution stated, that the existing laws will be conformed to Quran and Sunnah. Due to the stated reasons, it was not acceptable to the Jamat,however,it had no option other than to bear with it (Ahmed, 2014).

All the political parties including JUI and JI held the view that once the political parties were restored then the constitution could be amended to suit it to the democratic norms and Islamic principles (Ahmed, 2014). Thus within two years of its promulgation the National Assembly passed first amendment on 10 January 1964 (Mahmud, ed., 1975) by virtue of which the Preamble of the constitution was amended. In it the words, 'within the limits prescribed by Him', and 'as set out in Holy Quran and Sunnah' were added (Ahmed, 2014). The name of the state was reversed back to the 'Islamic Republic of Pakistan and repugnancy clause was inserted back into the constitution.

By virtue of the amendment the Islamic Provisions that lacked in the constitution were brought back. This showed the recognition of the influence of *Ulama*. It was also a political tool used by Ayub as he had decided to enter the political arena (Zaman, 2018). The response to the abrogation of the Constitution of 1956 and the promulgation of the 1962 constitution shows interesting political behaviour of both JI and JUI. Both the religio-political parties showed great flexibility in accepting the 'less Islamic' constitution as compulsion. Apart from this fact, it also reflects the behaviour of religio political parties that they made compromises in changing circumstances.

### **Sharpening the Pencils and the Formulation of 1973 Constitution**

The constitution of 1962 remained in force till president Ayub remained in power. It was abrogated by Yahya Khan (1917-1980) on 28 March 1970. Elections were held in December 1970, which were the very first elections based on adult franchise. JUI nominated ninety candidates for the national assembly in West Pakistan and fifteen in East Pakistan. Only seven returned to the Assembly and Mufti Mahmud defeated Z. A. Bhutto from Dera Ismail Khan (Pirzada, 2000). On the other hand only four candidates of JI returned to the assembly. The election results showed complete East and West divide in which Awami League of Sheikh Mujib-ur-Rehman had won 160 out of 162 seats of East Pakistan and did not secure a single seat in West Pakistan. In West Pakistan the Pakistan People's Party won 81 seats and emerged as the majority party in West Pakistan (Pirzada, 2000). As a result Awami League secured the majority and Z. A. Bhutto wanted to have a share in the government to which Awami League was not prepared. This led to the political chaos and ended up as an armed struggle of Bengalis and subsequent military operation by Pakistan military forces and ultimately a war with India in which Pakistan was defeated and East Pakistan became Bangladesh. On 20 December 1971 Yahya Khan resigned and handed over the power to Zulfikar Ali Bhutto. The history of old Pakistan was over and Bhutto assumed the reigns of New Pakistan.

The most arduous task that laid ahead was the formulation of a constitution. Bhutto in his maiden speech declared Pakistan as an 'Islamic State' and stated that the state system would run on the basis of Socialism. Mufti Mahmud welcomed the transfer of power and demanded the summoning of the session of the Assembly, adoption of the Constitution and founding the Constitution on the Holy Quran and Sunnah (Hussain, 2006). However, JI called for the formulation of the new Constitution and fresh elections should be held afterwards (Ahmed, 2014).

The Assembly Session was called on 14 April 1972 and the Interim Constitution was adopted on 17 April 1972. Presenting the Constitution Mia Muhammad Ali Qasuri, the Law Minister stated that they had made every effort to make that Interim Constitution 'a document worthy of, and acceptable to an honourable dignified sovereign state' (Debates, 1972). Responding to the law minister, Maulana Ghulam Ghaus Hazarvi of JUI stated that 'country cannot become an Islamic Republic by merely pronouncing it so and similarly a Constitution cannot become Islamic by only calling it so, unless special provision is made therein for Islamic tenets, commandments and prohibitions and for the Islamic teachings' (Debates, 1972). He emphasized that 'the definition of Muslim shall

## ISLAMISING PAKISTAN

be inserted in the constitution and Islam be declared as the official religion of the state' (Debates, 1972, PP. 216-17). Mufti Mahmud in his speech pointed out that the country was neither Islamic nor democratic but in order to get rid of martial law, he had to support the Interim Constitution, however; he also demanded that Islam be declared as the official religion of the state (Debates, 1972). He also criticized the clause of Freedom of Religion which gave independence to Muslims to adopt any faith which was against the instructions of the Prophet (PBUH) (Debates, 1972).

Professor Ghafoor Ahmad of JI, complained that the amendments to the Interim Constitution did not include any of the amendment proposed by 'them' (JI) (Debates, 1972). The amendments proposed by Ghafoor Ahmed included the inclusion of provisions relating to Islam in the operative clauses, establishment of an 'effective machinery' by virtue of which the present laws could be brought in to conformity with Quran and Sunnah within a fixed period. On the same day the Interim Constitution was put to vote, adopted and enacted 'to remain in force until the constitution is framed by this Assembly' (Debates, 1972).

A twenty-five member constitution committee was formed in order to report on the future constitution (Debates, 1972). The Constitution Committee presented its proposals in the National Assembly on 31 December 1972. On 2 February 1973 the constitutional bill was introduced in the National Assembly while on 17 February 1973 it was taken in to consideration by the House. The debate continued till 10 April on which the final and permanent Constitution for the country was adopted and passed and signed by members of the constituent Assembly (Debates, 1973). The president gave his assent on 12 April and was promulgated on 14 August 1973.

The Constitution of 1973 was a compromise document among the political parties after the breakup of Pakistan. It started with the Objectives Resolution as its Preamble with few additions, (Mahmud, 1975). It named the country as the Islamic Republic of Pakistan, declared Islam as the official religion, teaching of the Holy Quran and Islamiyat were to be made compulsory, state had to facilitate the teaching of Arabic language, had 'to secure and exact printing and publishing of the Holy Quran'. (Mahmud, 1975). The 1973 constitution required the President to be a Muslim, all existing laws were to be brought in conformity with the Holy Quran and Sunnah and no law was to be repugnant to such injunctions, the Council of Islamic Ideology was to be established to advise that whether a proposed law was or not repugnant to the injunctions of Islam (Mahmud, 1975). Presidents and Prime Ministers were required to take oath that they were 'Muslims believed in Oneness of Almighty Allah, the Books of Allah, the Holy Quran being the last of them, the Prophet hood of Muhammad (peace be upon him) as the last of the Prophets and there can be no Prophet after him, the Day of Judgment and all the requirements and teachings of the Holy Quran and Sunnah' and 'strive to preserve the Islamic Ideology' (Mahmud, 1975).

The journey from the failure of the Constitution of 1956 to the promulgation of the third constitution in 1973, the religio-political parties showed quite a pragmatic and flexible behaviour. The rock-ribbed notions of Islamism and Islamic Constitution went

through many transformations. Firstly, immediately after the imposition of Martial law in 1958 the religio-political parties adopted a soft or rather evasive attitude towards the formulation of the constitution of 1962. They did not protest over the abrogation of the first constitution and their views were not incorporated in the second constitution, yet they accepted it. The only reason was that they did not have the power to counter Ayub through any political means, thus they made a choice and received what was given to them by the military regime and waited for the time to make changes to the constitution, which they did and brought back the Islamic content through the first Amendment.

Secondly the political instability at the end of Ayub regime to the Fall of Dhaka in 1971, religio-political parties concluded that it was the failure of the state of Pakistan to implement Islamic Ideology that's why the country broke up and then onwards started to demand the inclusion of their demands in the constitution of 1973 more forcefully. Thirdly after the separation of East Pakistan, Awami League no longer existed so it gave a chance to the religio-political parties to play a greater role in the national politics, therefore; JUI emerged as the third largest party in the country. The religio-political parties not only made gains by binding the government to promulgate Islamic Laws within the two years of receiving the report from the Council of Islamic Ideology but also contributed in bringing constitutional stability to Pakistan.

### **Conclusion**

In the constitutional history of Pakistan, religio-political parties have effectively worked for Islamising the Constitution because they succeeded in romanticizing the notion of Islamic Constitution among the general public (Rais, 2017). There is a pattern of unity in that respect i.e., both JUI and JI have worked together to Islamise the Constitution of Pakistan. That fraternization has always remained multi-facet. Both the parties came close to each other on many occasions because they needed it. Such as in the primal days JI had no representative and JUI had only Shabir Ahmed Usmani in the Constituent Assembly who voiced for the Islamic Constitution. JI had to bring the issue of the Constitution in public and in order to pressurize the government Maududi used public pressure. In addition to that for the purpose of effectiveness, *Ulama* needed a singularity of opinion. Thus, they always came close together in the first decade after and unanimously reacted at each stage of constitution making.

The Second common pattern is the discussion over the notion of 'Islam' itself. Both religio-political parties agreed on the fact that Pakistan was made in the name of Islam and Islamic System had to be implemented. However, the approach towards the implementation of Islam varied as JI with Maududi called itself not merely a political party but a revivalist movement that was established to revive Islam and to build a community of pious who would then rule the land of pure and would implement Islam in each and every walk of life. This would then give way to the establishment of pure Islamic government. JI viewed that only the implementation of Political Islam was not enough rather it was the last step and before that the society had to be Islamised.

## ISLAMISING PAKISTAN

JUI had, however, a different approach in implementing Islam in Pakistan. JUI had its roots from Jamiat *Ulama-i-Hind* (JUH) which was the party of Deobandi *Ulama* established in 1919. And the institution to which it was associated, Deoband, was established in 1866. It had been working for almost eight decades and it had its own system of *Tabligh*(preaching) and Madrassa. Therefore, when Pakistan got independence, JUI argued that it only needed the implementation of Islamic law and appointing a body of *Ulama* that would look if any law was repugnant to Quran and Sunnah.

Another common pattern in which the religiopolitical parties-built relation with each other regarding the Islamisation of the constitution is historical learning. This process of learning enabled JUI and JI to adjust its views and claims with the changing circumstances. JI wanted to implement the Islamic Constitution but stayed out of electoral Politics for time being and later decided to join it. Similarly, the *Ulama* of JUI, when they were appointed in the Board of *Talimat-i-Islamia* (BTI) gave proposals for the government on the pattern of early Islamic Caliphate but later on they agreed to the 3<sup>rd</sup> BPC Report in which there was very less content of the suggestions of the BTI. The historical learning also made the religio-political parties understand that once few demands were accepted, new proposals were to be made. This process went through out the history of Constitutional development.

Islam remained an important political factor in the national politics of Pakistan, therefore, it gave the religio-political parties a chance to use it in their favour for Islamising the Constitutions. The breakup of Pakistan in 1971 was used by the religio-political parties to claim that it was a proof that without implementing the Ideology of Islam, Pakistan could not survive and the parochial, ethnic and linguistic identities were against the solidarity of the country. This notion affected the constitution of 1973 to a greater extent and thus the Islamic content was increased in it.

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## ISLAMISING PAKISTAN

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