

Islamizing the Constitution of Pakistan: The Role of Maulana Maudoodi

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Abstract:

After the creation of Pakistan the most important task was the making of constitution. There were many hurdles in the way of constitution making. The status of Islam in the state affairs was one among them. During the Pakistan movement the name of Islam was excessively used. But when the country was created the westernized leadership of Muslim League started lobbying to make Pakistan a secular state. The Ulama roused to the occasion and demanded Islamic constitution. It was known to them in advance that westernized intelligentsia will separate state and religion from each other. Maulana Maudoodi among the religious intelligentsia played an active role in Islamizing the constitution. He rendered remarkable services for this purpose. The paper is an attempt to highlight valuable services of Maulana Maudoodi briefly and concisely.

Key Words: Pakistan, Islam, Constitution, Westernized Leadership, Ulama, Maulana Maudoodi.

Introduction:

Pakistan was established on August 14, 1947 as a result of a long and exhausted yet peaceful movement led by Quaid-i-Azam under the umbrella of the ideology of Islam. Pakistan is unique in the sense that Islam has been its *raison d'être*. No Muslim country has experienced such rigorous movement for Islamization of state as Pakistan did.

There were many reasons responsible for Pakistan movement i.e. economic, political, social and cultural but the religion was the most important among them all. Islam almost overlapped all other reasons. Islamic government, Islamic constitution, Islamic state were the slogans during the entire movement of Pakistan and even for some years after the creation of Pakistan.

In a heterogeneous society of India where the people of the same religion were speaking different languages and following different cultures, Islam was the only cementing and uniting force. It was Islam and nothing else, which united Punjabis, Bengalis, Pashtuns, Sindis, Baluchis and many other

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small groups at one single platform for the creation of Pakistan. Saying this that Pakistan was created as a Muslim state only for the protection of economic rights of Muslims can at best be regarded as an academic interpretation of events leading to the creation of Pakistan but not as an exact reading of the real situation of that time.¹

“Pakistan was created in the name of Islam. The Pakistan Movement was an expression of Muslim India’s firm desire to establish an Islamic State. The movement was inspired by the ideology of Islam and the country was carved into existence solely to demonstrate the efficiency of the Islamic way of life.” Says Maulana Maudoodi. He further says, “The real objective behind the creation of Pakistan was the establishment of a country wherein the Islamic ideology could be implemented in its entirety. The support and the sacrifice of the people were meant for this objective and for nothing else.”²

CONSTITUTION MAKING PROCESS AND DEMAND FOR AN ISLAMIC CONSTITUTION

First Constitutional Assembly and Constitution Making Process:

In modern era constitution is the first priority for any state. It not only specifies the system of the government but also serves as a blueprint of the state program. Keeping in view this, Pakistan soon appointed a Constituent Assembly, elected in 1945-46, to frame a constitution. The first session of the new Constituent Assembly was held in Karachi from August 10 to 14, 1947. Under the Indian Independence Act 1947, the Assembly had to perform dual functions i.e. to make constitution and to act as federal legislature.³ Muslim league was the biggest in the Assembly. Though, there was no organized Muslim political opposition in the Assembly but there were some critics inside the Muslim League. Among them one was Maulana Shabir Ahmad Uthmani who died at the end of 1949.⁴

Demand for Islamic Constitution:

The demand for the establishment of Islamic way of life is deeply rooted in the history of Indian Muslims. After the creation of Pakistan, this demand caught more strength and attention. The constitutional assembly sat to frame a new constitution for Pakistan, keeping in view the socio-political and religious conditions of the country. After the creation of Pakistan the question rises that what would be the nature of the state. Was it an end in itself or it is a mean for achieving a greater end? This question consumed much of the time of Constituent Assembly. The stand of Jama’at was that it was not an end rather a source for the achievement of a greater end. They further said that the creation did not solve the problem of Muslim identity as a separate nation. It was the beginning of a decade long quest and debate over just what Pakistan’s Islamic character should be. For modern Muslims it was just a Muslim homeland for Muslims of India. While for others i.e. common person and religious class it was an Islamic state.⁵

The traditionalists and modernists were trying to make it as per their wishes. The views of Quaid-e-Azam regarding the nature of the state were interpreted differently both by Ulama and modernists. Modernists explained that Quaid wanted Muslim state. On December 25, 1956, while celebrating the birthday of Quaid-i-Azam Prime Minister of Pakistan, Hussain Shaheed Suharwardi said that Quaid-i-Azam never supported Two-Nation Theory. He used it for the creation of Pakistan but after independence, he abounded it in favour of one composite Pakistani Nationalism.⁶ But the thorough study of Quaid's life reveals that he was a devoted Muslim and sincere with his principles. His clear vision about everything involved in the creation of Pakistan did not support this idea. He was a man of principles so much so that he never used anything for achieving any objective, which according to him was not right. There are many examples in his life that he even did not exploit opportunity or sensitivity of anything for his personal goals. Suharwardi's idea cannot be supported by even a single example from Quaid's life.

While traditionalists interpreted that he wanted an Islamic state. In a letter to Pir of Manki Sharif in 1945, he writes, "it is needless to emphasize that the constituent assembly which would be predominantly Muslim in its composition would be able to enact laws for the Muslims, not inconsistent with the Shariat law and Muslims will no longer be obliged by un-Islamic laws."⁷ After the creation of Pakistan, he assured the people of Pakistan about the Islamic constitution, "will be democratic type embodying the essential principles of Islam."⁸ Liaquat Ali Khan also expressed the same views while speaking on Objective Resolution in the Constituent Assembly. According to him, the purpose of the creation of Pakistan was to enable the Muslims of India to live their lives according to the teachings of Islam.⁹

Ulama were very much enthusiastic and determined to make Pakistan an Islamic state. From the very beginning, they were demanding that law of the land would be Islamic. That is why all the three constitutions of Pakistan contained provisions to the effect that law in Pakistan would not be repugnant to the teaching of Islam.¹⁰

Objective Resolution: the first Triumph of Ulama:

The question of the place of Islam in constitution considerably delayed the constitution making process. Until 1949 the assembly was unable to pass even a single constitutional bill. On March 12, 1949 Objective Resolution was passed which provided 'the Aims and Objectives of the Constitution. It laid the foundation and outlines for the future constitution. It is considered the most important occasion in the life of Pakistan, next in importance to the creation of Pakistan.¹¹ Objective Resolution appeared to suggest that the government had accepted the demand of Ulama. It was the first remarkable achievement of Ulama.

The most important feature of the Objective Resolution was that it provided base to the constitution of Pakistan on the ideals of Islam. The preamble of the resolution made a frank and unambiguous recognition to the

sovereignty of God and declared that all authority must be subverted to God.¹²

Basic Principles Committee (BPC):

On March 12, 1949 the day Objective Resolution was passed by Assembly, many committees and sub-committees were constituted in order to facilitate the constitution making process. The Basic Principles Committee was the most important among these. Its term of reference was to give recommendations for the Constitution in accordance with the Objective Resolution. The BPC setup three sub-committees:

1. Sub-Committee on franchise
2. Sub-committee on judiciary
3. Sub-committee on federal and provincial constitution and power distribution.¹³

The BPC offered a prolonged discussion decided to set up a board of experts consisting of reputed scholars, well versed in Talimat-e-Islami to advise on matters arising out of Objective Resolution and on such other matters as may be referred to them by the various committees. Among the members were some eminent religious scholars. They were Maulana Sayyed Suliman Nadve, Maulana Mufti Muhammad Shafi, Prof Abdul Khaliq, Mufti Jaafar Hussain (Shia) Maulana Zaffar Ahmad Ansari, Dr, Muhammad Hamidullah, Mualan Shabeer Ahmad Usmani, and Maulana Akram Khan.¹⁴

Role of Maulana Maudoodi:

“The religious and political thoughts of Maudoodi was and is one of the main ideological currents contending for supremacy in Modern Pakistan. Maudoodi went beyond the formulation of a new type of Muslim political theory. He sought to put that theory into practice and for this purpose he established a political movement. He (Maudoodi) involved himself in a number of controversies ranging from the making of a Pakistani constitution to Maudoodi’s defense of Purdah.”¹⁵

Maulana Maudoodi found Jama’at-e-Islami in 1941. Its main objective was the creation of a disciplined, morally upright, ideological body which would become agent of Islamic revolution in Indian society. Initially it was not a political party but soon evolved into a political party demanding the establishment of an Islamic Pakistan. Jama’at was the party which sought for the first time to redefine tradition in the context of the new state.¹⁶

In the beginning Maulana Maudoodi was not in favor of Pakistan movement. It should be remembered that his opposition was not the one like Jamiat-ul-Ulama-e-Hind who supported the Congress’ concept of Composite Nationalism. Maulana was the chief critic of this concept and thus of the policy of Jamiat. Sayyed Abula’ala’s main objection to the Muslim league movement was that he did not see the qualities of an Islamic leader in the entire leadership. To him leaders must not only be well versed in Islam but also devoted and loyal to religion. He feared that westernized leaders would not be able to create an Islamic state.¹⁷

After the creation of Pakistan Maulana Maudoodi migrated to Pakistan and rendered valuable services to Islamize the constitution.¹⁸ Maulana wanted to preach the teachings of Islam in the whole world. However, according to him it was not possible without the support of an ideal Islamic state. For this purpose, he migrated to Pakistan and tried to make it an ideal Islamic state.¹⁹ Maulana Maudoodi was a man of high intelligence. He had deep knowledge of religion, politics, society, economics, philosophy etc. In the field of politics he received acknowledgments even from his opponents.²⁰

Immediately after the creation of Pakistan, Maulana Maudoodi along with other Ulama launched movement for an Islamic way of life. Inside the parliament Maulana Shabir Ahmad Uthmani raised the demand of Islamic constitution and Maulana Maudoodi raised the demand outside of the parliament. He channelized the public opinion, the nation's feelings and aspirations as regards the objectives of the state. In 1948, he delivered a lecture in Law College Lahore and presented a resolution which was passed by the people and sent to the Governor General, Prime Minister, President of Constituent Assembly.²¹

“Whereas the overwhelming majority of the citizens of Pakistan firmly believe in the principles of Islam, and whereas the entire struggle and all the sacrifices in the freedom movement for Pakistan were for the sole purpose of establishing these very Islamic Principles in all the fields of our life. Therefore, now after the establishment of Pakistan, we, the Muslims of Pakistan demand that the constituent Assembly should unequivocally declare:

1. That the sovereignty of the state of Pakistan vests in Allah Almighty and that the government of Pakistan shall be only an agent to execute the Sovereign's Will.
2. That Islamic Shariah shall form the inviolable basic code for all legislation in Pakistan.
3. That all existing or future legislation contravene, whether in letter or in spirit the Islamic Shariah shall be null and void and be considered ultra vires of constitution.
4. That the power of the government of Pakistan shall be derived from, circumscribed by and exercised within the limits of Islamic Shariah alone.²²

As these four points reflected the deepest aspiration of the people presented their general will. There were echoes from every side of the country and the demand for the acceptance of the four points spread like a jungle fire.

Maulana attacked the bill of fundamental rights passed by the constituent assembly in 1950. He termed it gross violation of the teaching of Islam and outrightly rejected the bill and presented the following set of fundamental rights.

1. Protection of life, honor and property
2. Freedom of thought, expression, belief, and worship
3. Freedom of movement throughout the country
4. Freedom of assembly and association

5. Freedom of adopting any profession or occupation and the right to own, acquire and dispose of property
6. Equality of opportunity in all walks of life and equal right of benefiting from all public instructions. In addition to these rights the constitution should further guarantee that:

“No citizen of the state shall be deprived of the fundamental rights without his guilt being judicially established in an open court of law according to the common law of the land.”²³

Reaction to Basic Principles Committee’s First Report:

Basic Principles Committee was able to present its first interim report to Assembly in November, 1950. Liaqat Ali Khan, the first Prime Minister of Pakistan presented its report. It adopted the Objective Resolution as its preamble, but the report did not carry enough materials about Islam. It closely followed Western pattern. This draft awakened the ‘Ulama to the reality that the Muslim League either has no or very little intention about the creation of Islamic Constitution. Liaqat Ali Khan’s draft was strongly opposed by the Ulama and by the people of Pakistan.²⁴ Mufti Muhammad Shafi, an eminent jurist, said that the report was totally void of any provision for the positive requirements of Islam, and many of its contents are even against Islam and against the Objective Resolution.²⁵ After two months passed, when the report was presented in the Constituent Assembly, the Ulama gradually aroused and termed the report as “un-Islamic” and was therefore to be opposed. Board of Talimat-e-Islamia and Jami’at-e-Islami under the dynamic leadership of Maulana Maudoodi, were responsible for arousing the Ulama.²⁶

Maulana Shabeer Ahmad Uthmani, unfortunately, died before this report was presented. Maulana Maudoodi and Maulana Sayyed Suliman Nadvi visited all Pakistan, urging rejection of the draft. Board of Talimat-e-Islamia asked for the publication of the Board’s report, but the government refused. The consideration was postponed in order to avoid direct conflict with Ulama. Liaqat Ali Khan, in a speech, challenged the Ulama to present their agreed proposals on Islamic Constitution. In this speech, Liaqat Ali Khan tried to confuse the Ulama, and was sure that they would not be able to unite on an agreed formula. However, Ulama accepted the Challenge and took it very serious. A meeting of 31 eminent Ulama was summoned in Karachi on January 21-24, 1951. The meeting was represented by all schools of thoughts. They drafted an agreed upon 22 fundamental principles of an Islamic state.²⁷

Representatives of the Meeting:

The following Ulama attended the meeting:

1. Maulana Sayyed Suliman Nadvi,
2. Maulana Sayyed Abula’ala Mudoodi (Amir Jama’at-e-Islami Pakistan)
3. Maulana Khair Muhammad Jalandhri (Multan),
4. Maulana Mufti Muhammad Shafi Sahib,

5. Maulana Muhammad Jafar, (Mujtahid member Ta'alimat-e-Islamia Board),
6. Maulana Zaffar Ahmad Ansari, member Ta'alimat-e-Islamia Board,
7. Maulana Muhammad Athar, member Ta'alimat-e-Islamia Board,
8. Maulana BadriAlam Meerthi,
9. Maulana Muhammad Yusaf Binori,
10. Maulana Muhammad Idrees Kandhlvi,
11. Maulana Abdul Hamid Badiwani (President Jamiyyat-ul-Ulam-e-Pakistan),
12. Maulana Haji Muhammad Ameen (Amir Jama'at-i-Najia Sarhad),
13. Maulana Muhammad Ismail (Jama'at-e-Ahl-Hadith),
14. Maulana Dawood Ghaznvi (Jama'at-e-Ahl-Hadith),
15. Maulana Ihtisham-ul-Haq, Karachi,
16. Pir Hashim Jan, Sindh,
17. Maulana Shamsul Haq Afghani,
18. Maulana Shamsul Haq Fareedabadi (Jamiyyat-ul-Ulama-e-Islam East Pakistan),
19. Maulana Athar Ali (Jamiyyat-ul-Ulama-e-Islam East Pakistan),
20. Pir Sahib Sarsena Sahib (East Pakistan),
21. Maulana Raghob Hassan,
22. Maulana Hafiz Kifayat Hussain (Mujtahid member Ta'alimat-e-Islamia Board),
23. Maulana Mufti Muhammad Sadiq, Karachi,
24. Maulana Ahmad Ali Lahori,
25. Maulana Muhammad Ali Jalandhri,
26. Maulana Mufti Muhammad Hassan Amratsari,
27. Maulana Muhammad Salih (East Pakistan),
28. Maulana Habib-ur-Rahman (East Pakistan),
29. Maulana BadrulIslam (TandowalaYarkhan Sindh)
30. Pir Sahib Muhammad Amin al-hasant, Pri of Mankisharif,
31. Qadi Abdus Samad Sarbazi, Kalat State.²⁸

22 Points of Ulama, Principles of Islamic State:

The Ulama despite their differences on the interpretation of Islamic laws, were very much united and clear about the Islamic nature of constitution. They responded to the challenge of Liaqat Ali Khan and presented the following agreed upon famous 22 points of formula Allah.

1. The Ultimate Sovereignty over the whole universe and laws vested in Almighty Allah.
2. Quran and Sunnah as the basis of all law. Current laws considered in conflict with the Sharia to be abrogated or suitably amended to conform to Sharia.
3. The state to be based on principles and ideals of Islam and not on any geographical, racial or linguistic concept and considerations.
4. The state to enjoin practices prescribed by the Quran and Sunnah and to prohibit those forbidden by it. Beliefs of various sects to be taken into

consideration while reviving or establishing Islamic customs, practices and laws.

5. The state to strengthen bonds of unity and solidarity with the Muslim world.
6. The State to undertaken responsibility for providing the basic needs of its citizens who are unable to earn their own livelihood irrespective of religion, race or creed.
7. All citizen to enjoy fundamental rights granted by the Shariah, such as safety of life and property, freedom of religion, worship, freedom of expression, assembly and movement, freedom to work and to enjoy equality of opportunity etc.
8. No citizen would be deprived of fundamental rights except under law of the land and no court of law would sentence a citizen without providing him with an opportunity for defence.
9. Recognized Muslim sects were to enjoy full religious freedom within the limits of law. They had the right to impart education to their own followers in their own way. Their personal law was to be governed by the laws of their own sect and the law courts were to respect these laws while dealing with member of the sect.
10. Similar freedom was to be enjoyed by non-Muslim citizens of the state in respect of their religion, education and culture. Law courts were to respect their religious law and custom while dealing with cases involving their personal law.
11. All agreements and treaties entered into with non-Muslim subjects of the state were to be honored in accordance with Shariah. Non-Muslim citizens were guaranteed fundamental rights equally with Muslim citizens.
12. The Head of State was to be a Muslim, male citizen of the State.
13. All responsibilities for running the state was vested in the Head of State who could delegate his authority or part thereof to any individual or institution in the State.
14. The Government constituted by head of the State was to be of a consultative and not dictatorial character. The Head of State was required to discharge his responsibilities in consultation with the elected representatives of the people.
15. The Head of the State had no right to rule the country abrogating the whole or part of the Constitution.
16. The institution responsible for electing the head of the State had also the power to remove or suspend him.
17. The Head of the State has no immunity and was subject to law like any other citizen.
18. The accountability to the law of the land was equally applicable to all member of Government and functionaries of the State.
19. The judiciary was to be independent of executive.
20. Propagation of such ideas and ideologies as are considered contrary to the fundamentals of Islam was to be prohibited.

21. The state was to be unitary in nature. Different regional, racial, tribal or linguistic areas consist the territory of the state were not to enjoy the right of secession.
22. No interpretation of the constitution which was repugnant to the Holy Quran and Sunnah was to consider valid.²⁹

This was the landmark achievement of Ulama that they successfully drafted unanimous points for Islamic constitution. The modernists tried their best to create differences among the various schools of thoughts. But fortunately they did not succeed in disuniting the Ulama in their demand for an Islamic Constitution. Jamat-e-Islami further elaborated the Islamic constitution from every angle, in their publications. Maulana Sayyed Suliman Nadvi and Maulana Ashraf Ali Thanvi delivered speeches to huge gathering and awakened the people's consciousness. The modernist had no alternatives, except to accept the demands of the Ulama in practice. However, they tried tooth and nail to reduce the value of the demands and secularize them as much as possible.³⁰

The proposals of Jama'at-e-Islami and other Ulama pushed the western educated Leaguers into great difficulty. They could neither accept these nor could reject or alter because of public fear. However, it was difficult for both groups to come to an agreed upon constitution. One group want secular democracy while the other demanded to restore to the golden principles of Caliphate.³¹

Eight Points Formula of Maulana Maudoodi:

There was an interval in the political arena after the Ulama presented their 22 points "The principles of Islamic State." A full eighteen months there was silence. The people become impatient and got suspicious about the intentions of political leaders. Consequently, Maulana Maudoodi once again stood up in May, 1952 to awaken the nation. He criticized the delaying tactics of the constitution makers and put forward his famous demands that the constitution should be made before the end of 1952 and the following points should be included in it.

1. That Islamic Shariah shall be form the law of the land.
2. That there shall be no such legislation as would contravene any of the dictates or principles of the Shariah.
3. That all such laws as are in conflict with the dictates or the principles of the Shariah shall be abrogated.
4. That it shall be incumbent upon the state to eradicate the vices which Islam wants to be eradicated and to uphold and enforce the virtues which Islam requires to be upheld and enforced.
5. That none of the basic civil rights of the people, security of life and property, freedom of speech and movement shall be forfeited except when a crime has been proved in an open court of law after affording due opportunity of defence.

6. That the people shall have the rights to resort to a court of law against transgressions on the part of the legislative or the executive machinery of the state.
7. That the judiciary shall be immune from all interference from the Executive.
8. That it shall be the responsibility of the state to see that no citizen remains un-provided for in respect of the basic necessities of life, viz, food clothing, shelter, medical aid and education.³²

Second Report of Basic Principles Committee:

Liaqat Ali Khan was assassinated on October 16, 1951 and was succeeded by Khwaja Nazimudin. He tried to enlist the support of Ulama by showing himself as their friend. He presented the second constitutional draft in the assembly on December 22, 1952. The draft was strongly criticized by Ulama. The Pakistan Times wrote in an editorial of January 11, 1953 about the draft that it was based on an unhappy admixture of divergent constitutional concepts which fails to provide a set-up suited to the peculiar conditions of Pakistan.³³ The Ulama convention was held in Karachi from January 11 to 18, 1953 under the leadership of Maulana Maudoodi, proposed amendments to the report. The Ulama amendments reflected their dissatisfaction. They wanted the constitution to be made in the light of the Quran and Sunnah. These should not be reduced to contributing factors only.³⁴

The second draft embodies most of the demands of 8 points of Maudoodi, but not all of them. A convention of Muslim scholars from all schools of thoughts was held and they decided to accept the draft with certain amendments unanimously formulated by Ulama.³⁵

Regarding the “Directive Principles of State Policy” the Ulama emphasized that teaching of the Holy Quran and Sunnah should be made compulsory. Intoxicants, gambling, prostitution, and other evils should be based on the Islamic principles of social justice. The state should provide the basic necessities of life such as food, shelter, water, and education to all citizens of Pakistan regardless of caste, creed, or religious background.³⁶

In regard to legislation repugnant to the Holy Quran and Sunnah, the Ulama made it clear that the clause “No legislature should enact any law which is repugnant to the Holy Quran and the Sunnah” was not enough. They suggested that the following should be added to make it clearer. “And the Holy Quran and the Sunnah are the chief source of the law of the land.”³⁷

In respect to candidates for the Assembly, the Ulama asked that it should be made clear that a candidate for the Assembly should be a person who observed the Faraz (obligatory things) and desisted from Fawahish (Sinful deeds); non-Muslim members were excluded from it. About the judiciary, they asked that judges should be appointed on the basis of their Taqwa (piety) and knowledge of Shariah.³⁸

The Ulama asked that the administrative division of Pakistan should not be based on racial, linguistic, or tribal basis, rather these should be discouraged, while brotherhood and universalism should be taught throughout the country.³⁹

Three things are clear from the above discussion, first, the Ulama were flexible in their opinions; second, they were not interested to make Pakistan Islamic only in name, but wanted to practically implement Islamic laws in Pakistan; and third, they were not interested in their own rule. They would let the modernists rule if they implemented the Shariah sincerely.

With the passage of time, the Ulama realized the intentions of modernists that they were not going to implement Islam. Islam was on their lips, but not in their hearts. Ulama realized that an Islamic state can be created only through Islamic workers about which Maulana Maudoodi said:

“You should not be unaware of the fact that a particular type of reevaluation needs the same type of movement, leaders and workers, and the same type of social conscious and cultural and moral atmosphere.”⁴⁰ Maulana Maudoodi told the people of Pakistan that an orange tree could produce only oranges, not mangoes. Therefore, if the people of Pakistan would desire to make Pakistan Islamic, they should vote for people who have sound knowledge of Islam. Maudoodi further explained that expecting Islamic legislation from modernists is just like, one expects mangos from orange tree.⁴¹

Muhammad Ali Bogra Formula:

After the dissolution of Khwaja Nazimudin, Muhammad Ali Bogra was made the Prime Minister of Pakistan. In September, 1953, the third draft of the Constitution was presented in the Assembly, which is generally known as “Bogra Formula.” It was not much different from the second draft especially regarding the Islamic provisions. Islam was reduced to a matter of policy and not a program. Although there were not enough materials about Islam, yet the Ulama were satisfied with the report. Jamat-e-Islami and Jamiat-ul-Ulama-e-Islam gave their approval to the draft of the Constitution, and celebrated October 22, 1954 as the Constitution day of Pakistan.⁴²

Islamic provisions were not attacked in Bogra Formula, either in East or West Pakistan. The Ulama and Jama’at-e-Islami called the amended draft of the BPC as “Islamic” in October, 12, 1954. The Central Executive Committee of Jama’at-e-Islami declared that “the proposed constitution of Pakistan was to a very great extent Islamic in character” and also demanded for its adaptation with immediate effect. Mufti Muhammad Shafi, in a statement to the press, called upon the people, of Pakistan to celebrate Islamic Constitution Day on October 22, and to demand for the enforcement of the draft constitution.⁴³

Islamic provisions of the Report were based on the recommendations of the Board of Talimat-e-Islamia. The Ulama had a powerful lobby outside the Constituent Assembly. Regarding the Islamic provisions; the Committee recommended that the Objective Resolution, passed by Assembly on March 12, 1949, should be included in the preamble of the proposed constitution.

Second Constituent Assembly:

The first Constituent Assembly was about to finalize its work of constitution making. The Constitutional Bill was ready and now only the

formality remained for enacting it into law. But unfortunately on October 24, 1954, the Governor General of Pakistan Ghulam Muhammad dissolved the Assembly by saying that the “Constitutional Assembly at present constituted has lost the confidence of the people and can no longer function.”⁴⁴

Although Maulana Maudoodi along with other Ulama very skillfully mobilized people and compelled government to insert Islamic provisions in the constitution. But unfortunately with the dismissal of the Constituent Assembly, the efforts of Maulana Maudoodi were doomed for the time being.⁴⁵

Binder says, “The Assembly was dissolved and the draft constitution was discarded along with the agreed formula for safeguarding the Islamic law in Pakistan.”⁴⁶

The second Constituent Assembly was appointed by the Governor General in January of 1955, and the first session was summoned in Murree on July 7, 1955. It prepared the fourth Constitutional draft and presented it in Assembly in January, 1956. It was passed by the Assembly with some alternations and amendments and Governor General gave his assent to it and finally it was implemented on March 23, 1956. This Constitution was not much different from previous drafts of constitutions.⁴⁷

The Bill of the Second Constituent Assembly:

Up to 1956, the government badly failed to draft a constitution for the country. Jama’at-e-Islami led by Maulana Maudoodi continued its demand for Islamic constitution. They also demanded that the Objective Resolution must be made active part of the constitution, according to which no law repugnant to Islam could be made. Finally the government bent to her knees and included Objective Resolution in the preamble of the constitution.⁴⁸ ButtoMaulanathis was not enough. He continued his struggle to compel the government to include the provisions in the main body of the constitution that no law, repugnant to the teaching of Islam, shall be passed by any legislature. He also demanded right for citizens to challenge any such law in the supreme court of Pakistan.⁴⁹

The Assembly presented its constitutional bill on January 9, 1956. The draft was warmly welcomed by all religious parties and channelized public opinion in its support. Maulana along with Mian Tufail, the then General Secretary and later on the Amir of Jama’at, visited East Pakistan, addressed public conventions, and asked them to support the constitutional bill. He attended the meeting of Ulama, mashaikh and pirs from all over Pakistan organized by All Pakistan Islamic Constitution Committee at Dhaka on February 8, 1956.⁵⁰

Maulana Maudoodi’s Comments on Draft Constitution of 1956:

When the Assembly passed the constitution and incorporated Islamic provisions in it, was warmly welcomed by Maulana Maudoodi. He was of the opinion that though there is still need for reforms but the deficiency is not that much because of which the constitution could be rejected. On March 18, Majlas-e-shura of Jama’at-e-Islami issued a press statement on Pakistan constitution. It

paid thanks to Almighty Allah that after a long time stretching over more than eight years passing through various dangerous stages the question of the future Constitution of the country has at long last been settled in a manner, which to a great extent is reflecting the aspirations of Islam-loving democratic people.⁵¹

Jama'at-e-Islami always expressed its approval or disapproval to the constitutional drafts presented time to time. It is very important to know that many amendments proposed by Jama'at-e-Islami made their place in the constitution. Thus, the minimum requirement of an Islamic Constitution was met. Jama'at-e-Islami express her satisfaction on the Islamic nature of the constitution. On March 8, 1956, J.I announced that the long struggle of Islamic and anti-Islamic forces ended with the triumph of the first. The announcement further said that after the fourth Caliph for the first time the government has come into the hands of peoples instead of Royal Families. At the same time, J.I castigated some provisions in the constitution, as the preventive detention, complete suspension of fundamental rights during emergency, the disqualification of any person from election if he has sentenced for at least two years, for a period of five years after his/her release. However, Jama'at did not reject the entire constitution because of these drawbacks. They were of the opinion that at least an Islamic constitution has achieved and the real achievement is an Islamic order. Now further struggle is required that the constitution work as real Islamic constitution. Maulana Maudoodi in consultation with his associates, prepared a detailed comments on the draft proposed concrete amendments to it.⁵²

Prior to publishing these comments Maulana tried to ascertain the viewpoint of other important sections of the country and was satisfied that no materials of difference existed between their viewpoint and that of his own as contained in these comments. These amendments and comments are given below.⁵³

Preventive Detention:

Under this draft the government was empowered to imprison any person for three months without giving him opportunity of defence. In case of more than three months, the only restriction was that the case should be referred to the Advisory Council. It also provided for the law making to keep people in restriction without seeking the opinion of the Advisory Board. Maulana Maudoodi proposed that detention under this law is the total negation of justice. As an Islamic State, there should be no such laws, but if still the government emphasis then it should be subject to following conditions.

- i) That the persons arrested under any such law shall be produced before a court of law within a period of 15 days and a defined charge brought against him.
- ii) He shall be provided with full facilities of defence; and
- iii) Only a court of law, if satisfied as to the guilt of the decided period for which he should be detained. An advisory board, even if consisting of High Court Judges, cannot and should not be given the

power to express *exparate* opinion against a *detenue* on the basis of mere police reports and without hearing the other side.⁵⁴

Restriction of Freedom:

According to Maulana, on one hand all the fundamental rights are given to the citizen, on the other hand, the law makers have been empowered to snatch these. Maulana suggested that the words “any restriction” should be replaced with the words “reasonable restriction.” Then the matter can be justifiable and the courts of the country can nullify or set aside any restrictions, which are not found reasonable.⁵⁵

The Question of Interest (Riba):

The constitutional draft is silent about the elimination of Riba (interest) which is strongly prohibited in Islam. From Islamic point of view Riba is more heinous a crime than gambling, use of liquors and prostitution. Islam gives the ultimatum of war to the culprits on behalf of Allah and His Prophet. Maulana Maudoodi suggests that elimination of *Riba* should be made the part of the Directive Principles of State Policy.⁵⁶

Separation of Judiciary from Executive:

The constitutional draft provided for separation of Judiciary from Executive, but there was no time limit for this purpose. Maulana Maudoodi proposed that as in the previous draft 3 years were given, then why not it should be in the proposed constitution.⁵⁷

Term of President:

The draft provided that the outgoing President shall continue in office until the newly elected President assumes the office. Maulana suggested that the President must vacate office on the expiry of his term. In case the new president has not elected by one reason or other, the vice president may assume the office temporarily. In order to avoid the possibility of vacation of both the offices at the same time the term of the offices of president and vice-president may be different (for example the first vice-president may remain in office for two and a half year).⁵⁸

Powers of the President:

Maulana Maudoodi criticized the dissolution power of the president. Such a dictatorial power to a single person cannot be tolerated even for a single moment. It is the way of dictatorship not of democracy. Therefore, the president should not be given the power to dissolve the National Assembly or the Prime Minister. The provision made under the Article 35, to impeach the president, and remove him from office is not relied upon an effective safeguard against this danger.⁵⁹

Article 56 as proposed in the constitutional Bill can create ties between president and legislature. It should be so worded as to provide that in case the president wants to withhold assent to any bill, he should make a declaration to this effect within 15 days and should return the bill to National Assembly with his message, if any, within 30 days. If the bill is again passed by National

Assembly with or without amendments, the president shall give his assent within 15 days.⁶⁰

Governor's Powers:

The draft empowers provincial governor to dissolve the provincial assembly and cabinet. This power enhances the chances of dictatorship. Maulana demanded that the governor should not have the power to dissolve the provincial assembly or dismiss the Chief Minister. He proposed regarding the assent of the governor, that the same procedure should be adopted as in the case of president and National Assembly.⁶¹

Appeal against Military Courts:

Article 170 empowers the Supreme Court to grant special leave for appeal from any court or tribunal in Pakistan. But this power of Supreme Court is restricted in case of Military Court's decision. This is against justice, any person, whether military or civilian should be given the right of appeal in Supreme Court, being the final repository of justice in the country.⁶²

Appointment of Judges:

The power of the provincial governors to appoint the judges of the High Courts of their provinces is objectionable to Maulana Maudoodi. If the judiciary is independent from Executive, then there is no need of the involvement of the governor, who is the head of the executive, in the appointment of judges.⁶³

Suspension of the Fundamental Rights:

The proposed constitution empowers the president to suspend all or a part of fundamental rights. This Article can lead to the dictatorship. It should be scraped.⁶⁴

Proclamation of Emergency:

The constitution says that the validity of emergency should not be challenged in any court. But Maulana Maudoodi proposed amendment in it that the jurisdiction of the Supreme Court should be extended to see the validity of emergency.⁶⁵

Islamic Provisions:

Maulana Maudoodi praised article 205 which says that no law shall be passed repugnant to Quran and Sunnah. But Maulana has reservations over the mechanism which says that president will appoint a commission within one year after the commencing day of constitution and commission shall submit its report within 5 years, which will be discussed in Assembly within six months after presenting, which ultimately mean that assembly can easily pass laws repugnant to Quran at least for seven years after commencing day. So the clause instead of ensuring Islamic laws, delays it for an unknown period.⁶⁶

Imposition of Martial law:

The constitution provides for the imposition of martial law in the country. The clause in itself is not objectionable. But the bill neither prescribes any condition for martial law nor impose any limitations on the military courts nor qualifies the acts to be indemnified with the epithet of "done in good faith".⁶⁷

Maulana asked the constitution makers that they not only making constitution for their country and its nation but for themselves and for their coming generations as well. He requested for amendments in this article.

Maulana Maudoodi very thoroughly analyzed the constitutional draft and criticized it very objectively. His proposed amendments in those articles where constitution makers deviated from Islamic principles and fundamental human rights. It shows the in-depth knowledge of Maulana about the 20th century's politics and constitutional demands.

Conclusion:

During the entire process of constitution making the views of Ulama and Jama'at-e-Islami has been very effective since 1947. Although the public opinion was totally ignored by constitution makers but the overwhelming majority was agreed on the point that the constitution must be Islamic. In other words Jam'at was enjoying the silent public support in her demand to establish a system on the footings of caliphate system.⁶⁸

After the thorough study of the politics of Pakistan shows that how much high the political temperature was. All the forces remained very active to make a constitution which could safeguard their vested interests. The modernists left no stone unturned to make Pakistan a secular state. The second force was of ualma who too struggled day and night to make Pakistan an Islamic state, which was the real objective of Pakistan movement or one can easily say that Islamic state was the motto of Pakistan movement. Among the religious circle Maulana Maudoodi played a significant role. He was the person who knew both about the Islamic law and modern constitutions. This was the thing which make him distinguished among all. He was able to answer the questions of modernist and present an Islamic solution to it. Maulana Maudoodi not only opposed the secular constitutions but also provided Islamic constitution. He answered the modernists who were saying that Islam was for a primitive and tribal society. Maulana answered them that Islam was not a static religion. There are laws in Islam which are alterable according to the changing situation and according to the needs and requirements of the time.⁶⁹

His drafts and amendments were not limited only to criticism but were very much practical. He never remained silent on any development, negative or positive. Every time he gave his approval or disapproval to any constitutional setup. Maulana enjoyed the support of public that's why the modernist could not reject his proposals rather always sought his opinion.

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