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Population in 1947, after independence
All the constitutions of
Pakistan were borrowed from
1935 act. (federalism)
Purpose of Federation → DIVERSITY
→ unity.

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THE PROCESS OF CONSTITUTION MAKING IN PAKISTAN FROM 1947-1954: HISTORICAL AND POLITICAL PERSPECTIVE

1954,

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Bengali, Urdu
both will be
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Abstract

Ever since the establishment of Pakistan in 1947, it faced multiple challenges, the framing of the future constitution of Pakistan was the biggest of them. The India act of 1935 with certain modifications became the interim constitution and the country was continuously ruled till 1956 constitution of Pakistan. This research paper highlights the problems from inadequate administrative system, extreme refugee problems, lack of financial resources, insufficient means of communication and transportation, ethno-linguistic problems, lack of trained leadership and the missing of national consensus were major issues which the newly established independent sovereign state of Pakistan faced as its early problems.

Keywords: Bogra Formula, Constituent Assembly, Interim Constitution, One Unit, Martial Law

Introduction

Pakistani Government started functioning under the modified Indian Act of 1935 after its establishment. At the centre, the Constituent Assembly performed two functions. It had acted as a central legislature and took efforts to frame the constitution for the new country. (Symond: 1995, p.89)

(The Assembly, by acting as the central legislature amended the Government of India Act of 1935 and the Indian Independence Act of 1947. The centralized structure was retained under the India Act of 1935) Previously, the Governor General had adequate discretionary powers and responsibilities which were not

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Dissolve of constituent assembly

The Government

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given to him under the adopted or amended Act of 1935. He remained head of the State, and was to act, however, only as titular head, i.e., on the advice of the cabinet. The Governor General had also enjoyed certain emergency powers under Section 102 of the adopted Government of India Act of 1935. When emergency powers were in force, the federal nature of the country ceased to exist and its administration took the form of a unitary system of government (Choudhry: 1969, p.47).

The structure of government in the provinces was similar to that at the centre. The Governor was appointed by the Governor General and was titular head of province. He was to act on the advice of the cabinet, but in similar way had also enjoyed certain emergency powers like Governor General.

The Governor was the executive head of the province, but was not under the direct control of the province. This was one of the essential features of the Government of India Act 1935.

(Pakistan's political system was parliamentary as well as federal only in a formal sense during the first decade of the independence but in a real sense it was unitary system of government with most powerful executive, aided and supported by army and bureaucracy (Yusuf: 1999, p.67).)

The circumstances under which Pakistan began to achieve her independence were the most unfavorable (Myrdal: 1968, p.781) The problem faced by this newly independent country included an inadequate administrative system, an extreme refugee problem, the lack of financial resources, and inadequate means of communication and transportation (Braibanti: 1963, p.73) Pakistan's difficulties were even more colossal than those faced by India. Politically, it was engaged in preparing a constitution. It is established fact that soon after independence, Pakistan stared her struggle to organize its national government and the administrative system. Many believed that Pakistan would not survive for long (Op.cit 1987). It is also necessary to point out that carnage and communal violence attended the dawn of independence. (About seven million people, uprooted from their homes in India, trekked down to Pakistan to seek refuge and resettlement.) The problems of reprisals and the safety of the Hindus and Sikhs moving eastward weighed down on a skeleton administration already strained to

breaking point in dealing with the vast influx of refugees (Ahmad & Amjad: 1984, p.84).

However , the partition line of the subcontinent cut across the two major provinces of Pakistan, namely, the Punjab in the west and Bengal in the east, which moved Jinnah to remark about a 'truncated' and a 'mouth-eaten' Pakistan. Unlike the case with India where these provinces lay on the periphery and the system of government was already established and functioning. This also needs to be mentioned that the consequences of Sir Cyril Radcliff award was the fatal demarcation of the Punjab boundary whereby overland access was allowed to India to the princely Muslim Majority State of Jammu and Kashmir. Its significance became apparent during the Pakistan India war in 1947, just two months after the independence. The determined hostility which the Indian Congress leadership showed towards Pakistan from the very beginning sprang not only from embittered memories of a conflict of interest and a sense of defeat arising from its failure to prevent the partition of the sub-Continent but also from the conviction that Pakistan was going to be short-lived and its collapse, in the perception of the Congress, could be hastened (Burke & Ziring: 1990, p.92).

The Cabinet Mission considered Pakistan as impracticable, a feeling that was also shared by Lord Mountbatten, Pakistan's unpaid share of cash balances was withheld by the Indian government, which showed itself equally determined to deprive Pakistan of its share of the large stocks of reserve arms, equipment, and stores belonging to the Indian army at the time of independence (Op.cit:1999).This research work also undertakes to examine the impacts and influence of civil bureaucracy on the parliamentary system in the early phase of the Pakistan. The edifice of the parliamentary system adopted at independence was based on a bureaucratic foundation. It has also been observed in the political tradition in Pakistan since beginning that the civil services were long established institutions, with a strong *esprit de corps*. They were, however, unaccustomed to any immediate parliamentary authority and worked almost independently. The military stood by the civil bureaucracy, who shared the ethos of the bureaucracy and was supported by a political tradition, where obedience to authority was based on the principle of elected representation was a new phenomenon. The politicians faced the challenges of building the institution of the political

democracy in essentially and administrative state. Soon after the independence, a strong feeling was developed among the politicians and people of the country to frame a constitution and initiate to institute an elected house to reflect the democratic will of the people.

It is also to be stated that the authoritarian feudal culture, which dominated political life in the west wing, was itself needed reform to accord with democratic values. A few discerning eyes might have visualized that if the politicians failed to establish their pre-eminence, the civil-military bureaucracy, in the resulting institutional imbalance, would appropriate political functions. For the time being, there was no ambiguity. The mantle of authority fell on the Muslim League, a movement, which now transformed itself into a political party and became responsible for shaping the destiny of the country.

Establishment of Government

The establishment of the government began with the swearing in of Quaid-e-Azam Muhammad Ali Jinnah as the first Governor General of Pakistan (Ibid: p.79). Muhammad Ali Jinnah appointed Liaquat Ali Khan as the Prime Minister of Pakistan. He was also given the charge of two other ministries, foreign Affairs and commonwealth relations and defense. The cabinet also included political stalwarts like Abdul Rab Nishtar from the North-West Frontier Province. He headed the ministry of communications, Fazal Rehman, a leading politician from East Bengal was given the ministry of interior and information; I.I. Chundrigar, a lawyer, was given commerce and industries; Ghazanfar Ali Khan, from the Punjab, agriculture and health and Ghulam Muhammad the ministry of finance.

Outside the cabinet, Sir Muhammad Zafarullah, later became the foreign minister, who had an outstanding record of judicial service, was deputed to represent Pakistan at the United Nations. Sir Faroz Khan Noon became an envoy in the Middle East. The cabinet and other appointment to such a high political office reflected a paucity of talent among the politicians.

The position of Muhammad Ali Jinnah as Governor General was unique and he could not obviously fit into the traditional pattern of a ceremonial head of the state. He was indeed above any office, which could be offered. As a leader who had successfully led the Muslims nationalist movement to achieve a homeland, he personified the new state and was a symbol of its identity (Ibid: p.87)

Quaid Governor General
Liaquat Ali Khan PM
After death of Quaid
Khanqah Nizamuddin Govt General

Dismissed Nizamuddin
and made
Muhammad Ali
Bogra PM

^{Quaid Ali} → He appointed Skindar Mirza, a retired General as Governor General who appointed Ayub Khan ^{Chandigarh Lehman Ali (PM)} as commander in chief of Armed forces.
of West Pakistan! Politicians, Bureaucrats did not want to give up their rights. They wanted East to go colony.

The Process of Constitution Making In Pakistan

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On June 9, 1947 he had remarked that he had done his job and appeared reluctant to assume any office (Op.cit:1969). The long struggle had apparently taken a toll of his fading health. The powers as envisaged in the Act of 1935, were supposed to be exercised by a cabinet through parliamentary convention the cabinet was answerable to the legislature, now the same powers to be exercised by Mr. Jinnah. Affected by the plight of the refugees he took the portfolio of the ministry of refugees under his own control. (The Constituent Assembly elected him as its first President and also appointed its legal advisor.)

(However, under the parliamentary system of government, the Prime Minister, with his Council of Ministers, becomes the real executive. In the case of Pakistan, the Prime Minister and his Council of Ministers failed to play their appropriate role as they depended more on the father of the nation. It is also one of the reasons the "Mr. Jinnah 'personified' the new state of Pakistan and served in triple capacity as President of the Muslim League, Governor-General of Pakistan, and President of the Constituent Assembly" (Op.cit:1999). During his brief tenure, Muhammad Ali Jinnah exercised more influence and powers than those which were officially given his office. Cabinet rarely functioned without his directives. Following his death, Khawaja Nazimuddin became the Governor-General of the country. But it may be noted that the capability and authority of Khawaja Nazimuddin were not a match with the prestige and powers as exercised by Mr. Jinnah. Liaquat Ali Khan tried to improve his authority and prestige of his office and succeeded in establishing parliamentary conventions. The powers of the Governor-General still remained. (The powers exercised by Mr. Jinnah were therefore dispersed among the Governor-General, President of the Constituent Assembly and the Prime Minister.) (Callard: 1968 p.81) states that the dispersal of the power of the Quaid-e-Azam was to have important consequences in 1953 and 1954. The evidence suggests that Liaquat Ali Khan was at first able to control the government, but nevertheless failed to reach consensus on a constitution. Consequently, political opposition, however ineffective, began to grow as the provinces protested against the central government for its failure to solve the various problems faced by the country. With the assassination of Liaquat Ali Khan in 1952, Khawaja Nazimuddin left the

office of the Governor-General and assumed the responsibilities of Prime Ministership.) He retained most of the members of the previous cabinet, but included Choudhury Mohammad Ali as finance Minister. Since Nazimuddin an old Muslim League was a Bengali, the new Governor-General Ghulam Mohammad, feared that Nazimuddin might triumph in and electoral contest and would eventually oust him from the office.

Though Nazimuddin was, a man of piety, and integrity he was incapable of imposing his will upon the members of the cabinet, who had long experience in administration and politics. Moreover, Nazimuddin failed to deal effectively with the language riots in East Pakistan in 1952 and the Ahmadiya riots in Punjab in 1953. Language riots took place when government of Pakistan declared Urdu as country's national language. (The Governor-General dismissed Nazimuddin and his cabinet by accusing him of being incapable of solving Pakistan's numerous problems) (Ibid: p.83). (Thus after dismissing one Bengali, the Governor-General invited another Bengali, Mohammad Ali, Bogra Pakistan's Ambassador to the United States, to become Prime Minister.) Mohammad Ali assumed the office of the Prime Minister and retained six members of the outgoing ministry in his cabinet. Though not a leader of a party, he was the personal choice of the Governor-General. Such an action by the Governor-General indicated a fundamental lack of power and leadership in the Muslim League. From this period onwards, the Governor General, and later the President, emerged as the country's most powerful officer. It may be noted that the Muslim League did not challenge the action of the Governor-General despite its overwhelming majority in the Constituent Assembly. The House had two major parties (Muslim League, which held 60 seats, and the Congress, which held 11.) Even the Constituent Assembly, consisting mainly of lawyers, landlords, business and the liberal professions, did not challenge the new government. Technically speaking, it was still a government of the Muslim League, which filled almost every Muslim seat in the central and provincial legislatures, but in reality this was not so. The Muslim League was split in many directions and could not act on future action. (The defeat of the East Pakistan Muslim League in March 1954 elections showed that it had repudiated the leadership of the Muslim League.

In September 1954 the Constituent Assembly adopted legislation to ensure that the Governor-General would act with the advice of the cabinet only and the

cabinet must be selected from the members of the national legislature. Sensing that his powers would be reduced by this legislation, the Governor-General issued a proclamation dissolving the Constituent Assembly. The proclamation said that the government had failed to control political crisis which had been prevailing throughout country and causing constitutional break down. Governor-General declared a state of emergency throughout Pakistan. (Op.cit: 1999)

(A new government was formed with Mohammad Ali Bogra as the Prime Minister) Maulvi Tamizuddin Khan challenged this act of the Governor General of dissolving the Constituent Assembly. He also filed petitions of mandamus and a quo warranto in the Sind Chief Court against the members of the cabinet who did not qualify to become Ministers under Section 10 (fourth Amendment) of India Act of 1935. (The Sind Chief court decided in favour of Maulvi Tamizudin Khan. On appeal, however, the Federal Court of Pakistan upheld the decision of Governor-General. However, the court ordered the Governor -General to summon the Second Constituent Assembly which would be elected indirectly by members of the provincial legislatures. The members elected to the Assembly were divided into approximately 12 groups, of which the Muslims League was the largest, though it failed to command an absolute majority (see Table 2.1). It is also noted that the Second Constituent Assembly consisted mainly of lawyers, landlord, retired officials, industrials, and businessmen. Others who represented in the Assembly included newspapers proprietors, journalists, ulemas (religious leaders) teachers, trade unionists, tribal chiefs and rulers of Princely seats. The landlords were dominant force in West Pakistan because of the highly concentrated pattern of land ownership. By contrast members of the legal profession were dominant force in East Pakistan. The first session for the Second Constituent Assembly was held in Muree in July 1955. (Since Ghulam Mohammad was ill, Iskander Mirza succeeded him in August 1955). (Meanwhile the various groups who formed the Assembly were engaged in seeking alliances and a coalition with Muslim League and the United Front. This was formed with Chaudhri Mohammad Ali as a Prime Minister, replacing Mohammad Ali Bogra.)

Table 2.1

PARTY ALIGNMENT IN THE SECOND CONSTITUENT ASSEMBLY		1957
POLITICAL PARTY	1955	
Republican Party	-----	21
Muslim League	33	15
United Front	16	-----
Awami League	13	13
Krishak Sramik	-----	06
National Awant Party	-----	04
Noon Group	03	-----
Nizam-e-Islam	-----	03
Congress	04	04
Scheduled Caste Federation	03	02
United Progressive Party	02	01
Independents	06	09
Vacant	00	02
TOTAL NO OF SEATS	80	80

Source: Mushtaque Ahmed, *Government and politics in Pakistan*. (Karachi: Pakistan Publishing House 1967), p.114

This new coalition government, now in power at the center was one in which East Pakistan was well represented, and it quickly sought to frame a constitution for Pakistan. During the period of this coalition government, the Constituent Assembly adopted a constitution and Iskander Mirza became the first President in March 1956. During the first two years of his presidency four Prime Minister held office and there were several coalition cabinets. Table 2.2, Table 2.3 and Table 2.4, show the persons who held the office of the Governor-General, President, and Prime Minister during 1947-88.

TABLE 2.2

LIST OF GOVERNOR GENERALS TILL 1956		
GOVERNOR GENERALS	TENURE	
M.A. Jinnah	August 1947	September 1948
Khawaja Nazimuddin	September 1948	October 1951
Ghulam Mohammad	October 1951	September 1955
Iskander Mirza	September 1955	March 1956

Source: Hamid Yusuf, 1999, *Pakistan: A Study of Political Development*, (Lahore: Sange Meel Publications)

Table 2.1 shows that the Muslims League, which was defeated in East Pakistan in elections of 1954, became a minority party in the constituent assembly when many of its members joined other parties. (By September 1956, the Muslim League was ousted from the central cabinet and from two provincial cabinets. It was replaced by the Republican Party, which for several years controlled West Pakistan and became a major participant in the central cabinets.) For about a year the Republican Party shared power with the Awami League (see Table 2.1). But a split between the Republican Party and the Awami League on the issue one unit led to a new short-lived coalition headed by the Muslim League. The cabinet fell when the Republican Party withdrew its support because it did not agree with the Muslim League on the separate electorate issue.

(In December 1957, another government was formed with Republican Leader Malik Faroz Khan Noon as Prime Minister.) He was supported by a coalition of Awami League, the Krishak Sramik Party (the party of peasants and laborers) and his own Republican Party. But the Awami League and the National Awami party did not join the cabinet. As the result of the transfer of allegiance from one party to another, the parliamentary government at the centre was on the verge of collapse, and the situation in the provinces was not much better. Thus, one would argue that from 1947 until the coup in October 1958, Pakistan experienced a high degree of political instability, which was caused by the shift of allegiance from one party to the other.

TABLE 2.3

LIST OF PRESIDENTS		
PRESIDNETS	TENURE	
Iskander Mirza	March 1956	October 1958
Mohammad Ayub Khan	October 1958	March 1969
General Yahya Khan	March 1969	December 1971
Zulfiqar Ali Bhutto	January 1972	August 1973
Ch. Fazal Ilhai	August 1973	July 1977
General Zia ul Haq	January 1985	August 1988

Source: Hamid Yusuf, 1999, *Pakistan: A Study of Political Development*, (Lahore: Sang-e Meel Publications).

Both politician and heads of state were thus responsible for the break-up of party solidarity. For one example, Ghulam Mohammed dismissed the Nazimuddin

cabinet in 1953 even though he held the confidence of the majority party in the legislature. Similarly, Iskander Mirza encouraged the formation of a dissident group under the name of the Republican Party the Muslim leaguers in 1956. In addition, the powers permeating central interference in provincial politics were undeniable. Finally, the cabinet used the emergency powers given to the head of the state for partisan purposes. For example, Prime Minister Suhrawardy imposed emergency rule in West Pakistan in 1957 with a view to preventing the Muslim League from forming the provincial government (1959. p31).

Conclusion

(It can be summed that the years before the October Revolution of 1958 were years of instability, chaos and disorder, which culminated in the declaration of martial law by President Iskander Miraza. President Mirza appointed General Muhammad Ayub Khan as the Chief Martial Law Administrator. Within three days of the declaration, Ayub Khan was able to secure Mirza's resignation and became head of the State and government.)

If the Constitution was framed early the true essence of Federalism be implemented but only because Pakistan was surrounded by multiple problems ever since it was born, ethnic issues, minorities, East Pakistan, military intervention and non-serious attitude of politicians gave Pakistan major setbacks and the country saw more Constitutions one after another.

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Ayub Era

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AYUB'S PAKISTAN

THE END OF THE BEGINNING

"law of necessity."

The chairlift at Nathia Gali which provides fine views over the Neelum River in Kashmir, even with the deteriorating security situation, remains a tourist attraction. It forms part of the national park which is called Ayubia in honour of Pakistan's first ruling general. Few of the younger generation of now mainly Pakistani tourists who view its splendours have much interest, however, in Ayub or his legacy. This popular lack of interest is matched at a scholarly level,¹ yet on closer consideration it is evident that the Ayub regime (1958–69) still casts its shadow over contemporary Pakistan.

This chapter has a threefold aim: firstly to reveal Ayub's impact on Pakistan's foundational problems with respect to authoritarian traditions of governance, political institutionalization, centre-province relations, and the role of Islam in public life; secondly, to explain how the army expanded its reach into Pakistan's polity and society; and thirdly, to reveal how both diplomacy and the patronage of Islamic groups were deployed to counteract India's predominance in the enduring rivalry between the two states.

Ayub, Governance, and Depoliticization.

Ayub reinvigorated the viceregal tradition inherited from the British. He famously asserted that democracy was not suited to the 'genius

of the people'. His distrust of the political class had intensified during the year he spent as Minister for Defence, following Ghulam Muhammad's dismissal of the Constituent Assembly in October 1954.² Indeed, he blamed the 'unruly' politicians for Pakistan's ills. In his first broadcast as Chief Martial Law Administrator on 8 October 1958, Ayub delivered a withering attack on the politicians, claiming that they had waged 'a ceaseless and bitter war against each other regardless of the ill effects on the country, just to whet their appetites and satisfy their base demands'. There had been no limit 'to the depth of their baseness, chicanery, deceit, and degradation'.³ Ayub's paternalistic solicitude for the 'real people' of Pakistan, on the other hand, the rural classes, came straight out of the British lexicon for the security state in North-West India. Typical of his sentiments echoing British paternalism were such descriptions of rural dwellers as 'by nature patriotic and good people' who were 'tolerant and patient and can rise to great heights when well led'.⁴

The much-vaunted Basic Democracy scheme⁵ which Ayub promulgated on the first anniversary of the coup, reintroduced nineteenth-century colonial ideas of political tutelage through indirect elections and official nomination of representatives. At the union council and committee level of the Basic Democracies system, the government could nominate up to one-third of the members. One report into the workings of the Basic Democracies scheme revealed that 85 per cent of the items for discussion at union council meetings were initiated by government officials.⁶ The 80,000 Basic Democrats collectively formed the electoral college which affirmed Ayub as President in the January 1960 ballot. Following the introduction of the 1962 Constitution, the Basic Democrats were also the electorate for the national and provincial assemblies.

As in the British era, the elite civil service formed the backbone of a system of governance which privileged administration over popular participation. Ayub in fact was to rely more on the Civil Service of Pakistan (CSP) than later military rulers. The screening process to purge it of 'corrupt' elements initiated under Martial Law Regulation no. 61 was half-hearted at best. The CSP played an increasingly important part in his regime as a result of the central role accorded to Commissioners and Deputy Commissioners in the Basic Democracies scheme and the control over development funds which they acquired under the Rural Works Programme. Leading bureaucrats such as Altaf Gauhar and Akhter Husain acted as Ayub's key advisers.

Pakistan's already weakly institutionalized political system was dealt a further blow by the Ayub regime. This initially banned parties, and even when Ayub began the civilianization of his rule, the indirect elections to the newly constituted National and Provincial Assemblies in 1962 were held on a 'partyless' basis. This further entrenched the power of the local landholders and *biraderi* heads who were inimical to the development of grassroots political organization. Ayub reluctantly legalized party organization in the July 1962 Political Parties Act. Even then, the political system bore his imprint in that the Convention Muslim League emerged as a pro-regime party, just as the PML(Q) was to do, a little over a generation later. Ayub became its President in December 1963.

Freedom of expression and of individual political activity was circumscribed. The notion of accountability and the banning of 'corrupt' politicians from elective office, which had been introduced by Liaquat in 1949, was greatly extended. Ayub introduced the Public Offices (Disqualification) Order (PODO) and the Elective Bodies (Disqualification) Order (EBDO) respectively in March and August 1959. Those accused had the option of trial by a tribunal for 'misconduct' or voluntary withdrawal from public life. Persons found guilty under EBDO were to be automatically disqualified from membership of any elective body until after 31 December 1966. At the most conservative estimate, 400 political leaders were disqualified.⁷ Muhammad Waseem has maintained that EBDO 'turned out to be one of the strongest arms in the hand of the Ayub Government' and that its stifling of meaningful opposition helps to explain the longevity of the Ayub system.⁸

Censorship further undermined the opposition. Ayub not only used the Public Safety Ordinances already on the statute book to control news items, but in 1963 promulgated the Press and Publications Ordinance, 'to make the press conform to recognised principles of journalism and patriotism'.⁹ A tighter grip on news management followed in 1964 when the supposedly independent National Press Trust was established. It acquired ownership of such former radical papers as the *Pakistan Times* and transformed them into government mouthpieces. 'Sycophancy and servility' replaced a true 'patriotism' born of honest reporting. Altaf Gauhar, in his role as Central Information Secretary, was the virtual 'Editor-in-Chief' of over 1,500 publications.¹⁰ Ayub's actions not only undermined resistance to his particular brand of authoritarianism, but hampered the long-term development of civil

society. The Press and Publications Ordinance was repealed in 1988 and the National Press Trust was only dismantled in 1996.

Centre-Province Relations

Ayub favoured a centralized state. Despite his otherwise considerable constitutional tinkering, he significantly made no effort to modify the One Unit Scheme. The 1962 Constitution devolved some additional powers to the provinces, such as control over industries and railways, but hedged around this so much that little in reality was conceded.¹¹ Political centralization was to be accompanied by cultural integration. The biggest challenge involved the de-emphasizing of the distinctiveness of Bengali. The 1959 report of the Commission on National Education recorded that:

Urdu and Bengali [should be brought] nearer to each other by increasing the common element in their vocabularies and by putting such common elements to extensive use.¹²

Ayub suggested that this task could be better promoted by introducing the Roman script for all Pakistan's languages. This idea was abandoned because of public opposition, but government institutions such as the Central Boards of Urdu and Bengali worked to integrate the languages. In this atmosphere, the central government played down the 100th anniversary celebrations of the birth of the great Bengali poet Rabindranath Tagore (1861–1941) and later banned the broadcasting of his poetry. Activists retaliated by changing street signs and name plates from Urdu to Bengali throughout Dhaka.

While Urdu continued to be stressed as the national building block, Ayub's regime saw the pushing to one side of the *mohajirs* in favour of the Punjabis. Pakhtuns, in part because of military recruitment, came to form a junior partner in an increasingly Punjabi-dominated state. The new locus of power in Pakistan was symbolized by the decision to shift the federal capital from Karachi to the new city of Islamabad, deep in the Punjab beside the Margalla Hills and adjacent to the army headquarters at Rawalpindi. The movement of Central Government personnel began as early as September 1960, with civil servants and their families being temporarily housed in the cantonment town at Chaklala while the construction work at Islamabad was carried out.

Mohajir resentment was to develop slowly during the following decades and eventually to focus on a new ethnic political identity

main Punjab recruitment areas.²³ This naturally fuelled claims of the 'Punjabization' of Pakistan.

The Role of Islam

Ayub did not toy with Islam as a form of legitimization as some politicians had done earlier in the decade. Modernization was to be the hallmark and justification of his regime. This involved not just economic development and an attempt, albeit half-hearted, at land reform,²⁴ but modernization of Islam itself. The 1962 Constitution significantly dropped the title 'Islamic' from the Republic of Pakistan title. Another significant change was the rewording of the Repugnancy Clause. This dropped the earlier direct reference to the Quran and Sunnah and merely stated that no law should be enacted which was repugnant to Islam, thereby encouraging the modernist conception of *ijtihad*.²⁵ In a further decisive move, Ayub sought to introduce 'secular' influence into the functioning of marriage and inheritance through the Muslim Family Laws Ordinance. Finally, he attempted to introduce state management of the endowed properties attached to mosques and shrines, through the West Pakistan Auqaf Properties Ordinance.

A variety of motives have been attributed to this attempt to resolve the ambiguities surrounding the future role of Islam in the Pakistan state, in favour of a modernist approach. Undoubtedly, Ayub imbued not only a Pakistan nationalist outlook, but a modernist approach to Islam through his education at Aligarh. He was also of course part of what has been termed the 'British' generation of army officers, which was to adopt a very different attitude to Islam than that of the 'Pakistani' generation of the Zia era. Ayub's modernist Islam was practical and based on common sense rather than any theological interpretation. It was summed up in the sentiment, 'It is a great injustice to both life and religion to impose on twentieth century man the condition that he must go back several centuries in order to prove his bona fides as a true Muslim'.²⁶ Personal observation confirmed him in the view that the *mullahs* were no better than the politicians he so detested, in that they were covetous of 'wealth and power and did not stop short of any mischief'.²⁷ Yet rather than emerging as a latter-day Kemal Ataturk, Ayub was soon forced to backtrack in the face of resistance from Islamist groups. Ironically, he turned to the traditionalist Islam of the Sufi shrines. He was supported by Pir Dewal Sharif and many of the prominent

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sajjada nashins. By the end of his regime, the role of Islam in Pakistan's public life was as unresolved as it had ever been.

The *ulama* opposed the 1962 Constitutional changes and were also unhappy with the composition of the Islamic Advisory Committee which Ayub had established to assist the National Assembly in framing laws based on Islamic concepts. He was forced to retreat on the name of the country. The First Constitutional Amendment Act of 1963 restored the name 'Islamic Republic of Pakistan'. When the Political Parties Act legalized political organizations, JI swung onto the offensive. Maulana Maududi fired off volleys of criticism at the anti-Islamic features of the Ayub regime. Even before the ban on political activities had been formally lifted, he organized a meeting of fifty *ulama* from the two wings of the country to condemn the Muslim Family Laws Ordinance. To counter attempts in the National Assembly to repeal it, Ayub provided constitutional cover which protected it from judicial scrutiny. Similar safeguards were built in at the time of the 1973 Constitution, by which time the Muslim Family Laws Ordinance had become both a totem for women's rights and the *bête noire* of the Islamists. Maududi, however, continued his attack on the Ayub government. The Central Council of JI which met in Lahore during the first week of August 1962 passed a series of resolutions which condemned, among other things, the official Advisory Council of Islamic Ideology, the Muslim Family Laws, the Pakistan Arts Council, the Girl Guides and the Blue Birds, the construction of cinemas, and the importation of books critical to Islam.²⁸

Less than a generation later, JI was to be temporarily at the heart of Zia's martial law regime, rather than pitched against the army. We will be examining later the emergence of what has been termed the 'Mullah-Military' complex. Farzana Shaikh has argued that for all Ayub's modernism and 'ambitious programme of economic and social reform', he helped make room for this development:²⁹ firstly, by turning to Islam as ethnic and class divisions threatened his regime; secondly, by emphasizing that Pakistan was both a Muslim territorial homeland and a fortress of Islam in which the army played a guardianship role; thirdly, as we shall see later in this chapter, by working with religiously motivated irregular forces to advance Pakistan's strategic objectives in Kashmir. Shaikh sees the 1965 war with India as being a crucial turning point with respect to these inheritances from Ayub's rule. It was then, she declares, that he for the first time bound Islam, Pakistan identity, and the army together in a common defence against 'India aggression'.³⁰

Wilde Military Hegemony, Ayub Era

instrumental in the creation of Pakistan and people in both parts of the country were familiar with its name, an organisational base was not really imperative.

The political costs of the military hegemonic regime proved catastrophic for Pakistan. East Pakistan was alienated, since the East Pakistani elites were inadequately represented in the military-bureaucratic ranks that dominated the regime. The Basic Democracies barely gave East Pakistanis a modicum of political participation. The hegemonic system generated a crisis of legitimacy for the military and brought into question its claim to be saviour and protector of the nation. The military regime not only failed to develop any viable political institutions, but it also hampered the growth of political parties. The collapse of the hegemonic system also brought the collapse of the Pakistani state.

And yet, besides expanding the military's role in the economic sector and co-opting the feudal class, the regime made two important contributions in the economic domain: it stabilised the financial-industrial groups and created viable economic institutions. These classes and institutions not only developed into an important support base for the regime, but also continued to be the most durable components of Pakistan's economy. → for industrial investments

Political stability + liberalization

The Trader-Merchant Class and its Transformation into Financial-Industrial Groups

In the early phase of Pakistan's history, the trader-merchant class was associated with economic policy-making institutions. It reflected Quaid's belief that in an independent Pakistan, private enterprise and industrial development should be encouraged by the government.

At the time of Independence, Pakistan inherited a small but cohesive trader-merchant class that was primarily comprised of the minority Muslim communities (the Bohras, the Khojas and the Memons) and two trading families from Punjab (the Saigols and the Chinioties).⁴⁴ Prior to Independence, this class of Muslim trader-merchants was widely dispersed in India. Its members were dynamic and skilful entrepreneurs who had been successful in undivided India. Trade and business was an inherited profession to them that did not require any formal schooling. This class was made up of small, close-knit, clannish, caste-like communities. (After Independence, most members of this class established their headquarters in Karachi and Lahore -- see Table 3). They were quick to seek bureaucratic patronage from the regime and soon came to dominate the commercial-industrial life in Pakistan.⁴⁵ The institution that represented the interests of the trader-merchants

Loans + Financial Aid

from outside world
97

GDP → 6-8%

Dams created

Indus water Treaty 1960

for Pakistan
- Indus
- Chenab
- Jhelum

For India
- Ravi
- Bias
- Sutlej

Investment from outside

(IMF + world bank)

↓
Bretton Woods

International law ↓

River disputes can't be decided

Water a major crisis for Pakistan

↓
Red zone

in 2022

like in Africa

was the 600-member Pakistan Chamber of Commerce.

Table 3

Industrial House	Community	Family	Settled Origin/Area	Business Hdqrtrs pre-1947
Adamjee	Memon	Kathiawar/ Jetpur	Karachi	Calcutta
Dawood	Memon	Kathiawar/ Bantwa	Karachi	Bombay
Saigol	Punjabi Sheikh	W. Punjabi/ Chakwal	Lahore	Calcutta
Valika	Dawoodi/ Bohra	Bombay	Karachi	Bombay
Colony	Punjabi Sheikh Chinioti	W. Punjab/ Chiniot	Lahore	Lahore
Fancy Bawany	Khoja Ismaili Memon	Kathiawar Kathiawar/ Jetpur	Karachi Karachi	E.Africa Rangoon
Crescent	Punjabi Sheikh Chinioti	W. Punjab/ Chiniot	Lyallpur	Delhi
Beco Wazir Ali	Punjabi None, Syeds	E. Punjab W.Punjab/ Lahore	Lahore Lahore	Batala Lahore
Amin	Punjabi Sheikh	W.Punjab	Karachi	Calcutta
Nishat	Punjabi Chinioti	W. Punjab/ Chiniot	Lyallpur	--
Hoti	Pathan Landlord	Charsaddah	Charsaddah	Charsaddah*
Fateh Ispahani	Marwari	Gujrat	Karachi	Calcutta
Karim	None	Iranian	Karachi	--
Habib	Bohras Khoja	Bombay Bombay	Karachi	Bombay
Hyesons	Isnasheri None	Madras	Karachi	Madras

Sources: Rashid Amjad, *Industrial Concentration and Economic Power in Pakistan*, Lahore: South Asian Institute, Punjab University Press, 1974, p. 16; H. Papanek, *Pakistan's Big Businessmen, Economic Development and Cultural Change*, 21; October 1972, p. 21; Stanley A. Kochanek, *Interest Groups and Development, Business and Politics in Pakistan*, Karachi: Oxford University Press, 1983, p. 93.

*Most of the studies have erroneously put Charsaddah as the place of settlement and business headquarters of the Hotis, whereas they are settled in Mardan and their business headquarters are also located there.

In the pre-military hegemonic period, the regimes in Pakistan had encouraged the participation of the trader-merchant class in the economic policy-making process. However, this class could not organise itself effectively and in fact contained quite a bit of internecine rivalry; its impact on economic policy-making remained

marginal. Still, during this period business organisations proliferated. According to one estimate, in 1958 there were more than 250 business organisations.⁴⁶ Almost every major city had a chamber of commerce, but there was no coordination among them. The military found the large number of business organisations cumbersome. Therefore, under the Central Ministry of Commerce, an office of the Director of Trade organisations was created in 1958, and in 1961 it introduced a reorganisation scheme that abolished all the competing organisations. The director was given wide powers to form new organisations. He could inspect their records, attend their meetings and even reject the formation of new organisations. He could modify and amend any resolution adopted by any business organisation, including the Pakistan Chamber of Commerce. Previously, the Chamber of Commerce had the right to elect the management of public or semi-public institutions. According to the new law, the Chamber could only nominate its members to these bodies and the director retained the power to regulate membership.⁴⁷ This centralisation established bureaucratic control of the commercial and economic policy arena. Instead of creating an atmosphere in which business could grow and expand through competition under free-market principles, the military would reinforce a patron-client relationship with the trader-merchant class.⁴⁸ The president of the Chamber of Commerce protested against the measures, but without success.⁴⁹ In addition to bureaucratic patronage, another factor that facilitated the transformation of the trader-merchant class into financial-industrial groups was the vacuum created by the migrating Hindu trader-merchant class. This opportunity was skilfully and effectively exploited by the Muslim trader-merchants. Operating relatively small and cohesive family businesses, this class had the initial advantage of experience. In addition, the areas that constituted Pakistan were strongholds of agrarian social structure and tradition; an indigenous trader-merchant class was virtually nonexistent. By 1960-61, a small segment of the trader-merchants came to dominate the trade and commerce of Pakistan. Industry had not taken hold in the new state, while the dominant rural classes were deeply entrenched in the rural structure and were occupied with ensuring their dominance. The peasantry was powerless and weakly organised and thus found it difficult to dislodge the feudals. Moreover, the bureaucracy, confronted with the problems of restoring law and order in the urban centre, was keen to preserve stability in the rural areas.

Because its priority was to create an infrastructure for a modern state without rocking the agrarian structure, the regimes in the pre-military hegemonic period had given priority to the development of the industrial sector. A number of economic policies

were initiated during the 1950s to transform the trader-merchant class into financial-industrial groups. Since most of the trader-merchants had settled in West Pakistan, this area became the prime beneficiary of industrialisation.

Economic Institutions

In creating a role for itself in the economy, the Ayub regime was also instrumental in developing economic institutions. The regime consolidated the financial-industrial groups and reshaped the economic institutions. According to a well-informed observer of Pakistan's economic scene, Ayub "...was deeply concerned with economic development and threw his weight on planning."⁵⁰

The antecedents to Ayub's role in fostering economic institutions and planning activities can be traced to 1953-1954. It was in 1954 that U.S. military and economic aid began to flow into Pakistan. By procuring aid, the military elites under Ayub enhanced their position in the country's politics, developed a strategic link with the U.S., and were able to obtain U.S. expertise for developing economic institutions. In the same year, two advisory groups, one military, the United States Military Assistance Group (U.S. MAAG) and the other economic, the Harvard Advisory Group (HAG), began operations. The HAG, in particular, played a key role in creating, promoting and expanding the planning and economic institutions of the country.

Planning Commission

One of the most important achievements of the military alliance with the U.S. was the creation of the Planning Commission, an institution that became the pivot of economic planning, development and growth in Pakistan.

In February 1954, the government of Pakistan, the Ford Foundation, and Harvard University signed an agreement stating that the university, with funding from the Ford Foundation, "would recruit and guide a group of experts who would assist Pakistan's Planning Commission ... to prepare the first comprehensive plan for long-range economic and social development."⁵¹ Under the agreement, the HAG was to assist the Planning Commission in three ways:

1. Organising and developing a long-term development plan;
2. Recommending and analysing major economic policy questions;
3. Training professionals in various sectors of national planning.

The agreement also initiated a one-year fellowship programme

Week :8

Z.A Bhutto

Left Politics → addresses issues of
common person, support their voice

Yahya finished 1956 constitution.
Finished one unit scheme.

1970 → first elections

300 seats

162 - 160 PPP.

But Yahya did not transferred
powers to go E.Pak

LFO
temporally
constitution
120 days
to be given to
form constitution

but 1971
was started
constitution
couldn't be
formed

Bhutto's Populism: Hopes and Dashed Expectations

Bhutto's meteoric rise in popularity from 1967 onwards owed much to the hope he brought of a dramatic break with Pakistan's past. He held out for the masses the prospect of economic as well as political empowerment. If this had been achieved, it would have provided him with an infinitely stronger safeguard against military intervention than that arising from constitutional niceties and the shallow trappings of the FSF. Bhutto's land reforms, nationalization measures and labour laws did not, however, transform Pakistan for good. They merely added to the number of enemies generated by his combative political style.

A number of explanations have been provided for the failure of Bhutto's populism. Some focus on his personal failures and on the logical inconsistency of a hugely privileged Sindhi feudal landowner preaching the virtues of socialism.⁴⁰ Others maintain that if Bhutto's rule had been properly institutionalized, reforms could have been better implemented. To these we must add the factor that just as his attempts to rein in the military came up sharp against Pakistan's geo-political insecurity vis-à-vis both Afghanistan and India, so attempts to reduce Pakistan's glaring economic inequalities were made more difficult by the inflationary pressures generated by the 1973 Arab-Israeli War. For the man in the street, the rhetoric of egalitarianism sounded increasingly hollow when confronted with annual price rises of 20 per cent.

Bhutto's 1972 land reforms were more radical than Ayub's, but they did not meet his 1970 election aspiration to remove the 'remaining vestiges of feudalism'. (The maximum land ceilings were still 150 acres for irrigated and 300 acres) for un-irrigated land. Intra-family land transfers were still allowed and individual ceilings could be increased if evidence of agricultural improvements, including the use of tractors and tube-wells, were provided. This meant that, as in Ayub's 1959 reforms, little land was available for redistribution. The fact that Bhutto's reforms removed any compensation for owners meant that they retained their most fertile holdings, leaving poor quality land to be distributed to landless tenants and small peasant owners. To make matters worse, as in 1959 there were numerous instances of fictitious transfers. Ironically, rather than signalling a shift in the rural balance of power, the reforms encouraged many Punjabi landlords to enter the PPP's ranks in order to safeguard their position. The PPP's weak institutionalization enabled them to take up leading roles. Despite his populist rhetoric, Bhutto

liberally distributed election tickets to landlords at the time of the 1977 polls. This further disillusioned the PPP rank and file.

Significantly, in an admission of the failings of the reforms, Bhutto announced more stringent measures on the eve of the 1977 elections. Ceilings were lowered to 100 acres of irrigated land and 200 acres of un-irrigated land. This still hardly represented an agrarian revolution. Nevertheless, the measures were suspended with the introduction of martial law on 5 July.

(Bhutto's labour reforms, which were also introduced in 1972) were more far reaching, thanks in part to the radical influence of Muhammad Hanif, the Minister for Labour. Union power was increased with the establishment of Works Councils and special Labour Courts for the adjudication of industrial disputes. A compulsory system of shop stewards was established in factories. Employers were called upon to provide subsidized housing and education to matriculation level for at least one child of every employee. The state also held out the promise of old age pensions and insurance against injury.⁴¹

For some PPP activists even these measures were insufficient and they demanded the introduction of a minimum wage and the labour laws' extension to pieceworkers. The newly emboldened workers became embroiled in a number of strikes and *gheraos* (lock-ins) which further hit production in many of the poorly managed new nationalized industries. There was a bloody conflict between strikers and some employers in Karachi, which was only ended when the army was called in. This precipitated a break between Bhutto and a number of PPP radicals. Lower-middle-class PPP supporters who owned small enterprises were hit by the cost of pension and medical benefits for workers. They also chafed under the workers' new participation in management structures. Some small-scale enterprises, as for example those in the Sialkot sports goods industry, sought to circumvent the reforms by reverting to a home-based decentralized production.⁴² Business confidence was in fact hit, not just in the small-units sector of the economy. There was rising unemployment for workers whose lives were already being made miserable by the spiralling prices of goods. Ironically, the improved conditions which some sections of the working class experienced during the Bhutto years owed far more to government encouragement of labour migration to the Gulf than to its vaunted reform programme.

(Labour reform had gone hand in hand with a far-reaching nationalization programme.) This encompassed the banks and life

insurance companies, large heavy industry such as engineering, chemicals, and iron and steel, but also small-scale consumer industries such as the ghee, rice husking, and cotton trading industries. We have already noted that their owners, along with small-scale traders and merchants, were at the forefront of the anti-Bhutto campaign. Nationalization was intended to 'eliminate, once and for all, poverty and discrimination in Pakistan'.⁴³ This tall claim was impossible to fulfil, not just because there were a myriad of other causes of poverty and discrimination, but because of the fact that many of the newly nationalized industries were badly managed. Moreover, the threat of further nationalization led to a flight of capital and skills out of the country. The resulting decline in private sector investment meant that the high rates of economic growth of the Ayub era were replaced by near stagnation.

Nationalization also brought increased corruption and clientelism in its wake. This occurred both at individual and political level. The PPP's vastly increased resource base further encouraged the process of substituting patronage for political institutionalization. The support of the large landholders who were opportunistically joining its ranks was facilitated by cheap credit from the newly nationalized banks. A precedent was set in which successive governments used loans from government-controlled institutions to buy support. By the mid-1990s, the scale of defaults had reached the staggering level of Rs 108 billion. The bad loans threatened the liquidity ratios of nationalized banks, undermined Pakistan's credibility with international financial institutions and fed into a culture of endemic corruption.

The unintended effects of Bhutto's reforms were to expose the PPP to disunity and clientelism, to create powerful enemies amongst the rural and urban elites, and to fail to create the conditions for a more just society, capable of supporting a democratic system of government. This populist period can be variously described as a 'heroic failure', 'missed opportunity' or as merely a replay of Pakistan's traditional personality-centred politics, in an albeit more exaggerated form. The immediate fruits of the socio-economic reforms were displayed during the 1977 elections and their chaotic aftermath, which brought down the curtain on the Bhutto theatricals.

Bhutto also moved to nationalize educational institutions. The only exemption was those schools and colleges under the direct control of foreign missionaries. Nationalization was seen as the necessary instrument for 'Preparing Pakistan's educational sector for meeting the

demands of a modern and dynamic society'.⁴⁴ The linkage of education with empowerment was made explicit by the introduction on 1 October 1972 of free, but not compulsory, education for all children up to the age of 13. Bhutto was to maintain that these educational reforms were his greatest achievement. As with other measures, however, they failed to take account of the complex and interlocking causes of deprivation in Pakistan. Poor parents could not allow their children to take up the offer of free education as they needed them to work to supplement meagre household incomes. Indeed, around two-thirds of all young adults were forced to work. A staggering 39.5 per cent of the total labour force was made up of children in 1971.⁴⁵ The rate of educational enrolment in these circumstances hardly surprisingly only increased by 5 per cent over 1972–4, taking into consideration population growth. The nationalized schools and colleges experienced falling standards to the chagrin of the urban middle classes. Once again, the PPP government was creating enemies without effecting the sweeping changes of its rhetorical discourses.

Conclusion

Bhutto had sought to transform Pakistan. His rule witnessed tumultuous events, but at its close much remained the same. Despite the claim that he would abolish feudalism, the large Punjabi and Sindhi landowners continued to wield power. The promise to empower the poor had achieved only limited success. Politics remained in the thrall of patron-client ties in which personality counted for more than ideology or party institutionalization. The party system displayed instability and immaturity, rather than vitality and development, thereby opening the door for military intervention. Within a few years of the army's defeat and demoralization at Dhaka, it had been allowed back into public life to aid civil authority. It was soon in receipt of the swollen budgetary allocations which had distorted Pakistan's economy since independence. Its institutional recovery and re-emergence as a domestic political power contrasts sharply with that of other demoralized forces such as the Greek colonels (after the 1974 Turkish invasion of Cyprus) or the Argentine junta after the 1982 Malvinas/Falklands War.

Bhutto had not only been unable to restructure civil-military relations but he had failed to resolve once and for all the tensions between the centre and the provinces. Hopes for a new beginning had collapsed.

Abdul Hafeez Pebrada
written 1973 constitution

The 1973 Constitution of Pakistan

A constitution governs the government- Government brings order in the society. Constitution being the mega law it serves as the principle and higher moral power; It lays down the meta political rules of the game. Therefore, constitution provides a broader set of principles, political values, ideals and goals for the political life of a country. It defines the framework of government. The authority, responsibilities, functions and limitations of the various institutions of state and government are specified in the constitution.

Change in a constitution becomes inevitable with the passage of time, necessitated by new situations, circumstances, environment, factors and forces. No constitution in the world is immune from change, even though as little as the reinterpretation of Islamic laws (Ijihad) to meet new or changed situations in the light of Quran, Sunnah and Hadith. No wonder the 1973- Constitution of Pakistan has undergone 20 amendments, to date to meet new situations and requirements. The major motivation of the 18th Amendment (April, 2010) is that it has restored the spirit of parliamentary government by vesting executive authority of the federation in the Prime Minister and Cabinet by removing anomalies created by 8th and 17th amendments. The 19th Amendment had struck fine balance between the powers of judiciary and parliament about the procedure of appointment of judges by fixing the number of serving judges in the Judicial Commission (recommendatory body) and by making the Parliamentary Committee (scrutiny and approving body) to give its reasons for accepting the JC's recommendation in writing. The 20th amendment has however enhanced the credibility of the electoral process in the country by slashing presidential powers to form an interim government in the national phase.. (Transfer of power from one government to another). Now this all is to take place on the basis of a consensual process (after consultation between the government and the opposition)

The 1973 constitution was the result of a consensus among the political parties. The Pakistan People's Party (party in government) reached an accord with the opposition parties namely National Awami Party (Abdul Wali Khan), Jamiat-e-Ulma-e-Islam (Multi Mehmood), Jamiat-e-Ulma-e-Islam (Shah Ahmed Noorani), Jamat-e-Islami (Maulvi Tufail Alimed, through Prof. Abdul Afoqr) and Council Muslim League (Sardar Shaukat Hayat Khan).

The passage of the 1973 constitution on April 10, 1973 is considered to be one of Z. A. Bhutto's greatest accomplishments. Even his bitter enemies acknowledge this fact. The 1973 constitution presented a broad national-consensus for which credit goes to Bhutto's bargaining skills as well as the opposition's reasonable and realistic stance. They all had made concessions and they all had made compromises:

Supreme court cannot give orders what to do in Parliament

Main Characteristics:

Though the original version of the 1973 constitution was different, yet a total of 19 amendments changed its shape and substance in several ways. The main characteristics of the institution, in its amended form are as follows:

Parliamentary Form of Government:

Parliamentary
Form of
Government
legislators
Ministers

Why legislature is supreme?

Mathematical Question like this comes

make budget
laws

Parliamentary system has been adopted. Executive authority of federation shall be exercised in the name of President by the federal government consisting of Prime Minister and the Federal Ministers who shall act through the Prime Minister and who shall be the Chief Executive of the federation of Pakistan.

Election of Prime Minister:

The Prime Minister (PM) shall be elected by the majority of total members of the National Assembly. There will be a second poll in case no one gets majority votes of the total members in the first poll, two candidates scoring the highest will go for a second poll. A candidate who receives the majority votes of the members present and voting shall be declared as Prime Minister. In the case of a tie between the two candidates, further polls will be held until one of the two secures majority votes of those present and voting. In implied terms, a member of National Assembly supported by a comparative majority and not by absolute majority of the total membership of the Assembly can get elected. Apparently it negates the principle of liberal democracy. On the other hand this provision may reduce, if not eliminate the chances of horse trading at the time of election of PML.

The office of Prime Minister is made extremely powerful and the office of President is made correspondingly weak, ineffective and dependent.

Power of appointments:

The President shall appoint Chiefs of Army, Navy, Air Force and Chairman Joint Chiefs of Staff on the advice of Prime Minister.

Dissolution of National Assembly:

The national Assembly shall be dissolved by the President if so advised by the Prime Minister. President can dissolve the National Assembly on his own if a no confidence move against the existing Prime Minister has been carried and no other member commands confidence of the majority of members.

Position of President:

The President is a ceremonial and nominal head of the state without executive powers. He could veto any legislative bill as the bill would become law on the expiry of 7 days if the President does not assent it.

The Prime Minister's advice is binding on President. The National Assembly would stand dissolved on the advice of Prime Minister even if the President did not agree.

2. Federal System:

Pakistan has a federal form of government with the clear distribution of powers made between Federal Government and Provincial Governments. In federation legislation on matters of regional importance are left to provincial governments. For uniformity of laws and policies matters of national importance are vested in the federal government. Under the 18th * amendment, the principle of decentralization has been followed and in addition to residuary powers, 47 subjects previously in the Concurrent List belong to provinces. The legislative powers of federal government are enumerated in the Federal List, which include defense, foreign policy, communications, water and power as being the most important. The 47 subjects, originally in the concurrent list meant for centre as well as provinces wherein the federal law was to prevail over provincial law, have now been devolved exclusively upon provinces. In the original 1973-

Constitution, strong centre was envisaged

with due autonomy to provinces. With the passage of 18th amendment, balance has tilted in favor of provinces.

3) Safeguards for Provincial Interests.

The Bullock politicians laid claim, and they still do, to the revenues obtained from the extraction of minerals and the sale of gas pumped out of their province. The politicians of Pukhtoonkhwa-Khyber (formerly NWFP) made similar royalty claims concerning the electricity generated there. The Sind and NWFP had worries over the distribution of Indus water. In order to handle these and other matters fairly, three constitutional institutions have been provided

- I. The Council of Common Interest (CCI) is meant for the formulation of policies regarding industrial development, water, power and railways.
- II. The National Economic Council (NEC) is mandated to make plans for policies to be adopted in respect of financial, commercial, economic and social matters common to all provinces.
- III. The National Finance Commission (NFC) makes recommendations for federal grants-in-aid and sharing of net proceeds of certain federal taxes between the federation and provinces.

The 18th amendment has enlarged and strengthened these constitutional bodies by putting Prime Minister as their head and by placing all the four Chief Ministers as members and by requiring convening meetings within a specified period of time. The CCI will formulate and regulate policies and meet at least once in 30 days. This constitutional body will resolve also disputes over hydro-electric power stations in any province.

The excise duty on natural gas and oil, and the royalty collected by the federal government shall be paid to the government where well-head is located. Mineral oils, natural gas within the province or within the territorial waters adjacent to the province shall vest jointly or equally with that province. The NEC shall review overall economic conditions and formulate plans in respect of social, Commercial, financial and economic policies and formulate plans for balanced development in all provinces. Any province may raise domestic or international loans within limits set by the NEC. The NFC awards shall not be reduced from the share previously made to a province

4) Bicameral Legislature:

Two chambers legislature has been provided the chamber of the people, the National Assembly was represented on population-basis. All the four provinces regardless of their population or size represented the upper chamber called the Senate equally. The upper chamber was meant for checks and balances to safeguard the interests of provinces having relatively less representation in the National Assembly.

5) Fundamental Rights:

Great emphasis is laid on fundamental rights/The familiar democratic rights and freedoms such as freedom of speech, expression, press, assembly, conscience and employment are guaranteed. All the citizens are to be treated equal before the law and entitled to equal protection of law.

During the emergency, the President can, by an order, suspend the enforcement of some of the fundamental rights. The civil rights such as right to life, liberty and property are guaranteed, though with some qualifications and safeguards.

An important provision from the standpoint of civil liberty was laid down that if a person were arrested, he/she could not be detained in custody without being informed as soon as possible, of the grounds of such arrest. Nor a person could be held without lawful manner. However, in several instances, it made the rights subject to reasonable restrictions in public interest

6). Islamic Character of the Constitution

The 1973 constitution while retaining the Islamic provisions of 1956 and 1962 constitutions added some more Islamic provisions.

State Religion

Article 2 of the constitution designated Islam as the state religion and required President and Prime Minister to be Muslims. Oath of the President and Prime Minister required them to affirm their belief in unity of God, finality of Prophethood of Muhammad (SAW) and the Quran as the last of Holy Books. This oath had the effect of excluding members of Ahmedi sect from holding any of the two offices.

11C

Articles 223 provided for Council of Islamic Ideology to make recommendations to the Parliament and Assemblies for bringing the existing law into conformity with the injunctions of Islam.

Another article declared that 'no law shall be enacted which is repugnant to the injunctions of Islam as laid down in Quran and Sunnah.'

each according to his ability

7). Socialist Flavor

Article 3 promised to create a policy that took from each according to his ability and gave to each according to his work

Article 38 provided for preventing the concentration of the means of production and distribution in a fewer hands. Under the constitution, equitable adjustment of rights between employers and employees, and landlords and tenants was to be ensured. Article 253 authorized parliament to designate business and industries that might be placed in the public sector. Article 34 required the state to ensure the "full participation of women in all spheres of national life."

8). Appointment of Judges:

The judges have always been appointed politically in the sense that the political executive has the discretion of appointing judges to the higher courts. In the words of 1973-Constitution, 'The Chief Judge of Supreme Court shall be appointed by the President and each of the other judges shall be appointed by the President in consultation with the Chief Justice' (Article. 177). There was a consultative process, yet ultimate discretion was left to the President. In practice, however, both accommodated each other in appointment of judges during consultative process. This process

precipitated political controversies as to the power of appointing judges to the higher courts, in particular when tussles between a President and Prime Minister went on. As the controversies went on, the superior judiciary acquired power to make binding recommendation for appointment of judges. This power was acquired through different judgments. The starting point was the famous "Judges Judgment" of 1996 by Chief Justice Sajjad Ali Shah, as a result of which many of the judges appointed during Benazir's second tenure, had to go home. From that point onward, the judiciary strengthened its grip over the appointing procedure. The struggle reached culmination when CJ. Iftikhar Chaudhry asserted this 'acquired power' in appointments of judges in 2010. The issue became a public debate involving a section of lawyers, media and the parliamentarians. In order to end the controversy, a new Article 175-A as part of 18th Amendment was inserted which provided for a mechanism of appointing judges to the higher courts. To meet the concerns of Supreme Court, 19th Amendment in the constitution was adopted; which not only enhanced the number of judges in the Judicial Commission on the one hand and made it obligatory on the part of Parliamentary Committee to give reasons for rejecting Judicial Commission's recommendation in writing.

Mechanism of Judges Appointment:
The appointment procedure consists of two bodies and two stages. A Judicial Commission makes recommendation and a Parliamentary Committee to scrutinize. After scrutiny, the names are either sent to President, through the Prime Minister, for appointment or returned to the Judicial Commission with reason for rejection.

a) Judicial Commission: The JC will have of 6 members and headed by Chief Justice, making the total strength as 7. The JC will consist of, in addition to Chief Justice, two senior most judges of the SC, one retired Chief Justice or a judge to be nominated in consultation with the senior-most judges of the supreme court, federal law Minister, Attorney General of Pakistani land one nominee of the Supreme Court Bar Council from amongst the senior advocate^ of supreme court. The Commission will make recommendations to be considered by the parliamentary committee.

b) Parliamentary Committee:
A bipartisan committee consisting of 8 members, 4 from the government and 4 from the opposition, two each from the Senate and National assembly, will scrutinize and decide about the judges. Confirmation of the recommendations is to be decided by two-thirds (5 out of 8) whereas rejection can be made by three-fourth (5 out of 8) but it has to be done within 14 days. The recommendation for appointment shall be forwarded to President via Prime Minister.

The new method of appointment of judges is consultative in substance and transparent in nature. It assigns a rather pre-eminent, though not the sole, role to the judiciary in the appointment process. The controversy that surrounded the 18th Amendment revolved around the point that whether or not appointing procedure amounts to upsetting the basic structure of the constitution. The pro-CJ lobby in the legal entity who favored the exercising of "acquired powers" wanted the appointing procedure in the 18th Amendment to be struck down.

Opposed to basic structure theory were the one who considered parliament as the sole constitutional authority to amend the constitution in view of the fact that Article 239, clause 2 & 4 bars the court to question an amendment. The said clause has clarified rather explicitly that parliament is the sole authority to amend the constitution.

In the final analysis, basic structure argument did not seem applicable to the constitutional authority to amend the constitution. It has been argued that supremacy of elected parliament in

the matter of constitutional amendment cannot be infringed upon through the device of judicial activism. By playing with the tool of judicial activism, the judiciary should not become the sole power in a polity as asserted by the legal analysis. Independence of judiciary rather domination of judiciary is the recognized principle of modern democratic structure. Widely accepted and adhered to are the principles of separation of powers and checks the principal features of a successful political system.

238 - 23^{c1} -
2/3 majority

9). Method of Amendment:

Article 238 and 239 of the constitution deal with the amendment procedure. The constitution may be amended by act of parliament. A bill to amend the constitution may originate in either house and when the bill has been passed by the votes of no less than two thirds 2/3 of the total membership of the house, it shall be sent to the other house where the amendment bill shall have to be passed again by the votes of not less than 2/3 of the total membership of the house. Once passed by respective both houses it shall be presented to president for assent who cannot alter or veto it.

Important Amendments:

So far 20 amendments have been made in the 1973 constitution. The most important amendments, which changed the very nature of the constitution, are 8th, 13th, 17th and, 18th, 19th and 20th which relate in the major part of the powers of the President

8th Amendment:

The original structure of the polity was parliamentary in nature with President as a nominal, ceremonial and titular head of the state. Some called him the rubber stamp of Prime Minister. This position was altered by the 8th amendment in the constitution on 2nd March 1985 during General Zia-ul-Haq's period of Government.

General Zia held the parliamentary form of government responsible for the political crisis of 1977, which according to him had brought the country to the brink of civil war. He held the general elections to the National and Provincial Assemblies in February 1985 on non-party basis. By holding elections, he wanted to create some semblance of democracy that would give him an appearance of legitimacy.

But before the parliament could meet, he comprehensively amended the constitution through a President's order known as Revival of Constitution of 1973 order (RGO). As many as 65 articles were amended, substituted, added, modified, altered, deleted and omitted. The most important was the addition of clause 2 and sub clause B to article 58 of the constitution.

This article 58 (2) B empowered the President "to dissolve the National Assembly at his discretion where, in his opinion, appeal to the electorate was necessary." General Zia-ul-Haq exercised this power to dismiss his own hand-picked Prime Minister Muhammad Khan Junejo on March 1988 because he was asserting his powers and position and being not obedient to Zia.

The 13th Amendment
After the General Elections of 1997, Nawaz Sharif having an overwhelming majority in the National Assembly did away with the discretionary powers of the President (then Farooq

Laghari). The constitutional (13th Amendment) Act 1977 was moved and passed in a matter of minutes on April 4, 1997.

The Article 58 (2) B of the constitution vesting discretionary power in President to dissolve the National Assembly was omitted. Similarly, the corresponding power of the governors under Article 112 (2) B to dissolve Provincial Assembly was removed.

The power of the President to appoint governors was watered down. Previously the President made such appointments after consultation with the Prime Minister. After the 13th.Amendment, such power was exercisable 'on the advice of Prime Minister'. The advice of the Prime Minister was a new binding on the President

The 17th.e Amendment

The National Assembly passed the 17th Amendment Bill on 29th December 2003 and by the Senate on 31st December 2003. It amended several articles but restoration of Articles 58 (2) B and were the most important because those were deleted under the 13th Amendment. A concession was however made here on the demand of opposition. In Article 28, a new clause (3) had been added to provide for reference to the Supreme Court within 15 days of the National Assembly under Article 58 (2) B.

The Legal Framework Order 2002 (LFO) was promulgated by General Musharraf on 21st August, which indeed was in total disregard of the 1973 constitution.

Under the 17th amendment Article 270 AA had been added validating all the laws made during the period of suspension of the 1973 constitution and actions taken there under. The constitution of 1973 was held in abeyance soon after. Musharraf had taken over on 12th October 1999.

The 18th Amendment:

The major contribution of 18th Amendment is that the office of president has been made ineffective, dependent and only ceremonial with nominal powers as head of the state. The Prime Minister will be the chief executive of the federation who will be elected immediately after election of Speaker and Deputy Speaker by the National Assembly with majority votes of the total membership.

The Prime Minister's advice is binding on President. The National Assembly would stand dissolved on lie advice of Prime Minister even if the President did not agree. Floor-crossing is apparently prevented with a provision in the constitution that vote of such a member who is elected as nominee of a political party will be disregarded if the majority of the members of that political party had cast votes against the resolution of no-confidence. The 18th amendment, however, has deleted a clause (Article 17.4) that required intra-party elections, thus letting the dynastic politics prevail and the family enterprise flourish. The defection clause (Article 63.A) has been amended making way for the Party Chairman and not the parliamentary leader to decide about the defection reference.

(note : Introduction to 19th and 20th amendment has been given in the earlier discussion)

Week :9

Zial Ul haq Era

period. It became the third largest recipient of US aid after Israel and Egypt.¹³ As during the 1950s, American largesse bolstered the army to the detriment of democratic forces. A blind eye was turned both to human rights abuses and to the mounting 'scorecard' of Pakistan's violations of non-proliferation policy, despite the safeguards to this provided by the Pressler Amendment.¹⁴ While for Washington the Afghan conflict was a new front in the global struggle with the Soviet Union, for Islamabad it presented an opportunity to acquire strategic depth against India. The carefully calibrated conflict succeeded in preventing full-scale Soviet retaliation against Pakistan. This successful strategy also encouraged military thinking in Pakistan that a proxy war could be directed against India in Kashmir.

There was, however, a 'blowback' from the Afghanistan conflict. This was seen in the leakage of weapons, the spread of drug addiction and the mounting Afghan refugee problem. Longer-term legacies included the ever closer ties between the army and the ISI with militant Islamic groups. According to a leading ISI officer, by 1987 at least 80,000 *mujahadin* had gone through training camps in Pakistan.¹⁵ Militant groups had originated as armed offshoots of JI and JUI. The later movement of Islamic fighters between *jihadist* and sectarian groups was to increase sectarian violence drastically within Pakistan.

Zia's Authoritarianism

As Iqbal Akhund has noted, Zia stands in a long line of Pakistani rulers who have damaged institutions, acted arbitrarily, and undermined respect for the law.¹⁶ Their actions, designed to bolster their power, have stunted the prospects for democratization. Zia's rule, however, had an especially pernicious impact, because of both its longevity and its severity. Ayub, as we have seen, muzzled the press, but it would have been unthinkable during his rule to flog journalists before the gaze of world opinion. In May 1978, however, four journalists were flogged in Lahore because they had gone on hunger strike to protest against the closure of the leading PPP newspaper, *Musawat*.¹⁷ The public flogging of political prisoners by bare-chested wrestlers remains one of the starkest images of the martial law regime. Martial Law Regulation no. 48 of October 1979 invoked a maximum penalty of 25 lashes for taking part in political activities, all of which had been banned. Editors of 'defamatory' publications could be punished by

10 lashes and 25 years of rigorous imprisonment. Early in September 1983, the Karachi branch of the Pakistan Medical Association called on the government not to involve doctors in the process of flogging and to 'stop such punishments on humanitarian and medical grounds'.¹⁸

Opponents of the regime were routinely tortured. This became so widespread at the time of the 1981 and 1983 military crackdowns that it attracted international condemnation. It also became immortalized in the creative writings of what became known as 'resistance literature'.¹⁹

While Zia took the brutal repression of dissent to new depths, he also indulged in the time-honoured techniques of censorship which throughout Pakistan's history had stunted healthy debate and the flowering of democratic values. Newspapers were subject to full pre-censorship from October 1979 onwards, whereby proofs had to be submitted for scrutiny and approval before publication. There were also 'advices' as to what should be included and how issues should be covered. The 1979 Motion Pictures Ordinance censored film productions on the grounds of both immorality and undermining religion or Pakistan's 'integrity or solidarity as an independent state'. The ordinance served only to suffocate creative talent within Pakistan, as video cassettes of pirated copies of Hollywood and Bollywood films remained readily available.

The state was however able to control educational curricula and textbook production. Pakistan Studies was introduced as a compulsory subject from secondary school to university level. Government-approved texts provided not only a one-sided version of history but, as K. K. Aziz has pointed out, encouraged xenophobia and the glorification of military struggle to an impressionable younger generation.²⁰ Like many despots, Zia sought to rewrite history. The official discourse swept to one side the ambiguities of the freedom movement and deemed the struggle for an Islamic state to be its main objective. Jinnah was portrayed as upholding Islam, while the *ulama* whose influence had been marginal to the creation of Pakistan were elevated to a vanguard role. Newspaper articles on the occasion of Jinnah's birth in December 1981 omitted his speech to the Constituent Assembly in which he called for religious freedom and the relegation of faith to the private sphere. The following year, the regime sought to use the film industry to present Jinnah as a proponent of an Islamic state. Production began on a film of Jinnah's life entitled *Stand Up From the Dust*. The Ministries of Information and Broadcasting and Culture were involved in the project along

with the Pakistan Television Corporation and scholars and journalists sympathetic to the regime. The script was required: Not to be in conflict with the policies of the Martial Law regime.

To portray Jinnah as a greater leader than Gandhi and show the creation of Pakistan was the outcome of the Quaid's supreme command over the Muslim League and his followers.

To emphasize that Quaid-i-Azam's main motivation for founding Pakistan was to form an Islamic state as had been established by the Martial Law regime.²¹

The opening sequences of armed horsemen by the Arabian Sea reproduced the Two Nation Theory linkage of Pakistan's genesis with the emergence of Muhammad Bin Qasim, the first Muslim invader of India. A similar didacticism was present in the narrator's concluding comments: 'His achievement was Pakistan, an independent homeland for the Muslims of India, a sovereign state where Islam could flourish freely not merely in its religious rituals, but in culture, law, economics, in fact every aspect of life'.²²

Zia's lukewarm response to the rushes ensured that the film was never publicly released, despite its considerable production costs. Nevertheless, as we shall see later in the chapter, the Islamization of Pakistan's society and economics formed the main legitimization of his regime. Zia also saw it as a solution to Pakistan's long-standing identity problem. Islam was however less effective in providing a national cohesive force than Zia anticipated.

The early Zia era was littered with promises to hold elections which were then postponed. This pattern was prompted by the anxiety that the PPP would triumph in any polls and take revenge on the coup's instigators. Such varied bystanders as Iqbal Akhand and Lieutenant-General Faiz Ali Chishti maintain that Zia's decision to solve the 'Bhutto problem' by his 'judicial murder' similarly resulted from Zia's sense of self-preservation.²³ Following a further postponement of elections in October 1979, Zia announced a ban on all parties and meetings. In the wake of the Movement for the Restoration of Democracy campaign in Sindh in 1983, Zia extended the ban on political activity by PPP members to ten years.

Like Ayub before him, however, Zia found that in order to increase the effectiveness of his government he needed to broaden its base. On the first anniversary of the coup, some civilians were taken into the Federal Cabinet which had previously been dominated by the bureaucracy and the military. The Sindhi Muslim League politician

Muhammad Khan Junejo became the Railways Minister. At the end of 1981, Zia restored the colonial practice of setting up a consultative assembly of nominated members. In keeping with his commitment to Islamization, he gave it the title of *Majlis-i-Shura*. This ironically involved him in conflict with some of the *ulama* who maintained that a *shura* as prescribed in the Quran would have made decisions through mutual consultation and not just endorsed the decisions already taken by the government. JI increasingly distanced itself from the government because of the delays in introducing Islamization and began to call for elections which it hoped would enable it to oversee a fully-fledged Islamization process. Zia's reluctance to hold polls was another cause of the JI's drifting away, as was the banning early in 1984 of its powerful student wing *Islami Jamiat-i-Tulaba* (IJT) along with all other student organizations linked to political parties.

Zia adopted a two-pronged strategy with respect to elections. Firstly, he sought to bolster his own position as president by means of holding a national referendum; secondly, he determined that any polls should be held on a 'partyless' basis. The wording of the referendum which was hastily arranged for 19 December 1984 made it difficult to oppose Zia's continuation for five years as president without giving the appearance of voting against Islam.²⁴ In Karachi, 'everywhere it was the same desultory picture. Under marquees erected outside polling stations, one for men and another for women, yawning officials sat on plain tables handing out little chits to voters. Except that there were no voters to speak of. The officials beckoned like merchants in an oriental bazaar, to every passerby to please come in and vote'.²⁵ Such scenes were repeated across the country, although Pakistan Television broadcast pictures of large crowds at polling stations and the official turnout was recorded at just over 62 per cent. The performance concluded with Zia receiving a 97.71 per cent 'Yes' vote.

National Assembly elections were held on a non-party basis in February 1985. They paved the way for the lifting of martial law the following December. This was a civilianization of martial law rather than its democratization. The polls were popularly dubbed the 'deaf and dumb' elections because of the stringent ban on public meetings, processions, and use of public address systems.²⁶ Even more than in Ayub's earlier partyless polls, the elections in the absence of party organization encouraged *biraderi* loyalties and patron-client ties to come to the fore. These were the very aspects of Pakistani electioneering which had

traditionally stood in the way of modern-style politics. The partyless elections alongside developments in Sindh also contributed to an ethnicization of political identity. Zia made a further endeavour to ensure that he remained fully in control after the lifting of martial law, handpicking the Prime Minister, Muhammad Khan Junejo, and arming himself, through the 8th Amendment to the 1973 Constitution, with the discretionary power to dismiss the Prime Minister and dissolve the National Assembly. The President also retained the power to appoint provincial governors and the chief of the armed forces. This created an important legacy which was used by Zia's successors as President to fetter democracy. Zia was also careful to ensure that the Assembly indemnified all his acts after the 1977 coup.

Zia's aim was to crush the PPP, and this motive had lain behind his treatment of Zulfiqar Ali Bhutto. He never fully succeeded in this aim. Indeed, the deceased Prime Minister's daughter, Benazir Bhutto, who had spent a number of years in prison and in exile, emerged towards the close of his regime in a popular challenge to his power.²⁷ She returned to a tumultuous reception in April 1986. Zia did succeed, however, not only in constitutionally trammelling her power but in strengthening those groups which opposed the PPP. The ISI was to play a role in organizing them into a coherent grouping in advance of the 1988 elections which followed Zia's death. When Benazir returned the PPP to power, it was as she herself acknowledged with one hand tied behind her back.

Zia's grip on Pakistan was much stronger following the civilianization of martial law than Ayub's had been. In 1988, Junejo attempted to carve out an area of autonomy with respect to foreign policy and even, as we shall see later, sought to interfere with the military elite's perks. Zia did not hesitate to remove the Prime Minister in May. Junejo also paid the price for failing to capitalize on Pakistan's considerable strategic investment in Afghanistan. Shortly before his death, Zia appeared willing to scrap the whole basis of the civilianized martial law system. He was in a position to do this as, unlike both Ayub and Musharraf, he did not give up his post as Chief of Army Staff. He was also much more adept than Pakistan's other military rulers in wrongfooting opponents. Even detractors who regarded him as an intolerant and vindictive ruler admitted that he was in possession of considerable native cunning. His popularity with certain sections of the population was demonstrated by the huge crowds of mourners at his burial on 20 August 1988 at the Faisal Mosque in Islamabad.

Zia and Islamization

Islamization was the cornerstone of the Zia regime. It thrived within the regional context of the Afghan conflict and domestically drew strength from the rapid socio-economic changes of the later 1970s and the truncation of the state. Opinion remains divided as to whether it was a genuine product of Zia's Deobandi-influenced piety or a cynical ploy to acquire legitimization. In August 1983, the Advisory Council of Islamic Ideology conveniently pronounced that a presidential form of government was the 'nearest to Islam'. It was later to rule that political parties were non-Islamic. Whatever its motivation, it is clear that Zia saw Islamization as holding the key to Pakistan's decades-long search for stability and national unity. In one of his earliest pronouncements he declared that 'Pakistan, which was created in the name of Islam, will continue to survive only if it sticks to Islam. That is why I consider the introduction of an Islamic system as an essential prerequisite for the country'.²⁸ In May 1982, he maintained that the preservation of the country's ideological boundaries was as important for security as safeguarding its geographical boundaries.²⁹

We have seen earlier that Pakistani Islam was not monochrome. The stark Deobandi approach contrasted with the colour and vitality of Sufi religious expression. Zia's Islamization increased tensions between these different expressions of faith. Significantly, Sufi shrines were at the forefront of the resistance to Zia in the 1983 revolt in Sindh. A crowd of 50,000 disciples of the Makhdim of Hala successfully blocked the national highway on one occasion. Even more damagingly, Zia's attempt to place Islam at the forefront of Pakistan's public life widened sectarian fissures. Contemporary Pakistan continues to suffer from the fruits of these divisions.

The *ulama* were no more united in their public pronouncements on Islam than at the time of the 1953 martial law in Lahore. They devoted much energy not only to sectarian disputes but to petty issues. Energies were expended in debates on whether blood transfusion and eye donation were against Islamic teachings. They also became preoccupied with attempts to impose dress codes on women and with unsuccessful appeals to the government to issue a martial law ordinance to make the wearing of beards compulsory.

Initially it was the lay activists of JI who were at the forefront of the Islamization process. The traditional *ulama* as represented in the JUI and JUP stood aloof from Zia's regime. The growing tensions between

it and JI, however, encouraged Zia to co-opt the *ulama*. The Deobandi-influenced JUI for the first time began to adopt elements of Islamism to its increasingly 'neo-fundamentalist' world view. Farzana Shaikh has dubbed this process 'shariatization' and draws a sharp distinction between its attempt to establish the political hegemony of Islam and the desire to create an Islamic state.³⁰ While the former ideology is wedded to an Islamic universalism which could in given circumstances question the validity of the territorial state, the latter seeks to capture the state to Islamicize society, and in its more instrumentalist garbs sees Islamization as a useful tool to create a strong Pakistan state. The implications of these contrasting approaches were not fully evident in the Zia era. They are however exerting a profound influence in contemporary Pakistan where Taliban proponents of 'shariatization' are battling the state. As we shall see later, the radicalization of offshoots of JUI was intimately linked with Pakistan's ongoing involvement in Afghanistan and the army's attempt to use trans-national Islamic groups to achieve its strategic aims.

By 1983, a range of Islamization measures had been introduced covering the areas of judicial reform (the introduction of *shariat* courts); implementation of the Islamic Penal Code (Hudood Ordinances); economic activity (interest-free banking and Islamic taxes, *zakat* alms, and *ushr* agricultural tax); and educational policy (emphasis on Urdu as the language of instruction, establishment of an Islamic University in Islamabad and state support for mosque schools). The latter was to possess the two far-reaching legacies of a politicized armed sectarian identity and a system of religious schools which has consistently evaded full state control. We shall turn first, however, to judicial reform.

(i) Judicial reform

It is important to note from the outset that the establishment of *shariat* courts not only alienated 'secular-minded' lawyers and generated confusing legal competing jurisdictions, but also ultimately disappointed the Islamist and *ulama* parties whom Zia had sought to co-opt in a 'mullah-military' nexus. The *shariat* benches in the provincial High Courts were not only to apply new *shariat* laws, but to rule on whether existing laws were consistent with Islam or 'repugnant' to it. The great quantity of intricate petitions created a serious backlog. Some petitions were frivolous: the Shariat bench of the Sindh High

Court, for example, had to respond to a petition that women's hockey and cricket matches were repugnant to Islam because they allegedly violated *purdah* rules. The piecemeal construction of an Islamic judicial system created overlapping jurisdictions on the repugnancy issue between the Council for Islamic Ideology and the Federal Shariat Court which was established in 1980. In 1984 Qazi Courts, in which cases could be tried according to Islamic law, were added to a system which now encompassed federal and lower *shariat* courts, civil courts and summary military courts. The *ulama* complained because of the confused and tardy working of the courts, and the new system's limitations. The Council of Islamic Ideology had a strictly advisory role, while the Federal Shariat Court did not have the power to make a judicial review of Ayub's Muslim Family Laws Ordinance, which had been long condemned by them as un-Islamic in its character. The legal reforms also contributed to sectarian divisions, as the fact that no Shia judges were appointed to the Federal Shariat Court led the community to refuse to accept any of its judgements.

The greatest causes of Sunni-Shia conflict however arose from the economic reforms instituted by Zia which played out to a backdrop of increased Shia activism following the Iranian revolution.

(ii) Economic reform

The state's enforcement of Islamic taxes, which were previously offered as voluntary acts of piety, created bitter sectarian divisions. The Shias saw the Zakat Ordinance (designed to implement the obligatory Islamic alms tax) as part of an attempt to achieve the 'Sunnification' of Pakistan. The *Tehreek-i-Nifaz-i-Fiqh Jafria* (TNFJ, or Movement for the Implementation of Shia Law) was founded to oppose attempts to Islamicize Pakistan in keeping with Sunni jurisprudence. Shias did not object to *zakat* as a voluntary donation, but objected to the compulsory deduction of 2.5 per cent from all savings bank accounts and its distribution to Sunni charitable institutions. They staged a massive two-day protest in Islamabad in July 1980 which openly defied the martial law ban on public gatherings. Zia was forced to exempt them from paying the alms tax, but in response a number of Sunni extremists began to claim that Shias were non-Muslims. It was also from this time onwards that the Zia regime began to patronize Sunni *madaris* in order to contend with the Shia 'problem', both within the country and

emanating from Iran. As one observer has noted, the growing numbers of state-funded *madaris* constructed in Balochistan and NWFP 'form a wall blocking Iran off from Pakistan'.³¹

The TNFJ was led from February 1984 onwards by Allama Arif Hussain, who had imbibed many of Khomeini's teachings while studying in seminaries in Iran and Iraq. Following his assassination in August 1988, a militant splinter group of TNFJ emerged. This group, *Sipah-i-Muhammad Pakistan* (SMP), became engaged in armed struggle with militant Sunni sectarian groups such as *Sipah-i-Sahaba Pakistan* (SSP) and the *Sunni Tehreek*. They received arms in the training camps set up in Pakistan for the *mujahadin* struggle against the Soviets in Afghanistan. In the aftermath of the Afghan War, they also had camps in the country in which to train and take sanctuary. There was a further splintering of militant Sunni sectarian forces with the emergence of the *Lashkar-e-Jhangvi* (LJ). Its activists were trained in Afghanistan by *Harkat-ul-Ansar* (HUA), a Deobandi anti-Shia group engaged in the Kashmir *jihad* and closely linked with Osama bin Laden. The interconnection between jihadists and Sunni extremists remains one of a number of doleful inheritances for contemporary Pakistan from the Zia years.

The introduction of the Zakat system not only created Sunni-Shia conflict over the legality and distribution of alms, but failed in the attempt to establish an Islamic welfare society. Only meagre amounts found their way to the 'deserving poor' and there were instances of corruption involving fake Zakat committees. Similarly the steps to encourage moral uplift through ordinances such as the Ramadan Ordinance which made eating, drinking, and smoking in public a crime during the period of fasting, and the establishment of prayer wardens to persuade and inspire people to offer the five daily prayers, were not only open to abuse, but failed to achieve more than outward displays of piety.

(iii) Islamic Penal Code

Islamization failed to build a national consensus, because it enhanced sectarian divisions. It also sowed the seeds for 'an *ulama* wing of Islamism' which sought to influence the debate on national identity by redefining Pakistani nationalism primarily in terms of its relation to an imagined extra-territorial 'community of believers'.³² Islamization also

further deepened the divisions between the religious establishment and Pakistani liberals. Lawyers, human-rights activists, and elite women were in the vanguard of the resistance to the punitive and discriminatory elements of Islamization. Non-Muslims, for example, were marginalized by the introduction of separate electorates and were increasingly vulnerable to charges of blasphemy. Amendment to the Pakistan Penal Code introduced by Presidential Ordinance made it a criminal offence for Ahmadis to 'pose' as Muslims and to use Islamic terminology or Muslim practices of worship. While separate electorates have been done away with, the latter legacy of Zia's Pakistan has encouraged militant Islamists to bring charges against Ahmadis for simply exercising their religious beliefs.

Elite women protested through the Women's Action Forum against the discrimination inherent in the Law of Evidence³³ and the Operation of the Hudood Ordinances.³⁴ The former not only undermined women's legal status, but denied them the equality of citizenship guaranteed by the Constitution. The latter made women who had been raped liable to Islamic punishment of whipping in a public place for adultery (*zina*). The Zina Ordinance was not only discriminatory, but was open to abuse in the form of nuisance suits against 'disobedient daughters' or 'estranged wives'. Women protesting outside the Lahore Court about the Law of Evidence were tear-gassed and *lathi*-charged by the police. The episode revealed the polarized views of religious conservatives and liberals. The *ulama* described the protest as an act of apostasy which challenged Quranic injunctions, while the Lahore High Court bar association condemned the 'barbarity' of the police. The Hudood Ordinances have not yet been repealed, a testament to the strengthened position of conservative attitudes as a result of the Zia era.

10% quota of Army officers in Civil Services

(iv) Educational reform

The most important educational legacy of the Zia era was the mushrooming of mosque schools. Many were financed out of *zakat* funds. They represented the only opportunity for schooling for poorer families in the wake of the failure of the state education system. The traditional prestige of studying in an Islamic institution was increased by Zia's decision to give degree-level status to their higher awards (*Darja-i-Alia*; *Darja-i-Alaimia*), not that the University Grants

Commission had any control over their curriculum. By 1983–4 alone, over 12,000 were opened.³⁵ In 1947, there had been only around 250 mosque schools in the whole of Pakistan. As we have already noted, official support was given to the creation of some institutions to counter Shia activism. This encouraged the development of sectarianism, especially in the absence of an overarching curriculum. Many schools were loosely linked to the main Deobandi, Barelvi, and Ahl-e-hadith Islamic traditions with which they were associated. Those funded from Saudi Arabia taught a mixture of Wahhabism and Deobandism. The proliferation of schools in areas of concentrated native Pushtun and Afghan refugee population encouraged a *jihadist* outlook to run strongly alongside sectarian attachments. Indeed, Zia deliberately patronized some institutions in the context of advancing the Afghan *jihad*. The Taliban movement was to emerge later from this educational milieu with its radical 'neo-fundamentalist' outlook and trans-national commitments to *jihad*.

Most mosque schools did not of course provide military training in preparation for their students to go on *jihad*. A minority, attached to Ahl-e-hadith and JI, voluntarily provided elements of a modern curriculum alongside traditional Islamic teaching. Nevertheless, many of the students they turned out were ill-suited for careers other than within the burgeoning religious establishment. Cohen terms them as forming 'a class of religious lumpen proletariat'.³⁶

While the mushrooming of the mosque schools was linked with the particular domestic and regional conditions of the Zia period, they have continued to grow in the intervening years. Western attention has been diverted to their functioning in the wake of 9/11. Some analysts are however coming to the view that videos, pamphlets, and posters may be more important in encouraging radicalization than attendance at mosque schools. The latter's significance may lie more in their providing 'gathering places' where militants and potential recruits interact than in their educational indoctrination.

Western pressure on the Pakistan state to register *madaris* and control their curricula has met with a patchy response. Undoubtedly a small number are involved in the recruitment and training of militants. This connection was highlighted by the notorious Lal Masjid (Red Mosque) in Islamabad. This had to be seized by the army in Operation Silence in 2007 because the students of its two Islamic schools had sought through force to impose *shari'ah*. The mosque complex had

been extended by Maulana Abdullah under Zia's patronage after he had agreed to recruit *mujahadin* for the Afghan *jihad*.

Zia also encouraged the development of the educational complex at Murdike near Gujranwala, run by the *Dawat-ul Irshad Markaz* (Centre for Preaching and Guidance). Its educational philosophy brought together the Islamic strands of *Tabligh* and *jihad* within the service of neo-fundamentalism.³⁷ This emphasized the requirement of a Muslim urge to a transformative power that rejected Western democracy while embracing science and technology. Perhaps unsurprisingly the *Dawat*'s key proponent of these ideas, Professor Hafiz Saeed, was a faculty member of the Engineering University, Lahore. Significantly, he also came from an East Punjab refugee background which had seen 36 members of his extended family killed in the flight from India. The *Dawat-ul Irshad*, as we shall see in a later chapter, was to be linked in the decades after Zia's death with high-profile terrorist activities carried out in India by its militant offshoot, *Lashkar-e-Taiba* (LeT).

Zia also patronized the Deobandi Jamia-uloom-e-Islamia mosque at Binora in Karachi, which had been founded by a refugee from India, Maulana Yusuf Binori, shortly after independence. The red minareted mosque with its attached school now attracts students from all over the Islamic world and is the second largest Islamic educational establishment in Pakistan with around 8,000 pupils. Zia made its founder a member of the Council of Islamic Ideology and he chaired the organization in 1979. The mosque was at the forefront in mobilizing support for the Afghan *jihad*. Many of its former students were to become leading figures in *jihadist* organizations from the 1990s onwards. These included Maulana Masood Azhar, who was both a leading figure in *Harkat-ul-Ansar* and founder of *Jaish-e-Muhammad* (JeM), organizations which conducted terrorist activities in India and were closely associated with Osama bin Laden on his return to Afghanistan from Sudan at the beginning of 1996.

The Politics of Ethnicity in Zia's Pakistan

Zia's conception of Pakistan as an ideological state founded on Islam and culturally unified by Urdu exaggerated the longer-term homogenizing trends in state construction. Inevitably, it was resisted by ethnic nationalists from the smaller provinces. Zia was however skilfully able to manage the situation in Balochistan and the North West Frontier Province, although Sindh proved irreconcilable.