

Intellectual Legacy

*Essays by Dr. Javid Iqbal on
Academic, Literary, Educational Issues,
Political Thought and Pakistan*

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INTELLECTUAL LEGACY

ARTICLES OF DR. JAVID IQBAL ON ACADEMIC,
LITERARY, EDUCATIONAL ISSUES, POLITICAL
THOUGHT AND PAKISTAN

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IQBAL ACADEMY PAKISTAN

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PUBLISHER'S NOTE

Dr. Javid Iqbal is an erudite scholar blessed with penetrating insight and analytical mind. The depth of his scholarship is manifest from the multidimensional subjects he has written on, such as contemporary thought, Pakistan, religion, law, current issues and especially Studies on Iqbal. The anthology of his writings at hand covers all these topics. The contents of these papers demonstrate his keen insight, understanding and awareness of contemporary problems. He not only pinpoints the issues but also presents a workable solution to them.

These writings in the form of lectures were delivered in seminars held in Pakistan and different cities of the world over a period of the past more than fifty years. They provide new dimensions to the challenges of the day and interpret them in a manner as to enable a reader to develop their understanding. He has the rare quality of connecting the dots and making a clearer and larger picture emerge from the haze. The papers, contained in this anthology, not only make a reader realize the magnitude and gravity of the problems posed to the Muslim civilization and culture but also infuse him with the confidence to bank on his heritage to fight off these challenges with a win-win mindset.

A close relationship with Iqbal marks the anthology. Dr Javed Iqbal believes that a comprehensive understanding of Iqbal's thought can steer our ship out of uncharted waters. It is this association with Allama Iqbal that gives authenticity to his writings as well as novelty to his sayings.

Dr. Javed Iqbal doesn't merely consider the theoretical aspect of Iqbal's thought. He is, rather, in search of its

practical applicaoun in our society to realize the ideals championed by the founders of this country when they set about the gigantic task of achieving homeland for the Muslims. His articles on the legal, constitutional, educational and social issues provide a fresh thought and open up possibilities of a brighter future.

This anthology, I am sure, will be of immense benefit to the readers and provide them with much-needed food for thought. This would help shape the social attitude and mindset required for the reconstruction of our society.



PAKISTAN





CULTURAL FACTORS AND THE PROPAGATION OF FAMILY PLANNING IN THE PAKISTANI SETTING

To be reluctant to accept change is human whether or not a community is educationally advanced and economically self-conscious. Radical changes can be imposed and ideas can be thrust down the throats if the political structure is founded on dictatorship; but if one contemplates to introduce change in a community through democratic means, the process would automatically be slow and a lapse of considerable time would be necessary before an idea is properly digested.

Family Planning is a new idea and people in this country could accept it either through imposition or by persuasion. So far as the method of forcibly imposing this idea is concerned, we shall not consider it for obvious reasons even though the population quake in Pakistan is alarming and the situation demands the immediate taking of effective measures before it develops into an explosion. The other method, that is to say, persuading people convincing them of the need of Family Planning could be considered only if such, ways and means of propagating this idea are adopted which produce the desired result within the shortest possible span of time.

The Pakistani people are essentially a very conservative people and in spite of the fact that the modern history expects them to move along with it, their attitude of mind or approach towards numerous contemporary problems remains

basically medieval. It is generally understood here that Family Planning means Birth Control, and Birth Control is something abominable morally as well as spiritually. It is morally distasteful because it implies destruction of life and is bracketed or identified with wilful murders and it is spiritually disapproved because it comes into conflict with the cardinal principle of religious belief that God alone is the Nourisher. One could say that there is some justification in the latter way of thinking. Obviously one thinks in terms of Family Planning because it would not be possible to provide food and nourishment to additional, superfluous and unwanted mouth. On the other hand, if one believes in God as the Nourisher and the Almighty who never does anything in vain, one is automatically involved in difficulties and find it impossible to reconcile the two contradictory positions.

Then how, it may be asked, a synthesis could be worked out in which the belief and practice do not conflict with each other? Firstly a clear distinction should be made between Birth Control and Family Planning and Family Planning should be popularised through this distinction. Secondly, the people should be made conscious of the fact that it is not only the father and mother who have rights with regard to the child, but the community also has an equal share in those rights. From this argument it follows that just as the parents desire healthy and upright children, the community also wants that it should be constituted of healthy and upright members. In other words if the parents were to contribute to the community unhealthy, corrupt, undesirable and unprincipled children, it would naturally affect the community as a whole and it would also become sick, deceased, corrupt and indisciplined.

Indeed God alone is the Nourisher, but that does not mean that the peasant should give up tilling the land and sit idle with the hope that sustenance would be provided to him without any effort on his part. Even a morsel cannot reach the mouth without the use of hand, in other words, God is the Provider of sustenance provided that man makes effort to

get it and is able to help himself, but if he literally believes that God has promised to provide nourishment and that therefore, he should sit idle and rejoice, then undoubtedly he will starve to death. From this argument it follows that bounties from God are guaranteed so long as man observes the conditions and realises the responsibilities Imposed on him by God. Children are, therefore, gifts of God and it is the responsibility of the parents to bring them up physically strong and healthy, and morally clean and up-right. It is also the duty of the Muslim parents to contribute physically strong and morally upright members to the Islamic community. If they fail to do so and procreate superfluously and wastefully, it would be absurd to blame God in case the community goes down the drain.

Thirdly, so far as the propagation of Family Planning in the Pakistani setting is concerned, it is the responsibility of the state to give a proper incentive to the masses by providing equal opportunities and constructing such structures which should ensure equality and socio-economic justice. Unfortunately the present conditions in the country do not give the proper confidence to the people and they are to some extent, justified in suspecting that Family Planning is a conspiracy of the haves against the have-nots. If one plans a family diligently and afterwards realises that the children of the more powerful and more influential members of the Community have all the avenues open before them whereas every door is shut in the face of his child, he is bound to be disappointed and would be perfectly justified in feeling that the only potential power which the countless dumb millions of have-nots possess to obliterate the few have, is to raise the China Wall or to flood the valleys and ravines and thereby to sweep away all traces of the privileged classes. Therefore, if the State is anxious and genuinely desires the propagation of family Planning in this country for the betterment of the people, it must demonstrate by providing the necessary incentive for them. So long as the incentive is not there, Family Planning will remain a pious hope.

And fourthly, if a government in a country wishes to implement its programmes, particularly those like Family Planning, it must seek the cooperation of the people; and the cooperation would not be forthcoming if the people are suspicious of the genuineness of the intentions of the government.

Population control is necessary. Most of us realise it. But there are real suspicions in the minds of the people founded on certain assumptions which may or may not be real. At any rate, if the government is interested in carrying out the programme of Family Planning, it must give concrete proofs that the assumptions of the people are unreal.

IDEOLOGY OF PAKISTAN

Ideology of a nation always reflects the state of a peoples' mind, their emotions, hopes, aspirations, ideals or objectives and a subsisting will to realize them. The worth of any ideology depends on the extent of a peoples' dedication to it and not on its rational or scientific demonstration. Therefore, it is not logic but sympathy that is required for properly understanding the ideology of any people.

Pakistan claims itself to be an ideological state because it is founded on Islam. It came into being because Muslims of the Indo-Pakistan sub-continent developed a specific attitude of mind — an attitude which was determined by a consciousness of certain principles or objectives which they felt must be realized.

It is obvious that the people of Pakistan descend from different racial stock, speak different languages and live in geographically non-contiguous territories. The foundation of this state, therefore, could not possibly be laid on such principles as common race, common language and contiguousness of territory. On these principles there exist numerous groups of people such as Bengalis, Punjabis, Sindhis, Pathans and Baluchis within Pakistan. The requirements of what is called 'nationalism' in the West are matters in Pakistan merely of sympathetically understanding regional aspirations and equitably adjusting the demands for regional autonomy in accordance with the will of the people of several units constituting the federated centre. The real

factor which sustains the state of Pakistan is the existence of a consciousness among the people of belonging to each other because a large majority of them adheres to a common spiritual aspiration, i.e. faith in Islam. It is for this reason that Quaid-i-Azam proclaimed at a public meeting in Dacca held on 21st March, 1948:

“Islam has taught us this, and I think, you will agree with me, for whatever else you may be and whatever you are, you are a Muslim. You belong to a nation now: You have carved out a territory, vast territory, it is all yours; it does not belong to a Punjabi, or a Sindhi, or a Pathan, or a Bengali; it is yours.”

Consequently the basis of nationhood in Pakistan is Islam. Islam acted as a nation-building force long before the establishment of Pakistan. Muslims gradually developed a national consciousness in the Indo-Pakistan sub-continent, they collectively struggled for the right of self-determination and the establishment of an independent homeland to be carved out from those territories where they constituted majorities. They eventually secured what they wanted. Hence the historical fact which could not be denied is that the formation of the Muslim nation preceded the demand for a homeland. Pakistan by herself did not give birth to any nation; on the contrary, the Muslim nation struggled for and brought Pakistan into being. Therefore, Pakistan is not the cause of any kind of nationhood. She is only an effect, a result or a fruit of the struggle of the Muslim nation for territorial specification.

Of course we may now claim ourselves to be Pakistanis or belonging to the Pakistani nation but, strictly speaking, this is only for the purpose of distinction or identification among other nations of the world. Pakistani nationhood is not the real basis for the unity of the state in Pakistan; it is merely an apparent basis. At the present stage of our development as a nation it is not a primary but only a secondary consideration; the primary being Islam, which cements us as a nation and also provides the basis for the unity of the state.

The same can be said respecting patriotism, i.e., laying down one's life for one's country. Muslims do not have a notion of Pakistan as 'fatherland' or 'motherland'. They do not believe in worshipping the geographical features of a country called Pakistan. They are not prepared to lay down their lives merely for Pakistan's dust, trees, deserts, mountains or rivers. This form of patriotism, according to them, is idolatrous. But in their native soil, Muslims are ready and willing to lay down their lives for the religio-cultural principles on which the state of Pakistan is founded. Quaid-i-Azam clearly illustrated these principles when he addressed the Officers and Men of the 5th Heavy Ack Ack and 6th Light Ack Ack Regiments in Malir on 21st February, 1948:

"Now you have to stand guard over the development and maintenance of Islamic democracy, Islamic social justice and the equality of man in your own native soil. You will have to be alert, very alert, for the time for relaxation is not yet there."

Quaid-i-Azam was dedicated to the ideals of liberty and freedom. These ideals had precedence over every thing else. Therefore, he was a firm believer in strong defence which he regarded as a bulwark against aggression and therefore a service to the cause of peace. Addressing the Establishment of H.M.P.S. 'Dilawar' on 23rd January, 1948, he said:

"While giving the fullest support to the principles of the United Nations Charter, we cannot afford to neglect our defence. However strong the United Nations Organization might be, the primary responsibility for the defence of our country will rest with us and Pakistan must be prepared for all eventualities and dangers. The weak and defenceless, in this imperfect world, invite aggression from others. The best way in which we can serve the cause of peace is by removing the temptation from the path of those who think that we are weak, and therefore, they can bully or attack us. That temptation can only be removed if we make ourselves so strong that nobody dare entertain any aggressive designs against us. You will have to make up for the smallness of your size by your courage and selfless devotion to duty for it is not life that matters but the courage and determination you bring to it."

Hence the first principle of the ideology of Pakistan as laid down by Quaid-i-Azam is that for Pakistanis, Islam is the basis of their 'nationalism' as well as 'patriotism'.

Pakistan is an ideological state for it claims itself to be Islamic. It is not a 'theocratic' state because Islam is essentially a polity and aspires to create a civil society. This point was explained by Quaid-i-Azam in his broadcast recorded on 19th February, 1948 when he proclaimed:

"Make no mistake: Pakistan is not a theocracy or anything like it. Islam demands from us the tolerance of other creeds and we welcome in closest association with us all those who, of whatever creed, are themselves willing and ready to play their part as true and loyal citizens of Pakistan."

Islam does not recognize the distinction between the 'spiritual' and the 'profane'. According to Islam the spiritual and temporal obligations are not only connected with each other but it is incumbent on every Muslim to constantly endeavour to realize the spiritual values while performing his temporal obligations. Hence 'secularism' is an integral part of Islam and it is for this reason that the Islamic State assimilates the qualities of an ideal 'secular state'.

In the positive sense a 'secular state' means a state which guarantees religious freedom to every citizen and which, without distinction of religion or race, endeavours to promote the material advancement and welfare of all its citizens. The Islamic state of Pakistan, as envisaged by Quaid-i-Azam, embraces the qualities of an ideal "secular state". In this state every citizen is granted the right of religious freedom. Sunnis, Shias, Wahabis and other sects of Islam, Hindus, Christians, Parsis and their numerous sects are free to profess their respective personal faiths and be governed by their respective personal codes of law. Islamic theology recognizes a distinction of meanings in the words 'Mazhab' and 'Din.' 'Mazhab' means personal faith, viewpoint or path; whereas 'Din' means a body of those universal principles of Islam which are applicable to the entire humanity. Therefore, in this sense, the State of Pakistan does not have any specific

'Mazhab' because it is neither founded on nor projects the personal viewpoint of any particular Islamic sect, but like an ideal 'secular state', to promote the material advancement and welfare of all its citizens without distinction of religion or race, is one of its numerous duties. Thus, in the political sense, irrespective of their religion or race, all Pakistanis are citizens of the State of Pakistan on equal terms. This very important aspect of the State of Pakistan was clarified by Quaid-i-Azam in his famous presidential address to the Constituent Assembly on 11th August, 1947, when he proclaimed:

"You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion, or caste or creed — that has nothing to do with the business of the state....We are starting with this fundamental principle that we are all citizens and equal citizens of one state....Now, I think, we should keep that in front of us as our ideal and you will find that in the course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the state."

The State of Pakistan claims itself to be Islamic firstly, because it is founded on Islam as 'Din' (as distinguished from 'Mazhab') i.e., a body of Islamic principles which are for universal application. These principles are: That sovereignty belongs to God alone and the authority which He has delegated to the state of Pakistan through its people is to be exercised within the limits prescribed by Him; that the authority delegated to the state is a sacred trust; that the state must endeavour to achieve the ideals of equality, solidarity, freedom and justice among all its citizens; that its constitution must be democratic for it must exercise its powers and authority through the chosen representatives of the people; that it must guarantee man's inalienable and fundamental rights, e.g., equality of status and of opportunity, equality before law, freedom of thought, expression, belief, faith, worship, association, assembly, movement, trade, business or

profession, and the right to hold and dispose of property, subject to law and public morality; that it must secure the complete independence of the judiciary and uphold the supremacy of rule of law. Each of these principles can be directly traced from the Quran and Sunnah. The following statements of Quaid-i-Azam reiterate the very same principles:

“It is my belief that our salvation lies in following the golden rules of conduct set for us by our great law-giver, the Prophet of Islam. Let us lay the foundations of our democracy on the basis of truly Islamic ideals and principles. Our Almighty has taught us that our decisions in the affairs of the state shall be guided by discussions and consultations”. (Speech: Sibbi Durbar, 14th February, 1948).

“Brotherhood, equality and fraternity of man — these are all the basic points of our religion, culture and civilization. And we fought for Pakistan because there was a danger of denial of these human rights in this sub-continent.” (Speech: Chittagong, 26th March, 1948).

“The theory of Pakistan guarantees that federated units of the National Government would have all the autonomy that you will find in the constitutions of the United States of America, Canada and Australia. But certain vital powers will remain vested in the Central Government such as the monetary system, national defence and other federal responsibilities. Each federal state or province would have its own legislative, executive and judicial systems, each of the three branches of Government being constitutionally separate.” (Interview: Associated Press of America, 8th November, 1945).

“The constitution of Pakistan has yet to be framed by the Pakistan Constituent Assembly. I do not know what the ultimate shape of this constitution is going to be, but I am sure that it will be a democratic type, embodying the essential principles of Islam. Today they are as applicable in actual life as they were 1300 years ago. Islam and its idealism have taught us democracy. It has taught equality of man, justice and fair-play to everybody. We are the inheritors of these glorious traditions and are fully alive to our responsibilities and obligations as framers of the future Constitution of Pakistan.” (Recorded broadcast, February, 1948).

Secondly, the State of Pakistan is Islamic for the reason that although it is committed to promote the material advancement and welfare of all its citizens like an ideal 'secular state', it is also its duty to endeavour to promote the moral and spiritual advancement and welfare of its Muslim citizens. This does not in any way imply that there are grades or classes of citizenship in Pakistan. For all practical purposes such conditions do not exist. Since Muslims constitute a large majority, they have the right to demand that constitutionally the head of the state of Pakistan must belong to the majority community. (Even this is merely symbolic for in a federal parliamentary form of democracy, as envisaged by Quaid-i-Azam, the real power vests in the party which commands majority in the Assembly). Similarly they have the right to demand that the state must promulgate such laws and implement such educational system for their children which promoted (besides the material advancement and welfare of all its citizens) the moral and spiritual advancement and welfare of its Muslim citizens so that Muslims are enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Quran and Sunnah. This is also necessary for the preservation of the ideology on which Pakistan is founded.

Consequently, the second principle of the ideology of Pakistan as laid down by Quaid-i-Azam is that for Pakistanis Islam is the basis of their 'secularism' as well as 'constitutionalism.'

Islam has its own economic system. Muslims believe that each generation, guided but unhampered by the work of its predecessors, can interpret the Quran according to its needs and requirements. The object of Islam is to establish a balanced economic order based on fundamental human rights which ensure that no individual can exploit another. It rejects 'capitalism' and 'communism' as two extremist viewpoints and bases its own economic system on the principles of 'moderation', *i.e.* 'Iqtisad' — the maintenance of a correct

balance between labour and capital. Therefore, it acknowledges the fundamental human right of 'private ownership' with the proviso that any individual cannot accumulate so much wealth that it becomes a source of exploitation of others.

In order to keep the power of capital within specified limits, the Quran forbids the taking of interest, disallows speculation, imposes the law of inheritance and a system of taxation. In addition to the above, for the protection of collective rights, there is a duty imposed on the state to continuously make efforts in providing basic necessities of life such as food, clothing, shelter, education, medical aid and employment to its citizens. Thus for the realization of these objectives, any steps which the state may take, shall be considered in accordance with the Quran and Sunnah so long as these steps are not opposed to or in conflict with the Quranic injunctions.

Quaid-i-Azam fully realized that there was no room for capitalism (in its generally accepted sense) in Islamic society. Accordingly, he was opposed to the adoption of Western capitalist economic system in Pakistan. In his speech at the opening ceremony of the State Bank of Pakistan on 1st July, 1948, he proclaimed:

"The economic system of the West has created almost insoluble problems for humanity and to many of us it appears that only a miracle can save it from the disaster that is now facing the world. It has failed to do justice between man and man, and to eradicate friction from the international field. On the contrary, it was largely responsible for the two world wars in the last half century. The Western world, in spite of its advantages of mechanization and industrial efficiency, is today in a worse mess than ever before in history. The adoption of Western economic theory and practice will not help us in achieving our goal of creating a happy and contented people."

Similarly Quaid-i-Azam could not accept the communist ideology, economic theory and practice. While addressing the Punjab Muslim Students Federation at Lahore on 19th March, 1944, he proclaimed:

"I warn the communists to keep their hands off Muslims....Islam is their guide and complete code for their life. They do not want any isms."

Quaid-i-Azam wanted to base the economy of Pakistan on 'Iqtisad', the Islamic economic system, when on the occasion of the opening ceremony of the State Bank of Pakistan on 1st July, 1948, he proclaimed:

"We must work our destiny in our own way and present to the world an economic system based on true Islamic concepts of equality of man and social justice. We will thereby be fulfilling our mission as Muslims and giving the humanity the message of peace which alone can save it and would secure the welfare, happiness and prosperity of mankind."

In reply to a question as to what would be the economic policy of Pakistan in an interview to a representative of the foreign Press, on 8th November, 1945, he said:

"You are asking me to interpret what the Government will do. But personally I believe that in these modern days essential key industries ought to be controlled and managed by the state. That applies also to certain public utilities. But what is a key industry and what is a utility service are matters for the lawmakers to say, not for me."

If the views of Quaid-i-Azam are explained in the light of modern terminology of economics, he contemplated an order for Pakistan based on 'mixed economy', i.e. an economy which permits individual enterprise within specified limits and side by side implements the principle of state control.

There are statements of Quaid-i-Azam, for instance, his address to the Karachi Chamber of Commerce on 27th April, 1948 in which he enumerated the industries then reserved for management by the state as consisting of Arms and Munitions of War, generation of Hydel Power, and manufacture of Railway wagons, Telephone, Telegraph and Wireless Apparatus, whereas all other industrial activity was left open to private enterprise which, according to him, would be given every facility a Government could give for the establishment and development of industry. Similarly, there are his statements, for instance, his speech on the occasion of

laying the foundation stone of the building of a textile mill on 26th September, 1947 in which he insisted on private sector to provide for proper residential accommodation and other amenities for workers and labourers, because, according to him, no industry could thrive without contended labour. But it is obvious that Quaid-i-Azam desired to give the power to the National and Provincial Assemblies to determine as to which more basic or key industries or public utilities should be brought under state control and which should be left open to private enterprise. Therefore, according to him, it were only the representatives of the people who could make laws concerning the extent of landholdings and nationalization or denationalization of a particular basic or key industry or a public utility in accordance with the collective needs and requirements of the community. According to Quaid-i-Azam, the establishment of such an economic order would facilitate the realization of the ideals of Islamic social justice, equality and brotherhood of man. In order to distinguish Islam from the atheistic socialism of Pandit Nehru, he once termed Islamic economic system as 'Islamic socialism' (Speech. Chittagong 26th March, 1948). But by the use of this expression he meant nothing more than what he intended to mean.

Quaid-i-Azam was aware that the object of the economic teachings of Islam is to realize the ideals of equal distribution of wealth and a classless society through the politico-moral principles of equality, brotherhood, justice and evolution (*i.e.* with the consent of the people secured through democratic means) and not through class-hatred, violence, destruction and revolution.

The ultimate aim of 'Iqtisad' is to bring into being a welfare state of the middle class, because according to the Islamic moral code, the respectability of a person depends on the nobility of his character, and not on his wealth or poverty. Hence the object of the economic teachings of the Quran is to provide facilities for the have-nots so that they could achieve the living standard of the middle class, and to impose

restrictions on the haves so that they could not step beyond middle class. This is precisely what is meant by 'Iqtisad', the only method which, according to Islam, is easy and practicable.

A community which believes in 'Iqtisad' (*i.e.* moderation) in the sphere of economics must naturally pursue neutralist foreign policy and foreign trade. The principles of Pakistan's foreign policy were laid down by Quaid-i-Azam in February, 1948 when he proclaimed: "Our foreign policy is one of friendliness and goodwill towards all the nations of the world. We do not cherish aggressive designs against any country or nation. We believe in the principles of honesty and fair-play in national and international dealings and are prepared to make our utmost contribution to the promotion of peace and prosperity among all the nations of the world."

The ideology of Pakistan when approached in the light of Quaid-i-Azam's statements is simply this that Islam is a complete code of life for Muslims. It is the source of their spiritual, moral as well as temporal values and so long as Islam is the basis of Pakistani nationalism patriotism, secularism, constitutionalism, as well as socialism, there is a chance of our survival as a people. If this basis ceases to exist, Pakistan shall be no more what it is. All these 'isms' are creations of human mind. They are trends of human thought moving in different directions, opposing one another and in constant conflict with each other. Islam has the capability of assimilating, absorbing, embracing and dominating all these 'isms.' Islam does not restrict the movement of Pakistanis in any of these directions; it only controls and guides them and so long as Islam is there to provide the guidance, there will be coherence and consistency in our movement irrespective of the direction we may take. This is precisely the reason why Quaid-i-Azam had declared that Muslims did not need any 'isms' and that Islam was their guide and complete code for their life.

ISLAM – A STATE-BUILDING FORCE

In Sura 4 Verse 59 of the Quran, Muslims are enjoined to obey Allah, to obey the Prophet and those having authority over them, who are from amongst them. From this verse four important principles of Islamic polity have been deduced. The first principle is that since all authority in the universe vests in Allah Who is the Omnipotent and Omnipresent Creator of the universe, He alone must be obeyed to the exclusion of all others. Allah has laid down law in the Quran in the form of what is good and what is evil. These commands have been sent as revelation from time to time to the Prophets for the guidance of mankind, the last being the Holy Prophet Muhammad (Peace be upon him) through whom the faith has been completed and perfected in the Quran. Allah has already placed in the nature of man the knowledge of good and evil and has further clarified the distinction between good and evil in the Quran. Thus, the law of Allah, properly so called, consists of positive and negative injunctions, and it is on this basis that according to a Muslim's faith all legislation has already been made by Allah and every Muslim is commanded to promote good and to suppress evil.

The second principle is that obedience may be rendered to man, but only under Allah's command, generally speaking, in the case of the Prophets, whereunder rendering obedience is in fact to Allah and not to human-beings. The Holy Prophet (PBUH) is to be obeyed because he was the last and the final

one through whom the faith had been eventually perfected in the Quran, which is the pure word of Allah whereas the *Sunnah* (Practice) of the Holy Prophet (PBUH) is the authoritative exposition of the Quran.

The third principle is that obedience may be rendered after Allah and the Holy Prophet to those who command authority over Muslims but provided that they are acting only in execution of the commands of Allah and the Holy Prophet. Evidently, rendering obedience to those who command authority over the Muslim community is conditional and this obligation ceases if the above condition is not fulfilled.

The fourth principle is that obedience can only be rendered to those who command authority over Muslims who are from amongst them in the sense that they are themselves members of the Muslim community. Obviously these leaders of Muslim community have to be Muslims themselves as they are expected to act in execution of the commands of Allah and the Holy Prophet. Thus, it is clear that in the Quran no mode of life is prescribed for a subjugated Muslim community. The mode of life which a Muslim is commanded to follow can only be followed if he is member of a politically and economically free community. Consequently, the Muslim community must strive for establishing a state wherever it is possible to establish a viable state.

A state which is managed and administered in accordance with the law of Islam is technically called *Darul Islam* (country of peace). But if a *Darul Islam* or a Muslim state is politically or economically subjugated by a non-Muslim power, in legal terminology, it will be transformed into *Darul Harb* (country of war), and the Muslims therein shall be left with only two alternatives: Either to conduct *Jihad* (militant struggle) in order to regain their independent status or to migrate (*Hijrat*) to some Muslim country. Hence the Muslim concept of patriotism is not solely based on an attachment with a particular land or territory but is based on an attachment to the ideals and aspirations which have been realized or are

being realized or may be realized through institutions established in such land or territory.

In theory the Islamic state is Allah's state and speaking in the Quranic terminology, Muslims constitute Allah's Party (*Hizbullah*). It must cater for the realization of material happiness for the Muslim community in this world as well as prepare it for realizing spiritual happiness in the hereafter. In other words, in order to realize the objectives of this two-fold concept of happiness, the Muslim community (*Hizbullah*) in an Islamic state must be founded on the principles of economic as well as spiritual equality, solidarity and freedom.

Before embarking on the discussion as to how Islam in history had acted as a state-building force, it may be useful to examine briefly as to what the Muslim Jurists of the past had to say about the characteristics of an Islamic state. Traditionally emphasis has been laid on its three fundamental features: Muslim community (*Milla*), the Islamic law (*Shariah*) and the Headship of the Muslim community (*Khalifa*). Since absolute authority or ultimate sovereignty vests in Allah, the Islamic state upholds the supremacy of *Shariah* law and further, since the Muslim community is to be governed in accordance with the *Shariah* law, it must have a directing Head to implement or execute the said law. But since the law has already been laid down by Allah in the Quran, strictly speaking, the Head of an Islamic state is only an executive authority or functionary and has no inherent power to legislate. Wherever the law is clearly laid down in the Quran, he must implement or execute the same. However, guided by the spirit of those laws and principles, he is authorized, in certain exceptional circumstances, to alter or temporarily suspend those laws or make subordinate legislation. He is also expected to appoint a Body of Advisers (*Shura*) which must be consulted in making such subordinate legislation or for other matters concerning the state, but he is not bound by their advice. The Head of the Muslim community was traditionally called *Khalifa* (the successor of the Holy Prophet) or *Imam*. The Judiciary (*Qada*) had technically the power to

interpret the *Shariah* law and to adjudicate in accordance with the same. According to the *Sunni* view, as shall be explained later, the appointment of the *Khalifa* had to be confirmed by the Muslim community (*Milla*) through its consent which was formally obtained by means of *baiyat* (a symbolic way of rendering obedience). The *baiyat* amounted to a contract in which two parties were involved i.e., each Muslim was to render obedience to the *Khalifa* in consideration of *Khalifa*'s promise to govern the Muslim community in accordance with the *Shariah* law. If there arose any dispute between the parties, then according to the Quranic Injunction laid down in Sura 4 Verse 59, the matter could be referred to the Judiciary for adjudication in accordance with the Book of Allah and *Sunnah* of the Holy Prophet and the judgment of the Court was binding on both the parties. If the dispute could not be resolved through peaceful means, the Muslim community or any member thereof was entitled to rebel against the erring *Khalifa* or to replace him by another *Imam*.

It must be clearly understood that in an Islamic state absolute authority does not rest with the Head of the state or with Parliament, nor are the people vested with the ultimate sovereignty. Ultimate sovereignty or absolute authority only vests in Allah and the only principle operative in an Islamic state is the supremacy of *Shariah* law. Using modern terminology, therefore, the Islamic Constitution may contain only two important organs: The Executive and the Judiciary. The third organ i.e., the legislature is not an important feature for the simple reason that all legislation has already been made by Allah in the Quran which merely requires to be implemented or executed by the Head of the state, who, in consultation with the Body of Advisers or otherwise may make subordinate legislation by way of Ordinances.

There are two verses in the Quran about consultation. In Sura 42 Verse 38, it is laid down that the Muslims conduct their affairs by mutual consultations and in Sura 3: Verse 159 the Holy Prophet is commanded to consult them in affairs and when he has taken a decision, he should put his trust in

Allah. In the first verse consultation is recommended and does not create an obligation. However, it is descriptive of the nature of the Muslim community which is expected to conduct all its affairs by mutual consultations. While interpreting this verse a very important question arises as to whether the Body contemplated in the verse is a Consultative Body or an Advisory Body. The expression used in the Quran is "mutual consultations" and the *Khawaraj* have always interpreted it to mean that under the Quranic Injunctions a Consultative Body and not a single Head of the state is required to conduct the affairs of the Muslim community. According to their view, there is no obligation to render obedience to a *Khalifa* or *Imam* as the Head of the state, because the Muslim community can govern itself by constituting the Consultative Body from amongst themselves. However, if a need arises a Head of the state may be appointed. On the other hand, according to the *Sunni* view, the verse contemplates the establishment of an Advisory Body and the *Sunni* Jurists support their reasoning by citing the practice (*Sunnah*) of the Holy Prophet who consulted a Body of eminent members of the Muslim community in the conduct of the affairs of the state and this practice was subsequently followed by the four Rightly Guided Caliphs. They, in support of their reasoning, also refer to the second verse mentioned above which is addressed to the Holy Prophet and contains a command to the effect that he should consult the eminent members of the Muslim community in the conduct of the affairs of the state. Thus, the principle that those who command authority ought, in all matters of importance, consult the Muslims is undisputed.

Now, we come to the question as to what are the distinctions between an Islamic state and a purely secular state. The main distinction is that an Islamic state is expected to be governed by revealed law whereas a secular state is governed by the laws made through human reason. The other distinctions are: A modern secular state should have three features: It must be fully sovereign; it must be national; and it

must have well-defined territories. When these three features exist a state can legitimately claim itself to be a sovereign state and these are also the requirements for its becoming a member of the United Nations. However, an Islamic state, although sovereign from this generally accepted standpoint is theoretically not fully sovereign, because according to the faith of Muslims ultimate sovereignty vests only in Allah. Strictly speaking, it is also not a national state, because Muslim community (*Milla*) is a Community of Faith and consists of peoples who may belong to different races or nationalities and may speak different languages or be of different colours but who share a common spiritual aspiration i.e., their faith in Islam, and regard¹ themselves as a nation on the basis of common spiritual aspiration. But if nationalism is to be considered in Western terms, then an Islamic state is a multi-national state. Thirdly, it is not a territorial state in the strict sense of the term, because it aims and aspires to become a universal state. Nevertheless, it is not a Utopia or an imaginary state. It has to be initially founded as a territorial state, although the territories are expected to expand.

The Prophet of Islam migrated from his ancestral home Mecca, because the Meccans would not accept his faith. Had he been a territorial nationalist, he could have made a political compromise with his opponents and decided to live with them on the condition that they may stick to their idols and he as well as his followers be permitted to profess their own faith. But he did not take such a decision. Instead he left Mecca and established the first Islamic state at Medina by uniting the Immigrants (*Muhajirin*) and Helpers (*Ansar*) in a fraternal bond of a Community of Faith. This Practice (*Sunnah*) of the Holy Prophet has usually been followed by Muslims. They have been and are still persecuted in numerous countries of the world where they constitute minorities. Therefore, they have either managed to establish a separate state for themselves wherever it was possible to create a viable state, the examples being the emergence of Pakistan and Bangladesh in South-Asia; or they aspire for

carving out a viable state for themselves, as can be seen from the struggle of the Muslims of Palestine, Cyprus and the Philippines. Wherever there is persecution and militant struggle either fails or is impossible, they are usually not inclined to make a compromise with their oppressors or to give up their faith, but prefer to migrate from their ancestral or national home. According to a conservative estimate recently made, amongst the refugees from all over the world today 75% are Muslim.

There is another important Quranic Injunction requiring consideration at this stage. In Sura 4: Verse 58 Muslims are commanded by Allah to hand over their trusts only to most competent persons. In other words, the Quran has ordained that only the most competent person/persons be appointed for running the Islamic state, though this is even logically the obligation of those who are expected to make such appointments. However, the Quran itself does not lay down any method for the appointment of the Head of the Muslim community. According to the *Sunni* Jurists, this was quite natural because the Quran is concerned mainly with matters relating to right and wrong or good and evil and is not concerned with matters relating to planning (*Tadbir*). That the best person/persons are to be appointed is a matter relating to right and wrong. But the question as to how the appointment is to be made or whether a particular process employed for determination of the best person will succeed or not, is a matter relating to efficiency and wisdom in the light of the prevailing conditions. Similarly, no procedure has been prescribed for the deposition of the Head of the Muslim community. According to the *Sunni* view, the Holy Prophet did not nominate or appoint any successor after him nor did he lay down any rule for constituting or deposing the successor. His silence on these matters was deliberate because such structures were to be evolved in the light of the good sense of the community. These were not meant to be permanent but were subject to the changing requirements of the Muslim community from time to time. Thus, the real

object of Islam is to establish a Community of Faith governed by the *Shariah* law and for its enforcement, although the establishment of a state is essential, the Muslim community is at liberty to determine any mode of constitutional structure which suits its requirements.

In the Quran, Allah also talks of kings and it can be successfully argued that in the light of Quranic Injunctions, monarchy as an institution has not been disapproved. The argument can proceed further on these lines and a statement may be made to the effect that the Prophet of Islam was Prophet-King in the tradition of the earlier Prophet-Kings mentioned in the Quran. The argument also finds support from the writings of Al-Farabi, who, influenced by Plato's theory of the Philosopher-King, evolved his concept of the Prophet-Imam (King) and applied the same to the Prophet of Islam describing his period of *Imamate*, in Medina as the ideal state (*Al-Medinatul Fadila*). In other words, according to Al-Farabi the ideal Islamic state was established at Medina by the Prophet of Islam and so long as he remained its Prophet-Imam, the two-fold concept of happiness was fully realized by the Muslim community.

Whatever be the idealistic or philosophical implications of this thesis, it may be pointed out that in the Quran Allah talks of kings who had ruled before the advent of Islam and although the institution of monarchy has not been specifically disapproved, the nature of the Muslims has been clearly described in Sura 42: Verse 38 when it is stated that Muslims are those who conduct their affairs by mutual consultations. The second objection to this thesis is that the Prophet of Islam never claimed himself to be a Prophet-King on the lines of the earlier tradition. He had not been appointed as such by Allah in the Quran as it had happened in the case of Prophet David, who was specifically appointed Allah's Successor on earth.

Now let us examine as to how Islam has acted in history as a state-building force. It has already been stated that the first Islamic state was founded at Medina by the Prophet of

Islam after his migration from Mecca. This state was founded on the basis of a document of constitutional nature commonly known as the Contract of Medina (*Meesaq-ul-Medina*). According to the stipulations of this contract, the contracting parties had agreed to run the administration of Medina with the Holy Prophet as the sole arbiter and as the apex of delegated sovereignty in the new state. The principles which can be deduced from the period of *Imamate* of the Holy Prophet are these: The affirmation of the sovereignty of Allah and supremacy of the *Shariah* law, and the establishment of the first Islamic state at Medina by uniting the Immigrants and Helpers in a fraternal bond of a Community of Faith, which was to be governed in accordance with the *Shariah* law. The Holy Prophet was the Head of *Imam* of the Muslim community, but had no kingly prerogatives except that as the Chief Executive, his seal conferred legitimacy to state documents. He consulted the eminent members of the Muslim community in the management of its affairs and these eminent members had been described as the Companions of the Holy Prophet.

It has already been pointed out that according to the *Sunni* view the Prophet of Islam did not nominate or appoint any successor nor did he lay down any framework for constituting or deposing his successor. Jalaluddin Suyuti on the authority of Hodayfah states that some of the Companions of the Holy Prophet asked him as to whether or not he would appoint a successor unto them. The Holy Prophet is stated to have replied that if he did appoint such a successor over them and that if they were to rebel against the successor appointed by him, then punishment could come upon them. He further states that had the Holy Prophet in fact appointed a successor or prescribed a specific method for such appointment, then that mode alone would have become the only way of appointing the Head of the state, and a restrictive stipulation of this nature would have caused difficulty in the evolution of Islamic polity. Thus, the Holy Prophet by not appointing his successor or suggesting any specific mode had definitely acted

in conformity with the spirit of Quranic Injunctions on this point.

During the period of first four Rightly Guided Caliphs (632 A.D. to 661 A.D.) different modes were adopted for the appointment of the Head of the state and in all the cases the appointment was confirmed by the Muslim community through its consent, which was formally obtained by means of *baiyat*. Generally speaking the methods adopted during this period had a common feature i.e. the selection of the best man through initial election, nomination, and election through an electoral college, in all cases followed by private *baiyat*, subsequently the appointment being confirmed through a public *baiyat*. The course adopted in all the cases was republican, although the majority principle, not specifically disapproved, had not been followed.

Ibn Ishaq in his Biography of the Holy Prophet written within 70 years of his death provides an accurate picture as to how the first successor of the Holy Prophet, namely Abubakr, was appointed.. He states that on the death of the Holy Prophet Muslims of Medina formed three distinct political groups e.g. *Mohajirin* (Immigrants) *Ansar* (Helpers) and Banu Hashim (the supporters of the Family of the Holy Prophet). The Immigrants were led by Abubakr and Umar, the Helpers supported Saad Ibn Ubaida, whereas the supporters of the Family of the Holy Prophet were solidly behind Ali. The claim of the Helpers for power was based on the ground that they constituted the bulk of the armed forces of Islam and they even suggested in the alternative the divisibility of Government. The Immigrants opposed such separationist tendencies, stood for the unity of the Muslim community and advanced their claim on the ground that Arabs as a whole will only accept leadership from the tribe of Quraysh. The claim of Banu Hashim was based on their close connections with the Family of the Holy Prophet. The groups, with the exception of Banu Hashim, gathered in the hall of Banu Saada at Medina and a political debate took place there. Eventually, Umar proposed the name of Abubakr as

the Head of the state when he asked him to extend his hand and Abubakr, a candidate for succession, accepting such nomination held out his hand. Thereafter the Immigrants as well as Helpers present there swore allegiance to him by way of *baiyat*. Subsequently this private *baiyat* was followed by a public *baiyat*.

In the case of the second Caliph namely Umar, he was nominated by Abubakr. The nomination had no legal precedent and, therefore, it was merely a recommendation. However, since the Muslim community had reposed confidence in Abubakr, his recommendation was accepted through the subsequent referendum when the nomination of Umar was put to public at large and it was confirmed by a general *baiyat*.

Umar before his death constituted an electoral college of the probable candidates in order to select one from amongst them for being put up as the sole candidate for succession. A council of six was formed consisting of Ali, Uthman, Abdur Rahman, Saad, Zubair and Talha. He also appointed his own son Abdullah to give a casting vote in case there was an equal division, but Abdullah was specifically excluded from standing as a candidate for the succession. The council through a process of elimination deputed Abdur Rahman to make a recommendation as to who out of Ali and Uthman should be the sole candidate. Abdur Rahman is said to have consulted as many people as he could in Medina including women as well as students and those who had come from outside or happened to be present in Medina as way-farers and majority of them expressed their view in favour of Uthman. Then Abdur Rahman even questioned Ali and Uthman about the manner in which they would conduct themselves if any of them was selected as the successor. Eventually Abdur Rahman supported Uthman and finally Uthman was selected as the sole candidate. Later the rest of the Muslim community swore allegiance to him in the form of a public *baiyat*.

On the assassination of Uthman some eminent members of the Muslim community of Medina gathered in front of the house of Ali and requested him to agree to become the successor. The uncle of the Holy Prophet namely Abbas supported him as the sole candidate. But Ali refused to accept a private *baiyat* and insisted that if the Muslim community wanted to swear allegiance to him as the Head of the state, it should be openly done in the Mosque of the Holy Prophet. This was accordingly done.

From this brief survey it is evident that during the period of first four Rightly Guided Caliphs the Head of the state could only be appointed with the consent of the Muslim community. Women were not excluded from registering their consent. Furthermore, during this period the hereditary rule was specifically excluded in the case of succession. It has already been mentioned that in the times of the Holy Prophet there was only one acknowledged prerogative of the Head of the state i.e., all the state documents were expected to bear his seal. But during the period of first four Rightly Guided Caliphs, particularly in the turbulent days of Ali, the fourth Caliph, a second prerogative was introduced and that was if the Head of the state himself was not leading the congregational prayers, then the leader of the public worship mentioned his name in the *Khutba* (sermon) and prayed for him.

In the historical process of transformation from 661 A.D. to 1258 A.D. the interaction of numerous forces and events led to changes in the Caliphate in substance as well as form. Muawiyah was proclaimed *Khalifa* in 661 A.D. through force and coercion. Four years before his death Muawiyah nominated his son Yazid as his successor and oath of allegiance was secured for him despite the protests of the Jurists who maintained that it was illegal to swear allegiance to two persons at one and the same time. Muawiyah nominated his own son as the succeeding *Khalifa*, because, as he himself explained, if he had nominated anyone outside his own family, or if he had appointed an electoral council as

Umar had done, or if he had left the matter to be decided by the community it would have led to a civil war among Muslims. His reasoning was that the precedent of nominating the succeeding *Khalifa* already existed. Consequently, Marwan, his Governor of Medina, said to the people: "Varily the Commander of the Faithful hath seen it fit to appoint his son Yazid as the successor over ye according to the institutions of Abubakr and Umar." Abdur Rahman ibn Abubakr interrupted: "Rather according to the institutions of Khusrau and Caesar, for, Abubakr and Umar did not do so for their children, nor for anyone of the people of their house." The prompt reply came from Marwan: "There was no legal bar for Abubakr and Umar to nominate their children or anyone of the people of their house if they had found them competent. But in the present case the Commander of the Faithful is nominating his son Yazid as successor over ye because he had found him fit and competent." The example thus set was followed throughout the history of Islam. The reigning *Khalifa* nominated one of his sons or kinsmen as his successor and the oath of allegiance was secured for him. During the Abbasid rule double nominations were also made and this arrangement frequently led to wars of succession. The Caliphate was transformed from a republican institution into a hereditary or dynastic monarchy mainly for the reason that there was a likelihood of disintegration of the Muslim community through civil strife if the democratic mode was to be followed. So kingly prerogatives were introduced. Besides the earlier two prerogatives, namely *Khatm* (seal) and *Khutba* (sermon), three more were introduced by Muawiya himself. These were *Sarir* (throne), the right of the *Khalifa* to sit at a higher place; *Maqsura*, the right of the *Khalifa* to have a confined part in the mosque for his exclusive use; and finally *Sikka*, the right of the *Khalifa* to have his name carved on the coinage struck in the country. Arabic was made the Court language and the earlier simplicity gradually gave way to luxury and splendour.

From this period of the 'history of Islam onwards the role of the Muslim Jurists had been to bridge the gulf between the ideal and the real or theory and practice by attempting to provide an Islamic rationale to every change in order to maintain the continuity of the Islamic character of the community. It is interesting to note that according to the *Sunni* Jurists, replacement of a *Khalifa* by another through force, coercion or usurpation (*Istela*) was considered as a legitimate method of change of Government. It may be pointed out at this stage that according to some *Sunni* Jurists including Shah Wali Ullah the methods for constituting a *Khalifa* or *Imam* or Head of the Muslim community are restricted to only those adopted during the times of the Rightly Guided Caliphs as well as through usurpation (*Istela*). The modernist Muslim position is that the adaptation of different methods could not be considered to have any restrictive significance. But on the contrary it was indicative of a liberal and flexible approach i.e., to adopt a method which is convenient for realizing the objectives of the Muslim community at a particular time. According to Al-Mawardi, the rule of a usurping Amir was legitimate if he obtained a letter of investiture from the Central Caliphate and governed his dominion in accordance with the *Shariah* law. This accommodation had probably been made under the doctrine of necessity as propounded by Al-Ghazali that the tyranny of a usurping Amir was preferable to chaos. Some Jurists are of the view that since the source of strength of a usurping Amir was his own power (*Dhu Shawka*), he did not require the consent of the Muslim community. However, the others think that he too required approval of the Muslim community in addition to governing his dominion in accordance with the with *Shariah* law.

So long as the Muslim world remained one and united, theoretically it was managed and administered by a universal Caliphate even though it had been transformed into a hereditary or dynastic monarchy. There had been an instance in the history of Islam of the establishment of more than one

Caliphate at the same time in Baghdad, Cairo and Cordova. But even during that period two of the additional Caliphates in Cairo and Cordova eventually disappeared and only one in Baghdad survived. On the sack of Baghdad by the Mongols, when the Abbasid Caliph was put to death in 1258 A.D., there was for a period of three years (1250-61 A.D.) no Caliph in the world of Islam. In the later period of Islamic history when numerous rulers managed to acquire power, controlled specific territories in the world of Islam and the universal Caliphate only existed in name, these rulers did not adopt the title of Caliph or *Imam* but remained content to call themselves Amirs, Sultans and Padshahs. However, from amongst the Ottoman Sultans, Saleem I proclaimed himself *Khalifa* in 1517 A.D. when the territories of the *Hijaz* including the principalities of Mecca and Medina came under his sway. Thus, the non-Qurayshite Caliphate was established from 1517 A.D. onwards at Constantinople.

The modern revival of Islam commenced from 18th Century onwards when gradually numerous independent or semi-independent Muslim national states emerged in the world of Islam. In most of them hereditary or dynastic monarchy was the order of the day and in some legislative assemblies had been constituted. Thus, when Islam entered modern history, the question arose that since the universal Caliphate had become a thing of the past, could different Muslim national communities manage their affairs by themselves? In other words, could the powers and obligations of a *Khalifa* or *Imam* be shared by a Body of Persons as the elected representatives of the Muslim community in a particular Muslim national state?

After the break up of the Ottoman empire and the abolition of Caliphate in Constantinople in 1924, Turkey was the first country in the world of Islam to advance the reasoning to the effect that the power of the *Khalifa* or *Imam* could be vested in a Body of Persons in the form of an elected assembly. It has already been pointed out that this was the view of the *Khawaraj* in the earlier history of Islam who

had held that it was not obligatory on the Muslim community to appoint a *Khalifa*, but the Muslims could manage their affairs themselves by mutual consultations as recommended by the Quran. Views were also expressed to the effect that in modern Muslim national states elected assemblies could constitute *Ijma* (Consensus of the eminent members of Muslim community in regard to the interpretation of a *Shariah* law) or *Shura* (Advisory Body) of the Muslim community and make subordinate legislation on the basis of *Ijtihad* or interpret the *Shariah* law in accordance with the changing needs and requirements of the Muslim community in the light of the principles laid down in the Quran and *Sunnah*. In any case, no voice was raised against the transformation which took place in Turkey and in due course even in other Muslim countries, where legislative assemblies were formed, the establishment of the same has not been considered repugnant to the Injunctions of Islam.

Be that as it may, a Muslim national state may not become an Islamic state unless and until it adopts the characteristic features of the same, which still remain unalterable. The arguments against the adaptation of the democratic method are that it has been adopted by some of the Muslim countries due to the influence of Western ideas and it is admittedly not a perfect method. An Islamic state is expected to be run by the best members of the community and the democratic method, although adopted by Western countries in order to achieve the same objective, ordinarily does not ensure the election of the best, because a really suitable or competent candidate may be defeated by an unsuitable or incompetent candidate only for the reason that he has obtained more votes or more heads had been counted in his favour. Similarly, a vote is no substitute for *baiyat*, because *baiyat* is a bilateral covenant whereas a vote does not have the implications of a contract. Furthermore according to the *Sunnah* of the Holy Prophet a person who offers himself as a candidate for any office abuses his position of trust (*Khain*) and must be ignored. If this rule is usually adopted for the selection, for

instance, of a Judge, then why it should not be adopted for the election of a so called legislator. Again, there is no obligation to follow the majority principle as the right as such of majority is not recognized in Islam. The supporters of this viewpoint also argue that since Muslims constitute Allah's Party (*Hizbullah*), the multi-party system has no place in an Islamic state as it is repugnant to the Quran and *Sunnah*. It is also pointed out that some *Sunni* schools of law do not acknowledge *Ijma* as a source for the evolution of *Shariah* law. According to them *Shura* is merely a Body of Advisors (or experts) which must be appointed by the Head of the state through selection or nomination and not election, for the purposes of consultation.

The arguments which are advanced in favour of the democratic method are as follows: If the powers and obligations of a *Khalifa* or *Imam* are to be shared by the community in a particular Muslim national state, it is necessary to create a Body of Persons to constitute an assembly in the nature of *Ijma* or *Shura* which should conduct the affairs of the Muslim community through mutual consultations and such Body cannot be constituted except through the elected representatives of the Muslim community. Although the majority principle was not followed during the historical experiment of the Rightly Guided Caliphs, its adaptation has neither been specifically forbidden nor disapproved by the Quran and *Sunnah*. Admittedly, the Quran and *Sunnah* insist on sovereignty of Allah and the enforcement of the *Shariah* law, but the evolution of the method for the realization of these objectives is left to the good sense of the Muslim community in accordance with its requirements from time to time. As the real object of Islam is to establish a Community of Faith governed by the *Shariah* law, the Muslim community is free to evolve any suitable method for the enforcement of *Shariah* law. The principle that a person who offers himself as a candidate for any office abuses his position of trust and, therefore, must be ignored cannot be made applicable universally, for, if all suitable and

competent persons are to refrain from offering themselves as candidates, then the Muslim community, not being aware of their presence, may be compelled to select mediocrities for appointment to positions of trust. Furthermore, strictly speaking, a vote may not be bilateral covenant like *baiyat*, but it certainly is an indication of selection of a candidate among others, on the basis of suitability or competency in the eyes of the electors in order to represent them only for a fixed period of time. In case he does not prove himself to be suitable or competent, he can be rejected or discarded at the next election. The establishment of such a legislature is also necessary, because subordinate legislation, which is not repugnant to the Quran and *Sunnah*, is a very wide field due to changing needs and requirements of the modern Muslim community. The successful working of the democratic method really depends on a conscientious electorate which is aware of its rights and obligations under the *Shariah* law. It is likely to fail where the electorate is gullible. Therefore, it is necessary to educate and train the Muslim community in order to make it conscious of its rights and obligations under the *Shariah* law, for, only through education and training it would be in a position to elect the best members of the community. It is also argued that although the Muslim community is Allah's Party (*Hizbullah*), the formation of groups among Muslims for promoting good and suppressing evil is recommended by the Quran and *Sunnah*. Soon after the death of the Holy Prophet when three distinct political groups emerged, and still later during the Caliphate of Ali, when the additional group of *Khawaraj* was formed, no objection had been raised. Therefore, political parties may be permitted to function in a Muslim national state provided that they adhere to the Islamic ideology and give an undertaking to the state to operate strictly within its framework. However, in order to ascertain the will of the Muslim community, measures can be adopted to determine clearly as to which candidate obtains overwhelming and not merely bare majority of votes in his favour. It is further argued that the democratic

method must be adopted, because there is no other appropriate substitute for the time being which would yield better results as required by Islamic standards.

The conflict in the viewpoints regarding Western and Islamic forms of democracy, creates a problem which is being faced by most of the Muslim national states at present and it is probably due to this reason that there are occasional instances of political break down in some of them leading to the establishment of Military dictatorships.

However, as it has been pointed out, the fundamental principles on which an Islamic state is founded continue to remain the same. A Muslim national state cannot claim itself to be an Islamic state unless and until its constitution strictly adheres to the principles of ultimate sovereignty vesting in Allah and the supremacy of *Shariah* law. But it must be clearly understood at this stage that an Islamic state is not a theocracy.

Islam does not recognize the distinction between 'spiritual' and 'secular', and it is incumbent on every Muslim to constantly endeavour to realize spiritual values while performing his temporal obligations. In this sense the Islamic state, in the modern context, assimilates the qualities of an ideal secular state. In the positive sense, a secular state ought to guarantee religious freedom to every citizen and endeavour to promote the material advancement and welfare of all its citizens without distinction of religion or race. This is also one of the numerous duties of an Islamic state which at the same time must protect the places of worship as well as culture of citizens who adhere to faiths other than Islam under the Quranic Injunction laid down in Sura 22: Verse 40 to the effect: "If Allah had not raised a group (i.e., Muslims) to ward off the others from aggression, churches, synagogues, oratories and mosques, where Allah is worshipped most, would have been destroyed". Since the faith and culture of religious minorities are to be protected, they are entitled to any measure for self-protection including the claim for

separate electorates or representation in the form of a fixed quota of seats in the assembly.

In modern times there are numerous concepts of human rights based on different ideologies. The capitalist democracies have evolved the concept of inalienable rights of man laying emphasis on political and civil rights of an individual, whereas the Marxist countries have evolved the concept of peoples' rights laying emphasis particularly on economic rights of a group. There is also a concept of welfare rights advanced by some countries which do not adhere to capitalist or Marxist ideologies, but believe in the principle of mixed economy. The Islamic concept of human rights is based on its own ideology. Its peculiar feature is that it conceives broadly two categories of rights: Of Allah (*Haququllah*) and man (*Haququl Ibad*). The Islamic state, therefore, guarantees the rights of Allah as well as of man. Rights of man which can be directly traced from the Quran and *Sunnah* are of life, individual freedom, equality before law and prohibition against impermissible discretion, justice, fair trial, protection against abuse of power, against torture, of honour and reputation, asylum, equality of status and of opportunity, freedom of thought, expression, belief, faith, worship association, assembly, movement, trade, business or profession, to hold and dispose of property, protection of minorities, to participate in the conduct and management of public affairs, status and dignity of workers, social security, founding a family and related matters, of married women, education, or privacy etc. subject to the *Shariah* law and Islamic morality. During the times of the Rightly Guided Caliphs, since the republican method was adopted and everyone studied the Quran, citizens had a thorough grasp of their rights. While guaranteeing the rights of man the Islamic state ensured the complete independence of the Judiciary as this was the only way for upholding the supremacy of rule of *Shariah* law.

It has already been pointed out that there exists only a restricted power of legislation in an Islamic state, for,

technically speaking this authority can be exercised by the Head of the state only within the limits prescribed by the Quran and *Sunnah*. Therefore, he must enjoin that what is considered by the Quran as *Maruf* (universally acknowledged moral values). According to some Jurists, in certain exceptional circumstances, the Head of the state is empowered to temporarily suspend a Quranic Injunction. However, generally speaking there can possibly be three spheres of legislative activity in a Muslim national state:-

- (i) To bring all the existing laws in conformity with the Quran and *Sunnah*;
- (ii) to enforce laws which have specifically been laid down in the Quran and *Sunnah*; and
- (iii) to make laws as subordinate legislation which are not repugnant to the Quran and *Sunnah*.

Now an attempt may be made to answer the question as to: in the light of the principles discussed above what possible form could Islamic democracy take in modern times? It may be noted that during the period of Rightly Guided Caliphs if there was any contest between the candidates for succession, as it happened in the cases of Abubakr as well as Uthman, it was resolved through mutual consultations or political debate in favour of one, either by the eminent members of Muslim community who assembled in the hall of Banu Saada or by the electoral college which had been created for that purpose. It was only thereafter that a single candidate for the office was put up for approval of the general public obtained through what may be termed as a referendum. Today if the Muslim electorate is aware of its rights and obligations under the *Shariah* law including strict adherence to the Quranic Injunction that only competent persons should be handed over the trusts of the Muslim community, it can elect representatives either on non-party basis or through only such political parties which adhere to the Islamic ideology and are in a position to put up candidates who are familiar with the legislative limits prescribed by the Quran and *Sunnah*. It may be necessary also to adopt such measures which

should clearly determine as to which candidate has the overwhelming support of the voters. This elected Body of Persons may be called *Ijma* or *Shura*. Next, this assembly should be entrusted with the responsibility first, to agree on a single candidate, either from among themselves or from outside the assembly, for the office of the Head of the state, through mutual consultations, political debate or secret ballot in case there is any contest, and thereafter to put up this single candidate for the approval of the nation to be obtained through a referendum. On referendum having been decided in his favour, the Head of the state should be considered as appointed for a fixed term of period. He may select his Ministers or Advisers from the same assembly and give formal sanction to the legislation made by it.

A modern Muslim legislative assembly, at least for the present, may consist mostly of members who possess no knowledge of the subtleties of the *Shariah* law. Therefore, they are likely to make errors in its interpretation. If competency is to be considered as the sole criterion, then the assembly is expected to consist of experts in different fields and should include lawyers who are qualified in the *Shariah* law as well as modern jurisprudence, and this object can be realized through the accomplishment of a reform in the present system of legal education in Muslim countries by extending its spheres so as to combine the study of *Shariah* law with an intelligent study of modern jurisprudence. For the interim period two constitutional devices have been adopted by some Muslim national states in order to reduce the possibilities of erroneous interpretation of *Shariah* law in a modern Muslim legislative assembly. These are: Making provisions within the assembly of a separate committee of *Ulema* having power to supervise the legislative activity of the assembly; or constituting a Body of *Ulema* outside the assembly as an Advisory Council having authority to advise the assembly on any question referred to the Council about a proposed legislation as to whether it is or is not repugnant to the Injunctions of Islam.

According to some modern Muslim Jurists presidential form of constitutional democracy may be closer to the Islamic concept of state whereas the others are of the view that the selection of form would make little difference so long as the principle to be followed is democratic. Any way, the points which are to be kept in mind are that Islam cannot be comprehended without a state, for, it lays emphasis on sovereignty of Allah through upholding the supremacy of *Shariah* law and the *Shariah* law can only be enforced through a state, and further that the Muslim community is at liberty to evolve any mode of constitutional structure on the foundational principle of mutual consultations which may suit its requirements. Thus the ideal of Islamic state is realizable in modern times by constituting a welfare state in which Government is formed with the consent of the people, the Head of the state as well as other authorities are accountable to the community, and the establishment of a highly independent judiciary is ensured.

ISLAM IN MODERN PAKISTAN

What is it that binds Pakistan together in spite of its bizarre lay out and makes the Pakistanis feel that they are one nation? It is now generally accepted that Pakistan is a state which has been carved out not on a racial, linguistic or economic basis but on that of religious unity. This explanation, although in a way, correct, tends to mislead those who, not being students of comparative culture, fail to appreciate what Islam means to the Pakistanis or what the Pakistanis mean when they claim - modestly or proudly, that Pakistan is an ideological state or that the political ideology of Pakistan is founded on Islam.

Anyone brought up and educated in the contemporary Christian tradition is conditioned to think that religion and state are by nature and definition completely distinct entities. This way of thinking is obviously set against the background of almost two thousand years of European experience of Christianity. Furthermore, the European image of Islam, in spite of a more liberal and objective approach during the past two hundred years, continues to remain, to a considerable extent, medieval. It is, therefore, understandable that when the Muslims of the Indian subcontinent put forward their claim to national unity upon the identity of religious belief, "In the Western mind", to quote Keith Callard, "this conjured up vague (and usually unhistorical) visions of Muslim fanaticism, the holy war, the Mahdi, the conquest of

the empire by the sword, the forced conversion of the Infidel and the destruction of temples and idols”.

In the circumstances, the writer, as a Pakistani, is perfectly aware that he is at a disadvantage to make himself fully understood by anyone who is reluctant to consider religion as the basis of nationality, and who instinctively feels that the concept of a nation or a state based wholly on religion may be acceptable to the sixteenth and seventeenth centuries but it has to be regarded as a reactionary anomaly by the twentieth century. However, a sincere attempt will be made to give a brief exposition of the case of the Pakistanis notwithstanding the difficulties involved in its presentation.

Let us approach the question: What Islam means to the Pakistanis? To begin with, it must be understood that Islam does not recognise the distinction between the church and state, the spiritual and temporal, or the holy and profane. There exists no duality of spirit and matter in Islam. Its religious ideal and social order are organic to each other. Accordingly, neither priesthood nor church-organisation has any place in Islam. The doctrine of personal religion and secular politics, therefore, is alien and contrary to the spirit of Islamic teachings. Most of the laws of Islam are essentially temporal, although their source is believed to be revelational. For instance, a Muslim testator cannot give away more than one-third of his property as a bequest or legacy under his will; the same restriction is imposed on the testamentary capacity of a person governed by the Roman-Dutch Law. But whereas this principle of the Roman-Dutch Law is readily accepted as a principle of secular law, the very same principle of Islamic Law is disposed of as a principle of religious law merely because its source is claimed to be revelational.

It is, therefore, necessary that Islam should be approached with a different frame of mind. A way of life like Islam which has in itself such aspects as purely religious, social, political, legal, economic, military, ethical, literary, artistic, mystical, philosophic as well as scientific cannot, in its totality, be casually put in the category of a mere religion. The Arabs,

Persians, Turks and the others who made contributions to the different fields of Islam, did not make these contributions on any racial or national basis. It, therefore, follows that Islam should be accepted and understood not only as a religion but as an attitude of mind, mode of thinking, way of life, culture or civilisation - and this is precisely what Islam in its totality means to the Pakistanis.

As pure religion 'Islam' means 'peaceful submission or surrender' (to the Will of God) and 'Muslim' means 'the one who peacefully submits or surrenders' (to the Will of God). The structural principles of Islam are: belief in the Unity of God and the finality of Muhammad's Prophethood; the obligations of praying five times a day; Fasting during the month of Ramadan; paying the Alms-tax and performing the Pilgrimage to the holy cities of Macca and Medina. Strictly speaking, a Muslim is not only to believe in these essentials but they are to be actually practised. A Muslim who performs these obligations, recites the Quran regularly, accepts the genuineness of the missions of -Abraham, Moses, Jesus Christ and all the other Prophets down to Muhammad, believes in the Day of Judgment and leads a life in conformity with the ethical standard of Islam, would naturally be regarded as a practising Muslim. However, those Muslims who may only believe in these essentials and are not practising Muslims as such do not fall outside the pale of Islam because they are tied to the common cultural and more important, legal tradition and are part and parcel of the same social order. (The Hanafi School of Islamic-Law - the bulk of Pakistani Muslims follow this School - draws a line between 'belief' and 'practise', and claims that so long as a person believes in the Unity of God and the Finality of Muhammad's Prophethood, he remains within the fold of Islam even though he may fail to perform the Obligations of the Faith. The actual performance of the Obligations can also be dispensed with by the practising Muslims in exceptional circumstances. For instance, the payment of Alms-tax is not required from those who are too poor and the performance

of Pilgrimage is not incumbent on those who cannot economically afford it. Similarly, Praying and Fasting can be discontinued under conditions of physical or mental ill-health. Even the cardinal principle of Islam - belief in the Unity of God and the Finality of Muhammad's Prophethood - can be abandoned in case its profession endangers the life of a Muslim who may have fallen into the hands of the enemies of Islam). It has already been pointed out that there is no church--organisation in Islam, therefore, inquisition as well as ex-communication, as understood in the West, are again alien and contrary to the spirit of Islamic teachings. Like Christianity there are numerous sects in Islam, but unlike Christianity, there is a unanimous agreement among the different Muslim sects on the primary essentials of Islam. It is because of the belief of the Muslims in these essentials that there prevails a uniform spiritual atmosphere in the entire Muslim world.

One outstanding feature of the religious life of the Muslims which usually escapes the notice of the Western critics of Islam is the unfathomable love of the Muslims for the person of Muhammad. Muhammad proclaimed himself as the Warner and the Messenger of God, yet he always had held himself out as the slave of God and never claimed divinity for himself. Accordingly, Umar, one of the devout companions of the Prophet, while announcing his death to the Muslim congregation, exclaimed: "Let it be known to those who worship Muhammad that Muhammad is dead. But let it be known to those who worship God that God is ever-living and ever-lasting." The Muslims love Muhammad because they regard him as the best that mankind produced. Nevertheless they are most resentful if they are addressed as 'Muhammadans' because, although they follow the path of Muhammad, they do not 'worship' him.

Let us now approach the other question: What the Pakistanis mean when they claim that Pakistan is an ideological state or that the political ideology of Pakistan is founded on Islam? In other words what is the genesis of

Islamic nationalism the development of which in the Indian subcontinent eventually led to the establishment of Pakistan? The answer will cover an exposition of Islam as a nation-building force, the historical conditions under which Islam played this important role in the body-politic of Muslim India and the aspirations of the modern Pakistanis with regard to the establishment of an Islamic state in Pakistan.

Modern Islamic revival starts from the eighteenth century. It resulted from the religio-political conditions prevailing in the Muslim world, and commenced in the form of 'puritanic' reform movements in Arabia, North Africa, South Russia, and India. Within a century, owing to the impact of the West, 'puritanism' broadened into 'liberalism' and attempts were made by the Muslim performers to Islamicise the Western ideas which had infiltrated into the world of Islam. 'Puritanism' had been anti-Western whereas 'liberalism' was not. However, in the beginning of the twentieth century, the fear of European expansion, led to a movement for Islamic solidarity (also called the 'Pan-Islamic' movement). By the end of World War I, a large number of Muslim countries lost their independence and were occupied by the European colonial powers. This stimulated the growth of secular nationalism among the Muslims particularly of the Middle-Eastern countries and their struggle for independence began.

In Asia - particularly in India, which is Asia in miniature, nationalism was imported from the West. The Indian subcontinent had remained under the sway of Islam for more than six hundred years before it passed into the hands of the British. Although the Muslims had ruled this country for such a long period, they constituted only, what may be termed, a ruling minority and the Hindus remained three times more numerous than them. (By the way, it may not be out of place to mention here that the generally accepted notion in the West and also propagated by the Hindus that Islam spread by the sword leading to forcible conversions, is disproved by the facts so far as India is concerned. Had it really been so, the Muslims would have at least managed to constitute a majority

when they had ruled this country for a period of more than six hundred years. Imperial Spain conquered Latin America and forcibly imposed Catholicism on the entire indigenous population of that continent in a far more short period of time). Furthermore, the Hindus and Muslims showed no inclination to amalgamate into one another throughout this period. Even during the British rule, the two communities, in spite of their superficial resemblances or similarities, remained basically separate and distinct from each other.

As secular nationalism spread in India, the Muslims hesitated to accept the nationalist creed primarily because they realised that for the attainment of independence and self-determination Muslim India would have to come into conflict not only with the British but, at one stage or the other, it would also have to come to grips with the Hindu majority. Accordingly they rejected the Western interpretation of nationalism and endeavoured to reinterpret it in their own terms.

The early leaders of Muslim India had observed nationalism in action in Europe, and they gradually arrived at the conclusion that this ideal was anti-moral as well as anti-human. It sowed the seeds of hatred between man and man, it reduced man into a brute and invoked in him the sinister desires of conquest and subjugation of other man. Secular nationalism and idolatrous patriotism taught European nations to compete against, to be jealous of, and to despise one another. Thus, the adherence to these ideals divided Europe for all times to come and dragged it into internecine wars on more than one occasion.

The Muslims were acutely conscious of being a minority (although they constituted more than seventy millions) and therefore, politically speaking, always remained on the defensive in India. In the later half of the nineteenth century and the beginning of the twentieth century, on the one hand, the European colonial powers were in the process of occupying the Muslim countries of the Middle East, and on the other hand, the Hindu majority acquired more and more

political power behind the hypocritical slogan of secular nationalism. Under such conditions the Muslims felt that their survival was possible only if the world of Islam stood united. Accordingly we note Muslim India vigorously supporting the movement for Islamic solidarity (or the 'pan-Islamic' movement).

After World War I, as the Middle East came under the spell of nationalism and its struggle for independence started, the Muslims of the Indian subcontinent re-evaluated their political ideology in the light of the international Islamic reality. They made no alteration in their fundamental concept of international Islam, but owing to the end of the Caliphate in Turkey (in 1924) and the growth of nationalism in the Middle East, it was generally accepted that a stage had arrived when the Muslim nations must concentrate exclusively upon their individual selves, reconstruct themselves politically and economically, and when they had acquired this strength individually, they should unite together as a living family of Muslim republics. Accordingly it was preached that Islam was neither nationalism nor imperialism but a commonwealth of nations.

In the Muslim countries of the Middle East the growth of nationalism did not create any problem because in these countries the Muslims constituted overwhelming majorities and, as it were, Islam accommodated nationalism for Islam and nationalism were considered as practically identical. In India, however, the situation was completely different. In this country the Muslims happened to be in a large minority and nationalism demanded their complete self-effacement, total absorption and absolute extinction as a distinct political entity. They, therefore, adopted the principle of 'Islamic' nationalism and tried to seek self-determination as a 'cultural' unit.

The development of 'Islamic' nationalism led to the bifurcation of the Indian nationalist movement and eventually resulted in the secession of Islam from India and the establishment of Pakistan. Thus, the very coming into

existence of Pakistan proved that nations were not necessarily created by the territories they occupied, but territories could be carved out for the needs and requirements of nations. Hence, as a homeland Pakistan is not the 'cause' of the Muslim national solidarity, but her establishment is the 'effect' of and has resulted from the national oneness of the Muslims. In other words, Pakistan did not give birth to the Pakistani nation, but Islam as a nation-building force in the Indian subcontinent gave birth to Pakistan.

In the Indian subcontinent, the formulation and elaboration of the conception of 'Islamic' nationalism was the achievement of Muhammad Iqbal (the poet, Philosopher and spiritual father of Pakistan). He dominated Muslim India intellectually between World War I and World War II, and was mainly responsible for laying down the principle of a separate Muslim state in the Indian subcontinent.

Iqbal argued that although nations were identified by the countries they occupied, 'country' as a geographical concept, did not come into conflict with Islam "because its boundaries were changeable". Before the promulgation of the Government of India Act, 1935, the people of Burma were called Indians. But on the enforcement of this Act, when Burma was separated from India they became Burmese. Nationalism, therefore, came in conflict with Islam only when as political ideal it demanded that Islam should recede into the background of a private opinion and cease to be a living factor in the collective life of a people.

As for patriotism, Iqbal maintained, if it implied that man should lay down his life merely for a portion of earth with which his soul has developed a temporary association, then obviously this ideal was meaningless. But if by patriotism was meant that man should be prepared and willing to die for his beliefs, convictions, historical traditions and culture, then such patriotism was an integral part of a Muslim's faith.

Iqbal distinguished 'community' from 'nation', and explained that a nation was a group of people formed on the lines of race, tribe, language or territory. Such a group could

appear in numerous forms and in a variety of places. Community, on the other hand, assimilated this multiplicity of groups and transformed their aggregate into a single people possessing a self-consciousness of their own. In his opinion, numerous mutually repellent races embraced Islam and were thus transformed into a single community.

Tracing the development of the ideal of nationalism, Iqbal wrote the history of religions indicated that religion was national in ancient times as among the ancient Egyptians, Greeks or Indians. Later on it was considered racial - as in the case of the Jews. Christianity, however, taught that religion was a personal and private affair.

Christianity was founded as a monastic order in a profane world. In civil matters it obeyed the Roman authority. When the State came within the fold of Christianity, a dispute arose between the Church and the State. Luther's revolt which was directed against the Church had far reaching consequences. The Church was separated off as being a personal affair and the State came to represent the collective life of the individuals. Accordingly ethico-legal systems were evolved on national lines - recognising race, language and territory as the principles of human unity.

The separation of the spiritual and temporal in Europe resulted firstly, in the formation of a set of mutually ill-adjusted states dominated by interests not human but national and secondly, in the exclusion of religion from the lives of these states. "These mutually ill-adjusted states", in the words of Iqbal, "after trampling over the moral and religious convictions of Christianity, are today feeling the need of a federated Europe, i.e., the need of a unity which the Christian church-organisation originally gave them, but which, instead of reconstructing in the light of Christ's vision of human brotherhood, they considered it fit to destroy under the inspiration of Luther".

Islam, however, according to Iqbal, brought home that religion was neither national nor racial nor personal but purely human. Unlike Christianity, Islam, from the very

beginning, was founded as a civil society. The legal principles laid down in the Quran, like the Twelve Tables of the Romans, carried potentialities of evolution through interpretation. Thus Islam meant laying the foundations of a state and also laying down the broad principles of the government of that state.

The interesting feature of Islam as a polity is that whereas in the other religions to perform one's moral obligations are left at the discretion of the individual, in Islam such moral obligations assume a 'legal' form and if they are not carried out by an individual Muslim, he could be legally penalised. Alms are collected by the state in the form of a tax, and the Eidan (Muslim Feasts) congregational worship cannot be attended by an individual Muslim if he has not separated and donated out of his income the share of the poor. In other words, the individual Muslim has no right to claim 'happiness' so long as the others are unfed and unclothed.

Islam also makes it obligatory upon its adherents not only to tolerate the believers in other Faiths but to defend their places of worship if such a need arose. God says in the Quran: "If God had not raised a group (i.e., the Muslims) to ward off others from aggression, churches, synagogues, oratories and mosques where God is worshipped most, would have been destroyed." (22; verse 40).

Ideally speaking, a sincere believer in one Faith ought to respect the sincerity of a believer in any other Faith. In Iqbal's terms, the Muslims should be aiming towards a much fuller and more complete expression of 'the hitherto partially revealed purpose of Islam' which is the establishment of a 'spiritual' democracy that Iqbal regards as 'the ultimate aim of Islam'. In Iqbal's opinion, since the state in Islam is an endeavour to realise the ideals of equality, solidarity and freedom in a specific human organisation, it absorbs the principle on which the secular state justifies itself. The modern Islamic state, therefore, must offer more security to believers in other Faiths than a secular state.

Although in Pakistan the Muslims constitute an overwhelming majority just as they do in Iran, Turkey and the United Arab Republic, the basis of Pakistani nationality still remains different from that of the one accepted in these countries of the Middle East. Indeed Islam is the religion of the majority communities in Iran, Turkey etc., but the peoples of these countries are unified essentially on the basis of race, language and territory. This is, however, not the position in Pakistan where the basis of human solidarity is a common spiritual aspiration. Thus when the Pakistanis claim that Pakistan is an ideological state or that the political ideology of Pakistan is founded on Islam - what they really mean is that the basis of nationalism in their country is human and shall always remain human.

As for the question: what are the aspirations of the modern Pakistanis with regard to the establishment of an Islamic state in Pakistan? Everyone agrees that Pakistan was not created because the Muslims were endeavouring through its establishment to gain religious freedom (freedom of worship etc.). Such religious freedom was granted to them even under the British rule. The object, therefore, in creating Pakistan was the establishment of a social order based on such fundamental Islamic values as equality, solidarity and freedom. An order founded on social justice. Unfortunately, much of the contemporary discussion about the Islamic state in Pakistan, whether conservative or nominally liberal, has remained essentially Utopian and has endeavoured to define in abstract terms the characteristics of the ideal Islamic state, saying nothing practical about the implementation of the ideal. Such discussion has generally ignored entirely the essential question which is the poverty, degradation and suffering of the masses. It is only too clear that conditions in Pakistan - the feudal landlords, the unscrupulous politicians, the Westernised intellectuals, the professional holy men, the medieval religious leaders, and the alienated masses - resemble in many ways conditions in Russia before the Revolution. The static religion and ineffective liberalism of

Russia disappeared in smoke before the organisation, discipline and coherent purpose of Lenin.

Iqbal contemplated the phenomenon of Lenin. In his poem, "Lenin before God", he spoke of the destruction wrought by Lenin as a kind of necessary judgment on the sterile religion, blood-sucking capitalism and imperialism of the West. Iqbal also saw the possibility that if the Muslims continued to accept Islam in the form of a religion which teaches fatalism, keeps the poor oppressed, justifies social inequality, or rejects the idea of transforming conditions in the material world, then the explosive force of the alienated masses would swell up like a flood, break its confines and find its own direction.

The alternative to this possibility, in Iqbal's opinion, was an interpretation of Islam which emphasized, instead of a static Utopian system, a view of history as a process. Muslims within history should always be moving towards a more perfect state and thus be always developing more adequate structures of social, economic and political justice.

JUDICIARY IN PAKISTAN

This brief study is confined to two aspects: The establishment of superior Courts under different Constitutional enactments, and the role they played under different conditions in a developing country like Pakistan.

On the creation of Pakistan as from the 15th of August 1947, under the Indian Independence Act 1947, the Government of India Act 1935 with some modifications was adopted as its Provisional Constitution. Pakistan acquired the status of a Dominion under a Governor-General, and the Judiciary continued to remain more or less the same as it had been set up before the Partition. There already existed the High Court at Lahore for the Punjab, the Chief Court of Sind at Karachi, and the Judicial Commissioners in North West Frontier as well as Baluchistan exercised the powers and jurisdiction of High Courts. Any way, a new High Court was established at Dacca for East Bengal and the Federal Court of Pakistan were set up at Karachi.

The Federal Court had its original, appellate as well as advisory jurisdiction and it also heard appeals from the Revenue Courts of Pakistan. Its powers included power to make rules of procedure to conduct its own business, power to grant special leave to appeal, power to review its own judgments and power to punish for contempt. Its original jurisdiction was further extended to determine the questions of interpretation of the Indian Independence Act 1947 or any order made thereunder. By virtue of the Federal Court

(Enlargement of Jurisdiction) Act 1947, for some time the Federal Court acquired a position between the Privy Council and the High Courts. But then followed the Privy Council (Abolition of Jurisdiction) Act 1950, whereby the Federal Court became the highest Court of appeal in Pakistan in place of the Privy Council. Thus it was made a Court of general jurisdiction as it could pass any decree or make any order which was necessary for doing full or complete justice in any matter pending before it. It stood at the apex of the hierarchy of Courts. The High Courts had original jurisdiction in certain matters, but it was mainly appellate, both in civil and criminal matters. They were conferred powers of review as well as revision, of superintendence over the subordinate Courts which fell within their territorial jurisdiction, to make their own rules of practice, to transfer cases and to punish for their own contempt as well as contempt of the Courts subordinate to them. They exercised their powers and jurisdiction subject to such limitations which had been imposed by law.

During this period one of the most important powers which was conferred on the High Courts was through the addition of new Article 223-A to the Provisional Constitution through the Government of India (Amendment) Act 1954 which provided that "every High Court shall have power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any Government within those territories, writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them". In other words, under the aforesaid Article the High Courts were given the power to issue what were known as the Prerogative Writs in the law of England. Their power came to be known in Pakistan as the 'extraordinary jurisdiction' or 'Constitutional jurisdiction'. The determination of the scope of this new jurisdiction depended largely on the discretion of the individual Judge because the exercise of this power had

not been subjected to any qualifications. Consequently full use of this effective power was made by the High Courts.

The Constituent Assembly under the Indian Independence Act, 1947 had the authority to exercise all the powers conferred on the Legislature of a Dominion. It started framing the future Constitution of Pakistan and in that course gave the famous Objectives Resolution in 1949. Then followed the three Reports of the Basic Principles Committee in 1950, 1952 and 1953. Finally, a Constitution was made in 1954 but unfortunately before it could be promulgated the very Constituent Assembly which had prepared its draft was dissolved by Ghulam Muhammad, the then Governor-General, who dismissed its Speaker as well as members and constituted a Council of Ministers. Thereupon, Maulvi Tameezud Din Khan, the then President of the Constituent Assembly filed a petition under Article 223-A before the Chief Court of Sind at Karachi for the issuance of writ of quo warranto against the newly appointed Ministers and for the issuance of a writ of mandamus for his own restoration to the office of Speaker of the Constituent Assembly on the ground that the Governor-General had no authority to dissolve the Constituent Assembly and to dismiss him from the office of its Speaker. The contention of the Federal Government was that the Government of India (Amendment) Act 1954 which conferred on the High Courts the power to issue such writs (as well as all legislation of the Constituent Assembly acting as such) was unenforceable for want of the assent of the Governor-General. The practice in the previous years had been that when the Constituent Assembly made laws while acting as the Federal Legislature, these laws were presented for the assent of the Governor-General. But legislation of the Constituent Assembly, when acting in that capacity, was always authenticated by its own President. The Chief Court of Sind held that no such assent was required to the Constitutional legislation of the Assembly as it was a sovereign, body. (*Maulvi Tameezud Din Khan v. Federation of Pakistan* – P.L.D. 1955 Sind 96).

Against the judgment of the Chief Court of Sind the Federal Government appealed and the Federal Court gave the verdict that assent was essential to the validity of Constitutional legislation of the Assembly, because Pakistan being a Dominion or member of the Common-Wealth, and its Interim Constitution being of the Common-Wealth pattern, there must be an authority with power to assent to laws for the Constituent Assembly was acting as the legislature of the Dominion, (*Federation of Pakistan v. Maulvi Temizud Din* – P.L.D. 1955 F.C. 240).

As a result of the verdict of the Federal Court Article 223-A was declared inoperative like many other laws which the Constituent Assembly had passed but which had not been validated by the assent of the Governor-General. Subsequently, the Federal Court held in *Usif Patel v. Crown* – P.L.D. 1955 F.C. 387) that the Governor-General could not validate by Ordinance any of the laws to which assent had not been accorded. This led to the filing of the Reference by the Governor-General before the Federal Court in its advisory jurisdiction respecting the Constitutional position. The opinion of the Federal Court was that to a situation for which no provision had been made by any Statute, the principles of common law would apply. The conclusion of the Federal Court was that in such circumstances the legislation of the former Constituent Assembly could be saved only through the application of the principle of State necessity, and consequently the Governor—General could issue a proclamation giving retrospective validation to Constitutional laws to which assent had not been accorded until such time as the new Constituent Assembly could determine the question of their validity. (Reference by the Governor-General – P.L.D. 1955 F.C. 435). Thus Article 223-A like other laws was restored validity by virtue of the Validation of Laws Act 1955.

In order to secure independence of the Judiciary adequate Constitutional protection was provided to the Judges of the superior Courts. If the case discussed above was to be considered as a test case, it would indicate that confidence

was reposed in the Judiciary and it exerted considerable influence.

The newly elected Constituent Assembly eventually framed the Constitution which was promulgated on the 29th of February 1956 and a few days thereafter Pakistan was declared as an Islamic Republic. However, by virtue of the Establishment of West Pakistan Act 1955, all the Provinces of the west wing of the country had been merged into a single Province known as West Pakistan. As a result, the High Court of Lahore, the Chief Court of Sind as well as the Courts of Judicial Commissioners in North West Frontier and Baluchistan were amalgamated into one High Court of West Pakistan with jurisdiction over the entire Province. Its permanent seat was to be at Lahore, with its Benches at Karachi as well as Peshawar and Circuit Benches could be set up by the Chief Justice.

Under the 1956 Constitution, the Governor-General appointed by the crown was replaced by an elected President. The Federal Court was given the name of the Supreme Court and it remained at the apex of the hierarchy of Courts with one High Court in each of the two Provinces of the country, namely, East-Pakistan and West Pakistan. The 1956 Constitution accepted the principle of judicial review found in the federal systems of the United States, Canada and Australia. The Supreme Court had the power to interpret the Constitution and to enforce the Fundamental Rights. The 1956 Constitution was made the fundamental law of Pakistan and the Judiciary was the guardian of the Constitution. The law declared by the Supreme Court was binding on all Courts in Pakistan and all executive and Judicial authorities throughout Pakistan, were to act in aid of the Supreme Court. The structure of the Judiciary under the 1956 Constitution was modelled on the former Provisional Constitution. Adequate Constitutional protection was granted to the Judges of the superior Courts. The writ jurisdiction was preserved as well as effectively used and Fundamental Rights were enforced. It is evident from the perusal of reports that in the

exercise of their extra-ordinary jurisdiction, the High Courts widened its scope by their consistent pronouncements. They did not only issue the well known writs but in order to enforce observance of law, issued appropriate directions for any other purpose.

Unfortunately, the 1956 Constitution, had a short life. Pakistan passed through a political crisis and this Constitution was abrogated on the 7th of October 1958, by Iskandar Mirza, the then President, who dismissed the Federal as well as Provincial Legislatures and Government, and placed Pakistan under Martial Law, with General Muhammad Ayub Khan as Chief Martial Law Administrator. On the 28th of October 1958 Iskander Mirza was made to relinquish his office and General Muhammad Ayub Khan, the Chief Administrator of Martial Law, assumed the office of President. But the country was divided into Martial Law Zones and the issuance of Martial Law Orders and Regulations became the rule of the day. Special and Summary Military Courts were set up in order to deal with cases under the Martial Law. Any way, three days after the 1956 Constitution had been abrogated, the Law (Continuance in Force) Order 1958 was promulgated whereunder the laws in force before the abrogation of the Constitution stood restored including the jurisdiction of all Courts. Under the aforesaid Order Pakistan was to be governed as nearly as may be in accordance with the provisions of the late Constitution. Thus, the superior Courts continued to exist and to exercise the same powers as before subject to Martial Law Regulations and orders. They could issue writs or directions but no such writ or direction could be issued against Martial Law Authorities.

The legality of the revolution which had swept over Pakistan, was questioned in *State v. Dosso* (P.L.D. 1958 S.C. 535) before the Supreme Court. Basing its opinion on Hans Kelsen's 'General Theory of Law and State' the Supreme Court held that the method by which or the persons by whom revolution was brought about was wholly immaterial

and equally irrelevant in law was the motive for a revolution. A victorious revolution or a successful coup d'état was an internationally recognised legal method of changing a Constitution. The revolution would be considered victorious if the persons assuming power under the change could successfully require the inhabitants of the country to conform to the new regime. Then in such circumstances the revolution itself would become a law creating fact. In that judgment the Laws (Continuance in Force) Order 1958 was accepted as the new Constitution and the validity of the existing laws was to be judged or the correctness of judicial decisions was to be determined in accordance with this 'new legal order'.

Under the so called 'new legal order' although the powers of the Courts were curtailed, even during this period, wherever possible, the Courts continued to remain inclined to adopt a wider interpretation of their jurisdiction. They continued to review administrative action and developed the principle that if an authority believed itself to be acting within the limits of a Martial Law Regulation or a Martial Law Order, then this, by itself, would not deprive any Court of the jurisdiction to decide any question that had arisen in a proceeding which the Court had jurisdiction to hear. (*Sher Muhammad v. Nasiruddin* – P.L.D. 1960 Lahore 583). The 'new legal order' purported to exclude the jurisdiction of the superior Courts in regard to the orders passed by the Military Courts. But the Courts consistently held that there was no ouster of jurisdiction where an order of the Military Court itself was without jurisdiction. However, Fundamental Rights were deemed to have been abolished and they could not be enforced. Similarly, there was ouster of jurisdiction in respect of cases decided by the Special Tribunals constituted under the Basic Democracies Order 1959.

On the 1st of March 1962, a new Constitution was promulgated whereunder the parliamentary form was discarded. The new Constitutional structure which had adopted the Presidential form was based on the claim that it was suited to the genius of the people.

The 1962 Constitution made only minor changes so far as the Judiciary was concerned. The Supreme Court remained at its apex with two High Courts below it in each Province. The subordinate Courts remained intact. The permanent seat of the Supreme court was to be at Islamabad but due to non-availability of accommodation there, it sat at Lahore with the requirement that it would sit in Dacca at least twice a year. The powers and jurisdiction of the superior Courts remained more or less the same. A High Court Judge could be transferred with his consent to another permanent Bench and a Judge could only be removed by the President when the Supreme Judicial Council had recommended his removal. The Supreme Judicial Council consisted of the Chief Justice of the Supreme Court, two senior most puisne Judges of the Supreme Court and two Chief justices of the High Courts.

The fundamental Rights were made justiciable by the First Amendment of the Constitution in 1963 and they were enforced by the High Courts until 1965 when they were suspended due to the proclamation of Emergency by the President on the out-break of war between India and Pakistan.

Under Article 98 of the 1962 Constitution the High Courts were conferred power to issue writs without naming them, but the conditions precedent were first, that only an 'aggrieved party' could apply for the same and second, that it could be issued only when no other adequate remedy was available. Under the aforesaid Article the High Courts were barred from issuing writs on an application made by or in relation to a person in the defence or other services of Pakistan.

The Presidential form of Government came to an end in Pakistan when the 1962 Constitution was also abrogated on the 25th of March 1969. President Muhammad Ayub Khan relinquished his office and invited General Yahya Khan, Commander-in-Chief of the Pakistan Army, 'to do his Constitutional duty' of restoring law and order in the country. General Yahya Khan, being the Chief Martial Law

Administrator, imposed Martial Law in the country and also resumed the office of the President. In pursuance of the proclamation of Martial Law, the Provisional Constitutional Order 1969 was implemented according to which Pakistan was to be governed as nearly as may be in accordance with the abrogated 1962 Constitution, subject to any Regulation or Order made by the Chief Martial Law Administrator. The Fundamental Rights were abrogated. Neither the Orders of the Martial Law Authorities could be questioned, nor could the Proclamation or any Regulation or Order made thereunder be challenged in any Court. The Courts could function and they derived their power as well as authority under the Proclamation of Martial Law as well as the Provisional Constitutional Order 1969.

By virtue of the Province of West Pakistan (Dissolution) Order 1970, the Province of West Pakistan was split into four Provinces as they had existed before 1955, and as a result the High Court of West Pakistan was broken up. Then followed the general elections in December 1970. Towards the end of 1971 the law and order situation in the Province of East Pakistan was shattered, and eventually due to the aggression of Indian Army, Dacca fell on the 16th of December 1971. Thus, East Pakistan was separated off from the rest of Pakistan. President Yahya Khan handed over power to Mr. Zulfikar Ali Bhutto as the leader of the majority in West Pakistan. Mr. Bhutto assumed the office of the President as well as Chief Martial Law Administrator and summoned the session of the National Assembly which gave an Interim Constitution and thus the Martial Law was lifted. The Interim Constitution came into force on the 21st of April 1972 and it was to remain in force for a period of one year.

The Interim Constitution was mainly an adaption of the 1962 Constitution with some features of the 1956 Constitution. Its form remained Presidential. The Supreme Court was at the apex and retained its jurisdiction and power. The Interim Constitution provided for a High Court for each Province, namely, the Punjab, Sind, Frontier and Baluchistan,

but any two Provinces could set up a joint High Court as was done by the Provinces of Sind and Baluchistan by establishing a High Court at Karachi. The other High Courts functioned at Lahore and at Peshawar. They retained the power and jurisdiction which they had under the 1962 Constitution.

The power to review its own decisions in the light of the principle of *stare decisis* was considered by the Supreme Court in the famous case entitled *Asma Jilani v. Government of Pakistan* (P.L.D. 1972 S.C 139). The Supreme Court overruled *State v. Dosso* and held that the Martial Law Regime of 1969 was unlawful and that General Yahya Khan was a usurper. In that judgment the entire Constitutional history of Pakistan was surveyed, many judgments including those of foreign Courts were discussed, books of eminent Jurists on Constitutional and International law were considered, Hans Kelsen's theory was minutely analysed and the Supreme Court arrived at the conclusion that the Kelsen had not advanced any such theory which favoured totalitarianism, that Kelsen had never attempted to lay down any such principle of law, that every person, who was successful in grabbing power could claim himself to have become also a law creating agency under the new dispensation called successful revolution, that Kelsen had advanced only a theory of law as a rule of normative science, that he had merely stated that such things as revolutions did take place but even when they were successful they could not simultaneously acquire any valid authority to annul the previous grund-norm until they had themselves become a legal order by habitual obedience of the people. Thus, it was held that the proposition which had found favour in *Dosso's* case was absolutely incorrect.

On the question as to whether the decision in *Dosso's* case was the legal order to be followed under the principle of *stare decisis*, the Supreme Court gave the verdict that principle of *stare decisis* was not applicable to it as the Supreme Court was not bound by its earlier decisions. It was further held that

the Court of ultimate jurisdiction must always have the power to review its own decisions for inclination to adhere to previous precedents was subjected to flexibility as law neither remained stagnant, nor the Judges could become slaves of precedents.

On the question of grund-norm, it was held that the nation's grund-norm was enshrined in the concept that legal sovereignty over the entire universe belongs to Almighty Allah alone, and that the authority to be exercised by the people within the limitations prescribed by Him was a sacred trust. This norm had been accepted in the Objectives Resolution of 1949 and it had neither been abrogated, nor deviated from by any Regime, Military or Civil, in this country so far. The Supreme Court held that the basic concept under this principle of sovereignty was that the whole body politic became a trustee for the discharge of sovereign functions and the trustees under this concept of power were persons who were expected to have authority as properly constituted by law, end not usurped by them.

The Supreme Court also examined numerous previous authorities on Martial Law and considering the imposition of Martial Law under various situations in history, arrived at the conclusion that looking at the matter either from the Constitutional point of view or the Martial Law point of view, whatever was done in March 1969 by President Ayub Khan or General Yahya Khan was entirely without any legal sanction. However, in order to save the bulk of legislation of this period the doctrine of necessity was invoked under the principle of condonation (and not legitimization) of the illegal and illegitimate acts of the usurper in the wider public interest.

Thereafter, in Ziaur Rehman's case (P.L.D. 1973 S.C. 49) the contention was raised that some of the provisions of the Interim Constitution were violative of the norms laid down by the Objectives Resolution of 1949, and that consequently the Court was empowered to strike down such provisions on the ground that the Objectives Resolution was the grund-

norm for Pakistan and being a supra Constitutional instrument it stood above the Interim Constitution or any Constitution which might be framed in the future. This proposition did not find favour with the Supreme Court which gave the verdict that since this was not part of its function of interpretation, the Judiciary could not claim to declare any of the provision of the Constitution as *ultra vires* or void. It was further held that the Objectives Resolution did not stand on a higher pedestal than the Constitution, because it embodied the very spirit as well as the fundamental norms of the Constitutional concept of Pakistan and further that since it constituted the preamble, it could only be examined to ascertain the intent of the law maker in case of any doubt, but it could not control the substantive provisions of the Constitution.

The new Constitution was promulgated on the 12th of April 1973. The fundamental rights were incorporated in the same but they remained suspended due to the proclamation of emergency. The powers and jurisdiction of the superior Courts were more or less identical to those of the earlier Constitutions of 1956 and 1962. The complete separation of the Judiciary from the Executive was to be accomplished within three years. The Supreme Court remained at the apex and there existed a High Court for each Province, although two or more Provinces could have a joint High Court. The existing system of subordinate Courts, Civil as well as Criminal, was kept intact. The writ jurisdiction under Article 199 was almost a reproduction of Article 98 of the 1962 Constitution. The Judges of the superior Courts had been given the same Constitutional protection which they previously had. In the recent years numerous benefits and facilities had been provided to them and their number was increased. Under certain recent amendments of the Constitution the tenure of the Chief Justices of the superior Courts has been fixed. Some improvements have been accomplished in the contempt law and provisions have been made for the transfer of Judges from one High Court to

another. The Supreme Court has now shifted to its permanent seat at Islamabad and a separate High Court has been set up at Quetta for Baluchistan. In accordance with the recommendations of the Law Commission the procedural law is being changed in order to obliterate the effects of delay and for the clearance of backlog. In cases involving Government claims for payment of arrears of taxes etc., the power of the Courts to issue orders of stay for an indefinite period has been reduced to a maximum period of sixty days so that such cases could be decided expeditiously. The power to grant *ex parte* interim bail in a petition arising out of the Defence of Pakistan proceedings has been taken away, although the Courts retain the power to grant bail after notice and hearing the prosecuting party.

The superior Courts in Pakistan have passed through two Martial Laws and during the interludes of autocratic and arbitrary use of power by the Executive, although the conditions had not been conducive to the development of a properly independent Judiciary, the superior Courts somehow or the other managed to uphold the rule of law as far as it was possible. It is evident from the case law of this period that in spite of the stresses and strains, the superior Courts in Pakistan not only developed but enlarged such concepts as natural justice, due process of law and provision of relief through the exercise of the extra-ordinary jurisdiction. It is now a generally accepted and well-established legal order in Pakistan that the principles of natural justice are fundamental and ought to be observed not only by judicial or quasi-judicial bodies but also by administrative authorities. The preservation of the right of an individual to be dealt with in accordance with law only, finding place in different Constitutions including the present one, has been adjudged as an important charter. In it the Supreme Court has found the concept of due process of law as established in the United States. The writs and directions were as well as are being issued in the form of equitable relief against all kinds of injustice. It is well-established that the refusal to grant bail is

an exception and in any case it cannot be refused by way of punishment. Thus, it can be said that in a developing country like Pakistan, which is still struggling to achieve political stability and maturity, the superior Courts of Pakistan are discharging their functions to the best of their ability and to the satisfaction of the people of the country.

PAKISTAN; PAST, PRESENT AND FUTURE

(Presented at the Initiation of the Pakistani-American Congress, Chicago, March 9, 1991)

Thank you very much for your generous introduction, and warm welcome. I am delighted to be with you on this very historic occasion, when you are taking an imaginative step to create a broadly representative Pakistani-American Congress. This organization, I hope, will tackle social, religious, cultural and political problems of the Pakistanis, who are now settled in the United States. Also, I hope that the Congress will build bridges of understanding between Pakistan and the United States. We in Pakistan would like to have stable and dependable relations with the United States, where Pakistan's sovereignty is maintained and its strategic interests are respected.

Friendship cannot be stable, and credible, if the United States cultivates Pakistan only on occasions of her threatened global interests. Medium size states like Pakistan also have serious regional interests of security, which cannot be brushed aside in the debate over nuclear non-proliferation.

Pakistanis in the United States are not only the citizens of the United States, but they are also our ambassadors of goodwill. We in Pakistan expect you to play this role energetically and sincerely.

The topic that you have assigned me is a complex one. One cannot do justice to it in a short period of time. I can

only share some of my thoughts with you. A foreword to my reflections is in order.

The first part of my presentation is a bit philosophical. I hope you will forgive me if I start with the abstract ideas and then end up with concrete political realities of Pakistan. In other words, I plan to discuss the moral and political ideals of the founding fathers, including Iqbal and Jinnah, and then plow through the arid uplands of Pakistan's fragile democracy and military dictatorships, and finally, end with a cautiously hopeful note about the future developments. You will notice that I am an optimist about the future. But, I believe optimism must not be allowed to cloud our vision; excessive optimism does not enable anyone to learn anything from history, which is the best teacher that there is for nations.

With these words of caution, let me now begin with some of the fundamental problems of modernism, Islamic modernism, the role of the sharia, and what the founding fathers thought of these issues. This mode of analysis, I hope, will enable us to determine the extent to which Pakistan's political development has drifted away from the grand architectural design of the founding fathers.

(I)

What are the ideological bases of Pakistan? There is no denying the fact that in the sub-continent Islam was a nation-building force and the Muslims developed solidarity on the basis of a common spiritual aspiration rather than on common race, language and territory. Thus, when the Muslims had developed a national consciousness, they started the struggle for, and eventually managed to establish Pakistan as their homeland.

This was only one dimension of Islamic modernism where Western concepts of nationalism and patriotism were reconciled with Islam leading to the territorial consolidation of Islam. The founders of Pakistan had a definite interpretation of Islam, on which they founded Pakistan and

through which they hoped the Muslims would be able to realize their aspirations in the newly created state. The galaxy of eminent founders of Pakistan extends from Sir Syed Ahmad Khan to Muhammad Ali Jinnah. However, here I will attempt to explain Islamic modernism in the context of Iqbal and Jinnah's perspective.

Iqbal had a dream of a new Muslim society. Throughout his life he strove to define the principles on which it could be founded in the proposed Muslim state. He has expounded three basic ideas in his writings:

(1) *A New Approach to Theology*: In order to encourage the development of a correct understanding of religion, he desired the reformulation of the Science of Interpreting Revelation (*Ilm-al-Kalaam*). He thought that the new *Ilm-al-Kalaam* should be evolved on the basis of the discoveries of modern empirical sciences, because their findings were in harmony with Quranic revelations. This correlation between science and religion would strengthen the faith of modern Muslims in Islam. He believed that the day was not far off when Religion and Science would discover their mutual harmonies.

(2) *Reinterpretation of Islamic Law (Shariah) through Ijtihad*: According to Iqbal, new cultural needs had developed due to the spectacular changes that had occurred in all aspects of modern life. Consequently, the Decisions (Fatawa) of classical jurists required a review. In his view, under the broad and multidimensional principles laid down in the Quran and Sunnah, the Decisions given by the jurists at different times were valid for those specific times, but they might not be applicable to the present day needs of the Muslims.

(3) *Integration of Islamic Sciences and Modern Sciences*: Iqbal envisaged a vital change in the field of education. He believed that under the influence of Quranic teachings early Muslims had developed the experimental method and, therefore, they were the original founders of modern empirical sciences. He believed that the integration of Islamic sciences with modern sciences would rekindle the spirit of inquiry, creativity, and

innovation. He was against the separation of the religious schools from the universities and desired their integration in the academia.

It is necessary to examine Iqbal's concept of a modern Islamic state.

He viewed the formation of elected assemblies, especially in Turkey, as a return to the original purity of Islam. Relying on sura 42: verse 38 of the Quran, he argued that the fundamental principle regarding the management of state was the process of free election. He proposed the foundation of a modern Islamic state on three principles: (1) Equality; (2) human solidarity, and (3) freedom. To him, the ultimate aim of Islam was not only to create a democratic order in the secular sense, but also to make it mandatory for the Muslims to establish a genuine "spiritual democracy".

In his Allahabad Address (1930), which presented Iqbal's dream for Pakistan, he emphasized religious tolerance in the light of the Quran (sura 22: verse 40), and declared:

"A community which is inspired by feelings of ill will towards other communities is low and ignoble. I entertain the highest respect for the customs, laws, religious and social institutions of other communities. Nay, it is my duty according to the teachings of the Quran even to defend their places of worship if need be."

Also, Iqbal's letters to Jinnah reveal that in the proposed Muslim state he wanted to see the establishment of a social democracy which had the approval of the Shariah. However, he emphasized the reinterpretation of Shariah through *Ijtihad* to suit the modern needs and requirements of the Muslim community.

Iqbal proposed the practice of *Ijtihad* by taking away the power of *Ijtihad* from the *ulama* (individual jurists) and handing it over to the elected members of a Muslim assembly. Only they were competent to make laws. According to him, this was the new shape which could be given to *Ijma-e-Ummat* (Consensus of the Community) in modern times. In order to minimize the possibility of

erroneous interpretation of the Shariah on the part of the elected members of Parliament, Iqbal suggested that a Board of Ulema could be nominated by the government and it could guide, help or assist the elected members in the process of Islamic law-making in Parliament.

He was certainly not in favor of granting the *Ulema* the power to veto the laws made by the legislative assembly, as held by the *Walayat-e-Faqih* under the present Iranian constitution. Iqbal, in order to avoid erroneous interpretation, recommended the election of lawyers to Parliament. They were supposed to be not only familiar with the conventional Islamic Fiqh, but were also to be well-versed in the discipline of modern jurisprudence.

Iqbal is probably the first Muslim thinker of this century who realized that the Shariah had lost its dynamic quality. He believed that due to the extreme conservatism of the Muslim community, the judges, in their judgements, depended entirely on the ancient works of Fiqh for the interpretation of Shariah. Consequently, while the community was moving forward, Islamic law was lagging behind.

To Iqbal, *Ijtihad* was indispensable, since it was the dynamic principle in the social structure of Islam. Recognizing this, the founders of the schools of Islamic law, while interpreting Shariah, never claimed that their interpretations were final.

Iqbal stood for a complete *Ijtihad* in mundane affairs (*Muamalaat*). He agreed with Imam Karkhi's view that the future generations of Muslims were not bound even by the Unanimous Decisions of the Companions (*Ijma-e-Sahaba-e-Karaam*) when such Decisions involved the interpretation of law. Similarly, relying on Shah Wali Ullah's views in his *Hujjat Allah-al-Balighah*, Iqbal believed that Islamic punishments for crimes were not necessarily applicable for all times and therefore could not be strictly enforced on successive generations.

The views of Jinnah regarding Islamic modernism are also remarkably dynamic. He stated that *Tauhid* (Unity of God)

taught the Muslims to believe in human equality, fraternity and liberty.

In what sense did Jinnah desire Pakistan to be an Islamic state? According to him, a parliamentary form of democracy was not repugnant to the injunctions of Islam. He had declared time and again that all the Muslim sects, as well as non-Muslim minorities in Pakistan, would be treated with equality, justice and fair play. He did not want the judiciary to be subservient to the executive, but desired it to be completely separate and independent. He was against the establishment of one-man's rule or one party's dictatorship and believed in the supremacy of Parliament in Pakistan.

Jinnah did not envisage Pakistan as a theocratic state ruled by religious leaders where only people of a particular religion, for example, Muslims of the majority sect, would be full citizens and non-Muslims, as well as Muslims of minority sects, would not be full citizens. His faith in Islam was totally free from any kind of bias, bigotry, narrow-mindedness and conservatism.

Remarkably, there was harmony in the views of Iqbal and Jinnah regarding the establishment of a modern Islamic democratic welfare state in Pakistan. They were liberal and reformist Muslims who wanted to see Pakistan as an embodiment of dynamic Islam. They were both misunderstood during their times and were declared renegades or apostates (*Kafir*) by the Ulema who stood for the religious and social status quo.

(II)

Soon after the establishment of Pakistan, guidance was sought from the ideas of Iqbal and Jinnah. This is evident from the adoption of Objectives Resolution (1949) as the Charter of Freedom and a foundational principle for Islamic legislation in Pakistan, as well as the inclusion of provisions

relating to the Council of Islamic Ideology in the first Constitution framed for Pakistan (1956).

Pakistan's first Constitution was framed with great difficulty since the people of East Pakistan had to be persuaded to agree to the principle of parity with the people of West Pakistan. During the first eleven years, the judiciary was held in great esteem and the executive accepted its decisions, since it functioned as an independent conscience of the nation, and adhered strictly to the Rule of Law.

After the establishment of Pakistan, the religious leaders (and their parties) who had opposed the Pakistan movement, lost much of their importance and credibility. The Ulama were encouraged to launch a religious movement against the Ahmadis, by some politicians of the Punjab who wanted to oust Prime Minister Khawaja Nazimuddin's federal government. Consequently, the anti-Ahmadi agitation flared up in the Punjab and the first martial law was imposed in the province in the early 1950s.

This event indicated that in Pakistan the dissemination of religious fanaticism could lead to political breakdown and the imposition of martial law. The inquiry regarding the Punjab Disturbances conducted by Justices Munir and Kayani revealed that the Ulema of Pakistan did not even agree on a common definition of the term "Muslim".

No lesson was learned from this event. In 1958, when President Sikander Mirza concluded that his newly created Republican Party had no chance of winning the forthcoming elections, he imposed martial law in Pakistan and General Ayub Khan seized power. The 1956 Constitution was set aside and the Supreme Court in Dosso's case affirmed that the usurpation of power, if successful, created a new legal order. This judgement clipped the wings of the judiciary and circumscribed its jurisdiction.

In order to perpetuate his power, Ayub Khan made new constitutional experiments in Pakistan. He introduced the concept of Basic Democracies and implemented a Presidential form of Constitution in 1962. West Pakistan was

amalgamated into one unit and the capital was shifted to Islamabad. During his dictatorship, some industrial and economic development took place, but he could not satisfy East Pakistan, where regional nationalism was gaining strength. The demand was raised to make Bengali a national language alongside with Urdu.

Eventually, agitation started in East, as well as West Pakistan, for the ouster of Ayub Khan, who did not care to follow his own Constitution. Instead of transferring power to the Speaker of the National Assembly, he handed it over to General Yahya Khan. The 1962 Constitution was accordingly abrogated and the country again came under martial law.

The judiciary once again fell into the clutches of the executive. Its freedom of conscience was as circumscribed as its jurisdiction. Its dignity had already been impaired, and one felt a bad taste in one's mouth while administering justice in the court.

Under the dictatorship of Yahya Khan, the principle of parity between East and West Pakistan was abandoned and One Unit was dissolved. Free elections were held and the country broke up. It is not easy to determine whether this was a result of Bonapartism or democracy. Bonapartism can indeed break up a country. However, the issue merits serious consideration: In the absence of mutual trust and tolerance, can an impoverished, disorganized and a developing society generate democracy or produce even economic development?

After the breaking up of the country, constitutional democracy started functioning again from 1973 onwards. The Supreme Court took a turn and struck down the controversial principle upheld in Dosso's case, and declared Yahya Khan a usurper. But the dignity of the judiciary could not be restored. The civilian government of Zulfikar Ali Bhutto, in order to tighten the hold of the executive over the judiciary, insisted that the Anglo-Saxon judicial system of the country was a relic of the colonial times, and that it had failed because of its origin. Against this background, it was propagated that the traditional courts would be replaced by "Peoples Courts" on

the pattern of some socialist countries. These courts were supposed to provide cheap and quick justice to the masses.

Industrial and economic development achieved during the regime of Ayub Khan suffered a setback when Prime Minister Bhutto nationalized big, small and miniscule industries and business enterprises. It was a blow to the confidence of the entrepreneurial class. They transferred their capital to other countries, including the United States, and many have not yet been lured back to Pakistan.

Since peaceful transfer of power from Bhutto appeared impossible, all the opposition parties joined together and felt the necessity of launching a religious movement in order to get rid of him. This resulted in the "Nizam-e-Mustafa" agitation in the country and once again on July 7, 1977 the military dictatorship of General Zia ul Haq strangled constitutional democracy and the country was afflicted by yet another martial law.

When the 1973 Constitution was suspended, the old question about the legal status of martial law was raised again. The matter was considered by the Supreme Court. It was unanimously decided that the usurpation of power for a limited period was legally justified under the doctrine of "State Necessity" especially when there was political breakdown in the country.

The judgements of the Pakistan Supreme Court about the "usurpation" of power being legal at one time or illegal at another time, may appear contradictory, but in reality, they paint a pathetic picture of the country where a stable political system of peaceful transfer of power from one set of leaders to another has not yet developed. These decisions, therefore, reflect a continuous crisis of democracy in Pakistan.

Islamic history is not unfamiliar with the "usurpation of political power". Traditional Muslim jurists like al-Mawardi and Imam Abu Hanifa consider "usurpation" (Istela) valid under the Shariah law provided that the usurper undertakes to implement Islamic laws and is himself a practicing Muslim. Similarly, according to Shah Wali Ullah, a renowned jurist of

Muslim India, there are only three legal methods of constituting an Islamic government and these are: *Election*, *Nomination*, and *Usurpation*. But these precepts are of conventional Islamic jurisprudence. As is evident from Objectives Resolution, the founders of Pakistan had a reformist approach. Therefore, they only approved of "election" as the legal method of constituting a modern Islamic government. Also, they regarded democracy as a return to the original purity of Islam.

Pakistan was created on the basis of election. If the independence of judicial conscience as well as supremacy of the Rule of Law are to be maintained, they can be realized only through the establishment of constitutional democracy. It appears from the brief political history of Pakistan that the patience and tolerance which are required for the development of a reformist way of thinking, have not been cultivated.

From the standpoint of conventional Fiqh, Zia ul Haq was a perfect Islamic usurper. He led his personal life within the limits prescribed by Islam and he initiated a process of Islamization in the country. Had he lived in the thirteenth century Muslim India, he, like Jalaluddin Khilji or Muhammad Tughlaq, would probably have been the founder of his own dynasty.

During Zia's dictatorship, the country was afflicted by ethnic violence, disregard for the rights of women, and religious fanaticism. The judicial power declined further as it was asserted by Zia that Islamic "Qazi Courts" would be established in order to provide cheap and quick justice to the masses. At one stage, it was generally believed that the present judicial system in Pakistan would be completely abolished. This attempt of keeping the judiciary in the clutches of the executive also failed.

It has already been pointed out that no method was evolved in Pakistan for a peaceful transfer of power. The only method put into practice for removing the wielder of power has been to launch some sort of religious agitation against

him. However, this device, if the opposition leaders had chosen, would certainly have failed in toppling Zia since he talked about nothing except implementing his brand of Islam. It was the consistent adoption of this strategy by him that gave a thin air of legitimacy to his autocratic rule.

Consequently, the form of democracy approved by him was meekly accepted by the political leaders. A kind of constitutional democracy again started functioning in the country. However, after the death of Zia in an air crash, certain important decisions were taken by the Supreme Court which paved the way for the establishment of a proper democratic order in Pakistan. Since then, elections have been held on two occasions and power was transferred peacefully from one group of leaders to another.

The Muslim fundamentalists, who were, in fact, the real supporters of Zia, still have the Shariat Bill in their arsenal, which can be used to foment an agitation in order to topple any government. According to the founders of Pakistan, at critical moments in Muslims' history, it was Islam that had saved the Muslims and not vice versa. But, in Pakistan, a practice has been developed by religious leaders to mobilize street force with the slogan that Islam is in danger. This practice has been adopted to engender a spirit of frenzy and agitation leading to political breakdown. It is successfully used by political opponents for the destruction of democratically elected governments and in the past, it has usually led to the imposition of martial law.

An important question deserves to be raised: Are the Islamic laws promulgated by Zia and retained subsequently by the democratic governments, and the new Islamic legislation on the same lines in the form of the Shariat Bill proposed by certain quarters, in conformity with the views held by the founders of Pakistan? If the answer to this question is in the affirmative, then the Pakistanis do not really mean what they say; and if it is in the negative, then they have abandoned the ideology on which Pakistan was founded, and have moved in an altogether different direction.

(III)

Pakistan is one of the developing countries of the Third World. It hardly makes any difference whether it is a Muslim or a non-Muslim state. Its problems are, generally speaking, identical with those of the other less developed countries. The solution of those problems does not in any way come into conflict with Islam. Regardless of the power struggle among different political leaders, whosoever forms the democratically elected government in Pakistan will naturally be confronted with the same problems. Institutionally, it is necessary to develop a stable political system which would enable peaceful transfer of power from one party to another.

More than half of the life of Pakistan has been spent under military rule. One can only hope that by now all concerned have learned a lesson. The recent peaceful transfer of power from the PPP Government to the IJI Government leads one to hope that the current democratic phase is not merely an interlude, but an enduring reality.

Some of the major problems of Pakistan, as everyone knows, are: Poverty, high rate of illiteracy, lack of medical facilities, inflation, unemployment, population explosion, insecurity, difficult terms in trade relations with the West, and dependence of the entire national economy on loans. These problems have generated complications of national integration and political instability resulting in successive military regimes, lack of mutual trust, dissemination of regional prejudices and ethnic hatred leading to violence, absence of religious tolerance, and border disputes with neighboring countries. A large bulk of the national budget is being spent on defense, and most regrettably, Pakistan became a victim of the rivalry of the superpowers.

The prevalence of ignorance and credulousness among the masses is due to lack of education. The population has become gullible, and has always been exploited by the

protagonists of bad religion, fraudulent spiritual preceptors and unscrupulous politicians.

The universities have become intellectual wastelands and students have been politicized to the extent that they do not learn and the teachers do not teach. The best of the students, as well as the professionals and intelligentsia, migrate overseas to the Middle East, Europe, and the United States. The working classes become taxi-drivers, sweepers, waiters, busboys, and plain domestic servants overseas and some even engage in the traffic of narcotics.

In 1947, when Pakistan came into existence, the population of West Pakistan was between 38 to 40 million. Now Pakistan's population has exceeded 110 million. Unfortunately, Pakistan has neither been able to control and plan its population, nor has it developed economically to keep pace with the rise in population. If countries like Korea and Taiwan, which were international basket cases in the 1950s, could become impressive economic powers, there is no reason why Pakistan cannot be equally successful.

Among the smaller provinces of Pakistan, there is a distinct feeling of relative deprivation in the sense that they do not feel that they can participate in the political life of the country as equals. In Baluchistan, in the past, military actions were repeatedly taken to subdue the province, and the province of Sindh has become a killing field because of ethnic violence. No government of Pakistan has really tried to find a solution to the problem other than clamping down hard on the elements which are supposedly responsible for ethnic violence and the general breach of law and order. However, the positive side is that the Pashtuns in the North West Frontier Province, have begun to feel that they are dynamic partners in the administration, armed forces, and the political life of Pakistan. This salutary development is indeed to be welcomed.

The recent peaceful transfer of power and the functioning of constitutional democracy in Pakistan indicate that the future is not bleak. The areas which require special attention

are obviously education and economic growth. In some ways, Pakistan's industrial progress has been fairly remarkable. Its impressive peaceful nuclear program, as a source of energy, can provide cheap electricity to light up the rural and remote areas, as well as to run all kinds of industries.

The present government has made it clear that in the future the national economy would not depend on foreign loans and that economic problems would be resolved through indigenous means and sources. On the principle of self-reliance, the government has already presented a scheme of industrial development in the country. Similarly, a new educational policy is being prepared, and in view of the industrial aspects of the economy, the government would invest more money in scientific and technological education. These policies should also be welcomed, and I hope that they will be fully implemented.

If all efforts are directed towards the dissemination of education and well-planned industrialization in the country, the democratic order can usher in an era of national integration, peace and prosperity in Pakistan. It is not improbable that these targets could be achieved within the first decade of the twenty-first century, and Pakistan may be able to project a positive image of itself in the international community. We would indeed join together in harmony to welcome this development.

Thank you for letting me share these thoughts with you.

THE ACHIEVEMENT OF QUAID-I-AZAM IN THE LIGHT OF ISLAMIC HISTORY

The achievement of Quaid-i-Azam Muhammad Ali Jinnah is unique. He not only gave a concrete shape to the aspirations of Indian Islam, but by accomplishing Pakistan for the Muslims of the Indian sub-continent he also managed to achieve something which no great leader of men has been able to achieve in the annals of recent history. He brought into existence a country and a state which had never existed before – has never been heard of before. His achievement indicates that under the guidance of a great individual how easily the collective will of a people can reconcile the ideal with the real, bring down the absolutely new form from the realm of possibility and implant it as a concrete reality.

Contemporary Islam has produced such great personalities as Kam al Ataturk, Reza Shah Pehlavi and many others besides them who brought their respective peoples back to life and transformed the old into the new. Modern Islam is still full of vitality and is in the process of producing great leaders as architects of an ever-increasing number of new Muslim nations. There is activity throughout the world of Islam from North Africa to Indonesia. But there exists not a single example in our recent history where a great man built up a nation out of a rather unidentifiably mixed people by the force and of his personality and eventually managed to

secure self-determination as well as territorial specification for this newly constitutional nation.

The state created by Quaid-i-Azam Muhammad Ali Jinnah is based on the ideology of 'Muslim nationalism', an ideology which assimilates racial, linguistic and territorial diversity, and presents Islam as international. It recognizes the multiplicity of nations within Islam so long as this multiplicity does not come into conflict with the general principles of equality, fraternity and solidarity among the Muslims as established by their religious usage and cultural coherence.

Islam brought within its fold numerous mutually repellent races and transformed their aggregate into a single people possessing a self-consciousness of their own. Being non-racial, non-linguistic and non-territorial in spirit as well as in character Islam furnished a model for human unity. Accordingly the conception of Muslim brotherhood is as old as Islam and in spite of multifarious internal conflicts it seems to have survived unimpaired. The study of Islamic history makes it abundantly clear that the conception of Islamic solidarity is not a new conception but it had existed as a political reality for a considerably long time in our past history.

Islam entered the Indian sub-continent as the religion of the conquerors, and notwithstanding the state patronage, the Muslims from the very beginning developed on the lines of a distinct community particularly because they were self-conscious as a minority amid an hostile environment. The religious distinction between the Hindus and the Muslims was maintained throughout the Muslim rule in India, and the relations between the two communities were far from being cordial. The earliest account of the differences between the Hindus and the Muslims has been provided by Al-Beruni who visited India in the company of Sultan Mahmud in 1001 A.D. and his observations although recorded roughly a thousand years ago make a perfectly modern reading today.

In the sixteenth century the Naqshbandiah Order resisted all the attempts made either by Emperor Akbar himself or by

his disciples to displace Islam as the religion of the state. The order has a restraining influence upon the Mughals and their religious excursions.

Between the 16th and the 18th century the religious policy of the Mughals particularly that of Akbar and Aurangzeb represent two different models to solve the communal problem of India. Akbar's attempt failed because the Muslim minority was not willing to merge into the Hindu majority and Aurangzeb's attempt failed because by imposing the laws and institutions of the Muslim minority on the Hindu majority he offended his Hindu subjects. Thus although the political unity of the empire was maintained by the sword, ideologically India remained divided between Muslim India and Hindu India ever since the establishment of Islam in India.

Modern Islam and its problems arouse out of the political humiliation of Islam in the 18th century. Islam had deteriorated morally as well as economically. Consequently the Muslim territory one after the other fell into the hands of European Colonial Powers. This deterioration within Islam led to the growth of 'puritanic' reform movement in numerous parts of the Muslim world. The 18th century 'Puritanism' revived Islam but was violently anti-western. The followers of Ibn Abd-al-Wahhab in Arabia, Muhammad al-Sanusi in N. Africa, the Imam in S. Russia and Syed Ahmad of Bareilly in India led holy wars against their oppressors. However, within a generation or two 'puritanism' broadened into 'liberalism' and the work of Islamicizing the western ideas was taken up by Medhat Pasha in Turkey, Mufti Alam Jan in S. Russia, Sheikh Muhammad Abduh in Egypt and Syed Ahmad Khan in India. Under the able guidance of Jamal-al-Din Afghani 'liberalism' was reconciled with 'puritanism' and the foundations of 'Pan-Islamism' were laid. Shortly after the 1914-1918 war, when the Ottoman Empire was being dismembered, 'Pan-Islamism' was superceded by 'Muslim nationalism'. The emergence of Modern turkey out of the ruins of Ottoman Empire was followed by the

establishment of Modern Iran. The rest of the Muslim nations continued their struggle for independence. The rapid grandlog of Muslim nationalism has resulted in the liberation of numerous Muslim nations and is still a great force in North African Islam.

The puritanic revival of Islam in the 18th century India made the Muslims self-conscious as a religious community. The followers of Syed Ahmad Khan secured separate electorates for the Muslims which established them as a distinct national entity in the Indian sub-continent. 'Pan-Islamism' led to the development of extra-territorial sympathy among the Muslims of India for their brethren in the Middle East. The eyes of Indian Islam were turned to Central Asia and saw a revival of the spirit of Islamic solidarity. When 'Pan-Islamism' was superceded by 'Muslim nationalism' in the Middle East, Indian Islam from steadfast followed its separatist policy. The Western conception of nationalism reconciled perfectly with Middle Eastern Islam because in these countries the Muslims constituted the bulk of the population. For the Indian Islam nationalism would have meant submergence into the larger community. Accordingly nationalism was replaced by Islam as a nation building force in the Indian sub-continent. The Muslims insisted on bringing their majority into power in the N.W. and East India. By 1930 the idea that the Muslims had always remained a distinct community in their past history and on account of that they had been granted a political status, in 1906 gradually developed into the conception that the Muslims were a nation. Muhammad Iqbal dreamt of centralizing Indian Islam in a specified territory and desired to see a separate state in the Indian sub-continent as the national home for the Muslims. In other words up till 1930 there existed a Muslim nation as well as a Muslim state but only in theory. It is from 1930 onwards that the realistic approach to politics of Quaid-i-Azam Muhammad Ali Jinnah made its presence felt. He reorganized the Muslims who had been but a 'no man's lands' between the British and the

Hindus and transformed them into a 'balance' between the two great adversaries of Islam.

Within a short span of seventeen years Pakistan emerged out of a well of Indian Constitutional utopias in a spectacular manner and became a political reality. Thus the spirit of Islam which had been implanted in the Indian sub-continent twelve hundred years ago, and which had time and again in the course of its history turned either its eyes into the direction of the sister Muslim countries in Central Asia for moral support or begged its political adversaries – the Hindus and the British in vain for a respectable compromise, eventually found an anchorage. We owe the security, the peace and the tranquility of our homes to Quaid-i-Azam Muhammad Ali Jinnah. Without his achievement Indian Islam today would have either been a subjugated Islam or a wounding Islam.

The existence of Pakistan as a geographically non-contiguous state is a living proof of the force and strength of the ideology on which her foundations were laid but there are disruptionist forces today so long as a common interest is sustained in this ideology, and so long as we remain united, disciplined and faithful we shall go on providing a living example to the world that an ideology can furnish a model for human unity in spite of the geography which may drive humanity apart.

The building up of Pakistan is not as difficult as was the securing of it provided that our present day leadership rises above personal interests and private ambitions and provided that we learn to determine the value of our individual and collective action in the light of that ideology for which Quaid-i-Azam Muhammad Ali Jinnah lived and gave his life.

THE FORGOTTEN HERO

In the Pakistan Day Supplement of *the Pakistan Times*, dated the 23rd March, 1964, appeared an article entitled "The Forgotten Hero", by M. Anwar. I desire to make the following observations with regard to the afore-mentioned article.

Mr M. Anwar writes, "While Quaid-i-Azam Muhammad Ali Jinnah was the creator of Pakistan, the late Rehmat Ali was the man who dreamt the great dream which materialized into Pakistan. In the year 1932, Rehmat Ali who was then a young student at Cambridge became the first man to realise the implications of the Anglo-Hindu design to enslave the Muslims of this sub-continent for ever in an Indian Federation. He further states that although during these fateful years, seventy million Muslims were represented at the Round Table Conference in progress in London by statesmen like the late Quaid-i-Azam, the late Sir Muhammad Iqbal etc., there was not one amongst them who had really discerned the hidden design behind the concept of the Indian Federation. In his view, these Muslim leaders were afraid to talk in terms of Islam or Muslims because it was fashionable to be regarded as nationalists in those days. Therefore, it was only Rehmat Ali's solitary voice which warned the Muslims and also the delegates attending the Round Table Conference of the danger which the Muslims of this sub-continent were facing in being made a part and parcel of the Indian Federation.

I wonder if the writer of this article is aware of the following writings and statements of Allama Iqbal:-

“I have myself been of the view that religious differences should disappear from this country (India), and even now act on this principle in my private life. But now I think that the preservation of their separate national entities is desirable for both the Hindus and the Muslims. The vision of a common nationhood for India is a beautiful ideal, and has a poetical appeal, but looking to the present conditions and the conscious trends of the two communities, appears incapable of fulfillment” (A letter written in 1909 quoted in *Safina-i-Hayat* by G.Q. Farrukh p. 23).

It is known to even an elementary student of Muslim politics that Allama Iqbal was opposed to the idea of surrendering separate electorates and when the Muslim League in 1927 split on this issue, Iqbal gave his full support to the group of Muslim leaders who upheld separate electorates. Anyone who is even superficially acquainted with the writings of Iqbal would agree that from 1907 onwards, in his own words, (refer to *Iqbal Nama* Vol:1 edited by Sh. Ata Ullah p. 110) he started giving expression to a yearning for Pan-Islamic Solidarity and in the years that followed he became a stalwart of Muslim nationhood in the Indian sub-continent. “My efforts as a writer”, Iqbal wrote to a friend, “have always been to give the Muslims of India an ego of their own. This can be done through the faith of Islam and this is what I have always kept before my mind’s eye.” (Refer to *the DAWN* Iqbal Day Supplement-April 21, 1949.)

In his famous Presidential address to the Muslim League Session held at Allahabad in December, 1930, Iqbal supported emphatically such Muslim demands as the extension of constitutional reforms to NWFP and Balouchistan, the separation of Sind from Bombay Presidency and the restoration of the majority position of the Muslims in the Punjab and Bengal. He likewise opposed the idea of an Indian Federation and for the first time publicly expressed the principle of creating a Muslim State as the only solution of the communal problem. His exact words were, “I would like to see

the Punjab, NWFP, Sind and Balouchistan amalgamated into a single state. Self government within the British Empire or without the British Empire, the formation of a consolidated North West Indian Muslim State appears to me to be the final destiny of the Muslims at least of North West India." He further stated, "The exclusion of Ambala Division and perhaps of some districts where non-Muslims predominate will make it less extensive and more Muslim in population...the life of Islam as a cultural force in this country very largely depends on its centralization in specified territory."

"May I tell," Iqbal wrote in the Times of 12th October, 1931, "that I do not put forward a demand of a Muslim State out-side the British Empire, but only a guess at the possible outcome in the dim future of the mighty forces now shaping the destiny of the Indian sub-continent. No Indian Muslim with any pretence to sanity contemplates the Muslim State or series of States out-side the British Commonwealth of Nations as a palm of practical politics." (Refer to the proceedings of the Round Table Conferences 2nd Session pp. 110 and 117).

In his address to the session of the Muslim Conference held at Lahore, in March, 1932, Iqbal clearly stated that he would never accept the idea of an All India Federation, because it would destroy the Muslims as a political entity. (Refer to the Indian Annual Register, 1932, Vol: 1, p. 302). In one of his statements in reply to Pandit Nehru, Iqbal said, "If by nationalism he means a fusion of the communities in the biological sense, I should personally plead guilty to the charge of anti-nationalism. The building up of a nation in this sense is, in my opinion, neither possible nor perhaps desirable in the peculiar circumstances of India." (Refer to *Why's of the Great Indian Conflict* by M.A. Mehtar p. 86). He pointed out that the struggle for independence was not between India and England, but between the majority and the minority, and maintained, "Either the Indian majority community will have to accent for itself the permanent position of an agent of the British Imperialism in the East or the country will have to be distributed on the basis of religious, historical or cultural

affinities so as to do away with the question of electorates and the communal problems in its present form." (Statements to this effect are numerous, covering the period between 1932 and 1937. See *Harf-i-Iqbal* published by Alminar Academy pp. 75, 76 238. Also refer to *Speeches and Statements of Iqbal* p. 182). Denouncing the idea of the single Indian Federation, in one of his letters to Quaid-i-Azam, Iqbal wrote "A separate federation of Muslim Provinces, reformed on the lines I have suggested is the only course by which we can secure a peaceful India and save Muslims from the domination of non-Muslims. Why should not the Muslims of North West India and Bengal be considered as nations entitled to self-determination just as other nations in India and outside India are?" He continued, "Personally I think that the Muslims of North West India and Bengal ought at present to ignore Muslim minority provinces. This is the best course to adopt in the interests of both Muslim majority and minority Provinces." (This letter was written in 1937. Refer to *letters of Iqbal to Jinnah*, published by M. Ashraf pp. 3, 22, 23).

Mr M. Anwar writes that the word "Pakistan" was coined by Rehmat Ali in the latter part of 1932. This is correct, because on the expression in public of the idea of establishing a Muslim State by Iqbal in 1930, Rehmat Ali and some other Muslim students at Cambridge started working out a scheme under which this idea could be put in a more concrete form. However, Mr. M. Anwar has attempted to advance the thesis that all those who claim that it was actually Iqbal who dreamt the creation of a Muslim State in this sub-continent, have given a twist to history so as to give to others than Rehmat Ali the credit for conceiving and nurturing the idea of Pakistan. He contends that Iqbal was opposed to the idea of Pakistan as late as the year 1935, and in his support he refers to a letter of Allama Iqbal addressed to Dr. Edward Thompson (of course without quoting the letter). In this letter, Iqbal is alleged to have said that he thought the Pakistan plan would be disastrous to the British Government, disastrous to the Hindu community and disastrous to the

Muslim community. Actually there is enough material on record to show that Edward Thompson, being connected with the Labour Party of England and being a close friend of Pandit Nehru, was not very happy at the position which Iqbal had adopted with regard to the establishment of a Muslim State. Consequently, In his book *Enlist India for Freedom* (page 58, also quoted by M. Anwar) he was dishonest to the extent as to tell a lie about Iqbal. To begin with, there is no such letter of Iqbal addressed to Edward Thompson. If there was such a letter why did Thompson not quote it in his book? Unfortunately Mr. M. Anwar also seems to have mis-read or mis-quoted page 58 of this book again, he would perhaps note that there is no reference to any letter written by Iqbal to Thompson. What Thompson claims is that in the course of an interview, Iqbal told him that he felt obliged to advocate the creation of a Muslim State only because he was the president of the Muslim League. Otherwise he realised how destructive such a State, if created, would be for the British Government, the Hindus as well as the Muslims. Obviously there is no written or documentary evidence which could attribute to Iqbal what Thompson alleges, he said to him. Furthermore, there is no reason why Thompson's statement should be accepted when he was known to be anti-Muslim and Pro-Hindu. In addition to this the statement attributed to Iqbal by Thompson is wrong also because there was no obligation on the part of Iqbal to support the idea of a separate Muslim State, in his capacity as the President of the Muslim League. He was President of the Muslim League only in the year 1930, and at that stage the goal of the Muslim League was not the establishment of Pakistan, but securing self-determination for India in such a way that the political, cultural and religious rights of the Muslims could be safeguarded. Therefore, it is evident that there was no obligation on the part of Iqbal to support the idea of the establishment of a Muslim State. The idea was only a personal opinion of Iqbal and not the policy of the Muslim League at that time. Obviously what Thompson claims is based on a

cynical lie. At any rate, Mr. M. Anwar thinks that Iqbal was converted to the idea of Pakistan only a short while before his death. But unfortunately here Edward Thompson does not seem to agree with him. Because in another book entitled *Ethical Ideals in India Today* (published in 1942 by Edward Thompson) he mentions having received a letter from Iqbal to the effect that in his vast, undisciplined and poor country the establishment of multi-states would lead to its eventual destruction. In other words in the opinion of Edward Thompson, Iqbal had become disgusted from the idea of Pakistan shortly before his death. Both the books of Edward Thompson *Enlist India for Freedom* and *Ethical Ideals in India Today* were published in 1940 and 1942 respectively. However, Iqbal died on 21st April, 1938 and during the last year of life, as it is clear from the letters of Iqbal to Jinnah, he was an ardent and fanatical supporter of the idea of establishing the Muslim State. (For this purpose Dr. Ashiq Hussain Batalvi's book entitled *Iqbal Ke Akhri Du Saal*, may also be consulted pp. 555 to 565.)

As for the contribution of Rehmat Ali to the establishment of a Muslim State, no one would disagree that the word "Pakistan" was taken from his writings. However, the Lahore Resolution (1940) did not mention the word "Pakistan" which was actually used by the Hindu Press in the course of its attack on the resolution. Rehmat Ali started working on the geographical possibility of such a state from 1933 and the word "Pakistan" was used for the proposed Muslim State in North West India by him for the first time in a pamphlet called *Now or Never*. By 1937 he incorporated Bang-i-Islam (Bengal and Asam) and Usmanistan (the State of Hyderabad Deccan) in his original scheme. From 1940 onwards, Rehmat Ali seems to have made a further advance and suggested that all the minorities in whichever areas they predominated should be provided with separate national States. Thus he further sub-divided India (besides Pakistan, Bang-i-Islam, Usmanistan and Hindustan) into 'Curuistan', 'Rajistan', 'Maharashtr', 'Dravidia' etc. For the Muslim

Minority in the Hindu majority provinces of British India, he demarcated additional States like 'Siddiqistan' (in Central India), 'Faquistan' (in Bihar and Orissa), 'Hairderstan' (in the United Provinces), 'Muinistan' (in Rajputana), 'Maplistan' (in Madras Presidency), 'Safiistan', 'Nasaristan' etc.

Undoubtedly, Rehmat Ali was a dreamer in the real sense and his was although impracticable, the first worked out scheme for the Partition of provincial re-distribution of India before the Muslim League adopted the Lahore Resolution in 1940. Some of these schemes had been studied and examined by the League Working Committee, though the Committee does not appear to have followed any specific scheme.

Dr. S. Abdul Latif of the Usmania University at Hyderabad Deccan also presented his scheme in a booklet entitled *the Muslim Problem in India* and suggested a provincial redistribution of India into what he called the cultural zones.

Another scheme was proposed by two professors of Aligarh University, S. Zafar-ul-Hassan and A.H. Qadri. This scheme suggested a division of India into six independent sovereign states covered with numerous free cities all over India. Still another scheme entitled *The Confederacy of India* was published in 1939 by Mian Kafait Ali of Lahore. Under this scheme India was to be divided into five countries, constituting five separate federations, two Muslims and three Hindu. India was to be separated under 2 or more Central Governments and then re-assembled in a confederation. Besides these there were Abdullah Haroon's Scheme, Sikandar Hayat Khan's Scheme, Asdullah's Scheme, MRT's Scheme, Rizwanullah's Scheme and even Feroz Khan Noon's Scheme.

In addition to these schemes there were numerous other schemes and proposals which were suggested to the Muslim League as alternatives to the Lahore Resolution. These were Coupland's Scheme, Sultan Ahmad's Scheme, Roy's Scheme, Ardeshir Dalal's Scheme, Mukherji's Scheme, Dr. Ambedkar's Scheme etc. Most of these schemes emphasised the unity of India under a wider federal system.

As it has already been pointed out the word "Pakistan" was derived from the writings of Rehmat Ali, but the Muslim League did not accept or adopt the scheme of Rehmat Ali as its programme or goal, just as it did not adopt any of the other schemes referred to above. It, therefore, follows that it was Iqbal who first thought in terms of the establishment of a Muslim State and then Rehmat Ali and others inspired by this idea attempted in their own spheres to put this idea in a more concrete form and numerous schemes were worked out until the Lahore Resolution was adopted by the Muslim League and the word "Pakistan" caught the imagination of the Muslims as the name of the proposed Muslim State.

II

At the publication of the first article in the series on the *Forgotten Hero*, Raja Hassan Akhtar and Jamiluddin Ahmad very ably set the record right so far as the involvement of the personalities of Allama Iqbal and Quaid-i-Azam was concerned. The following observations are made regarding the second article in the series on *The Forgotten Hero* published in the Pakistan Times dated 3rd May, 1964.

Mr. M. Anwar, the writer of this article series, maintains that his sole object is "to bring into focus the work and personality of the late Rehmat Ali." If this is the object of the writer, then obviously there would be no need of making any comments on his thesis. But his intention, as it is reflected from these articles, appears to be to build up Rehmat Ali at the cost of Allama Iqbal and Quaid-i-Azam. This naturally hurts the feelings of every patriotic Pakistani and makes one wonder as to whether the writer of this article series is only a mouth-piece of an already known group which aims at destroying the images of Iqbal and Quid-i-Azam in Pakistan. We, therefore, feel that it is necessary to keep setting the record right (so far as the involvement of the personalities of Iqbal and Quaid-i-Azam is concerned) at the publication of each and every series of *the Forgotten Hero*.

Mr. M. Anwar writes: "The first public expression of these mental processes which had led to the putting forward of the two-nation theory, was made, as was said in the earlier article, in a pamphlet (of Rehmat Ali) dated the 28th January, 1933 in which for the first time that man of dauntless courage put forward his thesis, albeit in an embryonic form."

This is indeed a very sweeping statement and indicates that Mr. M. Anwar has not even tried to go beyond Rehmat Ali for developing a better understanding of the Muslim political history in the Indo-Pakistan sub-continent. The mental processes which had led to the putting forward of the two-nation theory have existed long before Rehmat Ali was born and there are numerous public expressions made by Muslim historians and leaders of the past to that effect.

Al-Beruni, who visited India in 1001 A.D. along with Sultan Mahmood, makes the following observations regarding the relationship between the Hindus and the Muslims in his famous book entitled *Kitab-al-Hind* (translated into English by E. Sachau): "All their (Hindus) fanaticism is directed against those who do not belong to them – against all foreigners. They call them *malechha* i.e., impure, and forbid having any connection with them, be it by inter-marriage or by any other kind of relationship) or by sitting, eating and drinking with them, because thereby, they think they would be polluted. They consider as impure anything which touches the fire and water of a foreigner and no household can exist without these two elements. They are not allowed to receive anybody who does not belong to them, even if he wished it or was inclined to their religion. This renders any connection with them quite impossible, and constitutes the widest gulf between us and them." (Vol: I p. 17).

Syed Ahmad Khan, in his writings and statements, has expressed time and again that the Hindus and the Muslims could never be united. "I am convinced," he said in 1867, "that the two communities will never unite. Although their differences are imperceptible at present, but as the number of educated class increases, their differences will lead to the

growth of mutual distrust and hatred among them. Those who live after me shall see it.” (*Hayat-i-Javid* by Altaf Hussain Hali Part I, p. 112. See also *Khutut-i-Sir Syed* ed. by Syed Ross Masud p. 66).

It was on this very basis that the Muslims demanded and eventually secured separate electorates in 1909 which made the Muslims establish themselves as a distinct political entity in India.

Maulana Muhammad Ali observed in 1923 that the ‘vast continent of India’ was ‘a geographical misnomer.’ It had no unity except ‘the misleading unity of opposition.’ The cleavage between the Hindus and the Muslims was essentially religious. Consequently the problems of India were ‘international.’ (*Speeches and writings of Maulana Muhammad Ali* ed. by Afzal Iqbal pp. 296, 257). In a letter written by Maulana Muhammad Ali on January 1, 1931 (two days before he died), he pointed out to the then British Prime Minister: “The Muslims constitute not a minority in the sense in which the last war and its sequels has habituated us to consider European minoritiesA community that in India alone must now be numbering more than 70 million a cannot easily be called a minority To talk of it as a minority is a mere absurdity (*Speeches and Statements* – p. 475).

Concerning the problem of the unity of an Indian nation Iqbal was of the opinion that since each and every caste or religious unit, instead of merging itself into a larger whole, devoted its entire collective energy towards self-preservation, the problem in India was ‘not national but international.’ The principles of European democracy could not be applied to India until the fact of communal groups had been recognised. (Muhammad Iqbal Presidential Address: The Muslim League - Allahabad Session – December 1230 pp. 5 and 18).

In the light of the above quotations it can be safely concluded that the mental processes which led to the presentation of the Two-nation theory by Quaid-i-Azam had been publicly expressed long before Rehmat Ali. However, nations always tend to identify their leading personalities with

the evolution of ideas and concepts in history. Thus when Quaid-i-Azam advanced the Two-nation theory and on its basis demanded Pakistan, he crystallised the Muslim thought processes of the past one thousand years in his theory.

Similar is the position with regard to the idea of establishing a Muslim State in the sub-continent. Ever since the Muslim leaders realised that the Lucknow Pact (1916) should be undone, that the majority position of the Muslims should be restored in the Punjab and Bengal, that constitutional reforms should be extended to NWFP and Baluchistan, and that Sindh should be separated off from Bombay Presidency, they started moving in the direction of establishing a Muslim State. In fact Hindu leaders, such as B.C. Pal, Lajpat Rai and the others, even publicly expressed their apprehensions that behind the Muslim demand loomed the desire of the formation of a Muslim bloc in the North West of India. They even suspected the Muslims' sympathy for Ottoman Turkey or the involvement of the Muslim leaders (of the Khilafat days) with the 'Pan-Islamic' movement.

At any rate, it is interesting to note that Mr. M. Anwar has shifted his position with regard to Iqbal in his second article. In the first article on *the Forgotten Hero* series he had asserted that Iqbal was opposed to the idea of establishing a Muslim State up to 1935. (It is difficult to judge on the basis of what evidence he has fixed this arbitrary date). However, in his second article he maintains that Iqbal did think in terms of establishing a Muslim State in 1930 but as an Integral part of India, that the idea of a separate nationhood for the Muslims did not occur to him and that there is irrefutable evidence to show that in the days of the Round Table Conferences Rehmat Ali and Iqbal, who were both friends, often met in London and Cambridge, where they had prolonged conversations and discussions about the 'Two-nation theory' as expounded by Rehmat Ali but Iqbal could not be convinced in favour of the establishment of Pakistan.

May we ask, what is the nature of the 'irrefutable evidence to show that Rehmat Ali did meet Iqbal in London but failed

to convince him of a separate nationhood for the Muslims? Certainly Mr. M. Anwar could not be a reliable witness in this respect. As for the evidence of Rehmat Ali himself, that too has to be taken with great caution in the light of what shall follow later. At any rate, Khawaja Abdur Rahim, Bar-at-Law, who was a colleague of Rehmat Ali at Cambridge and worked along with him (Khawaja Abdur Rahim possesses about thirty letters of Rehmat Ali) has a different story to narrate. It is stated on his authority that when Iqbal came to attend the Round Table Conference in 1931, some Muslim students at Cambridge including Rehmat Ali and Khawaja Rahim called on Iqbal. Iqbal was ill and therefore, confined to bed in his apartment. The boys managed to reach him and told him that they had worked out a name for the Muslim State he had proposed in his Allahabad address of 1930. Then Rehmat Ali and Khawaja Abdur Rahim told him that it was PAKISTAN. Iqbal suggested to them that they should write each letter separately of this word and place it in front of his eyes. The students did as they were told. They visited Iqbal again on the following day and Iqbal approved of the name.

According to Mr. M. Anwar, if Rehmat Ali could not convince Iqbal in favour of the establishment of a Muslim State and that if Iqbal had only proposed the formation of a Muslim State as an integral part of India, then why have Edward Thompson, Pandit Jawahirlal Nehru and Dr. Ambedkar taken pains in establishing that although Iqbal had proposed the establishment of a separate Muslim State, he recanted and changed his mind afterwards. (See *Enlist India for Freedom* pp. 58, 59; *Discovery of India* p. 298; *Thoughts on Pakistan* p. 326). Furthermore, the name of Maulana Hasrat Mohani is associated with a scheme of creating an amalgamated North-Western Muslim 'province' in India. (See *Why of the Great Indian Conflict* by M.A. Mehtar pp. 84, 85). It was actually this scheme which was presented to the Nehru Committee but it was rejected with the remarks: "It would mean the creation of an unwieldy province sprawling all over the North and North West." (See the Nehru Committee Report in the Indian

Annual Register 1928 Vol: I, ed. by N.N. Mitra p. 20). While criticising the Nehru Committee Report Iqbal avoided the use of the word 'province' but went a step further and talked in terms of a 'State': "Self-Government within the British Empire, or without the British Empire, the formation of a consolidated North-West Indian Muslim State appears to me to be the final destiny of the Muslims at least of North West India." (Presidential Address, 1930. p. 7).

In London, when Iqbal was asked to explain what he had stated in his 1930 Address, he wrote in the *Times* of the 12th October, 1931: "May I tell that I do not put forward a 'demand' for a Muslim State outside the British Empire, but only a guess at the possible outcome in the dim future of the mighty forces now shaping the destiny of the Indian sub-continent. No Indian Muslim with any pretence to sanity contemplates a Muslim State or series of States outside the British Commonwealth of nations as a plan of practical politics. (Round Table Conference Proceedings, Second Session pp. 116, 117.)

Numerous statements of Iqbal in 1932, 1937, 1937 emphasize the distribution of India on the basis of religion, historical and cultural affinities. Finally Iqbal's letters to Quaid-i-Azam clearly state his position: "A separate federation of Muslim provinces," he wrote to Quaid-i-Azam, "reformed on the lines I have suggested is the only course by which we can secure a peaceful India and save Muslims from the domination of non-Muslims. Why should not the Muslims of North West India and Bengal be considered as nations entitled to self-determination just as other nations in India and outside India are?" (*Letters of Iqbal to Jinnah* published by M. Ashraf, pp. 22, 23).

How can it be believed that a person like Iqbal, who, from 1907 onwards, started giving expression to a yearning for Pan-Islamic solidarity and in the years that followed become a stalwart of Muslim nationhood in the Indian subcontinent, could not be convinced by Rehmat Ali of the idea of a separate Muslim nationhood?

Undoubtedly Iqbal had been criticised for the stand he had taken. W.C. Smith is of the opinion that the 'reactionary' teachings of Iqbal paved the way for the partition of India. (See *Modern Islam in India*, pp. 132, 146, 154). H. A. R. Gibb maintains that the 'backward-looking romanticism' of Iqbal 'harmonised' with the longing of the 'militant' Muslim Leaguers for a strong leader to restore the political power of Islam, and that consequently led to the creation of Pakistan. (*Modern Trends in Islam*, p. 61). E.M. Forster holds that since Iqbal gave up the cause of Indian Unity, the adherents of Pakistan claimed him as their prophet. (*Two Cheers for Democracy*, p. 296). But of course Mr. M. Anwar would have us believe that neither was Iqbal the spiritual father of Pakistan nor was Quaid-i-Azam the real expounder of the 'Two-nation' theory. These images are altogether false. The originator of the Pakistan idea, the expounder of the 'Two-nation' theory as well as the outspoken critic of the Federal Scheme was no other person than Rehmat Ali.

Mr. M. Anwar does not seem to have studied the development of the Muslim political history in the Indo-Pakistan sub-continent after the Round Table Conferences. Had he done so, he would not assert that it was Rehmat Ali's lone voice which condemned the Federal Scheme. The Round Table Conferences were failure, and since no record could be reached among the major communities of India, the British gave what they called the 'Communal Award' in 1932. Then followed the Government of India Act of 1935. The Federal System it promulgated was criticized by all Muslim leaders including Quid-i-Azam. In fact the Muslim Leaders were speaking against the Federal Scheme long before the promulgation of the 1935 Act. At any rate, since the Act had been promulgated, it was accepted at what it was worth. It is, therefore, childish to assert that only Rehmat Ali criticised the Federal Scheme and that leaders like Quaid-i-Azam were not bold enough to speak against it.

If Mr. M. Anwar's sole object is to bring into us the work and personality of the late Rehmat Ali, he need not worry

himself about such questions as to who was the first to think in terms of establishing a Muslim State, or who first expounded the 'Two-nation' theory, or who first criticized the Federal Scheme. So much work has already been done on these issues and the Pakistanis are aware of it. But Mr. M. Anwar can certainly make original contributions to our political history if he could throw some light on such questions as: Who was Rehmat Ali? Facts of the life of Rehmat Ali are rather vague. He worked as a tutor of some Nawabs' children in India and for sometime also worked as a journalist at Lahore. Then he is said to have gone to Cambridge and settled there. What were his sources of income? W.C. Smith remarks about him: "It has been widely believed in India that an Indian 'student' at Cambridge who lavishly sponsored the Pakistan Campaign, and whose means of support were not obvious, was in the pay of the India Office." (*Modern Islam in India*, pp. 254, 327).

Furthermore, if Rehmat Ali was the real man behind everything that was achieved by Quaid-i-Azam, why do we have no mention of his name in the writings and statements of Allama Iqbal or Quaid-i-Azam? In 1940, when the famous Lahore Resolution was passed, Rehmat Ali is reported to have been in India. Why did the Muslim League not own him? Afterwards, when Pakistan had been established, Quaid-i-Azam appointed as Ministers in the first Cabinet persons like Muhammad Zafarullah Khan who had been opposed to the very idea of Pakistan. Why did Quaid-i-Azam not make any use of Rehmat Ali? Rehmat Ali wrote a book (it is banned throughout Pakistan) in which he hurled abuses on Quaid-i-Azam and made such accusations against his person that even the worst enemies of Quaid-i-Azam had never made such accusations against him. Would Mr. M. Anwar make us believe that the accusations levelled by Rehmat Ali against the person of Quaid-i-Azam were justified? These are the questions indeed which Mr. M. Anwar could answer if he desires to bring into focus the work and personality of Rehmat Ali.

THE IDEOLOGICAL BASIS OF PAKISTAN

What is it that binds Pakistan together in spite of its bizarre layout and makes the Pakistanis feel that they are one nation? It is now generally accepted that Pakistan is a state which has been carved out, not on a racial, linguistic, or economic basis, but on that of religious unity. This explanation, although, in a way, correct, tends to mislead those, who not being students of comparative culture, fail to appreciate what Islam means to the Pakistanis or what the Pakistanis mean when they claim, modestly or proudly, that Pakistan is an ideological state or that the political ideology of Pakistan is founded on Islam.

Anyone brought up and educated in the contemporary Christian tradition is conditioned to think that religion and state are by nature and definition completely distinct entities. This way of thinking is obviously set against the background of almost two thousand years of European experience of Christianity. Further-more, the European image of Islam, in spite of a more liberal and objective approach during the past two hundred years, continues to remain, to a considerable extent, medieval. It is, therefore, understandable that when the Muslims of the Indian sub-continent laid their claim to national unity upon the identity of religious belief, "In the western mind," to quote Keith Collard, "this conjured up vague (and usually unhistorical) visions of Muslim fanaticism, the holy war, the *Jihad*, the conquest of the empire by the

sword, the forced conversion of the infidel and the destruction of temples and idols.”²¹

In the existing circumstances, the writer, as a Pakistani, is perfectly aware that he is at a disadvantage to make himself fully understood by anyone who is reluctant to consider religion as the basis of nationality, and who instinctively feels that the concept of a nation or a state based wholly on religion may be acceptable to the sixteenth and seventeenth centuries but is regarded as a reactionary anomaly by the twentieth century. *Notwithstanding the difficulties involved in its presentation*, a sincere attempt will be made to give a brief exposition of the case of the Pakistanis.

Let us approach the question; what does Islam mean to the Pakistanis? To begin with, it must be understood that Islam does not recognize any distinction between church and state, the spiritual and the temporal, or the holy and the profane. There exists no duality of spirit and matter in Islam. Its religious ideal and social order are organic to each other. Accordingly, neither priesthood nor church-organization has any place in Islam. The doctrine of personal religion and secular politics, therefore, is alien and contrary to the spirit of Islamic teachings. Most of the laws of Islam are essentially temporal, although their source is believed to be revelational. For instance, a Muslim testator cannot give away more than one-third of his property as a bequest or legacy under his will; the same restriction is imposed on the testamentary capacity of a person governed by the Roman-Dutch Law. But whereas this principle of the Roman-Dutch Law is readily accepted as a principle of secular law, the very same principle of Islamic Law is disposed of as a principle of religious law merely because its source is claimed to be revelational.

It is, therefore, necessary that Islam should be approached with a different frame of mind. A way of life like Islam which has in itself aspects purely religious, social, political, legal, economic, military, ethical, literary, artistic, mystical, and philosophical as well as scientific, cannot, in its totality, be casually put in the category of a mere religion. The Arabs,

Persians, Turks, and others who made contributions to the different fields of Islam, did not make these contributions on any racial or national basis. It, therefore, follows that Islam should be accepted and understood not only as a religion but as an attitude of mind, mode of thinking, way of life, culture or civilization—and this is precisely what Islam in its totality means to the Pakistanis.

As pure religion 'Islam' means 'peaceful submission or surrender' (to the Will of God) and 'Muslim' means 'the one who peacefully submits or surrenders' (to the Will of God). The structural principles of Islam are: belief in the Unity of God and the Finality of Muhammad's prophethood; the obligations of praying five times a day; fasting during the month of Ramadan; paying the Alms-tax and performing the pilgrimage to the holy cities of Mecca and Medina. Strictly speaking, a Muslim is not only to believe in these essentials but also to actually practise them. A Muslim who performs these obligations, recites the Quran regularly, accepts the genuineness of the missions of Abraham, Moses, Jesus Christ, and all the other prophets down to Muhammad, believes in the Day of Judgement, and leads a life of conformity to the ethical standard of Islam, would naturally be regarded as a practising Muslim. However, those Muslims who may only believe in these essentials and are not practising Muslims as such do not fall outside the pale of Islam because they are tied to the common cultural tradition and are part and parcel of the same social order. The Hanifite School of Islamic Law, which the bulk of Pakistani Muslims follow, draws a line between 'belief' and 'practice', and claims that so long as a person believes in the Unity of God and the Finality of Muhammad's prophet-hood, he remains within the fold of Islam even though he may fail to perform the obligations of the Faith. The actual performance of the Obligations can also be dispensed with by the practising Muslims in exceptional circumstances. For instance, the payment of Alms-tax is not required from those who are too poor, and the performance of pilgrimage is not incumbent on those who cannot

economically afford it. Similarly, praying and fasting can be discontinued under conditions of physical or mental ill-health. Even the cardinal principle of Islam — belief in the Unity of God and the Finality of Muhammad's Prophet-hood — can be abandoned in case its profession endangers the life of a Muslim who may have fallen into the hands of the enemies of Islam. It has already been pointed out that there is no church-organisation in Islam, therefore, inquisition as well as ex-communication, as understood in the West, are again alien and contrary to the spirit of Islamic teachings. Like Christianity, there are numerous sects in Islam, but unlike Christianity, there is a unanimous agreement among the different Muslim sects on the primary essentials of Islam. It is because of the belief of the Muslims in these essentials that there prevails a uniform spiritual atmosphere in the entire Muslim world.

One outstanding feature of the religious life of the Muslims which usually escapes the notice of the Western critics of Islam is the unfathomable love of the Muslims for the person of Muhammad. Muhammad proclaimed himself as the Warner and the Messenger of God, yet he always held himself out as the slave of God and never claimed divinity for himself. Accordingly, Umar, one of the devout companions of the prophet, while announcing his death to the Muslim congregation, exclaimed: "Let it be known to those who worship Muhammad that Muhammad is dead. But let it be known to those who worship God that God is ever-living and ever-lasting." The Muslims love Muhammad because they regard him as the best that mankind produced. Nevertheless they are most resentful if they are addressed as 'Muhammadans' because, although they follow the path of Muhammad, they do not 'worship' him.

Let us now approach the other question. What do the Pakistanis mean when they claim that Pakistan is an ideological state or that the political ideology of Pakistan is founded on Islam? In other words, what is the genesis of Islamic nationalism, the development of which in the Indian

subcontinent eventually led to the establishment of Pakistan. The answer will cover an exposition of Islam as a nation-building force, the historical conditions under which Islam played this important role in the body-politic of Muslim India and the aspirations of the modern Pakistanis with regard to the establishment of an Islamic state in Pakistan.

Modern Islamic revival starts from the eighteenth century. It resulted from the religio-political conditions prevailing in the Muslim world, and commenced in the form of 'puritanic' reform movements in Arabia, North Africa, South Russia, and India. Within a century, owing to the impact of the West, 'puritanism' broadened into 'liberalism' and attempts were made by the Muslim reformers to islamize the Western ideas which had infiltrated into the world of Islam, 'Puritanism' had been anti-Western whereas 'liberalism' was not. However, in the beginning of the twentieth century, the fear of European expansion led to a movement for Islamic solidarity (also called the 'Pan-Islamic' movement). By the end of World War I, a large number of Muslim countries lost their independence and were occupied by the European colonial powers. This stimulated the growth of secular nationalism among the Muslims, particularly of the Middle-Eastern countries, and their struggle for independence began.

In Asia, particularly in India, which is Asia in miniature, nationalism was imported from the West. The Indian subcontinent had remained under the sway of Islam for more than six hundred years before it passed into the hands of the British. Although the Muslims had ruled this country for such a long period, they constituted only what may be termed a ruling minority and the Hindus remained three times more numerous than they. It may not be out of place to mention here that the generally accepted notion in the West and also propagated by the Hindus that Islam spread by the sword leading to forcible conversions is disproved by the facts so far as India is concerned. Had it really been so, the Muslims would have at least managed to constitute a majority when they had ruled this country for a period of more than six

hundred years. (Imperial Spain conquered Latin America and forcibly imposed Catholicism on the entire indigenous population of that continent in a far shorter period of time). Furthermore, the Hindus and Muslims showed no inclination to amalgamate throughout this period. Even during the British rule, the two communities, in spite of their superficial resemblances or similarities, remained basically separate and distinct from each other.

As secular nationalism spread in India, the Muslims hesitated to accept the nationalist creed primarily because they realised that for the attainment of independence and self-determination, Muslim India would have to come into conflict not only with the British but, at one stage or the other, it would also have to come to grips with the Hindu majority. Accordingly, they rejected the Western interpretation of nationalism and endeavoured to reinterpret it in their own terms.

The early leaders of Muslim India had observed nationalism in action in Europe, and they gradually arrived at the conclusion that this ideal was anti-moral as well as anti-human. It sowed the seeds of hatred between man and man, it reduced man to a brute and invoked in him the sinister desires of conquest and subjugation of other man. Secular nationalism and idolatrous patriotism taught European nations to compete against, to be jealous of, and to despise one another. Thus, adherence to these ideals divided Europe for all times to follow and dragged it into internecine wars on more than one occasion.

The Muslims were acutely conscious of being a minority (although they constituted more than seventy million) and therefore, politically speaking, always remained on the defensive in India. In the later half of the nineteenth century and the beginning of the twentieth century, on the one hand, the European colonial powers were in the process of occupying the Muslim countries of the Middle East, and on the other hand, the Hindu majority acquired more and more political power behind the hypocritical slogan of secular

nationalism. Under such conditions the Muslims felt that their survival was possible only if the world of Islam stood united. Accordingly, we note Muslim India vigorously supporting the movement for Islamic solidarity (or the 'Pan-Islamic' movement).

After World War I, as the Middle East came under the spell of nationalism and its struggle for independence started, the Muslims of the Indian subcontinent re-evaluated their political ideology in the light of the international Islamic reality. They made no alteration in their fundamental concept of international Islam, but owing to the end of the Caliphate in Turkey (in 1924) and the growth of nationalism in the Middle East, it was generally accepted that a stage had arrived when the Muslim nations must concentrate exclusively upon their individual selves, reconstruct themselves politically and economically, and when they had acquired this strength individually, they should unite as a living family of Muslim republics. Accordingly, it was preached that Islam was neither nationalism nor imperialism but a commonwealth of nations.

In the Muslim countries of the Middle East the growth of nationalism did not create any problem because in these countries the Muslims constituted overwhelming majorities and, as it were, Islam accommodated nationalism because Islam and nationalism were considered as practically identical. In India, however, the situation was completely different. In this country the Muslims happened to be in a large minority, and nationalism demanded their complete self-effacement, total absorption, and absolute extinction as a distinct political entity. They, therefore, adopted the principle of 'Islamic' nationalism and tried to seek self-determination as a 'cultural' unit.

The development of 'Islamic' nationalism led to the bifurcation of the Indian nationalist movement and eventually resulted in the secession of Islam from India and the establishment of Pakistan. Thus, the very EXISTENCE of Pakistan proved that nations were not necessarily created by the territories they occupied, but territories could be carved

out for the needs and requirements of nations. Hence, as a homeland, Pakistan is not the 'cause' of the Muslim national solidarity, but her establishment is the 'effect' of, and has resulted from the national oneness of the Muslims, in other words Pakistan did not give birth to the Pakistani nation, but Islam as a nation-building force in the Indian subcontinent gave birth to Pakistan.

In the Indian subcontinent, the formulation and elaboration of the conception of 'Islamic' nationalism was the achievement of Muhammad Iqbal (the poet, philosopher, and spiritual father of Pakistan). He dominated Muslim India intellectually between the two world wars and was mainly responsible for laying down the principle of a separate Muslim state in Indian subcontinent.

Iqbal argued that although nations were identified by the countries they occupied, 'country' as a geographical concept, did not come into conflict with Islam because its boundaries were changeable. Before the promulgation of the Government of India Act, 1935, the people of Burma were called Indians. But on the enforcement of this Act, when Burma was separated from India they became Burmese. Nationalism, therefore, came into conflict with Islam only when as a political ideal it demanded that Islam should recede into the background of a private opinion and cease to be a living factor in the collective life of a people.

As for patriotism, Iqbal maintained, if it implied that man should lay down his life merely for a portion of earth with which his soul has developed a temporary association, then obviously this ideal was meaningless. But if by patriotism it was meant that man should be prepared and willing to die for his beliefs, convictions, historical traditions, and culture, then such patriotism was an integral part of a Muslim's faith.

Iqbal distinguished 'Community' from 'nation', and explained that a nation was a group of people formed on the lines of race, tribe, language or territory. Such a group could appear in numerous forms and in a variety of places. Community, on the other hand, assimilated this multiplicity

of groups and transformed their aggregate into a single people possessing a self-consciousness of their own. In his opinion, numerous mutually repellent races embraced Islam and were thus transformed into a single community.

Tracing the development of the ideal of nationalism, Iqbal wrote, the history of religions indicated that religion was national in ancient times, as among the ancient Egyptians, Greeks, or Indians. Later on it was considered racial, as in the case of the Jews. Christianity, however, taught that religion was a personal and private affair.

Christianity was founded as a monastic order in a profane world. In civil matters it obeyed the Roman authority. When the State came within the fold of Christianity, a dispute arose between the Church and the State. Luther's revolt which was directed against the Church had far reaching consequences. The Church was separated as being a personal affair and the State came to represent the collective life of the individuals. Accordingly ethico-legal systems were evolved on national lines — recognizing race, language, and territory as the principles of human unity.

The separation of the spiritual and temporal in Europe resulted firstly, in the formation of a set of mutually ill-adjusted states dominated by interests not human but national, and secondly, in the exclusion of religion from the lives of these states. "These mutually ill-adjusted states," in the words of Iqbal, "after trampling over the moral and religious convictions of Christianity, are today feeling the need of a federated Europe, i.e., the need of a unity which the Christian church-organization originally gave them, but which, instead of reconstruction in the light of Christ's vision of human brotherhood, they considered it fit to destroy under the inspiration of Luther."²

Islam, however, according to Iqbal, established the fact that religion was neither national, nor racial, nor personal but purely human. Unlike Christianity, Islam, from the very beginning, was founded as a civil society. The legal principles laid down in the Quran, like the Twelve Tables of the

Romans, carried potentialities of evolution through interpretation. Thus Islam meant laying the foundations of a state and also laying down the broad principles of the government of that state.

The interesting feature of Islam as a polity is that whereas in the other religions the performing of one's moral obligations is left to the discretion of the individual, in Islam such moral obligations assume a 'legal' form and if they are not carried out by an individual Muslim, he could be legally penalized. Alms are collected by the state in the form of a tax, and the *Eidan* (Muslim Feasts) congregational worship cannot be attended by an individual Muslim if he has not separated and donated out of his income the share of the poor. In other words, the individual Muslim has no right to claim 'happiness' so long as the others are unfed and unclothed.

Islam also makes it obligatory upon its adherents not only to tolerate the believers in other faiths but to defend their places of worship if such a need arises. God says in the Quran: "If God had not raised a group (i.e., the Muslims) to ward off others from aggression, churches, synagogues, oratories, and mosques where God is worshipped most would have been destroyed." (22; verse 40).

Ideally speaking, a sincere believer in one faith ought to respect the sincerity of a believer in any other faith. In Iqbal's terms, the Muslims should be aiming towards a much fuller and more complete expression of 'the hitherto partially-revealed purpose of Islam' which is the establishment of a 'spiritual' democracy that Iqbal regards as 'the ultimate aim of Islam.' In Iqbal's opinion, since the state in Islam is an aspiration to realize the ideals of equality, solidarity, and freedom in a specific human organization, it absorbs the principle on which the secular state justifies itself. The modern Islamic state, therefore, must offer more security to believers in other faiths than a secular state.

Although in Pakistan the Muslims constitute an overwhelming majority just as they do in Iran, Turkey, and the United Arab Republic, the basis of Pakistani nationality still

remains different from that of the one accepted in these countries of the Middle East. Indeed Islam is the religion of the majority communities in Iran, Turkey, etc., but the peoples of these countries are unified essentially on the basis of race, language, and territory. This is, however, not the position in Pakistan where the basis of human solidarity is a common spiritual aspiration. Thus when the Pakistanis claim that Pakistan is an ideological state or that the political ideology of Pakistan is founded on Islam, what they really mean is that the basis of nationalism in their country is human and shall always remain human.

As for the question: what are the aspirations of the modern Pakistanis with regard to the establishment of an Islamic state in Pakistan? Everone agrees that Pakistan was not created because the Muslims were endeavouring through its establishment to gain religious freedom (freedom of worship etc.). Such religious freedom was granted to them even under the British rule. The object, therefore, in creating Pakistan was the establishment of a social order based on such fundamental Islamic values as equality, solidarity, and freedom—an order founded on social justice. Unfortunately, much of the contemporary discussion about the Islamic state in Pakistan, whether conservative or nominally liberal, has remained essentially Utopian and has generally ignored the essential problem which is the poverty, degradation and suffering of the masses. In these circumstances, the revival of *Ijtihad* (independent inquiry pertaining to the interpretation of law) is the major problem facing the Pakistanis concerned with articulating liberal and progressive interpretation of Islam which is in conformity with modern experience and the rapidly changing conditions of modern life. Iqbal was quite right when he pointed out: 'The teaching of the Quran that life is a process of progressive creation necessities that each generation, guided but unhampered by the work of its predecessors, should be permitted to solve its own problems.'³ however, if the Pakistanis were to continue to seek guidance from Iqbal, and instead of accepting Islam as a

static utopian system, interpret it from the view of history as a process, then within history they would be in a position to move towards a more perfect state and thus be able to develop more adequate structures of social, economic, and political justice.

Notes and References

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- 1 *Pakistan*, p. 195.
 - 2 Presidential Address, the Muslim League (Allahabad Session), 1930, p. 3.
 - 3 *The Reconstruction of Religious Thought in Islam*, p. 168.

THE ISLAMIC IDEOLOGY

Why (it may be asked) is there renewed emphasis on the Islamic ideology ever since the present regime achieved power in Pakistan?

A critical examination of the internal policy of the regime makes it abundantly clear that it is not revolutionary in the sense that its object is to erase completely the past from the minds of the people and to start with a programme of reforms based on some absolutely new and entirely radical ideology. It, therefore, would not be wrong to say that the regime is essentially revivalistic, for it aims at clearing up the political, social and economic mess which had resulted from the lack of vision at the top in the past ten years, reviving the fundamental principles on which Pakistan was originally founded. Any form of turning back to the original principles which led to the establishment of Pakistan would automatically involve a re-evaluation of the Islamic ideology.

'How should the Islamic ideology be implemented?' is a question that seems to have occupied the minds of our theologians, intellectuals and politicians for many years. But, unfortunately, it has, up till now, only led to academic discussion in this country.

It seems that our present leadership is fully aware that the basis on which we struggled for and got Pakistan was Islam. They seem to realise that this achievement was wrongly considered by most of us as an end in itself. In reality, it was only the beginning of the struggle, for the problem of

building our country, and expressing Islam in a practicable way, still lay before us, and that was, and is an infinitely greater and more difficult task.

Muslim Ideas

Pakistan came into being because the Muslims regarded themselves as distinct from the Hindus and looked forward to developing themselves along the lines of their own distinctive culture. What do we mean when we say that we look forward to developing ourselves along the lines of our own distinctive culture? It only means that the Muslims desire to express in a practicable way the Islamic ideals of equality, solidarity and freedom, and look forward to implementing these ideals in our corporate life as a nation.

If Islam is to be expressed as a reality in our corporate life, numerous practical questions are bound to arise. Some among them will be: How should Islam be made a vital organ of the State? What are the duties of the State and those of the individual to the State from the standpoint of Islam? What are the fundamental rights of the individual from the Islamic standpoint? How can the ideals of unity and solidarity be developed and revised among our people whilst retaining intact their regional pride, culture and traditions? How should the Islamic ideology be expressed and taught in terms of the new kind of knowledge available through modern education? What methods or devices should be adopted to inculcate the Islamic ideology in the minds of the present and future generations?

The above-mentioned questions, however, are not novel. They have been raised before and numerous attempts have been made to answer them. The object here is not to make an attempt to answer these questions or to suggest possible means of implementing the Islamic Ideology. The aim of the present writer is only to examine the different attitudes with which these questions have formerly been approached and to assess the value of the answers received.

In the Indo-Pakistan sub-continent, these questions have been approached and answered by theologians, intellectuals, politicians and Muslim revivalists (of the 19th and early 20th century). The answers, however, conflict with one another because the questions have been approached with absolutely different attitudes of mind. The result has been confusion in the minds of most of the people.

The problem before us is to discuss the different attitudes with which these questions have formerly been approached so that we can find out the causes of this confusion. Then we can proceed further to discover which attitude of mind has been and is most appropriate and suitable for approaching these questions.

Theologian's Attitude

The Muslim theologian prefers to live in the past. He frowns at the concept of 'change,' rejects history as a record of experimentation in applied ethics, and is unable to realise the fact that the interpretation of Islam in the light of modern experience or the changed conditions of modern life is absolutely necessary. He, therefore, turns his back towards the future, shuts his eyes to the demands of modernity and lives and breathes in a medieval world. This attitude tends to make his approach to all problems idealistic and in a way romantic, but wholly impracticable.

In the eyes of Iqbal, the Muslim theologian is intellectually stagnant and is responsible for making Islamic thought practically stationary. It is left to the reader to assess the value in terms of practicability of the answers which are given by those who approach these questions with this kind of stagnant attitude.

Intellectual's Attitude

The modern (Muslim) intellectual, a product of secular educational institutions, who has been brought up in a borrowed (Western) tradition of culture, takes great pride in applying 'scientific reason' to contemporary problems. Since

he is fundamentally a rootless man, his approach to these questions is curiously mischievous. He is thoroughly academic, and loves to define concepts in categorical terms.

In case the question of implementing Islam is raised before him, he will innocently demand the definition of Islam. If he is told that Islam means belief in God's unity and the finality of Muhammad's prophethood, he will again ask, "Would you be so kind as to prove the existence of God to me?" Now here, he thinks, his triumph begins, for it is obviously impossible to prove the existence of God in rational terms whether it is the God of Islam or that of any other religion. The intellectual, therefore, scornfully rejects everything that pertains to Islam and regards the Islamic ideology as synonymous with bigotry and fanaticism. He either looks towards the West for inspiration (of course without having any idea of the real problems of the West) and is attracted by secularism, capitalism or atheistic socialism; or else he simply drifts as a nihilist feeling frustrated by the emptiness and lack of sense of purpose in his life.

We have a liberal and moderate tradition of approaching our theological and ideological issues. This tradition begins with Syed Ahmad Khan and comes down to Iqbal. These reformers have influenced the minds of our people and directed their transition from medieval to modern ways of thinking. It is the tradition established by these reformers which has led to the political and cultural emancipation of Islam in the sub-continent.

Such men combine in their attitudes an awareness that the basic principles of Islam must be preserved with a recognition of the value and importance of modern ways of thinking. They look to the future, but they also re-affirm the valid truths of the past. Since we are the heirs of their thoughts and their struggles, we should use their teachings as the foundation on which to build our own interpretation of the meaning of Islam for our problems today.

Anyone who takes the trouble of studying the great minds of the 19th and early 20th century Muslim revivalists (Jamal-

al-Din Afghani, Sheikh Muhammad Abduh, Syed Ahmad Khan, Iqbal, etc.), can manage to catch a glimpse of their magnificent vision of the Mussalman of tomorrow.

It is always history or the passage of time which decides the worth of concepts and their interpretations. The Prophet is reported to have said: "Do not denounce Time for Time is God." (Iqbal was very fond of quoting this Tradition). It follows from the above that the ideas which cannot stand the test of time are bound to perish. The ideas of our liberal and moderate reformers have withstood the test of time, and the trend of modern history is moving in the direction which demands the fulfilment of their ideas. It is, therefore, essential that all our ideological problems should be approached in the light of their teachings, and reforms implemented accordingly.

THE LEGACY OF QUAID-I-AZAM

Pakistan is the legacy which Quaid-i-Azam has left behind for Pakistanis. This legacy is in the form of principles and ideals on which the state of Pakistan is founded and on the basis of which it is claimed that Pakistan is an ideological state. But unfortunately, many of us, particularly young Pakistanis, born and brought up in Pakistan, do not fully understand these principles. Consequently, the Ideology of Pakistan is clouded in vagueness.

It is obvious that the people of Pakistan descend from different racial stock, speak different languages and live in geographically non-contiguous territories. The foundations of this state, therefore, could not possibly be laid on race, language and contiguousness, of territory. On these principles there exist numerous groups of people such as Bengalis, Punjabis, Sindhis, Pathans and Baluchis within Pakistan. The requirements of what is called 'nationalism' in the West are matters in Pakistan merely of understanding and properly adjusting regional aspirations of several units constituting the federated centre. The real factor which sustains this state is the existence of a consciousness among the people of belonging to each other because a large majority of them has a common spiritual aspiration, i.e., Islam. It is for this reason that Quaid-i-Azam proclaimed at a public meeting in Dacca, held on 21st March, 1948:

"Islam has taught us this, and I think you will agree with me that whatever else you may be and whatever you are, you are a

Muslim. You belong to a nation now; you have carved out a territory, vast territory, it is all yours; it does not belong to a Punjabi, or a Sindhi, or a Pathan, or a Bengali; it is yours”.

Consequently the basis of nationhood in Pakistan is and shall remain Islam. Islam acted as a nation-building force long before the establishment of Pakistan. Muslims gradually developed a national consciousness in the Indo-Pakistan subcontinent, they struggled for the right of self-determination and the establishment of an independent homeland to be carved out from those territories where they constituted majorities. They eventually secured what they wanted. Hence the formation of Muslim nation preceded the demand for a homeland. Pakistan by herself did not give birth to any nation; on the contrary, the Muslim nation struggled for and established Pakistan. Therefore, Pakistan is not the cause of any kind of nationhood. She is only an effect, a result or a fruit of the struggle of the Muslim nation for territorial specification.

We may now claim ourselves to be Pakistanis or belonging to the Pakistani nation: But this is, strictly speaking, only for the purpose of identification among other nations of the world. Pakistani nationhood is not the basis for the unity of the state of Pakistan. At the present stage of our development as a nation, it is only a secondary consideration; the primary being Islam, which cements us as a nation and also provides the basis for the unity of the state.

The same could be said respecting patriotism, i.e. laying down one's life for one's country. Muslims do not believe in worshipping the geographical features of a country called Pakistan, i.e. her soil, trees, deserts, mountains or rivers. This form of patriotism, according to them, is idolatrous. Muslims are ready and willing to lay down their lives for the religio-cultural principles on which the state of Pakistan is founded. Quaid-i-Azam clearly illustrated these principles when he addressed the officers and Men of the 5th Heavy Ack Ack and 6th Light Ack Ack Regiments in Malir on 21st February, 1948.

“Now you have to stand guard over the development and maintenance of Islamic democracy, Islamic social justice and the equality of mankind in your own native soil. You will have to be alert, very alert, for the time for relaxation is not yet there.”

Hence the first principle of the ideology of Pakistan as laid down by Quaid-i-Azam is that for Pakistanis Islam is their ‘nationalism’ as well as ‘patriotism’.

Pakistan is an ideological state for it claims itself to be Islamic. It is not a ‘theocratic’ state because Islam is essentially a polity (or a civil society). This point was explained by Quaid-i-Azam in his broadcast talk recorded on 19th February, 1948 when he proclaimed:

“Make no mistake: Pakistan is not a theocracy or anything like it. Islam demands from us the tolerance of other creeds and we welcome in closest association with us all those who, of whatever creed, are themselves willing and ready to play their part as true and loyal citizens of Pakistan.”

The Islamic state of Pakistan assimilates the qualities of an ideal secular state in the sense that ‘pure religion’ (Mazhab) is a personal affair in Pakistan and the state is committed to promote material advancement and welfare of all its citizens. Sunnis, Shias, Wahabis and other sects of Islam, Hindus, Christians, Parsis and their numerous sects are free to profess their respective personal faiths (Mazahib) and be governed by their respective personal codes of law. In the political sense, they are all citizens of the state of Pakistan on equal terms. This very important aspect of the state of Pakistan was clarified by Quaid-i-Azam in his famous Presidential Address to the Constituent Assembly on 11th August, 1947 when he proclaimed:

“You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this state of Pakistan. You may belong to any religion or caste or creed – that has nothing to do with the business of the state ... we are starting with this fundamental principle that we are all citizens and equal citizens of one state ... Now, I think, we should keep that in front of us as our ideal and you will find

that in the course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the state.”

The state of Pakistan claims itself to be Islamic in the sense that it is founded on Islam as ‘din’ (as distinguished from ‘Mazhab’), i.e., a body of Islamic principles which are for universal application. These principles are: that the state must endeavour to achieve the ideals of equality, solidarity, freedom and justice among all its citizens; that its constitution must be democratic for it must exercise its powers and authority through the chosen representatives of the people; that it must guarantee man’s fundamental rights, e.g., equality of status and of opportunity, equality before law, freedom of thought, expression, belief, faith, worship, association, assembly, movement, trade, business or profession and the right to hold and dispose of property, subject to law and public morality; that it must secure the complete independence of judiciary and uphold the supremacy of rule of law. Each of these principles can be directly traced from the Quran and the Sunnah. The following statements of Quaid-i-Azam reiterate the very same principles:

“In Islam there is no difference between man and man. The qualities of equality, liberty and fraternity are the fundamental principles of Islam.” (Address: Karachi Bar Association, 25th January, 1948).

“It is my belief that our salvation lies in following the golden rules of conduct set for us by our great law-giver, the Prophet of Islam. Let us lay the foundations of our democracy on the basis of truly Islamic ideals and principles. Our Almighty has taught us that our decisions in the affairs of the state shall be guided by discussions and consultations.” (Speech: Sibbi Durbar. 14th February, 1948).

“Brotherhood, equality and fraternity of man – these are all the basic points of our religion, culture and civilization. And we fought for Pakistan because there was a danger of denial of these human rights in this sub-continent.” (Speech: Chittagong. 26th March, 1948):

“The theory of Pakistan guarantees that federated units of the National Government would have all the autonomy that you will find in the constitutions of the United States of America, Canada and Australia. But certain vital powers will remain vested in the Central Government such as the monetary system, national defence and other federal responsibilities. Each federal state or province would have its own legislative, executive and judicial systems, each of the three branches of Government being constitutionally separate.” (Interview: Associated Press of America, 8th November, 1945).

“The constitution of Pakistan has yet to be framed by the Pakistan Constituent Assembly. I do not know what the ultimate shape of this constitution is going to be, but I am sure that it will be a democratic type, embodying the essential principles of Islam. Today they are as applicable in actual life as they were 1,300 years ago. Islam and its idealism have taught us democracy. It has taught equality of man, justice and fair-play to every body. We are the inheritors of these glorious traditions and are fully alive to our responsibilities and obligations as framers of the future constitution of Pakistan.” (Recorded Broadcast, February, 1948).

The Islamic state of Pakistan embraces the qualities of an ideal secular state (i.e. guarantees religious freedom and promotes the material advancement and welfare of all its citizens) with the addition that it is bound to promote the spiritual advancement and welfare of its Muslim citizens. This does not in anyway imply that there are classes or grades of citizenship in Pakistan. Since Muslims constitute a large majority, they have the right to demand that the head of the state of Pakistan must belong to the majority community (even this is merely symbolic for in a federal parliamentary force of democracy, the real power vests in the party which commands majority in the Assembly), or that the state must promulgate such laws and *implement such educational system* for their children which promote the material advancement and welfare of its Muslim citizens. This is also necessary for

the preservation of the ideology on which Pakistan is founded. Consequently, the second principle of the ideology of Pakistan, as laid down by quaid-i-Azam is that for Pakistanis Islam is their 'secularism' as well as 'constitutionalism.'

Islam has its own economic system. Muslims believe that the verses of the Quran can be interpreted according to the needs and requirements of each new generation. The object of Islam is to establish a balanced economic order based on fundamental human rights which ensures that no individual can exploit another. It rejects both capitalism and socialism as two extremist viewpoints and bases its own economic system on the principles of moderation; i.e., 'Iqtisad' – the maintenance of a correct balance between labour and capital. Therefore, it acknowledges the fundamental human right of 'private ownership' with the proviso that any individual cannot accumulate so much wealth that it becomes a source of exploitation of others.

In order to keep the power of capital within specified limits, the Quran forbids the taking of interest, disallows speculation, imposes the law of inheritance and a system of taxation. In addition to the above, for the protection of collective rights, there is a duty imposed on the state to continuously make efforts in providing basic necessities of life such as food, clothing, shelter, education, medical aid and employment to its citizens. Thus for the realization of these objects, any steps which the state may take, shall be considered in accordance with the Quran and the Sunnah so long as these steps are not opposed to or in conflict with the Quranic injunctions.

Quaid-i-Azam wanted to base the economy of Pakistan on 'Iqtisad', the Islamic economic system, when on the occasion of the opening ceremony of the State Bank of Pakistan on 1st July, 1948, he proclaimed:

"We must work our destiny in our own way and present to the world an economic system based on true Islamic concepts of equality of man and social justice. We will thereby be fulfilling

our mission as Muslims and giving to humanity the message of peace which alone can save it and would secure the welfare, happiness and prosperity of mankind.”

In reply to a question as to what would be the economic policy of Pakistan in an interview to a representative of foreign press on 8th November, 1945 he said:

“You are asking me to interpret what the Government will do. But personally I believe that in these modern days essential key industries ought to be controlled and managed by the State. That applies also to certain public utilities. But what is a key industry and what is a utility service are matters for the law-makers to say, not for us.”

If ‘Iqtisad’ is explained in the light of modern terminology of economics, it is an order based on ‘mixed economy’, i.e. an economy which permits individual enterprise within specified limits and side by side implements the principle of state control. The object of ‘Iqtisad’ is to realize the ideal of equal distribution of wealth through the politico-moral principles of equality, brotherhood, justice and evolution (i.e. with the consent of the people secured through democratic means) and not through clean-hatred, violence, destruction and revolution. The ultimate aim of ‘Iqtisad’ is to bring into being a welfare state of the middle class because according to the Islamic moral code the respectability of a person depends on the nobility of his character, and not on his wealth or poverty. Hence the object of the economic teachings of the Quran is to provide facilities for the have-nots so that they could achieve the living standard of the middle class, and to impose restrictions on the haves so that they could not step beyond middle class. This is precisely what is meant by ‘Iqtisad’, the only method which, according to Islam, is easy and practicable.

A study of the life of the Prophet of Islam and the practice of the Rightly Guided Caliphs reveal that there is no room for capitalism (in its generally accepted sense) in Islamic society. Accordingly Quaid-i-Azam was opposed to the adoption of Western capitalist economic system in Pakistan. In his speech

at the opening ceremony of the State Bank of Pakistan on 1st July, 1948, he proclaimed:

“The economic system of the West has created almost insoluble problems for humanity and to many of us it appears that only a miracle can save it from disaster that is now facing the world. It has failed to do justice between man and man, and to eradicate friction from the international field. On the contrary, it was largely responsible for the two world wars in the last half century. The western world, in spite of its advantage of mechanisation and industrial efficiency is today in a worse mess than ever before in history. The adoption of western economic theory and practice will not help us in achieving our goal of creating a happy and contented people.”

Hence the third principle of the ideology of Pakistan as laid down by Quaid-i-Azam is that for Pakistanis Islam is their ‘socialism’.

A community which believes in ‘Iqtisad’ (moderation) in the sphere of economics must naturally pursue neutralist foreign policy and foreign trade. The principles of Pakistan’s foreign policy were laid down by Quaid-i-Azam in February, 1948 when he proclaimed:

“Our foreign policy is one of friendliness and goodwill towards all the nations of the world. We do not cherish aggressive designs against any country or nation. We believe in the principle of honesty and fairplay in national and international dealings and are prepared to make our utmost contribution to the promotion of peace and prosperity among the nations of the world.”

Nevertheless, Quaid-i-Azam fully realized as to what were the demands of the security of Pakistan. He was dedicated to the ideals of liberty and freedom. These ideals had precedence over everything else. Therefore, he believed that strong defence was a bulwark against aggression and hence it served the cause of peace. Addressing the Establishment of H.M.P.S. ‘Dilawar’ on 23rd January, 1948 he said:

“While giving the fullest support to the principles of the United Nations’ Charter, we cannot afford to neglect our defences. However strong the United Nations Organization might be, the primary responsibility for the defence of our country will rest

with us and Pakistan must be prepared for all eventualities and dangers. The weak and the defenceless, in this imperfect world, invite aggression from others. The best way in which we can serve the cause of peace is by removing the temptation from the path of those who think that we are weak, and therefore, they can bully or attack us. That temptation can only be removed if we make ourselves so strong that nobody dare entertain any aggressive designs against us....You will have to make up for the smallness of your size by your courage and selfless devotion to duty for it is not life that matters but the courage and determination you bring to it."

However, in Pakistan, the lost ten years' long night of the corrupt, anti-moral, anti-democratic, Western capitalist oriented, highly centralized, obstinate, autocratic and cynically dictatorial regime of Ayub Khan and his hunchmen, has left behind a trail of national, political, constitutional and economic problems. We hear voices today which emphasize that Islam is not the unifying factor in the state of Pakistan; that Pakistan is a multi-racial, multi-linguistic and multi-national country; and that even its regional economy, defence, communications and foreign policy are multiple. Hopefully watching the development of these separatist tendencies, the agents of imperialism of socialist and capitalist varieties have suddenly become active. Ideologically, the situation is indeed desperate, because the growth of such negative tendencies usually leads to the disintegration of nations and countries.

Undoubtedly these tendencies developed as a reaction against the centralized dictatorship of Ayub Khan. Had political activity been really allowed during the past ten years, politico-economic leadership may have emerged on a national level. But now, although the Pakistani nation has been successful in throwing Ayub Khan and his hunchmen out of power, it psychologically continues to remain under the grip of insecurity, distrust and agitation. Consequently, it tends to look upon regional leadership exclusively for guidance in the solution of its politico-economic problems.

This negative state of mind cannot last indefinitely because at the back of their minds most of the Pakistanis feel that if

Pakistan is dismembered or broken up, there is no chance of their survival as Bengali, Punjabi, Sindhi, Pathan or Baluchi nationalities. In such an eventuality, their future would be drifting under the subjugation either of the socialist or of the capitalist sponsored imperialism. Therefore, as soon as things settle down in Pakistan and the people have time to think calmly, they will be forced to arrive at the conclusion that the positive solution of all their constitutional and economic problems is possible only if these problems are approached and resolved in the light of the ideology of Pakistan, i.e. Islam – which permeates, assimilates, absorbs and dominates all such 'isms' as nationalism, patriotism, secularism, constitutionalism and socialism.



ACADEMIC, EDUCATIONAL
AND LITERARY ISSUES



DAYS AND NIGHTS OF LITERATURE

(ADDRESS IN SEMINAR OF UNITED RELIGION INITIATIVE)

Your Excellencies, Honorable Colleagues, Ladies and Gentlemen,

I feel greatly honored to participate in the third edition of this magnificent International Festival and Colloquium on Days and Nights of Literature, particularly on the topic: "Alone in the Global Village". I am grateful to Mr. Eugene Uricaru, President of the Writers' Union of Romania, for inviting and providing me with an opportunity to meet not only the distinguished literary figures of Romania but also from the rest of the world. It is an appropriate time that the poets, writers and thinkers of the world should get together and take collective steps for the creation of a peaceful and pluralistic world for our future generations.

The loneliest personality, before the universe was created, was God Almighty. He created the universe so that He should be identified and known. Hence loneliness and solitude are associated with creativity. A creative person cannot complain about his personal loneliness, but his function is to remove loneliness. It is a great responsibility on our shoulders that we should not let an individual in this global village stand alone-helpless and bewildered as a hostage in the hands of events, but to transform the "clash" into "reconciliation" and to hold out "Globalization" as a message of human solidarity, peace and social justice. If this ideal is not realizable by the politicians, then it must be

achieved through the sincere and dedicated efforts of the poets, writers and thinkers of the world.

I may point out to this distinguished assembly that my religious text namely the Quran, attaches so much importance to the role of poets in the progress of humanity that a complete chapter titled "The Poets" has been devoted to them. Poets who disseminate love and encourage humanity to struggle for unity and peace are given spiritual eminence. But those poets who sow the seeds of discord and hatred between man and man, are rejected and like Plato, the Quran expels them from the society.

In accordance with the Muslim cultural tradition, communion with the "Unknown" or the "Divine" takes place in solitude or loneliness and in three forms: First, "revelation" which is the prerogative of the prophets; second, "intuition" or "knosis" i.e. the faculty of pre-cognition or knowing things without conscious reasoning, which is the power bestowed upon saints and mystics; and third, "inspiration", i.e., arousal of the lonely-mind to special unusual acts of creativity, granted to poets, writers, thinkers, musicians, artists, sculptors and painters. The inspiration of the poet, in some exceptional cases, can achieve such heights that his poetry becomes prophetic. One such poet was the great Romanian poet, Eminescu. A perusal of his life and works would make one arrive at the conclusion that he was a "Majzub-e-Elahi", which, in Sufi terminology means a person "Absorbed by the Unknown or the Divine". His optimistic message was for humanity at large and particularly for the Romanian nation. But unfortunately, in the times of Eminescu, Europe was under the spell of "Hegelian Rationalism" or modernity and therefore, his physicians could not diagnose the malady of the great poet. There are many other examples of productive solitude that produced higher poetry in the world literature falling in the category of "prophecy".

All of us are aware that there is no single definition of truth which is acceptable to everyone. But the great religions of the world have always taught the essential oneness of

human race. When there are multiple perceptions of the truth, we are left with no other alternative except to think in terms of humanity as a whole and to talk only of human welfare. We have to live together on this planet. The resources here are limited. The world history manifests that even if we try, we cannot totally destroy or annihilate each other. But we have the ability to hurt one another. Therefore it is necessary that we develop a larger vision and a sense of neighborhood. We have to see that our children do not inherit a planet fractured by greed, hatred and violence and consequently, with diminished surroundings. We have to create opportunities so that they could spend their life positively by pushing forward the frontiers of knowledge, for mutual benefit of humankind. Rapid technological advancement, instant communications, shrinking distances and porous boundaries have made it possible for us to help one another as we all have the ability to influence each other's lives. If we have the will we can restrain the affluent nations from economically exploiting the less-privileged ones under the slogan of "Globalization". Therefore it is possible for us to change the world consisting of man's inhumanity to man.

All religions and cultures encourage the development of a moral dimension among humankind and expect man to show it in whatever form it can be manifested. The ideal of human solidarity therefore, is not realizable without reciprocity. Collective action is required at all levels. The target of the needy should be self-sufficiency, and those who come forward to help should understand that a true self-realization is only achievable through the elimination of others' sufferings.

The global issues which confront us can be briefly described as: the uneven world population growth, the environmental destruction, the growing poverty in the Third World countries, the influence of multi-national and trans-national corporations on the global economy, the emphasis on global militarization and finally the phenomenon of terrorism.

We are all aware that large tracts of this planet are poverty stricken. The most effected out of the six inhabited continents are Africa, Asia and Latin America. The technical advancement and the power to increase food production have failed to prevent human beings from dying of malnutrition or starvation. This situation requires an urgent remedy. But unfortunately, the international economy is not balanced and favors the prosperous industrialized states. As a result the entire development process continuously suffers from stresses and strains.

The role of the multi-national and trans-national corporations which are actually the largest private commercial enterprises on earth is questionable. These giant corporations operate within or between nations but are really private companies working for the profit of their shareholders, individuals or states. They are highly organized and have access to sophisticated technology. Owing to the globalization of the capital markets they have a vast potential for industrial investment in the developing countries. But from the humanitarian point of view, if they have a potential for contributing to human welfare, they also have the potential for causing human misery.

One fails to understand what is the justification for global militarization, and particularly the spread of militarization throughout the countries of the Third World? Most of these countries have crippling debt burdens. But despite their developmental needs, the bulk of their revenue is spent on arms purchases. It appears that this is happening because the general perception is that we live in a world in which insecurity among human beings is increasing and not diminishing. In other words, we as poets, writers and thinkers have failed to create a climate of peace and international understanding in the world which is necessary for confronting the great challenges of our times. The distrust which feeds this race of armaments calls for our urgent attention.

As for the phenomenon of terrorism, the international community has not so far arrived at a consensus as to how to define it. The ambiguities concealed in the expression exist because one man's terrorist is another's freedom fighter. It could be an answer to the problem that if the international community does not help in eliminating injustice, the affected people would be bound to place reliance on violent methods. However, these methods are not only used by the aggrieved groups but also by the governments to suppress their opponents. Terrorism hinders the development of international cooperation and understanding between nations, which is necessary for the development of an international humanitarian outlook. Only two-pronged strategy could fight terrorism: One, to remove the causes of terrorism; two, to eradicate it through collective action pursued at the global level.

The problems which humanity faces today can only be resolved through the building of a global consensus. If the ideal of humanitarianism is to be realized, the vicious circle of conflict and clash has to be broken and reformed into multilateralism and reconciliation. We must recognize the worth and dignity of each and every human being as well as to respect the ethical values shared by all the members of the international community. For realizing common good, common action is necessary. I conclude with a few verses of Pakistan's national poet, Iqbal, who pleads for the unification of humanity in reconstructing the future world rather than our departure from one another into the dark realms of unproductive loneliness:

Come! let us cooperate and lead a life of harmony.
Our mutual skills can transform
This wretched planet into a paradise
Under the skies, if we together
Disseminate love and healing.
And banish jealousy, hatred and misery.

EDUCATION FOR CREATIVITY, INNOVATION AND AUTHENTIC LIVING

(Convocation Address, 2006, Southeast University Dhaka, Bangladesh)

Your Excellency Professor Dr. Iajuddin Ahmad, Hon'ble President of the People's Republic of Bangladesh, Dr. M. Osman Farruk, Hon'ble Education Minister, Government of the People's Republic of Bangladesh, Mr. Md. Rezaul Karim, Hon'ble Chairman, Southeast University and South Asia Foundation, Prof. Dr. M. Shamsheer Ali, Vice-Chancellor, Southeast University, Deans, Faculty members, Your Excellencies, dear graduates, ladies and gentlemen:

It gives me great pleasure to be with you and specially to address the young graduates of Southeast University at its first convocation. I am profoundly impressed to learn that this new University provides facilities to the students to specialize in Management Sciences, Computer Sciences, Electronics and Information Sciences, Pharmacy, Textile Engineering, Law, English and Islamic Studies. It provides education not only on its campus but also caters for distance instruction.

On an occasion like the present one, one is expected to give some advice to young men and women who are about to cross the threshold from a protected life to a world full of numerous challenges. However, I do realize that ever since the dissemination of the doctrine of GG i.e. Generation Gap between the seniors and the new generation, the technique of giving advice has become obsolete and instead, in this highly

individualistic and competitive modern world, every one is inclined to learn through his/her own mistakes.

But there may be consensus on this point that owing to globalization no nation-state in the third world today can survive without acquisition of the knowledge of Science, Technology and Economics. Studies of Science and Technology reveal that through creativity and the development of innovative way of thinking, the working of things and the quality of life can be improved.

It is difficult to define creativity, but any attempt to do so must include innovative and inventive bent of mind along with the elements of wonder and novelty. Generally speaking, in the fields of Science and Technology, the human mind, which has many potentialities, manipulates the existing ideas or external objects and as a result something unusual is produced. Creativity, therefore, breaks the conventional mode and thereby expands the limits of reason and perception. In fact human creativity, unlike God's creativity, does not create anything out of nothing but it is a result of the assessment and rearrangement of the existing things and knowledge within our environments. But it is sad to observe that the reward of originality is usually received in the form of hostility of our conformist fellow-beings, probably because the conventionalists prefer the maintenance of status quo and are inclined to disapprove anyone who has something new to say.

Usually a challenge in the collective life of a community demands the performance of a creative act for its resolution. Therefore, such a creative act is not only novel but it provides an appropriate solution to a given problem. However, the creative idea in its nature remains not only innovative but it is also exploratory and an adventure into the realm of the unknown. On the other hand, the conformist idea, as it avoids disturbing the status quo, is cautious and methodical. Thus, according to very respected philosopher friend, Professor Khawaja Masud, former principal of Gordon College, Rawalpindi, creativity is iconoclastic whereas

conformity is dogmatic. The dictum of the conformist is "why change"? But the principle on which the creative mind operates is "why not"?

Creativity involves the ability to change attitude, approach or prospect in regard to a given problem. We must not forget that every human being is endowed with numerous mental potentialities and happens to be creative in different fields and to different degrees. Consequently the difference between a genius and a common man is not of quality but is essentially of quantity i.e. the imagination, energy or persistence of the genius may be a little more developed than that of the ordinary man. There is however, agreeing with Khawaja Masud, another difference which is more important. The innovative man starts from doubting the value of the generally accepted notion and his skepticism liberates him from the shackles of conventional belief, while his urge for the new, prepares him for courageously undertaking the responsibility of his creative discovery. Creativity, therefore, implies non-conformity. A conformist is less intelligent as compared to a liberated mind. He is less confident of himself and therefore more dependant on others, more rigid and certainly more self-righteous and authoritarian.

I note that this illustrious University offers Islamic Studies as one of its courses. I trust this subject includes the causes of the collapse of Islamic polity and culture in modern times. According to all the eminent Muslim thinkers of South Asia there are three reasons for this decline: arbitrary Monarchy, sterile Mullaism and decadent Sufiism. They have proposed that for the renaissance of Islamic polity and culture, Monarchy should be replaced in the world of Islam by democracy, equality for all, respect for Human Rights and Rule of Law as these values are not repugnant to Islamic Injunctions; Mullaism to be replaced by reinterpretation of Islamic laws pertaining to mundane affairs by the elected assemblies of Muslim countries through the process of Ijtihad; and the spirit of true Sufiism to be revived through the dissemination of liberal modern education among the

illiterate masses of Islam. But all such reformist thinkers like Shah Wali Ullah, Muhammad Abduhu, Syed Jamal ud Din Afghani, Rashid Riza, Syed Ahmed Khan, Allama Iqbal and Muhammad Ali Jinnah were declared "Kafirs" by the dogmatic conformists because they dared to say something new.

It is necessary for the progress of the new education method to bid farewell to the medieval system of learning. I agree with Khawaja Masud that the times have passed when prescribed text books were expected to be committed to memory and poured out during the examination. Now only that education system will succeed which draws out the creative potential of a student, for creativity comes as naturally to the average student as it comes to the clever and brilliant one. Therefore it is the responsibility of the teachers to encourage the development of original and innovative ideas among the students. In order to tap the springs of creativity among the students, logical and rational thinking should always be encouraged, and freedom of thought must not be suppressed by coercive or authoritarian methods.

I am so pleased to learn that Southeast University has ventured to adopt a dual mode of education i.e. campus mode and distance mode. This new experiment of imparting distance education should be adopted by all the universities in the third world countries. Owing to the advancement in technology, it is now possible to make use of web-based modules, CD, email besides face to face tuition. It is a technology through which education could be provided and spread to a large number of people, as anyone who desires to be educated in any specific field of studies can learn by joining a campus or/while sitting at home. I trust Southeast University takes a further step to establish contacts or affiliation with foreign centers of excellence.

Creativity in fact is self-direction; it is to learn at one's own initiative. One cannot deny that this is an era of explosion of knowledge. In the modern world, knowledge is developing at such high speed that by the time our dear graduates leave this

grand University, what they have learnt so far, will become obsolete. Therefore after leaving your alma mater, it is only through self-education that you can keep pace with the latest developments in your field of studies. I am sure that the creative teachers of this University have launched the graduates on a new voyage of discovery by giving them an understanding of the basic structure of their subjects. This is not an advice but remember, to be creative is to fulfill yourself as a person. Consider this as this has to be, as this is your destiny.

What is authentic living? This is essentially a question of philosophy although it concerns itself with certain moral values which maybe permanent in nature or may not be permanent but subject to the law of change in accordance with the changing needs of a person. The conformist's view is that authentic living is not achievable in this world and that by observing religious obligations one should prepare himself for realizing authentic living in the hereafter. The generally accepted view is that education only informs and this is not sufficient; because a student has to be "formed" besides being "informed". It has also been held that what-you have, gained through your studies so far is not genuinely relevant. Your life at the university has merely been an exercise of a warrior equipped with certain tools. The real battle or trial shall now commence when your skill to handle the tools shall be put to a test and you would be judged also on the grounds whether as a person you are good or bad.

Once upon a time it was believed that authentic living is realized when one becomes "cultured" in the real sense through developing a good understanding of literature, fine arts, philosophy, history etc. Then came a stage when some moralists formulated the view that it was irrelevant to involve oneself in the futile discussion as to how authentic or unauthentic living can be associated with "culture". The argument proceeded, why should one bother to establish a connection between the Greek versions of the tragedy called "Electra" (written by Aeschylus, Sophocles, and Euripides)

with that of Eugene O' Nielle's "Mourning Becomes Electra". No one is interested to find out who among Marlowe, Kyd and Shakespeare originally conceived or actually wrote "Hamlet"; or which out of the three proofs i.e. teleological, ontological or cosmological establishes the existence of God. Who cares whether or not you approve the cosmology of Ptolemy, Copernicus, Galileo, Newton or Einstein. The study of literature, philosophy, history etc. or mastering of the classical languages may make one knowledgeable or may even make one cultured, but what has such specialization to do with authentic living?

There is also a view that "Peace" leads to the realization of authentic living. "Peace" is a laudable ideal for which one should aspire although it appears very difficult to achieve. One of my learned colleagues in the Supreme Court once informed me that the Chinese word for "Peace" is pictorially depicted by a roof with one woman under it. On the other hand, "War" is depicted by a roof with two women under it. The wisdom of the Chinese in these picturesque linguistic expressions is obviously indisputable so far as domestic peace and harmony is concerned.

There is another way of evaluating "Peace" as a concept. Ali Hajwari, better known as Data Ganj Bakhsh, the patron-saint of Lahore, in his *Kashf al Mahjub* (Lifting of the Veil) narrates that a young student from Merv once came to him and pleaded that he desired "Peace" for authentic living but since he was surrounded by enemies who wanted to exterminate him, the saint should pray for their destruction. The saint replied: "you should be grateful to your enemy for he is your best friend in the sense that he always keeps you awake and in a state of preparedness. Authentic living means awareness and alertness, and if conflict or competition is eliminated from your life the result will be apathy and death".

In South Asia the Muslim poet-philosopher Iqbal's contribution to the cultural renaissance of Islam is his philosophy of the "Self" which is reflected in his poetic and prose works. He believes that man is potentially a creative

activity and has a capability to become co-worker with God in the process of progressive change if he takes the initiative. Iqbal desires the rebirth of the spirit of inquisitiveness and defiance among the modern Muslim youth so that their lost station in the field of Science could be recovered.

He demonstrates through an analysis of history that in the sphere of human knowledge the Western civilization is a further extension of Islamic civilization. Everything in the Western thought that led to human progress is an elaboration of those very ideas, theories and debates which were initiated by Muslim thinkers and scientists. Therefore, if we learn those sciences and equip ourselves with that technology in a more developed form today, we will not be receiving something from an alien culture, but taking back what we originally gave to the West. In this way, he attempts to create a bridge between Islam and the West.

The values on the basis of which Iqbal elaborates his concept of authentic living, are the adoption of such moral attributes as love, freedom, courage, high ambition, and indifference towards the acquisition of material comforts. The cultivation of these attributes in one's character, according to him, is likely to result in the fortification of man's "ego" and the acts of such a person may become creative and innovative. He is of the view that the factors which destroy man's "ego" or "self" arise out of stagnation. Stagnation disseminates passive virtues like humility, submission or obedience as well as fear, cowardice, corruption, begging or asking not only for the means of livelihood but also for ideas from others, imitating and finally servitude.

Iqbal also highlights the symbol of "Eagle" to illustrate his concept of authentic living and advises the Muslim youth to adopt the five qualities which he notes in this regal bird:

- i) it soars high in the sky;
- ii) has keen eyesight;
- iii) enjoys loneliness;
- iv) does not make a nest; and lastly

v) abhors to eat the “shikar” killed by some other than itself.

In this modern age, since everyone is expected to learn at one's own initiative, my young friends! You are free to choose your own pattern of moral values for determining what is going to be your personal ideal of authentic living. I conclude by most sincerely wishing all of you the best of luck as you leave the portals of this illustrious institution and give you this parting message through the verses of Iqbal:

یہ آج کی روانی یہ ہمکناری خاک
 مری نگاہ میں ناخوب ہے یہ نظارہ
 ادھر نہ دیکھ ادھر دیکھ اے جوان عزیز
 بلند زور دروں سے ہوا ہے نوازہ

“The passive meandering of the stream,
 Creeping slowly within its muddy banks,
 Is a sight unpleasant to my eye!
 Do not look at it my dear youth!
 Turn yourself to the other side and behold—
 The fountain surging magnificently upwards
 By its own inner force.”

HALLUCINATION

Last night I heard,
Or dreamt I heard -
But was it a lingering echo
Of some voice remote and cold
Or a haunting shadow's whisper bold;
I do not know:
The minds had snatched a doleful tune;
And Night, with silvery lids half-closed
Had ceased to breath;
As if she heard,
Or dreamt she heard (like me) -
The voice that tried to reconcile
The misty heights with unknown depths:

.....

Under the leaden light of stars
Troops of wondering ghosts appear;
Spirits forsaken and earth bound,
Dreading from some unknown fear.
Amid the far off mourning sounds,
(As autumnal leaves do faintly crawl
On vast and naked ground,)
They groaned -
And glided round and round
Lo some one cried -
(I know not who)
"Hark, beware!

The time arrives;
 Awake, prepare -- !!
 And make some room;
 For God tonight
 Shall here alight
 To grant you a boon."
 "A boon for me?! But why?!!"
 As I reply;
 "For weight of crime that bends my back
 Or flame of sin that eats my soul as wax?!!"
 "Nor weight of crime
 Nor flame of sin,
 But a crescent moon with a gilded hilt
 That under the case of God was built
 Shall you receive –
 And in return,
 Few drops of blood
 Shall he demand,
 To purge the mosque from infidels –
 (Where ever collect his lovers best)
 And ever stand in row to row
 And before his high invisible Self,
 Do their shining foreheads bow)

.....

With languid eyes
 The message I took,
 While winds still snatched their tunes.
 With longing heart
 I upwards looked;
 Dark night had been illumined,
 So many sparks did float so high
 As numerous shining moons
 Then soon a mighty arm extends,
 I saw it like a tower rise
 And plucked something from off the skies;
 And then I felt,
 Or dreamt I felt –
 As if I held

A brandished steel –
 It was as wrapped in heavenly light,
 (or was it a mist of Muslim bright?)
 I saw on it a seal
 And then I heard a heavy voice,
 I think from the heights it came;
 “Draw thy sword
 And wound the earth, that it may cleave in twain.”
 I stair and pause
 And thought and thought, how could I dare.
 But suddenly my heart did leap;
 It was because of sad delight
 That made me rise with my full might –

.....

And then –
 (What I beheld?!)
 There was no sword;
 My empty grip was tight and stiff,
 Though often it did tremble.
 There were no troops of wondering ghosts,
 No mournful sounds, no groves;
 No dancing sparks now I could see,
 Nor numerous shining moons
 The night with silvery lids half-closed
 Was mute and still and calm,
 And now no more did she intend
 To listen the heights enormous;
 And winds did too give up their tune
 And lost themselves in slumbers –
 There was no noise, except –
 Dying echoes of wondering steps,
 Of far off lonely moon
 Who languidly did roam so high
 As a child who walks in swoon
 And now I felt,
 Or dreamt I felt,
 All all alone I lie
 Amid the slumbering trees who knelt

Before the mighty spirit of sky
My soul from flesh then did transcend,
I heard her passing by;
And kissing the crescent moon and stars
She flew and raged high
I traced her with my fleshy eye
As far as it could see her fly
Before the heights had made it dim;
I could not see but I listened
Above, the blessed angels hymn
And now I saw her downwards fly
A star that cuts its heavenly tie
And shoots from its abode so high
So she did fall as I could see
And falling falling she did cry
“Allah, Allah” – twice
(I heard the frame of moon quiver
The universe did shake and shiver
And far off, far off hills resound
The echo of this ethereal sounds)
Then to the desolate dungeon bound
With brilliant eyes she looked around
I saw she wore a garland gay
That in her neck would lightly sway;
There played a smile on her lips
She wiped my tears with finger-tips
Then held my arm –
So near she came,
And in my ear but secretly
She whispered the holy prophet’s name;
Then loudly said,
“Arise, arise
My warrior blessed,
Or time that flies
Will leave behind for you no prize.”

.....

HISTORY, THE BIOGRAPHY OF GREAT MEN

I believe history should be the biography of great men. My inference is derived from two basic facts. Firstly, this universe, tangible as well as intangible, is neither a system of mere consciousness nor automatism. But there exists a guiding spirit who has essentially a moral viewpoint. That source of infinite good sheds rays of light upon us and farther we are removed from the source, deeper is the darkness in which we dwell. Thus good is positive in the sense that it suggests nearness to the light. Evil negative because it suggests merely distance from the light and nothing positive within itself.

Our life here is a preparation for the life which has yet to come. Therefore, we are purposely left imperfect with a burning quest for ultimate perfection.

Secondly, though we are basically imperfect yet we have degrees of imperfection. Some of us are less-imperfect, others are more-imperfect. This variation in imperfection serves as a foundational principle for the fact of inequality in all the manifestations of God. Inequality in human species can thus, either be of powers of body, or it depends upon a kind of convention established or at least authorized by the consent of man himself.

Each and every human individual is a centre of experience. Yet the number of highly talented people in a given society is

much smaller than the number of less talented people. Hence from this variation in the centres of experience emerges the great man or the better man or comparatively the more perfect man.

We need such better men from time to time, to take us out of darkness and to lead us towards the source of light. History as the record of the achievements of such men will not only inspire the ordinary man, but also serve as a pattern for the future greatmen who have the capability of improving upon those that preceded them. Thus the quest for ultimate perfection shall continue till evil is finally conquered and good prevails. Only in this way the purpose of history can be made moralistic in an altruistic sense as is the purpose of the entire human knowledge, and mind you, ever since, which shall be the last to perceive the Divine Light.

History, a record of the movements of masses, as held by Macauley, to me seems a superficial doctrine. Masses are an aggregate of ordinary men with faulty apprehension of the universe which causes immediate change in their thought. Ordinary man should be essentially sincere and his sincerity should depend upon loyalty to the best he can perceive above himself. Great man sees reality; ordinary man, if sincere, sees the great man who is himself a piece of visible reality under the apparent reality.

Now, for a moment, let us see what Islam has to say in this matter. Life, as declared in the Quran, is a process of progressive creation. Thus this world of ours is not only to be known through concepts but something to be made and remade by continuous action.

For the felicitous fulfillment of this continuous or unending action we require great leaders. Hence history is needed to record their achievements and not the movements of ordinary men.

Lastly, the historians who think that history, being a scientific record of cause and effect, should therefore be based upon statistics or data provided by the climatic conditions of a particular country and ethnographic

differentiation of a particular race, can also be considered. Their view is that at any time if the same conditions appeared, the phenomenon in history would repeat itself. Our observation, I can say tells us that the phenomenon in history does not repeat itself exactly as the phenomenon in Astronomy or physics might repeat in given conditions. Hence to me it seems absurd to say that history is a science and therefore it should be treated as such.

INFLUENCE OF THE MATHNAVI ON MUSLIM THOUGHT IN SOUTH ASIA

(Address at 2nd International Maulana Rumi Congress, Seljuk University
Konya)

The Mathnavi of Maulana Rumi reached the Indian Subcontinent around the Twelfth Century A.D. through the Sufis of the Suhrawardiyah and Qadiriya orders. The Sufis of these orders were very active in winning converts to Islam during the period commencing from the reign of Sultan Alauddin Khilji and extending up to the times of Sultan Muhammad Tughlaq (Eleventh and Twelfth Centuries). Their method of preaching was unique, because, according to their creed, the ultimate aim of Islam was to realise the ideal of human unity. One eminent Sufi of the Suhrawardiyah order, namely Sheikh Bahauddin Zikariya of Multan was a contemporary of Maulana and was very much influenced by his teachings.

From the period of Sultan Muhammad Tughlaq down to the reign of the Mughal Emperor Akbar, (Thirteenth to Sixteenth Centuries), Islamic Sufism suffered a decline due to the influence of Buddhist and Vedantic ideas. But some Sufi orders tried to revive Islamic Sufism by seeking guidance from the *Mathnavi*. They encouraged the development of literature and poetry, and took pains to disseminate a correct

understanding of Islam imbued with a spirit of religious tolerance.

These preachers and reformers, inspired by the *Mathnavi*, emphasised particularly the ethical values of Islam and devoted themselves entirely to the character building of the people. The ideas of Sheikh Ahmad of Sirhind (also known as Mujaddid *Alaf-i-Thani*), the great Sufi sage of *Shabudi* school, were based on some basic concepts of Maulana. It was due to him that the *Shabudi* approach to *Taubid* as opposed to the *Wajudi* approach, became popular amongst the Muslims of the Sub-continent, and this distinguished them from other religious communities. Furthermore, eminent scholars and Sufis, like Khwaja Baqi Billah, Sheikh Muhaddis Dehlavi and their colleagues rendered outstanding services in the evolution of an Islamic educational system. Their efforts resulted in the preparation of a separate and distinct curriculum for Muslim children.

From the Seventeenth to Twentieth Centuries, one can easily trace the influence of the *Mathnavi* in the writings of scholars like Shah Waliullah, Syed Ahmad Barailvi and Shah Ismail Shaheed. Their disciples, such as Shah Rafiq, Shah Muhammad Ishaq, Mufti Sadaruddin, Shah Ghulam Ali, Mufti Ilahi Bakhsh, Maulana Fazal Haq Khairabadi and others further developed their ideas. Thereafter the teachings of Syed Ahmad Khan, poetry of Altaf Hussain Hali and writings of Shibli and others belonging to the Aligarh school of thought are also founded on the *Mathnavi*. On the other hand, the history of Muslim educational system in the Sub-continent reveals that throughout the centuries it has been dominated by the *Mathnavi*. Thus it would not be wrong to say that the ideas found in the *Mathnavi* eventually led to modern Islamic resurgence in the Sub-continent.

Muhammad Iqbal, the dreamer of a separate Muslim State in the Sub-continent, and the spiritual father of Pakistan was evidently inspired by the teachings of Maulana. Like any Muslim of this century who wants to retain faith in Islam, and at the same time to accept modernity, Iqbal raises certain

questions which agitate his mind. These questions are addressed to Maulana and the answers have been drawn from the verses of the *Mathnavi*. This famous long Urdu poem by Iqbal is titled "Sage Rumi and Indian Disciple"

The poem consists of an interesting dialogue between Iqbal and Rumi and indicates that, even today, the *Mathnavi* can provide solutions to all the problems faced by modern Muslims. Some extracts are as follows:

Indian Disciple: A stream of blood flows from the seeing eye because at the hands of modern knowledge Religion is tattered and torn. How can this be remedied?

Sage Rumi: Knowledge used exclusively for material gain bites you like a serpent. But as a purifier of the inner self, it becomes your best friend.

Indian Disciple: O leader of sensitive lovers! I remember the exalted dictum embodied in your verse:

Mind, strings and frame of the instrument are dry, yet wherefrom emerges the song which reminds one of the Beloved?"

The modern age is intoxicated by the song, but it does not derive any pleasure as it is transitory, uncertain and unaware of the joy of presence before the Beloved. Thus how can it know the secret as to who is the Beloved and wherefrom emerges the song, Alas! Despite the light of Arts and Sciences in Europe, the song is plunged into the abyss of darkness instead of being elevated to the heavens.

Sage Rumi: Everyone is not capable of enjoying the song. Figs are a fruit which are not relished by all birds.

Indian Disciple: I have absorbed the philosophies of the East and the West. Yet my soul remains troubled and agitated with aches and pains.

Sage Rumi: Incompetent healers have made you ill. Consult a physician who takes motherly care of you.

Indian Disciple: Alas! The Young man who gets university education has been hunted down by the European wizard.

Sage Rumi: A chick which has not grown its own wings is bound to be torn to pieces by the cat if it attempts to fly.

Indian Disciple: How long will the fight between Religion and Fatherland continue? Should the body be preferred to the soul?

Sage Rumi: At night a counterfeit coin gives the appearance of gold. Therefore gold must await the light of day to reveal its authenticity.

Indian Disciple: Tell me what is the reality of Man? I am only a speck of dust, transform me into a moon or a sun.

Sage Rumi: Outwardly man is so insignificant that even a mosquito can make his life miserable. But inwardly he has the potential to dominate the seven heavens.

Indian Disciple: The brightness of your thought can illuminate the dust. Tell me whether the object of man is to seek Reality through perception or through vision?

Sage Rumi: Man in substance is vision whereas the rest of him is only crust, and vision means enlightenment of the eye with the beauty of the Beloved.

Indian Disciple: The East is alive due to the warmth of your songs. Tell me what causes nations to perish?

Sage Rumi: Nations perish when they mistake pebbles for perfume.

Indian Disciple: Why is the Muslim of today devoid of spiritual and material power? How has his blood turned cold?

Sage Rumi: God does not disgrace any community until they hurt His chosen few by rejecting the offered truth and accepting falsehood.

Indian Disciple: How can an honest man benefit in the deserted market-place of existence?

Sage Rumi: He should sell "wisdom" and buy "wonder", as wisdom is only speculation whereas wonder is vision.

Indian Disciple: O exalted sharer of the intoxication of the eminent Companions (of the Holy Prophet) in the expedition of Badr! Resolve the problem of freewill and determinism for me.

Sage Rumi: Both falcon and crow have wings to fly, yet the wings of the falcon take it to the throne and the wings of the crow take it to the graveyard.

Indian Disciple: What is the ultimate aim of the Religion of the Holy Prophet? Does it preach striving for the rulership of the world or its renunciation?

Sage Rumi: Islam teaches me to strive to gain power, whereas Christianity teaches man to renounce the world and find refuge in the caves of the mountains.

Indian Disciple: How can baser instincts be controlled? How can the heart be awakened in the breast?

Sage Rumi: Be truly a man of God and tread on earth like a horse, obeying the commands of your Rider, and be not like a corpse that is a burden on the necks of others.

Indian Disciple: You know the secrets of the universe. Tell me how can the life of a nation gain strength?

Sage Rumi: If you are a seed, the birds will peck at you and if you are a bud, children will tear you apart. So hide the seed and spread out like a net. Conceal the bud and adopt the form of slimy grass on the roof.

Indian Disciple: You say one should search for the heart and must always strive for its possession. But my heart is in my breast, and my essence is thus reflected in my mirror.

Sage Rumi: You claim you have a heart, but the heart's abode is the highest heaven, and not the depth and degradation of a lump of flesh beating in your breast. You misunderstood me by considering your heart as the heart. What I mean is one should constantly search for men of heart, and this search you have given up.

Indian Disciple: How can one master knowledge and science? How does one acquire love and longing for the Beloved?

Sage Rumi: Knowledge and science are mastered through honest living. Love and longing come through honest living.

Indian Disciple: Society demands that one should live in the company of others. But without seclusion fire cannot be instilled in poetry.

Sage Rumi: Seclusion is required from strangers and not from those who are your own. A fur coat is worn in winter and not in spring.

Indian Disciple: In India there remains neither light nor longing for the Beloved. The men of heart in this country lead a miserable life.

Sage Rumi: Real men are never tired of disseminating light of Faith and warmth of Love. Those who spend their lives in spreading deceit and shamelessness are the mean ones.

The Muslims of the Sub-continent passed through an identity crisis after the decline of their political power. The subsequent Islamic revival was followed by a cultural renaissance. If one were to attempt to trace the philosophical

or ideological basis of Muslim nationalism in South Asia, the conclusion would be that Muslims had rejected pantheistic *Wajudi* Sufism based on the dictum: "All is God", for their survival as a community, and instead adhered to the principle that "All is from God." This purer form of Islamic Sufism is the crux of the teachings of Maulana Rumi. Hence it will not be wrong to say that since Pakistan is the creation of Muslim nationalism, its roots are in Konya even though it is geographically situated in South Asia.

ISLAM, NATIONALISM AND SECULARISM

For interpreting its religious vision in this world, Islam has always been concerned with implementing its social order. Pakistan itself came into being because Islam in the Indian sub-continent sought a State in which to implement its social order, and not because a State first came into being and then sought to be Islamic.

The active struggle for the establishment of Pakistan commenced in 1940. The question is what role did the intellectuals play in this struggle: and also one might ask what have they done since 1940 and what are they doing now? The responsibility of the intellectuals in any community should be firstly to serve their community by making honest attempts to help the people solve their problems, and secondly to provide the people with fresh and practicable ideas to simulate and guide their people. Unfortunately our intellectuals have until now been alienated from the rest of their community and therefore Pakistan has suffered from a dearth of new ideas.

It is usually said that countries are destroyed by accidents. In our country these accidents have gone by the name of politicians. During the last ten years, the term 'Politics' has meant a bitter and ruthless struggle for power, and almost complete decadence and corruption. The ideal of these crooks was only to defeat their opponents or to throw them out of office by any means. Since none of the politicians cared about the welfare of the people, the people lost their self confidence and their hopes. Pakistan passed through a

phase of distrust, disbelief, restlessness and discontent. However the present revolution has saved us from collapse. We are now standing again where we were in 1949. It is high time that we realise our responsibility to try to use our training and our talents to serve our people. We have been guilty of too much introverted cynicism and nihilism, and have become cut off from our community. A revolution is needed in our attitudes towards our role as intellectuals so that Pakistan could look forward to a bright tomorrow.

Community and Islam

What is the significance of community in Islam? The Islamic era begins from the time when the Prophet and his followers arrived in Madina from Mecca and established an autonomous socio-political order. In other words, the Islamic era began, or Islamic history started at the moment when, for the purpose of implementing its social order, Islam had managed to acquire a State. The Islamic era, unlike the Christian era, did not begin from the date of birth of the Prophet; neither did it begin from the death of the Prophet; nor from the time when the Quran was revealed.

This historical fact proves that the founding of the community is basic in Islam, and that each Muslim receives his identity because he belongs to the Islamic Community. For this reason if a poet, writer or an artist is alienated from the other members of his community, and creates art for himself alone, then his work will receive no response from his community, and he creates art for himself alone. Then his work will receive no response from his community and is not likely to last. An outstanding characteristic of Islamic civilization has been a capacity of Islam to absorb arts and sciences from other cultures, to give them fresh life, and to remould them according to the Islamic pattern. Islamic literature, Islamic fine arts, Islamic history, Islamic philosophy, Islamic ethics, Islamic mysticism, Islamic theology, in short every art and science that developed in the Muslim world has been influenced by Islam.

Islam has no place for those poets and writers who alienate themselves from the community. Such poets and writers have been condemned by God in the Surah "The Poets" of the Quran. But those are not condemned about whom God says:

"Except those who believe (in the Oneness of Allah), and do righteous deeds, and remember Allah much, and reply back (in poetry) to the unjust poetry (which the pagan poets utter against the Muslims). And those who do wrong will come to know by what overturning they will be overturned." (Surah XXVI, v. 227)

During his life time, the Prophet set a standard of literary criticism. Every poet and writer who had used his talents for the service of the community received the Prophet's approval.

New Ideas

Towards the end of the eighteenth century, owing to internal weaknesses, numerous parts of the world of Islam were occupied by the Western colonial powers. The impact of the West brought many new ideas into the Muslim world. Two of the most powerful of these ideas were nationalism and secularism. Since Islam was not inert, it did not simply accept these ideas as a passive recipient; these new ideas were only accepted to the extent that Islam as a living and dynamic force could absorb and make use of them. In the Muslim India of the 19th century, the poets and writers played a great part in adapting these ideas into an Islamic frame-work. For the first time in the history of Indian Islam, the writers used their talents for the welfare of the community. The poet Hali has great significance in this connection because he laid the foundations of what may be called literature for the service of the community. In the twentieth century, this ideal which had been formulated by Hali found its fullest realisation in the work of Iqbal.

It would be wrong to say that the twentieth century Muslim is exclusively the product of Western ideologies,

because the modern Muslim has accepted here foreign ideas only in so far they have been absorbed into and adapted by Islam. Therefore, the Modern Muslim is, both consciously and unconsciously, the product of Islam and has also needs Islam to help him to deal with the new and perplexing requirements of contemporary life.

Firstly then as for secularism the modern Muslim has not accepted it. Rightly or wrongly, the Muslims have always understood that the principle of secularism has derived from the fundamental duality of spirit and matter in Christianity, and that this principle has resulted in the elimination of religion from the corrective life of Western peoples, that is, it has led to the development of the secular State. However the idea of separating the department of religion from the other departments of an Islamic State for administrative convenience is not a new idea to a modern Muslim, because there are instances of such arrangement in the past Islamic history. A modern Muslim cannot think of accepting any principle which might have the object of eliminating Islam from the collective life of the community.

Secondly, as far nationalism the modern Muslim has not accepted it in its Western form because Islam rejects the principle according to which the unity of a people is founded on a purely racial, linguistic, or territorial basis. Nationalism, understood as a purely political ideal, puts forward claims which are contrary to Islamic teachings. But, of course, patriotism, that is to say to lay down the life for one's country is an integral part of a modern Muslim's faith.

Thus we see that in modern Islamic countries it is Muslim nationalism rather than secular nationalism which has inspired the people. 'Muslim nationalism' means that in each country inhabited by Muslims, there should be emancipation from foreign rule for all of the citizens who adhere to Islam irrespective of language or race, and that this emancipation must not come into conflict with the general principles of equality, fraternity and solidarity among Muslims, as established by their religious usage and cultural coherence.

For example, present day Iranian nationalism is essentially Shia Muslim nationalism. A characteristic feature of Arab nationalism is the difficulty of distinguishing between Arabism and Islam. The status of Indonesian nationality is only offered to Muslims. In Turkey also the status of full Turkish citizenship is granted only to Muslims; the Jews and Christians do not have the same status in the country. The 1955 riots in Istanbul have indicated that the Turkish Muslims are not willing to accept non-Muslim Turks within their concept of Turkish nationalism.

New Weapons

Today we see that on the one hand man feels close to the possibility of travelling through space and reaching other planets, but we also see that modern man has created weapons which are capable of bringing about the complete devastation and annihilation of humanity. The question is whether in the face of these new possibilities and dangers the Western countries themselves find the concepts of nationalism and secularism adequate to their needs. The same Europe who spread these ideas in Asia in the past two centuries is today uncertain and afraid of the dangers which may result from nationalism and secularism. European nations have come to understand that the division of humanity into nations based on race, language or territory is destructive, and for this very reason they are coming closer to one another. There are also signs of a revival of Christianity among Western peoples.

If our intellectuals were to accept uncritically the Western ideas of nationalism and secularism, they would be likely to become alienated from the community because they would not be sharing the aspirations and purposes which led to the establishment of Pakistan. They would, therefore, be unable to make their proper contribution to the life of the country.

Two-Nation Theory

Pakistan was founded on the principle of Muslim nationalism. The 'Two Nation Theory' was put forward as an exposition of this principle. Some of the critics of Pakistan try to say that Quaid-e-Azam Muhammad Ali Jinnah invented this theory, and that it had no true historical basis in Indian Islam. But the fact is that the problem of the two nations originally came into existence soon after the Muslims, under the leadership of Muhammad-Bin-Qasim, entered India as conquerors. In illustration of this point, let me quote the words of Al-Beruni taken from his famous work entitled, 'Kitab Al-Hind' which he wrote in the ninth century when he visited India in the company of Sultan Mahmud. He writes as follows about the contrasts he observed between the customs and habits of the Hindus and the Muslims:

"One might think that they (Hindus) had intentionally changed them into the opposite, for our customs do not resemble theirs, but are the very reverse; and if ever a custom of theirs resembles one of ours, it has certainly just the opposite meaning."

And he gives the following reasons for the complete isolation of the Muslims as a community from the Hindus:

"All their (Hindus) fanaticism is directed against those who do not belong to them — against all foreigners. They call them 'maleccha,' i.e. impure, and forbid having any connection with them, be it by inter-marriage or by any other kind of relationship, or by sitting, eating, and drinking with them because thereby, they think they would be polluted. They consider as impure any thing which touches the fire and water of a foreigner, and no household can exist without these two elements. They are not allowed to receive anybody who does not belong to them even if he wished it, or was inclined to their religion. This renders any connection with them quite impossible, and constitutes the widest gulf between us and them."

Akbar's Efforts

These thoughts were expressed one thousand years ago. The history of the Indian sub-continent shows us that

numerous unsuccessful attempts were made to solve this problem of the isolation of the two communities from each other. In the sixteenth century, Emperor Akbar renounced Islam in an effort to amalgamate the two communities, but he did not succeed. Then in the seventeenth century, Emperor Aurangzeb tried the alternative method of attempting to impose strictly the laws of the ruling Muslim minority upon the unwilling Hindu majority. This attempt also failed because the subject Hindu majority would not accept it. In the nineteenth century after the decline the power of the Moghuls and when India had fallen into the hands of the British Syed Ahmed Khan recognised the seriousness of the same problem. Later on in the beginning of the twentieth century, Maulana Muhammad Ali also said there were two nations in India.

Since Iqbal believed that Islam has always in its past history implemented its social order for the purpose of expressing its vision in this world, he vigorously proclaimed the need for a separate state for the Muslim nation in the Indian sub-continent. In the end, it was Quaid-i-Azam Muhammad Ali Jinnah who solved the problem which has appeared insoluble even to such autocratic and all powerful Emperors as Akbar and Aurangzeb. The Quaid-i-Azam said:

“The Hindus and Muslims belong to two different religions, philosophies, social customs, literatures. They neither inter-marry nor inter-dine together and indeed, they belong to two different civilisations which are based mainly on conflicting ideas and conceptions. A Muslim, according to the Hindu religion and philosophy, becomes an out-cast and he becomes a ‘malechha,’ and the Hindus cease to have anything to do with him socially, religiously and culturally or in any-other way. He, therefore, belongs to a different order, not only religious, but social and he has lived in that distinctly separate and antagonistic social order, religiously, socially and culturally. It is now more than a thousand years that the bulk of the Muslims have lived in a different world, in a different society, in a different philosophy and a different faith.”

There is a thousand years of history between the observations of Al-Beruni and the extracts from the speeches of the Quaid-i-Azam which I have quoted. It is quite apparent that the Hindus and Muslims were not able to come close to one another even in one thousand years of living together. Clearly it is not possible to say that the Quaid-i-Azam invented the problem and the theory of the two nations.

It is necessary that we should keep the principle of Muslim nationalism always clearly in our minds because it is this principle which is the basis and the 'raison d'etre' of Pakistan. If we were to relinquish this principle in favour of any other ideology, we would be committing a form of treason against the cause for which our community has already sacrificed so much. Pakistan came into being because Islam in the Indian sub-continent sought an autonomous State for the implementation of its social order. It was for this reason that the Objective Resolution 1949, was passed. It was for this very reason that the Objective Resolution received the support of the entire community. And now since we stand again in the same place where we stood in 1949, it is necessary for us once again to affirm our support of the Objective Resolution so that we can look forward to the realisation in terms of the every-day life of our people of what Pakistan ought to be.

New Hopes

Just as our problems are new, so also are our fears. Our hopes are new and our dreams are new. Our task as intellectuals is not only to train ourselves to achieve intellectual enlightenment and individual self-reliance; we need most of all a genuine vision of God's purpose for our country, and a willingness to offer our lives and our art to the advancement and betterment of our community.

When we write we should select such themes as will promote love, unity and understanding between the peoples of Pakistan, and annihilate all sectarianism and provincial

antagonisms from our midst. In our very recent past we have seen our people showing immense strength and courage in facing terrible difficulties. Why should we not find subjects from the actual examples that we know of such strength and courage so that our writings may raise the general morale of our people and help them to come to grips immediately with the many desperate and urgent problems which surround us? We should try to select such themes as can help the people learn to overcome some of their mediaeval habits and narrow-minded attitudes and as will encourage them to become forward looking in all aspects of life. Part of our responsibility is to select those themes that will help to keep before the eyes of the government the real needs and problems of the people. Finally, we should do all that we can to help Pakistan become strong, prosperous and just.

Furthermore, since we have a distinctive culture of our own, our intellectuals should find ways of implementing our cultural and social values in terms of the complex needs of the novel modern world. Just as there are certain themes which are appropriate for our writers to use in serving the present needs of the country, so also similar themes should be used creatively and in the same way by those whose talents lie in the realm of the other arts such as music, painting, sculpture and so forth.

We got Pakistan because we were Muslims and therefore, our literature should be not only constructive but also Islamic. The function of our intellectuals should be to provide fresh and practicable ideas to guide and help the people to solve their problems. If and when our intellectuals can come to understand their proper function, then Pakistan will no longer suffer from a dearth of ideas but we will find ourselves in the midst of a sudden flood of new and inspiring works of art.

ISLAMIC MYSTICISM

Islamic Mysticism is a vast subject and requires an extensive study of its numerous orders. But as the time at our disposal is short, I shall attempt to give only a general description.

What is 'Mysticism', or what is implied by Mystic experience?, are the questions that require explanation. Still, there is no denying of the fact that, the nature of the phenomenon being vital, its definition in strict empirical terms would be out of question. We are aware that the knowledge apprehended of sense-experience has its limits, for it does neither affirm the self as a finite non-material entity nor God as an Infinite non-material Absolute. When the question 'What am I' is raised, sense-experience only provides us with perceptual data, accurate as well as inaccurate; without solving our enigma. Existence and nature of the self, therefore, can only be affirmed by some other form of experience than merely sense experience.

Let us now study briefly the main argument that human Reason seems to have advanced for the existence of God. Rational identification of the self, for instance, with an infinite non-material Absolute (that is ontological proof for the existence of God), as we shall presently see, is often too serious criticism. Descartes maintained that we have the idea of a perfect Being in our mind whose source cannot be nature because nature is change. Thus corresponding to the idea in our mind there must be an objective counterpart

which is its cause. This provokes criticism because an idea of a perfect Being in my mind cannot include its objective existence.

The Cosmological argument on the other hand, considers universe as a definite effect, and passing through a chain of dependent sequences, described as causes and effects, comes to an abrupt stop, at an uncaused final cause, because of the unthinkability of an infinite regress. The argument is defective firstly, the relation of cause and effect is equally necessary to each other. Secondly, the necessity of existence of the uncaused final cause is not identical with the conceptual necessity of causation.

The theological argument is no better either, for it considers God as a designer and accepts the possibility of pre-existing material which He does not appear to have created. But the designer regarded as external to his material must always remain limited by his material, and have a finite designer.

These are the three main arguments which human reason have put forward for establishing the existence of God. Rationally speaking, these attempts show a sincere quest after the Absolute, yet logically portray a superficial interpretation of Reality, for the argument fall to pieces by the same instrument that actually constructs them.

I have so far tried to explain how a posterior knowledge, that is, the knowledge that we derive through our sense-experience, as well as the knowledge that we desire through our Reason, fails to establish the existence of self and of God. And as long as the problem of existence of self and of God is not solved, the question of relation of the two would be irrelevant.

Yet, there is another source of knowledge – that is, innate or a priori knowledge. The source of this knowledge, it is held, is instinct, developing into flashes of intelligence and culminating into that most controversial faculty, intuition. The sciences of psychology and psychic research are still young to arrive at satisfying conclusions regarding intuition.

Nevertheless, Bergson holds that intuition is a maturer and an evolved form of instinctive behaviour. In case of an intuitive experience; he maintains, time does not appear in the form of mathematical bits of past, but it is a constant state of 'now'. In other words, the atomic nature of time is dissolved into what may be termed for convenience sake, 'duration'.

From amongst the schools of psychology the Gestalt School shows probability of reaching at more helpful results in this connection. The school tries to present the point of view that mind has capability of grasping the situation as a whole, transcending spacio-temporal relations.

Intuition may be the result of developed form of instinctive behaviour or it may be termed synthetic reason; but as we shall presently see, it has definitely been considered a source of knowledge with tremendous possibilities away all the mystics.

Heart is considered by almost all the mystics, as the fountainhead of intuition (as compared with Head, the source of Reason). Heart, according to Ghazali, has two aspects or two windows. One aspect of Heart is material (that is the organic aspect) in which case its window opens to outer reality. The other and more important aspect is spiritual, that is, it is the seat of soul, of love, of faith and a source of innate, apriori knowledge. In this aspect, its window opens to inner realities. By Ghazali it has been compared to a mirror or a polished plate of steel that reflects the nature of Absolute if it was kept constantly clear and tidy by the performance of virtuous acts, and was not neglected to rust by the dirt of evil deeds. Oriental mysticism also uses the allegory of 'Pure Gold' in connection with Heart: God says in the Quran: "My Earth and My Heaven contain Me not, but the Heart of My faithful servant containeth Me."

Now, on the basis of intuition, when one attempts to make an enquiry about his 'self' and is successful in affirming its existence (with or without the guidance of a superior, self – that depends entirely on the intensity of the quest of one that enquires), he develops an ambition to come into direct

contact with the Ultimate Self, or, in other words, to hold communion with God through his attributes. This knowledge is called 'gnosis' and it is the very essence of mysticism. While one is in a state of holding communion with God, it is termed mystic experience. In such a state, one is not supposed to be conscious of his material environments, and therefore may not be conscious in the literary sense or as we define the term consciousness.

Mystic experience, has two aspects:- (i) feeling, and (ii) concept. As feeling, it is subjective, extremely personal and private; that is, an exclusive possession of one who undergoes such an experience. In this case it does not admit of my consideration by those who have not gone through it. But as concept it can be judged for it is an interpretation or communication of feeling or a view of Reality.

Precisely it is an intuitive affirmation, firstly, concerning the existence and finitude of 'self' and secondly, its return, as it were, to the source. This affirmation is based on two broad formulas in Islamic Mysticism :- (i) "One who has known his 'self' has known his God" and (ii) "We are from God and unto Him are we to return." Mysticism in Islam is identified with the term Tasawwuf or Sufism, and from now on I shall make use of these terms.

Sufism sprang up spontaneously with the advent of Islam. Its beginning can be traced firstly, through the Quran and secondly, through the life of the Prophet himself. In the Quran God says: "I was a hidden treasure and I desired to be known, therefore I created the creation in order that I might be known." Or: "If my servants enquire of thee concerning Me; lo I am near." Or: "Withersoever ye turn, there is the face of God." Or: "Everything upon Earth passeth away save His face." Or: "God is the light of the Heaven and of the Earth." The Prophet is reported to have said: "Create in yourselves the attributes of God." Or: "He is nearer to him than his own jugular vein." etc. etc.

God constantly reminds his servants to reflect, to consider, to remember and to mention Him always as they all

shall stand in His presence on the Day of Judgement. This uninterrupted, remembrance of God therefore, is the very basis of 'gnosis'. Thereby the human soul absorbs or overcomes all obstructions and submerges itself into God, achieving thus the eternal continuance of spiritual existence in Him.

Study of the Prophet's life reveals that whenever he found leisure from his worldly affairs, he used to return to a cave for meditation and contemplation. For the first time when the Angel Gabriel (In the Quran Gabriel is called 'Ruh'ul-Quds', that is, the 'Holy Spirit' or the 'Holy Ghost') addressed him, he became exceedingly afraid and ran to his house trembling and crying "Wrap me up! Wrap me up." Later when such states became more frequent, in one of such states, he is reported to have asked his spouse Ayesha: "Who art thou?" She replied: "I am Ayesha." Again he asked: "Who is Ayesha?" She said: "The daughter of Siddiq." Again the Prophet asked: "Who is Siddiq?" He received the reply: "The father-in-law of Mohammad." But when she was asked who Mohammad was, Ayesha remained silent.

The phenomenon of Transportation of the Prophet led by the Angel Gabriel, passing through the heavens and standing in the presence of God – can also be mentioned in this respect; as it is referred in the Quran: "He carried His servant by night from the sacred mosque (of Mecca) to the mosque that is more remote (of Jerusalem) whose precincts We have blessed, that We might show him of Our Signs."

Coming to the question how Tasawwuf came to be known as Tasawwuf or from whence does the term Sufi derive its origin or what is understood by it, numerous theories have been presented. In the Prophet's times a group of men of Mecca gave themselves up to meditation, devoting themselves to the doctrines of the Prophet and making the mosque as their permanent abode. Some hold that these 'sitters in the shrine' were styled as Sufis. Such men are referred in the Quran as friends of God, patient men, virtuous men, pious men etc. etc. Another theory connects

them with a tribe of pagan Arabia known as 'suffa' who devoted themselves to the service of the temple of Mecca. Some say that the term sufi is derived from 'Suf' i.e. 'bench' – meaning thereby, that they were bench-sitters. Or from 'soof' i.e. 'wool', meaning thereby, that these pious men always wore woolen garments. In this connection the Muslim Sufis also mention Jesus Christ and his apostles who always wore wool – wool being a symbol of piety and humbleness. There is another view that the term comes from 'Suff' i.e. 'a row', meaning thereby, that these men would stand in the first row of men on the Day of Judgement. Or from 'sufa' i.e. 'purity,' as they were men of pure hearts and pure lives.

Dhun Noon of Egypt, a renowned sufi himself, defines a sufi: "as one whose behaviour accords with his speech, whose silence reveals his state, and who gives up worldly connections." Junaid of Baghdad considers in Tasawwuf the attribute of the servant is annihilated and of God becomes eternal. Others define it as renunciation of all pleasures of the lower self and complete surrender of the Heart of God. In this connection, they associate various qualities with Heart (which must be acquired if not gifted). These qualities are: submission, liberality, patience, silence, separation, woolen dress, travelling, poverty etc. etc. as illustrated in the lives of Isaac, Abraham, Moses, Christ and Mohammad.

In fact, Tasawwuf is a matter between the finite and the Infinite. So far a Sufi, to study the life of the Prophet, to comprehend his code of conduct and Tradition is essential for higher spiritual experience. The 'way-farer' when he pursues the 'Path', he steadily attains a 'station' – that is, he stations himself in one of the attributes in which God manifests Himself in him.

Sufism, in its early stages, as it can be safely assumed, was a movement essentially of asceticism. In the first generation of ascetics names of Abu Bakr, Omar, Ali, Osman etc. are mentioned. In the second generation names of Uwaysi-Qarni, Al-Hasan Basri etc. are mentioned. And in the third generation people like Abu Hanifa, Abu Yazid Bistami,

Junaid, Mansur Hallaj, Abu bin Adham etc. are mentioned. After these numerous orders of sufi arose.

Tasawwuf in its beginning was awake and conscious of its environments. It grappled with the material world and yet it was not of it. The Prophet's lie furnishes such an example. Again people like Abu Bakr, Omar, Ali etc. were not only ascetics but also great administrators. Islam considers universe as a real obstruction that a Muslim is supposed to overcome. Thus it prohibits its entire renunciation. But maturer the Sufism grew, it showed a tendency to disentangling itself from sobriety and becoming drunk, as it were, in the spiritual drunkenness. Matter was blamed as the cause of all wickedness and therefore renounced. Ascetic pleasure came to be considered as the only good for human achievement. Junaid felt this neglect and therefore he pointed out: "If you discard satan, you give him an independent existence, which he is not." But Sufism, heedless of the consequences, went a proceeding more inwards than outwards. The love of the 'Absent' was preferred to the love of the 'Present', whereas God reflected Himself in both His attributes. This was the reason perhaps why intoxicated Sufis like Mansur Hallaj, insisting too much on the Absent, became too drunk and in their moments of supreme ecstasy gave out expressions such as: "There is none under this cloak except God." Or: "I am Truth." Hallaj only meant that he was the manifestation of God's attribute 'Truth', 'Truth' being his 'station.' His contemporaries realized it, still they were justified to sign the scroll for his execution upon cross, out of regard of Islamic law.

In the period of maturity, Sufism devoted more of its attention in communicating its view of Reality. Many volumes were written about the Unity of God and His attributes. This unity of being was identical with everything else, therefore in most cases, the idea culminated into different forms of Pantheism i.e. Universe is God, or the Essence and the attributes are one. This doctrine was held by most of the Sufis, particularly after Ibn Arabi who wrote so much about

it. Gazali's approach to God was not through His attributes, he rather descended to the attributes through God. Precisely speaking, to Ibn Arabi Universe is God; to Gazali God is Universe. Ibn Taimiyyah and Sheikh Ahmad criticized this doctrine which led to the formation of another school of sufi thought. Sheikh Ahmad held that God transcends His attributes, as He is the Creator of His attributes as well. According to this view, God appeared detached from His attributes as their Creator, and was incomprehensible, intangible. The argument laid stress on the fact that since God was above our intuition and experience, since he was 'beyond and beyond and beyond' (i.e., because the finite Self can never comprehend the Infinite), thus the only requirement for man was to achieve moral perfection according to the dictates of God, and not to struggle in vain for a spiritual union as such in God. The school believed that the comprehension of God laid actually in His incomprehensibility. (Amazingly though, Kant inculcates the same view among the modern philosophers, when he rejects the possibility of metaphysics and laid stress on 'Categorical Imperative'.)

Apart from the interpretation of Sufi metaphysics, certain attributes of the soul came to be reckoned as its complimentary constituents. These were: Love, Poverty, Patience, Trust, Submission, Faith, Conversion, Self denial, Service, Earnest Striving, Isolation, Abstinence, Silence, Hope, Sorrow, Repentance, Contentment, Desire, Uprightness, Sincerity, Truthfulness, Bashfulness, Magnanimity, Remembrance, Insight, Prayer, Purity, Decency, Yearning etc. etc. All the attributes (or virtues) compare what may be termed, sufi ethics. Many of the Sufis considered some of these attributes as 'stations' that could be acquired, others as 'states' – since the stations were individual earnings whereas the states were gifts of God.

The East and West of the Islamic world participate in the maturity of Sufism. Many schools were formed that upheld a pattern of certain select attributes which have already been

mentioned. Baghdad became the centre of Sufism. Besides the accepted schools, sober as well as intoxicated, there were many seats of Sufis who were considered as heretics or atheists. They were the corporalists, the Incarnationists, the Transmigrationists etc. Omar Khayyam for instance, was one of the exponents of the doctrine of re-incarnation.

The finite self had to pass through three stages for a spiritual reunion in God. In the first stage, the tenets of Islam and its laws were to be truthfully observed. In the second stage contemplation became more essential than religious observances. And in the third stage one acquired the knowledge akin to inspiration. The last stage was most difficult to achieve, as it is obvious. Now when a sufi had acquired the final stage, he lived as it were, in God. He could prophesy, he became the possessor of miraculous acts; he could guide or cure the lesser selves, as he was a stationed self.' Though not dead yet he knew the secret of death. All the veils were lifted for him. He had absorbed all obstructions that gave rise to all wickedness. Evil now for him became unreal, phantasmagorical.

The Persian mystic poet such as Saadi, Hafiz, Rumi etc. are noticeable, for most of them were the upholders of intoxicated Sufism, with the exception, perhaps of Rumi, whose intoxicated Sufism was dynamic and afforded to the traditional sufi conception of pre-destinarianism. In their poetry they made use of mystical symbolism – comparing God, for instance, with a beautiful woman, her face, tresses, mole, eyes, eye brows, lips etc. were the attributes. Sometimes Reality appeared in the garb of a Saqi (i.e. wine bearer). The allegory of wine (i.e. ecstatic experience) was considerably used. Cup, jar, pitcher, sea, drop, tavern, laveru haunter etc. were all symbols.

Persian poets sang, in a way, the swan song of Sufism, because after them comes the steady decay of Tasawwuf and no original conspicuousness is noticed, though minor poets continued to play in the strings of their predecessors for a considerably long time.

To the question how or why did Sufism decay, there are numerous presumptions. The first and the foremost cause that strikes a student of Tasawwuf is, that it had run its full course. So the obvious reasons for its decline were the lack of originality in creative thinking and the want of personalities. Some critics hold that the signs of decay appeared when the Sufism of Indian Islam tried to reconcile itself with the Hindu Sedantic mysticism, i.e. the conception of "Unity in plurality." It may not be out of place to point out here that the originality of Islam as a religion laid in the fact that it stood for continuous activity and tension. So the moment Sufis ignored the greatest obstruction to life, namely matter, and taught to run away from it instead of absorbing it, they upheld death rather than life as their ideal. Their veins tended to have a narcotic effect and their doctrines fell like night in the day of life. Credulous and ignorant masses started promoting superstitions with the names of ancient Sufis who could show miracles. The religious ordinances were given up. Learning was condemned as it did not associate itself with the cloak of phenomenal piety. Magic, charms and amulets acquired a special interest. And the professional sufi made it a point to have the best in the darkness of ignorance and misery.

I may mention an amusing case which I recently happened to read in one of the newspapers received from home – concerning a professional sufi, who depended upon apparatus provided by modern science to impress his spiritual greatness. The man was arrested when it was discovered that he made use of battery bulbs under his beard and long tresses to give the effect of divine illumination around his face when he prayed. In the court a strange telegraphic apparatus was also produced by the police with the help of which he receive communications from Heaven.

The phenomenon of remembrance of God associated (by some of the ancient sufi schools) with music and dance – in this respect, particularly the school of Rumi can be mentioned, according to which dance was a physical

representation of the dynamic nature of soul, is merely reduced now to an exploitation of muscle control in North Africa. It may impress the beholder with all its animal and wired magnetism, associated and stimulated by tropical drugs, as it brings back the memories of pagan rituals of the Middle East. Sufism, in fact, mixed itself with all the polytheistic voluptuousness, contrary to the inner spirit of Islam. Thus overwhelmed with its own drunkenness, it came to an end, as one may say, in a state of delirium tremance, and today its ashes lie scattered all over the Middle East in the form of books, monasteries and tombs.

PHILOSOPHY AND THE COMMUNITY

It is rather unfortunate that in the course of study of philosophy we tend to isolate great ideas from the environments which have been responsible for their production. The histories of Philosophy enumerate the achievements of individual thinkers in the realm of speculative thought, but they do not throw any light on the socio-political conditions under which the philosophers felt obliged to think.

For example, in the seventh century, when the Umayyad power was firmly established and the world of Islam had come under its sway, we are informed by the historians, that a considerable amount of talent which had been profitably utilized in laying the foundations of the early Islamic republic, was diverted entirely towards the other-worldliness of 'Tassawuf' because of the disillusionment which resulted from the replacement of Islamic democracy by Umayyad dictatorship. The historians also tell us that during this phase a determinist philosophy developed which laid emphasis, on a most perverse kind of fatalism. The philosophers who advanced the determinist argument were called the Murjites. They believed that everything in the material world takes shape under the command of God and that therefore man must completely resign himself to the conditions under which he happens to be living because such is the Will of God. There is enough evidence to support the viewpoint that the Umayyad Caliphs patronised the development of determinist

thought because it indirectly provided a justification for their rule and the transformation of the Islamic republic into a hereditary monarchy at their hands.

Islam produced Ghazali in the eleventh century; but that were the conditions under which he felt obliged to think? Politically the Abbasid caliphate was at its lowest ebb, and ideologically a confusion had arisen in the Islamic thinking because of the controversies of the Mutasillites, Asharites and Sufis. It was under the conditions of hopelessness and despondency that Ghazali speculated and gave a message of hope and rejuvenation.

What was the background in which Sheikh Ahmad of Sirhind had to advance his conception of 'Wahdat-i-Shahud' and thus to distinguish Islamic mysticism from non-Islamic mysticism? In the sixteenth century India, the Emperor Akbar had manufactured a new religio-political ideology called 'Din-i-Elahi' under the inspiration of Ibnul Arabi's conception of 'Wahdat-i-Wajud'. Akbar attempted to amalgamate the Muslims and the Hindus into one another, and thereby to secure their complete obedience to the Crown, the embodiment of the State, through the device of 'Din-i-Elahi, he himself became the central figure in the new ideology and wanted his subjects to become one by accepting and acknowledging him as the unifying factor instead of Islam and Hinduism. Had the Sheikh not advanced the conception of 'Wahdat-i-Shahud', Islam would have disappeared from India. He is, therefore, rightly called by Allama Iqbal the founder of Mussalman nationality in the Indo-Pakistan sub-continent.

In the West too, if one were to study the socio-political conditions which engendered personalities like Martin Luther, Descartes, Leibnitz, Spinoza, Hegel, Kant, Kierkegaard and the others, one would arrive at the conclusion that the spiritual and philosophical ideas of a community are largely the expression of its socio-political environment.

If we study the socio-political conditions under which Iqbal lived and worked, it becomes evident that his thought

was profoundly influenced by his environment. One could easily close Iqbal in brackets with Ghazali because the conditions under which he lived and worked were similar to those of Ghazali. Iqbal's philosophy of individual and collective ego, or his emphasis on creative activity and dangerous living, indicate that he was deeply involved with and dynamically responded to the deadness of the world in which he was born.

It is a pertinent question to raise as to how can an original thinker enlarge from a sterile community? The answer to this question can be given in the words of Iqbal himself. He says, "A diseased social organism sometimes sets up within itself forces which have a tendency to preserve the health of the organism — e.g., the birth of a great personality which may revitalize the dying organism by the revelation of a new ideal".

From the words of Iqbal just quoted, it follows that a community, which remains in a state of perpetual decay, is undoubtedly unable to establish a tradition under which the development of thought could take place through the emergence of a series of thinkers as the community itself advances in age. Therefore, in communities which are alive, thought advances step by step; but those communities which remain in a state of perpetual decay, no development takes place. On the contrary, thought seems to take a leap over centuries when suddenly a great thinker appears like a tulip in the sands of a desert.

Although thought cannot be arrested or suppressed, its emergence and development depends entirely on the socio-political environment of the community in which a thinker is born. If a community is alive and productive, thought advances, and one original thinker is succeeded by another. On the other hand, if a community is dead and sterile, then still a great thinker may emerge unexpectedly, because, as Ghalib has aptly put it and Iqbal agrees with him:

درد کا حد سے گزرتا ہے دوا ہو جانا

Another very important question can also be raised and it is as to why we have not been able to produce original thinkers who could contribute to the development of thought and thereby establish a tradition to the effect that we are a 'thinking' people? An answer to this question would necessitate a closer study of the socio-political environment under which the Pakistani community has been conditioned to live ever since the establishment of Pakistan.

However, before the required, assessment is made, it may be worthwhile to note briefly as to what is the ideal community in the eyes of Iqbal? Of course the ideal community is composed of the ideal men, and the ideal man, according to Iqbal, is the one who could fortify his personality by acquiring "the more fundamental I am". The ideal, man is equipped with the attributes of love, freedom, disinterestedness (*faqr*) and courage, and therefore his entire activity is creative. He has a perception into the trends of history and he is in a position to change, mould, reshape or recast history in accordance with his aspirations. In other words, he is not merely the sequence of events in the stream of history; but on the contrary he creates history which is the result of his initiative.

At this stage, let us also enumerate the facts which destroy personality and consequently transform man into a baser man. In the eyes of Iqbal stagnation is the major factor which yields this deplorable result. Stagnation involves lethargy which engenders fear, corruption, cowardice, begging or asking, and finally servitude.

Now let us turn towards what Iqbal has to say about the relationship of Government with the character of a community. I quote a passage from his *Stray Reflections*:

"Let fools fight for the ferns of government", says Alexander Pope. I cannot agree with this political philosophy. To my mind, government, whatever its form, is one of the determining forces of a people's character. Loss of political power is equally ruinous to nation's character. Ever since their political fall the Musalmans of

India have undergone a rapid ethical deterioration. Of all the Muslim communities of the world they are probably the meanest in point of character. I do not mean to deplore our former greatness in this country, for, I confess, I am almost a fatalist in regard to the various forces that ultimately decide the destinies of nations.

If the socio-political environment of the Pakistani community is studied in the light of the observations of Iqbal, we would not be wrong in arriving at the conclusion that although we have apparently gained political independence, the spirit of servitude survives as an existential reality in the grave-yard. Consequently we continue to remain, generally speaking, lethargic and as a community permit ourselves to be consumed by fear, corruption, cowardice, begging etc.

Our attitude towards the forms of government in Pakistan has so far been like that of Alexander Pope who let fools fight for them, or perhaps like that of the ones who diverted themselves to the other-worldliness of 'Tassawuf' because of the disillusionment which resulted from the replacement of Islamic republic by Umayyad dictatorship. We have not cared, to ponder on the fact that the implementation of sound political structures is necessary for the development of the character of a people; and so long as the character of a community remains distorted, there could be no development of thought.

The governments which have come and gone, may have worked for the industrial and commercial development of Pakistan. But there is no denying the fact that they have so far totally failed in building up the character of the people. On the contrary, the experiments made with regard to the implementation of suitable political structures have been made so cynically that they have led to the progressive deterioration of the character of the community. No wonder we have completely failed to produce exemplary political leadership just as we have miserably failed in producing original thinkers.

Where lies the solution? The solution can obviously not be found in philosophical quibblings. If the object is to recreate conditions under which a tradition is established of advancing thought in the community, then our entire energy must be spent in actively combating and ultimately liquidating the forces which have distorted the character of the nation. Hence, let us first set our socio-political environment right, before we could think in terms of establishing a tradition of advancing thought. Or else let us continue to hibernate for a couple of centuries until the thought takes a leap on its own and a redeemer is unexpectedly born.

THE ETHICS OF THE PROPHET AND THE MODERN MAN

Modern man is the product of development as understood in the west. Development has been defined as growth with change. It implies increase in per capita income through more production and the resulting change in the mind, attitude and way of life of man. Development is regarded essentially as a modern western innovation. It resulted from the evolution of western society from the Renaissance to the Industrial revolution. In the process of this evolution, the modern west gradually established a world market, which gave birth to a market society. The market society prospered and developed into a developed society. The evolution brought along with it numerous changes of a purely materialistic nature which culminated in the rise of capitalism. The capacity to produce generated in the west a new desire for power to dominate the world. Affluence became the general rule of the developing western civilization and scarcity was an exception. The rise of capitalism brought in its wake imperialism, creation of colonial empires and misery to many. In the west itself these changes led to the establishment of rival politico-economic structures, and their conflict resulted in two world wars.

However, rationalism, scientific technology, capitalism and development continued to be generally accepted as modern modes of progress. Consequently technology, wealth and

power supplemented by efficiency had its impact everywhere as the modern modes of communications transformed the whole world into what has been described as a 'global village.' The colonial empires gave way to numerous underdeveloped independent national states, aspiring to realize development. Under-development may have had its roots in local tradition but international history was also responsible for it. Anyhow with the world-wide dissemination of western ideas, the underdeveloped society started looking at the face of its future in the present image of the European or western developed society. Hence development was generally equated with Europeanization or westernization, and the capitalist or the Marxist patterns came to be regarded as the only two modern ways for realizing development.

The recent movement in the developing countries for technological emancipation and economic autonomy as well as the grave crises which the western policies of development had created at home and abroad, brought about a reconsideration by the western liberal thinkers of their approach to development. This reconsideration had been exhilarated by the energy crisis and the alarming prediction in the first report of the Club of Rome to the effect that the world resources of power would exhaust within one hundred years. Overwhelmed by the energy crisis, world inflation and anticipated exhaustion of world power resources within a century, some western thinkers have started denouncing the accepted modes of development as a threat to man's sense of mastery over his destiny. In their view the armament race everywhere gave priority to the production of technology for better killing over the production of technology for better living, and that there was no social organization in the best developed countries which could provoke man's enthusiasm anymore.

Although the orthodox communist thinkers still believe that the synthesis of scientific and technological revolution with communist revolution would eventually transform the world into a classless society of developed humanity, some of

them are extremely critical of the present trends in the Soviet Union. According to them if Marx were to return to life and observed as to what had happened in the Marxist countries, he would not identify himself as a Marxist.

The optimistic viewpoint is represented by another set of writers who are of the view that the present world economic crisis can only be resolved by a new human answer. Some of them conceive of a new world civilization in which everyone in the developed as well as developing countries must participate through the establishment of a multinational corporation for the control of economic forces. Some recommend the formation of a new structure of world government. They are of the opinion that the new problems of change are bound to stay and would even speed up, and that they must be tackled before they explode. Thus they dream of the establishment of a new international economic order.

Other experts also recommend 'global organic development' which in their opinion is likely to lead to the betterment of human condition whereas 'fragmented development' may lead to human catastrophe. Numerous western thinkers believe that, the authors of the first report of the Club of Rome concentrate on the physical limits of growth, but ignored the fact of man's capability for innovation as well as adaptation to new problems of change. According to them, at this crucial stage, the choice for man is between utopia or death and that he can avoid both by transforming today's utopia into the reality of life of tomorrow, only through the realization of global solidarity. In their opinion mankind has always suffered from false divisions or fabricated dualism, such as whites and coloured, colonosiers and colonized, capitalists and socialists, or developed and underdeveloped. In their view everyone must realize now that they are all underdeveloped in the sense that they are economically interdependent and that therefore they would either all develop together as human beings or perish together.

At this stage, it may be useful to point out as to what the liberal thinkers of today mean by the expression 'modern man.' Modern man was originally the product of the market society of the west. With the emergence and development of that society, he appeared as a new man with a new set of mental attitudes. He was essentially the western man, although he might be of capitalist or Marxist orientation. But now he has been described as industrial or technological man, stuffed man, mass man, one-dimensional man, powerless man, alienated man, lonely man etc. He believes in the supremacy of science and technology of which he is a product; he relies exclusively on reason and efficiency; he is non-religious and conducts affairs in a secular manner; he is a moral and believes in pursuing happiness only in the materialistic sense; he is perpetually determined by the forces of change and has no mastery over his destiny. According to some liberal thinkers the super-developed countries such as the United States, the Soviet Union, western Europe and Japan, share a common ideology which has been termed 'industrialism' or 'technologism', and the modern man in these countries is alienated irrespective of the fact as to whether he happens to be Soviet, American, European or Japanese. In their opinion the alienated man has been made one-dimensional by technology-either through Soviet State technology or by free enterprise technology. He is therefore merely a powerless instrument, with no control over his destiny, in the hands of a 'technostructural class' which rules both in the east and the west. The sole object of this class being the growth of the politico-economic power of its super-state.

These views must make the underdeveloped societies ponder. The relevant question is: Is it worth the trouble to follow the pattern for development or the model of modern man as hitherto for presented by the west or the Soviet Union, particularly when these modes of progress have already been rejected by the liberal thinkers as obsolete and irrelevant? Necessity has compelled the Western thinkers to

recommend change in the economic strategy. They now talk in terms of global consultations and global management in order to bring about a new international economic order on the grounds that humanity is one, that divisions are false, that human beings are interdependent, that they all are underdeveloped and that they would perish together unless everyone participated in the economic survival of mankind. But the moot question is: Is it possible to bring about a new international economic order without the formulation of a universal ethics for development? At present the world politics are power politics and not development politics, and the world order is based on a balance of terror rather than a balance of mutual trust. In the background of armament race, on which the bulk of the budgets of national communities are spent, the world presents a distressing picture of inflation, overpopulation and underdevelopment.

According to the faith of Muslims, the Quran is addressed to humanity and the function of Islam is to help man in his transition from tribal, racial, national or regional to global consciousness. Man's object is admittedly the pursuit of happiness. The Greeks thought that the realisation of happiness was possible only in this world. Christianity which regarded the world as profane, however, preached that happiness could only be achieved in the Hereafter. But Islam presents a two-fold concept of happiness for man. It teaches man to realize happiness here by voluntarily accepting and adopting such universal moral principles which ensure his happiness also in the Hereafter.

The Quran was revealed to an Arabian Prophet who belonged to the tribe of Quraish, one of the active trading communities of Mecca. From the commercial environment of Islam, it appears that through the revelation of the Quran to a member of trading community of city dwellers God intended to provide a universal ethical code for reforming the moral life of man so that he could prosper and develop in a state of economic liberalism.

The Prophet spent a lonely childhood. But when he grew up to be a man, his truthfulness, honesty and integrity in commercial dealings won him the title of 'Amin' (The Trustworthy One) from the pagan Arabs. As a young man, he was extremely polite-mannered, but he never associated himself with idol worship or other polytheistic practices as well as sacral activities of the pagan members of his community. He started his career as a commercial representative of the wealthy Quraishite lady Khadija whom he subsequently married. During the course of his employment in the service of lady Khadija and throughout his life thereafter, his reliability and cleanliness in transactions as well as sanctity for contracts was so exemplary that he set a model for his followers. However, his sensitive conscience never accepted the polytheistic environment in which he lived. Therefore he was in the habit of occasionally isolating himself in the Cave of Hera for solitude and meditation. When he had the first encounter with the Real, his reaction was that of fear to undertake the great responsibility of Prophethood. But when he was satisfied that it had been so ordained, he was steadfast and determined to accomplish the task. His emphasis on 'Tawhid' (Unity of God) and invitation to his community to accept Islam, was bound to upset the pagan Meccan order. Therefore, he was subjected to ridicule or violence, and even his life was threatened. But as a breaker of tradition and a pathfinder of nature, he patiently accepted his sufferings until it became virtually impossible for him to stay in Mecca. The Migration of the Prophet to Medina led to the foundation of the fraternity of believers in Islam. The Medinite helpers who offered their town to the Prophet were mostly farmers whereas his Meccan Companions were traders. Thus Islam grew up into a fraternity of traders and farmers as well as a polity in Medina. It was during the course of life of the Prophet in Medina that he had to fight for the retention of liberty and independence of the newly founded Muslim fraternity. These battles were courageously fought by the Prophet who himself led the expeditions until the fall of

Mecca. But whether in victory or in defeat, in jubilation or in sorrow, his respect for contracts, patience, mercy and charity were proverbial. He led a life of simplicity, although he could have had as much wealth or comfort as he wanted. He worked throughout the life and did not hesitate to work with his hands, obliged others by doing their task, treated everyone as his equal, was magnanimous, and of an affectionate, kind, loving as well as forgiving disposition.

The Prophet transformed a community of pagan traders and farmers into a commonwealth of believers in Islam, whose ethical code was the Quran and the conduct of the Prophet himself which was the embodiment of the Quranic moral ideal. In his last Sermon on the Mount Arafat, he proclaimed the sanctity of the human life and property. This sanctity was obviously founded on work or activity as the value-making factor. God likes man for his deeds and not for his possessions. Therefore work or activity constitutes the very basis of ethics in the Quran. The Prophet of Islam was a working man and always preferred to work or to remain employed rather than to sit idle waiting for charity of others. Consequently there has always been a vital link between virtuous deeds and good economic activity in the ethics of the Prophet. The attitude of the Quran towards economic activity in general is not contemptuous for it is a means through which man can achieve happiness in this world. Economic activity of man therefore is sanctioned, stimulated and protected on the condition that it is governed by a universal code of ethics in order to create a moral man and an orderly world.

The development crisis which threatens the world today is not essentially an economic crisis but a crisis of values. There is a crying need for the redefinition of development in order to subject economic growth to justice, equity and fair play. Thus authentic development can only be defined in ethical terms. If Muslims equip themselves with the ethics of the Prophet and rediscover the treasure that lies hidden within them, they can demonstrate to the world that to develop is

not to grow more wealthy or more powerful, but to develop in love, justice, equality, liberty, honesty, integrity, truthfulness, courage, determination, steadfastness, tolerance, kindness, charity, mercy, simplicity and constant creative activity. In the present day state of economic chaos it is not the modern man but the moral man who can succeed in accomplishing a new international economic order for the betterment of human condition. Iqbal has rightly said:

ہر کجا بنی جهان رنگ و بو آل کہ از خاکش بروید آرزو
یا ز نور مصطفیٰ او را بہاست یا ہنوز اندر تلاش مصطفیٰ است

Everywhere is perceived the material world from the dust of which desire springs. Either the value of desire is enhanced with the radiance of Mustafa, or it is still in the quest for him.

THE FUTURE OF HUMANITY AND RELIGION

Before discussing the future of religion, I wish to discuss the future of humanity. Broadly speaking religion is required for the moral uplift of man. If there had been no man, there would have been no need for religion.

It would be proper to commence the discussion by defining two terms. These are: (a) Development, and (b) Modern Man.

Development, in the modern context, means in per capita income of a nation-state". This purely materialistic concept of development is generally considered a Western innovation.

What do we mean by the expression "Modern Man"? Certain changes took place in the mentality and way of life of the Western man as a result of the dissemination of materialism and the evolution of Western Europe from a developing to a developed society. Modern Man is sometimes called Industrial Man, Technical Man, Mass Man, One-sided Man, Angry Man, Lonely Man etc. He believes in the supremacy of science and technology of which he himself is a product. He relies on reason and feverish activity. He multiplies material comforts and wealth. He is so much overshadowed by the results of his intellectual achievements that he has ceased to live soulfully i.e., from within.

Many liberal thinkers and poets have criticized Modern Man. There is a very interesting passage in Iqbal's

Reconstruction Lectures in which he shows his disillusionment with both Western man as well as Eastern man. About Western man, he comments: "In the domain of thought he is living in open conflict with himself, and in the domain of economic and political life he is living in open conflict with others. He finds himself unable to control his ruthless egoism and his infinite gold-hunger which is gradually killing all higher striving in bringing him nothing but life-weariness. Absorbed in the fact, that is to say, the optically present source of sensation, he is entirely cut off from the unplumbed depths of his own being". About Eastern man, he laments: "The condition of things in the East is no better. The technique of medieval mysticism by which religious life, in its higher manifestations, developed itself both in the East and in the West has now practically failed Far from reintegrating the forces of the average man's inner life, and thus preparing him for participation in the march of history, it has taught him a false renunciation and made him perfectly contented with his ignorance and spiritual thralldom." (*Reconstruction*, pp. 148-149).

Generally speaking, Modern Man is Western man and he is found in materially prosperous countries, technically called I.D.Cs (Industrially Developed Countries) as opposed to U.D.Cs (Under Developed Countries).

What took place in Europe which eventually led to the development of materialism and the emergence of Modern Man?

The European society in the Middle Ages was a feudal society. The average man lived as a serf, totally dominated by cruel feudal lords and a corrupt Church. The hold of the Church was primarily based on Ptolemy's cosmology, according to which the earth was the centre of the universe and everything including the sun revolved around it. On the basis of this cosmology, the position adopted by the Church was that man was under the direct gaze of God. Thus the Church being the Vicar of God, and with the support of the feudal lords, had acquired enormous power over the ignorant,

superstitious and frightened masses who were exploited for centuries.

However certain events/movements in Europe changed the then existing state of affairs. These were: Reformation, which released man's faith from the clutches of a dominating corrupt Church. Renaissance, which liberated man's mind, and in his quest for knowledge man gradually learnt to depend on reason, sense-perception and scientific-thinking. The Ptolemaic cosmology was shattered by the Copernicus astronomy, according to which the earth could no longer be considered the centre of the cosmos, but as for its position in the universe, it was merely an insignificant speck. So man was not under the constant gaze of God as such. Then followed Darwin's theory that man had descended from apes or had biologically evolved from animals. All these events led to the awakening of man, as he gradually became aware that he had to depend solely on himself. He gained confidence through his philosophies of criticism and naturalism. He felt that his future lay in his control over the forces of nature. Thereafter the Industrial Revolution started changing the face of Europe, and with the French Revolution started changing the face of Europe, and with the French Revolution came the concepts of equality and freedom of man. It was in fact this awakening which led to the rise and growth of materialism, and the disappearance of religion from the collective life of the people.

Man learnt to produce energy through coal and steam. Thus cheap energy and labour were used for running factories and mills. Europe manufactured so many goods that in the history of mankind this had never been achieved before.

For the sale of these goods markets were required. The search for markets and more raw material led to colonialism and imperialism. Thus in Europe a market society was created, and the standard of life of an average man improved. Through the emphasis on freedom of trade autocratic powers

of monarchs were curtailed, and capitalist democracies were established on the basis of territorial nationalism.

In Europe these events engendered the formation of a new mentality and a new freedom. But the new man who came into being in this process, demanded absolute freedom. Absolute freedom without any kind of control actually amounted to tyranny and it meant ruthless trampling over the rights of others. Therefore, Modern Man with all his dedication to and respect for human rights, maintained double standards. Broadly speaking, human society was divided into the exploiters and the exploited.

The competition and jealousy among the exploiter-robbenations of Europe eventually led to the First World War on the one hand and the establishment of atheistic socialism/communism in Russia on the other.

However the struggle of Modern Man for supremacy over the others continued and resulted in the Second World War. But no lesson was learnt by man from these two wars of mass destruction of human life and property.

The race for the manufacture and production of fatal arms did not stop. According to the figures provided by Dr. Hans Blix upto 1985 the member-states of the Nuclear Club possessed 50,000 nuclear devices with an explosive yield of 1000 Heroshima bombs. In other words, according to him, there was 4 tons TNT explosive available for the destruction of each and every human being in this world, and this was the position in 1985.

How are the I.D.Cs sustaining their prosperous position or what is the secret of their material power? It is the production and use of energy. The position is that the population in the I.D.Cs is 27% of the population of the whole world whereas they consume 80% of the energy produced in the world. The population of the U.S.A is only 6% of the world population but it consumes 36% of energy. As for the U.D.Cs, they constitute 73% of the world population and the energy used by them is only 20%.

The U.D.Cs aspire to become like the I.D.Cs and the model of man before them is the Western Modern Man. But the I.D.Cs maintain their economic and technological hegemony over them by imposing a system of economics based on loads. If the U.D.Cs increase the prices of raw material, the I.D.Cs increase the prices of technology or finished products. This results in global inflation which is not as destructive for the I.D.Cs as it is for the poor U.D.Cs. Thus the material prosperity of Modern Man is founded and is being maintained on this discrimination between man and man.

However, despite the oil crisis, global inflation, and population explosion in the U.D.Cs, the movement in those countries for economic freedom and technological emancipation is gaining momentum.

Meanwhile, a depressing picture of the future is presented in the annual reports of the Club of Rome. According to these reports by approximately middle of the 21st century, the world's food resources may be completely exhausted. According to their estimate hunger is likely to strike first in certain parts of Africa and thereafter Bangladesh, India, Pakistan etc. If the growth rate of the population remains the same it is at present, and this situation is likely to arise in the first quarter of the 21st century. The reports also state that the conventional means of obtaining energy for the world's power resources may be completely exhausted before the end of 21st century.

In the light of these reports, some liberal thinkers of the West are recommending that the political leaders of the I . D . Cs should review their definition of "development". According to them the Utopias of early twentieth century i.e., communism and capitalism, as economic orders, have both failed to get rid of under-development on global scale, and that at present no one possesses any such economic system which can generate will and courage in man to improve his living conditions in the future.

Eminent Marxist philosophers like Herbert Marcuse and Maximillion Rubel have been extremely critical of the Soviet policy of only concentrating on breaking the Western industrial and technological supremacy instead of using the Soviet revolution for the economic betterment of man. In a way, these thinkers had forestalled the eventual break-down of the Soviet economy if such a policy was to be pursued.

The world politics at present is not development oriented but is power oriented. If power is dependent on economic stability, then the emergence and continuance of the U.S.A. as a unipolar power, would involve the length of time it can remain in the field as such.

But the unipolar power cannot live in the ivory tower when 73% population of the world is afflicted with global inflation, population explosion and under-development . According to the liberal thinkers, the world today is standing on the edge of a global economic crisis which can lead to total destruction of mankind. Consequently these thinkers are suggesting the establishment of a new international economic order based on ethics and morality. According to them such artificial discriminations like blacks and whites, developed and under-developed etc. had been harmful for the natural advancement of humanity. Tofler suggests that the U.N. should establish an international body composed of economic experts belonging to both I.D.Cs as well as U.D.Cs, in order to control the threatened global economic crisis or to keep an eye on the negative trends of world economy. Tofler is of the view that in order to save mankind from all future economic crises, it is necessary to think in terms of unity of human beings rather than nations. According to him the world's population should be planned according to its resources and that these resources should be fully exploited. All men are under-developed in the sense that for their economic survival they have to depend on one another. Therefore the future survival of man is possible only if he becomes mature by his bitter experience and learns to

respect his fellow men. (The Future Shock/The Ecco Spasm Report).

It is interesting to note that the views which are being expressed by the liberal thinkers of today about the future of humanity, are more or less the same which had been expressed by Iqbal in his writings more than fifty years ago. In a statement recorded a couple of months before his death in 1938, he pointed out: "The modern age prides itself on its progress in knowledge and its matchless scientific developments. No doubt, the pride is justified....But in spite of all these developments, tyranny of imperialism struts abroad, covering its face in the masks of (capitalist) democracy, (territorial) nationalism, communism, fascism and heaven knows what else besides. Under these masks, in every corner of the earth, the spirit of freedom and the dignity of man are being trampled underfoot in a way of which not even the darkest period of human history presents a parallel. The so called statesmen to whom government had entrusted leadership have proved demons of bloodshed, tyranny and oppression. The rulers whose duty it was to promote higher humanity, to prevent man's oppression of man and to elevate the moral and intellectual level of mankind, have in their hunger for dominion..., shed the blood of millions and reduced millions to servitude simply in order to pander to the greed and avarice of their own particular groups. After subjugating...weaker peoples...they sowed (the seeds of) divisions among them that they should shed one another's blood and go to sleep under the opiate of serfdom, so that the leech of imperialism might go on sucking their blood without interruption....The governments which are not themselves engaged in this drama of fire and blood are sucking the blood of the weaker peoples economically. It is as if the day of doom had come upon the earth, in which each man looks after the safety of his own skin, and in which no voice of human sympathy or fellowship is audible....The world's thinkers are stricken dumb. Is this going to be the end of all this progress and evolution of

civilization?...Remember, man can be maintained on this earth only by honouring mankind, and this world will remain a battle-ground of ferocious beasts of prey unless and until the educational (and moral) forces of the whole world are directed to inculcate in man respect for mankind.... National unity too is not a very durable force. Only one unity is dependable and that unity is the brotherhood of man, which is above race, nationality, colour or language.....So long as men do not demonstrate by their actions that they believe that the whole world is the family of God, so long as distinctions of race, colour and geographical nationalities are not wiped out completely, they will never be able to lead happy and contented life, and the beautiful ideals of liberty, equality and fraternity will never materialize". (*Speeches and Statements of Iqbal* ed. By A. R. Tariq pp. 226-228).

Now we can consider the question: What is the future of religion? It has already been pointed out that broadly speaking, religion is required for the moral uplift of man. However a counter-argument may be advanced that morality or ethics being a branch of philosophy, why should it be founded on religion? This line of reasoning would naturally take us to the discussion as to what is the difference between philosophy and religion?

Philosophy is an independent inquiry based on reason for the comprehension of Reality. Religion, in the broader or higher sense, is also a search for Reality, but its foundations are laid on experience, which is other than the normal level of experience. If one claims that the normal level of experience is the only level of knowledge-yielding experience, then religion needs not attract anyone's attention. But if the universe, as it is normally perceived, is only an intellectual construction, and there are other levels of human experience capable of being systematized by other orders of time and space, and in which concept and analysis do not play the same part as they do in the case of our normal experience, then the matter is different. It is precisely for this reason that a person who relies on religious experience, the knowledge

gained by him through his experience is essentially personal and incommunicable. However the fact that the knowledge gained through religious experience is incommunicable does not imply that the pursuit made by the man of religion has been futile.

Modern Man is secular in the sense that he is indifferent towards religion. The reason is that according to his evaluation religion is in conflict with science, and since the findings of science are rationally demonstrable, religion is reduced to mere superstition providing solace to man in his stages of ignorance, but of no authentic relevance in the future. This conclusion may not be correct. Martin Lings is of the view that Modern Man is disintegrating. He argues: "One of the most striking features of the general disintegration characteristic of modern man is an unparalleled mental independence by reason of which many minds are feverishly active and almost 'acrobatically' nimble. The same lack of anchorage makes also for an abnormally hurried superficiality of judgement and conclusion". (*Studies of Comparative Religion*, p. 14).

It may not be wrong to say that Reality has outer as well as inner dimensions. Science is concerned with the external behaviour of Reality whereas the domain of religion is to discover the meanings of Reality in reference to its inner nature. In this respect both scientific and religious processes run parallel to each other. Iqbal while commenting on these processes correctly states: "A careful study of the nature and purpose of these really complementary processes shows that both of them are directed to the purification of experience in their respective spheres. (*Reconstruction*, p. 155).

In the narrower sense or at a lower level, religion is a form of discipline, which is voluntarily accepted by a group of people as unconditional commands without any rational understanding of the ultimate purpose of those commands. It is only in this sense that religion is based on dogma, ritual or some kind of priesthood, and claims itself to be the sole possessor of the Truth. It is again through this determined

form that religion becomes exclusive or relative and engenders hatred of one religion against the other as well as within a religion itself when one mode of interpretation comes into conflict with another.

For instance, a Jew believes that the Messianic mission has not yet been fulfilled, therefore, he refuses to admit the Messianic claim of Jesus and regards it as false. A Christian believes that Judaism has been superseded by Christianity and he places Islam in the category of pseudo-religion. However, a Muslim does not consider Judaism and Christianity as false religions, but believes that both have been superseded by Islam.

The question may well be asked that if in the context of higher religion, God is the centre of all religions and the Truth is absolute, then why the diversity or relativity of religions? The answer is that He has sent different religions especially suited to the needs, requirements and characteristics of the different groups of humanity in different temporal cycles. But if these groups of men, in the course of human history, have persecuted one another on account of religious differences, then Providence cannot be held responsible for it. However, despite winning converts through persuasion or slaughter of human beings in the name of religion, many religions, which have fought against or competed with one another in the past history, have survived and dominated different parts of the world. It is, therefore, necessary that irrespective of the position adopted by the partisan religious authorities we must carefully examine what higher religion teaches about the nature of God.

The modern Western civilization has dealt with the problem of religion through encouraging the development of two types of secularism. One type of secularism is based on indifference towards religion and this is the attitude adopted by Modern Man in the capitalist democracies. The other type is based on the suppression of religion and for a number of years this policy has been followed by the socialist countries. But the experience tells us that indifference towards religion

automatically leads to the demand for that variety of "freedom" which Albert Camus calls "tyranny" or "waywardness". On the other hand, the recent developments in the U. S. S. R and the other socialist countries indicate that atheism cannot be successfully imposed from outside on a people, and whenever such an attempt is made, it is bound to fail. Thus it is evident that the existing types of secularism have not been able to resolve the problem.

It is perhaps in this background that Iqbal rejected the methodologies of territorial nationalism, capitalism, atheistic socialism as well as religious fundamentalism as drawing upon the psychological forces of hate, suspicion and resentment which tend to impoverish the soul of man closing up his hidden sources of spiritual energy. He points out: "Surely the present moment is one of great crisis in the history of modern culture. The modern world stands in need of biological renewal. And religion, which in its higher manifestations is neither dogma, nor priesthood, nor ritual, can alone ethically prepare the modern man for the burden of the great responsibility, which the advancement of modern science necessarily involves, and restore to him that attitude of faith which makes him capable of winning a personality here and retaining it hereafter. It is only by rising to a fresh vision of his origin and future, his whence and whither, that man will eventually triumph over a society motivated by an inhuman, competition, and a civilization which has lost its spiritual unity by its inner conflict of religious and political values". (*Reconstruction*, p. 149).

From the above analysis it appears that the solution of the problem lies in the adoption of the policy not of indifference towards or suppression of religion, but of respecting all religions. Every religion in the narrower sense consists of dogma, ritual and some form of priesthood. This aspect of religion is exclusive or relative to the people who adhere to it and it is only in this context that the international community is multi-religious. Unfortunately some of the religious communities in the world today are passing through a phase

of fundamentalism which has let loose the forces of hatred and resentment. Whatever be the reasons for this affliction, let us hope that the phase is temporary and shall pass away. However each great religion, at the higher level, contains the absolute Truth. Therefore it is necessary for every religious community to discover and project the higher level of its religion. It is at this level that religion can restore to humanity its spiritual unity and ethically prepare man to respect his fellow-men.

Martin Lings correctly states that Islam being the last religion of this cycle of time, unlike Judaism and Christianity, is more generous to other religions. (*Studies in Comparative Religion*, p. 21). Although the Muslim theologians today have not bothered to discover and project the higher level of the religion of Islam, I have no hesitation in pointing out that a careful study of the Quran certainly reveals the nature of God at that level. In order to rationally demonstrate my point, I shall view that emphasis can be laid on these verse so as to provide a remedy for at least some of the ailments of a despairing humanity.

In sura XL verse 78 while addressing the Holy Prophet, God says: "Verily We have sent messengers before thee. About some of them have We told thee, and about some have We not told thee". The self-evident meanings of the verse are that God has not only sent those prophets whose names are known to the Semitic religions (Judaism, Christianity and Islam), but also other messengers had been sent by him bearing the tidings of numerous other modes of Religion of Truth.

The second relevant piece in this connection is sura V verse 69 in which it is stated: "Verily the Faithful (Muslims) and the Jews and the Sabians and the Christians, whoso believeth in God and the Last Day and doeth good deeds, no fear shall come upon them neither shall they grieve". As for the expression "Sabians" there is no general agreement as to which religion is referred to. However, as is indicated in the verse, it is that category of religions which are based on a

central idea of God, of accountability and which emphasize on the doing of good deeds. Thus according to the Quran, everyone who believes in God, eventual accountability and who does good deeds need not fear as no grief shall come upon him.

The third is sura V verse 48 in which God addressing human beings declares: "For each of you We have appointed a law and a way. And if God had willed He would have made you one (religious) community. But (He hath willed it otherwise) that He may put to the test in what He has given you. So vie with one another in good works. Unto God will ye be brought back, and he will inform you about what wherein ye differed". If God had sent only one religion to a world of widely differing aptitudes, it would not have been a fair test for all. Therefore he has sent many different religions and in this Quranic verse, He expects human beings to enter into rivalry with one another only in doing good deeds and nothing else. It is in the light of these and other such verses of the Quran that Iqbal desired the Muslims of today to evolve and establish, out of the hitherto partially revealed purpose of Islam, that spiritual democracy, which according to him, is the ultimate aim of Islam. (*Reconstruction*, p. 142). It is indeed unfortunate that this important aspect of Iqbal's thought has neither been understood by the so-called religious authorities nor political leaders anywhere in the world of Islam.

The conclusion is that if for the survival of humanity it is necessary for man to respect his fellow-men, in the same way it is necessary for him to learn to respect religions other than his own. It is only through the adoption of this "moral strategy" that man may rise to a fresh vision of his future, for whatever he is surrounded by at present, borrowing Nietzsche's words, "is sickness and unreason".

THE SHADOW OF ETERNITY

You dare not take my words as a mere adoratum of Quaid-i-Azam, I may point out at the very outset. Truth will make your conclusion itself proclaim, 'A super-eminent being', surpassing all the rest; an Übermensch, as Nietzsche might have called him; a milestone, a landmark, amongst all the handiwork of Almighty; for whose birth even time suggested nature not to pretermite.

Come forward, and I shall let you have a closer glimpse of this mighty soul, this colossus of ours. I shall place before you all the human created norms of greatness, to enable you to realize that whatsoever I utter carries a weight. Now prepare yourself and take steps to be impartial and then, judge.

Let us first of all, start with inequality amongst men; though it seems a finite term, yet in extent of its meaning, as infinite as universe itself. We feel that there is inequality in all the manifestations of God. We obviously find inequality amongst angels when we go through scriptures; amongst planets when we study Astronomy; and so there is inequality amongst trees, flowers, fruits, birds, beasts, etc. Then why should there be no inequality amongst men.' It was Rousseau who first admitted this fundamental inequality. He conceives two types of inequality amongst human species, which he defines as physical inequality and moral inequality. Physical inequality consists according to him 'in the difference of age, of health, of the powers of body' etc., and moral inequality

depends upon a kind of convention and is established or at least authorized by the consent of man.' This inequality is essentially, either of degree or of kind. A gifted individual may possess more power of the same kind, or he may possess a power of entirely superior caliber. But now the question arises, in what way does this fact of inequality effect the general human situation? The number of highly talented people in a given society is always much smaller than the number of less talented people. As it is this natural inequality from which the great man emerges.

Carlyle, who has said the most about the matter, is almost ethical when he suggests that the great man "lives in the inward sphere of things, in the True, Divine and Eternal." It is not essential that he should be drunk with God, but because he is granted the quality of 'true insight', therefore he can see something more than his neighbour. He may see it in any domain. Usually people believe that artists belong to aesthetics, but there are also moral artists who bring new ideas in the thought of people. Political thinkers of a country are always great when they shoot out new politico-ethical systems.

We remember when Quaid-i-Azam declared that the sub-continent of India was not suited for democracy or federation. We neither frowned or gave a skeptical smile at this unnatural ejaculation. But it was not that he suffered from phantasmagoria: he proved what he said. In those transitory periods he was searching a firm anchorage for the Mussalmans. His eye, like the eye of nature, was beholding the life transparent before him; he wanted to see through the show of things and beyond it; like a great artist he was dissatisfied with the existing scheme of things, and this desired a change, a reform. Ultimately his penetrating eye caught the inner genuine essence of truth from the visible super-structure of the tangible universe; which dawned as an ideal of Pakistan, a national urge to maintain a separate entity. His true insight may be termed 'vision' or 'intellect', but as a matter of fact it is nothing except comprehension. Ordinary

man's spiritual or intellectual eye sight is weak as compared with that of the great man's, therefore it is only he who comprehends, speaks or acts.

The second attribute of a great man is 'sincerity'. Quaid-i-Azam simply could not believe that a hundred million Mussalmans can be treated like an ordinary minority in such a heterogeneous sub-continent as India. He felt that the Muslim India was not a baby nation, but an adult people with a happy and glorious past. His sincerity compelled him to defend them, so that they may not be tortured by the Hindu national sadism. And in their defence, he did not extend a communal but a by-nation problem. Two nations in one administrative unity, because accidentally they are controlled by one master. Now the world has realized that there is nothing organic about the unity of India; the very conception does not possess the third dimension; it is not life-like at all. We know, if Roman Empire was one, it was only because there was a strong hold of one superior power. But when that superior power perished or when that Empire disintegrated, numerous nations came out from it. As is the case here. India is a name of an empire, which represents the boundaries of the British conquest, and decidedly not of one country. It is a museum of races, a wilderness of creeds and cults; and the Mussalmans here do not represent only a race, but the very non-Hindu values, reared up for centuries in the lap of a distinct culture. Our genuineness lies in the fact that we have preserved our identity with all the freshness and originality of a mighty nation. And Quaid-i-Azam gave expression to the preserved individuality by putting before us an ideal, which is worthy to achieve and worthy to die for.

He would have escaped from the presence of awful reality, but he could not, because his mind was so made. A flame image was glaring upon him, undeviatingly and thus he became a permanent captive of an unconscious sincerity. Now as his actions are based upon correctly conceived truth, therefore his sincerity is absolute and cannot be refuted. A hypocrite's sincerity is based upon logic, variety of words and

his faulty apprehended universe; which generally causes change in the shape of his philosophy or capacity at a given time. But as it is devoid of all true insight therefore it is inferior in pattern.

The final attribute is 'ability'. There is no denying of the fact that we were a fallen people – a heaven-lost, one might say. We were in great danger of being lost in the rising surge of the fanatic Hindu nationalism. We did not know what to do, and it did not behove us to be passive spectators, still we could not identify ourselves with that Hindu Renaissance or the so-called Indian Nationalism. We waited. We were perturbed, disorganized, scattered, like one left in the lurch. Then he appeared, and by his ability, knitting together these stray outbursts of a national feeling, flung the ideal of Pakistan into the crowd of Indian Constitutional Utopias; giving a new consciousness of existence and hope to a nation of a hundred million Mussalmans; uniting them, and making them a living, breathing, healthy, proud force. He presented a solution; not an ordinary safe-guard for us, not cheap checks, balances and weightages; but an extraordinary solution of a preternatural problem. Then he claimed that democracy was nothing short of tyranny. Savagery and butchery in much a country where lived a permanent racial, cultural and deeply religious minority.

It is the first requisite of democracy that a country be homogeneous not only geographically, but historically, racially, culturally and psychologically; and if this requisite is absent, then it is just installing of the tyrant on the 'gaddi'. Paksitan is not a philosophy of hatred or aggression, it is the only way out from this atmosphere of infinite distress, suspension and bitterness which is prevalent.

At this, Quaid-i-Azam was maligned, misunderstood, suspected and hated by the opposing eyeless heroisms. But he would not suffer his convictions to be made popular. He made the Mussalmans conscious of a few aspirations, and now this consciousness has come to them, and run from top to their foot-nails. Muslim India is palpitatingly one, and is

craving for an international recognition of its oneness. As in this way he has become a confirmed representation of the ego of a mighty nation.

'The hero can be poet, prophet, king, priest, or what you will; according to the kind of world he finds himself born into.' This is what Carlyle holds and he is correct when he says so. As the gifted individual is mystically aware of the invisible needs of humanity, therefore he takes the shape or form which the occasion demands. He, in other words, interprets the dumb time and provides what it wants. If men need to be told what there lies a hidden truth in the depths of visible skepticism, then he comes in the shape of a prophet and declares the awful God. If man suffer from the agony of ignorance and hopelessness, then he takes the form of a philosopher and soothes them; and if they are oppressed by the weight of foreign or domestic tyranny and exploitation then he appears as a statesman and frees them.

In India, when the scattered hordes of Mussalmans were wandering aimlessly in the deserts of ignorance, besieged by an eternal depression and attaching their destinies to numerous sparkling mirages; there came one in the shape of a philosopher, preacher and poet. Iqbal – the shrill sound of whose trumpet sat deep in their hearts; but before they could trace him, he had fulfilled his felicitous function and had made his exit. Time demanded another hero, and nature compelled, yielded.

And now there he stands before us, this colossus of ours; a being who has an intimate but unconscious contact with the Eternal Mind; a thorny hedge around an infant plant, guarding it from the merciless gusts of opposing storms. The axis, the spirit, the very fate of a mighty nation. The shadow of God himself.

I warn you brothers! Sincere men are those who recognize the genuineness of a hero, and only they are the people deserving respect and reverence. Sincere men by nature are the obedient men, because their sincerity depends upon loyalty to the best they can perceive above themselves. It is the duty of the great man to see the reality; the ordinary man, if sincere, sees the great man, who is himself a piece of visible

reality under the apparent reality. I once again warn the insincere, malignant stigma from amongst us, to be ware before they plan to mitigate this shadow of God. Their efforts will be futile because it is not possible to transgress the laws of nature. They cannot strangle a shadow, a shadow of eternity itself.

WRITER'S NATIONALISM AND SECULARISM

For interpreting its religious vision in this world, Islam has always been concerned with implementing its social order. Pakistan itself came into being because Islam in the Indian sub-continent sought for a state in which to implement its social order, and not because a state first came into being and then sought to be Islamic.

The active struggle for the establishment of Pakistan commenced in 1940. The question is what role did the intellectuals play in this struggle; and also one might ask what have they done since 1940 and what are they doing now? The responsibility of the intellectuals in any community should be firstly to serve their community by making honest attempts to help the people solve their problems, and secondly to provide the people with fresh and practicable ideas to stimulate and guide their corporate growth. But unfortunately our intellectuals have, until now, been alienated from the rest of their community and therefore Pakistan has suffered from a death of new ideas.

It is usually said that countries are destroyed by accidents. In our country these accidents have gone by the name of politicians. During the last ten years, the term 'Politics' has meant a bitter and ruthless struggle for power, and almost complete decadence and corruption. The ideal of these people was only to defeat their opponents or to throw them

out of office by any means. Since none of the politicians cared about the welfare of the people, the people lost their self-confidence, and their hopes. Pakistan passed through a phase of distrust, disbelief, restlessness and discontent. However the present revolution has saved us from collapse. We are now standing again where we were in 1940. It is high time that we realize our responsibility to try to use our training and our talents to serve our people. We have been guilty of too much introverted cynicism and nihilism, and have become cut off from our community. A revolution is needed in our attitudes towards our role as intellectuals so that Pakistan could look forward to a bright tomorrow.

That is the significance of community in Islam? The Islamic era begins from the time when the Prophet and his followers arrived in Medinah from Mecca and established an autonomous socio-political order. In other words the Islamic era began, or Islamic history started at the moment when, for the purpose of implementing its social order, Islam had managed to acquire a state. The Islamic era, unlike the Christian era, did not begin from the date of birth of the Prophet, neither did it begin from the death of the Prophet, nor from the time when the Quran was revealed.

This historical fact proves that the founding of the community is basic in Islam, and that each Muslim receives his identity because he belongs to the Islamic community. For this reason if a poet, writer or an artist is alienated from the other members of his community, and creates art from himself alone, then his work will receive no response from his community and is not likely to last. An outstanding characteristic of Islamic civilization has been a capacity of Islam to absorb arts and sciences from numerous cultures to give them fresh life and to remould them according to the Islamic pattern. Islamic literature, Islamic fine arts, Islamic history, Islamic philosophy, Islamic ethics, Islamic mysticism, Islamic theology and in short every art and science that developed in the Muslim world has been influenced by Islam.

Islam has no place for those poets and writers who alienate themselves from the community. Such poets and writers have been condemned by God in the Surah *the Poets* of the Quran. But those are not condemned about whom God says:

“Save those who believe and do good works, and remember Allah much, and vindicate themselves after they have been wronged.” (Surah XXVI; V. 227)

During his lifetime, the Prophet set a standard of literary criticism. Every poet and writer who had used his talents for the service of the community received the Prophet’s approval.

Towards the end of the eighteenth century, owing to internal weaknesses, numerous parts of the world of Islam were occupied by the western colonial powers. The impact of the west brought many new ideas into the Muslim world. Two of the most powerful of these ideas are nationalism and secularism. Since Islam was not inert, it did not simply accept these ideas as a passive recipient; these new ideas were only accepted to the extent that Islam as a living and dynamic force could absorb and make use of them. In the Muslim Indian of the 19th century, the poets and writers played a great part in adapting these ideas into an Islamic framework. For the first time in the history of Indian Islam, the writers used their talents for the welfare of the community. The poet Hali has great significance in this connection because he laid the foundations of what may be called literature for the service of the community. In the twentieth century, this ideal which had been formulated by Hali found its fullest realization in the work of Iqbal.

It would be wrong to say that the twentieth century Muslim is exclusively the product of western ideologies, because the modern Muslim has accepted these foreign ideas only in so far they have been absorbed into and adapted by Islam. Therefore, the Modern Muslim is, both consciously and unconsciously, the product of Islam and he also needs

Islam to help him to deal with the new and perplexing requirements of contemporary life.

Firstly then as for secularism the modern Muslim has not accepted it. Rightly or wrongly, the Muslims have always understood that the principle of secularism has derived from the fundamental duality of spirit and matter in Christianity, and that this principle has resulted in the elimination of religion from the collective life of western peoples that is it has led to the development of the secular state. However the idea of separating the department of religion from the other departments of an Islamic state for administrative convenience is not a new idea to a modern Muslim, because there are instances of such arrangements in the past Islamic history. A modern Muslim cannot think of accepting any principle which might have the object of eliminating Islam from the collective life of the community.

Secondly, as for nationalism the modern Muslim has not accepted it in its western form because Islam rejects the principle according to which the unity of a people is founded on a purely racial, linguistic, or territorial basis. Nationalism, understood as a purely political ideal, puts forward claims which are contrary to Islamic teachings. But, of course, patriotism, that is to say to lay down one's life for one's country, convictions, historical traditions, and culture is an integral part of a modern Muslim's faith.

Thus we see that in modern Islamic countries it is Muslim nationalism rather than secular nationalism which has inspired the people. 'Muslim nationalism' means that in each country inhabited by Muslims, there should be emancipation from foreign rule for all of the citizens who adhere to Islam, irrespective of language or race, and that this emancipation must not come into conflict with the general principles of equality, fraternity and solidarity among Muslims, as established by their religious usage and cultural coherence. For example, present day Iranian nationalism is essentially Shia Muslim nationalism. A characteristic feature of Arab nationalism is the difficulty of distinguishing between

Arabism and Islam. The status of Indonesian nationality is only offered to Muslims. In Turkey also the status of full Turkish citizenship is granted only to Muslims; the Jews and Christians do not have the same status in the country. The 1955 riots in Istanbul have indicated that the Turkish Muslims are not willing to accept non-Muslim Turks within their concept of Turkish nationalism.

Today we see that on the one hand man feels close to the possibility of travelling through space and reaching other planets. But we also see that modern man has created weapons which are capable of bringing about the complete devastation and annihilation of humanity. The question is whether in the face of these new possibilities and dangers the Western countries themselves find the concepts of nationalism and secularism adequate to their needs. The same Europe who spread these ideas in Asia in the past two centuries is today uncertain and afraid of the dangers which may result from nationalism and secularism. European nations have come to understand that the division of humanity into nations based on race, language or territory is destructive, and for this very reason they are coming closer to one another. There are also signs of a revival of Christianity among western peoples.

If our intellectuals were to accept uncritically the western ideals of nationalism and secularism, they would be likely to become alienated from the community because they would not be sharing in the aspirations and purposes which led to the establishment of Pakistan. They would, therefore, be unable to make their proper contribution to the life of the country.

Pakistan was founded on the principle of Muslim nationalism. The 'Two Nation Theory' was put forward as an exposition of this principle. Some of the critics of Pakistan try to say that Quaid-e-Azam Muhammad Ali Jinnah invented this theory, and that it had no true historical basis in Indian Islam. But the fact is that the problem of the two nations originally came into existence soon after the Muslims, under

the leadership of Muhammad Bin Qasim, entered India as conquerors. In illustration of this point, I would have liked to quote the words of Al-Beruni taken from his famous work entitled, *Kitab-Al-Hind*, which he wrote in the ninth century, when he visited India in the company of Sultan Mahmud. But owing to limited time at my disposal I shall skip the quotation about the contrasts he observed between the customs and habits of the Hindus and the Muslims. And he also gave reasons for the complete isolation of the Muslims as a community from the Hindus.

These thoughts were expressed one thousand years ago. The history of the Indian sub-continent shows us that numerous unsuccessful attempts were made to solve this problem of the isolation of the two communities from each other. In the sixteenth century, the Emperor Akbar renounced Islam in an effort to amalgamate the two communities, but he did not succeed. Then in the seventeenth century, the Emperor Aurangzeb tried the alternative method of attempting to impose strictly the laws of the ruling Muslim minority upon the unwilling Hindu majority. This attempt also failed because the subject Hindu majority would not accept it. In the nineteenth century after the decline of the power of the Moghuls, and when India had fallen into the hands of the British, Syed Ahmed Khan recognized the seriousness of the same problem. Later on in the beginning of the twentieth century, Maulana Muhammad Ali also said that there were to nations in India.

Since Iqbal believed that Islam has always in its past history implemented its social order for the purpose of expressing its vision in this world, he vigorously proclaimed the need for a separate state for the Muslim nation in the Indian sub-continent. In the end, it was Quaid-e-Azam Muhammad Ali Jinnah who solved the problem which has appeared insoluble even to such autocratic and all powerful Emperors as Akbar and Aurangzeb.

The views of Quaid-e-Azam on the complete isolation of Muslims as a community from the Hindus are known to all of

you. Anyway, there is a thousands years of history between the observations of Al-Beruni and the views expressed by Quaid-e-Azam. It is quite apparent that the Hindus and Muslims were not able to come close to one another even if one thousand years of living together. Clearly it is not possible to say that Quaid-e-Azam invented the problem and the theory of the two nations.

It is necessary that we should keep the principle of Muslim nationalism always clearly in our minds because it is this principle which is the basis and the *raison d'être* of Pakistan. If we were to relinquish this principle in favour of any other ideology, we would be committing a form of treason against the cause for which our community has already sacrificed so much. Pakistan, as I have already said, came into being because Islam in the Indian sub-continent sought an autonomous state for the implementation of its social order. It was for this reason that the Objective Resolution, 1949, was passed. It was for this very reason that the Objective resolution received the support of the entire community. And now since we stand again in the same place where we stood in 1949, it is necessary for us once again to affirm our support to the Objective Resolution so that we can look forward to the realization in terms of the every day lives of our people of what Pakistan ought to be.

And now, in conclusion, let me suggest that just as our problems are new, so also are our fears. Our hopes are new, and our dreams are new. Our task as intellectuals is not only to train ourselves to achieve intellectual enlightenment and individual self-reliance; we need most of all a genuine vision of God's purpose for our country, and a willingness to offer our lives and our art to the advancement and betterment of our community.

When we write we should select such themes as will promote love, unity and understanding between peoples of Pakistan, and annihilate all sectarianism and provincial antagonism from our midst. In our very recent past we have seen our people showing immense strength and courage in

facing terrible difficulties. Why should we not find subjects from the actual examples that we know of such strength and courage so that our writings may raise the general morale of our people and help them to come to grips immediately with the many desperate and urgent problems which surround us? We should try to select such themes as can help the people learn to overcome some of their mediaeval habits and narrowminded attitudes, and as will encourage them to become forward looking in all aspects of life. Part of our responsibility is to select those themes that will help to keep before the eyes of the government the real needs and problems of the people. Finally, we should do all that we can to help Pakistan become strong, prosperous and just.

Furthermore, since we have a distinctive culture of our own, intellectuals should find ways of implementing our cultural and social values in terms of the complex needs of the novel modern world. Just as there are certain themes which are appropriate for our writers to use in serving the present needs of the country, so also similar themes should be used creatively and in the same way by those whose talents lie in the realm of the other arts such as music, painting, sculpture and so forth.

We got Pakistan because we were Muslims and therefore our literature should be not only constructive but also Islamic. The function of our intellectuals should be, as I have already said, to provide fresh and practicable ideas to guide and help the people to solve their problems. If and when our intellectuals can come to understand their proper function, then Pakistan will no longer suffer from a dearth of ideas but we will find ourselves in the midst of a sudden flood of new and inspiring works of art.

ADDRESS IN THE LAUNCHING CEREMONY OF *QUOTES FROM QUAID*

Mr. Liaquat Merchant, Prof. Sharif-al-Mujahid, Mrs. Ameena Saiyed, Ladies and Gentleman!

Mr. Liaquat Merchant and the Jinnah Society have bestowed a great honour on me by inviting me to launch *Quotes from the Quaid*. I think, we all are aware that during the past many years we have been gradually drifting away from the principles enunciated by Quaid-i-Azam. A nation usually reverts to the purity of its foundational principles when, due to some unfortunate events in its history, such principles are ignored, misinterpreted or distorted, outwardly for the sake of some forms of necessity, emergency or expediency, but inwardly to suit the requirements of a person or a group which derives a transitory benefit from the situation.

The distortion and misrepresentation of these principles have led to an unending debate in this country as to what the Quaid stood for. The objectors contend: (a) The political ideal of the Quaid was to establish a secular state in Pakistan and not an Islamic state, (b) The Objectives Resolution adopted on 12th March 1949 by the Constituent Assembly was inconsistent with his political ideal, therefore was not moved during his own life time, (c) he failed to get the Constitution of Pakistan framed during his tenure of office as the first Governor-General of Pakistan. And (d) he did not

encourage the development of dedicated succeeding political leadership as he had a dictatorial temperament.

The outline of this diabolical reasoning proceeds thus: When the Quaid led the struggle for Pakistan on the basis of "Two-Nations" theory, by "Two-Nations" he obviously meant the Hindu and the Muslim nations. But when Pakistan had been established, he shifted the emphasis and thought in terms of only "Pakistani" nation. In other words, he gave up Islam as the basis of nationhood in Pakistan and adopted the Western concept of state based on secular nationalism. In support of this thesis his address to the Constituent Assembly on 11th August 1947 is highlighted and the argument is advanced that the political ideal of the Quaid was to establish a secular and not an Islamic state in Pakistan. It is maintained that there was no contradiction of the "Two-Nations" theory as advanced by the Quaid because the word "nation" could be used in two different meanings. It could be used with reference to a people marked off by common race, language, and culture, as the Quaid used it in the pre-Pakistan days; and it could also be used with reference to the people of a state in terms of Political Science and International Law, as the Quaid used it in the post-Pakistan period. The Quaid did not regard the Muslims left in India as a minority. According to him, they constituted part of the Indian nation just as the Hindus and other non-Muslims in Pakistan constituted part of the Pakistani nation. But shortly after his death, history was made to take a sudden turn under the pressure of the "Maulvis and Maulanas", and the Objectives Resolution was adopted which was inconsistent with the political ideal of the Quaid.

It is interesting to note that those who took part in the events of that period have been asked to fill up the gap in history between the Quaid's address of 11th August 1947 and 12th March 1949, the date on which the Objectives Resolution was passed along with a challenge that those who attempt to answer the above questions must start with the assumption that the Quaid never indulged in self contradiction and that hypocrisy, political trickery and a

desire to win cheap popularity were just not part of his character.

Assuming that the Objectives Resolution was inconsistent with the Quaid's political ideal, the need for moving it did not arise during life-time of the Quaid simply because the people of Pakistan had implicit faith in him and his political ideal. It was only after his death that those who held the reins of government felt obliged to move and adopt that Resolution in order to reassure the people that the political ideal of the Quaid was going to be implemented and that the future Constitution of Pakistan would be based on the very same ideal.

If it is assumed conversely, then the inevitable conclusion would follow of the contradiction of "Two-Nations" theory by the Quaid. But the objectors want us to start with the assumption that the Quaid never indulged in self-contradiction; although they assert that the Quaid used the word "nation" in two different meanings at two different stages of the history of the Muslims of the subcontinent. In other words, in the pre-Pakistan days he utilized Islam as a nation-building force and in the post-Pakistan period he switched on to the secular-nationalist standpoint. Of course, according to the objectors, without contradicting himself. The justification of this point of view is sought from the fact that the Quaid regarded the Muslims left in India as Indian nationals, just as he considered the Hindus and other minorities left in Pakistan as Pakistani nationals. But why not put it simply that the Quaid regarded the Muslim minority in India as citizens of India and he assured the Hindu and other minorities in Pakistan that they would be treated as equal citizens with the majority community in Pakistan. Had the Muslim minority in India been oppressed, would the objectors want us to believe that the Quaid would have remained indifferent to or unconcerned with their fate, merely because he had adopted the use of the word nation in terms of Political Science and International Law or that after

discarding Islam as the basis of nationhood in Pakistan, he had switched on to the secular-nationalist standpoint?

If the Quaid wanted Pakistan to be a secular state, but those who succeeded him distorted his political ideal by making it "Islamic", then we must not forget that after the assassination of Liaquat Ali Khan, a political vacuum had been created in which those elements were sucked in who had nothing to do with the Pakistan Movement. Ch. Muhammad Ali, Malik Ghulam Muhammad and Iskandar Mirza were not even remotely connected with the Muslim freedom movement. Then followed from General Ayub Khan onwards a chain of "strongmen" from the armed forces who were strong enough to abrogate or promulgate constitutions for Pakistan after every nine or ten years, and yet one might as well ask why none of these strongmen had the courage to restore the political ideal of the Quaid by making Pakistan a secular state?

Had the Quaid lived a few years longer or Liaquat Ali Khan not been assassinated, there was every possibility that a responsible succeeding democratic leadership may have emerged from the Muslim League, and the Army takeovers had not become customary in Pakistan. When the Quaid held the office of Governor General, the times were abnormal and there existed a genuine apprehension that the infant Pakistan may be strangled at its very birth by "step sisters". The Quaid remained in office for a total period of thirteen months out of which he was seriously ill for the last four months. Therefore it was not humanly possible for him to get a constitution framed for Pakistan. Similarly destiny did not give him sufficient time to groom a dedicated succeeding political leadership for the country. Even otherwise it is not always grooming that makes the leadership. Great leaders like the Quaid are gifts of God. They cannot be made to order.

Was the Quaid a dictator? This question should be left unanswered for the reader must exert himself to find out the distinction between a dictator and a democrat from the restatement of the principles and ideals of the Quaid.

It must be made clear at this stage that the Quaid never stood for establishment of the “conventional” model of “Islamic state”, known in our history as Caliphate, Imamate, or Sultanate. His vision of Pakistan as an Islamic state was a parliamentary federal form of democracy with residual powers vested in the participating units; equality of all citizens irrespective of their cast or creed, fundamental rights guaranteed by the state and, finally establishment of the rule of law. In his conviction these principles were not repugnant to the injunctions of Islam. He consistently declared that Pakistan would not be a theocracy. In brief, he stood for a modern democratic Islamic welfare state, the parliament of which is sovereign and can, after mutual discussion, interpret and legislate the Shariah, in accordance with the needs and requirements of the times. In other words, the Quaid did not contemplate that the antiquated version of Islamic state should be implemented in Pakistan. If the Quaid kept his ideological distance from the secularists he also did not touch with a bargepole the model of Islamic state advanced by the “Maulvis and Maulanas”. On this point, I may beg to submit that one very relevant quote of the Quaid which should have been included in the “Quotes” has escaped attention. I desire to bring to your notice a passage from the Quaid’s speech dated 5th February 1938, delivered at the Muslim University Union, Aligarh, informing the students what the All India Muslim League has accomplished under his leadership:

“What the League has done is to set you free from the reactionary elements of Muslims and to create the opinion that those who play their selfish game are traitors. It has certainly freed you from that undesirable element of Maulvis and Maulanas. I am not speaking of Maulvis as a whole class. There are some of them who are as patriotic and sincere as any other; but there is a section of them which is undesirable. Having freed ourselves from the clutches of the British government, the Congress, the reactionaries and so-called Maulvis, may I appeal to the youth to emancipate our women.”

The “Quotes” cover questions like: In what sense did the Quaid desire Pakistan to be an Islamic democracy? How

much importance did he attach to fundamental rights of the citizens? Did he want Judiciary to be subservient to the Executive or independent of it? Did he expect Pakistan to have one man's rule or one party's government? Was he in favour of the system of indirect election or direct election? What were the Quaid's views regarding the development of Commerce and Industry? Did he support the Western economic theory and practice or did he advocate the adoption of socialization based on the Islamic concepts of equality and social justice? What were according to him, the requisites of national consolidation? Was he for the emancipation of Muslim women? What changes he wanted to implement in the system of education? What ideals he set before the services, civil and military? On what major principles did he want to base the foreign policy of Pakistan? What were his views regarding the defence of Pakistan? *Quotes from the Quaid* provides answers and is bound to stimulate academic research. This booklet like the Red Book of Mao, merits to be kept in the pocket of every lover of the Quaid and Pakistan. I congratulate Prof. Sharif-al-Mujahid and Liaquat Merchant for editing the booklet, and Mrs. Ameena Saiyed of the Oxford University Press for publishing it.

I close the speech by describing the personality of the Quaid through a modification of two verses of Allama Iqbal:

کہتا ہے وہی بات سمجھتا ہے جسے حق
 نے ابلہٴ مسجد ہے نہ تہذیب کا فرزند
 اپنے بھی خناس سے ہیں بیگانے بھی ناخوش
 وہ زہرِ بلائیں کو کبھی کہہ نہ سکا قد

ADDRESS ON THE OCCASION OF BAPSY'S BOOK LAUNCH

Ladies and Gentlemen!

I cannot recollect since how long have I known Bapsy. Our friendship has been more or less perpetual, free from the tight grasp of Zarwan, the God of Serial Time of ancient Iran. If I am called upon to describe our friendship in classical Urdu, it has been from "Azl" and shall continue to "Abad", i.e., from no beginning in time to hopefully no ending.

I again do not remember at what precise moment in our cordial relationship Bapsy made a reluctant disclosure that she was a story-teller and had compiled in English one or two novels. These novels were in manuscript form, and as she was not aware of their worth, she did not dare to get them published. I requested her to lend me one of the manuscripts so that I could examine it as a layman and express my opinion if any, as I am not as eminent a critic of English literature as some of those who are present here today.

Bapsy readily lent me a manuscript. I ardently went through it; found it interesting, absorbing and amusing. I suggested to Bapsy that it was worth publishing. But Bapsy was silent. However I could read her thoughts: "Who is going to publish a novel in English in Pakistan of an unknown author? Who will care to read it as most of us do not like reading books, or speaking correct English, or even proper

Urdu? When we can acquire knowledge through TV Channels why the hell should we bother to read anything?"

I told Bapsy to get it printed at her own expense as she was a rich girl. She agreed on the conditions that (a) I suggest its title, (b) write its Foreword, (c) find a printer, and (d) launch it.

There was no problem in finding a printer when you were willing to pay for the job. As for the title, I, by chance enquired, why had Bapsy portrayed Faridun as a very talkative character? Bapsy replied: "Parsis are usually very talkative persons." I casually informed Bapsy, "You know, a talkative person is described in a Punjabi idiom as 'the one who has eaten a crow' (Is nay kaan khada hoye aye). Since the novel deals with the Parsis as a very talkative community, why not name it 'The Crow-eaters'?" "Bapsy immediately agreed with the title and that matter was settled.

Now remained the question of writing a Foreword. This took some time. I had to do some real research on the religion, culture, history, literature, and habits and customs of the Parsis of Iran and India. In the course of the research, I learnt so much that I could deliver a series of lectures on the Parsi community in any university as a Professor. Finally the Foreword was completed and printed as part of the novel titled "The Crow-Eaters". Faiz Ahmad Faiz wrote a para of appreciation at the back of the title page, and this is how the first novel of Bapsy saw the light of the day.

The novel was well received by the liberal Parsi community in Bombay who did not mind laughing at themselves. But the Parsi community in Karachi, perhaps more orthodox due to the influence of the conservative Muslim environments of Pakistan, did not appreciate the humor and disapproved the novel. They blamed Bapsy for ridiculing and defaming the small self-righteous Parsi community. Thus the novel was condemned but mark you! Not the Foreword. I was loved and respected by the Karachi Parsi community for this Foreword. I was invited to Karachi to deliver a lecture on Parsi culture, and at a fabulous dinner

attended by the leading and eminent members, I was specifically honoured by the Parsi community. Thank you Bapsy!

Now a few words about the launching of Bapsy's first novel in Lahore. Well, a small interesting get-together of writers and Bapsy's friends was arranged in one of the smaller halls of Al-Hamra Complex. I was in the chair and, I think, three speakers had addressed the gathering and the fourth was on his feet, when suddenly there was a bomb scare. Now during those days bomb-throwing on gatherings or planting at relevant places was not as popular a sport as it is today in this country. Nevertheless Justice Durab Patel, may God bless his soul, whispered in my ear: "Try to wind up as soon as possible, otherwise the bomb may explode." Disgusted I asked: "Who has planted the damned bomb and where?" "How would I know," he replied innocently, "I have not planted it." Respecting the pronouncement of my senior brother Judge I shortened the proceedings, wound up the function and we all quietly or rather stealthily walked out of the hall. Luckily there was no explosion. It was simply a scare, but who circulated it? The mystery of Bapsy and the Bomb has never been resolved. Bapsy is here again today. I trust, everything is O.K. and I hope security is alert, or is not it?

Not only the Parsis, every novelist has to be a very talkative person, otherwise he cannot be a good story-teller. And if as a story-teller he is really very talkative, then he would naturally be expected to have a taste for eating crows. Consider the example set by Scheherazade. She narrated 1001 stories and got her execution postponed every day to tomorrow. Imagine how many crows she might have consumed.

Ever since "The Crow-Eaters", Bapsy has written many novels which have been published one after the other. She is now a well established author, and had even been lecturing in some of the U.S. Universities on the subject of "Creative Writing". I am sure she must have explained the importance

of crow-eating to her pupils in case they really wanted to adopt the career of story-telling.

Bapsy is not the author of the book that is being launched. She is only the introduction writer/editor of "Beloved City". The book contains selected writings on Lahore, Bapsy's beloved city, of numerous Lahori or non Lahori story-tellers. But since the writings are disjointed small pieces, it appears that the contributors tasted only specific portions of the crow - may be breasts, or legs, or possibly wings. Now you will judge by examining the book whether it is well done, medium or raw.

Bapsy loves Lahore where she was born and brought up, just as Scheherazade loved Baghdad. She is well aware of the maxims evolved by the Lahoris e.g. "Lahore is Lahore", or "Whoever has not seen Lahore has yet to be born". But Bapsy shall soon leave the beloved city and return to Texas. Therefore, let us bid her farewell, Good-by Bapsy! Scheherazade of Lahore, Good-bye Good Friend! May the number of your novels reach 1001 and the Sultan of your readers go on prolonging your fame every day to tomorrow - that never comes!!

(27th November, 2005)

BIOGRAPHY OF HAJI SETH ABDULLAH HAROON

(Book Review)

This interesting biography of Haji Seth Abdullah Haroon, a great Muslim leader of the subcontinent, was compiled by his beloved daughter Daulat Haroon Hidayatullah. Nawabzada Liaquat Ali Khan wrote a foreword to the first edition while he was Prime Minister of Pakistan.

The first two chapters of the book which deal with the early life and struggle of Seth Abdullah Haroon are very sensitively written by the author. He was born in 1872 or 1873, but lost his father at the age of four. He was brought up by his courageous mother. The family of Seth Abdullah had migrated from Cutch to Sindh. Being of Cutchy Memon stock, the family had a natural aptitude for trade, therefore the urge for commercial enterprise was in the Seth's blood. At the age of six, he was sent to a Gujrati School. His mother used to buy him a trayful of small saleable articles and made him sell pencils, rubbers, shoe laces etc. in the streets in order to earn a living. This was the manner in which the young salesman started his business career. Whenever the Seth complained to his mother how ashamed he felt to walk in the streets selling things, she would reply:

"To beg was a shame, but selling merchandise was a proud heritage of your family. Was it not better to be doing something

for your livelihood than to go begging in the streets?”

In 1887, at the age of fourteen years Seth Abdullah left the school and joined the firm of his brother-in-law at the salary of four rupees a month. Then in 1889 at the age of sixteen he accompanied his mother for the performance of Haj and thus became a Haji at a very young age. On his return he joined the firm of his maternal uncle who was engaged in the grain business. This was the beginning of a career of phenomenal success in trade and commerce along with giving away of his wealth freely for charitable purposes as well as of selfless political service to Sindh and Muslim India.

Although he took interest in politics since 1901, the biography does not disclose how the political career of Seth Abdullah was influenced by the three major developments in Muslim politics; namely when the All India Muslim League was created in 1906, when separate electorates were conceded for the Muslims in 1909, and finally when the Congress—League pact was signed in 1916. However, it is stated that the forces released by the Lucknow pact 1916 did affect Seth Abdullah's political life very closely and that it was against this background that he joined the Congress in 1917. These were the times when Muslim India had come under the spell of the enigmatic Khilafat Movement and a false notion of Hindu Muslim Unity. Accordingly Seth Abdullah plunged into the Khilafat Movement with his heart and soul, and was elected President of the Sindh Province Khilafat Committee in 1919. He actively participated in the non-cooperation movement and even founded a paper called “Al- Wahid”. In 1920 he was also elected President of the Sindh Provincial Muslim League.

On the collapse of the Khilafat Movement, from 1925 onwards, Haji Abdullah directed his efforts to the separation of Sindh from the Bombay Presidency. His efforts began to bear fruit and the separation began to take shape. He was elected member of the Central Legislative Assembly in 1926, appointed member of the Sindh Financial Enquiry Committee in 1931, the Sindh Administrative Committee in

1933 and finally the Sindh Delimitation Committee in 1935. Haji Abdullah also planned to organize a political party in Sindh patterned along the lines of Unionist party in the Punjab of Fazil Hussain. Eventually he was elected party leader of the Sindh United Party. However, for the services rendered by him for making Sindh stand on its own feet as a province, for gaining eminence as a great Muslim philanthropist and an outstanding political leader of Muslim India, he was conferred knighthood in 1937.

In 1937, elections were held under the government of India Act 1935 and as a result the Congress won and the League lost. The Congress victory and the policy of Congress provincial leaders alarmed the Muslims of their fate under the Hindu dominated provincial and federal governments. The eyes of the Muslims naturally turned to the Muslim League which started gathering strength. The first provincial Muslim League Conference was held at Karachi under the presidentship of Jinnah in October 1938. Haji Abdullah was made Chairman of the Reception Committee and the conference proved to be a turning point in the politics of the Muslims of Sindh.

Haji Abdullah in his letter dated 7th November 1938 wrote to the Agha Khan:

“In no case we trust the Congress and the Hindus. We are seriously considering the possibility of having a separate federation of Muslim states and provinces so that we are free from the Hindu molestation.”

In July 1939, while writing the foreword to Dr. Abdul Latif's book, he stated that the Muslims see no other way of consolidating their future except carving out cultural zones or separate homelands for themselves. In March 1940, Haji Abdullah took a very prominent part in the Lahore session of the All India Muslim League when the Pakistan Resolution was passed. But he was not destined to witness the emergence of Pakistan. He passed away two years later on 27th April 1942.

What intrigues me in this biography is the photograph of a car in which Haji Abdullah is sitting along with Allama Iqbal. According to my research, as pointed out in my biography of Allama Iqbal titled "Zinda Rud", this photograph was taken on the historic occasion of the All India Muslim League session held at Allahabad on 29th December 1930 under the presidentship of Allama Iqbal in which, from the platform of the Muslim League, for the first time, the concept of a Muslim state was advanced by a President of the Muslim League when Iqbal proposed the creation, "within or without the British Empire", of an "amalgamated Muslim State" consisting of the Punjab, Sindh, Frontier Province and Balochistan as the national homeland for and the destiny of at least the Muslims of North West India.

The caption underneath the photograph reads that Hafeez Jalandhari is standing on the extreme left, and Yousaf Haroon, then a spirited lad, second from the right. The other persons present have not been identified, nor any detail is provided in the biography how Haji Abdullah and his son Yousaf Haroon happened to be present in Allahabad on that occasion. According to my information, the host of Allama Iqbal was Nawab Sir Muhammad Yousaf, and those Muslim Leaguers who attended the session included Syed Hussain Imam, Maulvi Abdul Qadir Qasuri, Maulana Abdul Majid Badayuni, Syed Habib, Zakir Ali and Mufti Fakharul Islam Wakil. Did Haji Abdullah and his son accompany Iqbal from Lahore in order to participate in the session or were they already present in Allahabad? However it appears that they did attend the historic session, and it also establishes that it was not for the first time that Haji Abdullah talked of a separate federation of Muslim majority provinces in 1938 or of separate homelands for the Muslims in 1939, but he was a firm supporter of the idea of a separate federation of Muslim States and visualized it like Iqbal since 1930. I have also another piece of evidence in support of this thesis. On 19th December 1930 Iqbal addressed an appeal in the name of upper India Muslim Conference to the eminent Muslim

leaders of these provinces which besides other material contained the following significant words: "They have to know that Allah who is Wise, Knowledgeable and Well-informed, has not created Muslim majorities in these four provinces as a mere coincidence, but in keeping them together in a contiguous area, He has such a purpose (Maslehat) which is gradually being revealed to those who can perceive and comprehend." One of the eminent Muslim leaders who eagerly responded to this call was no other than Haji Seth Abdullah Haroon. Since Upper India Muslim Conference could not be held in Lahore, Haji Abdullah along with his son Yousaf traveled to Allahabad to listen to Iqbal, revealing his dream of new social and political horizons for the Muslims in the future.

In order to pay tribute to Haji Sir Abdullah Haroon for rendering extra-ordinarily great services to the Muslim cause during the course of the establishment of Pakistan, the Pakistan Movement Workers Trust awarded Gold Medal to him in the year 2000. But as no one from his descendants came forward to receive the Medal, it is still lying with the Trust. One of Haji Sahib's sons, Yousuf Haroon has received the Gold Medal on the same grounds in his own right. But availing of this opportunity, I in my capacity as the Chairman of the Trust, request the Chief Minister Punjab, Ch. Pervez Elahi to present the Haji Sahib's Medal to his grand-daughter Charmaine Hidayatullah.

(10th March, 2006)



POLITICAL THOUGHT



ARISTOTLE'S "ON POETICS"

There are two extreme views about the Greek genius amongst the moderns. One of mystical reverence and the other of contemptuous indifference towards them. Strictly speaking, most of the Greek explanations are least applicable to the modern artistic or scientific problems – and on these grounds we can join hands with the sect of critics who believe in neglecting Greeks altogether, or if at all they were studied, then the basis of study should be entirely historical. On the other hand, we can safely assume that everything that troubled or mystified the Greek mind is also the cause of trouble or mystery to the modern mind. In other words, problems, as far as their basis or fundamentals are concerned, remain the same though explanations might differ from time to time according to the variation in human thought. So here we are compelled to provide a place for them as the pioneers in all domains of knowledge. The attitude of a student towards the study of a great mind should neither be of mystical reverence nor of contemptuous indifference, but of sincere application of our critical faculties to the subject.

We are here essentially to study Aristotle's conception of Poetic Drama which is contained in his famous treatise "On Poetics". Critical art develops most in an age when there is creative deficiency. We notice that the Golden Age of Greek poetry as well as of drama was already on the wane when Aristotle flourished. Poets like Homer, and tragedians like Aeschylus, Sophocles and Euripides had died since long. A

complete artistic deterioration in Greece was the cause of the rise of critical faculty to such an extent that we do not come across any great work of critical art after Aristotle's, neither in Greece nor in medieval Europe.

Before initiating the subject, we should better study what drama meant to the Greeks and how it evolved till it took a certain shape which was finished and complete for Aristotle to sit and set final principles about it.

The origin of Greek Drama is difficult to trace, though the general contention is that it had a religious purpose. Acting, in its primitive form must have been a means of prayer. The Greeks imitated a thing in order that the gods may take the hint and do likewise. We have reliable sources to believe that all forms of dramatic performance were connected with Dionyous, a Greek god presiding over drama, wine, vegetation, mirth and laughter. Generally Dionyous was made the hero in the plays and events of his life were staged at his festival known as 'The Great Dionysia' in the month of March under the presidency of his priests. So for the Greeks going to see a play was an act of religious worship. They built open-air theatres on usually one side of a hill. The stage or the altar used to be in the centre and stairs rose in the shape of a semi-circle up the hill. These stairs were used as seats and people sat upon them to watch the play. The gigantic ruins of these theatres in Thera and Crete denote the immensity of crowds that used to gather in those days. There was no fall of curtain, but the actors appeared as informers that a certain event had happened. These informers were sometimes part of the chorus which occupied the Greek stage continuously.

Greek drama had two definite forms, tragedy and comedy. Aristotle says, "Both tragedy and Comedy originate in a rude and unpremeditated manner – the first, from the leaders of dithyramb and second, from those who led off the phallic songs." Dithyramb was originally a song of revelers, probably led by a flute and accompanied by the magic of other Eastern instruments. It was reduced to a definite form by Arion, who composed regular poems, turned the moving band of

worshippers into a standing or 'cyclic' chorus of attendants of Dionysus – a chorus of satyrs, a tragic or goat chorus, invented a style of music adapted to the character of the chorus, and called these songs "Tragedies" or "goat songs". This form developed into lyrical tragedy. Lyrical tragedy is a transition stage between the dithyramb and regular drama. Further on it took the shape of tragic drama and its invention is ascribed to Thespis, a native of Icaria. As he introduced an actor, doubtless at first, generally the poet himself, who instead of merely alternating his recitations with the songs of the chorus, addressed his speech to the leader, with whom he carried on, in a way, a dialogue. Similar must have been the evolution of comedy.

In tragedy we generally find almost always a death, and the ritual to be explained – a tomb worship. Some tragedies indeed seem to be taken more from the epic tradition than from any ritual. Anyhow epic or heroic stories seem always to have in them a dirge, or a sacred tomb. Tragedy gives the violent death and lamentation of its hero or heroine.

When we think of 'drama', to us the word suggests a portrait of characters and a conflict between them. But the Greeks thought of drama differently. According to them the characters were subordinate to action, plot or situation. They held that the character is a subordinate or a secondary element which claims its importance only because it has some direct bearing or influence on the main situation. Even Aristotle has remarked that the poet is the soul of drama, and by this he meant the Greek drama, as it was the only drama that he knew. But some where else he admits in 'Poetics' – "the specific quality is given to the action by the characters." No doubt Aristotle distinguishes between action and character, but he considers character as subordinate to action always, and his remarks are correct so far as the Greek drama is concerned, as it was primarily a drama of action, of plot or of situation and it was only in secondary degree a drama of character like our modern drama.

Now the question arises why Greek drama was a drama of action, plot or situation, or why Aristotle attaches secondary importance to character or why the Greek drama was not a drama of character. These questions are very much interlocked. When we think that the Greek audience ranged from twenty to thirty thousand and the actor had to declaim to them all, we immediately realize that the Greek actor did not possess the resources of the modern actor which he employs in the portrayal of character, for example modulation of voice, play of features etc., which are amongst the significance resources of the modern actor for portraying the shifting conditions of the soul within. The Greek actor, to take the most obvious instance, did not try to imitate a man, he attempted to present somebody larger than life. Accordingly he wore a mask, propped himself upon buskins, was padded out to a super-human size. This made 'realistic action' as we understand, impossible. That is why the Greek dramatists preferred to give types rather than individuals. These factors determine the importance of action, plot or situation. So the Greek drama always began with action and spectacle, the deeds came before the words, the dance before the dialogue, the play of body before the play of mind. The Greek dramatists, as we have seen, very seldom made their own plots but took an accepted story from the epic tradition. The moment a story began on the stage, the audience knew how it would end. The criterion of perfection, efficiency and skill was determined by the treatment of the story or of the theme.

As far as the development of Greek drama is concerned, it was independent and self-restrained, though it might have owed certain elements to Egyptian or Phrygian or other Asiatic influences. Drama is a trans-literation of a Greek and that means a 'thing done' or 'performed' Theatre to Greeks meant a seeing place, and the word audience – those who listen. Greeks had different meanings of the word *orchestra*, that's the stage or altar where they danced or sang chorus, hymns etc.

Now we turn to the treatise "on Poetics". Aristotle takes poetry and tragedy in this booklet and gives his own explanation. We have been told that he also wrote a treatise on comedy, but it was lost. "Poetics" is a difficult study, because, it is quite probable, Aristotle never wrote it himself, he merely gave lectures and "Poetics" was the collection of jottings or notes from those lectures taken by some of his students.

The first few chapters, he devotes to the explanation of poetry. In the tenth book of the "Republic" Plato denounced Poetry as a false siren, the imitator of things which themselves are shows. It is bad, as Plato thinks, because it tells lies and fails to teach man. It feeds and waters passions — 'weeds that ought to be killed by draught'. And among the different kinds of Poetry, dramatic poetry is particularly bad because the actors representing the character of others destroy their own. Aristotle certainly knew this passage in the tenth book. He, without mentioning the name of Plato, demolishes every argument of Plato. Plato said "Art is a pale shadow twice removed from Reality." Aristotle says, "Fiction is more philosophic than the history of actual events." Plato said, "Poetry encourages men to be hysterical and uncontrollable." Aristotle says, "On the contrary it makes them less and not more, emotional by giving a periodic and healthy outlet to their feelings." In discussing katharsis, Aristotle over-exercises the moral effect of tragedy, because, firstly, he is answering Plato, and secondly, he is too much of a philosopher to be without a moral voice, although his voice is opposite to that of Plato.

Aristotle agrees with Plato that the origin of Poetry was due to imitation which is so natural to man from childhood. "And it is natural for all" says Aristotle, "to delight in works of imitation." For Plato the world around us was an imitation of the world present in the form of an idea in God's mind, thus its being an imitation, it was false and to imitate a falsity, for Plato it was no less than crime because falsehood has no moral value. But Aristotle believed that only through

imitation one learns. He says, "To be learning something is the greatest of pleasures not only to the philosopher but also to the rest of mankind, however small their capacity for it; the reason of the delight in seeing the picture is that one is at the same time learning – gathering the meaning of things, for example, that the man there is so-and-so; for if one has not seen the things before, one's pleasure will not be in the picture as an imitation of it, but will be due to the execution or colouring or some similar cause." We have also the sense of harmony and rhythm equally as imitation is natural to us. Aristotle categorizes all different forms of art as modes of imitation – their purpose being moralizing mankind through pleasure. Thus refuting the arguments of Plato (without mentioning his name) he defends art against the fierce attacks of Plato.

In chapter fifth of his treatise Aristotle explains what comedy is. He says in his matter of fact manner, "As for comedy, it is (as has been observed) an imitation of men worse than the average; worse however, not as regards any and every sort of fault, but only as regards one particular kind, the Ridiculous, which is a species of the ugly. The Ridiculous may be defined as a mistake or deformity not production of pain or harm to others; the mask, for instance, that excites laughter, is something ugly and distorted without causing pain." Here we might differ, but we should bear in mind that Aristotle spoke particularly of Greek comedy which was thus. We are not in a position to define our modern comedy on the basis of ridiculous as such.

From the sixth chapter starts his interesting account of tragedy. Aristotle defines tragedy as "the imitation of an action that is serious and also, as having magnitude, complete in itself; in language with pleasurable accessories, each kind brought in separately in the parts of the work; in a dramatic, not in a narrative form; with incidents arousing pity and fear, wherewith to accomplish its catharsis of such emotions."

Aristotle's conception of tragedy has six significant elements. First is Fable or Plot. In other words, the action

must have a plot or a combination of the incidents or things done in the story. Aristotle attaches much importance to plot, as he himself remarks "a tragedy is impossible without action (i.e., plot), but there may be one without character." Here, as we have already observed, Aristotle meant only the Greek tragedy, which he knew of. In defense of his argument, he says, "tragedy is essentially an imitation not of persons but of action and life, of happiness and misery. All human happiness and misery takes the form of action; the end of which we live is a certain kind of activity (plot), not a quality (character)." This is true to Greek tragedy, but as far as our modern tragedy is concerned we cannot apply it.

A plot must have a beginning, middle and an end. "A well-constructed plot", Aristotle remarks, "cannot either begin or end at any point one likes." In other words, Aristotle wants a plot to have a certain definite magnitude, "a length which allows of the hero passing by a series of probable or necessary stages from misfortune to happiness, or from happiness to misfortune," may suffice as a limit for the magnitude of the story. The action, then, should be a complete whole. That is, it should have a unity, with its several incidents so closely connected that the transposal or withdrawal of any one of them will disjoin and dislocate the whole.

Again, according to Aristotle, plots are either simple or complex. A simple plot is that which depicts the change in hero's fortune without peripety or discovery, and complex, when it involves one or the other, or both.

"A peripety is the change from one state of things within the play to its opposite of the kind described." In other words, if a person X is required to produce the effect of happiness on Y, he produces the opposite of happiness. We may call peripety – dramatic irony. But dramatic irony is a later form. Any how, it is a type of irony.

"A discovery is, a change from ignorance to knowledge, and this to either love or hate, in the personages marked for

good or evil fortune," says Aristotle. The plot then, should be complex, it must imitate actions arousing pity and terror.

Aristotle's conception of a tragic hero is: a man not pre-eminently virtuous and just, whose misfortune, is brought upon him not by vice and depravity but by some error of judgement – the change in hero's fortunes from happiness to misery, and the cause of it must lie not in any depravity, but in some great error on his part." His hero, in other words, is neither to be a prototype of virtue nor a minister of vice, but a man possessing a fair share of virtues as well as vices, like ourselves, who should arouse our sympathy. Aristotle rules out certain characters as unsuitable for tragedy, because they do not bring about the tragic catharsis, or they do not arouse the feeling of pity and terror. A good man fallen into bad fortune arouses pity and not terror. Similarly a bad man who is shown prosperous is unsuitable. The defeat of a villain gives a moral satisfaction but does not arouse tragic emotions. "not wickedness", as Lucas says "but weakness, remains the hardest of all human qualities to make dramatic." Angels make poor dramatics personage, it is human beings that we need. Aristotle prefers that his tragic hero should die in the end. The tragic deed is most effective if it is done, however, within the family. So should the deed of horror be done by the doer knowingly and consciously.

In chapter sixteen, Aristotle describes the best type of 'discovery'. He rejects 'discovery' by some sign or mark on the body. 'Discovery' should not be suggested by the agent himself nor the poet. 'Discovery' through memory and through reasoning is also less artistic. Best form of 'discovery' arises from the incident itself.

In chapter eighteen, Aristotle again turns to plot. A tragedy for him is in part complication, and in part denouement. He wishes that they should be masterly handled. "By complication", says Aristotle, "I mean all from the beginning of the story to the point just before the change in the hero's fortune; by denouement, all from the beginning of the change to the end." Aristotle distinguishes amongst four

distinct species of tragedy: first is complex tragedy, second is tragedy of suffering, third is tragedy of character, and fifth is tragedy of spectacle. For Aristotle, a poet should continue all elements of interest in every form if possible. The action should be one and not many. The chorus should be given an integral part in the action as one of the actors.

Now after plot and character, remain spectacle, diction and thought. Considering thought, "it is clear," says Aristotle, "that their (characters) mental procedure must be on the same times in their actions likewise, whenever they wish them to arouse pity and horror, or have a work of importance and probability." Diction is language in the play when spoken. "The difference between command and prayer, simple statement and threat, question and answer, and so forth." As far as diction is concerned, the poet, according to Aristotle, should be a master of metaphor, which is a sign of genius. Now remains the spectacle, which is discussed by Aristotle in his fourteenth chapter. The tragic fear and pity can also be aroused merely by spectacle, but it is less artistic, says Aristotle. Last comes melody, which is connected with harmony and rhythm used in the price.

Precisely, there is nothing else besides these six formative elements (plot, character, thought, diction, spectacle and melody) is a tragedy.

In the last few chapters of the treatise, Aristotle compares poetry and tragedy. He distinguishes history from these, by saying that history has to deal with one period, whereas tragedy or epic poetry deals with one action. Epic poem, is too like a tragedy for Aristotle, it should have a simple or complex plot, a story of character or of suffering. The only difference in epic poetry and tragedy is that epic poetry merely narrates, or imitates, by means of versified language – but tragedy imitates by means of action and spectacle. Then Aristotle discusses metres, considering the heroic metre as the gravest and weightiest of metres, and iambic and trochaic, on the other hand, as metres of movement – the one representing life and action, the other that of dance. The

Diction is required to be powerful where there is no action and no character or thought to be revealed. If the poet had weak power of expression, his art itself would be at fault.

The last chapter is a discussion whether the epic or the tragic is the higher form of imitation. Tragedy has the better poetic effect than the epic, therefore it will be the higher form of art. Thus the treatise "On Poetics" comes to a close.

Now, we should assert again that the critical principles which Aristotle sets are particularly meant for Greek tragedy and no other tragedy. Many of his principles were misunderstood from time to time. One of these is the three unities. Aristotle believes only in two unities (i) Unity of action and (ii) unity of time. Unity of place, the third unity, was formed due to a misunderstanding of Aristotle's vague statements by Castelvetro. Similarly the "theory of decorum" was also a misconception about the type of characters Aristotle considers suitable for tragedy. Aristotle held his sway in the domain of critical art for as many centuries.

Aristotle was the first critic to give a complete definition of tragedy. But from his definition an interesting discussion has ensued which has been from time to time bothering the critics and philosophers alike. The problem being why we feel pleased after seeing a tragedy? Or what are the causes of its appeal to us when it is sad enough to be shunned or escaped. Every critic and philosopher has his own interpretation about the emotional effects of tragedy.

Aristotle believes that by seeing a tragedy one gets himself relieved from the excursive emotions; or tragedy, by exciting the feelings of 'pity' and 'terror', gives a healthy outlet or catharsis to our over-flowing emotions. But do we go to theatre with this view that our emotional tension should find a relief? No. We go with no other motive than finding entertainment. If we stick to Aristotle's view then all the theatres shall turn into hospitals. I. A. Richards, the famous critic, who has a complete study of psychology as well – associates with 'pity' the sentiment of approach, and with 'terror' the sentiment of pity and reproach combine in such a

way that its sensation give pleasure to us. It is disputed conception. We might even not have the desire of approaching or retreating from the characters of the story, and yet we find entertainment. The truth is that we do not go back to Aristotle so much for the right answers as for the right question.

Rousseau held that the pleasure of watching a tragedy is to be largely a gratification of sadistic and malicious sentiments. Another view is that it is a gratification of masochistic sentiments. Yet another view is, we enjoy, not seeing others hurt, but being hurt ourselves; just as the tongue may relish a bitter taste. Tragedy is a luxury of sorrow. Hume held "it is pleasanter to be grieved than bored." Fontenelle remarks "the difference between a painful and a pleasant emotion is often merely one of degree" To Fontenelle the pleasure of watching a tragedy is like being tickled with a dagger; for Hume, our emotion at being tickled with a dagger is intensified when we are told that it is the dagger which has killed a king. For Hegel, that pity, which was for Aristotle the very essence of tragedy, is merely an insult to the tragic hero or heroine. He believes that the effect of Tragedy is the elevation of observer's mind, thus a cause of pleasure. For Schopenhauer, the gospel of life is 'vanity of vanities' and tragedies are its parables. For Nietzsche tragedy is alternate illusion and disillusion. For Shelley, pleasure and pain are sisters, they walk hand in hand, wherever there is pain there will be pleasure (but wherever there is pleasure is their pain?) The pleasure being the cause of sensation of human greatness yet its limitations. Another mystical view is that when we see a tragedy we are reminded of the greatness of God. (But does it not appeal to an atheist?)

"Tragedy then" says Lucas, "is a representation of human unhappiness which pleases us notwithstanding, by the truth with which it is seen and the skill with which it is communicated."

Recent American criticism has the attitude of Ortensis Laudi towards Aristotle who wrote of him as "putting that

vile beast Aristotle on the throne and depending on his conclusions as if they were oracles.” American critics do not draw any time between tragedy and comedy but attribute all such forms to the point of view of the artist. The function of all art, according to them, is essentially to please and to entertain – irrespective of the form tragic or comic. But is the pursuit of pleasure the sole motive in one’s life? Here their position is questionable on the basis of Ethics. But I shall not go further, as there is a probability of our entering into a different subject altogether. Pleasure, may it be known to all of you, is only a means for the satisfaction of desires; and desire if analysed will reduce this hedonistic conception to a mere humbug. Let me tell you that this so-called pragmatic attitude of American critics towards Aristotle as well as towards art is superficial and phenomenal.

Tragedy, to me appears a complaint, an answer of man to the Almighty above who crushes him so pitilessly. It is a poetic exposition of the desire for ultimate freedom of will and action. Ultimate freedom, in the philosophic sense, is merely a pseudo-idea, nevertheless, it generates a sensation of ecstasy in the mind that possesses it. At this juncture all the religious paraphernalia turns into a child’s affair; values and codes of human morality are demolished. Man emerges from himself and his ego stands face to face with God complaining against his imperfection and quest for perfection. Tragedy makes one fell in terms of the essential oneness of humanity. It makes one believe in the religion of emotions, love, help and sympathy to one another. It is a desire to mould the destiny according to one’s own need.

Personally, whenever I see a tragedy, it confuses me, yet this confusion gives me an anarchic pleasure. I come out with a sensation of revolt against the might of fate – which has arrested our movement, and has left us unfinished, incomplete, imperfect in the workshop of nature. My statement may appear satanic to you. But for me satan is a very great personality, a great tragic hero, taking part in the first tragedy that was staged in paradise he fell. And obviously

made us all fall along with him so Carlyle has said, in the act of creation God's finger slipped, and a lesser universe was formed. Now who is to change this 'less' into 'more'. To me it is we. We have done it, we are doing it and we shall do it, till Nietzsche's Ubermensch arrives.

INDIVIDUAL AND THE COMMUNITY

The perfect Man, according to Islamic teachings, is the Momin and the ideal society is the Muslim community (Ummah or Millah). It has, therefore, been said that Allama Iqbal's ideas respecting the individual and collective ego are founded on the Quranic conceptions of a Muslim Individual and the Islamic society.

Allama Iqbal's constant endeavour is to reveal to man his infinite possibilities and to goad him on towards leading a richer and fuller life. According to him, man is unique and distinct from God. He is free. His desires and aspirations, pains and pleasures, hates and loves, judgments and resolutions are exclusively his, and even God cannot feel, judge or choose for him when more than one courses of action are open to him. Man is potentially a creative activity and has a capability of becoming co-worker and co-creator with God in the process of progressive change, if he takes the initiative by fortifying his ego.

There is no end to man's activity as he always marches onward to receive ever-fresh illumination from God, i.e., the Ultimate Ego. Each and every act of man creates a new situation and thus offers further opportunities of creative unfolding. Man and God are highly dynamic personalities distinct from each other and yet together. The 'I-Thou' relationship between man and a highly personal God, as perceived by Allama Iqbal, is not the submergence of the

drops of water into the ocean but to move and have their being like pearls in the perpetual flow of the Divine Sea.

Their separate existence is never obliterated but they are held by the All-Embracing Ultimate Ego within Himself just as the flames of candles retain their separate and distinct existence in the overpowering light of the sun. Life, therefore, is a constant struggle for the drop to attain pearlhood and the destination of man is not emancipation from the limitations of individuality but a more precise definition of it. Human acts, if performed by a fortified personality are creative and live as permanent forces unaffected by serial time. Consequently man is essentially a spiritual being realising himself in space-time.

The Perfect Man of the creation of whom the entire humanity is aspiring, in the opinion of Allama Iqbal, is the one who can fortify his personality by going through a course of self-evolution in which three stages can be distinguished. These are Obedience of the Law, Self-Control and Vicegerency of God.

Respecting the first stage, Allama Iqbal maintains that authentic free-will always springs from genuine determinism. Thus obedience to the law of Islam is necessary for the fortification of the ego. In the second stage man discovers the relationship between thought and activity or the law and self. He finds out the real significance of the Five Obligations of Islam, the observance of which can transform his character. In this process, he manages to cultivate such attributes as Love (ISHQ), Freedom (HURRIYAT), Courage (SHUJA'AT) and Supreme Disinterestedness respecting the acquisition of material comforts or wealth (FAQR).

The factors which destroy man's personality in Allama Iqbal's views arise from stagnation, the opposite of creative activity. Stagnation gives birth to passive virtues such as humility, submission or obedience to any authority other than God, as well as to fear corruption, cowardice, begging or asking not only for the means of livelihood, but also for ideas from the other, imitating and finally servitude.

In the third stage, man is able to create values and ideals, *and he develops the wit as well as effort to realise them.* He is now free and dynamic. Allama Iqbal strives to resurrect man as a unique personality, and to awaken in him the longing for direct communion with the highly personal God so that he could absorb into himself the qualities or attributes of God and thus become a co-worker or co-creator with Him in the construction of a better universe and a more perfect world order.

Allama Iqbal calls himself the voice of the poet of tomorrow, for he has a vision of the perfect Muslim and the ideal Islamic society of tomorrow. He longs for the coming of the Perfect Man in the future.

In Allama Iqbal's view man be properly perceived not in isolation but as a living force possessing rights and duties in the social organism to which he belongs. Unique individuals must constitute a unique society — a society which possesses a well-defined creed and has a capability to enlarge its limits by example and persuasion. In the opinion of Allama Iqbal, Islam succeeds in establishing such a society in the form of Muslim Community (Ummah or Milla). The foundations of Muslim Community, according to Allama Iqbal, are laid on "TAUHEED" (Unity of God and "RISALAT" (the Finality of Prophethood). Its law is the Quran, and centre Mecca. Its objective is to realise the ideals of liberty, equality and fraternity through the construction of a strong character, by collective effort, as well as conquest of the forces of Nature by the acquisition of sciences.

At this stage, it may be pointed out that the foundation of Islamic polity was originally laid on the concepts of UMMAH or MILLAH in the form of "Community of Faith" and SHARIAH "the Revealed Law". The Holy Prophet (peace be on him) founded a community at Medina consisting of the MUHAJIRIN (Immigrants) and the ANSAR (Helpers) who were bound together by ties of brotherhood. This community was based on a common spiritual aspiration, unity of mankind and piety and its outlook was universal. It was

governed by the Law and the entire life of the community, religious as well as secular, was organised in conformity with it.

The Islamic State as created at Medina was intrinsically different from what we understand by the expression "State" today. There are three basic attributes of a modern state, and these are:

- a) it is sovereign
- b) it is national and
- c) it is territorial.

But in the Islamic State absolute sovereignty rests with Allah. It endeavours to be multinational for UMMAH or MILLAH, which inhabits the Islamic State is composed of members of a Community of Faith rather than a group of people based on common tribes, race, colour, language and territory. Further it is extra-territorial in its aims at becoming universal as the limitations of territory are not an end in the Islamic state but only a means for realising the objective of universality thus, ideally speaking the Islamic State is neither fully sovereign, nor strictly national, nor specifically territorial. But it is not an abstract State founded in the imagination. To begin with, it has to be founded, in concrete terms, in a specific territory on earth by UMMAH or MILLAH which takes upon itself to be governed by the Law so that individually and collectively it is enabled to order its life in accordance with the principles laid down in the Quran and Sunnah. The enforcement of the law necessitates the formation of a constitutional machinery and constitutionally speaking, whatever be the historical importance of such institutions as Caliphate, Imamate, Sultanate or other forms of rulership known to Muslims, the establishment of any such structure was not obligatory but came to be regarded as a rational necessity for the preservation of the Muslim Community.

It is evident that in the historical process of transformation, many forces were let loose in the world of Islam and numerous theories of rulership were advanced. A

survey of the history of Muslims from A.D. 632 to 1924 reveals that the Caliphate itself had undergone changes in substance as well as form due to different socio-political conditions, and the role of Islamic constitutional thinking had throughout been to bridge the gulf between the ideal and the real, or theory and practice by attempting to provide an Islamic relationship to every change in order to maintain the continuity of the Islamic character of the community.

In short, the experience of history demonstrates that these structures were not meant to be permanent but were subject to the law of change. The real object of Islam is to establish a Community of Faith, governed by the Law, and for its application and ENFORCEMENT, the community is at liberty to evolve any mode of constitutional structure which suits its requirements.

The Caliphate was abolished in 1924 and thereafter national communities or national States in the modern sense emerged in the world of Islam. During this period Allama Iqbal reminded Muslims that the concept of nationality in Islam has no material basis like territory, race, colour, language script or mode of dress because the sense of belonging to one another, among the Muslim people really depends on "like-mindedness" or a sort of mental agreement, in a certain view of the world and a desire to lay down their lives in defence of it. Hence, for a Muslim, Islam is by itself nationalism as well as patriotism.

Allama Iqbal argued that the history of religions indicates that religion was tribal or national in ancient times, and later on it was considered racial as, in the case of Jews. Christianity taught that religion was a personal or private affair. However, Islam, emphasised Allama Iqbal, brought home that religion is neither national nor racial nor personal but purely human.

There is no duality of spirit and matter in Islam. Its religious ideal and social order are organic to each other. Islam transcends all blood-relationship and all earth-rootedness; it demands loyalty to God and not to kings.

Spiritual life, therefore must form the basis of all political expression.

Allama Iqbal maintained that territory, race, language, etc., are there only for the purpose of identification. God says in the Quran: "Verily! We have made you into tribes or subtribes so that you may be identified, but the best among you in the eye of God is he who is the purest in life" (XLT 49:13). In his last sermon on the Mount of Arafat, the Holy Prophet (peace be on him) proclaimed: "O Men the Muslims are but brethren ... So you do not turn unbelievers after me, striking the necks of each other. Understand my words, O Men, for I have told you. I have left with you something which if you will hold fast to it you will never fall into error."

In the Quran whenever people are invited to come within the fold of Islam the term UMMAH and MILLAH in the sense of "Community of Faith" is used instead of QAUM (Tribe or race). A nation is a group of people formed of tribe, race, language or territory. Such group can appear in numerous forms and in a variety of places. The Muslim community, on the other hand, assimilates this multiplicity of groups and transforms the aggregate into a single people possessing a self-consciousness of their own. Islam drew its followers from mutually impellent tribes and races, and is to a considerable extent, successful in creating a conscience and a collective will in this heterogeneous man. Being non-racial, non-linguistic and non-territorial, Islam furnishes a model for humanity.

To the charge of the Western critics that the message of Allama Iqbal lacked universality because he had addressed himself exclusively to the Muslim world, he replied: "My real purpose is to seek a better social order and to present to the world universally acceptable ideal (of life and action) but it is impossible for me in the effort to define, thus ideal to ignore the social system and values of Islam whose most important objective is to demolish all artificial and pernicious distinctions of caste, creed, colour and economic status ... Who... realised that the concept of nationalism based on

differences of race and count ... was beginning to spread in the Islamic world also and the Muslims were in danger of giving up the universality of their ideal in favour of narrow patriotism and false nationalism, I felt it my duty, as a Muslim and as a well-wisher of humanity, to remind them of their true role in the drama of evolution”.

LETTER TO THE EDITOR OF CIVIL AND MILITARY GAZETTE

Javeed Manzal,
Mayo Road, Lahore

To,
The Editor,
Civil & Military Gazette, Lahore.

Subject: The Muslim Nation

Sir,

With reference to the comment made by Mr. Om Parkash Kapur on the letter of Mr. Yunas M. Sayeed, appearing in your paper of August 24, and denouncing the Muslim Nation as a separate entity; I call attention to the fact that his views are advanced without having the slightest acquaintance with the definition of the word 'Nation'. Fundamentally, it is not merely the difference between language, dress and diet (though it plays considerably important role) but there lies something beyond this apparently minor essential which causes the people to be one.

A nation in Renan's sense demands "Common possession of a rich heritage, the desire to live together, to preserve worthily the undivided inheritance. I wonder if we, I mean the Hindus and the Muslims have any such common possession. No doubt we have memories of our past, but that

memories are not those affection but of hatred and bitterness. Our heroes are Mahmood Gazni, Mohammad Bin Qasim and *Aurangzeb* who accordingly to the Hindus are mere plunderers, butchers or oppressors. So is the case with their heroes Savaji or Rana Partab, whom we consider no more than our ordinary rebels. Our history confirms that the divine faith of Akbar and the teaching of Kabir could not bring us together. Even at present communal riots every where in India show that we live in a state of perpetual civil war, than what to talk of future in which we are expected to presume worthily our undivided inheritance. The most essential factor for the formation of a nation is past background which I am afraid is quite discouraging in our case. Our inheritance is divided, our gulf is historical and historical gulfs are never abridged. Thus the Muslmans have every right to assert, that they are fundamentally different from the Hindus, even if the vital differences of faith and culture are put aside.

Coverts from Hindus as because the Muslamans are will, I believe he is correct to some extent, but we are converts to Islam which does not teach us to be anything except Musalmans. Islam, I may point out to enlighten my Hindu friends, is not only a church but a polity, which regards man not as an earthrosted creature, defined by this or that portion of earth, but to it the matter is spirt realising itself in space and time. So the ideal of Islam is organically related to the social order which it is created. The one rejection of one will eventually involve the rejection of the other. Thus the construction of a polity on national lines, if it means displacement of the Islamic principle of solidarity is simply unthinkable to a Musalman.

The Hindu understands the word nation to mean a kind of universal amalgamation in which no communal entity ought to retain its private individuality. But such a thing does not exist neither is it desirable that it should exist, because India is a museum of races, a wilderness of casts cults. So the Musalmans here will not at any cost join in any such form or state which shall make Islamic religion a private and

individual affair. Thus the principle of European democracy cannot be applied in India.

Proceeding further where Mr. Om Parkash Kapur has suggested that the modern world is thinking in terms of greater federations whereas the leaders think of dividing States, I may point out that Mr. Om Parkash Kapur has again misunderstood the significance of the word 'federation'. Federation, if looked up in a book of constitutions means a treaty founded upon mutual agreement of a Union Government in which several states, while independent in home affairs, combine for national or general purposes, whereas the nation in every case is one (as in the United States Of America). In India where there are two nations the application of the word federation appears meaningless. Moreover if by 'greater federation' Mr. Om Parkash Kapur means the so called federation that Hitler tried to create in Europe, I am afraid I shall attribute this to a cloaked form of Imperialism, and without doubt we are afraid of Hindu Congress for the so called federation forming policy without our consent who do not at any cost wish to be enslaved by a majority three times more than us.

Mr. Om Parkash Kapur says, "Their need be no fear for Muslims of domination by others" Well, we remember the fate of Buddhism in India, and who can say, Islam, however great its strength beyond the borders of India, may suffer the same fate. Hindu method of domination upon minorities is so terrible that it is beyond the comprehension of an average human being outside India. Take for example, the Achuts, or the untouchables, as they are called, an orthodox Hindu will gladly an animal but will always shrink from touching an untouchable. So this is and also was the treatment given to minorities, as the part History of confirms - a treatment to human-beings every worst than that to beasts. Then how can we save ourselves, and our culture front then except demanding separation. Thus our demand for dividing the states is logical fair and sincere. We give a bigger slice of the

cake to the Hindus, and accept the smaller only with a motive to preserve ourselves, not to amalgamate minorities into us.

About the corruption, bribery and other evil thing which raised it ugly head, as Mr. Om Parkash Kapur presumes to think, during the League regime in Sindh etc. I may request him to answer what the Congress formed 'Khan Ministry' is doing in N.W.F.P. Is it not a purely family affair? The data has so many times been published in papers; I need no mention the names. But is it what Congress does for the poor masses? Is it what it claims itself to be, the so called 'body of masses'?

"Even now" he says, "Nothing of reform is heard of from Bengal or Sindh". Well - how we can we make reforms when we have to face Hindu opposition every where. Apart from it, may I know, what reforms did Congress Ministries make when they were in power in those Provinces: except to change the language of mile stones from English to Hindi, or to cripple Musalmans by their huge economic force, to make them forcibly salute the Congress Flag. I wonder if these can be called reforms. It is obvious, if at all any reform was made, it was made by the British who are our master since the last 200 years. We shall make our reforms when we shall have our independent States - hindus in Hindustan and muslims in Pakistan. So the question of reforms does not arise as long as our reform bills require the British seal.

Again the question of desertation of League M.L.As is also not very convincing. Many musalmans who actually worked, rotted their lives in prisons for the sake of Congress, resigned as soon as they saw that the Hindu Congress had its own motives of utility before it and the falling of the musalmans was nothing but mere befoolry.

Mr. Om Parkash Kapur almost concludes "the country's social and economic state demands that the League should join hands with the Congress and work in a spirit of co-operation". May I know who is not willing to co-operate? As far as the League is concerned, the whole World knows that Mt. Jinah's hand has always been extended for co-operation.

But it is the hindu Congress which wants to defeat and then to cripple League, wherever possible. In Provincial Politics wherever they find our quislings though they might have no following at all, still the Hindu Congress will make them its leaders simply to defeat League, simply to widen the gulf all the more. Mr. Om Parkash Kapur can take the examples of the Punjab and Sindh.

Co-operation can never be sought, in a negation but in a mutual harmony or a moral consciousness, which I am afraid we all lack. True Statesmanship must not ignore facts, however, unpleasant they may be. Experience has so many times shown that various caste - units and religious units in India have never exhibited any desire to sink their respective individuality in a larger whole. So the only course left for us is separation, which will establish peace and good will when we will meet as equal partners as equal basis.

THE CONCEPT OF STATE IN ISLAM – A REASSESSMENT

The Holy Prophet started preaching Islam in his ancestral home Mecca. But he had to migrate from Mecca to Medina because the Meccans were not willing to accept his faith and made it difficult for him to preach his religion. The Medinans, on the other hand, accepted him as the Messenger of God, invited him to Medina, and with their help and support, he founded a city-state at Medina.

The Prophetic Era

In the person of the Holy Prophet, as Imam or Head of this new state, were combined a legislator (*mujtabid*), a statesman, an administrator, a judge, and a military commander. He also led the congregational prayers and was the supreme authority in matters connected with religion and Revealed Law. Therefore he had different capacities. Nevertheless, although he had the last word in political and military affairs, and as the Messenger of God (peace be upon him) was not obliged to consult others, he consulted his Companions in all matters other than those concerning revelation in accordance with the command addressed to him in the Qur'an to the effect that he should consult them in affairs and when he had taken a decision, he should put his trust in God (surah 3: verse 159). The command to the Holy Prophet (peace be upon him) in this respect is for no other

purpose except to emphasise the significance and importance on the Muslims of "consultation" (*shura*) in managing the affairs of the state, otherwise as has been pointed out above, the Holy Prophet (peace be upon him) did not require anyone's advice. In his personal capacity he usually accepted the advice of others and did not impose his own decision. In surah 42: verse 38 it is laid down that the Muslims should conduct their affairs by mutual consultation. The verse is descriptive of the nature of the Muslim community that is expected to conduct all its worldly affairs by mutual consultation. The Holy Prophet (peace be upon him) is reported to have said: "Difference of opinion in my community is (the manifestation of Divine Mercy)"; and: "My community would never agree on an error".¹

While interpreting the verses pertaining to "consultation" a very important question arises as to whether the body to be created for this purpose is a consultative body or an advisory body. According to the Practice (Sunnah) of the Holy Prophet who always consulted a body of eminent members of the Muslim community, namely his Companions, in the conduct of the affairs of the state, it was an advisory body, and the four Rightly Guided Caliphs subsequently followed this practice. The generally accepted principle is that the person in authority must consult others but he is not bound by the advice and can overrule it. However, as it will be seen later, the Khawarij did not agree to it. According to them under the relevant Qur'anic injunction a consultative body and not a single head of the state advised by the advisory body (which advice he could over-rule) was required to conduct the affairs of the Muslim community. They maintained that after the death of the Holy Prophet (peace be upon him) there was no obligation to render obedience to a Khalifah or Imam as the Head of the State, because the Muslim community could govern itself by constituting a Consultative Assembly from amongst themselves. However if a need arose the Assembly could appoint a Head of the State for its own convenience. Be that as it may, the principle that

those who command authority ought in all matters of importance consult the Muslims is undisputed.

In surah 4: verse 59 of the Qur'an, each and every Muslim is enjoined to obey God, to obey the Holy Prophet (peace be upon him) and those having authority over Muslims, who are from amongst them. From this verse four principles of Islamic political ethics have been deduced. The first principle is that since all authority in the universe vests in God, who is the Omnipotent and Omnipresent Creator of the universe, He alone must be obeyed to the exclusion of all others. God has laid down law in the Qur'an in the form of what is good and what is evil. These commands have been sent as revelation from time to time to the prophets for the guidance of mankind, the last being the Holy Prophet Muhammad (peace be upon him). God has already placed in the nature of man the knowledge of good and evil and has further clarified the distinction between good and evil in the Qur'an. It is, ethically speaking, on this basis that every Muslim is commanded to promote good and to suppress evil.

The second principle is that obedience may be rendered to man, but only under God's command, generally speaking, in the case of the prophets, where rendering obedience is in fact to God and not to human beings. The Holy Prophet is to be obeyed because he was the last and the final one through whom the faith has been eventually perfected in the Qur'an, which for a Muslim, is the pure word of God, whereas the Sunnah (Practice) of the Holy Prophet is the authoritative exposition of the Qur'an.

In the course of the evolution of Muslim polity, the state through a special department called "*Hisbah*", considered it as its duty to forcibly impose on the people Islamic religio-moral obligations detailed in the Qur'an and Sunnah, besides the strict enforcement of Islamic law pertaining to certain crimes (e.g., theft, adultery, drunkenness etc.) Through the department of Justice (*Qada*). Thus the functions of the *Muhtasib* (Religious Censor) included compelling the Muslims to do what was ethico-legally reputable or right (*ma'ruf*) and to

detect, restrain and punish what was disreputable or wrong (*munkar*). But as is evident from Muslim history this practice was not consistently followed. As for the contemporary Muslim nation-states, the department of "*Hisbah*" has ceased to exist in the traditional form in almost all such states. Similarly the specific provisions of Islamic criminal law are not being enforced in all the Muslim nation-states.

The third principle is that obedience may be rendered after God and the Holy Prophet to those who command authority over the Muslims. Theoretically, this form of obedience is subject to their acting in execution of the commands of God and the Holy Prophet. But if they are not acting as is expected of them, then, according to the interpretation advanced by eminent Sunni jurists, they must still be obeyed as God alone can punish them. The fourth principle is that obedience can only be rendered to those who command authority over the Muslims who are from amongst them, in the sense that they are themselves members of the Muslim community. Obviously these leaders of the Muslim community have to be Muslims themselves as they are expected to act, at least in theory, in execution of the commands of God and the Holy Prophet, although they can further employ or delegate their powers to non-Muslims who should likewise be obeyed. Thus generally speaking, in the Qur'an no mode of life is prescribed for a subjugated Muslim community. The mode of life which a Muslim is commanded to follow can only be followed if he is member of a politically free community. Consequently the Muslim community must strive for establishing a state of its own wherever it is possible to establish a viable state. This is one of the constitutional principles, which can be deduced from the Sunnah of the Holy Prophet, who migrated from his ancestral home Mecca to found a separate state at Medina.

A state which is managed and administered in accordance with the laws of Islam is called *Dar al-Islam* (Abode of Peace). Its independence has to be preserved under all circumstances and therefore its first priority must be defence. But effective

defence is only possible if equality is maintained among its citizens and they are all united to help one another in defending their common territory. This is also a constitutional principle deduced from the Sunnah of the Holy Prophet as is apparent from *Mīthāq al-Madinah*, the first written constitution of the world, which was promulgated by the Holy Prophet in the city-state of Medina.

This ancient document contains in all forty-seven articles. The first part, consisting of twenty-three articles, deals with the mutual relations, rights and duties of Muslims. It is under these articles that the Emigrants from Mecca (*Muhajirin*) were united with the Helpers from Medina (*Ansar*) in a fraternal bond of a Community of Faith, thus laying down the principle that according to Islam, nation-hood (*Millah* or *Ummah*) is to be founded on a common spiritual aspiration, rather than on common race, language and territory. The second part of the document, consisting of twenty four articles, is concerned with the relations of Muslims with the Jews and other non-Muslim inhabitants of Medina or the valley of Yathrib, and confirming them in their religion as well as possessions, enumerates their duties and rights. The interesting features of this part of the document are that non-Muslims are included "in" or "with" the Muslim Ummah, which implies that if nation-hood of Muslims is founded on a common spiritual aspiration, their unity with non-Muslim minorities in the state, is based on the defense of a common territory. The Muslims and non-Muslims, described as a "single community", are to help one another against whoever wars or fights against the people of Yathrib for, as stated in the document: "among them there exists sincere friendship, honourable dealing and no treachery". They are also expected to contribute or bear expenses equally so long as the war continues, and they are to collectively defend the valley of Yathrib which is described as:

"sacred for the people of this document". It is also stated therein that whenever among the people of this document there occurs any serious dispute or quarrel: "it is to be referred to

God and to Muhammad, the Messenger of God (God bless and preserve him). God is the most scrupulous and truest Fulfiller of what is contained in this document”²

It may be pointed out here that if a Muslim state (*Dar al-Islam*) is conquered or subjugated by a non-Muslim power, it will be transformed into an Abode of War (*Dar-al-Harb*), and theoretically the Muslims therein shall be left with two alternatives: either to conduct militant struggle (*Jihad*) in order to regain their independent status or to migrate (*hijrah*) to some Muslim country. It was to avoid this possibility that the Holy Prophet laid full emphasis on the defence of Medina. Hence it is evident that the Muslim concepts of patriotism and nationalism are not solely based on an attachment to a particular land or territory but these are founded on an attachment to the ideals and aspirations which have been realised or are being realised or may be realised through institutions established in such land or territory, and that land or territory is “sacred” only in this context.

The Holy Prophet had founded a confederal state as the non-Muslim tribes governed themselves in accordance with their own laws and were fully autonomous in their own regions. It was only in accordance with the terms of *Mithaq al-Medīnah* that they were one with the Muslim community. The Holy Prophet as the Head of the first Muslim state, was indeed concerned with the formation and maintenance of unity among the Muslim community (*Millah/Ummah*) and its governance in accordance with Islamic law (*Shari‘ah*). But, generally speaking, since the broad principles of law had already been laid down by God in the Qur’an, the Holy Prophet as the chief executive authority, interpreted those laws and implemented them, thus laying down the constitutional principle that in the sphere of legislation, the Head of the State has to be *Mujtahid* (one who himself exerts to interpret law) and not *Muqallid* (one who follows interpretations of others). The basis of this principle is the Qur’anic verse: “And to those who exert We show Our paths”. (surah 29: verse 69).

The principle is further illustrated in the light of a Tradition of the Holy Prophet. At the appointment of Ma'adh as the governor of Yemen, the Holy Prophet is reported to have asked him as to how he would decide matters coming up before him. Ma'adh replied: "I will judge matters according to the Book of God". "But if the Book of God does not contain anything to guide you?" "Then I will act in accordance with the precedents of the Prophet of God". "But if the precedents also fail?" "Then I will exert to form my own opinion".

From this principle one inference can clearly be drawn: that the worldly affairs (*Mu'amalat*), as distinguished from the religious obligations (*Ibadat*), being subject to the law of change, such situations are bound to arise where the Qur'an and the Sunnah may not provide sufficient guidance, and the Muslims would be expected to exert to advance their own solutions in interpreting Islamic law and implementing it in accordance with the needs or requirements of their respective times. In other words through "*Ijtihad*" a mechanism is provided within the polity in order to make the *Shari'ah* mobile and to proceed along with the community rather than becoming static or lagging behind. The other inference which can be drawn is that the Judiciary (*Qada*) is to be separated from the Executive. Because according to the Qur'anic injunction laid down in surah 4: verse 59 if any dispute arises between the citizens or as against the state, the matter is to be referred to the Judiciary for adjudication in accordance with the Book of God and precedents of the Holy Prophet, and the judgement of the court is binding on the disputing parties.

Next in importance from the constitutional standpoint is the document called the Treaty of Al-Hudaybiya, which was made between the Holy Prophet as Head of the State of Medina and Suhayl bin 'Amr, the representative of the pagans of Mecca. The treaty was a pact of non-aggression for ten years between the Muslims and the Quraysh. Apart from the stipulations in the agreement, which were favourable to the long-term strategy of the Holy Prophet, it is interesting to

note the manner in which the treaty was recorded. According to the version provided by the historians, the Holy Prophet asked Ali to write the treaty with the opening: "In the name of Allah, the Beneficent, the Merciful". But the representative of the Meccans objected asserting that the Quraysh would not approve of the words "the Beneficent, the Merciful", and that the treaty should commence with the pagan invocation: "In Thy name, O Lord". Thereupon the Holy Prophet directed Ali to write the words as desired by the representative of the Meccans. Then the Holy Prophet told Ali to write: "This is the treaty which Muhammad, the Messenger of God made with Suhayl bin Amr...". But Suhayl bin Amr again interrupted and asking Ali to withhold his pen, addressed the Holy Prophet thus: "If we had accepted you as the Messenger of God, there would have been no war between us. Therefore, let only your name and parentage be written". Accordingly under the direction of the Holy Prophet and despite the protests of Abu Bakr, "Umar and 'Ali, 'Ali reluctantly wrote: "This is the treaty which Muhammad bin 'Abdullah made with Suhayl bin 'Amr".³

The contents of the treaty as well as the manner in which it was recorded indicate that it is an embodiment of the political sagacity, farsightedness and pragmatic approach of the Holy Prophet as a statesman. According to Montgomery Watt, it was motivated by supreme importance of the Holy Prophet's belief "in the message of the Qur'an, his belief in the future of Islam as a religious and political system, and his unflinching devotion to the task to which, as he believed, God had called him".⁴ The treaty raises some very important constitutional questions. These are: Was the act of forsaking his designation as the Prophet of God (despite having been so appointed by God), a sovereign act on the part of the Holy Prophet as the Head of the State, performed in the interest of the state or the community, and as such was neither repugnant to nor in conflict with the overall sovereignty of God or supremacy of His Law? The next question is: If the act was sovereign, then would it be correct to say that the

overall sovereignty of God does not impose any restrictions on the sovereignty of the state or the Head of the State as legislator (*Mujtabid*) so long as the action taken, functions performed or laws of God interpreted are in the interest of the state or the community? In surah 38; verse 27 of the Qur'an while appointing David as a "*Khalifah*" (Vicegerent) in the land, God commanded unto him: "Verily We have made thee a *Khalifah* in the land; then judge between men with truth, and follow not thy desires lest they cause thee to err from the Path of God." It is therefore evident from this verse that God lays emphasis mainly on the adoption of a course of justice, honesty and truthfulness on the part of the Head of the State for this, generally speaking, leads to the Path of God; and not to allow his personal interest to influence his official conduct or decisions.

The traditional Fiqh (Islamic jurisprudence), acknowledges the powers of the Head of the State as legislator to suspend (*Ta'wiq*) a Qur'anic rule of law, or to restrict (*Tahdid*) or to expand (*Tawsi*) its application if the conditions so demand or the interests of the state or the community so require. The exercise of these powers constitutes "sovereign act" (as distinguished from *Ijtihad*) on the part of the Head of the State. If this is the position then the overall sovereignty of God or the supremacy of His Law does not interfere with or impose any limitations on the sovereignty of the state or the powers of the legislator (*Mujtabid*) to implement that interpretation of the Qur'anic rule of law which suits the requirements of the state or the community. Therefore it may not be correct to assert that the state in Islam is not fully sovereign or that the legislator (*Mujtabid*) can only exercise his powers in a restricted manner.

Theoretically a Muslim state acknowledges the supremacy of God's Law, but as for its interpretation and implementation, the legislator's supremacy cannot be doubted when his act is sovereign or he exercises his power of discretion by accepting/ advancing a specific interpretation with due regard to the interests of the state and the

community. Besides that he is entirely free in the sphere of making "man-made" laws and implementing them in accordance with the requirements of the state or in order to benefit the community, so long as these laws are technically not considered repugnant to the injunctions of Islam, or the Qur'an and Sunnah are indifferent towards them. A wider interpretation of the Qur'anic doctrine of "necessity" (*Idtirar*) is also available to the legislator where under what is forbidden (*haram*) becomes lawful (*halal*). The advancement of the theory during 661 A.D. that the Caliphate and Prophethood must not be permitted to remain within the same family established that spirituality was not relevant for the administration of the state. On this basis there is some justification in the claim that the state in Islam is not a theocracy. If the elimination of spirituality had led to the emergence of the "power" state (*mulle*) in Islam, it was argued that it did not matter for a "power" state was perfectly competent to enforce the *Shari'ah*.

Every enlightened Muslim is aware that from 661 A. D. onwards the republic in Islam was transformed into a monarchy due to the apprehension, as it was claimed, of the breaking out of a civil war among the Muslims. A vital change had taken place in the foundational principle of Muslim polity, yet only passive or ineffective voices were raised by Sunni jurists against the new political order on the ground that it amounted to subversion of the political system evolved through the Practice (Sunnah) of the Rightly Guided Caliphs. On the basis of this precedent one can say that if there is a threat to the Muslim community of its destruction from within, and under that threat, the persons in authority in the state completely alter the ideology of its traditional constitutional structure, they would be justified to do so under the *Shari'ah*.

Finally the Sermons on the Mount 'Arafat (*Khutbah al-Wida'*) delivered by the Holy Prophet during the Pilgrimage of Farewell in the tenth year of the Hijrah, have also to be considered for deducing an extremely important

constitutional principle as these amounted to an illustration of human rights from the Islamic viewpoint. It was for the first time in the history of mankind that in the light of the Qur'anic injunctions some of the human rights were enumerated and guaranteed by the Holy Prophet. Thus life and property were made inviolable, drawing of "riba" (usury) on money loaned was prohibited, vendetta as practiced in pagan days was to be left unrevenged, no Arab was to have any privilege over non-Arab except that based on piety, Muslims were to consider themselves as brethren and it was not lawful for a Muslim to take from the belongings of his brother except that which he parted with willingly, the rights of the spouses were protected etc.

It may be pointed out at this stage that foundations of the Secretariat of the Chief executive authority were laid by the Holy Prophet himself. Scribes were appointed who drew up the state documents, and the only privilege which the Holy Prophet had as Head of the State was that his seal conferred legitimacy to all official documents.

To sum up, some of the important constitutional principles that can be derived from the Sunnah (Practice) of the Holy Prophet are:

First; that the ultimate sovereignty vests in God. But the vesting of overall sovereignty in God or supremacy of His Law does not in any sense mean that the state has restricted sovereignty or is not fully sovereign in conducting its worldly affairs (*Mu'amalat*) particularly when a supra-legal action taken by the Head of the State is in the interest of the community or the state.

Second; that since the Muslims are expected to be governed under their own specific legal system called the *Shari'ah* in all spiritual and temporal matters, they must aspire to establish a state of their own wherever it is possible to create a viable state.

Third; that the nation-hood of Muslims is to be founded on a common spiritual aspiration and that commonness of race, language and territory is a secondary consideration.

Fourth; that the non-Muslim citizens of the state (not of conquered territories who were considered as “protected people”) are to be confirmed in their religion and possessions. Their national unity with the Muslims is to be based on sincere friendship, honourable dealing, mutual respect and the defence of common territory.

Fifth; that the Muslims and non-Muslims are jointly/collectively expected to defend the territories of the state, and to bear expenses of the same.

Sixth; that to frame and implement a written constitution for the state and to strictly adhere to its terms is a Sunnah (Practice) of the Holy Prophet.

Seventh; that the grant of a constitution is not the task of a single individual but a collective act of the representatives of the federating tribes who are voluntary signatories of the socio-political contract. The constitution not being sacrosanct has no spiritual or religious significance but essentially a contract.

Eighth; that through the peaceful co-existence of different religions, races and communities the ideal of human unity (*al-Ummah al-Wahidah*) is to be realised.

Ninth; that the importance of “consultation” (*shura*) in conducting the worldly affairs of the state has to be emphasised, although the Head of the State is not bound by any advice.

Tenth; that respecting interpretation of the *Shari'ah* and its implementation, the Chief executive authority in the state is expected to act as a “*Mujtahid*” rather than a “*Muqallid*”. Thus “*Ijtihad*” by the law-maker is a continuous and unending process.

Eleventh; that the Executive is to implement, execute and enforce the *Shari'ah* as interpreted by the Chief executive authority, and the Chief executive authority while making laws is expected to have a pragmatic approach, to act with political sagacity, and far-sightedness so far as the interests of the state and citizens are concerned.

Twelfth; that human rights as enumerated in the Qur'an and the Sunnah (Practice) of the Holy Prophet have to be guaranteed and enforced in the state.

Thirteenth, that "*Zakat*" or other similar taxes imposed through Islamic welfare laws be meticulously collected by the state officials and disbursed among the needy citizens under the supervision of the state.

Fourteenth; that the Judiciary (*Qada*) is to be separated from the Executive so that it can decide matters before it independently and without being influenced by the Executive.

Fifteenth; that the Muslims' primary obligation is that they should, after God and the Holy Prophet, render obedience to those who command authority from amongst them so that order is maintained in the state.

The era of the Holy Prophet as Head of the city-state of Medina has always been considered as a model in the sense that a Muslim state had been founded and was being managed and governed by the Prophet-Imam himself. This dispensation was unique in the history of Muslims and was never to be repeated. Philosophically speaking, it was an ideal or a perfect state in the sense that the Ruler was in direct communion with God. The Holy Prophet was Head of the State in the tradition of the earlier Semitic prophet-kings mentioned in the Qur'an. But although the foundations of the state had been laid and it was being headed by the Prophet-Imam, the state itself was in the process of becoming or developing and was, therefore, endeavouring to realise the objectives for which it had been created. In other words, on the spiritual or religious side (*Ibadat*) Islam had been perfected, but on the mundane or worldly side (*Mu'amalat*) the state in Islam was not a finished product, as the community was to keep on developing under a legal order. This development was to be accomplished through a continuous process of "*Ijtihad*".

The Result of Democratization

The Holy Prophet died in 632 A.D. and the question of a successor (*Khalifah*) arose on his death because, pragmatically speaking, a young socio-political organism like the early Muslim state required a directing head. Therefore originally the "*Khalifah*" as an institution came into being because the conditions had so demanded. The possibility cannot be ruled out that it came into being on the basis of Consensus of the Companions (*Ijma'*) in response to the demand of times.

Did the Holy Prophet nominate or appoint any successor? Some of the Sunni jurists argue that since the Holy Prophet, shortly before his death, had directed Abu Bakr to lead the congregational prayers, this indicated that he desired Abu Bakr to be appointed as his successor. On the other hand according to the Shi'ite jurists, he had appointed Ali as his successor. In this connection reliance is placed on a Tradition whereunder the Holy Prophet is reported to have said that those who consider him as their "Mawla" (master/leader), they should also regard Ali as their Mawla". However, Jalal al-din Suyyuti on the authority of Hudayfah has pointed out that some of the Companions of the Holy Prophet asked him as to whether or not he would appoint a successor unto them. The Holy Prophet is reported to have replied that if he did appoint such a successor over them and that if they were to rebel against the successor appointed by him, then punishment could come upon them. He also states on the authority of Imam Bukhari, Imam Muslim, Beyhaqi, and Imam Ahmad that Caliphs 'Umar and 'Ali had confirmed before their deaths that the Holy Prophet did not appoint any successor.⁵

It is evident that had the Holy Prophet in fact nominated a successor or prescribed a specific method for such appointment, then that mode alone would have become the only way of appointing the Head of the State, and a restrictive stipulation of this nature would have caused difficulty in the further evolution of Muslim polity. Therefore the Holy Prophet by not appointing his successor or suggesting any specific mode or laying down any framework for constituting

or deposing such a successor, had acted in conformity with the Qur'an which is silent on this issue. It may further be pointed out that the political system in Islam is one of such matters that falls in the category of *'Mu'amalat'* (worldly affairs) which being evolutionary are subject to the law of change. Therefore the political system in itself has no spiritual or religious significance.

In surah 4: verse 58 Muslims are commanded by God to hand over their trusts to competent persons. In other words the Qur'an has ordained that only competent person/persons be appointed for managing the affairs of the Muslim community, though this is even logically the obligation of those who are expected to make such appointments. The Qur'an is mainly concerned with matters relating to right and wrong or good and evil, and is not concerned with matters relating to planning (*tadbir*). That the best person or persons are to be appointed is a matter relating to right and wrong. But the question as to how the appointment is to be made or whether a particular process employed for determination of the best person will succeed or not, involves planning and is a matter relating to efficiency and wisdom in the light of prevailing conditions. Therefore the silence of the Holy Prophet in the matters of nomination or appointment of any successor after him or laying down any rule for constituting or deposing the successor, was deliberate because such structures were to be evolved in the light of the good sense of the community. These were not meant to be permanent but were subject to the changing requirements of the Muslim community from time to time. Thus the real object of Islam is to establish a Community of Faith governed under the *Shari'ah*. Although for the continuous interpretation and enforcement of the *Shari'ah* the establishment of a state or a political system is necessary, the Muslim community is at liberty to determine any mode of constitutional structure which suits its requirements.

The word "*Khalifah*" is derived from "*Khalafa*" (*kb.lf*) which means to succeed, to be followed or to leave behind.

That is the reason why some Muslim jurists argue that *Khalifah* can only be that of the Holy Prophet who was mortal, as only mortals leave successors behind. However, the term "*Khalifah*" also occurs in the Qur'an, although there is no indication which directly connects it with the political implications of the term i.e., the Head of the State in Islam. In surah 38: verse 27 God appointed David as a "*Khalifah*" in his land. In surah 6: verse 166 it is stated: "It is He (God) who has made you "*Khalafa*" (plural of *Khalifah*) on the Earth, and He raises some of you above others by (various) grades in order that He may test you by His gifts". But in the Qur'anic sense probably the word is to be interpreted as man being-vicegerent of God.

The word "Imam" also occurs in the Qur'an and implies a leader in a general or comprehensive sense i.e., leader of the believers or of the infidels. God's prophets are sometime addressed as Imams in the Qur'an; at other times the term appears to mean an example, a model, or a revealed book.

Respecting the practice of the Holy Prophet in this context, the chroniclers record that whenever he left Medina for some duration of time, he appointed a deputy to look into the affairs of the town in his absence.⁶ But although the appointment of a deputy was the practice of the Holy Prophet, he did not appoint a successor on his death. Nevertheless there is a Tradition attributed to the Holy Prophet in which he is reported to have said: "Leaders shall be from the Quraysh".⁷ Dr. Hamidullah remarks that the context of this direction is not known as the Sunnah (Practice) of the Holy Prophet himself does not seem to confirm the obligatory character of this qualification. He points out that the Holy Prophet left Medina at least twenty five times for one reason or the other. On all such occasions he nominated a successor in Medina, yet it was not the same person that he chose always for carrying on the interim government. Among these successors (called *Khalifah*) were Medinans, Qurayshites, Kinanites and others; there was even a blind person.⁸

During the period of the four Rightly Guided Caliphs (632 to 661 AD) different modes were adopted for the appointment of the Head of the State and in all the cases the appointment was confirmed by the Muslim community through its consent which was formally obtained by means of "*bay'ah*". Generally speaking, the methods adopted during this period had a common feature i.e., the selection of the best person through initial election, nomination, or election through an Electoral College, in most cases followed by a private *bay'ah*, and subsequently the appointment being confirmed through a public *bay'ah*. The course adopted in all the cases was democratic, and the majority principle, although not specifically disapproved, was not followed, as the need did not arise.

Ibn Ishaq in his biography of the Holy Prophet provides an accurate account as to how the first successor of the Holy Prophet, namely Abu Bakr, was elected. He states that on the death of the Holy Prophet, three distinct political groups were formed among the Muslims of Medina, namely, Muhajirin (Immigrants), Ansar (Helpers) and Banu Hashim (the supporters of the family of the Holy Prophet). The Muhajirin were led by Abu Bakr and 'Umar, the Ansar supported Sa'd bin 'Ubaydah, whereas Banu Hashim were solidly behind 'Ali.

While Ali and other members of the family of the Holy Prophet were busy in making arrangements for his funeral (according to Tabari⁹, the Holy Prophet was buried on the day after his death), news arrived that the Ansar were assembling in the Hall of Banu Sa'adah in order to elect Sa'd bin 'Ubaydah as the Head of the State. On hearing this Umar and Abu Bakr along with some other Muhajirin rushed to attend the proceedings.

The claim of the Ansar for power was advanced on the ground that they constituted the bulk of the armed forces of Islam and they even suggested divisibility of the government in the alternative. Proposals like joint rule with two Caliphs operating simultaneously or alternate succession, one from

the Muhajirin and the other from the Ansar, were considered.¹⁰ The Muhajirin opposed such suggestions, stood for the unity of the Muslim community and advanced their claim on the ground that the Arabs as a whole would only accept leadership from the tribe of Quraysh. Although Ali did not attend this session, the claim of Banu Hashim was based on their close connections with the family of the Holy Prophet. A political debate took place between the groups assembled in the Hall of Banu Sa'adah. Eventually, Umar proposed the name of Abu Bakr as the Head of the State when he asked him to extend his hand and Abu Bakr, a candidate for succession, accepting such recommendation held out his hand. Thereafter following Umar, the Muhajirin as well as the Ansar who were present there swore allegiance to him by way of *bay'ah*. Subsequently, this private *bay'ah* was followed by a public *bay'ah*.¹¹ Thus he was accepted as *Khalifah* by the Muhajirin and the Ansar. (According to Jabari¹², Ali and other members of Banu Hashim swore allegiance to Caliph Abu Bakr sometime after his public *bay'ah*).

Caliph Abu Bakr's speech, after the multitude had sworn allegiance to him, is significant. He proclaimed: "I am not the best among you; I need all your advice and all your help. If I do well, support me; if I mistake, counsel me. To tell truth to a person commissioned to rule is faithful allegiance; to conceal it is treason. In my sight, the powerful and the weak are alike; and to both I wish to render justice. As I obey God and His Prophet, obey me: if I neglect the laws of God and the Prophet, I have no more right to your obedience."¹³

The second *Khalifah* namely Umar, was nominated by Caliph Abu Bakr. But since nomination had no legal precedent, it was merely a recommendation. However, the Muslim community reposed confidence in Caliph Abu Bakr; therefore, his recommendation was accepted through the subsequent referendum when the nomination of Umar was put to public at large and it was confirmed by a general *bay'ah*.

Caliph Umar was assassinated. But before his death, he constituted an Electoral College of the probable candidates in

order to select one from amongst them for being put up as the sole candidate for succession. A council of six was formed consisting of Ali, Uthman, 'Abdur Rahman, Sa'd, Zubayr and Talhah. (Qadi Sulaiman Mansurpuri in his *Rahmatu'l-lil- 'Alamin*, vol. 2 p. 105 states that the name of the sister of the father of the Holy Prophet, Umm Hakim Bayda' was also included in the Electoral College). Caliph Umar appointed his own son 'Abdullah to give a casting vote in case there was an equal division, but 'Abdullah was specifically excluded from standing as a candidate for succession. The council through a process of elimination deputed Abdur Rahman to make a recommendation as to who out of Ali and Uthman should be the sole candidate. Abdur Rahman is said to have consulted as many people as he could in Medina including women as well as students and those who had come from outside or happened to be present in Medina as way-farers and majority of them expressed their view in favour of Uthman. Then Abdur Rahman even questioned Ali and Uthman about the manner in which they would conduct themselves if any of them was selected as the successor. Eventually Abdur Rahman supported Uthman and finally Uthman was selected as the sole candidate. Later the rest of the Muslim community swore allegiance to him in the form of a public *bay'ah*.

Caliph Uthman's era developed its own complications when the Muslim settlers in Egypt, Kufa and Basra complained against the administrators appointed by him. They alleged that their grievances were not redressed, they demonstrated and turned into insurgents, demanding resignation of Caliph Uthman from his office. There was no garrison deputed in Medina for the protection of the Caliph. Army assistance from outside was sought, but it did not arrive in time. The insurgents stormed the house of Caliph Uthman and brutally murdered the old Caliph.¹⁴

After the assassination of Caliph Uthman some eminent members of the Muslim community in Medina gathered in front of the house of Ali and requested him to agree to

become the *Khalifah*. The uncle of the Holy Prophet Abbas supported him as the sole candidate. But Ali refused to accept a private *bay'ah* and insisted that if the Muslim community wanted to swear allegiance to him as the Head of the State, it should be openly done in the Mosque of the Holy Prophet. This was accordingly done.¹⁵

The times of Caliph Ali were even more turbulent than those of Caliph Uthman. First, Mu'awiyah refrained from swearing allegiance to him; and second, Zubayr and Talhah, two eminent Companions of the Holy Prophet, left Medina for Mecca in order to persuade A'ishah, the Holy Prophet's very respected widow, to join them for demanding "Qisas" of Caliph Uthman's murder from Caliph 'Ali. Their reasoning was that the culprits were identified and therefore action should be taken against them. The problem as explained by Tabari¹⁶ was that there were conflicting opinions regarding this matter and even the then living Companions of the Holy Prophet were divided. It was, therefore, not easy for Caliph 'Ali to punish the alleged culprits. Caliph 'Ali while summing up the situation could not help lamenting that the conditions which prevailed in his times were identical to those of the days of "Ignorance".¹⁷

The issue resulted into the Battles of the Camel (*Jamal*) and of *Siffin* in which many Muslims lost their lives at the hands of one another including the Companions of the Holy Prophet. According to Tabari ten thousand Muslims were killed on both sides in the Battle of the Camel alone.¹⁸ After the unsuccessful arbitration between Caliph 'Ali and Mu'awiyah, some of the supporters of Caliph 'Ali who had earlier insisted on him to submit to arbitration, now turned against him maintaining that when he had already been elected as *Khalifah* by the people of Medina then he should not have conceded to refer this decided matter to arbitration. They formed a separate group of their own called "Ahl al-Sunnah wa 'l-'Adl" (Khawaraj) and rebelled against Caliph 'Ali. Just as Caliph 'Ali was waging war against Mu'awiyah, he had also to fight against the Khawaraj. Eventually Caliph 'Ali

was assassinated by a Kharijite while he was proceeding to offer prayers in the mosque at Kufa.

From this brief survey it is evident that during the period of the Rightly Guided Caliphs, different modes were adopted for the appointment of the Head of the State. These modes were neither mentioned in the Qur'an nor recommended by the Sunnah (Practice) of the Holy Prophet. It may further be added that at no stage the parties involved used the Qur'an and the Tradition in support of their individual political claims. The modes adopted were founded purely on the Sunnah (Practice) of the Rightly Guided Caliphs. The candidate for the Caliphate was selected through an initial election by a restricted number of eminent persons, or by nomination, or through a small electoral college, and thereafter, the approval of the general public was obtained in the form of an acquiescence and by way of *bay'ah*. Women were not debarred from registering their consent. Furthermore, the hereditary rule, although known to the Arabs, was specifically excluded in the case of succession.

The Head of the State was considered successor of the Holy Prophet (*Khalifah*), the interpreter and promulgator of Islamic law (Imam/Mujtahid), the leader of the congregational prayers, the defender of the religion of Islam, the guardian of the Muslim community, the judge, the moral censor (*Muhtasib*), the administrator, the statesman, and the military commander (*Amir al-Mu'minin*).

It has already been mentioned that in the times of the Holy Prophet there was only one acknowledged privilege of the Head of the State i.e., all the state documents were expected to bear his seal. The seal of the Holy Prophet was used by the succeeding Caliphs until the times of Caliph Uthman, when it fell into a well and was lost. However an identical seal was got prepared and was used for the same purpose. During the period of the Rightly Guided Caliphs, particularly in the turbulent days of Caliph 'Ali, the fourth *Khalifah*, a second privilege was introduced and that was if the Head of the State himself was not leading the congregational

prayers, then the leader of the public worship mentioned his name in the Sermon (*Khutbah*) and prayed for him.

It may be useful at this stage to briefly consider some of the views about the institution of Caliphate, advanced during this period. The Shi'ites restrict the *Khilafah* exclusively to the House of 'Ali. They reject the formula of election and hold that the leadership of Muslim community is an issue of such vital importance that the Holy Prophet could not have died without appointing someone as the Imam. They maintain that the Holy Prophet had no male issue to succeed him; therefore, he appointed his son-in-law 'Ali as Imam, and his descendants are to hold the office of Imamate as of right. The Shi'ites consider the appointment of the Caliphs who preceded 'Ali as illegal and regard Caliph 'Ali as the first Imam. According to this view each Imam (the descendant of Caliph 'Ali and Fatimah, the Holy Prophet's daughter) possesses super-human powers and is in constant touch with God. Thus the nature of Imam's authority is spiritual in essence.

The Kharijite (the term denotes "one who leaves his home among the unbelievers for God's sake"; it also implies secession (i.e. Khuruj from the Muslim community) theory is the extreme opposite to that of the Shi'ites. The Kharijites represent the left wing of Muslim political opinion and in modern terminology may be considered as strict social democrats. They require only moral qualifications in a *Khalifah*, and restrict his authority by retaining the right to depose him if he is found unfit to hold his office. The Kharijites maintain that the *Khalifah* should be appointed with the agreement of the entire Muslim community. Accordingly they reject the doctrine of the restriction of the *Khilafah* to the House of 'Ali, or to the tribe of Quraysh. They insist on a free election, and hold that even a non-Arab or a slave is eligible for the office of the *Khilafah* provided that he is a Muslim of upright character and takes the responsibility of performing the duties assigned to his office. Some of them maintain that even a woman could be appointed *Khalifah*, the

others among them reject the doctrine of the necessity of *Khalifah*, appointment, and argue that since it is nowhere specifically mentioned by God (i.e., it is only recommended but not obligatory), the Muslim community could rule itself by constituting a legitimate Consultative Assembly and at the same time, fulfil their religious obligations. Nevertheless, if the conditions so demanded, a *Khalifah* could be elected.¹⁹

During this period the Executive was properly consolidated. Caliph Umar, in particular, encouraged the establishment of different departments of Central Secretariat in the form of *Diwans* on the Persian model. In these departments secretaries and clerks were employed in order to assist the Chief executive authority in managing the affairs of the state. The department of moral censorship (*Hisbah*) was also organised to enforce the Rights of God (*Huquq Allah*), the Rights of Human Beings (*Huquq al-'ibad*), and the Rights which were common to both God and Human Beings (*Huquq bayn Allah wa 'l-'ibad*). Broadly speaking, the Rights of God were the holding of congregational prayers, the observance of fasts in the month of Ramadan, the payment of Zakah etc. The wrongs that infringed the Rights of Human Beings included unlawful transactions, usury, false and defective scales, weights and measures, non-payment of debt etc. The Rights which were common to both God and Human Beings were violated when, for instance, a divorced woman or a widow remarried without observing *Iddah* (a period of time to ascertain pregnancy); or when the leader of public worship lengthened the prayers unnecessarily so that the weak and old failed to stand it or people were hindered or delayed from performing other jobs; or when a judge made the people wait before holding his court etc.

It is interesting to note that besides *Huquq al-'ibad* as briefly defined above, "Human Rights" as we understand them today, were clearly laid down in the Qur'an and the Practice (Sunnah) of the Holy Prophet. The citizens were familiar with them and these were meticulously enforced during this phase of the seventh century republican Muslim

State. Following are the basic human rights which can be directly traced from the Qur'an and the Sunnah (Practice) of the Holy Prophet:

1. Equality of all citizens before law as well as equality of status and opportunity. "O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and spread from these two many men and women", (surah 4: verse 1). "Lo! Pharaoh exalted himself in the earth and divided its people into castes. A group among them he oppressed, killing their sons and sparing their women. Lo! He was of those who work corruption". (surah 28: verse 4).
2. Freedom of religion. "There is no compulsion in the matter of religion", (surah 2: verse 256)."And if thy Lord had pleased, all those who are in the earth would have believed all of them. Wilt thou (Muhammad) then force men till they are believers?" (surah 10: verse 100). "Had God willed, idolaters had not been idolatrous. We have not set thee (Muhammad) as a keeper over them, nor art thou responsible for them". (surah 6: verse 108)." For each of you We have appointed a law and a way. And if God had willed He would have made you one (religious) community. But (He hath willed it otherwise) that He may put you to the test in what He has given you. So compete with one another in good works. Unto God will ye be brought back, and He will inform you about that wherein ye differed." (surah 5: verse 48). "If God had not raised a group (Muslims) to ward off the others from aggression, churches, synagogues, oratories and mosques where God is worshipped most, would have been destroyed". (surah 22: verse 40). "Unto you your religion and unto me my religion", (surah 109: verse 6).
3. Right to life. "And slay not the life which God hath forbidden save for justice", (surah 17: verse 33).
4. Right to property. "And eat not up your property among yourselves in vanity, nor seek by it to gain the

hearing of the judges that ye may knowingly devour a portion of the property of others wrongfully". (surah 2: verse 188).

5. No one is to suffer from the wrongs of another. "Each soul earneth on its own account, nor doth any laden bear another's load". (surah 6: verse 165). "That no laden one shall bear the burden of another". (surah 53: verse 38).
6. Freedom of person. Inferred from the practice of the Holy Prophet, by Imam Khattabi and Imam Abu Yusuf: A Tradition is reported by Abu Da'ud to the effect that some persons were arrested on suspicion in Medina in the times of the Holy Prophet. A Companion inquired as to why and on what grounds had these persons been arrested. The Holy Prophet maintained silence while the question was repeated twice, thus giving an opportunity to the prosecutor, who was present there, to explain the position. When the question was put for the third time and it again failed to elicit a reply from the prosecutor, the Holy Prophet ordered that those persons should be released. On the basis of this Tradition Imam Khattabi argues in his *Ma'alim al-Sunan* that Islam recognises only two kinds of detention: (a) under the orders of the court, and (b) for the purposes of investigation. There is no other ground on which a person could be deprived of his freedom. Imam Abu Yusuf maintains in his *Kitab al-Khiraj*, on the authority of the same Tradition that no one can be imprisoned on false or unproved charges. Caliph Umar is quoted in Imam Malik's *Muwatta* as having said that in Islam no one can be imprisoned without due course of justice.
7. Freedom of opinion. "God loveth not the utterance of harsh speech save by one who hath been wronged". (surah 4: verse 148). "Those of the children of Israel who went astray were cursed by the tongue of David, and of Jesus son of Mary. That was because they

- rebelled and used to transgress". "They restrained not one another from the wickedness they did. Verily evil was that they used to do". (surah 5: verses 78-79). "And when they forgot that whereof they had been reminded. We rescued those who forbade wrong, and visited those who did wrong with dreadful punishment because they were evil-livers". (surah 7: verse 165). "You are the best community that hath been raised up for mankind. Ye enjoin right and forbid wrong". (surah 3: verse 110).
8. Freedom of movement. "It is He Who has made the earth manageable for you, so travel ye through its tracts and enjoy of the sustenance which He furnishes; but unto Him is the Resurrection". (surah 67: verse 15).
 9. Freedom of association. "And let there be formed of you a community inviting to good, urging what is reputable and restraining from what is disreputable". (surah 3: verse 104).
 10. Right of privacy. "It is not proper that ye enter houses through the backs thereof...So enter houses by the doors thereof". (surah 2: verse 189) "O ye who believe! Enter not houses other than your own without first announcing your presence and invoking peace (salam) upon the folk thereof. That is better for you, that ye may be heedful". "And if you find no one therein, still enter not until permission hath been given. And if it be said unto you: Go away again, then go away, for it is purer for you. God knoweth what ye do". (surah 24: verses 27-28). "And spy not, neither backbite one another. Would one of you love to eat the flesh of his dead brother? Ye abhor that so abhor the other!" (surah 49: verse 12).
 11. Right to secure basic necessities of life. "And let not those who hoard up that which God has bestowed upon them of His bounty think that it is better for them. Nay, it is worst for them. That which they hoard will be their halter on the Day of Resurrection". (surah

- 3: verse 180). "And in the wealth of the haves there is due share of the have-nots", (surah 51: verse 19).
12. Right to reputation. "Neither defame one another, nor insult one another by nicknames. Bad is the name of lewdness after faith". "O ye who believe! Shun much suspicion; for lo! some suspicion is a crime". (surah 49: verses 11-12). "And those who malign believing men and believing women undeservedly, they bear the guilt of slander and manifest sin". (surah 33: verse 58).
 13. Right to a hearing. Inferred from the Sunnah (Practice) of the Holy Prophet who, sending 'Ali to the Yemen gave him the following direction: "You are not to take decision unless you have heard the second party in the same way as you have heard the first".
 14. Right to decision in accordance with proper judicial procedure. "O ye who believe! if an evil-liver bring you news, verify it, lest you smite some folk in ignorance and afterward repent of what ye did". (surah 49: verse 6). "O man, follow not that whereof thou hast no knowledge". (surah 17: verse 36). "Lo! God commandeth you that ye restore deposits to their owners, and, if ye judge between mankind, that ye judge justly". (surah 4: verse 58).

The extent to which the citizens were aware of human rights laid down in the Qur'an, can be cited by an example. It is stated that one night Caliph 'Umar, while crossing a street in Medina, heard the sound of debauchery of a drunkard coming from inside a house. Losing his temper, he attempted to enter the house. But no one answered his knock or opened the door. Still annoyed, he climbed on the roof, and from it shouted down to the owner in his courtyard thus: "Why are you breaking the law by permitting such an abusive drunkard in your house"? The owner replied: "No Muslim has the right to speak like that to another Muslim. May be I have committed one violation, but see how many you have committed. For instance: (1) spying, despite God's command - "Thou shall not spy" (surah 49: verse 12); (2) breaking and

entering - you came in over the roof, despite God's order: "Enter houses by the door" (surah 2: verse 189); (3) entering without the owner's permission - in defiance of God's command, "Enter no house without the owner's permission" (surah 24: verse 28); (4) omitting the Salaam - though God orders, "Enter not houses without first announcing your presence and invoking peace (salam) on those within" (surah 24: verse 27). Feeling embarrassed, Caliph 'Umar said: "All right, I forgive your violation of Law". The owner of the house retorted: "That is your fifth violation. You claim to be the executor of Islam's commandments, then how can you say that you forgive what God has condemned as a crime"?

Everyone was free to express his own opinion concerning the execution of Islamic injunctions about human rights and even the Caliph was accountable for his conduct and actions. Sometimes the attitude of the citizens towards the Caliph was uncouth and aggressive, and at other times it was improper and insulting; nevertheless it was tolerated. On numerous occasions Caliph 'Umar had to face such situations and to provide explanations. Caliph Uthman was eventually assassinated since he could not satisfy his critics. On one occasion Caliph 'Ali was delivering Sermon (Khutbah) in the Mosque of Kufa when some Kharijites interrupted him with insulting language. The companions of Caliph 'Ali urged him to punish them or at least to expel them from the Mosque. But Caliph 'Ali declined to take such action on the ground that the Muslims' right of freedom of speech must not be imperilled.²⁰

Although the Caliph could over-rule the advice of the Council (*Shura*), during this period, it played a very vital part in the management of the affairs of the state. According to Shibli, whenever an important matter came up, the Council was summoned and no decision was taken without consultation. Some decisions were taken on the basis of majority opinion. The members of the Council were mainly from the two major political groups namely, the Muhajirin and the Ansar. In the times of Caliph 'Umar, the matter of

not treating land in the conquered territories of Iraq and Syria as “*Ghanimah*” (spoils of war) but considering it as state land (according to the text of the Qur’an one fifth of the said land should have been trusted for the welfare of the public and the rest was to be distributed among the soldiers), the fixation of salaries of the members of the armed forces and other personnel, the appointment of governors and tax-collectors, the matters involving trade relations with other countries etc., were disposed of according to the advice of the Council. Caliph ‘Umar is reported to have said that without “*Shura*” (consultation) there could be no *Khilafah*.²¹

As interpreter and promulgator (Mujtahid/Imam) of Islamic law, Caliph ‘Umar is considered as the founder of the Science of the Secrets of Religion (‘Ilm al-Asrar al-Din). In his view all Shar‘i (religio-legal) ordinances were based on rational considerations, although it was generally held that Reason had nothing to do with Islamic injunctions. Caliph ‘Ali also belonged to the same school of thought and made significant contribution to the science of interpreting Revelation in the light of Reason during his times. According to Shibli, Caliph ‘Umar was the first to encourage the development of “independent inquiry” (*Qiyas*) for formulating a legal opinion. Before him in the times of Caliph Abu Bakr, legal decisions were taken either in the light of the Qur’an, or in accordance with the precedents set by the Holy Prophet, or on the basis of Consensus of the Companions (*Ijma*).²²

Caliph ‘Umar had even been criticised for introducing innovation (*bid‘ah*) in the course of his interpretation of Islamic law. But his explanation always was that innovation was of two kinds namely, “reprehensible innovation” (*bid‘ah al-sayyi‘ah*) and “commendable innovation” (*bid‘ah al-hasanah*). In other words, in his approach, he, not only adhered to the text of the Qur’anic injunctions but at the same time attempted to reach the spirit underlying them.²³

Two examples of the *Ijtihad* of Caliph ‘Umar may be cited in order to show as to how he approached and resolved some of the problems of Islamic law. During a year of famine in

Medina, he suspended the Qur'anic penalty (*hadd*) of cutting of hands of thieves for the reason that if he, as the Head of the State, could not provide basic necessities of life to the citizen, he had no right to impose this Qur'anic punishment. He exercised this power under the doctrine of necessity (*idtirar*) as laid down in surah 2: verse 173, surah 5: verse 3, surah 6: verse 120, and surah 16: verse 115 of the Qur'an which transforms that what is forbidden (*haram*) into lawful (*halal*) under certain conditions of compulsion. In surah 16: verse 106, a believer under compulsion or if forced by necessity, has been permitted even to the extent of a verbal denial of his belief or making a sacrilegious utterance in order to save his skin. There are also some Traditions of the Holy Prophet which support these Qur'anic verses. For instance, he is reported to have said that harm or damage to the community must be avoided at all costs. On one occasion in the course of war he prohibited the cutting of hand of an established thief.

Thus the principle deduced is that in a state of necessity (*idtirar*) unlawful can become lawful, or necessity makes permissible acts otherwise prohibited. In such a situation a Qur'anic fixed penalty can be suspended. The later Muslim jurists, however, highlighted numerous dimensions of the concept of "necessity" and held that under such circumstances a Qur'anic rule, besides being suspended (*Ta'wiq*), can also be restricted in application (*Tabdid*) or extended (*Tawsi'*) as the conditions require. Eventually the Qur'anic doctrine, apparently of individual necessity, was developed further and applied with full force to the doctrine of collective or state necessity, and in the wider interest of public order or for the prevention of chaos, even usurpation (*istila'/taghallub*) was acceptable to Imam Abu Hanifah, Imam Ghazzali and other eminent Sunni jurists so long as the usurper (*Imam al-mutaghallib*) did not interfere in the orderly running of the government, permitted people to perform their religious obligations, and if possible, himself observed the limits of God.²⁴

The other example is of a famous problem of Islamic law of inheritance that arose in the case called *al-Himariyah*. In *al-Himariyah* the position was that a woman had died leaving behind a husband, a mother, two brothers from a former husband of her mother (uterine brothers), and her full brothers and sisters. In an identical case, Caliph Abu Bakr had given one half to the husband, one sixth to the mother, one third to the two brothers from her mother's former husband, and as the inheritance was distributed completely among the Qur'anic heirs, nothing was left as residue to be given to the full brothers and sisters of the deceased; therefore, they were excluded. When a similar case came before Caliph 'Umar for adjudication, he, in the first instance, decided the matter in accordance with the precedent set by Caliph Abu Bakr. But when the same situation arose in a subsequent case, one of the full brothers pleaded before him saying: "O Commander of the Faithful! Granted that our father was an ass (*himar*), still we had emerged from the same womb and shared a common mother. Therefore why should we be deprived?" Upon this Caliph 'Umar ruled that the full brothers and sisters should participate equally in the one third given to the uterine brothers of the deceased. The first decision of Caliph 'Umar may be based on justice (*'adl*) strictly in accordance with the Qur'anic law of inheritance, but his second decision which altered the shares fixed by the Qur'an for the uterine brothers, was based on something more than justice, i.e. equity (*Al-Qist/ ihsan*), as God loves the equitable (surah 49: verse 9).²⁵

Shibli states that in the times of Caliph 'Umar the entry of non-Muslims was not banned in Mecca and Medina, and that they could stay in the holy cities for as long as they liked.²⁶ Stipends were fixed also for poor non-Muslims from the "*sadaqat/ zakat*" fund. One can cite numerous examples of the existence of religious tolerance in those times. For instance, on one occasion it was brought to the notice of Caliph 'Umar that some Muslims in Syria had forcibly occupied a piece of land belonging to a Jew and constructed a mosque thereon.

Under his orders the mosque was demolished and the land was restored to the Jew. This piece of land, generally known as the "Jew's House" (*bayt al-Yahudi*) still exists in Syria.

Caliph Umar also kept an eye on the popular and renowned generals of the Muslim armed forces, which consisted of different nationalities including Jews, Greeks, Byzantines, Persians and even Jats of Sind, besides Arabs and other converts to Islam.²⁷ He reduced the rank of two eminent generals namely Khalid bin Walid in Syria, and Muthanna Shaybani in Iraq, to ordinary soldiers on account of their insubordination and in order to establish the supremacy of the central executive authority.²⁸

Caliph Ali had been a prominent member of the Council (*Shura*) during the preceding three administrations, and during his own Caliphate, he not only strengthened this institution, but usually acted under its advice and guidance. It was in accordance with the advice of the Council and his army officers that he desisted from destroying Mu'awiyah's men in the Battle of Siffin when they played the trick of tying copies of the Qur'an to their lances and seeking quarter, although he wanted to pursue them and finish the rebellion completely. Again it was on the advice of the Council that he agreed to refer the dispute between him and Mu'awiyah to arbitration.

Despite the fact that his times were difficult, Caliph 'Ali made significant contribution to the sphere of Islamic law and jurisprudence. He was, like his three predecessors, *Mujtahid* in regard to the interpretation of law. Although the Judiciary had been separated from the Executive, there were instances of the poor citizens' sufferings at the hands of important state officials and the courts failed to provide adequate relief to them due to the influence of such officials. In order to redress their wrongs, Caliph Ali founded a powerful new central court called "*Nazar al-Muzalim*" (Reviewer of Wrongs), and himself sat in it as the first "*Nazar*" (Reviewer). In short Caliph Ali as well as Caliph Umar as *Mujtahids* courageously interpreted and promulgated

Islamic law, enforced Human Rights, and took care that the independence of the Judiciary was maintained.

Caliph Ali was very democratic, humane and lenient. According to Ameer Ali, had he possessed the stern character of Caliph Umar's he would have been more successful in governing an unruly people like the Arabs. "But his forbearance and magnanimity were misunderstood, and his humanity and love of truth was turned by his enemies to their own advantage".²⁹

During the period of the Rightly Guided Caliphs, generally speaking, the constitutional principles deduced from the Sunnah (Practice) of the Holy Prophet were followed. But the most significant constitutional principle added to Muslim polity through the Sunnah of the Rightly Guided Caliphs was the multiplicity of methods of appointment of the Head of the State (*Khalifah*). The principle in essence was that the appointment must be made with the approval of the Muslim community, and the concept of hereditary succession was specifically excluded. The adoption of different modes of appointment, indicated that any mode could be adopted to suit the prevailing conditions so long as it was democratic, efficient and based on wisdom. However it was not generally realised that owing to the expansion of Islamic territories it had become necessary to obtain the approval of the entire Muslim community settled in numerous big cities other than Medina (the Capital). If this modification had been made in the basic principle of appointment, the objection of Mu'awiyah respecting Caliph 'Ali's election might have not been raised.

It is abundantly clear that the real emphasis of Islam is on the establishment of a Community of Faith being governed exclusively by the *Shari'ah*. But the republican political order introduced as a political system in the state under the Sunnah (Practice) of the Rightly Guided Caliphs had no spiritual or religious significance. It had its importance only because it followed immediately after the death of the Holy Prophet and

was evolved by his closest Companions. However, it collapsed owing to numerous reasons. Some of these are:

- First, the republican political system contained in itself the possibility of its transformation into a hereditary/dynastic monarchy.
- Second, the *Khalifah* was presumably appointed for life, but no legal methodology was evolved for his impeachment or deposition in case such a need arose.
- Third, as the ancient tribal rivalries disseminated suspicion and hatred, the differences of opinion among the various political groups took the form of militant confrontation and the struggle for power led to a civil war.
- Fourth, three out of the four Rightly Guided Caliphs namely 'Umar, Uthman and 'Ali were assassinated. Caliphs 'Umar and 'Ali were murdered in the mosque - an exposed place for any popularly elected Muslim Head of the State, making him extremely vulnerable, particularly when no arrangements had been made for his security. There was neither any garrison present in Medina nor guards had been deputed for the protection of the house and person of Caliph Uthman. Caliph 'Ali was assassinated in accordance with a well-planned conspiracy of the Khawarij, the political group which adopted terrorist methods for accomplishing their objectives.

It is a generally accepted principle that great men make history. The four Rightly Guided Caliphs, who laid down the foundations of republican Islam, were certainly the greatest men Islam has produced after the Holy Prophet. But great men make history only if they have the support and co-operation of the people united behind them. The efforts of the Rightly Guided Caliphs for the permanent democratisation of Islam failed, not because of any lapse on their part, hut owing to the failure of the Muslim peoples of those times to realise that democracy had its own discipline. If they had understood this political message, very ably

projected by the Rightly Guided Caliphs, the “*shura*” could have developed into a representative institution and the process of “*Ijtihad*” might have been initiated in the form of law-making through “*Ijma*” (Consensus of the Community). But the Muslims divided themselves into numerous intolerant and fanatical religio-political groups and under the general policy of “if you are not with us you are against us” these groups actually fought against and ruthlessly slaughtered one another. Ameer ‘Ali rightly observes that with Caliph ‘Ali ended the republic of Islam, and he closes the chapter of his book with a quotation of Oelsner to the following effect: “Thus vanished the popular regime, which had for its basis a patriarchal simplicity, never again to appear among any Mussulman nation”,³⁰

The Subversion of Political Message

In the historical process of transformation from 661 AD, to 1258 AD, and then from 1261 AD, to 1517 AD, the interaction of numerous forces and events led to changes in the Caliphate in substance as well as form. Mu‘awiyah was proclaimed *Khalifah* in 661 AD, and four years before his death he nominated his son Yazid as his Successor (Wali al-‘Ahd). The oath of allegiance was secured for Yazid despite the protests of some jurists who maintained that it was illegal to swear allegiance to two persons at one and the same time. Mu‘awiyah nominated his own son as the succeeding Caliph, because, as he himself explained, that if he had nominated anyone outside his own family, or if he had appointed an electoral council as Caliph ‘Umar had done, or if he had left the matter to be decided by the Muslim community, it would have led to a civil war among Muslims. His reasoning was that the precedent of nominating the succeeding *Khalifah* already existed. Accordingly, his Governor of Medina, said to the people: “Verily the Commander of the Faithful hath seen it fit to appoint his son Yazid as the successor over ye according to the institutions of Abu Bakr and Umar”. Abdur Rahman bin Abu Bakr interrupted: “Rather according to the

institutions of Khusro and Caesar, for Abu Bakr and Umar did not do so for their children, nor for anyone of the people of their house". The prompt reply came from Marwan: "There was no legal bar for Abu Bakr and Umar to nominate their children or anyone of the people of their house if they had found them competent. But in the present case the Commander of the Faithful is nominating his son Yazid as successor over ye because he had found him fit and competent".³¹

Thus the republican political system evolved had the seed which could transform it into a hereditary or dynastic monarchy. The example so set was followed throughout the later history of Islam. The reigning Caliph nominated one of his sons or kinsmen as his successor and the oath of allegiance was secured for him. During the 'Abbasid rule double nominations were often made, the two successors to hold the office of *Khalifah* one after the other. This arrangement frequently led to wars of succession. The *Millah/Ummah* was made to accept monarchy because first, the events of Muslim history brought home that the instability engendered by the republican order may eventually lead to the destruction of the Muslim community; and second, the Qur'an was not averse or opposed to the institution of monarchy as some of the earlier prophets mentioned in the Qur'an were also kings. As a result—the original political message, reflected in the teachings of the Holy Prophet and the Sunnah (Practice) of the Rightly Guided Caliphs was quietly discarded, the citizens were reduced to subjects and the republican order was replaced by an autocratic monarchy.

The later jurists and historians regard the Umayyads as usurpers or kings by right of power and Caliphs only in name. It was during this period that more emphasis was laid on sceptre and seal. The Umayyads ruled as an Arab aristocracy at Damascus instead of Medina, and the Caliph had come to acquire kingly prerogatives. Besides the two earlier privileges, namely the Seal (*khatm*), and the Sermon (*khubbah*), three more

were introduced by Mu'awiyah himself on apparently valid grounds. For instance, the Throne (*Sarir*) was introduced for the reason that Mu'awiyah was too fat and when he sat on the floor like the rest of the Arabs in accordance with the Arab custom, two persons were required to assist him to stand up. But if he were to sit on a higher place like a chair or a throne, then he could get up without anyone's help. A Confined Part (*Maqsurah*) in the mosque for the exclusive use of Mu'awiyah was introduced for security reasons, as an unsuccessful assassination attempt had been made on him by a Kharijite while he was offering prayers in the mosque. Finally, although the Muslim coinage (*Sikkah*) was struck since the times of Caliph 'Umar, the Umayyad caliph's name was carved on the coinage as a prerogative of the reigning monarch. Then Arabic was made the court language, and the earlier simplicity gradually gave way to luxury and splendour.

The executive and judicial institutions of Islam were also affected along with the vital transformation of the political order. In other words the political change led to the development of these institutions in such a manner that it should not come into conflict with the order established by the Umayyads. During this period, particularly after the tragedy of Karbala, disillusioned by the political conditions, the best minds in the world of Islam turned to mysticism (Sufism) or to the other-worldliness. There developed a school of determinist philosophy advocated by the Murji'ites who maintained that only that happens in this world what is willed by God. The Umayyads supported this school and encouraged its development because it helped in the dissemination of the viewpoint that the tragedy of Karbala or whatever happened there had actually been willed by God.

The Battle of Zab (750 AD) brought about the replacement of the Umayyad rule by the 'Abbasid rule, and the passing of the Caliphate from the second to the third phase of its development as an institution. It may be noted that under the Umayyad rule (661-750) the unity of the Muslim world had remained a political reality. But within six

years of the accession of Abu 'l-'Abbas al-Saffah, who was acknowledged as *Khalifah* in 749 AD, the unity of the Caliphate was shattered by the establishment of an independent Umayyad kingdom in Spain. The founder of this kingdom was 'Abdur Rahman I, a descendant of Marwan II, the last Umayyad Caliph defeated at the Battle of Zab. However the Umayyads in Spain did not assume the title "*Khalifah*" but adopted the title "Amir".³²

Under the 'Abbasids the capital was moved from Damascus to Baghdad, and the Caliphate was further transformed into a monarchy on the Persian model through the introduction of such institutions as the "*Wazarah*" etc. Meanwhile the Amirs (hereditary Governors) of the dominions of Islam, who were kept in check by the Umayyads, came to acquire enormous power under the 'Abbasids as the centre gradually showed signs of weakness. The Amirs secured deeds of investiture from the Caliph, and were completely independent in their own dominions. Some of them paid tribute to the Caliph while the others did not, but most of them fought against one another.

During the tenth and eleventh centuries, the world of Islam was divided into a number of petty principalities and a state of constant warfare prevailed among the Amirs.³³ North Africa was completely cut off first by the establishment of the Adrisid dynasty at Fez (in 785 AD), then the Aghlabite dynasty (in 801 A.D.)³⁴, and finally the Fatimid dynasty (in 909 AD). The Fatimids (tracing their descent from Caliph 'Ali and Fatimah) occupied Egypt and gradually built up an empire extending over the territories of North Africa and including Syria, Yemen and even the Hedjaz.

The position of the 'Abbasid Caliph at Baghdad during the tenth and eleventh centuries was very weak. The Buwayhid troops had entered Baghdad (in 946 AD), and the administration of the seat of the Caliphate had passed into the hands of the Buwayhid Amir. (The Buwayhid dynasty which held sway over Baghdad was a Shi'ite dynasty). The name of the Amir appeared with that of the Caliph on the

coinage, and was mentioned with that of the Caliph in the *Khutbah*. The Caliph could not issue the patent of sovereignty to anyone without the consent of the Amir. The function of the Caliph was only to bestow titles or honours. Nevertheless in theory he was considered as the religious as well as the temporal head of the Muslim community, and orders were issued in his name.

The 'Abbasid Caliphate was not acknowledged in North Africa. This was the empire of the Fatimids who regarded themselves as Imams. When the Holy Cities passed into the hands of the Fatimid, 'Abdur Rahman III, the Umayyad ruler of Spain adopted the title "*Khalifah*" and was acknowledged as such in his own dominions. So in the tenth century three separate, independent and antagonistic Caliphates were established in the world of Islam (i.e., Cordoba, Cairo and Baghdad). Although the Ummayyad power was declining in Spain by 1037 (the Muslims were finally expelled from Spain in 1610), and the Fatimid empire was recovered for the 'Abbasids by Salah al-Din in 1171, the 'Abbasid Caliphate survived in Baghdad until 1258.

Between the tenth and eleventh centuries the Baghdad Caliphate was at its lowest ebb. The Buwayhids controlled the administration of the capital, and the rise of numerous dynasties (e.g., the Tahirid, the Saffarid, the Samanid etc.), or the breaking up of Eastern Islam into a number of independent political units, had reduced the Caliphate to a constitutional fiction. However, as shall be discussed later, it was during this period of weakness and impotence that a systematic exposition of Islamic constitutional theory was advanced by Abu 'l-Hasan 'Ali bin Muhammad al-Mawardi (991-1058 AD). Unlike Al-Biruni (973-1048 AD) who recorded that the Caliphate had ceased to command authority over temporal affairs and had been reduced to merely a religious office³⁵, Al-Mawardi ignored the dependent position of the Caliphate. His account of the state in Islam, like the other Sunni jurists of different Schools of Fiqh

(jurisprudence), is far removed from the conditions that actually prevailed.

Since the importance of the Caliphate was reduced by the establishment of independent dynasties in the territories of Islam, Al-Mawardi insisted that those who had usurped the authority of the Caliph must secure the deed of investiture from him so that their rule could be validated as legal and constitutional. But the struggle for political supremacy between the Caliph and the politically independent Amirs continued and ultimately resulted in the development of "Sultanate" in Islam.

The word "*sultan*" occurs in the Qur'an and means authority, spiritual or magical power (i.e., good or evil power) etc. In the literature of Traditions the term appears to imply 'the power of God' or 'the governmental power'. In the early history of Islam "*sultan*" meant the temporal power of the *Khalifah*. However, under the 'Abbasids when Spain and North Africa were lost to the Baghdad Caliphate, the Umayyad rulers of Spain were sometime addressed as "*Ibn Sultan*" (on the ground that they were the descendants of the Umayyad Caliphs of Damascus). Among the 'Abbasids Caliph Ma'mun is reported to have been addressed as the "*Sultan of God*".

Under the later 'Abbasids when the rise of independent dynasties led to the curtailment or usurpation of the Caliph's temporal power, the term "*sultan*" came to imply 'the secular ruler/sovereign' in contrast to the Caliph who remained, at least in theory, the supreme religio-political head of the Muslim community. Nevertheless when the Buwayhids dominated Baghdad, they received from the Caliph such titles as the Amir al-'Umara, *Sultan al-Dawlah*, *Shah*, *Shaban i shah*, *Malik etc.*, and the precedent of "*sultan*" being given as a title by the Caliph had not been set. The independent sovereigns received the patent of sovereignty from the Caliph, under the advice of the Buwayhid Amir, for religious or political considerations, and they kept up the semblance of the unity of the Caliphate by mentioning the name of the Caliph in the

Khutbah or by putting it on the coinage; but within their own dominions they were completely independent. In other words the Sultanate had been established, though it had not reached the stage of complete emancipation from the Caliphate. It existed as an authority devoid of legal sanction and its use in official documents, correspondence, or on coinage had not yet become common.

The Caliph stripped of his temporal power retained such religious prerogatives as the appointment of the *Qadis* (judges), and the Imams of the mosques. He symbolised the unity of Islam, and was unaffected by the rise and fall of dynasties.

The Buwayhids were superseded by the Ghaznavids, and yet the title "*Sultan*", although in use, remained without legal sanction. However when the Seljuqid forces entered Baghdad and the influence of the Ghaznavids came to an end, the title "*Sultan*" received official confirmation. Tughral Beg received this title from the Caliph in 1055 AD³⁶, and it appeared on his coinage. Thus it can be assumed that it was not before the eleventh century that the Sultanate came to acquire a completely independent place for itself and stood side by side with the Caliphate. The Sultan became the sole possessor of the temporal power of the Caliph. His power depended on the sword and could not be set aside by any means other than the sword. Consequently the confirmation of the Sultan by the Caliph meant no more than the acknowledgement of an already established authority. Yet the Sultanate could not displace the Caliphate owing to the religious implications of the institution, the influence of the tradition, and the respect that the 'Abbasids commanded in the eyes of the Sunni Muslims.

The moralists (writers on political morality) of the eleventh, twelfth and thirteenth centuries either found a place for the Sultanate within the Caliphate, or justified the existence of the Sultanate in its own right. For instance, according to Nizami-i 'Arudi it was difficult for the Caliph to manage the affairs of the vast dominions of Islam singly,

therefore it was necessary that he should have deputies who ruled over different territories of Islam³⁷. Nizam al-Mulk (1017-1091 AD) does not appear to support the idea that the Caliphate was the source of the temporal authority of the Sultan. In his opinion the Sultanate was a divinely ordained institution and that therefore the Sultan should rule according to the *Shari'ah*. Nizam al-Mulk accepted the Caliphate only as a religious institution and regarded the *Qādis* (judges) as the deputies/representatives of the Caliph.³⁸

The Caliph's acknowledgement of the Sultan led to the establishment of a dual government at Baghdad which was bound to result in a conflict between the authority of the Sultan and that of the Caliph. The Caliph had occupied a dependent position, but when the wars of succession broke out among the rival Seljuqid claimants, the Caliph re-asserted his independence and Caliph Muktafi managed to re-establish his temporal power at least in Baghdad and the surrounding territories to the exclusion of the Seljuquids. But since the Caliph had delegated his temporal power to the Sultan of his own free will, the Sultan re-asserted his claim to temporal power. In the later half of the twelfth century the renewal of the deed of investiture to individual rulers from the Caliph fell into disuse, and the supporters of the Sultanate contended that it was beneath the dignity of the Caliph to control temporal affairs. In this connection Barthold quotes an Atabeg of the last of the Seljuqid Sultans as having said that the Caliph in the capacity of the Imam should occupy himself with the performance of prayers (*Namaz*) and religious leadership as it was the foundation of the Faith and the best of deeds. As regards temporal affairs, these should be delegated to the Sultan.³⁹

On the decline of the Seljuquids when the Khwarazm Shahs claimed the privileges formerly enjoyed by the Seljuqid Sultans, a new series of struggle started between them and the Caliph. The Khwarazm Shahs were Shi'ite and they never approached the Caliph for the confirmation of their Sultanate, the power of which depended originally on their

military strength. The Ghorids too, although a Sunni dynasty and on good terms with the Caliph, assumed the title "Sultan" before they were acknowledged as such by the Caliph.

The Khwarazm Shahs claimed Baghdad as their territory; they insisted on being acknowledged as Sultans, and their name being mentioned with that of the Caliph in the *Khutbah* in Baghdad. Muhammad bin Takash aspired to the restoration of the Universal Sultanate in his favour and accordingly carved on his seal the words: "The shadow of God on Earth". He secured a Decision (*Fatwa*) from the Shi'ite jurists of his dominion to depose the Caliph and marched towards Baghdad, but failed to capture it. Thus the stage had arrived that the Sultan could retaliate by omitting the name of the Caliph from the *Khutbah* in his dominion if the Caliph was not willing to permit the Sultan's name to be mentioned in the *Khutbah* in Baghdad. Moreover while the Caliph could not depose the Sultan, the Sultan could depose the Caliph by securing a Decision (*Fatwa*) from the jurists.⁴⁰

The conflict for political supremacy between the Sultanate and the Caliphate (which at that stage of the history of Islam was also a Shi'ah-Sunni conflict) eventually resulted in the collective ruin of Muslims. In the middle of the thirteenth century the Mongols not only inflicted a severe defeat on the Khwarazm Shah but also sacked Baghdad (1258 AD). Caliph Musta'sam was mercilessly put to death, and for the three years that followed (1258 to 1261 AD) the Muslim world remained without a *Khalifah*.

On its revival in Cairo in 1261 AD, the 'Abbasid Caliphate came under the protection of the Mamluk Sultans of Egypt, and was completely transformed into a religious office. According to Barthold, Sultan Baybars worked for its revival so that it could give a show of legitimacy to the Mamluk rule in Egypt; and that the aim of the Sunni jurists like Zuhri and Jalal al-Din Suyyuti, who supported the Cairo Caliphate, was to extol the Egyptian Sultanate as the only legally valid Sultanate.⁴¹ Thus the Caliph became part of the Sultan's train,

and bestowed deeds of investiture on those rulers whom the Sultan approved. He had nothing to do with temporal affairs. Although such practices as mentioning the Caliph's name in the *Khutbah* and striking it on the coinage had ceased, the Caliph was still regarded as the sole authority for validating the rule of the Sultans, and the fiction that sovereignty without the confirmation of the Caliph remained illegal according to the *Shari'ah* was kept up by the Sunni jurists of the fourteenth and fifteenth centuries. It was maintained by them that the 'Abbasid Caliph at Cairo was the successor of the Holy Prophet, and that a Sultan who possessed no deed of investiture from the Caliph was not authorised to appoint *Qadis* (judges) according to Islamic law; if he did so, all the marriage contracts in his dominion became invalid.⁴² The jurists of Mecca (like Qutb al-Din), however, were of the opinion that the Caliphate had ceased to exist in 1258 AD, and that it had since been substituted by the Sultanate.

The Mongol rulers having embraced Islam during the fourteenth and fifteenth centuries adopted the title "Sultan" (or "Il-Khan"). They did not acknowledge the Cairo Caliphate, because their ancestors had fought against the 'Abbasids, and also, they were not on good terms with the Mamluk Sultans.⁴³ In this background a new religious motivation was devised for the Sultanate in Eastern Islam. The Sultanate came to be regarded as "founded on Power" (*Dhu Shawkah*) and derived its strength 'through the Grace of God'. According to this theory, only the first four Rightly Guided Caliphs were the real successors of the Holy Prophet and under the *Shari'ah*, were the proper Caliphs; but the Umayyads as well as the 'Abbasids were Caliphs 'by Right of Power' (*Dhu Shawkah*). Furthermore since God was the source of all power, any Sultan could claim himself as *Khalifah* (i.e. the Successor of God). Shah Rukh, the son of Timur, proclaimed himself as *Khalifah* in the fifteenth century probably on these grounds.

In this way the Caliphate merged into the Sultanate, and the practice of mentioning the names of the Rightly Guided

Caliphs with that of the ruling Sultan in the *Khutbah* as well as the striking of the names of the Rightly Guided Caliphs with that of the ruling Sultan on the coinage became common from the fifteenth century onwards in Eastern Islam.⁴⁴

In 1517 AD the Ottoman Sultan Salim I conquered Egypt and annexed it into the Ottoman Empire. It is reported that Caliph Mutawakkil III was taken to Istanbul (Constantinople) where he transferred the office of the Caliphate to Sultan Salim I.

During the course of roughly nine hundred years (632-1517 AD) the Caliphate, initially a republican institution (632-661 AD), was transformed into a hereditary/dynastic monarchy and which once included the Sultanate as its part (632-1055 AD), first emancipated the Sultanate which came to occupy a rival position against the Caliphate (1055-1258 AD), then it came under the protection of the Sultanate (1261-1517 AD), and eventually was absorbed into the Sultanate (1517 AD).

The claim of the Ottoman Sultans to the Caliphate rested on the following grounds: (a) By Right of Power (*Dhu Shawkah*); (b) Nomination (on the basis of the same argument which was advanced at the appointment of Yazid as the successor of Mu'awiyah), and election (by a limited number of high officials forming an electoral college in accordance with the precedent set at the time of the election of Caliph Uthman); and finally (c) The Guardianship of the Holy Cities. In respect of the last ground, Barthold is of the view that although the Umayyad rulers of Spain did not adopt the title of "*Khalifah*" because the Holy Cities were under the control of the 'Abbasid Caliphate, no eminent jurist has regarded the possession of the Holy Cities as a necessary condition for holding the office of the Caliphate.⁴⁵

The Ottomans did not belong to the tribe of Quraysh. They were not Arabs but Turks. Accordingly the jurists of the sixteenth and seventeenth centuries (following Ibn Khaldun and Abu Bakr Baqillani) did not attach any importance to the Qurayshite lineage as a qualification for holding the office of

the Caliphate. It was under the rule of the Ottoman Sultan-Caliph that the office of the Sheikh-al-Islam gradually developed and the department of religion was separated from the other departments of the state. The Ottoman Caliphate was acknowledged through-out the Ottoman Empire. The Shi'ite Iran and Mughal India however, did not recognise the Ottoman Caliphate owing to religious and dynastic rivalries.

The Ottoman Caliphate declined during the eighteenth and nineteenth centuries due to its autocratic nature and inflexibility to adopt itself to the requirements of the changing times. Owing to the consistent emphasis of the Ulema and jurists over the past numerous centuries on remaining loyal to the rulers after God and the Holy Prophet, the Muslim masses (Sunnis in particular) had been conditioned to accept tyranny in order to avoid anarchy, and as a result, had submitted to absolute autocracy, or suffered under the despotic regime of one Sultan after the other. Throughout this period, with a few rare exceptions, the ruling elite appears to have remained above the law and if the *Shari'ah* was strictly enforced, it was to control or subdue the poor masses who had been reduced from citizens to subjects. Eventually the Arab subjects of the Ottoman Sultan-Caliph were attracted to the puritanic Wahhabi movement which asserted by violence the supremacy of Islamic law. On the other hand, the impact of the West let loose such forces as individual freedom, nationalism, puritanism, secularism, constitutionalism and radicalism in the world of Islam. The Ottoman Sultanate, Caliphate as well as the office of Sheikh-al-Islam were finally abolished by the Turkish nationalists under the leadership of Mustafa Kemal in 1923/1924 and Turkey as a "nation-state" was declared a secular republic.

The Opinions of Jurists, Moralists and Philosophers

On the subject of Islamic constitutional theory, political ethics and philosophy, literature started appearing in the world of Islam, generally speaking, from the ninth century

onwards. The writings can be broadly divided into three categories: (a) of jurists, (b) moralists, and (c) philosophers.

Jurists

The first and the most eminent among the jurists who wrote on this subject is Al-Mawardi (991-1031 AD). His famous treatise titled "*Abkam al-Sultaniyyah*" (The Ordinances of Government) was written in order to impress upon the Buwayhid Amirs the significance and importance of the 'Abbasid Caliph as the supreme spiritual as well as temporal authority. It is interesting to note that from this period onwards, in the history of Islam, the role of the Sunni jurists had been to bridge the gulf between the ideal and the real, or theory and practice, by attempting to provide an Islamic rationale to every change in order to maintain the continuity of the Islamic character of the community.

Al-Mawardi maintains that the establishment of the Caliphate/Imamate is a religious obligation for the Muslims, because its main object is the defence of the Faith and the preservation of order in the world through the implementation of Revealed Law. In support of his argument he quotes that verse of the Qur'an in which David was appointed *Khalifah* on Earth by God (surah 38: verse 27). He is of the view that a secular state is based on the principles derived through human reasoning, and therefore it promotes only the material advancement of its citizens. But since the Caliphate is based on Revealed Law, it promotes the material as well as the spiritual advancement of the people.⁴⁶

Al-Mawardi divides the community that appoints the Caliph into three groups. In the first group come the candidates for the Caliphate. A candidate for the Caliphate apart from being an adult Muslim of upright character, must be of Qurayshite lineage, physically and mentally sound, possesses courage and determination, is well-versed in the arts of war, is just, knowledgeable, and able to make independent decisions or pass judgements as a Mujtahid.

In the second group are placed the eminent members of the community who have acquired the authority "to bind and loose" and possess the right of electing the Caliph. Then follows the third group that consists of the masses of Islam who should swear allegiance when the Caliph had been elected by the eminent few.⁴⁷

Al-Mawardi regards both the election of the Caliph by the eminent members of the community or the nomination of the Caliph by the preceding Caliph as perfectly valid methods of appointment. According to him the reigning Caliph could appoint his son or kinsman as successor during his lifetime or even make more than one nomination at one and the same time.⁴⁸

Al-Mawardi was obviously rationalising the actual historical situation. In other words he was trying to justify the changes in the earlier republican methods of constituting the Caliph to suit the conditions of later times. The reigning Caliph usually nominated his son or kinsman as his successor during his life-time, and the leading Amirs, the eminent state officials etc., who were in most cases created by the Caliph himself, gave their approval. This approval after nomination constituted the election of the succeeding Caliph. Thus although the Caliphate had been transformed into a hereditary/dynastic monarchy, the fiction that the Caliph held his office on the basis of the established practice of the Rightly Guided Caliphs (i.e., nomination as well as election) was maintained.

It is strange that Al-Mawardi attempts to find support for his argument by citing examples from the early history of Islam. Caliph Abu Bakr was elected by the people who were not the creation or instruments of the preceding Caliph and his nomination of Caliph 'Umar was merely a recommendation which was accepted by the Muslim community. As for Caliph Uthman's appointment it was election by the Electoral College and not a designation. Similarly Caliph 'Ali was popularly elected. In any case, these examples have been used by Al-Mawardi as precedents to

legalise the hereditary/dynastic transfer of the office of the Caliphate within the 'Abbasid family, whose employee he was. He even justifies three successive designations on the basis of the precedent—that when Harun al-Rashid made a threefold designation of his sons as his possible successors, the jurists considered it as valid on the ground that on one occasion the Holy Prophet had made a successive designation of generals in the battle-field. According to Al-Mawardi, such a method of designation can be adopted in the public interest (*Al-Masalih al-'Ammah*). But he does not seem to realise that the example of successive designation in the battle-field may not be applicable because on the death of a Caliph when one of his heirs has succeeded him, the new Caliph, being the supreme authority, is entitled to designate his own successor and is not bound by the designation made by his predecessor.

According to Al-Mawardi, the duties of the Caliph are, that he should guard the religion of Islam and suppress the growth of heresy; that he should interpret Islamic law as *Mujtahid* and promulgate it; that he should keep armies on the frontiers in order to defend Islamic territories from aggression by an enemy; that he should champion the cause of Islam either by offering Islam to the non-Muslims of the adjoining countries or by waging war against them until they accepted the status of protected people; that he should execute and preserve justice; that he should implement a sound financial system, that he should appoint only competent ministers, governors, tax-collectors, judges and other state officials and fix their salaries from the state treasury; and lastly, that he should supervise all the departments of the state.

As it is apparent the duties of the Caliph were spiritual as well as temporal in nature, clearly indicating the unity of religion and politics or church and state. Thus the model of state advanced by Al-Mawardi was based on an amalgam of religious and secular aspects of life of the Muslim community. But whether such a situation existed in reality was a different matter.

Finally, Al-Mawardi speculates on the conditions under which the office of the Caliph can be forfeited. These are, when he fails to interpret the Faith correctly, becomes physically or mentally unfit is arrested or overpowered or restrictions are imposed on his movements. But he, at the same time argues that if the Caliph was under the influence of a powerful Amir, so long as the Amir ruled according to the *Shari'ah*, the need of either releasing or deposing the Caliph should not arise.⁴⁹ Obviously the existing political conditions were responsible for this thesis of Al-Mawardi.

At this stage, in the light of the exposition provided by Al-Mawardi, the legislative, executive and judicial aspects of his version of the state of his times can be briefly examined:

Theoretically speaking no one is empowered to legislate in a Muslim state, for God as the only true Law-giver has laid down His laws in the Qur'an. These laws however, are in the form of broad principles which require interpretation in the light of the Tradition (Hadith), the Consensus of the community (*Ijma*) and the use of Analogical Reasoning (*Qiyas*). There was also a very large field of legislation of such laws which were not repugnant to the injunctions of Islam (i.e the Qur'an and Sunnah), and in respect of those laws legislation had always been made by the Muslim rulers in the form of royal ordinances (*Farman*).

The jurists interpreted those Qur'anic rules of law which were seemingly obscure, or on the interpretation of which the preceding authorities disagreed. They did not object to the implementation of those man-made laws towards which the Qur'an and Sunnah were indifferent. The Caliph as monarch was technically only an agent through whom the *Shari'ah* could be implemented. But sometimes he legislated even in this field on the basis of his sovereign act. He also had the power to appoint jurists and to authorise them to give decisions or legal rulings (*Fatawa*) in matters concerning legislation, either by choosing the interpretation of a particular school which suited his needs, or by suppressing the decisions (*Fatawa*) of the jurists on the ground that they were inexpedient or against public interest, or by authorising only a few individual jurists to give decisions who agreed with

him. This arrangement suited the interests of the autocratic and absolute monarchy that had emerged from the early republic. Thus the authority to interpret the *Shari'ah* was usually granted to individual jurists who were the creation of the Caliph himself, and the formation of an assembly composed of various sections of the jurists (*Ijma'*) was discouraged lest it became strong enough to restrict or curtail the arbitrary power of the sovereign.

In the light of Al-Mawardi's exposition, theoretically the state in Islam was a unitary form of government, highly centralised under a single supreme head, who was the Chief executive authority. The Caliph in that capacity appointed the ministers (*Wazirs*), governors (Amirs), judges (*Qadis*), tax collectors (*Amils*) etc., and supervised all the departments (*Dimans*) of the state.

The office of the "*Wazir*" (Minister) was introduced during the reign of the 'Abbasids, when the Caliphate came under the influence of the Persian ideas of sovereignty. There existed no precedent for the establishment of this office. But justifying the appointment, Al-Mawardi advances the argument that the word "*Wazir*" is derived from "*w.z.r.*" which means "load" i.e., the *Wazir* shares the load of the sovereign's responsibilities. According to him, the jurists had already sanctioned the appointment of one or more *Wazirs* by the sovereign. He further argues that in the Qur'an Prophet Moses is stated to have asked God about the appointment of a *Wazir* (sharer of burden) from his family (i.e., Aaron, his brother). He also maintains that the Holy Prophet consulted his Companions who shared the burden of his temporal responsibilities. *Ibn Khaldun* likewise justifies the existence of this office on the ground that Abu Bakr was the *Wazir* of the Holy Prophet, 'Umar was the *Wazir* of Caliph Abu Bakr, and Uthman as well as 'Ali were the *Wazirs* of Caliph 'Umar.⁵⁰

It is interesting to note how the Qur'an and Sunnah were used by the subsequent jurists in support of any change that took place in the Muslim polity. It has already been noted that in order to emphasise the importance of the office of

Caliph on the headstrong Amirs and Sultans, Al-Mawardi advanced the argument that the establishment of the Caliphate was a religious obligation and God had set a precedent in the by appointing David as the Caliph on Earth. But the institution of the Caliphate was not regarded as divinely ordained in the times of the Rightly Guided Caliphs. Similarly no precedent existed for the appointment of a *Wazir* or *Wazirs*. Nevertheless Al-Mawardi took pains in providing justification for this office through the Qur'an and Sunnah. This clearly establishes that jurists of every age could adjust the interpretation of the *Shari'ah* in accordance with the needs and requirements of their times.

Al-Mawardi discusses three kinds of Governorship (*Amarat*) appointed or acknowledged by the Caliph. These are Governor-ship with General Powers (*Al-amarah al-'ammah*), Governo-ship with Specific Powers (*Al-amarah al-khassah*), and Governorship by Usurpation (*Al-amarah al-istila*). The Governorship with general powers was like sovereignty, and with specific powers amounted to command over a specific department.

The Governorship by usurpation came into being when a Muslim usurper occupied Muslim territory by force of arms (either by defeating the armies of the Caliph or by dethroning the reigning Amir). In such circumstances the Caliph had no choice but to confirm the usurping Amir in his dominion. Therefore, Al-Mawardi, under the doctrine of necessity, introduces the concept that the confirmation should not be declined if the usurping Amir gives the undertaking that he would rule in accordance with the *Shari'ah* and maintain the unity of the Muslim community (*Ummah/Millah*) by owing allegiance to the Caliph. The usurping Amirs on the other hand, solicited the confirmation of the Caliph because it gave an air of legitimacy to their rule. Some of them paid tribute to the Caliph, others did not.

The practice of appointing Amirs (governors) for outlying provinces is very old in Islam. The Holy Prophet appointed such Amirs, similarly the Rightly Guided Caliphs as well as

the Umayyads appointed Amirs and kept a strict watch over their activities. However under the Umayyads the practice of hereditary governorship had been introduced and was maintained by the 'Abbasids. Consequently on the death of an Amir, the Caliph formally confirmed his son or kinsman who succeeded him. But the Governorship by usurpation that transformed the unity of the Muslim world into a loose confederation and virtually made the Caliph impotent, was a much later development. It had no precedent in the early history of Islam. Al-Mawardi included it in his interpretation of the State in Islam⁵¹ because his aim was, as it has already been pointed out, to impress upon the usurping Amirs the importance of the 'Abbasid Caliphate which had lost its prestige.

Dealing with the executive responsibilities of the Caliph, Al-Mawardi also talks about the Judiciary (*Qada*) which had always been regarded as one of the most important organs (*wazifah*) of the state. As the Muslim Empire expanded four major courts with varying jurisdiction came into existence. These were the Court of the Reviewer of Wrongs (*Nazar al-Mazalim*), the Court of the *Qadi* with criminal/civil jurisdiction, the Court of the Moral Censor (*Mubtasib*), and the Court of the Police Magistrate (*Sahib al-Shurtah*). According to Al-Mawardi it was the exclusive responsibility of the Caliph to appoint the *Qadi* at all levels, although he himself should preside over the *Mazalim* Court.

In the light of Al-Mawardi's exposition the state in Islam was a monarchy, restricted to the members particularly of the house of 'Abbas and generally of the tribe of Quraysh. The Caliph as the supreme head of the state was (at least theoretically) empowered to appoint or dismiss his agents at will, and if sovereignty existed within the world of Islam it could only exist with the sanction of the Caliph, otherwise it was illegal.

The executive and judicial institutions that had been evolved during the course of centuries were maintained with some modifications and the administrative system of

numerous independent dynasties that held sway over different territories of Islam was modelled on them.

Briefly the peculiarities of the state in Islam as set out in Al-Mawardi's exposition are: That the object of the state was to achieve the well-being of the Muslims not only in this world but also in the Hereafter; that the state stood for the unity of the Muslim community and the oneness of the Muslim world, therefore there should be appointed a single Caliph and if the Muslim world were to be fragmented into a number of independent political units, these units should exist only with the sanction of the Caliph; that the state drew a line between Muslims and non-Muslims; that only those taxes which had been recommended in the Qur'an could be levied in the state; that usury was forbidden; that the Muslim subjects were to be governed under the civil law of Islam but Muslim and non-Muslim subjects came under the criminal law of Islam; and finally, that the state in Islam had a special department called Hisba (religious censorship) to enforce the religious discipline of Islam on its Muslim subjects.

Generally speaking, Al-Mawardi's model was followed by the later jurists, and as the condition of the Caliph at Baghdad deteriorated further, more adjustments or rather compromises were made in order to cope with the political reality. For instance, in the times of Al-Ghazzali (1058 AD - 1111 AD) the Caliph was completely dominated by the Seljuq Sultan. Therefore Al-Ghazzali, like Al-Mawardi, advanced the argument that the establishment of the institution of Caliphate was a religious obligation for the Muslims under the *Shari'ah*, and not merely a rational necessity. He argued that after the death of the Holy Prophet the Caliphate was acknowledged as an indispensable institution according to the Consensus of the Community (*Ijma'*).⁵² Therefore the appointment of a Caliph was imperative for the maintenance of a proper religio-political order, which could only be established by an Imam to whom obedience must be rendered. This line of reasoning was adopted to emphasise the legitimacy of the 'Abbasid Caliph Al-Mustzhar on the

Seljuq Sultan who wielded effective power, and also on the adherents of the Batiniyyah sect who acknowledged his Fatimid rival at Cairo as the legitimate Imam.

It is interesting to note that while repeating the qualifications of a Caliph as enumerated by Al-Mawardi, Al-Ghazzali modified some of them to suit the case of Caliph Al-Mustzhar. For instance, the ability to wage war (*Jihad*) was no more considered an important qualification when force and prowess (*Shawkab*) for waging war was possessed by the "loyal" Sultan, who could use it in place of the Caliph. Similarly the duty of the administration of the state could be delegated to the competent and conscientious Sultan as sharer of the Caliph's burden. Even the deficiency of Knowledge (*Ulm*) or the lack of ability of *Ijtihad* on the part of the Caliph was to be ignored, as the Caliph could rely on the Ulema (Islamic scholars) who might be consulted and their advice followed. In other words Al-Ghazzali held the view that the Caliph should be a *Muqallid* and depend on *Taqlid* (following the legal opinions of the Ulema) rather than trying to be a Mujtahid himself if he was incapable of *Ijtihad*.⁵³

Being conscious of the political situation that the Caliph was merely a ruler in name whereas the real authority vested in the Seljuq Sultan, Al-Ghazzali had no hesitation in maintaining that the Caliph should delegate authority to the one who was wielder of effective power (*Shawkab*) and who swore allegiance to him. Al-Ghazzali wanted the Caliph to lead a religious life and always to seek guidance from the Ulema. The Caliph was entitled to the obedience and loyalty of all the eminent personalities of the empire by virtue of his religious conviction (i.e., Sunni Islam).

During the times of Al-Ghazzali the 'Abbasid Caliphate had become so weak and impotent that at times the Sultan appointed or designated the new Caliph. Consequently on the grounds of existing practice as well as the designation having been made by the one who was backed by military force, Al-Ghazzali acknowledged this new method of the Caliph's appointment as valid under the *Shari'ah*. According to Al-

Ghazzali so long as the wielder of effective power i.e., the Sultan, acknowledged or swore allegiance to the Caliph, his government was lawful according to the *Shari'ah*. The principle on which Al-Ghazzali seems to have based his thesis is that tyranny of a cruel Sultan should be accepted, but chaos and lawlessness must be avoided at all costs. The main argument of Al-Ghazzali is that since an attempt to get rid of a tyrannous Sultan, who had the support of the army, was likely to lead to confusion and disorder, such an attempt must not be made in order to safeguard the welfare of the state and the Muslim community. Without citing the Qur'an (surah 4; verse 59), but placing reliance on some Traditions, he insists that besides the Caliph obedience must also be rendered to such Amirs and Sultans who were usurpers of political power.⁵⁴

In the thirteenth and fourteenth centuries, there are the views of two very eminent jurists namely, Ibn Jama'ah (1241 AD -1333 AD) and Ibn Taymiyya (1263 AD -1328 AD) on this subject which may also be examined. In the writings of Ibn Jama'ah one notices the same principle in operation as in the writings of Al-Ghazzali i.e. that tyranny to be considered preferable to anarchy. In other words, bad rule should be accepted in order to avoid disorder. Since the times of the Rightly Guided Caliphs the established interpretation of surah 4; verse 59 was that the obedience to the Caliph as Head of the State was qualified and depended on his following the laws laid down by God and the Holy Prophet, and that if his actions were in conflict with the *Shari'ah*, he was liable to be deposed. But in the light of political reality, this interpretation was forsaken by jurists like Ibn Jama'ah. He held that every constituted authority must be obeyed and the constituted authority included a usurper who was in effective control of the administration of the state and who, for his own convenience, had sworn allegiance to the figurehead Caliph.

What Ibn Jama'ah added to the methods regarding the appointment of a Caliph was: the legitimisation of self-appointed Imam through forceful seizure. It has already been

noted that Al-Ghazzali went a step further than Al-Mawardi in including the designation/appointment of a Caliph by the Sultan as one of the methods for appointing a new Caliph. But Ibn Jama'ah went even further by permitting a usurper of the supreme authority to appoint himself as the Imam. According to Iba Jama'ah, obedience to authority was an absolute religious obligation on the Muslim community under surah 4; verse 59 of the Qur'an, as it was identical with obedience to God and to the Holy Prophet. Therefore self-appointment by a military commander to the office of Imam was lawful under the *Shari'ah* and obedience should be rendered to such a ruler in order to maintain the unity of the Muslim community. Not only that, Ibn Jama'ah expects the Muslim community to render obedience even to the subsequent usurper who defeated the earlier one and after deposing him, became the effective Imam himself.⁵⁵

Al-Mawardi, Al-Ghazzali, and Ibn Jama'ah, all of them belonged to the Shafi'i school, and as it has been demonstrated, they, during their respective eras, went on compromising the *Shari'ah* interpretation with the deteriorating political reality, until the wheel had turned full circle and the delegation of all the powers and functions of the Caliph to the Sultan or to any usurper was completely legalised under the *Shari'ah*. In other words these eminent jurists of Sunni Islam clearly laid down that the *Shari'ah* is capable of numerous interpretations and it is perfectly legal to make the *Shari'ah* adjust to any set of prevalent circumstances.

The voice of Ibn Taymiyya (1263 AD -1328 AD), an eminent Hanbali jurist, strikes a somewhat different note. Disillusioned with the attitude of the conventional jurists towards the state in Islam, he claimed the freedom of *Ijtihad* and went back to the basic sources i.e., the Qur'an and Sunnah in order to make a fresh start. He did not concern himself with the Caliphate. He even denied the necessity of this institution. He was mainly concerned with the supremacy of the *Shari'ah* and as to how the Muslim community (the rulers as well as the ruled) could regulate their lives by it. He

did indeed lay emphasis on the close connection between the Imam and the Muslim community, but "Imam" according to him was any wielder of effective authority, irrespective of the fact as to whether he had acquired it legally or illegally.

While interpreting surah 4; verse 59, he advanced the argument that only those orders of the wielder of authority should be obeyed which were in conformity with the Qur'an and Sunnah. But it is interesting to note that although he absolved the Muslim community from obeying those orders which were in conflict with the Qur'an and Sunnah, he refrained from preaching rebellion owing to his fear of anarchy or disorder in the state.

He expected the wielder of power and his agents to act in accordance with the *Shari'ah*, and if the Head of the State was unfamiliar with it, then like Al-Ghazzali, Ibn Taymiyya advocated that he should seek the guidance of the Ulema. In other words, Ibn Taymiyya too was of the view that the quality of being a *Mujtabid* was not essential in the Head of the State and that he should practice *Taqlid*. Thus Ibn Taymiyya and Al-Ghazali desired that the influence of the Ulema in the governance of the state should increase as they both believed that the Ulema were the real successors of the Holy Prophet after the end of the era of the Rightly Guided Caliphs.

Ibn Taymiyya did not attach any importance to the struggle for power between the Caliph and the Sultan. He accepted the political situation as it existed in his times. His main concern was restoration of the Rule of the *Shari'ah* in the state so that the Muslims, for their collective survival as a community, could lead their lives in accordance with an authoritative and strictly enforced law.⁵⁶ Thus he stood for a puritanical or rather an idealistic *Shari'ah* government, and spent his entire life struggling for the implementation of his ideals. But since his interpretation of the *Shari'ah* was narrow, rigid, inflexible and unsuited to the prevailing political conditions, it was, generally speaking, ignored.

Moralists

The Moralists were a group of writers of books on political ethics. These books were in the form of counsel for kings (also called *Adab*, *Akblaq*, or Mirror literature). These moralists were neither concerned with Islamic constitutional theories as propounded by the jurists nor were they interested in the political thought of the philosophers. They isolated the Caliph and preached that he should devote himself completely to religious matters e.g., offering prayers, observing fast, defending Faith, punishing heretics etc. As for the Sultan, he was to be considered as the real sovereign over his realm and the citizens, although theoretically constituting the Muslim Ummah, were his subjects. The teachings of these writers were based mainly on political considerations. They did not bother to raise or answer the question as to whether a king held his office legitimately or illegitimately. They accepted the political reality as it existed and at the same time they tried to present the model of an Excellent King (*Malik al-Fadil*) or a Just Sultan (*Malik al-'Adil*). In order to realise their objective they imitated the style and methodology of the Persian writers of pre-Islamic times. This literature is obviously the product of an age when the Caliphate had gradually given way to the Sultanate.

Although the moralists projected the universal concept of ethics, they remained, generally speaking, attached to the *Shari'ah*. They were mainly concerned with the visualisation, in an already established absolute monarchy, of an ideal political order based on universal ethical values like justice and equity, the importance of which is also acknowledged by the *Shari'ah*. Therefore they freely used the examples and anecdotes of the former infidel (*kafir*) kings in order to establish how virtuous they were as models. Their works were usually in the form of guides to be read by the Sultans or Maliks - some of whom, although able to read and write, were in many respects tyrants or savages with little respect for ethical or human values. Advice could only be tendered to

them through the adoption of the art of flattery, about the qualities and duties required in a ruler, his servants and functionaries, or his relations with his subjects and as to how best to manage the affairs of state.

Some of the famous authors of such works are Ibn al-Muqaffa (*Kitab al-Adab al-Saghir*), Jahiz (*Kitab al-Taj* and *Kitab Istihqaq al-Imamah*), Kayka'us (*Qabus Nama*), Nizam al-Mulk (*Siyasat Nama*), and Al-Ghazzali (*Nasihah al-Muluk*).

Ibn al-Muqaffa (724 AD -757 AD), following the tradition of the earlier Sunni jurists, expects the Caliph/ruler to be a *Mujtahid* and to practice *Ijtihad* while implementing the *Shari'ah*. Jahiz on the other hand, refers to numerous manners, customs and anecdotes of ancient Persian kings, and in his *Kitab Istihqaq al-Imamah* maintains that the *Shari'ah* changes with the changing times whereas the ruler and the government are permanent requirements. Kayka'us as a ruling prince, wrote his book (compiled in 1082 AD) based on his own experiences, for the guidance of his son. In his view the ruler must be a practicing Muslim, wise, just, truthful and in effective control of his kingdom. Nizam al-Mulk (1018 AD-1092 AD) had served as Chief Minister of two Seljuq Sultans namely, Alp Arslan and Malik Shah: He, like Kayka'us, also enumerates the essential requirements in a Muslim king and expects him to conduct himself as an absolute monarch but within the boundaries of the *Shari'ah*. Since he lays emphasis on justice, Nizam al-Mulk wants the ruler to pay special attention to the establishment of a pious and unapproachable judiciary. He advises against women having any influence in the court, is against employing non-Muslims on key posts particularly when educated Muslims were unemployed, and finally desires that the ruler must maintain an intelligence service in order to know as to what was happening in the kingdom although spying has been specifically disapproved by the Qur'an.

Al-Ghazzali, who is essentially a religious thinker, discusses in his book (compiled in 1111 AD) as to what spiritual beliefs a Muslim ruler must hold and on what ethical

principles he should act. He was making an effort to reconcile his ideals with the existing political reality, but his attempt made him land into numerous inconsistencies. For instance, according to his conviction the Caliphate is an indispensable institution on the basis of a generally accepted Consensus of the Community (*Ijma'*), and its establishment is imperative for the maintenance of a proper religio-political order. But in *Nasihah al-Muluk* he preaches that kings are appointed by God who sends them to protect men from one another just as He sent prophets to guide men aright. Therefore he has no hesitation in maintaining that the Sultan is God's shadow on earth. He argues: "To dispute with kings is improper, and to hate them is wrong; for God on high has commanded: Obey God and obey the Prophet and those among you who hold authority - which means obey God and the prophets and your princes. Everybody to whom God has given religion must therefore love and obey kings".⁵⁷

It is interesting to note that when Caliph 'Umar was called the "Caliph of God", he refused to accept this title for the reason that in the Qur'an God had specifically called David as His Successor (*Khalifah*) on Earth. However with the passage of time a stage had arrived when a theologian of the stature of Al-Ghazzali would regard every king having been appointed by God to protect mankind and therefore he had to be considered as "God's Shadow on Earth".

Again Al-Ghazzali who attaches so much importance to the established 'Abbasid Caliphate, does not care to refer even to the theoretically accepted terms of contractual relationship (*bay'ah*) between the Caliph and the Muslims. He avoids discussing the main problem whether the Sultan should or should not obey the Caliph. On the contrary he wants the Sultan to fulfil the functions of the ancient Persian or Sasanid kings besides following the practice of the old caliphs. But for the subjects, Al-Ghazzali considers that abject obedience to the ruler is a form of worship of God.

To sum up, although the moralists attempted to keep the absolute monarchy within the confines of the *Shari'ah*, in

reality their counsel, as men of affairs, was based on political expediency, and this is the only criterion with which the entire mirror literature can be judged.

Philosophers

Generally speaking the Muslim thinkers endeavoured to interpret Islam in the light of Greek philosophy. Therefore their political thought was greatly influenced by the teachings of Plato and Aristotle. They agreed with Plato that Law was the only real foundation of a state. Accordingly they maintained that if a state was based exclusively on the *Shari'ah* and upheld its supremacy, it was truly "Islamic". On the other hand, if in a state the *Shari'ah* was not enforced or it was made to compete with man-made laws, then it would not be an Islamic state but a state founded on "Power" (*Mulk*). They also believed that the deeper meanings of the *Shari'ah* could only be understood through philosophy.

It may be useful to discuss here the views of at least three Muslim philosophers, namely Al-Farabi (868 AD -950 AD), Ibn Sina (980 AD -1037 AD), and Ibn Rushd (1126 AD - 1198 AD), before making an assessment of the ideas of Ibn Khaldun (1332 AD -1406 AD), who can neither be considered as a jurist, nor a moralist, nor a philosopher, but who as a political scientist with his empirical approach, forms a category of his own.⁵⁸

Al-Farabi has been generally accepted as the first Muslim political thinker. Although his thought was influenced by the ideas of Plato and Aristotle, he made his own interesting additions to them. Al-Farabi, like his Greek masters, was concerned with the question as to what was the ultimate aim of man and his conclusion like them was "to achieve happiness". But according to him, complete "happiness" could only be achieved by man if he led his life in accordance with the dictates of the *Shari'ah*. Next, man in isolation could not attain "Happiness" or "Perfection". He had to form a political association with other men for realising these ideals. Therefore the establishment of a state was necessary for man

could only achieve “happiness” in a community through helping one another. So in his view the ideal state was that which provided facilities to its citizens for realising the two-fold concept of “happiness” as envisaged by Islam i.e., well being in this world and preparation for achieving happiness in the hereafter.

According to Al-Farabi, the ideal state was ideal only if it was governed initially by the Prophet-Lawgiver-Philosopher-Imam. In other words the perfect state was the one which was ruled by the Holy Prophet himself as Imam, as he was in direct communion with God, whose Law was revealed upon him, and he had the capability of understanding its deeper meanings as a philosopher. This theory of Al-Farabi can only be understood if we accept his views respecting “Prophecy”. He further believed that those who lived in the state of Medina ruled by the Holy Prophet attained happiness and excellence or realised their true destiny. Since the Holy Prophet was the “Ultimate Interpreter of Law” (*Imam al-Mutlaq*), he was the ideal ruler of the “Ideal State” (*Al-Madinah al-Fadilah*).

Since it was virtually impossible to realise the ideal or perfect state in the absence of the Prophetic-Lawgiver- Imam, Al-Farabi enumerates different types of imperfect states which were contrary to his concept of a perfect state. Some of these imperfect states have been picked up from the writings of Plato, but the other varieties are the product of his own speculation. These states include: One concentrating only on providing basic necessities (*al-daruriyat*); Vile/Despicable state (*al-Shawah*); Tyrannical state (*al-Taghallub*); Democratic state (*al-Jama'iyyah*); Rouge/Hypocritical state (*al-Fasiqah*); Failed state (*al-Mubaddalah*); Erroneous state (*al-Dallah*) etc. However, he regards all imperfect states as “*Jahiliyyah*” (absence of wisdom/knowledge to follow the right path), and therefore the inhabitants of such states could never achieve authentic “happiness”.

According to Al-Farabi, all imperfect states emerge out of a false perception of religion or due to corrupt convictions. But it is interesting to note that he regards "democratic" state (*Madīnah al-Jamā'iyyah*) closest to his perception of the ideal or perfect state. Perhaps he had in his mind the republican era of the Rightly Guided Caliphs which immediately followed the ideal leadership of the Prophet-Imam. But again when he maintains that it is from a democratic state that most of the "*Jabīliyyah*" states emerge, one cannot help deducing that at the back of his mind was the transformation of the republican order into an absolute monarchy of different forms. Obviously Al-Farabi had a very deep perception of Islamic history, and in the course of the evolution of his political thought, whatever be the nature of the influence of Greek philosophy, he kept an eye on the historical experience of the Muslim community.

In Ibn Sina's political philosophy one notices the amalgamation of three elements i.e., the Greek ideas, the improvements made thereon by Al-Farabi, and the orthodox theories of the Caliphate as advanced by the jurists. Ibn Sina, like Al-Farabi and the Greek thinkers, believes that the ultimate object of man is to realise "happiness". He is also convinced that a state founded on the *Shari'ah* revealed to the Prophetic-Lawgiver was superior to the one founded on "Power" (*Mulk*).

As for the institution of Caliphate, Ibn Sina holds the opinion that the Caliph, who is expected to be well-versed in the *Shari'ah*, must be obeyed because he is the successor of the Prophetic-Lawgiver. He describes the same qualifications and duties of the Caliph as enumerated by the jurists. However he adds that the Caliph should be elected by the Muslim community, and if the electors made a wrong choice, then they would cease to be Muslims and become *Kafirs* (unbelievers).

There takes place a major departure on the part of Ibn Sina from the jurists when he advances the view that the usurper (*mutaghalib*) must be fought against and if possible

put to death. He maintains that those citizens who, despite having means, decline to act in this manner, must be punished. According to Ibn Sina the act of slaying a usurper is most pleasing to God. In this respect Ibn Sina's position is rather unique. But unfortunately there is an inconsistency in his thought. He argues that if a weak and incompetent Caliph is replaced by a strong and intelligent rebel, then the citizens should acknowledge the claim of the rebel if he was otherwise fit to hold the office. Evidently Ibn Sina is prepared to alter his earlier rigid stand in favour of an authority based on power plus intelligence. What he is trying to drive at is that a powerful and intelligent but less virtuous usurper should be preferred to a weak and incompetent but pious Caliph.

Ibn Sina also draws a line between religious obligations (*Ibadat*) and worldly affairs (*Mu'amalat*). He contends that it is necessary to perform religious obligations (*Ibadat*) because these are of general benefit to each member of the Muslim community. But he emphasises that the Imam must be primarily concerned with the worldly affairs (*Mu'amalat*) of the citizens. He should regulate the inter-human relations through such legislation that protects life, property and transactions of the citizens. In this connection Ibn Sina recommends that the *Shari'ah* should be enforced and its opponents should be eliminated from the state. According to Ibn Sina the two-fold concept of "happiness" i.e., the well being of man in this world and to prepare him for realising bliss in the hereafter, is guaranteed by adherence to the *Shari'ah*.

In Ibn Rushd one comes across the same idea again that man cannot attain "happiness" or perfection in isolation. He must establish a political relationship with others, as he cannot survive without a state. Furthermore since a just state has to be based on Law, the ideal state is the one that is founded on the Divinely Revealed Law, and that it is only in such a state that man can realise authentic "happiness" or highest perfection. The constitution of the ideal state is the *Shari'ah*, and since the philosopher alone has the capability of

understanding its hidden meanings and interpreting it, he has to play a very important role in the politics of the ideal state. It is interesting to note that although Ibn Rushd himself was a theologian as well as a jurist of the Maliki school who held office as *Qadi* of Cordoba, he considered the philosophers as more competent than the theologians (Ulema) as well as the jurists to understand and interpret the *Shari'ah*.

Ibn Rushd maintains that with the end of the era of the Rightly Guided Caliphs, the state in Islam ceased to be the ideal state and was transformed into a "*Mulk*" (Power State). Thereafter from "*Mulk*" different forms of imperfect states had been emerging in the history of Islam. In his view the *Shari'ah* is perfectly capable of providing an opportunity for the establishment of the ideal state. But the weaknesses in human character always lead to the creation of imperfections in the states. Hence it has become virtually impossible to realise the ideal of a state based purely on the *Shari'ah*.

Ibn Rushd considers the Caliph as identical to Plato's philosopher-king. But he does not agree with Al-Farabi that the ideal ruler could only be the Prophet- Imam, and that real "happiness" was only achieved by those citizens who lived in the ideal state governed by the Prophetic-Lawgiver-Imam. Since he believed in the extinction of prophecy after the death of the Holy Prophet, he argued that the ideal state which existed during the times of the Holy Prophet could not be recreated. However the imperfect states could endeavour to come as close to that ideal as possible.

Ibn Khaldun⁵⁹ draws a line between the state founded exclusively on the *Shari'ah* (*siyasah diniyyah*) and the state founded on rational laws (*siyasah 'aqliyyah*). His view of history is mainly based on his concept of "*Asabiyyah*" which means: a group's (or dynasty's) claim to rule based on eminence acquired through collective achievement, strength of will, and striking power. According to this theory, so long as the "*Asabiyyah*" of a group (e.g., the tribe of Quraysh) or a dynasty (e.g., the Seljuq) does not show signs of decline, it retains its power over the state. But with its fall, the group or dynasty is

eliminated and some other group or dynasty with a fresh “*‘Asabiyyah*” takes over.

In Ibn Khaldun’s times most of the existing Muslim states were power- states which in his terminology were “states based on man-made laws”. He argues that the Holy Prophet was the Lawgiver- Imam who knitted the Muslim community together under the *Shari‘ah*, the supremacy of which was acknowledged throughout the era of the Rightly Guided Caliphs. But thereafter owing to the decline of religious motivation, the Caliphate was transformed into *Mulk* (power-state) which was governed mainly through the laws formulated by human reason (*siyasah ‘aqliyyah*) although it was claimed that their original source was the *Shari‘ah*.

Ibn Khaldun also discussed the significance and importance of the Caliphate as a religio-political institution, and in this respect he agreed with Al-Mawardi that the Caliph should protect the religion of Islam and administer the state. But in his times the Caliphate had only survived as a purely religious institution at Cairo and the Caliph had long ceased to have any say in the administrative or political matters.

However, as a pragmatist, Ibn Khaldun was convinced that even *Mulk* (power-state) through its man-made laws could work for the welfare of its citizens, although he recommended that *Mulk* should not break its links with the *Shari‘ah* as *Mulk* had originally emerged from the Caliphate. Thus while acknowledging the *Shari‘ah*’s theoretical importance, Ibn Khaldun accepted the state as it was and held that a “mixed” state which was administered partly in accordance with the *Shari‘ah* and partly with the “*‘aqliyyah*” (man-made) laws could serve its citizens. In other words even a Muslim state administered exclusively through laws formulated by human reason could work for the well being of its citizens. This position is different from that of the jurists and philosophers who laid emphasis on maintaining the purity of the *Shari‘ah* in the state.

Conclusion

In the light of what has been discussed above, it is evident that what makes a Muslim state "Islamic" is not its constitution or the political system it adopts, but the implementation of those laws which are derived exclusively from the *Shari'ah*. Islam is indifferent to or unconcerned with the political order so long as the wielder of power (legitimate or illegitimate) maintains the supremacy of the *Shari'ah* in the state. Mithaq al-Madinah and the republican political systems introduced by the Rightly Guided Caliphs, had no spiritual or religious significance but were social contracts of different varieties. However, some jurists like Shah Wali Ullah include political system also as part of the *Shari'ah* and maintain that under the *Shari'ah* only three modes have been approved whereby the Caliphate (Head of the State) can be constituted and these are: election, nomination, and usurpation.⁶⁰ The conventional Fiqh grants legitimacy even to usurpation as one of the modes but with the condition that the usurper undertakes to enforce the *Shari'ah*. Therefore according to a majority of the jurists, moralists and philosophers the real Islamic state is only that which is administered under the pure *Shari'ah* laws, and if in a Muslim state the *Shari'ah* laws are made to compete or stand side by side with the man-made laws (or it is administered exclusively under the man-made laws), then it is not an Islamic state, but would be categorised as power-state (*Mulk*). According to this criterion, only the state governed by the Prophetic-Lawgiver-Imam and subsequently by the Rightly Guided Caliphs (who were themselves *Mujtabids*) was truly Islamic. Thereafter the state in Islam was transformed into different forms of "*Mulk*" (Power-state as opposed to Islamic state), brought into being through hereditary/dynastic succession, coercion or conquest or through any other lawful or unlawful means, and the claim was advanced that a power-state was perfectly competent to enforce the *Shari'ah*. Most of the power states in the Muslims world had been governed by "Mixed" laws (i.e., some *Shari'ah* laws and other man-made laws). Man-made laws were usually

enforced through a royal decree or ordinance (*Farman*), and possibly as sovereign acts on the part of the wielder of power.

Another important feature which should be noted is that the jurists while maintaining the supremacy of the *Shari'ah*, interpreted it, particularly in respect of the worldly matters (*Mu'amalat*), through the mechanism of "*Ijtihad*", in accordance with the needs and requirements of the changing times. They kept the *Shari'ah* mobile by providing various innovative interpretations and did not permit it to become static. The *Shari'ah* continued to remain one but its numerous interpretations led to the formation of different schools of Fiqh in the Muslim world.

During the republican phase of the Rightly Guided Caliphs, "*bay'ah*" had meant a contract between every individual citizen and a candidate for the office of the Caliphate that candidate when appointed Caliph shall govern in accordance with the laws of the *Shari'ah*.

The Muslim succeeded in building a great empire and a magnificent civilisation. But the cultural, philosophic and scientific progress achieved through centuries of labour was arrested due to the growth of irrational orthodoxy and fanaticism. While Arabic literature on philosophy and empirical sciences was being translated into Latin and Europe was moving out of the dark ages to an age of enlightenment, Muslims were burning their books of knowledge in the cross-roads of Cordoba and Baghdad. Their civilisation collapsed also owing to the sectarian differences between the Shi'ite and the Sunni when both Khawarzm and Baghdad were destroyed at the hands of the Mongols. Muhammad Iqbal has correctly observed:

"I consider it a great loss that the progress of Islam as a conquering Faith stultified the growth of those germs of an economic and democratic organisation of society which I find scattered up and down the pages of the Qur'an and the Tradition of the Prophet."⁶¹

The modern Muslim, effected and stimulated by the new Western ideas like individual freedom, nationalism,

patriotism, secularism, constitutionalism, humanism, social justice etc. disseminated in the Muslim world, is determined to reinterpret and rediscover the dynamic, progressive and forward-looking spirit of Islam. However the question that arises in his mind is as to whether the writings of the jurists and philosophers of the past can provide any guidance to the Muslims of today in the community to realise the humanistic, socialistic or egalitarian ideals of Islam.

According to Al-Farabi the adoption of democracy (*al-madinah al-Jama'iyah*) as a political system in a state can equip it with such qualities that would bring it closest to his concept of the ideal or perfect state, provided it does not degenerate into autocracy or despotism. On the other hand, Ibn Khaldūn in his "*Muqaddimah*", while acknowledging the theoretical supremacy of the *Shari'ah*, preaches that a Muslim power-state, administered under "mixed" laws (or even exclusively under man-made laws), can work for the betterment of its citizens because all man-made laws which are enforced for the well being of the citizens are to be derived from the fountain-head of the *Shari'ah*.

This implies that there is no distinction between the spiritual and the secular in Islam, because all man-made laws implemented in the state with the intention to benefit the community should be deemed to emerge from the *Shari'ah* or, to put it in another way, the *Shari'ah* would not or could not be opposed to them. It is interesting to note that almost five centuries after Ibn Khaldun, Muhammad Iqbal arrived at the same conclusion when he proclaimed:

"The Ultimate Reality, according to the Qur'an, is spiritual, and its life consists in its temporal activity. The spirit finds its opportunities in the natural, the material, and the secular. All that is secular is therefore sacred in the roots of its being".⁶²

Notes and Refernces

- ¹ These Traditions are well known and quoted by many scholars. For instance see *The Caliphate* by T.W. Arnold p. 184 etc.
- ² For English translation of Mithaq al-Madinah (The Constitution of Medina) see, Montgomery Watt, *Muhammad at Medina*, 1962 Ed. pp. 221-225.
- ³ Ibn Ishaq's *Sirat Rasul Allah* trans, as *The Life of Muhammad* by A. Guillaume 9th Pak. Ed. 1990 pp. 504-507; *Tarikh i Tabari* vol. 1 (*Sirat al-Nabi*) Urdu trans. Nafis Academy Karachi 1967 Ed. Pp. 335-339.
- ⁴ *Muhammad at Medina*, op. cit. Pp. 51-52.
- ⁵ Suyyuti's *Tarikh al-Khulafa'* Urdu trans, by Shabbir Ahmad Ansari pp. 9, 10.
- ⁶ *Kitab al-Tanbih wa 'l-Asbraf* by Al-Mas'uudi, pp. 235-36 etc.
- ⁷ *The Caliphate* by T. W. Arnold, pp. 45-50.
- ⁸ *Introduction to Islam*, pp. 110, 111.
- ⁹ *Tabari's* source of information is Waqadi. See *Tarikh i Tabari* vol. 1 (*Sirat al-Nabi*) vol. 1 Urdu trans. p. 527.
- ¹⁰ *Introduction to Islam*, p. 111.
- ¹¹ Ibn Ishaq's *Sirat Rasul Allah* trans. as *The Life of Muhammad* by A. Guillaume 9th Pak. Ed. 1990 pp. 504-507; *Tarikh i Tabari* vol. 1, (*Sirat al-Nabi*) Urdu trans. Nafis Academy Karachi 1967 Ed. pp. 529-535.
- ¹² *Tarikh i Tabari*, vol. 1, p. 535.
- ¹³ Ameer 'Ali's *A Short History of the Saracens* 1951 Ed. pp. 21, 22; Also see *Tarikh i Tabari*, vol. 1, p. 579; Ibn Ishaq's *Sirat Rasul Allah* p. 687.
- ¹⁴ *Tarikh i Tabari*, collected vols. 2&3 Urdu trans. 1977 Ed. pp. 439, 441-479, 505.
- ¹⁵ *Ibid.*, vol. 3 p. 27; *The Orient under the Caliphs* p. 19.
- ¹⁶ *Tarikh i Tabari*, vol. 3 pp. 39,40.
- ¹⁷ *Ibid.*, p. 40.
- ¹⁸ *Ibid.*, p. 199.
- ¹⁹ *Kitab al-Kamil* of al-Mubarrad ed. by W. Wright (Chapter on Khawaraj) pp. 527-600; Ibn Khaldun's *Muqqaddamah* pp. 196-202; *Sociology of Islam* by R. Levy vol. 1 pp. 301-304; *The Caliphate* by T.W. Arnold pp. 148-189; *A Literary History of the Arabs* by R. A. Nicholson, pp. 207-220; *The Development of Muslim Theology* by D. B. Macdonald pp. 7-63; etc.
- ²⁰ *A Muslim Commentary on the Universal Declaration of Human Rights* by Sultan Hussain Tabindeh. (*Nazar Madhhabi be I'laniya Huquq al-Bashar*) English trans. F.J. Goulding 1970 Ed. pp. 31,32.
- ²¹ Shibli's *Faruq i A'zam*, pp. 254-256.

- ²² *Ibid.*, pp. 448-450, 478,479.
- ²³ *Quami Digest Faruq i A'zam* Number, March, 1983 Article Dr. M. Hamidullah p. 28.
- ²⁴ For an interesting discussion on this aspect of the Qur'anic concept of "Necessity" see Begum Nusrat Bhutto vs. Chief of Army Staff etc. 1977 P.L.D. Supreme Court pp. 724-727.
- ²⁵ *A Digest of Muhammadan Law* by Neil B.E. Baillie 1957 Ed. pp. 733, 734.
- ²⁶ *Faruq i A'zam*, op. cit. pp. 395,396, 518.
- ²⁷ *Ibid.*, pp. 345,346.
- ²⁸ *Ibid.*, pp. 179,181.
- ²⁹ *A Short History of the Saracens*, p. 52.
- ³⁰ *Ibid.*, p. 54.
- ³¹ Suyyuti's *Tarikh al-Khulafa'* Urdu trans. by Shabbir Ahmad Ansari p.224; English trans. by S.H. Jarrett pp. 197,199-209.
- ³² *Muhammodan Dynasties* by S. Lane-Pool p. 20.
- ³³ *The Damascus Chronicle of the Crusades* trans. by H. A. R. Gibb pp. 22,23,34.
- ³⁴ *Muhammadan Dynasties*, p. 36.
- ³⁵ Al-Biruni's *Chronology of Ancient Nations* trans. by E. Sachau, pp. 129,131.
- ³⁶ R. Levy, *A Baghdad Chronicle*, p. 188.
- ³⁷ *Chabar Maqalah*, trans. by E.G. Browne p. 11.
- ³⁸ *Siyasat Nama*, pp. 5, 42, 43.
- ³⁹ Barthold's *Turkistan Down to the Mongol Invasion* trans. by H. A. R. Gibb, pp. 346,347.
- ⁴⁰ *Ibid.*, pp. 373-375.
- ⁴¹ Barthold's "Studien uber Kalif und Sultan", trans. by C. H. Becker. *Der Islam*, 1916. pp. 352, 364-374.
- ⁴² Barthold's *Musalaman Culture*, trans. by S. Suharwardy p. 69.
- ⁴³ *A Literary History of Persia* by E.G. Browne, vol. 3, pp.40-61.
- ⁴⁴ Barthold's "Studien uber Kalif und Sultan", pp. 353,374-386.
- ⁴⁵ *Ibid.*, pp. 352,354-355.
- ⁴⁶ *Abkam al-Sultaniyyah*, pp. 3; also see Ibn Khaldun's *Muqqaddamah*, p. 190,191.
- ⁴⁷ *Abkam al-Sultaniyyah*, p. 4,5.
- ⁴⁸ *Ibid.*, pp. 12,13,18; also see *Muqqaddamah*, pp. 210-218.
- ⁴⁹ *Abkam al-Sultaniyyah*, p. 23-32.
- ⁵⁰ *Muqqaddamah*, p. 237.
- ⁵¹ *Abkam al-Sultaniyyah*, pp. 47-57; also see Von Kremer's *History of Islamic Civilisation*, English trans. pp. 242-261.
- ⁵² *Kitab al-Iqtisadi 'l-I'tiqad*, pp. 95, 96.
- ⁵³ *Kitab al-Mustazhari*, pp. 83,92.
- ⁵⁴ *Ihya al- 'Ulum al-Din* vol. 2 p. 124; *The Sunni Theory of the Caliphate* by H. A. R. Gibb (Archive Oriental vol. 3 9948) pp. 401-410; "Al-Ghazzali's Theory of Islamic Government" *The Muslim World*, July 1955, pp. 229-241.

- ⁵⁵ *Tahrir al-Al-Ahkam fi-Tadbir abl al-Islam* ed. and trans. by Kofler in *Islamica* vol. VI pp. 349-414 and Vol. VII pp. 1-64.
- ⁵⁶ *Kitab al-Siyasah al-Shar'iyyah*, pp. 40, 56, 63, 169, 170.
- ⁵⁷ *Nasihah al-Muluk* (Counsel for Kings) English trans, by F. R. C. Bagley ed. 1964, pp. 45,46. English trans, of *Kabus Nama* and *Siyasat Nama* can also be examined.
- ⁵⁸ For a detailed study three works of Al-Farabi can be consulted namely, *al-Madina al-Fadilah*, *Kitab Siyasah Madaniyyah*, and *Kitab Tahsil al-Sa'adah*. For a further study of Ibn Sina's political thought the last two chapters of his *Kitab al-Shifa* are recommended. As for Ibn Rushd, his relevant works are *Tahafah al-Tahafah*, *Fasl al-Miqal*, *Damimah*, and *Manahij*. For this portion of my study I have also relied upon Rosenthal's *Political Thought in Medieval Islam* pp. 122-157,175-209; *Studies of Muslim Political Thought and Administration* by H. K. Sherwani pub. Sh. Muhammad Ashraf, pp. 58-86, 135-167, 168-184, 185-203; and M. Hamidullah's *Introduction to Islam*, pp. 105-119.
- ⁵⁹ Ibn Khaldun's *Muqqaddamah* is now available in Urdu translation as well as English translation by Erwin I. J. Rosenthal.
- ⁶⁰ *Hujjat Ullah al-Balighah* Urdu trans. by Maulana Abdur Rahim, 1962 Ed., vol. 2, p. 607.
- ⁶¹ *Thoughts and Reflections of Iqbal*, ed. by S. A. Wahid p. 100.
- ⁶² *The Reconstruction of Religious Thought in Islam*, IAP, 1989, p. 123.

WHAT IS “ISLAMIC STATE”?

The real object of the Quran and Sunnah is to create a civil society consisting of people who adhere to a common Faith. Since this society is expected to be governed by the provisions of revealed law, it was found necessary to establish an authority or an institution which could impose these laws. The state in Islam came into being as such an authority/institution. Therefore a brief definition of an Islamic state is: “A state that imposes Islamic laws on its Muslim citizens”. However the history of the Muslims indicates that although each and every variety of state in Islam followed this principle, it did not evolve any fixed political structure of governance. Therefore, it is essentially an ideal state the creation of which is an aspiration of Muslims.

It may be pointed out that although expressions like *سلطان، ملک، امام، خلیفہ، محتسب، قاضی، والی، اولوالامر، وزیر* etc. used by the ancient jurists in their books on the Islamic constitutional theory have been derived from the Quran, there is neither any direct reference to “Islamic State” in the Quran nor does this expression appear in the Hadith literature. The term *دارالاسلام* (The abode of Islam) implying “a country ruled by the laws of Islam”, was evolved by the jurists belonging to a later period of Islamic history. The three direct Quranic rules of law from which the foundational principle regarding the form of Islamic governance or state is derived is contained in sura

Al-Shura: verse 38, sura Aal-Imran: verse 159 and sura Al-Nissa: verse 57.

It is evident that in Medina the Holy Prophet joined together the Immigrants (مهاجرين) from Mecca and the Helpers (انصار) from Medina into a Community of Faith and thus laid the foundation of Ummah or Millah. In other words, all the groups, tribes and nations which were distinguished from one another on the grounds of race, language and territory, after embracing Islam, became one fraternity or "nation" on the basis of a common spiritual aspiration. Although most of the Muslim nation-states today are founded on the grounds of common race, language and territory, Pakistan claims to be a nation-state on the basis of a common religion as the foundational principle of Pakistanis' nationality.

The Holy Prophet of Islam, during his Imamate acknowledging the overall Sovereignty of Allah, established the first Islamic state. But does the acknowledging of overall Sovereignty of Allah means that the Islamic state is founded on limited/restricted concept of sovereignty? According to modern jurisprudence or International law the existence of three qualifications is necessary for a state to be considered as independent, and these are: first, it is "national"; second, it is "territorial"; and third, it is "sovereign". The Holy Prophet in his capacity as مجتهد مطلق (the ultimate law giver) illustrated the foundational principle of Islamic jurisprudence (فقه) on this point and that is that overall Sovereignty of Allah does not interfere in the sovereignty of an Islamic state, as the Head of an Islamic state can hold a Quranic rule of law in abeyance, restrict or expand its application if the conditions so demand.

The Holy Prophet was acknowledged as the sole leader of his community and governed like the Prophet David according to the principles of truth and justice as mentioned in the Quran. He persuaded the members of his community to observe حقوق العباد (human rights) and حقوق الله (Rights of

God). He defended the Hejaz valley and resolved the problems of his times through a pragmatic approach and on the basis of general public good *مصلحت عامة*. As *امام* he had only one prerogative, i.e., each state document (or pact) which was reduced into writing bore his seal (*ختم*). There are numerous achievements attributed to the Holy Prophet, in the art of governance such as *صلح حديبيه* (the Peace Pact of Hudaibia), *ميثاق المدينة* (the Covenant of Medina), the approval of the principle of *اجتهاد* on the appointment of Ma'ad as the governor of Yemen and finally *خطبة الوداع* (the Farewell Sermon). *ميثاق المدينة* (The Covenant of Medina) was the first written constitutional document of the world, consisting of 47 Articles and it was promulgated in Medina as a social contract. This document establishes that the promulgation of a written constitution and adherence to its terms is a Sunnah of the Holy Prophet. According to this social contract, in the valley of the Hejaz, besides the Muslim tribes there also were settled Jewish, Christian and pagan tribes who had participated as equal components to be governed according to their own specific laws in their respective territories. In other words this document constituted a federal structure based on the principle of territorial autonomy and was reduced into writing with the approval and consent of the participating tribes. Therefore through *ميثاق المدينة* (Covenant of Medinah) the intention of the Holy Prophet was to create a pluralistic society on the basis of religious freedom. It is for this reason that the participants of this contract were given the title of *الامت الواحدة* (The United Community). It is evident that through this contract the Holy Prophet attempted to bring into being a unification of humanity on the principle of freedom of religion.

Whatever interpretation is offered of the events in history, one point is self evident: that the Holy Prophet before his death in 632 AD did neither appoint a successor nor instructed as to what methodology is to be adopted for the

appointment of the head of the state for the purposes of governance. If any such direction had been given it would have been complied with. The silence of the Holy Prophet on this issue indicates that the real object of the Quran and Sunnah is to create a Muslim society which should be governed in accordance with the laws of Islam, and that for the achievement of this objective any political structure which is best suited to the needs of the times and is acceptable to the *Ummah* (Community) be adopted. Probably in the light of this principle the jurists of the subsequent times laid down that even if a usurper takes over, his governance should be accepted on the condition that he would not interfere in the performance of religious obligations by the Muslims and would not hinder in the implementation of the Shariah laws. The conclusion drawn from what has been discussed above is that an Islamic state neither has any fixed political shape nor any specific political structure.

Islam is not interested in the form of government. Its main concern is the implementation of Islamic laws.

Was the Holy Prophet's period of Imamate politically an ideal for the Muslims? Al-Farabi provides an answer to this question, in his famous treatise, titled *المدينة الفاضلة* (the Ideal State). He states that it is an ideal for the Muslims because in his capacity as the Prophet-Imam, the Holy Prophet had a direct communion with God, and therefore during his tenure every citizen of that state realized the "two-fold" concept of happiness, i.e., he achieved happiness in this world and was also successful in achieving happiness in the hereafter. But it was a unique period of the Muslim history and cannot be repeated. The only lesson that can be learnt is that the Muslim community must continue to preserve its identity by strictly following the Shariah laws, and are to adopt any political system suitable to its needs and requirements.

On the death of the Holy Prophet in 632 AD arose the question of his successor and it was decided by an *اجماع الصحابه* (Collective decision of the companions of the Holy Prophet)

that a single Caliph be appointed to administer the state. But was the methodology of appointment of the Caliph i.e., "election" in the case of the first Caliph, also a decision adopted by the اصحابه? No answer to this question is available in the history. If such a decision had existed it would have been followed as a precedent at the appointment of the second Caliph, who was "nominated" for this office by the first Caliph before his death. The second Caliph before his martyrdom appointed an "electoral college" consisting of six persons to choose one from amongst themselves as the Caliph and the third Caliph was appointed by this method. On the martyrdom of the third Caliph, the fourth Caliph was appointed through a general "referendum". On the martyrdom of the fourth Caliph the Republican era of the Muslim history came to an end. Although throughout the subsequent history, the generations of Muslims have adjudged this roughly thirty years period as the ideal and glorious period, and called it the era of the Rightly Guided Caliphs, but no attempt was ever made to revive it in the subsequent history of Islam.

What were the reasons for the collapse of the Republican order of the Rightly Guided Caliphs (632 AD to 661 AD)?

- 1) No political consistency was maintained in the methodology for the appointment of head of the state. The methods of election, nomination, selection through electoral college and referendum were the Sunnah of the Rightly Guided Caliphs and were important not only because they were republican, but also because they were adopted by those Companions (الصحابه) who were closest to the Holy Prophet. Accordingly in the eyes of the Shariah these four methods for the appointment of the Caliph are approved. Thereafter even the method of usurpation of political power, adopted by Amir Moawiya, was acknowledged by the Shariah as legally valid. Subsequently the succession through hereditary

nomination was also approved when it was claimed that Amir Moawiya had deemed it fit to “elect and nominate” his son Yazid as his successor in accordance with the precedents set by Caliphs Abu Bakr and Umar. This indicates that the Shariah was flexible to grant sanction to the adoption of different modes in accordance with the requirements of the times. It may also be noted that it was during this period that three viewpoints on the nature of the Caliphate were advanced leading to the formation of three distinct political groups in the community. According to the *ابن بيت* the Holy Prophet had appointed Hazrat Ali as his successor during his lifetime and that therefore exclusively he and his descendants had the right to hold the office of Imamate. The *ابن سنت والجماعت* believed that the Caliph could be appointed through any of the five methods approved by the Shariah with the condition that the appointee must be from the tribe of Quraysh. But *الخوارج* held the view that in accordance with the Quranic command contained in sura Shura: verse 38 it was not obligatory to appoint a Caliph as such an appointment was only *فرض كفايه* and that the members of the Shura were expected to govern and resolve the affairs of the community through mutual consultation. However if it was found necessary to appoint an *امام* then the appointment could not be restricted to the members of the *ابن بيت* or the tribe of Quraysh. On the contrary even a black slave or a woman could be appointed provided that the appointee was competent and qualified to hold the office.

- 2) Instead of making the *شورى* a sovereign body it was used as an “advisory body” and its advice could be accepted or rejected. by the *امام*. However, in accordance with the Quranic command contained in sura Aal Imran: verse 159, “only the Holy Prophet was

not bound by the advice of the شوری and could over rule it".

- 3) The appointment of the Caliph was for life. He could neither be impeached nor removed from his office.
- 4) There were no arrangements for the security of the Caliph. Therefore within the span of roughly thirty years, three out of the four Rightly Guided Caliphs were assassinated.
- 5) The incidents of raising arms against the legally constituted Authority, as it happened during the times of Caliphs Othman and Ali, indicate that the struggle for political power had already commenced during this period. Such events eventually resulted in the collapse of the republican order and the transformation of the Caliphate into an arbitrary heredity/dynastic monarchy (ملوکیت)

It may be interesting to note that the jurists have pronounced the succeeding twelve hundred years of Muslim history as ملوکیت instead of calling it an Islamic state or خلافت and by this expression they obviously meant governance by force and coercion. The Umayyad Rule lasted from 661 AD to 750 AD. The capital was moved from Medina to Damascus and to the former two privileges namely ختم (Seal) and خطبه (sermon in the mosque including prayers for the life of the Caliph), three more were added namely, سریر (throne), مقصوره (special protected place for worship in the mosque for the Caliph) and سکه (coinage). Arabic was introduced as the state language and in this way the era of Arab imperialism ushered in.

After the defeat of the Umayyads at the hands of the Abbasids i.e. from 750 AD to 1258 AD, the world of Islam was ruled by the Abbasids. The capital was moved from Damascus to Baghdad and the empire was governed in the style of the ancient Iranian or Sasanian emperors but the signs of decay appeared simultaneously. The Sultans took forcible possession of different territories and the empire

started disintegrating. In the 11th Century AD, instead of one united Caliphate, the world of Islam stood divided into three Caliphates ruled by the Abbasids in Baghdad, Fatimids in Cairo and Umayyads in Cordoba. By 1037 AD the Umayyad Caliphate in Cordoba disappeared (Muslims were completely evacuated from Spain in 1610 AD). The Fatimid Caliphate came to an end at the hands of Salahuddin Ayubbi when he conquered Egypt in 1171 AD. Eventually in 1258 AD the Mongols destroyed Baghdad and put the Abbasid Caliph to death. Thereafter there was no Caliph or امام in the world of Islam for a period of three years (1258 AD to 1261 AD) although there existed a فتوى of the jurists to the effect that if a Muslim was not under the بيعت of an امام/خليفة during his lifetime, he would go to hell.

Eventually the Abbasid Caliphate was revived in Cairo in 1261 AD at the instance of the Sultan of Egypt but the Caliph now was only a religious head and held the position of one of the Sultan's officials with the duty to grant religious sanction to the Sultans to rule and govern in the territories under their control, but only those Sultans who were approved by the Sultan of Egypt (Sultan Muhammad Tughlik of India received such a sanction from him in 1324 AD). This state of affairs continued almost for a period of two and a half centuries.

Finally when the Ottoman Sultan Salim conquered Egypt in 1517 AD he took Caliph Mutawakkil III to Istanbul and he transferred the office of خليفة or امام to the Sultan. In this way the Caliphate eventually merged into the Sultanate. The Ottomans were not from the Quraysh but were Turks. Therefore the Sunni jurists of the 16th century took pains in establishing their claim to the Caliphate on the ground that if the Quraysh were not competent to retain the office, it could be held by any other tribe which was competent to hold it. The Ottoman Caliphs were not acknowledged by the Shia Iran. Similarly the Mughal emperors of India did not recognize their claim due to mutual rivalries and suspicions.

The Ottoman Caliphate lasted for about four hundred years but since it could not subject itself to the change which was affecting Europe and preferred to live in the pre-modern age, its European neighbors gave it the name of "Sick Man of Europe". This came about when the European nations were undergoing a change caused by such movements as Reformation, Renaissance and the growth of Rationalism, besides passing through political, economic and industrial revolutions. Accordingly Europeans were emerging out of the dark ages of their history and entering into the era of enlightenment.

If this period of Islamic history is examined from the viewpoint that an Islamic state is the one which governs its citizens under the laws of Islam then all such Muslim states which were designated by the jurists as *ملك* as opposed to *خلافه* must also be considered as Islamic states because all those who wielded authority in such states neither interfered in the religious practices of its Muslim subjects nor hindered in the implementation of Islamic laws; but the rulers were certainly arbitrary and were anti-change. As a result when the European colonial powers started dominating the world of Islam, it was revealed that the Muslims' rules of governance had failed, they had no political ideals to suit the demands of time, they were economically backward, morally bankrupt and educationally as well as socially under-developed.

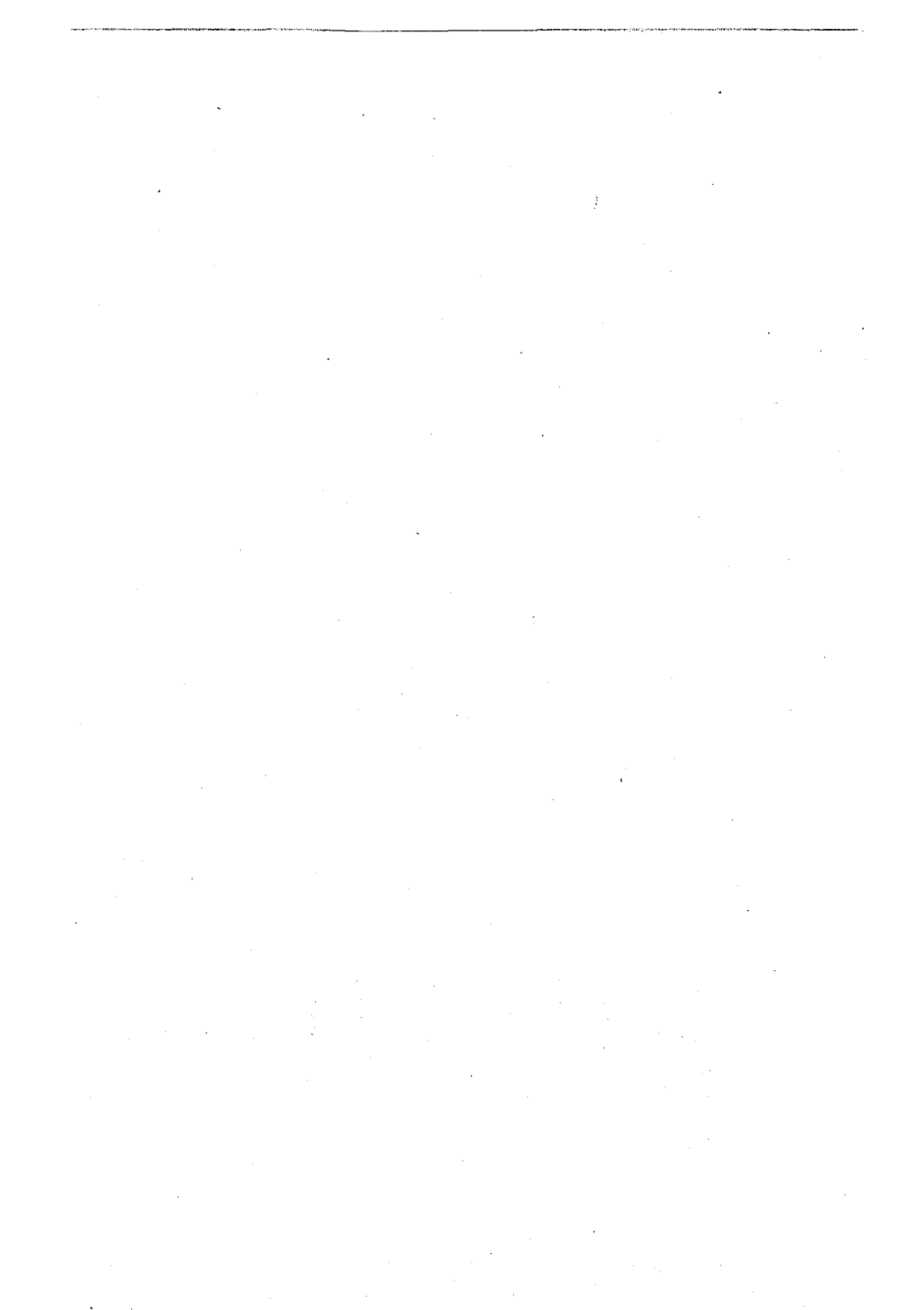
The Muslim seemed to have entered modern history in a state of bewilderment. The first important person who tried to make them conscious of the political changes that had taken place was Syed Jamal ud Din Afghani. (1838-1897). He tried to persuade the Ottoman Sultan Caliph Abdul Hameed to govern constitutionally and to be bound by the advice of the *شورى*. It was for the first time in the history of Islam that the concept of constitutional Caliphate was advanced. Syed Jamal ud Din Afghani desired that different Muslim territories constituting the Ottoman Empire should be given autonomy and united in the form of a federation under the

constitutional headship of the Sultan Caliph. But he was not successful in his attempt as the extremist Ulema did not support him and considered his ideas radical as well as against the teachings of Islam. Eventually the secular minded young Turkish military officers deposed the Sultan in 1908. Thereafter in 1924 the Caliphate was also abolished and Ata Turk laid the foundations of the secular nation-state of Turkey.



THE PERSONALITIES





PREMIER CHAU EN LAI

Most of the Pakistanis who have been to New China are already acquainted with premier Chau En Lai. Some of us had the opportunity of meeting him when he visited Pakistan a couple of years ago.

The writer had a glimpse of the Premier in December, 1956 and was most impressed by his quiet dignity - and attribute shared in common by all of us who belong to the Orient (but of course with few exceptions). At any rate, this was only a casual observation made while the Premier shook many eager hands in the Shalamar Gardens, Lahore.

The second encounter, although brief, was different. The scene had shifted from the Shalamar Gardens Lahore to the Grand Rostrum, Tien An Men Square, Peking, period: October, 1963. Time: 8 P.M. The sky of Peking was lit with colourful fire-works, the (traditional Chinese music was heard everywhere, and more than 300,000 people were singing and dancing in the Square. The question; was it a dream or reality? was fluttering in the mind of each and every foreign guest. The spectacle was indeed fabulous and the members of the Pakistan delegation were so deeply absorbed in it that they did not even notice when a quiet figure emerged from the multicoloured lights and shadows and moved in their direction.

There was a seven years' gap between the first and the second encounter of the writer with the Premier, and obviously few more impressions were formed. It was an

entirely different experience to meet the premier in an environment which was exclusively Chinese or new Chinese. Below the Grand Rostrum, in the vast Tien An Men Square, was unfolded a dream – and by our side stood one of those who had endeavoured (and was continuously endeavouring) to realise that dream.

In the morning we had witnessed the Grand parade organized by the Chinese people to celebrate their National Day. The brilliant Sun, countless red banners, streamers, out sized red lanterns, balloons with slogans hailing World peace, huge block Chinese characters reading “The Great Leap Forward”, doves circling the Peking sky, drums and gongs, flowers, and thousands of colourfully dressed people were still alive in our minds. And now amid all these live memories stood the prominent face of Premier Chau En Lai.

The Premier talked to us for some-time. He was glad to receive us in Peking, asked as to how long we were going to stay, and wanted us to see as much of China as we possibly could.

The Premier did not only possess the attribute of quiet dignity, the writer felt, he was as ageless as China. There had been not the slightest change in his person during the past seven years, but on the contrary he looked younger. His politeness and courtesy were also typically Chinese. Of course one meets politeness and courtesy at every stop in China, and sometimes it is so overwhelming that one does not know how to repay it.

The following night we met the premier again at the House of the Pakistan Ambassador who had invited him to dinner and to meet the Pakistan delegation. The Premier responded to the invitation although Maulana Bhashani, the leader of the Pakistan delegation, could not participate (he had been hospitalized the same day).

The Premier sat with us and had a cordial chat. There were no other guests. We were talking about his previous tour of Pakistan and he told us as to how much impressed he was of the Shalamar Gardens at Lahore. (Love of gardens is also a

Chinese characteristic. The writer discovered something exceptional about the premier at this meeting. He has a very warm and contagious laughter. One could not resist laughing when the premier laughed.

The conversation drifted towards Pandit Nehru and his "emotional explosiveness" displayed at the Bandung Conference, The Premier listened quietly and occasionally smiled without making any comments.

We talked about the spirit of friendliness towards New China which prevailed in Pakistan ever since New China was founded and inspite of Pakistan's involvement in CENTO and SEATO; we discussed the possibilities and advantages of organising another Bandung conference; and exchanged ideas on numerous other subjects affecting Asia generally.

The writer noticed that behind the quiet dignity, agelessness, politeness, courtesy, consideration, warm and informal laughter, the Premier has tremendous patience, determination, modesty, sincerity, honesty and a clear sense of direction. Behind his cool expressions are reflected the glorious culture and a magnificently rich history of China, the ruthless economic exploitation and the subjection of the Chinese people to inhuman humiliation by the western colonial powers throughout the preceding centuries, and the re-awakening of a potentially great and a self conscious China.

REMINISCENCES: MEMORIES ABOUT QUAID-E-AZAM

One of the most precious memories of my life is meeting the great Jinnah at 4 p.m. on 11 June 1936 while I was 12 years, 4 months and 6 days old. On the morning of 11 June 1936, my father Allama Muhammad Iqbal called me in his bedroom and directed me to be present in the drawing room at 4 p.m. along with my autograph book. While father knew I possessed an autograph book, this was the only time in my life he ordered me to bring it before his expected guest. It not only indicated the respect and admiration in which he held his guest, he wanted his next generation also to extend the same degree of respect and admiration to him. Curiously I asked 'Who is coming Abbajan?' The brief answer was 'The leader of the Muslims.' I did not quite understand what he said as I had never heard of any leader of the Muslims. In those days, Jinnah was not known as the Quaid-i-Azam. Perhaps no one even knew him as M. A. Jinnah in the Punjab.

What was the background of his visit with my father on that day? Equipped with his Fourteen Points, Jinnah had attended the First Round Table Conference in London in November 1930, which the Muslim delegation hoped would be incorporated into the future constitution of India. Iqbal was not invited to attend the Conference, but during the same year at the meeting of the Muslim League Council held

on 13 July 1930, Jinnah's proposal of Iqbal being made the president of the All-India Muslim League session 1930 was unanimously adopted. The session of the All-India Muslim League which was presided over by Iqbal was eventually held at Allahabad on 29 December 1930. In his presidential address Iqbal stated that if the Fourteen Points of Jinnah were not incorporated in the future constitution of India, he would go a step further and propose the creation of an amalgamated state consisting of the Punjab, Sindh, the Frontier Province and Balochistan, as the national homeland of the Muslims of North-West India. He also declared that this amalgamated state was the destiny of 'at least' the Muslims of that region.

The Muslim demands or the Fourteen Points of Jinnah were considered and rejected by the Hindu leaders at the conference. During the sessions of the conference, a remarkable change was noticed in Jinnah as his 'despondent mood' became palpable. He observed: 'I worked so incessantly to bring about a rapprochement that a newspaper remarked that Mr. Jinnah is never tired of Hindu-Muslim unity', and continued 'but I received the shock of my life at the meetings of the Round Table Conference. In face of danger the Hindu sentiment, the Hindu mind, the Hindu attitude led me to the conclusion that there was no hope of unity'. In 'utter helplessness', he could neither change the Hindu mentality nor make the Muslims realize their precarious position. Despairingly he decided to give up politics and to permanently settle in England. This sense of gloom and doom disturbed Jinnah's mind for almost four or five years of his stay in England. Similar sentiments had been expressed by some other Muslim leaders who at one time or the other upheld the nationalist cause of India. But Jinnah's case was different as he was much more liberal and broadminded than any other Muslim leader. If a liberal and broadminded leader like him could be so disillusioned with the Hindu leaders' attitude and find refuge in Muslim political 'conservatism', it implied that there remained not the slightest

possibility of a compromise and understanding between the Muslims and Hindus of India.

It is not clear who eventually succeeded in persuading Jinnah to return to India. Scholars have advanced the names of different eminent personalities who begged him to return. But perhaps the matter for him to decide was what he was expected to do in India after the rejection of his Fourteen Points. However, there is evidence to suggest that in 1931-32 while Iqbal attended the Second and Third Round Table Conferences, he met Jinnah a couple of times and requested him to return to reorganize the All-India Muslim League as a mass movement, with a new political agenda recommended by him in the Allahabad address. Jinnah returned to India in 1934 and described his political situation as: 'Having no sanction behind me I was in the position of a beggar and received the treatment that a beggar deserves'. He condemned the federation at the centre, but accepted the Provincial Scheme of Autonomy. Finally in early 1936 under his presidency the All-India Muslim League Central Parliamentary Board was created and Jinnah travelled all over India to establish Provincial Boards. It was in this connection that he visited Lahore and met Sir Fazl-i-Hussain, the founder leader of the Unionist Party in the Punjab, to explore if there was any possibility of his party's collaboration with the League in the forthcoming elections. But Sir Fazl-i-Hussain did not have a good opinion of Jinnah, as is indicated in the entry dated 2 March 1936 of his published personal diary and subsequently in his letter addressed to his successor Sir Sikandar Hayat. On 11 June 1936, Jinnah came to consult Iqbal as to what should be done.

When I entered the drawing room of our house at 4 p.m. on that day, I saw a very smart, tall and thin gentleman sitting on the sofa along with my father. On the next sofa was seated also a tall and thin lady in an elegant white sari. The gentleman wore a flawless well-tailored cream-coloured silk suit. I did not notice the colour of his necktie but he definitely wore white socks and brown and white coloured

shoes. I silently advanced the autograph book towards the gentleman. He took out a pen from the inner pocket of his jacket and while signing his name in the autograph book glanced at me with his sharp eyes.

Then with a mischievous smile on his face, he asked: 'Do you also write poetry?' 'No sir!' I answered. But suddenly followed the next question: 'Then what are you going to do when you grow up?' I did not know what to say and therefore remained silent. The gentleman turned towards my father and laughing casually remarked: 'He doesn't answer?' 'He won't answer', replied my father emphatically. 'He is waiting for you to tell him what he is to do.' Since my autograph book had been signed, I quietly left the room.

Jinnah appointed Iqbal president of Punjab Provincial Muslim League and of the Provincial Board, and Iqbal accepted these responsibilities despite his numerous ailments. During the last days of Iqbal, Jinnah had called a meeting of the League at Calcutta in which Sir Sikandar Hayat, the leader of the Unionist Party, also participated. Iqbal had certain apprehensions about the sincerity of Sir Sikandar and his group of the Punjab rural leaders. Therefore even on his death bed, he was warning Jinnah through different means to take care before signing the Sikandar-Jinnah Pact. A correspondence had started between Iqbal and Jinnah which lasted until the death of Iqbal on 21 April 1938. This correspondence was subsequently published by Jinnah and in it he refers to Iqbal as a friend and guide who firmly stood like a rock by his side in the darkest days of the Muslim League. Two years after Iqbal's death, on 23 March 1940, the Pakistan Resolution was passed in the Minto Park (now Iqbal Park) Lahore, not far from the site where Iqbal is buried. Turning his face to the grave of Iqbal, Jinnah marked to his secretary Matlub ul Hassan: 'Had Iqbal been alive today, he would have been very happy as we have done exactly what he wanted.'

I as a student also, like the rest, attended the public meetings addressed by Quaid-i-Azam in Lahore. We also

fought against the repressive measures adopted by the Khizar government against the Muslim League movement in the Punjab. During this phase, probably in 1946, two of my articles were published in *Dawn*; one on 'Quaid-i-Azam as a Great Man' and the other on 'Pakistan and Islam'. In the article on Quaid-i-Azam, being a student of English and European Literature as well as Islamic Philosophy, if I remember correctly, I compared his leadership qualities with the literary and philosophical models: 'Perfect Man' (*Insan-e-Kamil*) of Al-Jailli, 'Unique Man' (*Mutawwahid*) of Ibn Bajja, 'Super Man' (*Uber Mensch*) of Nietzsche and 'Over Man' of Johnson, and concluded that he was an extraordinary person. In the article 'Pakistan and Islam' my thesis was that the Pakistan Movement was not based on 'conventional' but on 'reformist Islam'. It is a matter of great pride for me that Quaid-i-Azam took notice of both these articles and I was specifically informed by one of his secretaries that he appreciated my efforts in projecting the Muslim nationalist cause. I was in Karachi on the evening of 11 September 1948 when Quaid-i-Azam breathed his last and I was one of the mourners in his long funeral procession.

Quaid-i-Azam was a man of action. He was able to raise the Muslims, whom he had formerly described as being in 'no man's land' into a position where they held the 'balance of power' between the British and the Hindus. He performed a miracle by transforming a dream into a reality. Had he not led the Muslims, Pakistan would not have been created. All the previous religiously motivated political movements of the Muslims in the subcontinent, e.g. the Wahabi Movement, the Khilafat Movement etc., had failed in achieving their objectives, whereas the Pakistan Movement, also motivated by Islam, was successful. Why, given that it was opposed by the Hindus, the British and the majority of the Ulema? The Ulema opposed it because they thought that the movement was not based on the conventional interpretation of Islam. An eminent Deobandi, Alam Maulana Najmuddin Islahi, wrote that 'the' Islam on which the concept of Pakistan is

founded was the other name of the philosophy of Iqbal. Iqbal was a 'reconstructionist' because he believed in the 'Reconstruction of the Religious Thought in Islam'. Who is a 'reconstructionist'? A 'reconstructionist' is described by the late Professor Iqbal Ahmad as 'one who seeks to blend convention into modernity in an effort to reform society.'

Nearly sixty years have passed since the death of Quaid-i-Azam. Whenever I am asked to deliver a lecture on Pakistan's ideology, the new generation of Muslim students frequently asks me: 'Conceded that Quaid-i-Azam was a Muslim. Was he a conventionalist, or a reconstructionist or a secularist?' I tell them Quaid-i-Azam perceived Pakistan as a democratic welfare state. He did not believe in discrimination between Muslims and non-Muslims as citizens of the state. He respected human rights, civil liberties and rule of law. He defined in his statements the role of the military to defend the frontiers of the country. According to his interpretation, these principles were not repugnant to Islam. He reminded the students of the Aligarh Muslim University on 18 October 1940 of the responsibility of the coming generation to establish a progressive and liberal Muslim nation in the subcontinent. He was deeply concerned with the deplorable conditions in which Muslim women had to live and he stood for their emancipation. While addressing the students of Anglo-Arabic College in Delhi, he proclaimed on 3 February, 1938:

Having freed ourselves from the clutches of the British government, the Congress, and the reactionaries or the so called Maulvis, may I appeal to the youth to emancipate our women. This is essential. I do not mean that we are to ape the evils of the West. What I mean is that they must share our life not only social but also political.

I tell the boys and girls 'In the light of what I have stated, you are free to fix the portrait of Quaid-i-Azam in any frame you like — conventionalist, reconstructionist or secularist.' I also tell them that since my childhood, I have been conditioned to idealize him. Guess what I think he was!

THE QUAID'S PLACE IN ISLAMIC HISTORY

The achievement of Quaid-i-Azam Mohammad Ali Jinnah is unique. He not only gave a concrete shape to the aspirations of Indian Islam, but by accomplishing Pakistan for the Muslims of the Indian sub-continent he managed to achieve something which no great leader of men has been able to 'achieve in the annals of recent history. He brought into existence a Country and a State which had never existed before, was never even heard of before.

His achievement indicates that under the guidance of a great individual how easily the collective will of a people can reconcile the ideal with the real, bring down the absolutely new from the realm of possibility and implant it as a concrete reality.

New Nations

Contemporary Islam has produced such great personalities as Kemal Ataturk, Reza Shah Pehlavi and many others besides them who brought their respective peoples back to life and transformed the old into the new. Modern Islam is still full of vitality and is in the process of producing great leaders as architects of all ever-increasing number of new Muslim nations. There is activity throughout the world of Islam from North Africa to Indonesia. But there exists not a single example in our recent history where a great man built up a nation but of a rather unidentifiably mixed minority into

a majority, and by the force and vigour of his personality eventually managed to secure self-determination as well as territorial specification for this newly constituted nation.

The State created by Quid-i-Azam Mohammad Ali Jinnah is based on the ideology of 'Muslim nationalism', an ideology which assimilates racial, linguistic and territorial diversity, and presents Islam as international. 'Muslim nationalism' recognises the multiplicity of nations within Islam so long as this multiplicity does not come into conflict with the general principles of equality, fraternity and solidarity among the Muslims as established by their religious usage and cultural coherence.

Islam brought within its fold numerous mutually antagonistic races and transformed them into a single people possessing a self-consciousness of their own. Being non-social, non-linguistic and non-territorial in spirit as well as in character Islam furnished a model for human unity. Accordingly the conception of Muslim brotherhood is as old as Islam and in spite of multifarious internal conflicts it seems to have survived unimpaired. The study of Islamic history reveals that the conception of Islamic solidarity is not a new conception but it had existed as a political reality for a considerably long time in our past history.

Islam entered the Indian sub-continent as the religion of the conquerors, and notwithstanding the State patronage, the Muslims developed on the lines of a distinct community from the very beginning particularly because they were self-conscious as a minority amid an hostile environment. The relations between the Hindus and the Muslims were far from being cordial, and the religious distinction between the two communities was maintained throughout the Muslim rule in India. The earliest account of the differences between the Hindus and the Muslims has been provided by Al-Beruni who visited India in the company of Sultan Mahmud in 1001 A.D. His observations recorded more than nine hundred years ago make a perfectly modern reading even today.

In the sixteenth century the Naqshbandiah-Mujjaddiah Order resisted all attempts made either by Emperor Akbar

himself or by his disciples to displace Islam as the religion of the State. This remarkable Order was a restraining influence upon the Mughals and their religious excursions.

Between the sixteenth century and the eighteenth century the religious policy of the Mughals particularly that of Akbar and Aurangzeb represent two different attempts to solve the communal problem of India. Akbar's attempt failed because the Muslim minority was not willing to merge into the Hindu majority, and Aurangzeb's attempt failed because by imposing the laws and institutions of the Muslim minority on the Hindu majority he offended his Hindu subjects. Thus although the political unity of the empire was maintained by the sword, ideologically India remained divided between 'Muslim India' and 'Hindu India' ever since the establishment of Islam in India.

Modern Islam and its problems arose out of the political humiliation of Islam in the eighteenth century. Islam had deteriorated morally as well as economically, consequently one Muslim territory after the other fell into the hands of European Colonial powers. This deterioration within Islam led to the growth of 'puritanic' reform movements in numerous parts of the Muslim world. The eighteenth century 'Puritanism' revived Islam but was violently anti-Western. The followers of Abn Abd-al-Wahhab in Arabia, Muhammad Al-Sanusi in North Africa, the Imam in South Russia, and Syed Ahmad of Bareilly in India led holy wars against their oppressors. However, within a generation or two 'puritanism' broadened into 'liberalism' and the work of Islamizing the Western ideas was taken up by Medhat Pasha in Turkey, Mufti Alain Jan in South Russia, Sheikh Muhammad Abduh in Egypt and Syed Ahmad Khan in India.

Under the able guidance of Jamal al-Din Afghani 'liberalism' was reconciled with 'puritanism' and the foundations of 'Pan-Islamism' were laid. Shortly after the 1914-1918 War, when the Ottoman Empire was being dismembered, 'Pan-Islamism' was superseded by 'Muslim nationalism'. The emergence of Modern Turkey out of the ruins of the Ottoman Empire was followed by the

establishment of Modern Iran. The rest of the Muslim nations continued their struggle for independence. The rapid growth of 'Muslim nationalism' has resulted in the liberation of numerous Muslim nations and is still a great force in North African Islam.

'Puritanic' Revival

The 'puritanic' revival of Islam in the eighteenth century India made the Muslims self-conscious as a religious community. The followers of Syed Ahmad Khan secured separate electorates for the Muslims, which established them as a distinct political entity in the Indian sub-continent. 'Pan-Islamism' turned the eyes of Indian Islam towards Muslim Asia. There developed an extra-territorial sympathy among the Muslims of the Indian sub-continent for their brethren in the Middle East, and the spirit of Islamic solidarity was reawakened. But when 'Pan-Islamism' was superseded by 'Muslim nationalism' in the Middle East, Indian Islam reverted to its separatist policy.

The conception of 'nationalism' has been borrowed from the West. It reconciled perfectly with Islam in the Middle Eastern countries because in those countries the Muslims constituted the bulk of the population. For Indian Islam, on the other hand, 'nationalism' would have meant submergence into the larger community. Accordingly, in the Indian sub-continent 'nationalism' was replaced by Islam as a nation-building force, and the Muslims insisted on bringing their majority into power in the North-West and East India.

By 1930 the idea that the Muslims had always remained a distinct community in their past history and on account of that they had been granted a political status in 1906, gradually developed into the conception that the Muslims were a nation and Muhammad Iqbal dreamt of centralizing Indian Islam in a specified territory and desired to see a separate state in the Indian sub-continent as the national hope for the Muslims. In other words, up till 1930 there existed a Muslim nation as well as a Muslim State but only in theory.

It is from 1930 onwards that the realistic approach to politics of Quaid-i-Azam Muhammad Ali Jinnah made its presence felt. He re-organised the Muslims who had been but a 'no-man's land' between the British and the Hindus, and transformed them into a 'balance' between the two great adversaries of Indian Islam.

Within a short span of seventeen years Pakistan emerged out of a welter of Indian constitutional utopias in a spectacular manner and became a political reality. Thus the spirit of Islam, which had been implanted in the Indian sub-continent twelve hundred years ago and which had in the course of its history, time and again, turned its eyes into the direction of the sister Muslim Countries of South West Asia for moral support, or begged in vain its political adversaries—the Hindus and the British, for a respectable compromise, eventually found an anchorage.

We owe the security, the peace and the tranquility of our homes to Quaid-i-Azam Muhammad Ali Jinnah. But for his achievement Indian Islam today would have either been a subjugated Islam or a wondering Islam.

The existence of Pakistan as a geographically non-contiguous State is a living proof of the vitality and strength of the ideology on which her foundations were laid. It is, however, unfortunate that such forces are active among us today which contemplate the destruction of the ideology on which depends the very existence of Pakistan. But so long as a common interest is sustained in the ideology, and so long as we remain united and disciplined, and faithful to the ideal of 'Muslim nationalism' we shall go on providing a living example to the world that here an ideology has furnished a model for human unity in spite of the geography which may drive humanity apart.

The building up of Pakistan is not as difficult as was the securing of it provided that our present day leadership rises above personal interests and private ambitions, and provided that we learn to determine the value of our individual and collective action in the light of that ideology for which Quaid-i-Azam Muhammad Ali Jinnah lived and gave his life.

SIR SYED, 'MODERNISM' AND ISLAM

While the backward-looking Muslim romantics fought a losing battle to preserve the mediaeval form of Islam, the impact of the West stimulated the growth and development of a new consciousness among the Hindus. Raja Ram Mohan Roy (1772-1833), the founder of the first Hindu religio-social movement in Bengal, called the Brahma Samaj, endeavoured to give a broad liberal progressive and forward-looking interpretation of Hinduism, and gave his whole-hearted support to the assimilation and absorption of the new culture.

The Bengali reformers who succeeded Raja Ram Mohan Roy continued to impress upon their community the necessity of reconciling 'modernism' with the faith of their ancestors. The religio-social movements of the Hindus, such as the Prarthana Samaj, the Deva Samaj and the Arya Samaj concentrated on the moral and educational regeneration of the Hindus, laid emphasis on the acquisition of modern sciences, and the need of social reform.

The Hindus did not yield to the Western culture wholly out of political consideration or because it had better economic prospects. But the Hindu social reformers as compared with their conceited Muslim counterparts, showed more far-sighted-ness and courage coping with the challenges of modern times. Accordingly, they encouraged the growth, dissemination of a new attitude and took a lead in modern education covering the whole of the Indian sub-continent with schools which fulfilled their requirements.

With the Muslims the case was altogether different. Before the Indian sub-continent passed to the British they were not only the political but also the intellectual power in the country. They possessed a system of education which was capable of affording a degree of intellectual training and which suited a mediaeval social order. Accordingly they refrained from learning English or assimilating the new culture. They preferred their children to have an education which should secure for them an honoured place among the learned (Ulema) of their community, instead of accepting 'Modernism'. Consequently they lived confined in a narrow medieval order shut off from, and unaware of the rapid changes happening all around them.

Hali's View

Why did the Muslims struggle to preserve their mediaeval form of life, and why did they turn their faces away from changes of any kind? The observations of Hali in this connection are worth quoting. Hali maintains that the Muslims, unlike the Hindus, were not suited to acquire foreign languages for wherever the Muslims settled they took the languages and literature (Arabic and Persian) with them. During the course of centuries they evolved a system of instruction which was a strange mixture of theology and secular sciences. Still later, this learning came to be regarded as part of Islam. The Muslims guarded their method of instruction jealously because of the fear that a change in it would lead to the replacement of Islam by some other creed.

Accordingly they protested when the Government intended to introduce English education in the Indian subcontinent (in 1838). The attachment of the Muslims to their learning kept a spirit of pride of cultural superiority alive among them. They were consequently opposed and indifferent to the acquisition of new learning and modern sciences. According to Hali, from 1858 (*i.e. from the time when the Universities of Calcutta, Madras and Bombay had started functioning*) to 1875 the number of Muslim graduates

in India was 20, whereas the number of Hindu graduates was 846.

Although the Muslim power in the Indian sub-continent had collapsed, yet the pride of the Muslims, a whose memories of the past were the rulers of the sub-continent, turned to a Dame of downfall besides general economic subservience, curtailment of religious privileges, termination of state patronage, suppression of languages and culture, and to crown all, a sense of shame, humiliation and frustration. It made the Muslims recede into their past. They stood on the verge of death and annihilation as a people.

'An Angry Man'

In this period of disintegration, decay and hopelessness, an angry man was born among the Indian Muslims. Syed Ahmad Khan (1817-1898) was annoyed at the hollowness and the false pride of his dying community. In the teeth of bitter and fanatical opposition from the decayed Ulema, he led a movement to encourage a positive attitude towards the new learning. He wrote:

"The Old Mohammadan books and the tone of their writings do not teach the followers of Islam independence of thought, perspicuity and simplicity, nor do they enable them to arrive at the truth of matters in general; on the contrary, they deceive and teach men to veil their meaning, to embellish their speech with fine words, to describe things wrongly and in irrelevant terms to flatter with false praise, to live in a state of bondage, to puff themselves up with pride, haughtiness and self-conceit, to speak with exaggeration, to leave the history of the past uncertain, and to relate facts like tales and stories. All these things are quite unsuited to the present age and the spirit of the time, and thus instead of doing any good they do much harm to the Mohammadans."

Syed Ahmad Khan believed that reform could only come from within the Muslims. Foreign domination was not the root of all ills; rather the weakness of the Muslims lay in their ignorance, credulousness, selfishness, conceit, reactionism,

intolerance, and lack of creative energy and fellow-feeling. He was of the opinion that the greatness of a people depended upon the broad, liberal and progressive outlook of the individuals who endeavoured to protect the interests of the community before protecting their own interests.

This was indeed the voice of an angry man, but it was also a voice of courage and hope. It meant redeeming the Muslims from the fetters of medievalism, just as it meant the dawn of a new, liberal, broad and forward-looking era over Islam. Modern Islam and her problems were born. The first problem was that while the Muslims were in a stupor, the Hindus had taken a lead of about 40 years in the educational, economic and other fields.

Reconciliation

On his return from England in 1870, Syed Ahmad Khan started his campaign to reform Muslim religious, moral, social, literary, educational, economic and political thought. In matters related to religion, he encouraged the development of tolerance and Tahqiq (impartial investigation). He was conscious that modern sciences, the acquisition of which was necessary for the community, represented a threat to the integrity of Islam unless the foundations of Islamic theology were reconstructed in the light of modern thought. He also repulsed the attack of those Christian missionaries who held that Islam was an irrational religion and was opposed to cultural progress.

Islam, in his view, was the 'religion according to nature'. He thought that the dictates of the Quran were in perfect harmony with the findings, of modern sciences.

Syed Ahmad Khan attempted to 'demythologize' Islam by giving a rational and scientific interpretation of the principles of the religion — an interpretation that was in accordance with the conclusions of modern empirical sciences. But his attempt to give a rational and scientific interpretation of Islam was misunderstood by the reactionary and conservative Ulema, and there developed a strong opposition to his

religious ideas. He was denounced as an anti-Christ (Dajjal), and condemned as an atheist. Even his life was threatened, but this angriest man of his age did not change his views.

He broadened the moral outlook of the Muslims by goading them to adopt a liberal and progressive attitude towards life. His famous journal, *Tahzib-ul-Akhlaq*, stood for liberal-mindedness, justice, self-help and progress. It aimed at reviving the spirit of fellow-feeling among the Muslims. It laid emphasis on the need for education, particularly the acquisition of modern sciences. It attacked reactionism, criticised indolence, uncouth manners and customs; and insisted on the immediate acquisition of all that was good and practically useful in Western culture.

The efforts of Syed Ahmad Khan also produced new trends in Muslims literature. Poetry and prose went through a revolution. The new poets and writers selected their themes with a set purpose, i.e. the general advancement of the Muslim Community. The Muslim Press was established, and in the years that followed, it developed a ceaseless and ever-increasing activity.

The services Syed Ahmad Khan rendered in the cause of Muslim education were very great indeed. He collected funds for the establishment of a Muslim college in the face of numerous odds and a considerable amount of opposition. Eventually in 1877 the foundations of the Muhammadan Anglo-Oriental College were laid at Aligarh. The aim of the College was, as stated by Syed Ahmad Khan, to reconcile Oriental learning with Western literature and sciences, and to dispel those illusory traditions of the past which had hindered Muslim progress.

The College did not fail to provide religious instruction to the Sunnis as well as the Shias. It encouraged the growth of love, tolerance, and fellow-feeling among the students. Hindu students were admitted in the College, though they were exempted from theological instruction. Cow slaughter was forbidden and beef was not served in the College.

In 1863 Syed Ahmad Khan had also founded a Scientific Society at Ghazipur, which undertook the task of translating standard European scientific works into Urdu. Later on when the Society was transferred to Aligarh, it started the publication of a weekly called the Aligarh Institute Gazette, which spoke for the necessity of moral and social advancement and laid emphasis on the acquisition of modern sciences.

Syed Ahmad Khan was aware of the appalling poverty of the Muslims. In his opinion the real cause of it was the lack of fellow-feeling and the absence of an idea of communal economy among the Muslims. He tried his best to bring it home that the improvement in the methods of agriculture was necessary for the prosperity of the Muslims. He spoke for the organisation of industry and encouragement of trade, in fact he dissuaded the Muslims from taking part in the political life of the country mainly because he realised that they were, collectively speaking, not only inferior in number and education as compared with the Hindus, but were also inferior in wealth.

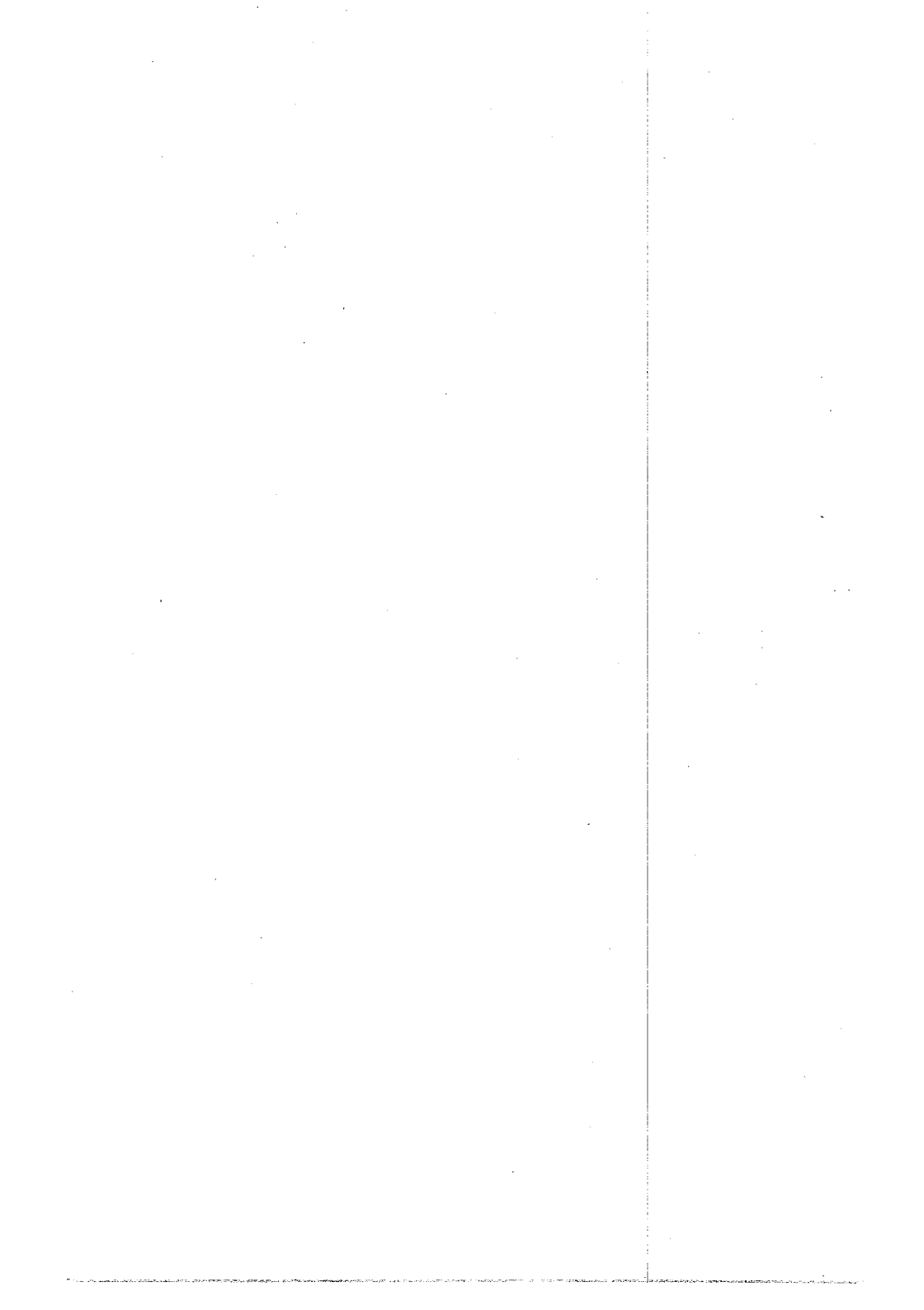
His political wisdom and his sense of realism was beyond question. He worked ceaselessly to rebuild the political prestige of the Muslims in the Indian sub-continent and was to a considerable extent successful in achieving his object.

Our community is still burdened and hindered in its development by the same mental narrowness and idolatrous worship of the past which hampered and enraged Syed Ahmad Khan. Large numbers of our people are either backward-looking and fanatical, or frustrated and negative. We have not yet succeeded in stating and manifesting in our lives a coherent expression of Islam which is directly relevant to the problems of life in the modern world. We need a spirit of courage, hope and righteous anger, and a willingness to work intensely hard for the welfare of the community as a whole. We can find perhaps no better model, than the hope and faith which inspired Syed Ahmad Khan.



CONSTITUTIONAL AND
LEGAL ISSUES





ADDRESS IN THE GENERAL ASSEMBLY OF UNITED NATIONS

Mr. President!

Pakistan had the honour to be one of the sponsors of resolution 1514 (XV) adopted by the General Assembly on 14th December, 1960. This resolution was submitted by the Afro-Asian Group of States and was passed under the agenda item: *Declaration on the granting of independence to colonial countries and peoples*, proposed by the U.S.S.R. during the Fifteenth session of the General Assembly. During the same Session, the U.S.A. proposed the item: *Assistance to Africa; A United Nations Programme for Independence*. The consideration of this item was deferred at the last Session, but now we are discussing it jointly with the item: *The situation with regard to the implementation of the declaration on the granting of independence to colonial countries and peoples*.

In resolution 1514(XV) the General Assembly solemnly proclaimed "the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations", and decided that "immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories without any conditions or reservations in accordance with their freely expressed will and desire, without any distinction as to race,

creed or colour, in order to enable them to enjoy complete independence and freedom.”

My delegation is pleased to note that imperialism is in a process of being wound up, and we are fortunately moving in the direction of solving the problem of colonialism. Last year we welcomed the spectacular beginning of African independence and were very gratified indeed to witness the admission of sixteen new African States to our organisation. This year we were happy to welcome the admission of Sierra Leone to the membership of this international community of sovereign States. By the middle of December, we hope to welcome Tanganyika to this great fellowship. There are strong indications that Uganda, Ruanda-Urundi and Western Samoa will attain independence in the near future. The resumption of negotiations for the recognition and implementation of the independence of Algeria is eminent. We sincerely hope that these negotiations will speedily lead to the realization of that most cherished goal - the independence of Algeria, and that we may be able to witness the admission of Algeria as a member of the United Nations before the end of the present Session of the Assembly.

There is no denying the fact that the record of some Colonial Powers is far brighter than that of others, and in this connection my delegation would not hesitate to pay tribute where it is due. We have in mind particularly the United Kingdom which has contributed more to the cause of independence than any other Colonial Power. The British policy of guiding their colonies towards self-government is in sharp contrast with that of certain other Colonial Powers which profess by a fiction not to regard their overseas territories as colonies and consequently, are not prepared to accept self-government or independence for these territories as an objective of policy.

However, our purpose is not to make a comparative study of the records of the Colonial Powers. We have always held that colonialism, as a system, is untenable - whether it exists in the conventional form or in the unconventional form.

There are numerous forms of exploitation, subjugation and domination of peoples for which we have not yet been able to discover a comprehensive term. What is undeniable is that the continued existence of colonialism in all its forms and manifestations, whatever its rationale or alleged justification, hinders the processes of liberation and emancipation of man from the subjugation of other men, and, is therefore, an anachronism and must be brought to an end as speedily as possible.

Declaration of Independence adopted last year as General Assembly resolution 1514(XV) laid down certain principles. These principles are in accordance with the Universal Declaration of Human Rights and the provisions of the Charter of the United Nations. The question now before us is: How should these principles be put into effect?

Can a single target date be fixed by which termination of colonialism should be effected? My delegation is of the opinion that the United Nations should find ways and means for an effective implementation of the Declaration of Independence in the shortest possible period of time. But circumstances differ widely, and we have no desire to be faced with a multiplication of Congos.

There are two aspects of the problem of colonialism which require careful consideration. First, it is essentially the Administering Authority which is directly responsible so far as the granting of independence to a colonial territory is concerned. Therefore, without the co-operation and collaboration of the Administering Authority, it is idle to determine a target date or to discuss when a specific territory should attain freedom and independence.

Secondly, although resolution 1514(XV) specifically lays down that "inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence". Gift experience in the Congo has taught us that the peoples of the dependent territories should be speedily trained particularly in the exercise of political authority so as to bear the responsibilities pertaining to

sovereign States. It is only in this way that power could be transferred smoothly and peacefully, and a country saved from being plunged into confusion and chaos.

In view of these considerations, my delegation is of the opinion that the fixing of an absolute and immediate blanket date uniformly applicable to all the dependent territories throughout the world is unrealistic and arbitrary. Each dependent territory has to be considered in the light of its own peculiar conditions and circumstances. A common target date may be too immediate for one territory and too remote for another.

The only practical method for resolving the difficulty of a single delayed target date or an absolute and immediate blanket date is to consider the possibility of a multiplicity of target dates which could be prescribed or determined for different territories in accordance with their varying circumstances and conditions.

But before a multiplicity of target dates could be prescribed for different territories, it would be necessary for the General Assembly to study and examine the state of political evolution of each territory, in consultation with the Administering Authority concerned as well as the representatives of political opinion so that it is in a position to determine whether the people of such territory are ready to assume the responsibilities of independence in the shortest possible period of time, and then to fix a target date appropriate to such territory for the grant of independence.

Thus in our opinion an effective implementation of the Declaration of Independence demands the establishment of machinery by the United Nations which could supervise and hasten the process of decolonization. In this connection, I would like to refer to the draft resolution contained in document A/L.366 which my country has the honour to sponsor along with the other Afro-Asian countries.

The draft resolution envisages the establishment of a Special Committee of seventeen members to be nominated by the President of the General Assembly at the current

session. This Committee in consultation with the 'appropriate authorities' and assisted by such United Nations organs as The Trusteeship Council, the Committee on Information from Non-Self-Governing Territories, and other specialized agencies of the United Nations, would examine the application of the Declaration contained in the General Assembly resolution 1514 (XV), make suggestions and recommendations on the progress and extent of the implementation of the Declaration, and report to the Seventeenth Session of the General Assembly.

Since the object of the proposed Special Committee is to supervise and hasten the process of decolonization in consultation and collaboration with the Administering Authorities and not to interfere in any way in the administration of the dependent territories, we earnestly hope that the draft resolution contained in document A/L.366 will be acceptable to everyone and will be adopted by an overwhelming majority.

AN OVERVIEW OF THE ZINA ORDINANCE

(Urdu Paper of Dr. Javid Iqbal translated into English by
Justice (r) Mrs. Nasira Iqbal)

Pakistan came into being due to the vision and practical struggle of some eminent Muslims. These personalities include Shah Wali Ullah, Syed Ahmad Khan, Syed Jamal ud Din Afghani, Maulana Shibli, Allama Iqbal and Quaid-e-Azam Muhammad Ali Jinnah. Most of these personalities, interpreted Islam in the light of changing requirements of modern times. Although all of them except Maulana Shibli were labeled as “Kaafirs” (infidels), the coming generations of Muslims should rely on them for resolving their problems and seek guidance from them.

The enforcement of “Muslim Personal Law” in the Indian subcontinent began in the times of the British. They included some of the principles of modern jurisprudence while enforcing Muslim Personal Law under the British doctrine of “Justice, Equity and Good Conscience”. For this very reason, Muslim Personal Law is sometimes called “Anglo-Mohammedan Law”. The Muslim Personal Law is still in force in India and Pakistan. The courts base their judgments regarding Muslim civil disputes on these laws.

The British enforced their “Penal Code” as well as “The Evidence Act”, but with the condition that the British laws

would be enforced only to the extent they conformed to the conditions of the subcontinent. Based on this principle, the law presumed that a woman involved in a sex related crime under the Penal Code would not be treated as an accused, since women of the subcontinent were oppressed and victimized. Therefore, in the cases of abduction, rape, enticement, etc, the woman was given the status of complainant and not a co-accused whether her consent was involved in the crime or not.

Has the condition of Muslim women changed after the creation of Pakistan? Although there has been some progress in the cities in the fields of education and related subjects, but in the rural areas where 70% of the population lives, no noticeable positive change has appeared. It is generally said that in Pakistan the majority of disputes arise out of quarrels over women, money or land. It appears that the women are included in "wealth" like land and money. Just as the possession of land and money are seen as status symbols similarly women are also treated as a matter of status and honour. This aspect of our culture is not Islamic, rather it is reflective of a feudal, male-dominated and conservative society. Wherever such societies exist, three ingredients are present: adherence to customs, prevalence of ignorance and economic backwardness. To consider such societies as Islamic would be a gross miscarriage of justice.

Allama Iqbal, one of the founders of Pakistan, made it clear that after the abolition of Caliphate in Turkey in 1924, all the powers of governance stood transferred to the elected assemblies or Parliaments of the Muslim nation states. In this respect he gives Parliament the name of "Shura" and he also calls this legislative assembly or law making institution, the "Ijma", and expects that the elected representatives will exercise "Ijtehad" in order to fulfill their responsibilities of legislating Islamic law in conformity with the changing needs of modern times. However, the members of Parliament are ignorant of the complexities of Islamic fiqh (jurisprudence) while the Ulema are not familiar with modern sciences and

many problems faced by the community today require the attention of the technocrats (non-Ulema experts) for their solution. In view of this situation, Allama Iqbal arrived at the conclusion that certain changes should be brought about in the curricula of Madrassas, law colleges and universities as well as other institutions imparting education in order to include a comparative study of modern jurisprudence and Islamic jurisprudence. The scholars who specialize in these subjects should then be presented as candidates for contesting the seats of legislative assemblies by the different political parties in order that they should be included in the "Ijma" and serve to steer the assembly towards Islamic legislation based on the principles of Ijtehad. (The Principle of Movement in the Social Structure of Islam).

Allama Iqbal was aware that the status of Muslim women of the subcontinent had not been elevated in accordance with the true Islamic standards. He knew that the best traditions of a nation could be only protected by the women of that nation. For these very reasons, while addressing a session of Anjuman-e-Khwateen-e-Islam in Madras on 7th January 1929, he said:

"I need not tell you that there is absolute equality between men and women in Islam. This is what I have understood from the verses of the Holy Quran.....During the past five or six hundred years, Islamic jurisprudence has remained stagnant. A few well-known books on jurisprudence were written five to six hundred years ago. The fatwas (interpretations) contained in these books were valid according to the conditions of that period. Today the circumstances are different. We should examine the problems of the Shariah in the light of the changed circumstances..... If women resolve to effectively secure their rights and to obtain those rights from their men folk which the Islamic Shariah has given them, I am certain that life will become difficult for the men..... You must insist on your rights. All the rights that a woman can demand on the basis of justice and equity have been bestowed to her by the Holy Quran."

Quaid-e-Azam was also aware of the fact that a nation cannot progress and prosper until its women work side by

side with men in the light of the Quranic principle of equality. While addressing the Muslim League session on 10th March 1944 at Aligarh, he said:

“The miserable and condemnable conditions that our women have to withstand are not permissible by our religion or morality. They are not permissible anywhere. You should take your women side by side with you like partners in every field of life.”

It is well known that the advent of Islam was a herald of freedom for the exploited women of that era. This was the reason why the first convert to Islam was a woman (Hazrat Khadeeja, wife of the Holy Prophet P.B.U.H.) and in the early period of Islam many men embraced Islam at the behest of women. But gradually a period of mental slavery set in and men tried to reduce and degrade the status of women instead of enhancing it further. A stage came when the women were even deprived of the protection which they enjoyed under the Penal Code. So-called “Islamic” laws were promulgated without placing them before Parliament for debate, thus further degrading the already victimized women. These laws were made at the instigation of some religious extremists without taking into account the needs of the times and the changing requirements of the nation. Unfortunately the Zina Ordinance is one such law which every citizen of Pakistan, whether male or female, should examine and become aware of the flaws that it contains:

- (1) The first flaw in this law is that it was never laid before the National Assembly or Senate as a legislative bill. It was ratified without any debate by Parliament as a measure of expediency. The military dictator General Zia-ul-Haq, set the condition that the Constitution and democracy would be restored only if the laws promulgated by him were provided legal cover. In other words these laws were not passed through proper constitutional procedure, rather these were retained as a “trade off or “give and take” at the expense of the restoration of the Constitution or democracy by the

then political government. In such circumstances, only the government that had negotiated the trade off could be bound to abide by this agreement, but the subsequent governments were not bound by such unconstitutional laws. However they have failed to examine and repeal the Haddoo laws because of their own vested interests. The Zina law was ratified without proper legislation and has no status unless it is enacted or rejected after being discussed in Parliament.

- (2) There is no such record from which it can be determined as to which individuals were consulted while making this law. It is evident from the nature of this law that the views of Shah Wali Ullah, Maulana Shibli and Allama Iqbal were not considered while framing it. Maulana Shibli in his book "Ilm-ul-Kalaam-i-Jadeed" has quoted Shah Wali Ullah from his book *Hujjat-ullah-ul-Baligha* page 123 in the following terms: "The best manner of interpretation and application of Islamic criminal laws is that they should be interpreted while keeping in view the customs and habits of the populace on whom they are to be enforced. Coming generations should not be oppressed by rigid implementation of such laws."

Allama Iqbal while agreeing with Maulana Shibli has observed in his famous English book *Reconstruction of Religious Thought in Islam*, ed. 1982, pp. 171, 172: "I reproduce here the substance of his view (Shah Wali Ullah's). The prophetic method of teaching, according to Shah Wali Ullah, is that, generally speaking, the law revealed by a prophet takes special notice of the habits, ways and peculiarities of the people to whom he is specifically sent.....The Shari'at values (Ahkaam) resulting from this application (eg, rules relating to penalties for crimes) are in a sense specific to that people; and, since their observance is not an end in itself, they cannot be strictly enforced in the case of future generations." Thus according to Iqbal, the Haddoo penalties were imposed keeping in view the customs, habits and temperament of the society at a given

time; These were not primarily meant for punishment but were a means of eradicating the crime/evil from society, therefore it is not essential that these laws should be applied with the same rigor on future generations. Iqbal laid more emphasis on welfare legislation of Islam which confers benefits on the citizens rather than the application of coercive penal laws in a modern Islamic state. In his view the extreme economic backwardness of Muslims was the root cause for the prevalence of different kinds of crime. Similarly when the Hadd Ordinances were enacted in 1979, a retired judge of the Supreme Court of Pakistan, Justice Badi-uz-Zaman Kaikaos, gave a statement in the press that no dictator is authorized by God to enforce such penal laws unless his government could eradicate poverty and economic depravity from the country.

- (3) The basic rule of Modern criminal jurisprudence with which all the courts of Pakistan are familiar is the principle of "Autrefois Acquit", which propounds that when a person accused of a crime is found innocent after the examination of eye-witnesses and other evidence, the court is bound to acquit him and he cannot be punished for the same crime on the basis of lesser evidence regarding the same offence. The Hadd laws provide a dual standard of evidence which is contrary to this principle, since they stipulate that if there is not sufficient evidence to apply Hadd (Divine punishment) to the accused, the court can award a different punishment under Ta'zeer on the basis of lesser evidence regarding the same offence. The Zina Ordinance is erected on the edifice of this contradiction which also leads to corruption and notoriety of the police officials who charge a higher fee for registering a case under Hadd instead of Ta'zeer.
- (4) It is appropriate to mention here that the administration of justice in Islam is based on the "Inquisitorial System" rather than the "Adversary System". Under the Inquisitorial system, the Qazi has

to simultaneously perform the duties of an investigator and a judge. The object being to find out the truth after thorough scrutiny of all aspects and intricacies of the matter in hand. Pakistan has been following the "Anglo-Saxon" or Adversary system inherited from the British. Under this system, the position of a judge is like a referee in a tennis match. Both the contesting parties submit their points of evidence and arguments, and the party with more points to its credit, is declared the winner. In other words; in this system of justice, the duty of the judge is not to find the truth by thoroughly investigating the matter, but rather to declare judgment in favor of the party having more "evidential points". The training of our judges and lawyers is not based on Inquisitorial system, therefore they are not familiar with its intricacies. In such circumstances when an apparently good and pious Muslim witness is likely to give a false statement, it is difficult for a judge to discover the truth as he does not possess the requisite skills. Therefore it would be absurd to expect a judge to apply this method in a satisfactory manner. This is the main reason why the trial court in the majority of Hadood cases convicts the accused who are subsequently acquitted by the appellate court. Numerous innocent women are incarcerated as accused of Zina offences and are ultimately released by the appellate courts. Thus it would not be wrong to say that laws like the Zina Ordinance not only violate the norms of human rights, equity and principles of natural justice, but have also failed to fulfill any positive so-called objective of reforming the society.

- (5) The superior courts of Pakistan through numerous recent decisions have held that if an adult Muslim woman and an adult Muslim man state before the court that they are married and if there is no impediment in the way of their contracting marriage, then the court will declare such a marriage as valid without requiring

strict observance of procedural requirements such as presence of witnesses, Nikah Khawan, Waali (Guardian) or marriage registrar, and will quash the case of "Zina" registered against them. According to the Zina Ordinance, Zina is defined as sexual intercourse committed by an adult sane man and an adult sane woman outside marriage. Thus the declaration of marriage is a complete defence to the charge of Zina. Over the years the superior courts by validating marriages on the basis of "Ijab and Qabool" (the bare proposal and acceptance of the marriage contract) have tried to lessen the harshness of the Zina Ordinance against women, but a limited number of women have benefited from these judgments.

- (6) The aspect of Zina Ordinance by which the Pakistani women are most victimized is the enforcement of the provisions regarding "Zina bil-Jabar" or "rape". There is no mention of Zina bil-Jabar in the Quran where Zina has been used as a general or omnibus term. Under the Pakistan Penal Code and the Evidence Act, if a woman's statement was corroborated by medical evidence and chemical report, it was considered sufficient to convict the accused. But under the Zina Ordinance and the Qanoon-e-Shahadat, things have changed. Now the legal protection that a woman enjoyed as a complainant is no more available. The Zina Ordinance has ended the basic rule of criminal jurisprudence, that the accused shall be considered innocent unless the prosecution has proved without any shadow of doubt that the accused is guilty. The Zina Ordinance has been enforced on the presumption that the court shall deem the plaintiff woman as accused unless she proves herself as innocent. Thus if any woman complains that a man has committed rape with her, she herself would be deemed to be involved in this offence to the extent that she has admitted the commission of Zina. The question as to whether it was

coercive or with her consent has to be settled by cogent evidence. She will be presumed guilty unless she can prove to the satisfaction of the court that she was raped. The court can convict her by treating her as an offender. It is also possible that the trial court acquits her treating her statement as trustworthy, but the appellate court, on appeal from the other party, can make a decision to the contrary and award punishment to the woman as an offender or release the male offender by not relying on the woman's testimony, and sentence the woman on the basis of admission of sexual intercourse. In short, the situation that now prevails is that a woman puts herself on the mercy of the court by registering a complaint of Zina bil-Jabar. If her evidence is accepted then the male offender is punished, but if not, then the complainant woman may have to undergo punishment due to her admission of Zina. It is to be kept in mind that if a woman does not report the offence of rape due to fear of disgrace and she gets pregnant as a consequence of the rape, she is still likely to undergo punishment. So in both the circumstances, whether she complains or not, a woman who is a victim of rape is always apprehensive of getting punishment. The Zina Ordinance has placed the offences of rape (Zina bil-Jabar) and Zina in one category. Whereas in Zina there is consent while rape is a crime perpetrated through some form of violence. An overview of decided cases on this subject reveals that it has become almost impossible for a woman to prove a case of rape (Zina bil-Jabar), since the evidence required for Hadd punishment in Zina is the eye-witness account of four adult, male, upright Muslims. The same evidence is required for Zina bil-Jabar. The victim woman who wishes to prosecute the rapist must produce four adult, upright male Muslim witnesses in support of her statement and *if the court accepts their testimony only then the male accused would be*

punished. Obviously, it is impossible for a woman to do this. No criminal is likely to rape a woman before four adult, upright male Muslims and if such witnesses were available they could be treated as accomplices for not preventing the crime of rape. Apart from these lacunae, the law provides mild punishments to men accused of rape who could not succeed in completing the act. The punishment for "preparation" of rape is even milder than the punishment for an "attempted" rape.

According to the Zina Ordinance and the Qanoon-e-Shahadat, the definition of adulthood of a woman is that the age of the girl is 16 years or she should have attained puberty. Thus if a girl starts menstruation from the age of 9 or 10 years, she will be physically considered as an adult although mentally she may not have attained maturity, and she can be given the punishments applicable to adult women under this law. Under the Zina Ordinance a physically adult girl is not considered a competent witness for the purpose of evidence in a Hadd case, although rape has been committed with the girl. According to the Pakistan Penal Code, performing intercourse with a wife younger than 12 years was considered rape and there was punishment of 10 years for this offence. But now according to the Zina Ordinance it is no longer a crime to have intercourse with a child-wife. Hence the legal protection available to girl children has come to an end.

The Zina Ordinance has also deprived male children from protection. In the past, under the Penal Code, a male child in a sex crime was awarded punishment keeping in view his age and mental capacity to form the intention to commit crime (*mens-rea*) and if a sexual offence was committed with a boy less than 14 years of age then his consent was irrelevant and could be struck off as defence. But under the Zina Ordinance and the Qanoon-e-Shahadat, if signs of puberty appear in the physique of a male child, he can be given punishment for Zina or rape and his consent could be considered as a defence for the adult male accused. [PSC 1991 FSC 826 (b)].

- (7) The seventh flaw in the Zina Ordinance is that in cases where Hadd may be imposed for Zina and Zina bil-Jabar there is distinction between the evidence of male Muslim and male non-Muslim witnesses and the evidence of woman is unacceptable. A male Muslim accused cannot be convicted and sentenced for Hadd punishment on the evidence of non-Muslim or female witnesses. This could give rise to many anomalous cases: If a male Muslim rapes a Muslim woman in the presence of several female Muslim witnesses in a Muslim women's hostel, he cannot be given the Hadd punishment since the evidence of female victim and female eyewitnesses is not acceptable for such punishment. Similarly if a male Muslim rapes a Christian woman in the presence of several Christian men and women witnesses, he cannot be awarded Hadd punishment because the testimony of non-Muslims male and female witness is not competent against a male Muslim accused. However the testimony of non-Muslim witnesses can be relied on for punishing non-Muslim accused persons.
- (8) The most oppressive effect of the Zina Ordinance regarding women is that the number of women in jails has increased manifold since the enforcement of this law. If a husband has a grudge against his wife or the woman's parents have sold her to a prospective husband or she is dependant on relatives who wish to sell her and she does not conform to their wishes, and attempts to escape this oppressive situation, her own husband, parents or relatives would register a case against her under the Zina Ordinance. Since the commission of Zina is a non-bailable offence, the women implicated in Zina cases are not allowed bail by the lower courts. If a woman succeeds in getting bail from the High Court, some male relative (or Mehram) has to furnish surety bond for her release. But her male relatives who have in the first instance got her arrested

in a false case will certainly not bail her out. Resultantly a countless number of innocent women are languishing in jails throughout Pakistan, often with their infants and minor children. Their trials and appeals are not given priority in the courts which are burdened with many other cases. Many children grow up in jails and the women accused are subjected to further custodial violence in the jails.

- (9) The ninth problem arising out of the Zina Ordinance is its incompatibility, with the provisions of the Muslim Family Laws Ordinance, 1962. The literacy rate of women is about 16% and a larger number of women are unaware of the law and their rights. The Muslim Family Laws Ordinance, 1962 requires the registration of Talaq/divorce by the husband with the Union Council. However, often husbands divorce their wives by pronouncing oral talaq three times or by handing over a written talaq or even through registered post. Many women, considering themselves validly divorced, enter into second marriages after completing Iddat period. In such circumstances, the first husband, out of spite would get an FIR under the Zina Ordinance registered against his former wife on the pretext that her divorce was not registered with the Union Council. In many such cases, unsuspecting women have been hauled up and incarcerated due to the fault of the errant, malevolent husband who had not got the divorce registered and had subsequently contrived to punish his ex-wife for an innocent act. The superior courts have tried to reduce the harshness of this law by holding that the triple talaq given by a Muslim husband would be valid even it had not been registered with the Union Council. (PLD 1984 SC 95).

Under the Offence of Qazf (Enforcement of Hadd) Ordinance 1979, proceedings can be taken against a person leveling a false allegation of Zina on a woman. But if a husband charges his wife that she commits Zina or that her

children are illegitimate, then if this allegation is false, the wife under section 14 of this law cannot proceed against him under the Offence of Qazf. In such circumstances she can only get her marriage dissolved under a specific form of dissolution of marriage called "Lian." However she will have to live with this stigma all her life that her marriage was dissolved due to her immorality or giving birth to illegitimate children, even though this allegation against her was false.

at the police station that it was a false case, but the police did not release them. At last they were released on bail under my orders after spending two weeks in jail.

(b) In Rahim Yar Khan a 60 years old man who had gone to Karachi airport with his 16 years old son's wife, to see off the old man's son, were arrested at the railway station by the patrolling police party. They were accused of Zina as they had not presented any bribe or "gift" to the police. Both had arrived at Rahim Yar Khan railway station from Karachi at 1'o clock at night as the train was 4 hours late. They had to spend the night in the waiting room of the railway station as there was no transport available at that time of night to take them to their village 35 miles away. They were released on bail after spending 8 days in jail.

(c) In Gujranwala, a person accused his political rival of committing Zina with a poor widow. The complainant stated that he was walking past the quarter of the widow. On hearing a noise he peeped through a chink in the door and found his rival and the widow committing Zina. The complainant hurried to the mosque to call four men to witness the incident. They all came and witnessed the occurrence from the chink for sometime. Then they pushed the door and entered the quarter to grab them. In the meantime, the male offender stately managed to escape, but they grabbed the widow. They handed over the widow to the police and afterwards the police arrested the male offender from his house. In this case, apart from other things, I

wondered why five men could not grab a single man while they succeeded in grabbing a poor woman. Both were released on bail.

(d) Another misuse of the Zina Ordinance came before me in Bahawalpur. A female student of a college went to her professor's office to ask some questions. While she was in his office, some male students bolted the door from outside and called the Imam of the nearby mosque telling him that the professor was committing Zina with the girl in his room. When the Imam arrived, the professor and the girl student were frantically knocking the door and when the door was opened they both came out harassed and annoyed. Subsequently the police registered a case of Zina against them on the statements of the students and the Imam and arrested them. The lower court did not allow bail and so the matter came before me. I asked the Imam in my chamber as to what he saw in the professor's room. First he replied that he had seen them committing Zina. Then he said that the boys informed him that they had seen them committing Zina. Then he stated that when he saw them coming out of the room they looked harassed and he assumed that what the students were saying was correct. Then he said that the Ulema of the religious institution to which he belonged warned him that he should remain firm on his first statement otherwise he would be in trouble. I released the accused on bail.

(e) Another case of Zina was presented before me in which both the accused of Zina had fled away and a report was registered against the old parents of the male offender to the effect that they were hiding the accused. As a consequence the police arrested them as abettors of the offence. The 75 years old parents had to suffer 3/4 months in jail before they were released on bail.

(11) In a society where there are plenty of people who can

tell lies for serving their own interests, where police is notorious and has unlimited authority with a reputation of being corrupt, and further it helps the powerful oppressor, and where the judiciary is struggling with the executive authorities for its independence, the abuse of laws like the Zina Ordinance is not unusual. However it is obvious that the illegal birch of this law whips the weak and oppressed poor women.

In my experience as a judge, the women of rich, upper-middle or middle class did not fall prey to this law. The women who became victims of this law mostly belonged to lower-middle class or fell "below the poverty line" class, particularly those who are illiterate. Such women do not know their legal rights and nobody cares for them. Many women of different ages are languishing in jails under the Zina Ordinance. Nobody notices that what injustice is being done to them. On the other hand the extremist Ulema are adamant that they will not allow repeal or amendment of the Zina Ordinance.

Recently many educated men and women have been elected to Parliament. There lies a great responsibility on their shoulders by the founders of Pakistan that they should help the backward and oppressed women, struggle to get them their rights and thoroughly review the laws like the Zina Ordinance which are in force in a hypocritical so-called Islamic society, to see whether such laws are in fact an instrument of oppression. Syed Sulaiman Nadvi in reply to a question by Allama Iqbal, had stated that the Ameer (ruler) of an Islamic state is authorized to hold in abeyance such Shariah laws the enforcement of which leads to disorder in the community. Here the term "Ameer" signifies "Parliament" and by "disorder" (fasaad) means "injustice".

(12) It may be asked as to whether the Zina Ordinance can be saved by removing its defects or by making amendments? A detailed debate on its contradictions and oppressive effects can be conducted in Parliament. But a cursory examination of its provisions indicate

that it was framed with malafide intention, haste and carelessness. For example, regarding the definitions of different terms used in the law, clause 2(a): "Puberty" means the age of 18 years for a male and age of 16 years for a female or when the signs of adolescence appear or when she starts menstruating. If this condition appears in a 9 years old girl, she would be considered as mature and if found guilty of Zina, she would be punished with the same penalty given to an adult woman guilty of Zina, under the Zina Ordinance. But if she is victim of rape then her testimony would not be considered trustworthy for enforcement of Hadd (penalty) on the male offender. This inconsistency or unjust contradiction need not be elaborated.

Under clause 2 (b): "Hadd" means the punishment in accordance with the Quran and Sunnah. In a famous case titled "Hazoor Baksh Vs Pakistan" (PLD 1981 FSC 145) it was held that the punishment of stoning to death is not according to the Quran, but this view was not accepted by the dictator Zia ul Haq. As a consequence, the judges of the Shariah Court were changed and the constitution was amended to allow the Federal Shariah Court to review its decisions and in the review petition "Pakistan Vs. Hazoor Baksh", the court over-ruled its previous judgment and held that the "Sangsaar" punishment is according to the Quran, whereas it was admitted that the punishment of "Sangsaar" in the times of the Holy Prophet (P.B.U.H.) was enforced by him in his capacity as a "Guide" (PLD 1983 FSC 255). The ambiguity in this decision has still not been removed.

Under clause 2(c): "Marriage" means a marriage that is not "Baatil" (void) according to the fiqh (personal law) of the parties. This definition also contains many ambiguities and this clause is devoid of legal uniformity. In "Nikah" there is a difference of opinion regarding procedure among the Muslim sects. Similarly "Mutah" (temporary marriage) may also be

considered as a type of marriage. The parties can adopt the view of any sect/creed that suits their vested interests.

In Hazoor Baksh's case (PLD 1983 FSC 255) the observations made by the learned court about clause 2(d) regarding the definition of "Mohsin" are very interesting. In the course of discussion on this subject, it has been pointed out that a married sane Muslim woman has to be a "free" woman for the award of the penalty of "Sangsaar" if the commission of Zina is established. She has to be discriminated from a "slave" woman, for if a "slave" woman commits the offence of Zina, she would be awarded half the penalty. This observation gives an impression that the learned court admits the existence of "slave" women in modern Muslim societies. If a "slave" woman means a woman purchased by money then according to the Constitution and law of Pakistan, the sale and purchase of women is a felony. The Zina Ordinance is silent on this serious matter due to which this business thrives in the Southeast and South Asian countries like Bangladesh, Thailand, Afghanistan and Pakistan. Zina Ordinance should have addressed itself to this serious crime.

(13) Under section 10 (4) of the Ordinance, if more than one man commit rape collectively then each one of them will be awarded death sentence. In this case there is no lesser penalty. Resultantly if five accused are involved in gang rape, the trial court awards death to each offender but the Appellate court considers it unjust to sentence five persons to death for the rape of one woman. There is a possibility of all of them being acquitted.

Under section 3, the Zina Ordinance overrides all the other laws in force. But when it comes into conflict with the Family laws the net result is problematic for the women. Apart from these examples there are numerous other ambiguities and contradictions in this law.

According to a saying of Hazrat Ali (RA) it is almost impossible to prove Zina having taken place before four adult

upright male Muslims and to enforce the Hadd punishment upon the criminal(s). It is a salutary rule of modern jurisprudence that only those laws can be enforced in the society that are effective and practical. But the manner in which the Zina Ordinance has been framed and enforced by some persons in Pakistan, should this man-made version of God's law be allowed to continue as one of Haquq-Ullah (Rights of God)? It is the duty of Parliament to decide this matter. Recently two Commissions appointed by the Government of Pakistan headed by retired judges of the High Courts have given their recommendations that the Zina Ordinance should be repealed. I agree with their recommendations as I have always held the view that this piece of legislation should be repealed.

CONSTITUTIONAL DEMOCRACY AND JUDICIARY'S FREEDOM OF CONSCIENCE*

The dictatorship of Ziaul Haq caused irreparable damage to the Judiciary. Previously the decline of judicial power was an internal problem of Pakistan. But during his phase the independence of our judicial conscience became a subject of criticism in international community, and the impression which spread in the civilized world was that the Judiciary in this country announces its judgments while sitting in the lap of the Executive. Then the judiciary was deprived of many judges of superior courts whose services were unceremoniously terminated. The remaining ones were called upon to take oaths frequently under numerous Martial Law Orders.

It is my firm conviction that man has been granted freedom of choice and he is capable of moulding his destiny through his own decisions. He can choose any destiny out of the numerous options available to him. In this respect human life does not proceed along a pre-determined path which takes us from the cradle to the grave. Instead we go on carving out the path ourselves as we proceed along. Sometimes one takes a wrong decision and has to suffer the consequences. Some decisions turn out to be correct and become a source of satisfaction. On certain occasions one's perception remains clouded and the decision is left to chance

* *Address in reply to the reference on his retirement on 04 October, 1989.*

or accident. Thus the brief span of human life is spent vacillating between doubt and contentment.

Initially I dabbled in politics in order to fulfill my aspirations of preserving national unity and the integrity and solidarity of the country. For this purpose I laid emphasis in my public utterances on the ideological basis of our nationhood. But at that time public attention had been diverted to other issues. Therefore I felt the need of changing my decision. There were two main reasons for this change of heart, and these were: I was defeated in the elections by a person, who, subsequently as Prime Minister, became the target of military usurpation and was sentenced to death by this very court. Secondly, Pakistan was broken up, although it has yet to be determined whether this was a result of Bonapartism or democracy, Bonapartism can certainly break up a country, but the question merits serious consideration whether given the absence of mutual trust and tolerance in an impoverished, disorganised and developing society, democracy may produce identical consequences as a result of failure to address issues leading to economic and political instability as well as national disintegration. These two traumatic experiences shattered my illusions and in 1971, abandoning my political ambitions, I took sanctuary in the temple of justice as a refugee.

At the birth of Pakistan the Judiciary was undoubtedly held in great esteem, because it functioned with an independent conscience and adhered to the Rule of Law. In those days the Executive respected and bowed before its decisions. So, one can safely assert that the initial eleven years in Pakistan witnessed the ascendancy of the Judiciary. But its decline set in from 1958. Since the Judiciary is a creature of the Constitution, the abrogation of the Constitution undermines its dignity by disrupting the supremacy of the Rule of Law. This is precisely what happened when Ayub Khan seized power. The 1956 Constitution was set aside and the Supreme Court in Dosso's case affirmed that usurpation of power if successful creates a new legal order. This

judgment clipped the wings of the Judiciary and circumscribed its jurisdiction. Eventually Ayub Khan's reign was followed by the dictatorship of Yahya Khan and the country came under the second Martial Law during the short span of its history.

I joined the Judiciary during this very turbulent period, and I am attempting to recreate my experiences before you today. The Judiciary was under the clutches of the Executive. Its freedom of conscience had been circumscribed as its jurisdiction. Its dignity had been eclipsed, and it left a bad taste in one's mouth while administering justice in the court.

However, after the elections and breaking up of the country, in whatever was left of Pakistan, constitutional democracy started functioning again from 1973 onwards. The Supreme Court took a turn, and striking down the controversial principle upheld in Dosso's case, declared Yahya Khan as a usurper. The judges of superior courts were granted certain benefits which improved their material condition. But the dignity of the Judiciary could not be restored. Owing to a heavy back-log of cases, shortage of judges in the courts, corruption of the officials and subordinate staff, heavy expenses of litigation, and delay in the rendering of judgments, a demand for cheap, quick and easy availability of justice was raised. But the supremacy of the Rule of Law was not reinforced through resolving the problems faced by the Judiciary. Instead, the civil government also, in order to tighten up the hold of the Executive over the Judiciary insisted that the judicial system of the country, being Anglo-Saxon, was a relic of the colonial times, and that it had failed because it was alien. In this background it was propagated that the traditional courts would be replaced by the "Peoples Courts" on the pattern of socialist countries and these would provide cheap, quick and easy justice to the masses. But before these plans could be put into action, on 5 July 1977 military dictatorship once again strangled constitutional democracy, and the country was afflicted by the third Martial Law.

On the suspension of the 1973 Constitution, the old question about the legal status of Martial Law was raised again. The matter was reconsidered by the Supreme Court, and it was unanimously decided that usurpation of power for a limited period was legally justified under the doctrine of "state necessity" when there was political breakdown in the country.

Our famous judgments about "usurpation" being legal or illegal may appear contradictory, but in reality they draw a pathetic portrait of helplessness the possibility of repetition of which cannot be altogether excluded. In fact these decisions reflect a continuous crisis of democracy in a Muslim country.

Islamic history is not unfamiliar with "usurpation of political power". Traditional Muslim jurists like Al-Mawardi consider "usurpation" (Istela) as valid under the Shariah law provided that the usurping Amir undertakes to implement Islamic laws. Similarly according to Shah Wali Ullah, the renowned jurist of Muslim India, there are only three legal methods of constituting an Islamic state, and these are: Election, Nomination and Usurpation. But these concepts are of conventional Islamic jurisprudence. As is evident from Objectives Resolution, the founders of Pakistan had a reformist standpoint. Therefore, they approved of only "election" as the legal method of constituting a modern Islamic state, and considered democracy as a return to the original purity of Islam. Pakistan was also created on the basis of election, and if the independence of judicial conscience as well as supremacy of the Rule of Law are to be maintained, these objectives can be realised only through the establishment of constitutional democracy. But it appears from the brief political territory of Pakistan that the patience and tolerance which is required for the development of a reformist way of thinking, could not be achieved. Hence our judgments about the legality or illegality of "usurpation" are an expression in legal language of the forty-two years old conflict in the mind of the nation.

The dictatorship of Ziaul Haq caused irreparable damage to the Judiciary. Previously the decline of judicial power was

an internal problem of Pakistan. But during this phase the independence of our judicial conscience became a subject of criticism in international community, and the impression which spread in the civilised world was that the Judiciary in this country announces its judgments while sitting in the lap of the Executive. Then the Judiciary was deprived of many judges of superior courts whose services were unceremoniously terminated. The remaining ones were called upon to take oaths frequently under numerous Martial Law Orders. As a result, person of each and every judge became a subject matter of discussion. Those who remained associated with the Judiciary were condemned as supporting tyranny. Those who were removed from office considered themselves as martyrs, and those who left after tendering their resignations regarded themselves as heroes. This form of discrimination had a very bad effect on the Judiciary. People lost faith in it and started expressing doubt about its impartiality and integrity. Allegations were levelled (which are repeated time and again) that the devil of personal interest has managed to find an abode in the hearts of the judges of superior courts. But strange it may sound that those were the "condemned" ones whose recent judgments eventually paved the way for the establishment of democracy in the country and provided hope for the "martyrs" and "heroes" that the new dispensation will adequately compensate them.

During this period it was held out that "Qazi Courts" on Islamic lines would be established in order to provide cheap, quick and easy justice to the masses, and at one stage it was generally believed that the present judicial system in the country would be completely abolished. But apparently this attempt of keeping the Judiciary in the clutches of the Executive also did not succeed.

Now for the past ten months constitutional democracy has again started functioning in the country, and I feel proud to say that I have been a party to those important decisions of the Supreme Court which paved the way for the establishment of a democratic order in Pakistan. Furthermore, if not at the time

of joining, then at least at the time of leaving, I bid farewell to the Judiciary when conditions are proper for strengthening the independence of its conscience and reinforcing the supremacy of the Rule of Law. It gives me great pleasure to point out that in these decisions the Constitution has been interpreted in the light of the relevant principles of jurisprudence as well as what is best in the interest of Pakistan.

It is only under constitutional democracy that the Judiciary can maintain freedom of conscience and uphold the supremacy of the Rule of Law. Besides that if public trust is restored in a free, independent and impartial Judiciary, then it can resolve all controversial issues including those involving the Centre and Provinces. It is evident from the early history of different democratic countries that the Judiciary had played a very important role in strengthening constitutional democracy and national unity. On the other hand you may recall that when Pakistan broke up, the country did not have any Constitution. There indeed did exist the lawlessness of Martial Law, but darkness does not have a positive existence of its own, it is merely the absence of light. So if the country broke up, it broke up in a kind of darkness. The lesson which is to be learnt from this experience is that each and every dispute between the Federation and Provincial Autonomy must be resolved through the Judiciary and it must be clearly understood that the consolidation and survival of constitutional democracy in this country entirely depends on making the Judiciary strong and genuinely independent. This is only possible if the Judiciary is drawn out of the clutches of the Executive and there is constant pressure of public opinion on the political leaders to adopt the habit of turning to the courts for the resolution of their disputes instead of following a course of mutual confrontation and providing an opportunity to a third force to intervene. They must not take the law in their own hands, but if they consider themselves as an aggrieved party, they should be ready and willing on every occasion to give themselves up to the hands of law. This is precisely what is meant by the supremacy of the Rule of Law.

REPORT OF THE FIRST COMMITTEE OF UN ON DISARMAMENT

- 1- Continuation of suspension of nuclear and thermo-nuclear tests and obligations of States to refrain from their renewal (73);
- 2- The urgent need for a treaty to ban nuclear weapons tests under effective international control (72);
- 3- Question of Disarmament (19);
- 4- The prevention of the wider dissemination of nuclear weapons (81);
- *5- Question of Algeria. (80)
(* The consideration of this item was postponed until 14 December, 1961 at the request of the representative of Libya adopted without objection by the Committee on 30 November, 1961)
- 5- Report of the Committee on the Peaceful Uses of Outer Space (21);
- 6- The Korean Question – Reports of the United Nations Commission for the Unification and Rehabilitation of Korea. (20);
- 7- Question of Algeria (80);
- 8- Threat to international peace and security arising from new plans of aggression and sets of intervention being executed by the Government of the United States of America against the Revolutionary Government of Cuba (78).

Compiled by Javid Iqbal:
Alternate representative
on the First Committee

27-12-61

First Committee

On Friday 16th October, 1961 the Committee considered a letter (A/C.1/844) dated 27th September, 1961 from the President of the General Assembly to its Chairman listing the items allocated to the First Committee by the General Assembly. In the above letter these items were listed as follows:-

- (1) Question of Disarmament
- (2) The Korean Question - reports of the United Nations Commission for the Unification and Rehabilitation of Korea.
- (3) Report of the Committee on the Peaceful Uses of Outer Space.
- (4) The urgent need for a treaty to ban nuclear weapons tests under effective international control.
- (5) Continuation of suspension of nuclear and thermonuclear tests and obligations of States to refrain from their renewal.
- (6) Complaint of Cuba of threats to International peace and security arising from new plans of aggression and acts of intervention being executed by the Government of the United States of America against the revolutionary Government of Cuba.
- (7) Question of Algeria.
- (8) The prevention of the wider dissemination of nuclear weapons.

A discussion started on the order of priorities of the items on the agenda (A/C.1/844), and statements were made by the representatives of the United States, the U.S.S.R. and India, making three different proposals.

The proposals of the U.S. and India were also supported by draft resolution A/C.1/L.281 and A/C.1/L.282 respectively; but the representative of the U.S.S.R. made an oral proposal to the effect that items 1,5,4 and 8 listed in

document A/C.1/844 above should be considered by the Committee as items 1,2,3 and 4 respectively.

The U.S. proposal (supported by draft resolution

The U.S.S.R. submitted an amendment (A/C.1/L.287) to the Afghanistan draft resolution, whereby the words "items 1,5,4 and 8" would be substituted for the words "item 5".

On Wednesday October 18, 1961 the Committee proceeded to voting on the draft resolutions, amendments and proposals before it. The request of Afghanistan for priority for its draft resolution was rejected by 61 votes to 23, with 10 abstentions. Pakistan voted against it. The representative of Afghanistan thereupon withdrew his draft resolution and the representative of the U.S.S.R. stated that he would not press for a vote on his amendment to the Afghanistan draft resolution.

The Indian draft resolution, as amended by the United States, was adopted by 83 votes to 10, with 4 abstentions. Pakistan did not participate in the vote.

The Indian amendment (A/C.1/L.285) to the United States revised draft resolution (A/C.1/L.281/Rev.1) was rejected by a roll-call vote of 51 to 33, with 15 abstentions. Pakistan voted against it. The United States draft resolution was adopted by a roll-call vote of 54 in favour, 13 against and 31 abstentions. Pakistan voted in favour of it.

On Thursday October 19, 1961 the Committee unanimously adopted the oral proposal by Ghana that items 1 end 8 in document A/C.1/844 be considered as items 3 and 4 respectively on its agenda. It also unanimously adopted that item 7 in document A/C.1/844 be listed as item 5 on the Agenda of the Committee.

The representative of El Salvador then moved, under Rule 120 of the Rules of Procedure, the adjournment of the question of priority for the remaining items on the agenda. The motion was carried by a vote of 48 in favour to 14 against, with 22 abstentions. Pakistan voted for the adjournment.

Order of consideration of items as approved at its meetings on 18th and 19th October, 1961 (document A/C.1/848) was as follows:-

1. Continuation of suspension of nuclear and thermo-nuclear tests and obligations of States to refrain from their renewal (73);
 2. The urgent need for a treaty to ban nuclear weapons tests under effective international control (72);
 3. Question of Disarmament (19);
 4. The prevention of the wider dissemination of nuclear weapons (81);
 5. Question of Algeria. (80)
-
1. Continuation of suspension of nuclear and thermo-nuclear tests and obligations of States to refrain from their renewal (73);
 2. The urgent need for a treaty to ban nuclear weapons tests under effective international control (72);

The general debate on the above two items was opened by the representative of the United States (Mr. Stevenson). Statements were also made by the representatives of India and the U.K.

The following draft resolutions were before the Committee:-

- (1) A U.K. - U.S. draft resolution (A/C.1/L.280).
- (2) An Indian draft resolution (A/C.1/L.283). This draft resolution was later revised and submitted as A/C.1/L.283/Rev.1.
- (3) An Afghanistan amendment (A/C.1/L.289) to the above revised. Indian draft resolution.
- (4) A draft resolution (A/C.1/L.288) jointly sponsored by Canada, Denmark, Iceland, Japan, Norway and Sweden. (Pakistan and Iran also joined as sponsors).

The U.K. – U.S. draft resolution (A/C.1/L.280) laid emphasis on the necessity “to reach an agreement prohibiting all nuclear weapons tests under effective control”. It urged, “the States negotiating at the conference for the discontinuance of nuclear weapons tests in Geneva at once to renew their efforts to conclude at the earliest possible time a treaty on the cessation of nuclear and thermo-nuclear weapons tests in all environments under inspection and control machinery adequate to ensure compliance with its the organisation of International control machinery representing all parties to the treaty and staffed and operated in such as way as “to guarantee its objectivity and effectiveness, avoiding self-inspection”; the executive and administrative operations of the control system established under the treaty should not be obstructed by the exercise of a veto; and administrative responsibility should be concentrated in the hands of a single impartial Administrator functioning under the supervision of a commission constituted by the representatives of parties to the treaty. The draft resolution requested “the negotiating States to report to the United Nations Disarmament Commission by March 1, 1962 on the progress of their negotiations”, and called upon “all States, upon the conclusion of a treaty which will ensure that nuclear weapons tests will be permanently prohibitive under effective controls to ratify or to adhere to that treaty.”

The Indian draft resolution (A/C.1/L.283) expressed deep concern and regret that test explosions had been resumed, and urged “the Powers concerned to refrain from further test explosions pending the conclusion of the necessary agreements with regard to tests and complete disarmament.” However, in the revised Indian draft resolution (A/C.1/L.283/Rev. 1), two paragraphs were added in the operative part. It considered that such tests should stand totally prohibited, and called upon “the Powers concerned to engage themselves with urgency and speed in the necessary efforts to establish such internationally binding obligations”

which would lead to the cessation and prohibition of test explosions.

The Afghanistan amendment (A/C.1/L.289) to the above revised Indian draft resolution would have the words "test explosions have been resumed" in paragraph 1 of the operative part to be replaced by the following words: "circumstances have led the nuclear Powers to resume test explosions."

Explaining the U.S. position, Mr. Stevenson stated in his preliminary statement that the act of the voluntary moratorium and the resumption of nuclear weapons testing by the Soviet Union would result in further testing by the United States in self-protection. Nevertheless, he said, the U.S. stood ready to resume negotiations with the U.S.S.R. for a test ban treaty without delay. If the U.S.S.R. agreed to such a resumption and stopped its tests, a treaty with effective controls be signed within thirty days.

The above arguments were further developed by Mr. Dean (U.S.A.) in his statement. He said that effective control was absolutely essential to verify observance of a treaty to cease nuclear weapons testing. He also stated that much ground has already been covered and agreements between the negotiating parties reached in Geneva on the draft treaty for the banning of nuclear weapons tests. He urged the Committee to support the the U.S. - U.K. draft resolution.

Sir Michael Wright (U.K.) stated that there could be no adequate assurance that no nuclear tests were taking place if there was no international machinery for establishing that fact. A voluntary uncontrolled moratorium did not have the force and validity of a treaty, and it did not involve an international system of scientific control.

Mr. Krishna Menon (India) spoke in support of the revised Indian draft resolution (A/C.1/L.283/Rev. 1). He blamed the two sides negotiating in Geneva with respect to preparations for nuclear weapons testing, and directed his attack mainly against the United States. He said that a treaty could not be secured by delivering an ultimatum. It could be

negotiated and signed in due course, but pending the establishment of internationally binding obligations, a voluntary moratorium regarding the suspension of nuclear etc. weapons testing should be resumed.

The draft resolution (A/C.1/L.288) jointly sponsored by Canada, Denmark, Iceland, Japan, Norway and Sweden (Pakistan and Iran also joined as sponsors), was worded in the form of an appeal to the U.S.S.R. to refrain from exploding in the atmosphere their 50 megaton hydrogen bomb by the end of October, 1961.

Mr. Hekkerup (Denmark), while introducing the above 8 powers draft resolution, requested that it be treated as an urgent matter and given absolute priority in the voting. The representative of India opposed the Danish request for priority and asked priority for the Indian draft resolution. The representatives of Japan, Pakistan and Canada supported the Danish proposal.

On Monday 23rd October, 1961, however, India tabled an amendment (A/C.1/L.290) to the 8-Powers draft resolution, which was accepted by the sponsors. The representatives of Sweden, Iran, Iceland and Norway addressed the Committee on the 8-Powers draft resolution incorporating the Indian amendment (A/C.1/L.283/Rev.1). The representative of Norway proposed that it be voted upon before the adjournment of the meeting, but later - owing to the opposition of the Soviet bloc - withdrew his proposal.

At this stage the following additional draft resolutions were placed before the Committee:-

- (1) Final version of the revised Indian draft resolution now sponsored also by Ghana, Nepal, U.A.R., Ethiopia and Yugoslavia (A/C.1/L.283/Rev.2)
- (2) Revised amendment of Afghanistan to the above revised Indian draft resolution (A/C.1/L.289/Rev.1)
- (3) A draft resolution submitted by Ethiopia, Ghana, Guinea, Mali, Morocco, Nigeria, Sudan and U.A.R. (A./C.1/1.291).
- (4) Senegal's amendment to the above African draft

resolution (A/C.1/L.293).

- (5) A draft resolution in the form of a Declaration submitted by Ceylon, Ethiopia, Ghana, Libya, Somalia, Sudan, Tunisia and Indonesia (A/C.1/L.292).

On Wednesday 25th October, 1961, the representative of Iran, on a point of order, moved that the Committee decide to adjourn temporarily the general debate on items 1 and 2 on its agenda in order to undertake immediate consideration of the 8-Powers draft resolution (A/C.1/L.288/Rev.1)

The Chairman stated that under the Rule 117 of the rules of Procedure he would put the motion, to the vote, after two representatives had spoken in favour of and two against the motion. At this stage a Bulgarian motion to adjourn the meeting was defeated by a vote of 24 in favour, 51 against with 15 abstentions. Pakistan voted against the Bulgarian motion.

The ruling of the Chairman was then challenged by the representative of the U.S.S.R., and was upheld by the Committee by a vote of 49 in favour, 20 against with 21 abstentions. Pakistan voted in favour of the ruling of the Chairman.

The representative of Afghanistan requested that under Rule 129 he be permitted to explain his vote before a vote was taken on the Iranian motion. The Chairman held that since Rule 117 was applicable, he could only allow explanations of vote after the vote. The ruling of the Chairman was upheld by a roll-call vote of 50 in favour, 17 against with 26 abstentions. Pakistan voted in favour of the Chairman's ruling.

The representative of Bulgaria proposed that Iranian motion be voted upon in two separate parts. The representative of Iran objected. The Bulgarian proposal was rejected by a vote of 22 in favour, 49 against with 22 abstentions. Pakistan voted against the Bulgarian proposal.

The Iranian motion as a whole was adopted by a roll-call vote of 51 in favour, 20 against with 22 abstentions. Pakistan voted in favour of the Iranian motion.

Thus the general debate on items 1 and 2 was temporarily closed and the Committee began consideration of the 8-Powers draft resolution (A/C.1/L.288/Rev.1)

Consideration of 8-Powers draft resolution (A/C.1/L.288/Rev.1)

The debate on the above draft resolution started with the statements by the representatives of Jordan, New Zealand, the U.K., Finland, Pakistan, Austria, Guinea, the U.S.S.R., the U.S., Italy, Greece and Denmark.

Mr. Muhammad Zafrullah Khan (Pakistan) stated that although the deleterious effects of the Soviet tests were confined to certain regions, they were not altogether so confined; they gradually spread to neighbouring regions and to further regions. These explosions were definitely harmful to human life and health. The present threat had been precisely defined and a date had been set for exposing humanity to its harmful effects. There was, therefore, extreme urgency with regard to this particular matter.

Mr. Tsarapkin (U.S.S.R.) stated that the question of the cessation of nuclear tests should have been considered under Disarmament. He blamed the U.S. for carrying on these tests from 1952 to 1958. About the 8-Powers draft resolution, he said, it had been tabled by members of eastern military blocs. He said that Pakistan was within the CETO military alliance and had accepted preventive atomic bombings by American planes on its own territory.

In exercising his right of reply, Mr. Muhammad Zafrullah Khan (Pakistan) said that the foul charge which the representative of the U.S.S.R. had repeated against his country was a lie cynically invented in Moscow, and it was being glibly repeated since then, in spite of the categorical denials of the Government of Pakistan.

Eventually the representative of Denmark moved, under Rule 118, that the Committee close the debate on the 8-

Powers draft resolution and proceed to the vote. The motion was opposed by the representatives of Afghanistan and Poland. A Romanian action for the adjournment of the meeting was rejected by 47 votes to 11, with 26 abstentions. Pakistan voted against the Romanian motion. The motion of Denmark was adopted by a roll-call vote of 54 in favour, 9 against, with 21 abstentions. Pakistan voted in favour of the Danish motion.

Then followed the explanation of votes on the 8-Powers draft resolution before the vote. The 8-Powers draft resolution was adopted by a roll-call vote of 75 in favour 10 against with one abstention. Pakistan voted in favour of the resolution.

The representative of Denmark requested the Chairman to inform the President of the General Assembly of the adoption of the above resolution and to request the latter to place it on the agenda of the General Assembly as soon as possible.

On 27th October, 1961 the 8-Powers resolution (adopted by the first Committee) was placed before the General Assembly. Mr. Tsarapkin (U.S.S.R.) while explaining his vote, again repeated its allegations against Pakistan. He stated that the representatives of Iran and Pakistan attempted to draw these charges in the First Committee. But there were official top secret documents of CENTO which had been discovered by the Soviet Union and which could be shown to any delegation that might wish to see them. (These documents were released by the Soviet Union to the Press of the United Nations and were later circulated among the member-States.)

Mr. Iqbal (Pakistan), in exercising his right of reply, pointed out to the General Assembly that the above documents were faked and were based on lies and falsehood.

The General Assembly then proceeded to vote on the 8-Powers resolution, which was adopted by a roll-call vote of 87 in favour, 11 against with one abstention. Pakistan voted in favour of the above resolution. (General Assembly Resolution 1632(XVI))

The Committee resumed the General debate on items 1 and 2 on its agenda with statements by the representatives of Sweden, Saudi Arabia, Iran, Poland, the Niger and Australia.

On the following day statements were made by the representatives of Austria and Yugoslavia. At this juncture, the representative of Ethiopia, on a point of order, moved, under Rule 117, that the Committee decide to adjourn temporarily the general debate on items 1 and 2 on its agenda so as to undertake immediately the discussion of the final version of the revised Indian draft resolution (also sponsored by Ethiopia) contained in document A/C.1/L.283/Rev.2 and to act upon it.

Mr. Chakravarty (India), speaking in favour of the Ethiopian motion, emphasized the urgency of stopping all nuclear tests and the resumption of Voluntary moratorium. Nigeria's representative also supported the Ethiopian motion.

The representative of the U.K., however, opposed the Ethiopian motion on the grounds that after a lengthy debate the Committee had decided to discuss the present agenda items 1 and 2 together. He said the main purpose of both items was to stop nuclear tests. The Indian draft resolution called, for a moratorium without making any mention of control. A decision on it at the present stage would prejudice the issue of whether an uncontrolled moratorium could be more effective than a treaty under international control. The representative of Greece also opposed the Ethiopian motion.

However, the Chairman put to the vote the Ethiopian representative's motion. A vote was taken by roll-call. The motion was adopted by 44 votes to 22 with 29 abstentions. Pakistan voted against the Ethiopian motion. Thereafter the representatives of Afghanistan, Guinea, Peru, the Sudan, Colombia and Japan explained their vote on the motion.

The representative of the U.S., on a point of order, moved that the Committee decided to act on the U.K.-U.S. draft resolution contained in document A/C.1/L.280 immediately after acting on document A/C.1/L.283/Rev.2, and at the same meeting.

This led to a procedural tangle. The representative of Ghana, on a point of order, moved under Rule 118, that the Committee close the debate on draft resolution A/C.1/L.283/Rev.2 and proceed to vote upon it.

The representative of Peru protested against the motion for the closure of debate on draft resolution A/C.1/L.283/Rev.2. Nigeria's representative supported the Peruvian position that the debate on the above draft resolution could not properly be closed until it had effectively begun. At this stage the representative of Italy moved the adjournment of the meeting. The motion was carried by a vote of 53 in favour to 26 against, with 14 abstentions. Pakistan voted in favour of the Italian motion.

On the next meeting of the Committee, the representative of the U.S., on a point of order, withdrew the motion he had submitted at the last meeting, but reserved his right to reintroduce it after the Committee had disposed of the draft resolution contained in document A/C.1/L.283/Rev.2. The representative of Ghana also withdrew the motion for closure of the debate which he had submitted previously.

Thus the Committee decided for the second time to close temporarily the general debate on items 1 and 2 on its agenda, and began consideration of draft resolution A/C.1/L.283/Rev.2.

Consideration of the Indian draft resolution A/C.1/L.283/Rev.2.

Mr. Stevenson (U.S.A.), making a Statement in connection with the discussion on the above draft resolution, pointed out to the Committee that in spite of the General Assembly's resolution, the Soviet Union had exploded a bomb much larger than 50 megatons. It was exploded in cynical disregard of the United Nations.

The representative of the U.S.S.R., exercising his right of reply, read a passage from the Statement recently made by Mr. Khrushchev. He stated that such test-explosions were

necessary for building up the defensive strength of the Soviet Union.

Statements were also made by the representatives of New Zealand, Netherlands, Canada, Afghanistan, Norway and Italy.

At the next meeting of the Committee the representative of Peru introduced an amendment (A/C.1/L.294) sponsored by Bolivia, Brazil, Chile, Colombia, El Salvador, Peru and Venezuela to the finally revised Indian draft resolution (A/C.1/L.283/Rev.2) under consideration. The amendment added a paragraph to the above draft resolution to the effect that "the States concerned will reach agreement as soon as possible on the cessation of tests of nuclear and thermo-nuclear weapons, under appropriate international control."

Mr. Muhammad Zafrullah Khan (Pakistan) stated that the representatives of the U.S.S.R., have repeated the calumny that Pakistan and its associates in the Central Treaty organization have conspired together to create vast areas of destruction within their own territories presumably to serve as barriers against the advance of U.S.S.R. troops into those territories. The Pakistan Government has officially and categorically repudiated these charges. The documents allegedly emanating from CENTO sources which have been circulated to the members of the Assembly, have been repudiated as fake documents by the Governments concerned. They are not even official documents of the U.S.S.R Government. They are introduced with a report from TASS. It is difficult to see what connection these documents have with the continuation of suspension of the ban on nuclear tests. Pakistan is the master of its own policies.

The representative of the U.S.S.R., in exercising his right to reply, stated that Pakistan was being used by the Western Powers and the aggressive alliance of CENTO was an instrument of this aggressive policy. He also referred to the U-2 flight incident and the flights of United States reconnaissance aircraft from airfields located on Pakistan territory.

Mr. Muhammad Zafrullah Khan (Pakistan), in exercising his right of reply, stated that with regard to the U-2, the Pakistan Government stated publicly that it was not aware of the destination of the U-2 when it left the Pakistan airfield. Pakistan had also made it quite clear that in future it would have to be assured with regard to the destination of any aircraft taking off from the airfields and the purpose of the flight before it would permit it to take off from its airfield.

The representative of the U.S.S.R. then said that the representative of Pakistan had contradicted himself. He had said that Pakistan was the master of its own policy, that it knew what it was doing and it knew what was the purpose of its actions.

Mr. Muhammad Zafrullah Khan (Pakistan), again exercising his right of reply, stated that he had not contradicted himself. Pakistan was the master of her policy, for it made it quite clear to the United States in the matter of the U-2 that in future it must know the destination and purpose of all flights from its airfields, otherwise it could not permit them. If that was not proof of its being master of its own policies and actions, he said, I do not see what further proof the U.S.S.R representative requires.

On Thursday, 2nd November, 1961 the Committee concluded the draft resolution contained in document (A/C.1/L.283/Rev.1 and L.294). Then followed statements in explanation of vote.

The representative of Afghanistan introduced an oral revision of his amendment (A/C.1/L.289/Rev.1) by which it would read: "Deeply concerned over the international tension that has led to the nuclear Powers to resume nuclear test explosions." The representative of the U.K. and Peru moved that finally revised Indian draft resolution (A/C.1/L.283/Rev.2 and add 1) under consideration be voted upon in parts. The foregoing draft resolution and amendments thereto were consequently voted upon as follows:

- (1) The Ghana amendment was rejected by a roll-call vote

of 14 in favour 59 against, with 28 abstentions. Pakistan voted against the Ghana amendment.

- (2) The Afghanistan revised oral amendment was rejected by a roll-call vote of 19 in favour, 61 against, with 21 abstentions. Pakistan voted against it.
- (3) The Latin American amendment (A/C.1/L.294) was adopted by a roll-call vote of 86 in favour, 10 against, with 5 abstentions. Pakistan voted in favour of it.
- (4) The preambular paragraphs of the draft resolution (A/C.1/L.283/Rev.2) under consideration were adopted by a vote of 72 in favour, none against, with 25 abstentions. Pakistan voted in favour of it.
- (5) The first operative paragraph was adopted by a vote of 83 in favour, none against, with 17 abstentions. Pakistan voted in favour of it.
- (6) The words "or general and complete disarmament" in operative paragraph 2 were deleted by a roll-call vote of 36 in favour, 43 against, with 22 abstentions. Pakistan voted for the deletion of the above words.
- (7) The remainder of operative paragraph 2 was adopted by a roll-call vote of 69 in favour, 21 against, with 11 abstentions. Pakistan voted in favour of it.
- (8) The newly numbered fourth and last operative paragraph was adopted by a roll-call vote of 81 in favour, 10 against, with 10 abstentions. Pakistan voted in favour of it.
- (9) The draft resolution as a whole, and as amended, was adopted by a roll-call vote of 72 in favour, 21 against, with 8 abstentions. Pakistan voted in favour of it.

Subsequent to the vote, the representative of the U.S. moved under Rule 117 of the Rules of Procedure that the Committee decided to adjourn immediately the general debate on items 1 and 2 on its agenda temporarily so as to undertake immediate discussion of the U.S.-U.K. draft resolution (A/C.1/L.280).

The representative of India, on a point of order, requested that draft resolution A/C.1/L.283/Rev.2 adopted by the

Committee be transmitted to the General Assembly for consideration as soon as possible.

A procedural debate ensued during which the representative of Afghanistan pronounced that the Committee adjourn its procedural discussion. The representative of the Philippines moved adjournment of the meeting. The motion was adopted by a vote of 50 in favour, 18 against, with 17 abstentions. Pakistan voted in favour of the motion.

On 2nd November, 1961 a letter from the Permanent Representatives of Iran, Pakistan, Turkey and the U.K. addressed to the President of the General Assembly was circulated among the members of the Assembly under document A/C.1/855. It was in reply to United Nations document No. A/C.1/853 dated 30th October, 1961 which reproduced a letter from the representative of the Soviet Union together with a number of enclosures consisting of a Tass Agency statement and copies of documents alleged to be the property of the Central Treaty Organization.

It stated that the Soviet delegation's action in using the United Nations Secretariat facilities for the translation, reproduction and circulation of news agency propaganda material of this character was wholly improper.

On Friday, 3rd October, 1961 the Chairman stated that he would transmit to the General Assembly, for consideration at its earliest possible meeting, the finally revised Indian draft resolution (A/C.1/L.283/Rev.2) adopted by the Committee provided the Committee saw no objection to such a procedure. The representative of Afghanistan thereupon withdrew his motion made at the previous meeting. There being no objection to the Chairman's proposal, the Chairman stated that he could notify the President of the General Assembly of the consensus of opinion of the Committee in this regard. The Indian motion was thus approved.

The U.S. motion made at the Last meeting was adopted by a vote of 50 in favour, to none against, with 25 abstentions.

Accordingly, the Committee began the debate on the U.S.-U.K. draft resolution (A/C.1/L.280).

The finally revised Indian draft resolution (A/C.1/L.283/Rev.2) was adopted by the General Assembly by a roll-call vote of 71 to 20, with 8 abstentions. Pakistan voted in favour of it. (General Assembly resolution 1648 (XVI).

Consideration of the U.S.-U.K. draft resolution (A/C.1/L.280).

Statements were made by the representatives of Guatemala, Canada and the U.S.S.R.

The representative of the U.S.S.R. opposed the draft resolution stating that his country would not consider a treaty on the suspension of nuclear tests unless and until it is accompanied by general and complete disarmament.

The representative of the U.S., on a point of order, moved, under Rule 118 the closure of the debate. The motion was adopted by a vote of 53 in favour to none against with 39 abstentions. Pakistan voted in favour of it.

Statements in explanation of vote on the U.S.-U.K. draft resolution were made by the representatives of Sweden, Afghanistan, Yugoslavia, Cyprus, Ghana, Austria, Mali, the U.S.S.R., Venezuela and the U.A.R.

India moved that the U.S.-U.K. draft resolution be voted upon in parts. The draft resolution was voted upon as follows:

- (1) The words "and the rejection of the proposal of the Governments of the United States and the United Kingdom that further nuclear tests in the earth's atmosphere be suspended", in the second preambular paragraph were retained by a vote of 52 to 13, with 26 abstentions. Pakistan voted in favour of their retention.
- (2) The words "pending completion of General Assembly discussion, on this matter", in the third preambular

paragraph were retained by 51 votes to 12 with 30 abstentions. Pakistan voted in favour of their retention.

- (3) Sub-paragraphs (b) and (c) of operative paragraph 2 were retained by a roll-call vote of 57 to 14, with 23 abstentions. Pakistan voted in favour of their retention.
- (4) The draft resolution (A/C.1/L.280) as a whole was adopted by a roll-call vote of 67 to 11, with 16 abstentions. Pakistan voted in favour of it.

The representative of the U.S., on a point of order, requested the Chairman to notify the President of the General Assembly of the express will of the Committee that the U.S.-U.K. draft resolution (A/C.1/L.280) be considered by the General Assembly at its earliest possible meeting. There being objection by the representative of the U.S.S.R. to the request, the Chairman put the U.S. motion to the vote. It was adopted by a vote of 39 in favour to 11 against, with 12 abstentions. Pakistan voted in favour of the U.S. motion.

The Chairman announced that the Committee would then resume the General debate on items 1 and 2 on its agenda. The representative of El Salvador moved, under Rule 118, that the Committee close the general debate on items 1 and 2 and proceed to discuss the two remaining draft resolutions contained in documents A/C.1/L.291 and Add.1 and A/C.1/L.292 and amendments to the former contained in document A/C.1/L.293 and Add. 1 and Add.1/Corr.1. The motion was adopted by 49 votes in favour to none against, with 35 abstentions. Pakistan voted in favour of it.

After a brief procedural discussion as to the manner in which the debate on the two remaining draft resolutions was to be conducted, the Chairman suggested, and the Committee agreed, that speakers could refer to both draft resolutions concurrently or separately.

In the General Assembly the U.S.-U.K. draft resolution (A/C.1/L.280), adopted by the Committee, was considered on 8th November, 1961. Statements in explanation of vote

were made by the representatives of Cyprus, the U.K. Japan, the U.S., Morocco and the U.S.S.R.

Cyprus introduced an amendment A/L.363 to the effect that the date by which the negotiating States should report on the progress of their negotiations to the United Nations Disarmament Commission should be changed from 1st March, 1962 to 14th December, 1961. The amendment was adopted by 67 votes to 11, with 16 abstentions, Pakistan voted in favour of it.

The U.S.-U.K. draft resolution, as amended, was adopted by the General Assembly by a roll-call vote of 71 to 11, with 15 abstentions. (General Assembly resolution No. 1649 (XVI).) Pakistan voted in favour of it.

Consideration of the African and Afro-Asian draft resolutions. A/C.1/L.291/Rev. 1 and L.292 and Add.1)

It was already been stated that 8 African Powers had submitted originally a draft resolution contained in document A/C.1/L.291. Amendments to this draft resolution had been presented by Senegal (A/C.1/L.293) to the effect that in subparagraph (a) of the draft resolution the words "in Africa" should be replaced by the words "especially in Africa", and that subparagraph (b) be deleted.

However, at a later stage, the African States submitted a revised draft resolution (A/C.1/L.291/Rev.1). It called upon member states to refrain from carrying out or continuing to carry out in Africa nuclear tests in any form, to refrain from, using the territory, territorial waters or air space of Africa in testing, storing or transporting nuclear weapons, and to consider and respect Africa as a de-nuclearized neutral zone.

Senegal's amendments to the first version of the above revised draft resolution had become useless, it did not insist on presenting amendments to the revised version (A/C.1/L.291/Rev.1)

The second draft resolution before the Committee (A/C.1/L.292) had been presented by Ceylon, Ethiopia, Ghana, Libya, Nigeria, Somalia, Sudan, Tunisia and Indonesia. Later Guinea, Liberia and Togo also joined as co-sponsors.

This draft resolution declared that nuclear and thermo-nuclear weapons must not be used by Member States in war, and requested the Secretary-General to consult the Governments of Member States to ascertain their views on the possibility of convening a special conference for signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons for war purposes and to report on the results of such consultation to the seventeenth session of the General Assembly.

The Committee began the debate on the above two draft resolutions on 8 November, 1961. The representatives of the U.S. and the U.K. were opposed to these draft resolutions. The representatives of the U.S.S.R. spoke in favour of them.

Italy submitted amendment (A/C.1/L.295) to draft resolution A/C.1/L.292 and Add 1 and 2. The effect of these amendments was to add the words "contrary to the United Nations Charter" whenever the use of nuclear and thermo-nuclear weapons for war purposes appeared. The amendments were not acceptable to the sponsors of draft resolution A/C.1/L.292.

Stating the position of Pakistan with regard to the two draft resolutions under consideration by the Committee, Mr. Muhammad Zafrullah Khan said that although he sympathized with the objective of draft resolution A/C.1/L.291/Rev.1, he considered it unnecessary, in view of the resolutions already adopted on the two items under discussion. If, however, the African States felt that the adoption of the proposal would add to their sense of Security, the Pakistan delegation would be prepared to support it.

With regard to draft resolution A/C.1/L.292, he stated that the aim of this draft resolution was to eliminate the use of nuclear weapons in case of war. He considered that it

could be more appropriately be discussed against the background of the question of complete disarmament. However, if the Committee decided to put this draft resolution to the vote under the present items, Pakistan will support operative paragraph 1, although the drafting of sub-paragraph (a) of that paragraph could be improved. His delegation would find greater difficulty in supporting paragraph 2 which related to one aspect of general and complete disarmament, and which should be discussed in its proper context. The best course would be to defer draft resolution A/C.1/L.292 for consideration under the general heading of Disarmament. If that course was not followed, Pakistan would abstain in operative paragraph 2.

The representative of Libya submitted an amendment (A/C.1/L.296) to draft resolution A/C.1/L.291/Rev.1 and Add 1-3. This amendment had the effect of removing the word 'neutral' from sub-paragraph (c) of the operative paragraph. The amendment was accepted by the sponsors of the above draft resolution.

The debate on the above two draft resolutions having been concluded, the Committee voted upon the draft resolutions and amendments thereto. The voting was as follows:

A/C.1/L.291/Rev.1

Operative paragraph 9a) (roll call), (1 in favour, 2 against, with 35 abstentions. Pakistan voted in favour of it.

Operative paragraph (b) (roll call), 16 in favour, 2 against, with 40 abstentions. Pakistan voted in favour of it.

Operative paragraph (c) (roll call), 58 in favour, none against, with 41 abstentions. Pakistan voted in favour of it.

The draft resolution as a whole was adopted by a roll call vote of 57 in favour, none against, with 42 abstentions. Pakistan voted in favour of it.

Italian amendments (A/C.1/L.295) to draft resolution A/C.1/L.292

The part of paragraph 6 of the amendments reading Operative paragraph 2; Substitute the words 'to consider the

means of prohibiting, for the words 'for signing a convention on the prohibition of' (roll call), 25 in favour, 50 against with 25 abstentions. Pakistan abstained on it. It was, however, not adopted. The remainder of the Italian amendments (roll call), 28 in favour, 50 against with 22 abstentions. Pakistan abstained on them. The amendments were not adopted.

Draft resolution A/C.1/L.292 was adopted by a roll call vote of 60 in favour, 16 against, with 25 abstentions. Pakistan voted in favour of it. (The operative paragraphs of this draft resolution were not voted upon separately).

Draft resolution A/C.1/L.291/Rev. 1 was adopted by the General Assembly by a roll call vote of 54 in favour, none against with 14 abstentions. Pakistan voted in favour of it. (General Assembly resolution 1652 (XVI)).

Draft resolution A/C.1/L.292 was also adopted by the General Assembly by a roll call vote of 55 in favour to 20 against, with 26 abstentions. Pakistan abstained on it and explained its vote before the vote on this draft resolution. Dr. Javed Iqbal (Pakistan) explaining the position of the Pakistan delegation, stated that this draft resolution should have been considered under the item on *Disarmament*. At any rate, since the principal powers, particularly the U.S.S.R., have agreed to resume negotiations on the signing of a treaty with regard to the banning of nuclear and thermo-nuclear tests, the position had changed and this draft resolution become unnecessary and ought not to be proceeded with. However, if it were put to the vote, Pakistan would abstain on it.

Draft resolution A/C.1/L.292 was voted upon paragraph by paragraph. Eventually the draft resolution as a whole was adopted by the General Assembly, as has already been stated. (General Assembly resolution 1653 (XVI)).

Thus the First Committee terminated its consideration of items 1 and 2 on its agenda.

3. Question of Disarmament (19)

The debate on this item began with the statements of the representatives of the U.S.S.R. and the U.S.A.

Mr. Zorin (U.S.S.R.) stated that the international situation has deteriorated because of the policy of the Western Powers, particularly the U.S.A. The U.S.A. and her allies in the military blocs have led things in the direction of war. He then proceeded to discuss the German peace treaty from the Soviet standpoint, and emphasized on the consolidation of the existing frontiers of the two German States. He said that to secure peace it was necessary to destroy all weapons, liquidate all armed forces, destroy the whole military machinery of States. He repeated the Soviet programme for general and complete disarmament and referred to "Basic provisions of a treaty on general and complete disarmament" (A/C.1/856) submitted to the General Assembly last year by the Soviet Government's Chairman Khrushchev. He then referred to the principles of general and complete disarmament which were ultimately agreed upon by the Soviet Union and the United States. He pointed out that the U.S. did not talk of disarmament under international control but of the establishment of control over armament. All that is proposed was that controls should be instituted over existing weapons, and that was not acceptable to the U.S.S.R.

He said that in spite of the difficulties the negotiations must be initiated. The General Assembly should establish for the purpose of working out a draft treaty on general and complete disarmament, a Committee on disarmament. This negotiating body should be composed of representatives of the Socialist States, the States members of the Western military blocs and the neutralist States.

Mr. Stevenson (U.S.A.) stated that the U.S.S.R. sought to perpetrate the division of Germany. He restated the U.S. proposal and programme of general and complete disarmament, and said that the plan called for the creation of an International Disarmament Organization within the framework of the United Nations. The U.S. recognized that all nations have a vital stake in the cause of peace and disarmament. On that basis the U.S. supported in the past the expansion of the United Nations Disarmament Commission

to include all the Members of the Ten-Nation Committee which was carrying on disarmament negotiations in 1960, on the basis of equitable geographic distribution. He said that the U.S. suggested that Member-Countries make available to the United Nations an inventory of the forces, of the equipment and logistic support which they would be prepared to put at the disposal of the United Nations for peace-preserving functions.

On Friday 17 November, 1961, the representative of Sweden introduced a draft resolution (A/C.1/L.297) sponsored by Austria, Ceylon, Ethiopia, Libya, the Sudan and Sweden.

The draft resolution (A/C.1/L.297) suggested that an inquiry be made as to the conditions under which countries not possessing nuclear weapons might be willing to enter into specific undertakings to refrain from manufacturing or otherwise acquiring such weapons and to refuse to receive in the future nuclear weapons on their territories on behalf of any other country. It requested the Secretary-General to make such an inquiry as soon as possible and to submit a report on its results to the Disarmament Commission to take such further measures as appear to be warranted in the light of that report, and called upon the nuclear Powers to extend their fullest co-operation and assistance with regard to the implementation of this resolution.

The Committee continued the debate on this question. Mr. Godber (U.K.) said in his statement that he was satisfied to learn of the joint statement of agreed principles by the Governments of the United States and the Soviet Union. The statement, he said, was of course only a first step. He referred to the set of principles on disarmament which was agreed earlier this year by the Prime Ministers of the Commonwealth. He said that the U.K. backed the plan for general and complete disarmament presented by President Kennedy on 25 September, 1961. He emphasized the need of international verification and control at all stages of disarmament, and said that his delegation was in favour of the

participation of non-aligned nations in the body in which future negotiations on disarmament are to be held. However, he suggested that the negotiating body should not be too large.

The representative of India submitted a draft resolution (A/C.1/L.299) and addressed the Committee. This draft resolution urged the Governments of the United States of America and the U.S.S.R. to reach agreement on the composition of a negotiating body, which both they and the rest of the world could regard satisfactory. It expressed the hope that such negotiations would be started without delay and lead to an agreed recommendation to the Assembly. It requested the Governments of the U.S.A. and the U.S.S.R. to report on the results of such negotiations to the Assembly before the conclusion of the sixteenth session.

On Tuesday 21 November, 1961 statements were made, at the beginning of the meeting, by the representatives of the U.S.S.R., the U.S. and the U.K. in connection with the resumption of negotiations at Geneva on the discontinuance of nuclear weapons tests.

The Committee continued the debate on the question of disarmament. On a proposal by India, and after the Committee had heard the statements of approval by the representatives of the U.S.S.R. and the U.S., the Committee agreed, without objection, to suspend the general debate on item 3 of its agenda and to vote on the Indian draft resolution (A/C.1/L.299) to which the U.S.S.R. and Ghana had added their names as co-sponsors.

At the suggestion of the representative of Mexico, and there being no objection to it, the Committee adopted unanimously the Indian draft resolution (A/C.1/L.299/Add.1) without it being put to the vote. The representative of India then requested that the draft resolution be transmitted to the President of the General Assembly, with the request that it be considered at the plenary as soon as possible. The request was approved without objection.

The representative of Liberia moved under rule 117, that the Committee suspended temporarily the general debate on item 3 on its agenda pending the result of the negotiations adverted to in the Indian draft resolution. The U.S., on a point of order, moved, under rule 120, the suspension of the meeting for 15 minutes. The motion was carried by a vote of 72 in favour to none against, with 5 abstentions. Pakistan voted in favour of the motion.

Upon the resumption of the meeting, statement was made by the representative of Liberia and he withdrew his motion.

The Indian draft resolution (A/C.1/L.299/Add.1) was later adopted unanimously by the General Assembly on 20 November, 1961. (General Assembly Resolution 1660 (XVI)).

The Committee resumed the debate on this question on Wednesday 22 November, 1961, and statements were made by the representatives of numerous countries.

Speaking on behalf of Pakistan, Muhammad Zafrullah Khan said that the two principal powers have agreed on general principles on which a disarmament treaty could be based, but they were in disagreement over a whole range of questions relating to the subject. The element which is lacking on both sides is trust and confidence. Both sides must make earnest efforts at understanding and satisfying each other's needs and allaying each other's apprehensions.

About the composition of the negotiating body, he said that his delegation supported the proposal that the committee of ten should be enlarged by the addition of ten members. These additional ten members should not be hand-picked, but they should be elected by the Assembly, or by the Disarmament Commission, on the basis of proportionate regional representation rather than on the basis of political policies or ideologies. If this proposal was not acceptable, then each side should nominate half the number of the additions to be made.

He said that if the object of general and complete disarmament is to render war and aggression impossible, the

object must be to secure at each stage that what had been retained did not exceed what had been agreed to be retained at that stage. He pointed out that once progress was made towards an agreement on disarmament, the matter of building up a United Nations force should be simultaneously taken up. He agreed with the recommendations made by President Kennedy to the Assembly on 25 September, 1961 in this respect.

The general debate on this item was continued. The Chairman, after a procedural discussion which followed a Canadian proposal for a temporary adjournment of the debate, under rule 117, briefly recessed the meeting for purposes of consultation. After the Committee re-convened, he proposed that the Committee decide to retain item 3 on its agenda, pending the receipt of the report referred to in General Assembly resolution 1660 (XVI) of 28 November, 1961, and that it proceed next to consider and vote on draft resolution A/C.1/L.297 and Add 1 and 2. The Committee agreed unanimously to the Chairman's proposal.

The debate thus began on the draft resolution (A/C.1/L.297) with statements by the representatives of different countries. Explanations of vote before the vote were also made by some countries. The draft resolution was adopted by a roll-call vote of 57 in favour, to 12 against, with 32 abstentions. Pakistan voted in favour of it. (Adopted afterwards by the General Assembly - 58-10-23 abstentions).

The representative of Libya, speaking on a point of order, proposed that the Committee postpone consideration of item 5 on its agenda "The Question of Algeria" until 14 December, 1961. The proposal was adopted without objection, and the Committee proceeded to the consideration of item 4 on its agenda.

4. The Prevention of the Wider dissemination of nuclear weapons (81)

At the time of consideration of this item the Committee had before it a revised draft resolution (A/C.1/L.298/Rev.1)

submitted by Ireland. It called upon all States and in particular on the States at present possessing nuclear weapons to use their best endeavour to secure the conclusion of an international agreement containing provisions under which the nuclear States would undertake to refrain from relinquishing control of nuclear weapons and from transmitting the information necessary for their manufacture to States not possessing such weapons and provisions under which states not possessing nuclear weapons would undertake not to manufacture or otherwise acquire control of such weapons. It urged all States to co-operate to those ends.

The draft resolution was introduced by the representative of Ireland who spoke in detail about . Statements were also made by the representatives of the U.S., the Ukrainian S.S.R., Peru, the U.K., Canada, New Zealand, the Netherlands, Iraq, Poland, India and Ireland.

At the suggestion of the representative of Peru, the Committee without voting, unanimously adopted draft resolution A/C.1/L.298/Rev.1 thus concluding consideration of item 4 on its agenda. (This resolution afterwards was also unanimously adopted by the General Assembly).

Organisation of Committee's Work

The representative of Canada proposed that item 3 in document A/C.1/844 "Report of the Committee on the Peaceful Use of Outer Space" (Agenda item 21) be considered as item 5 on the Committee's agenda.

The representative of the U.S.S.R. proposed that item 2 in document A/C.1/844 "Report on the Committee on the Peaceful Uses of Outer Space" (Agenda item 21) be considered as item 5 on the Committee's agenda.

The representative of the U.S.S.R. proposed that item 2 in document A/C.1/844 "The Korean question – reports of the United Nations Commission for the Unification and Rehabilitation of Korea" (Agenda item 20) be considered as item 5.

A procedural discussion on the above proposals ensued in which the representatives of numerous countries participated. In the course of the discussion the representative of Afghanistan made certain procedural suggestions as a result of which the Chairman, among other things, with the consent of the Committee, closed the list of speakers in the procedural debate.

At the conclusion of the debate, the representative of the U.S.S.R. withdrew his original proposal and, instead, proposed that the Committee should first take up the Korean question insofar as it referred to the invitations to the two Korean Governments as set forth in draft resolution A/C.1/L.300 submitted by the Mongolian People's Republic, and that, without waiting for an answer, the Committee should take up the question of Outer Space and, after concluding its consideration, discuss the substance of the Korean question.

After further statements by representatives of the U.S.S.R. and Canada, the Chairman put to the vote the Canadian proposal which was adopted by a vote of 56 in favour to 13 against, with 16 abstentions. Paksitan voted in favour of the Canadian proposal.

The representative of the U.S.S.R. then proposed that the Korean question be listed as item 6 in the Committee's agenda. The proposal was adopted without objection.

Thus the Committee decided to consider the items on its agenda in the following order:

5. Report of the Committee on the Peaceful Uses of Outer Space (21);
6. The Korean question – reports of the United Nations Commission for the Unification and Rehabilitation of Korea (20)
5. Report of the Committee on the Peaceful Uses of Outer Space (21);

The Committee commenced its consideration of this item with statements by the representatives of the United States, the U.S.S.R. and the U.K.

The representative of the U.S. introduced a draft resolution A/C.1/L.301, sponsored by Australia, Canada, Italy, and the United States.

The Chairman announced that in view of their interest in the question under consideration, observers from the following specialized agencies had taken seats in the Committee room - U.N.E.S.C.O., W.H.O., I.T.O., and W.M.O.

The draft resolution A/C.1/L.301 had the heading "International co-operation in the peaceful uses of outer space." It had five parts. In part A, it commended to States for their guidance in the exploration and use of outer space the following principles:

- (a) That international law, including the United Nations Charter was applicable to outer space and celestial bodies;
- (b) That outer space and celestial bodies were free for exploration and use by all States in conformity with international law, and were not subject to national appropriation by claim of sovereignty or otherwise.

It invited the Committee on the Peaceful Uses of Outer Space to study and report on the legal problems which were likely to arise from the exploration and use of outer space.

Part B of the draft resolution dealt with the establishment of the Central International Registration Centre - for launching objects into orbit or beyond to furnish information to the Secretary-General for purposes of registration of such launchings. It requested the Secretary-General to maintain record of information, and to communicate such date, upon request, to States-Members of the United Nations and members of the specialized agencies; to maintain close contact, in consultation with appropriate specialized agencies, with governmental and non-governmental organizations concerned with outer space matters; to provide for the exchange of such information as Governments may supply on a voluntary basis; to assist, at the request of the Outer Space Committee or other appropriate international bodies,

in the study of measure for the promotion of international co-operation in outer-space activities; and to report to the Committee on the Peaceful Uses of Outer Space and to the General Assembly on the service arrangements undertaken for the performance of these functions and on such developments relating to the peaceful uses of Outer Space.

Part C of the draft resolution dealt with Weather Forecasting. It recommended to all member-states and to the World Meteorological Organization etc., the early and comprehensive study of measures to advance the State of atmospheric science and technology, to develop existing weather forecasting etc. It requested the Secretary-General to seek the views of national Governments on these matters, in consultation with appropriate specialized agencies etc., to arrange for the submission of a report to the Economic and Social Council at its thirty-fourth session regarding appropriate organizational and financial arrangements to achieve these ends, with a view of their further consideration by the General Assembly on its seventeenth session. It requested the Committee on the Peaceful uses of Outer Space to review this report and submit its comments to the Economic and Social Council and to the General Assembly.

Part D of the draft resolution dealt with the communication Satellite System. It recommended the International Tele-communication Union to consider at its conference in 1963 those aspects of space communication in which international co-operation would be required. It noted the importance of communication satellites for use by the United Nations for operational and informational requirements etc.

Part E of the draft resolution dealt with the continuance of the membership of the Committee on the Peaceful Uses of Outer Space as contained in resolution 1472 (XIV) and decided to add Nigeria and Chad to its membership in recognition of the increased membership of the United Nations since the Committee was established. It requested the Committee to meet early in 1962 to carry out its mandate

as contained in resolution 1472 (XIV) and to make such reports as it may consider appropriate.

Mr. Stevenson (the U.S.) introducing the above draft resolution said "We proposed today that the United Nations write on this slate boldly, in an orderly and creative way – to narrow the gap between scientific progress and social invention – to offer to all nations, irrespective of the stage of their economic or scientific development – an opportunity to participate in one of the greatest adventures of man's existence." He stated that in the work of the Committee for Peaceful Uses of Outer Space there should be no vote, but the work should be carried out in a spirit of mutual understanding.

Mr. Zorin (U.S.S.R.) said that although his country followed a policy of co-operation in the peaceful uses of outer space, the U.S. did not. He referred to the launching of a U.S. satellite which was to disseminate 350 million copper needles in outer space. This experiment, he said, gave rise to protests from all quarters. He pointed out that the work of the Committee of Peaceful Uses of Outer Space should be based on the principle of unanimity. He said that the U.S.S.R. supported a procedure which would ensure equitable representation for the three main group of States participating in the work of the Committee. The U.S., he said, had always rejected the principle advanced by the U.S.S.R. that decisions in the Committee should only be taken by agreement of its members. The U.S. had attempted to retain the possibility of imposing decisions on the Committee through mechanical majorities, basing themselves on numerical advantages in the Committee through membership of the various military blocs.

Sir Patrick Dean (U.K.) said that he saw no reason why unanimity should not prevail in the work of the Committee, at least on all questions of importance, for obviously there was no sense in adopting major decisions without the agreement at least of those Powers with pre-eminent skill, knowledge and ability to use outer space. I agree, he said,

with the representative of the U.S.S.R. that there must be full equality of all participants. It was for this very reason that he could not admit any right of veto in the work of the Committee.

The Committee continued its consideration of this item and the draft resolution before it (A/C.1/L.301). Previously Report of the Committee on the Peaceful Uses of Outer Space (Doc: A/4987), and latter dated 14 November, 1961 from the Permanent Representative of the U.S.S.R. addressed to the acting Secretary-General (doc: A/C.1/857) had been circulated.

Upon a suggestion made by the representative of India as modified by the representative of Peru and supported by the representative of the U.A.R., the Committee decided to cancel its future meeting so as to give time to the representatives of the principal Powers to reach an agreement concerning the composition of the Committee on the Peaceful Uses of Outer Space.

The committee re-convened on Monday 11 December, 1961. It received a revised text of the four-Power draft resolution (A/C.1/L.301) concerning this item. The revised draft resolution (A/C.1/L.301/Rev.1 and Cor. 1) was jointly sponsored by Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, France, Hungary, India, Iran, Italy, Japan, Lebanon, Mexico, Poland, Romania, Sweden, the U.S.S.R., the U.A.R., the U.K. and the U.S. The Chairman drew the attention of the Committee to a change in operative paragraph 1 of Part B of the revised draft resolution by which the additional membership of the Committee on the Peaceful Uses of Outer Space would read as follows: "Chad, Mongolia, Morocco and Sierra Leone."

The general debate on this item was concluded with statements by the representatives of the U.S., the U.K. and the U.S.S.R. Statements on the revised draft resolution were made by the representatives of France, Austria, Brazil and China.

At the suggestion of the representative of Peru, the Committee adopted the revised draft resolution unanimously, without putting it to the vote, thus concluding its consideration of item 5 of its agenda. The resolution was later on adopted also unanimously by the General Assembly.

6. The Korean question: Reports of the United Nations Commission for the Unification and Rehabilitation of Korea (20)

At the beginning of the meeting, the Chairman drew the attention of the Committee to the following draft resolutions and amendments which had been submitted on this item:

- (1) Draft resolution A/C.1/L.300 by Mongolia. It decided to invite representatives of the Democratic People's Republic of Korea and the Republic of Korea to take part in the discussion on the Korean question without right of vote.
- 2) Amendments to the above draft resolution A/C.1/L.306 submitted by Greece and Thailand. The effect of these amendments was that the representatives of the Democratic People's Republic of Korea should be invited only in accordance with the conditions set forth in resolution A/C. 1/837 adopted by the First Committee at its 1146th meeting. They should be invited provided that the Democratic People's Republic of Korea first unequivocally accepts the competence and authority of the United Nations within the terms of the Charter to take action on the Korean. Question as has already been done by the Republic of Korea.
- (3) Draft resolution A/C.1/L.304 by the U.S. – inviting only the representative of the Republic of Korea to take his place in the Committee and to participate without the right of vote in the discussion of the Korean question,
- (4) Draft resolution A/C.1/L.302 by Mongolia – inviting the States maintaining armed forces in South Korea to withdraw those forces immediately from Korean

territory.

- (5) Draft resolution A/C.1/L.303 by the U.S.S.R. - deciding to dissolve the United Nations Commission for the Unification and Rehabilitation of Korea.
- (6) Draft resolution A/C.1/L.305 jointly sponsored by Australia, Belgium, Canada, Columbia, France, Greece, Luxembourg, the Netherlands, New Zealand, the Philippines, South Africa, Thailand, Turkey, the U.K. and the U.S. - requesting the United Nations Commission for the Unification and Rehabilitation of Korea to continue its work in accordance with the relevant resolutions of the General Assembly.

The Chairman invited the representative of the United Nations Commission for the Unification and Rehabilitation of Korea to take a seat at the Committee table.

In accordance with the Chairman's proposal, the Committee began its debate on the question of the invitations to the two Korean Governments. Statements were made by the representatives of Mongolia the U.S., the U.S.S.R., Australia, Greece, the Netherlands, China, Romania and Indonesia.

The debate continued and representatives of numerous countries addressed the Committee on the procedural draft resolutions and amendments.

When the debate on the procedural draft resolutions was concluded the Committee proceeded to vote as follows:

A/C.1/L.306 (Amendments by Greece and Thailand to the Mongolian draft resolution A/C.1/L.300)

Paragraph 2, separate vote requested by Ethiopia (roll call). 58 in favour of the retention of this paragraph, 1 against with 38 abstentions. Pakistan voted in favour of the retention of this paragraph. The proposal to delete this paragraph was not adopted.

Paragraphs 1 and 3 (roll-call). 60 in favour, 17 against with 22 abstentions. Pakistan voted in favour of the retention of these paragraphs. The paragraphs were adopted.

Draft resolution as amended (roll-call)

63 in favour, 18 against, with 19 abstentions. Pakistan voted in favour of the draft resolution as amended. It was adopted.

The representative of the U.S. did not press his draft resolution (A/C.1/L.304) to the vote.

In accordance with the decision taken by the Committee, the Chairman invited the representative of the Republic of Korea to take a seat in the Committee room. The Chairman stated that the draft as amended and adopted by the Committee would be communicated through the appropriate channels to the Government of the Democratic People's Republic of Korea.

3. Question of Disarmament (19)

At the beginning of the meeting the representative of the United States, on a point of order, proposed that the Committee suspend temporarily the debate on item 6 on its agenda "The Korean Question" and resume discussion of item 3 "Question of Disarmament", to enable it to consider the draft resolution A/C.1/L.307 jointly submitted by the U.S. and the U.S.S.R. The proposal was adopted without objection.

The above draft resolution endorsed the agreement that had been reached on the composition of a Disarmament Committee, whose membership would be: Brazil, Bulgaria, Burma, Canada, Czechoslovakia, Ethiopia, France, India, Italy, Mexico, Nigeria, Poland, Romania, Sweden, U.S.S.R., U.A.R., U.K. and U.S.A.

Statements on the joint draft resolution were made by the representatives of the U.S.A. the U.S.S.R., Mexico, the U.K., Argentina, Poland, Italy, Bulgaria, India, Peru, Ireland, Canada and Nigeria.

If the suggestion of the representative of Mexico the Committee adopted unanimously the joint draft resolution, without putting it to the vote, thus concluding consideration of item 3 on its agenda. The resolution was later on also unanimously adopted by the General Assembly.

6. The Korean Question – Reports of the United Nations Commission for the Unification and Rehabilitation of Korea (20)

The Committee resumed discussion on this item. After an announcement by the Chairman that the representative of the republic of Korea had requested the floor, the representative of the U.S.S.R. opposed this suggestion on the grounds that the debate on this item should be suspended until reply is received from the Government of the Democratic People's republic of Korea.

At this stage, the representative of Tunisia moved the adjournment of the meeting. The motion was carried by a vote of 38 in favour to 17 against with 12 abstentions. Pakistan abstained on this motion.

7. The Question of Algeria (80)

In accordance with the decision taken by the Committee at its 1208th meeting on 30 November, 1961, the committee took up item 7 on its agenda "Question of Algeria."

The U.S. representative, on a point of order, moved, under rule 117, that the Committee adjourn for 30 minutes the debate on the "Question of Algeria" in order to enable the representative of the Republic of Korea to make a statement. This proposal was opposed by the representative of the U.S.S.R., but the U.S. motion, when put to the vote, was adopted by the Committee by 37 votes in favour, to 19 against, with 21 abstentions. Pakistan voted in favour of the U.S. motion.

The representative of the Republic of Korea made a statement. The Soviet Bloc walked out. Afterwards the representative of the U.S.S.R. spoke on a point of order.

The Committee then reverted to the "Question of Algeria". There was one draft resolution on this item A/C.1/L.308, jointly sponsored by numerous Afro-Asian countries including Pakistan.

The draft resolution called upon France and the *Provisional Government of the Algerian Republic* to resume negotiations with a

view to implementing the right of the Algerian people to self-determination and independence respecting the unity and territorial integrity of Algeria.

The draft resolution was introduced and the debate on this item was opened by the representative of Pakistan.

Muhammad Zafrullah Khan (Pakistan) said, "We do not overlook the difficulties involved in seeking and arriving at a just solution of the problem. Indeed we are so conscious of them that we have not found it easy to decide whether, at this juncture, speech or silence would best serve the object we have in view, namely, to facilitate a just and speedy solution of the question."

He stated that the right of the people of Algeria to independence was no longer in dispute. The territorial integrity of the whole of Algeria had been conceded. Two attempts had already been made at direct negotiations between the Provisional Government of Algeria and France. He concluded by hoping that negotiations will be resumed as soon as possible between the representatives of the Provisional Government of Algeria and France.

Although the representatives of the U.K. and the U.S. felt that the draft resolution was moderate and they agreed with and supported the principle underlying it, they noted that specific mention had been made to the Provisional Government of the Algerian Republic in the draft resolution, which should not have been done. They also noted that the draft resolution presented the stand point of only one party to the negotiations. For these considerations, they stated that they would abstain on the draft resolution.

The debate on Algeria continued and statements were made by numerous representatives.

The draft resolution, when voted upon was adopted by the Committee by a roll-call vote of 61 in favour to none against, with 34 abstentions. Pakistan voted for the draft resolution.

The Committee thus concluded its consideration of item 7 on its agenda "Question of Algeria."

The resolution was later on also adopted by the General Assembly by a roll-call vote of 62 in favour to none against, with 38 abstentions.

6. The Korean Question – Reports of the United Nations Commission for the Unification and Rehabilitation of Korea (20)

The Committee again resumed its discussion on this item, the consideration of which had been temporarily suspended in accordance with the decision taken by the Committee on 13 December, 1961.

The Chairman drew the attention of the Committee to document A/C.1/864 which contained the reply of the Government of the Democratic People's Republic of Korea to the invitation extended to it by the Committee by the resolution (A/C.1/863) it had adopted on 13 December, 1961.

A discussion ensued on whether or not document A/C.1/864 constituted an appropriate reply in terms of A/C.1/863.

The representative of the U.S.S.R. proposed that the Korean question should be referred for consideration at the resumed session of the General Assembly.

The proposal was opposed by the representatives of the U.S.A. and the U.K. The chairman put the U.S.S.R. motion to the consideration of the Committee under rule 117. When the motion was put to the vote, it received 30 votes in favour, 41 against, with 24 abstentions and was therefore rejected. Paksitan voted against the U.S.S.R. proposal.

The Committee continued the discussion on this question. The representative of the U.S. submitted the following oral proposal.

“The First Committee, noting that the communication from the Democratic People's Republic of Korea does not accept unequivocally the competence and authority of the United Nations to deal with the Korean question, decides that there is no basis for participation by a representative of the Democratic People's Republic of Korea in the discussion of this question.”

The representative of Poland raised a point of order to the effect that rule 124 applied to the proposal. The Chairman ruled that in the light of the resolution adopted (A/C.1/863), the proposal made by the U.S. did not constitute a revision of the Committee's previous decision and therefore it did not require a two-thirds majority for its adoption.

A motion by the representative of Peru to close the debate on the U.S. proposal was adopted without objection. The Committee then proceeded to vote on the U.S. proposal, which was adopted by a vote of 54 in favour to 17 against, with 22 abstentions. Pakistan voted in favour of the U.S. proposal.

The Committee then commenced the general debate on this question. The Chairman drew attention to the following draft resolutions before the Committee.

(1) By Mongolia (A/C.1/L.302)

(3) By the U.S.S.R. (A/C.1/L.303)

(3) By Australia, Belgium, Canada, Columbia, France, Greece, Luxemburge, the Netherlands, New Zealand, the Philippines, South Africa, Thailand, Turkey, the U.K. and the U.S. (A/C.1/L.305)

The representative of the United Nations Commission for the Unification and Rehabilitation of Korea made a statement. Statements were made also by the representatives of numerous countries.

Eventually the representative of the U.K., speaking on a point of order, moved under rule 118 that the Committee close the debate on this question and proceed to the vote on the draft resolutions before it. The representatives of the U.S.S.R. and Afghanistan spoke against the motion for closure of the debate. The U.K. motion was put to the vote and was adopted by a vote of 40 in favour to 16 against, with 17 abstentions. Pakistan voted in favour of the U.K. motion.

The representatives of the U.S.S.R. and Mongolia stated that they would not press their respective draft resolutions (A/C.1/L.303 and 302) to the vote.

The Committee then voted on the fifteen-power draft resolution (A/C.1/L.305) which was adopted by a roll-call vote of 55 in favour, to 11 against, with 20 abstentions. The representative of Afghanistan did not participate in the vote. Pakistan voted in favour of the fifteen-power draft resolution.

The fifteen-power resolution was later on also adopted by the General Assembly by a roll-call vote of 60 to 11, with 27 abstentions.

Thus the consideration of item 6 on the agenda of the First Committee was concluded.

8. Complaint of Cuba of threats to international peace and security arising from new plans of aggression and acts of intervention being executed by the Government of the United States of America against the Revolutionary Government of Cuba (78)

With regard to the above item (item 8 on the Committee's agenda), the Chairman suggested that, because of the lack of time, this item should not now be discussed by the Committee. There being no objection to the Chairman's proposal, it was approved.

Later on, the General Assembly also took note of this decision of the First Committee.

The First Committee thus concluded its work. The Chairman thanked the members of the Committee for their collaboration and the Secretariat for its assistance in the work of the Committee.

FREEDOM OF RELIGION OR BELIEF*

It is an admitted fact that Muslims constituted a minority in the sub-continent. Therefore, in the words of the founder of Pakistan, Quaid-i-Azam Muhammad Ali Jinnah:

“Pakistan which symbolises the aspirations of a nation that found itself a minority in the Indian sub-continent, cannot be unmindful of the minorities within its own borders.” (*Speeches as Governor-General of Pakistan 1947-48*, p. 48).

Pakistan was made possible mainly because Muslims developed a genuine apprehension that they would 'be subjected to religious intolerance or persecution by the majority community. Again, in the words of the founder of Pakistan:

“We demanded Pakistan, we struggled for it, we achieved it so that physically as well as spiritually we are free to conduct our affairs according to our traditions and genius. Brotherhood, equality and fraternity of man - these are all basic points of our religion, culture and civilization. And we fought for Pakistan because there was a danger of denial of these human rights in this sub-continent.” (*Ibid*, pp. 98-99).

If this background for the establishment of Pakistan is kept in view, it is understandable that the Muslims of Pakistan would safeguard the rights of minorities by providing

* Paper contributed by Mr. Justice Javid Iqbal, Chief Justice Punjab, to the International Seminar on the Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief held at Geneva, December 3-14, 1984.

guarantees to those who profess faiths other than Islam so that they could be treated as equal citizens of the state. Declaration to this effect was made by Quaid-i-Azam Muhammad Ali Jinnah on 11th August, 1947 on his election as the first President of the Constituent Assembly of Pakistan. He announced:

“You are free; you are free to go to your temples, you are free to go to your mosques or any other places of worship in this state of Pakistan. You may belong to any religion or caste or creed - that has nothing to do with the business of the state. As you know,even now there are some states in existence where there are discriminations made and bars imposed against a particular class. We are starting the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one state. Now, I think we should keep that in front of us as our ideal, and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the state.”
(Ibid, pp. 8-9).

Explaining this very declaration on a subsequent occasion he stated:

“I have repeatedly made it clear, especially in my opening speech to the Constituent Assembly, that the minorities in Pakistan would be treated as our citizens and will enjoy all the rights and privileges that any other community gets. Pakistan shall pursue that policy and do all it can to create a sense of security and confidence in the non-Muslim minorities in Pakistan.”

(*Selected speeches and statements*, ed. by Rafiq Afzal, p. 440)

Pakistan is a Muslim state in the sense that it was carved out as a national homeland for the Muslims and in it they predominate. But it is also an Islamic Republic, for, in the eyes of Pakistanis it had been created on the basis of Islam. In other words, there exists a general consensus that Pakistan,

from its very inception, was established as an ideological or Islamic state wherein Muslims would be enabled, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam as set out in the Quran and Sunnah.

What are the teachings of Islam about understanding, tolerance and respect in matters relating to freedom of religion or belief set out in the Quran and Sunnah? The Quran lays down the rule of equality of all human-beings when it states:

“O mankind; Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and spread from these two many men and women.” (4; V.I).

In respect of freedom of religion it is commanded in the Quran:

“There is no compulsion in the matter of religion.” (2; V. 256).

“And if thy Lord had pleased, all those who are in the earth would have believed, all of them. Wilt thou then force men till they are believers?” (10; V.99)

“Had Allah willed, they had not been idolatrous. We have not set thee as a keeper over them, nor art thou responsible for them.” (6; V. 107)

“And argue not with the People of the Book unless it be in a way that is fair, save with such of them as do wrong; and say: We believe in that which hath been revealed unto us and revealed unto you; our God and your God is One, and unto Him we surrender.” (29; v. 46).

“If Allah had not raised a group (Muslims) to ward off the others from aggression, synagogues, churches, oratories and mosques where Allah is worshipped most would have been destroyed.” (22; v. 40).

There are numerous other verses of the Quran to the same effect. Consequently, the state from the stand point of the Quran must offer equal protection and security to all the religions in a Muslim country, because the God of Islam enjoins not only tolerance of all faiths other than Islam, but the Muslims are obliged even to defend places of worship of the non-Muslims under their protection.

There are numerous instances of Muslim tolerance in Islamic history and of the Muslims defending places of worship of the non-Muslims. The Prophet of Islam has set before us an illuminating example. Once a deputation of Christians waited upon him and while he was in conversation with them in his own mosque at Medina, the time for the Christian prayers approached. Accordingly, the Christians brought this fact to the notice of the Holy Prophet and proposed to move out of the mosque. But the Holy Prophet asked them: "Why do you not pray here?" They replied: "Our prayer is accompanied with music and it may be disapproved of if conducted in the mosque". The Holy Prophet said: "Pray as you like in your own way". And so the Christians held their service in their own way in the mosque of the Holy Prophet. Such was his tolerance. His attitude towards minorities had always been not only of tolerance but also of magnanimity. In his days security of life, property and freedom of conscience as well as worship were granted to all those who professed faiths other than Islam, and who lived within the territories of the Islamic state.

When Umar, the second Caliph, visited Jerusalem (Palestine) he called on the Bishop of the Church of Holy Sepulchre and while he was talking to him, the time for prayers intervened. Umar said to the Bishop: "Forgive me, for, it is time for my prayer and, therefore, I must get out and offer prayers." The Bishop said to him: "You could pray here instead of going out, for, this is also a house of prayer." Umar replied: "You are right and we can pray anywhere on God's earth. But my praying here entails the risk that the Muslims in my life time or after may claim a right to convert this Church into a mosque on the excuse that I have prayed in it." Thereupon, Umar went out and offered prayers on the steps of the Church of Holy Sepulchre. Similarly, when an attempt was made on the life of Umar and he was dying as a result thereof, he said: "To him who will succeed me, I commend my wish and testament that the people professing faiths other than Islam are the protected of God and the Prophet.

Respect the covenants entered with them and when necessary fight for their interests and do not place on them a burden or responsibility which they cannot bear." In the same way, Ali, the fourth Caliph, had to plead a case on behalf of himself in which a Jew was claimant and it was eventually the Jew who succeeded and was awarded the decree.

These examples indicate that Islam preaches freedom of belief and Muslims have demonstrated by practice tolerance for other religions. It was for this reason that the founder of Pakistan extended assurance and guarantee of equal status to all the citizens of Pakistan both before and after the creation of Pakistan as well as promised the minorities not only the same rights and privileges as the Muslim majority, but also declared that the minorities shall be treated generously.

Within six months of the death of Quaid-i-Azam Muhammad Ali Jinnah, the Constituent Assembly of Pakistan, passed on March 7, 1949, the Objectives Resolution which among other things reflected the will of the people of Pakistan to establish an order wherein adequate provision would be made for the minorities freely to profess and practice their religions and develop their cultures, to safeguard their legitimate interests (such as being governed by their own Personal Law in certain civil matters) and to guarantee fundamental rights including equality of status, of opportunity, social, economic and political justice, freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.

The Objectives Resolution has been referred to as a supra-constitutional instrument or the *grundnorm* in the light of which the provisions of the Constitution are to be interpreted. It has, with minor alterations in phraseology, been incorporated as Preamble to the Constitutions of 1956, 1962, and 1973. Thus, the principles contained in it have never been repealed, renounced or abrogated by anyone, nor have these been departed or deviated from by any regime, military or civil.

Under Article 2 of the 1973 Constitution, Islam is the state religion of Pakistan and in respect of the subject under discussion it apparently also means that the principles of religious freedom and tolerance, as enunciated by Islam, are to be fully observed. Consequently, reading the Objectives Resolution along with Article 2, safeguards against discrimination in services on the ground of race, religion, caste, sex, residence or place of birth are provided. Similarly, the legitimate rights and interests of minorities including their due representation in the Federal and Provincial services are protected; and technical, professional as well as higher education is accessible to all on the basis of merit. Subject to law, public order and morality every citizen has the right to profess, practice and propagate his religion and every religious denomination as well as every sect thereof has the right to establish, maintain and manage its religious institutions. These provisions are in accordance with Article 18 of the Universal Declaration of Human Rights, 1948, Article 18 of the International Covenant on Civil and Political Rights 1966, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, as well as Articles X, XII and XIII of Universal Islamic Declaration of Human Rights, 1981. However, freedom of religion does not mean that acts inimical to the peace, good order and morals of society may go unpunished under the cover of religious freedom. The right to worship is not a right to disturb others in their worship and the right to exercise religious liberty ceases where it overlaps or transgresses the rights of others. Thus, without violating the Constitutional guarantees, freedom of religion or belief can be subjected to such limitations as are prescribed by law and the state is empowered to enact laws in order to promote peace and order and the general welfare as well as to protect public safety, health, morals or the fundamental rights and freedoms of others.

According to 1981 Census in Pakistan, the people professing faiths other than Islam, of different

denominations, number 2.804 million and it works out to be 3.32 per cent of the total population of the country. According to 1981 Census the Christians form the largest minority community in Pakistan as they are 1.310 million in number and constitute 1.55 per cent of the total population. The second largest group consists of Hindus with a total population of 1.276 million (1.51 per cent) followed by Ahmadis whose number is 63,674 (0.12 per cent) . . The other minorities include Parsis, Buddhists, Sikhs etc. They have not been subjected to any kind of discrimination.

President Muhammad Ziaul Haq, while reiterating the pledges held out by the founder of Pakistan to the minorities, declared in the Majlis-i-Shura on the 12th of August, 1983, that in Islam minorities are not regarded as suppressed classes, rather they are considered as the most privileged ones. Thus, the Government of Pakistan have always considered it a sacred duty to strive for the implementation of these pledges and have made the necessary institutional arrangements to secure proper representation of the minorities at all levels as well as to ensure their fulfilment, happiness and prosperity.

At present I take the opportunity of enumerating the steps taken to prevent intolerance of religion or belief in Pakistan. The Government and especially the President of Pakistan reposes trust in the minorities and due to his concern for the welfare of the minorities a prominent public figure, himself belonging to a minority community, has been appointed as Adviser to the President on all the matters concerning minorities. An Advisory Council for Minorities Affairs consisting of official as well as non-official members has been set up and all its non-official members have been appointed from different minority communities. In the Federal Ministry of Religious Affairs and Minorities Affairs a minorities affairs wing exists for safeguarding the Constitutional rights of minorities as well as for promoting their welfare and removing their genuine grievances. Additionally, in order to coordinate the minorities welfare work in the Provinces

senior officers of the Provincial Governments have been appointed as Provincial Coordinators at the instance of the Federal Ministry of Religious Affairs and Minorities Affairs and in the Provinces of Sind and NWFP Cabinet Ministers have been placed in charge of minorities welfare. On the same lines the District Minorities Committees have been functioning in all the Districts of the country to look into the day-to-day problems faced by the minorities and to resolve them at the local level. Meetings of these committees are held regularly under the Chairmanship of the respective Deputy Commissioners or other local Administrative Officers.

Representatives of the minority communities have also been elected to the Local Bodies under the Local Bodies System in vogue in the country. Seats are reserved for them down to the village level on the basis of their numerical strength. The Councillors elected by the minority communities themselves play a very important and useful role within the Local Bodies in creating a healthy atmosphere of good will and cooperation with their Muslim counterparts as well as for resolving the day-to-day problems of the minority communities at the grass roots level.

So far as the social and economic conditions of the minority communities are concerned, it may be pointed out that it is a matter of historical record that in the undivided India, prior to the establishment of Pakistan, a caste system prevailed in which the lowest rung consisted of the Untouchables, who had no legal rights. During the British Raj many of these low castes were converted to Islam or Christianity and were called the 'scheduled castes'. At present in Pakistan there is no discrimination against the members of these erstwhile 'scheduled castes'. They have a right to get admission in any educational institution and are free to adopt any vocation or profession. Six per cent of all the vacancies in the Federal services have been reserved for them. The Pakistan Minorities Welfare Fund has been created mainly through Government contributions for helping or assisting the poor members of the minority communities, and a

scheme has been implemented for the grant of scholarships to deserving students of the minority communities. Under the previous Government private schools run by Christian Missionaries were nationalized. But the policy of the present Government is to encourage the private sector in order to open more schools for fighting illiteracy. The Central Government have recently amended the law authorizing the Provincial Governments to denationalize all the schools. The well-to-do members of the minority communities own property and are either businessmen or professionals such as contractors, technicians, Professors, Advocates, Doctors, Engineers etc.

To conclude, Pakistan fully adheres to the policy of religious tolerance. Sufficient protection has been provided to every citizen irrespective of his caste, creed or religion. Everyone is free to profess the religion or belief of his choice and each and every religious community is at liberty to establish, maintain or manage its religious institutions. No person attending any educational institution is required to receive religious instruction or attend religious worship if such instruction, ceremony or worship relates to a religion other than his own. Full safeguards have been provided against taxation for purposes of any particular religion and there is no discrimination against any community in respect of any religious institution for the grant of exemption of concession in regard to taxation. All citizens are equal before law and are entitled to equal protection of law. (Art. 4) Access to public places and safeguards against discrimination in services as well as elective offices have also been guaranteed. But as it has already been stated, these activities are subject to such reasonable restrictions as are prescribed by law in the interest of public order and safety, and for protecting the fundamental rights and freedoms of others.

ISLAMIZING OF OUR COURTS OF LAW

Under Article 198 (3) of the 1956 Constitution within one year of the Constitution Day the President was obliged to appoint a Commission to make recommendations as to the measures for bringing existing law into conformity with the Injunctions of Islam. In this connection announcements have already been made, a Judge of the Supreme Court has been appointed the Chairman of the Commission, some members have also been selected and meetings of the Commission are bound to follow. But as to the question; what recommendations the Commission would eventually make for bringing existing law into conformity with Islamic Injunctions, it is hard to conjecture at this stage for the Commission has to submit its final report within five years, of its appointment.

However, one aspect of the recommendations which ought to occupy the attention of the Commission is the Islamicizing of our Courts of Law or the revival of the Qaza (a specific kind of Judgeship) in Pakistan.

According to Ibn Khaldun there are three important organs (wazائف) of the Islamic State. These are the Imamah (the office of the Caliph) the Fatwa (the office of the Jurist) and the Qaza (the office of the Qazi).

As for the Imamah, ever since the abolition of the Caliphate in Turkey, the Muslim world seems to have accepted, expressly or impliedly, the Turkish legal opinion (Ijtihad) based on the arguments of the Khawarji and

Mutazilli jurists of earlier Islam that the Imamatus could be vested in a body of persons or an elected assembly. The growth of a republican spirit or the rapid development of legislative assemblies in Muslim countries has been regarded by modern reformers as a return to the original purity of Islam. Consequently the Constitution adopted by a Muslim assembly and a President elected under that Constitution is a legitimate substitute for the former Imam, Khalifah, Sultan or Amir as the Head of an Islamic State.

As for the Fatwa, the second important organ (wazifah) of the Islamic state, it has no place in our Islamic Republic, obviously because we do not know the source from which the Mufti (Jurist) could be derived. The second Basic Principles Committee formed under the Objective Resolution of 1949, made recommendations in its Report (submitted in 1952) for the appointment by the Head of the State of a Board of Ulema who should have an advisory capacity in determining whether the laws that the Assembly passed were in conformity with or repugnant to Islam.

This recommendation was severely criticised by the Press and public opinion went against it because it was believed that it implied separation of Islam from the State. The Assembly, therefore, rejected this proposal and there were hopes that in the Constitution the Supreme Court would be provided with the advisory jurisdiction regarding the issue whether the laws that the Assembly passed were in conformity with or repugnant to Islam.

The Constitution was promulgated in 1956 and under Article 162 the Supreme Court has been given an advisory jurisdiction but only in secular matters. If the Supreme Court had been provided with such advisory jurisdiction also in matters connected with the interpretation of Islamic Law then its function in its advisory capacity would have been similar to that of the Fatwa. Undoubtedly there are the Ulema who have undertaken to interpret the laws of Islam independently, and some of them certainly deserve our respect.

The Ulema have flourished throughout the course of Islamic history and made vital contributions to Islamic theology and speculative sciences. But the fact remains that in the Islamic state only such persons are authorised to interpret and preach Islam who have been specially appointed for these purposes by the Head of the Islamic state. The appointment of the Mufti by the Head of the Islamic state gradually led to the development of the Office of Sheikh-al-Islam in Ottoman Turkey as well as in Mughal India.

According to Al-Mawardi and ibn-Khaldun only that Qazi is eligible for the Fatwa who has perfect knowledge of the four principal sources as well as the branches of Islamic Jurisprudence (Fiqh) namely, The Quran, the Tradition (Hadith), the Consensus of the Community (Ijma) and the various aspects and limitations of the system of deriving inferences from legal decisions (Qiyas). Such a Qazi is also expected to have practical experience in the application of the rules derived from the principal sources enumerated above. Only when he is qualified and experienced he can be appointed Mufti by the Head of the Islamic state.

The need of a State-appointed body of Muftis to interpret the laws of Islam in the light of modern experience (whenever required) is generally felt, but this cannot be accomplished unless and until the Qaza is revived in Pakistan for the Mutis can only be derived from the Qazis.

“The establishment of the Qaza is the application of an unequivocal ordinance of the Quran (i.e. it is a Farz) and is a practice (Sunnah) that ought to be followed”. This quotation has been taken from Caliph Umar’s famous letter to Qazi Musa-al-Ashari. It has been quoted by such renowned jurists as Ibn Kutaibah, Al-Mawardi and Ibn Khaldun, though each version differs slightly from the other.

In the Quran the word “Qazi” is not used in the sense of ‘a specific kind of judge’. But the verb from the words ‘Qazin’ and ‘Qaza’ has been used in its etymological sense and means ‘to terminate’ a life, in ceremony or a dispute. It is in the last sense, i.e., to terminate a dispute (Qaza) when it approximates

to the word 'Hakama' (i.e. to judge) which does occur in the Quran. Again 'Hukkam' (judges in the plural sense) have been mentioned in the Quran.

In the Tradition (Hadith) we have the Holy Prophet (PBUH) appointing Ali as the Qazi of Yemen and giving him instructions as to how he is to perform his duties. In the case of Ma'ad, the Prophet is reported to have tested him before confirming him in his appointment as the Qazi. The Prophet asked him as to how he would decide matters coming up before him. "I will decide according to the Book of God" said Ma'ad. "But if the book of God contained nothing to guide you?" "Then I will decide according to the precedence of the Prophet of God." "But if you fail to find the precedence?" "Than I will exert to form my own judgments." These traditions provide the method of legal interpretation and also the qualification of a Qazi. The qualification of a Qazi includes many technical issues.

Most of these qualifications would now be regarded as obsolete or of secondary importance. At any rate the really important academic qualification was that the Qazi ought to have perfect knowledge of the four principal sources as well as the branches of Islamic Jurisprudence.

The jurists differ regarding the qualifications of the Qazi. For instance, according to Abu Hanifah an adult female could also be appointed Qazi provided that her evidence was sound. According to Ibn Jarir an adult female is as good as an adult male and there ought to be attached no such condition as the soundness of her evidence for the purpose of her appointment.

Al-Mawardi, however, disapproves of the appointment of a female to the Qaza and quotes the Quran in his support. According to him God has given superiority to males over females regarding the use of intelligence and reasoning faculties. (It may not be out place to mention that the Egyptians have accomplished In certain branches of Islamic Law by reviving those opinions (Fatwa) of ancient

jurists of authority which suited to modern requirements irrespective of the numerous schools of law (Mazahib) to which the jurists belonged. The new Egyptian law of Obligatory Bequests promulgated in 1946 could be cited as an example. The Western critics of Islam allege that the Egyptians have westernized Islamic Law whereas the Egyptians claim and quite rightly that they have not. The Egyptian experiment ought to be watched by our Law Commission.

If the Qazi has perfect knowledge of the four principal sources as well as the branches of Islamic Jurisprudence and has gained experience in the application of the rules derived from those sources, he would then be placed in the category of 'Arabab-al-Ijtihad' (those who are capable to interpret Law) in the opinion of Al-Mawardi, and could be appointed Mufti by the Head of the State.

But if the Qazi does not possess the above qualification and experience then he can, according to Al-Mawardi, neither be appointed to the Qaza nor to the Fatwa. (Here Al-Mawardi quotes in his support the test laid down by the Prophet when appointing Ma'ad the Qazi of Yemen). But Abu Hanifah maintains that such a Qazi can be validly appointed to the Qaza as he can decide matters according to the opinions and decisions of Fatwa) of the jurists (Muftis) whereas he can, under no circumstances be appointed to the Fatwa.

In the matters of Shariah, Al-Mawardi maintains, the blind following of authorities (Taqlid) is forbidden and the independent use of judicial faculties (Ijtihad) is recommended. Accordingly a Hanafi Head of the State could make a perfectly valid appointment of a non-Hanafi Qazi. The Qazi is forbidden to decide matters exclusively according to the decisions (Fatwa) of the school of law (Mazhab) to which he belongs.

Similarly the Head of the State cannot make the appointment of the Qazi conditional, for instance, by ordering the Qazi to decide matters in accordance with the

decisions (Fatwa) of a specific school of Law (Mazhab). In such a case the appointment would be valid whereas the condition would be void. In the opinion of Caliph Umar the Qazi is authorised to overrule his own decisions. (Umar himself set such a precedent in the famous Hamariyah Case).

The jurisdiction of the Qazi could be either general or specific. It is general where the Qazi is empowered to administer an oath, to appoint arbitrators, to decide disputes by compromise where it is legal, or to give his final judgment in favour of one party or the other.

If a party has his right established by force of evidence as well as confession, then the Qazi is authorised to let him have his right. He is empowered to manage the property of insane people, prodigals, orphans and minors; to administer religious endowments (awqaf); to administer the estate of the deceased by checking or giving sanction to legal documents such as wills, by paying off debts and legacies and by dividing inheritance among the heirs of the deceased. He is empowered to give sanction to the marriage and to give away women in marriage if they had no guardians. (Here there is a difference of opinion for according to Abu Hanifah, a Qazi is not so empowered, as the woman without a guardian is perfectly capable of contracting marriage by herself.)

If we have to materialize the provision of constitution (1956) as it is stated in its Article 198 (3), we can get enough guidance from the available literature of Islamic law and the record of our past legal and judicial institutions can be helpful for us.

ISLAMIZATION IN PAKISTAN

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Pakistan was established as a national homeland for the Muslims. In the eyes of the masses it had been created on the basis of Islam. In other words there existed a general consensus that Pakistan, from its very inception, was established as an ideological or Islamic state and not as a secular state in which Muslims predominated. It was in this background that Objectives Resolution 1949 was passed and thereafter in 1953, Pakistan was declared an Islamic Republic. The ground-norm of Pakistan is enshrined in the Objectives Resolution which clearly states, among other things, that the Muslims in Pakistan would be enabled, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam as set out in the Quran and Sunnah. The principles contained in the Objectives Resolution have no been abrogated by anyone so far, nor have these been departed or deviated from by any regime, military or civil.

The Preambles of the three Constitutions of Pakistan (1956, 1962 and 1973) incorporated the contents of the Objectives Resolution in one form or the other and in each

case it was also laid down as Principles of Policy that no law should be enacted which was repugnant to the Injunctions of Islam, and that the existing laws should be brought in conformity with such Injunctions. But such provisions were not made justiciable. If Islamic provisions were given any practical legal significance, it was through the establishment of the Advisory Council of Islamic Ideology created under the 1962 Constitution and retained in the 1973 Constitution. The functions of the Council were to make recommendations to the Central and the Provincial Governments as to means of enabling the Muslims of Pakistan to order their lives in all respects in accordance with the principles of Islam, to examine all the laws with a view to bringing them in conformity with the teachings of Islam, to advise the National Assembly, a Provincial Assembly, and the President or a Governor on any question referred to the Council as to whether a proposed legislation was or was not repugnant to the Injunctions of Islam. In 1977 Friday was declared as a weekly holiday throughout Pakistan instead of Sunday, legislation in respect of prohibition of alcoholic liquor was enforced and betting on horse races was prohibited.

In light of what has been discussed above the process of Islamization undertaken by the present regime is not an advance towards a new direction but it is a conscious attempt to realize the hopes, desires, dreams and aspirations of the Muslims, as consistently reflected in all the previous Constitutions of Pakistan.

The matter may as well be examined from another perspective and that is that Islamic resurgence is sweeping over the entire Muslim world—Arab as well as non-Arab countries—possibly due to the disillusionment of Muslims from the Western capitalist democratic order as well as Marxism.

In Pakistan particularly since 1977 the process of Islamization is affecting different areas of Muslim society. In the field of education a new educational policy has been introduced, the aim of which is to equip the coming

generation with the ideology of Pakistan and Islam. The textbooks as well as study courses have accordingly been revised and some books have been rewritten. The English-speaking schools were made to switch over gradually to Urdu as their medium of instruction. Emphasis has been laid on the study of Arabic language and compulsory instruction to Muslim children in the Quran and basic principles of Islamic theology as well as practical observance of Islamic tenets. Directions have been issued to government employees at all levels in the federal as well as provincial services to have a break for prayers if prayer time falls during office hours. Similarly, wearing of the national dress is encouraged among government employees, and has been made compulsory at government functions, feasts and banquets, and even the judges of the subordinate as well as superior courts have been made to discard the robes of the colonial period under a presidential order. Simultaneously, mass-communication media, particularly radio and television, have been made to change their programs so as to highlight the Islamic identity of the community. The sanctity of the month of fasting (*Ramadan*) has been legally enforced by prescribing punishment for those seen publicly violating the same. The prohibition law is further tightened by closing all liquor shops and imposing a complete ban on its sale to Muslims. In the same way, laws prohibiting gambling and betting on horse races have been tightened. There has been an unprecedented increase in religious fervor due to the emphasis on Islamic identity by the communication media. In order to encourage the observance of Islamic ethical standards measures have been taken to eliminate obscenity and vulgarity from audio-visual media, art galleries, newspapers, journals, magazines, and movies as well as theatrical performances.

Historically speaking, the Muslim legal tradition in the subcontinent evolved during the Mughal period and in fact meant the Mughal practice. Thus, when the Muslims were in power, all the communities of the country were governed by a uniform Islamic penal code, procedure and mode of

recording evidence. However, in civil matters the two major sects of the Muslims, i.e. *Sunni* and *Shia* as well as other religious communities, were governed by codes of their own personal law, and justice was administered through the courts of Qadis who were appointed by the Supreme Executive Authority. When the British took over from the Muslims they replaced the Islamic penal code by their own criminal system. But so far as the application of personal codes of law of different communities was concerned, the Mughal practice was followed and each community was permitted to be governed by its own personal law under the broad maxim: Justice, Equity and Good Conscience; except that Islamic civil procedure code as well as mode of recording evidence were substituted by the British code of civil procedure and the Evidence Act. Eventually, in 1864 the courts of the Qadis were abolished and the British system of administration of justice was introduced. So, generally a judge trained under the British legal discipline administered criminal justice in accordance with a universally applicable Penal Code, Criminal Procedure and Evidence Act based on the Anglo-Saxon notions of common law and equity; and furthermore, although he acquainted himself with a universally applicable Code of Civil Procedure, he was simultaneously expected to be familiar with the substantive personal law of each and every community. Hence the court was one and the same but the judge, in certain civil matters, administered justice in accordance with the personal law of the parties to a litigation.

The reason why it was considered necessary to give this background is that Islamic law, in certain specific civil matters, had already been enforced in the form of Muslim personal law during the British rule in the subcontinent. These specific matters were: law of inheritance (*Hanafi* as well as *Shia*); wills; deathbed gifts and acknowledgments; gifts; religious or charitable endowments; preemption; marriage; maintenance; dower; divorce; legitimacy and acknowledgment; guardianship of person and property; and maintenance of relatives. There were also many other pieces

of legislation which fell within the scope of Muslim personal law like the Dissolution of Muslim Marriages Act, 1939.

After the establishment of Pakistan the legal tradition of personal codes of law was handed over as a British (or one could say Mughal) legacy. Some additional legislation was made under the head of Muslim personal law, particularly the enactment pertaining to Muslim family laws; but penal code, codes of criminal and civil procedure as well as the evidence act continued to remain the same.

It was generally felt, as it has been reflected in the past three constitutions, that concrete measures should be taken so that no legislation was made in the country which conflicted with the Injunctions of Islam and all the existing laws should be brought in conformity with the same. It was in this background that the government of General Muhammad Ziaul Haque promulgated the *Constitution (Amendment) Order 1979* whereby Shariat Benches were established in the various high courts of the country and a Shariat Appellate Bench was constituted in the Supreme Court. These Shariat Benches were empowered to strike down any existing law if it was repugnant to the injunctions of Islam as laid down in the Quran and Sunnah with the exception of the 1973 Constitution, Muslim personal law, any law relating to the procedure of any court or tribunal, and until the expiration of three years from the date of the commencement of that enactment (i.e. February 7, 1979), any fiscal law or any law relating to the collection of taxes and fees or banking or insurance practice and procedure.

While doing so the Shariat Benches, apart from declaring any existing law to be Islamic or unislamic, could also recommend to the government how best the law declared to be unislamic, should be reshaped in order to bring it into conformity with the injunctions of Islam. On May 27, 1980, the four Shariat Benches constituted in the high courts were replaced by a Federal Shariat Court at Islamabad consisting of five judges and three *ulema* (learned in Islamic law) which performed the same functions. It was further conferred the

powers of hearing appeals or revisions against the judgments passed by any criminal court in relation to any law relating to the enforcement of *Hudood* (Quranic punishments of certain specific criminal offenses). Recently the powers of the Federal Shariat Court have been further increased so that it can undertake to examine any law *suo motu* with a view to deciding whether or not it is in conformity with the Injunctions of Islam, and it has also been provided that the law declared by the Federal Shariat Court shall be binding on the high courts as well as the courts subordinate thereto. Decisions of the Federal Shariat Court can be challenged in appeal before the Supreme Court of Pakistan and this appeal shall be heard by the Shariat Appellate Bench of that court, consisting of three Muslim judges of the said court along with two *ulema*.

It may be pointed out that besides the Federal Court there are other organizations also which have been entrusted with the task of examining the existing laws, Codes of Criminal and Civil Procedure, Evidence Act etc. with a view to declaring as to whether or not there are repugnant to the injunctions of Islam and if so how they could be recast or amended so as to bring them in conformity with the injunctions of Islam. Some of these are the Council of Islamic Ideology, the Pakistan Law Commission (consisting of the Chief Justice of Pakistan, four Chief Justices of the Provincial High Courts, the Federal Law Minister, some eminent lawyers and Professors of law), and the Federal Council (*Majlis-e-Shura*). This is a cumbersome, lengthy and continuous process which will consume considerable time before it is completed, because it not only strikes down a provision of law completely or to the extent of its repugnancy but also recommends, partially or wholly, the making of laws which are in conformity with the principles of Islam. Each and every existing piece of legislation in Pakistan is being scrutinized, examined, recast, reshaped and recreated by these legally or constitutionally created bodies.

As stated above, Islamic penal and procedural codes which were enforced in the subcontinent during the reign of the Muslim emperors were discarded by the British. Therefore, ever since the establishment of Pakistan, when it was asserted that all the existing laws should be brought in conformity with the injunctions of Islam, it had been recommended that particularly the Pakistan penal code should be Islamized through the incorporation of Islamic penal laws. The Islamic penal laws are based on two notions of crime, i.e. *Hadd* and *Tazir*. By *Hadd* (the plural of which is *Hudood*) is meant penalty or punishment fixed by the Quran for an offense, whereas by *Tazir* (plural of which is *Tazirat*) is meant penalty or punishment fixed by the state. Traditional Islamic criminal law, therefore, consists of both *Hudood* and *Tazirat*. In Pakistan for the first time steps were taken to Islamize the penal code by repealing the existing provisions relating to offenses of theft, robbery, dacoity, abduction, rape, fornication, adultery, false accusation of adultery, drunkenness, etc. and replacing them by *Hudood* and *Tazirat* laws. In this process the entire penal code has not been recast but it has been amended through the promulgation of several new orders and ordinances which came into force on February 10, 1979. These are:

I. Prohibition (Enforcement of Hadd) Order, 1979

It has substituted the existing provisions in the Penal Code pertaining to prohibition of intoxicants including alcoholic liquor. The offenses under the new legislation have been classified into two categories, namely offense liable to *Hadd* and offense liable to *Tazir*. The proof of an offense liable to *Hadd* is the same which is laid down in *Fiqah*, i.e. either on confession of an accused person or on the testimony of at least two adult male Muslims about whom the trial court is satisfied that they are truthful persons and abstain from major sins, and who give evidence on oath to the effect that they had actually witnessed the accused person committing the offense. When the standard of proof, as provided for *Hadd*, is

not available, or the offense (being drunk and disorderly) is committed by a non-Muslim, it becomes an offense liable to *Tazir*. The punishment of an offense liable to *Hadd* under this head is eighty stripes while of an offense liable to *Tazir* is punishable with imprisonment of either description for a term which may extend to three years or with whipping not exceeding thirty stripes or with both.

II. Offenses Against Property

(Enforcement of Hudood) Ordinance, 1979

The main offenses covered by this law are theft (*sarqa*) and robbery/dacoity (*baraabah*). Theft is liable to *Hadd* if it is committed by an adult surreptitiously from any type of custody (*hirz*) in respect of property at least of the fixed value of 4.457 grams of gold and is punishable with amputation of the right hand from the joint of the wrist. If the offense is committed for the second time the punishment provided is amputation of the left foot up to the ankle and if committed for the third time with imprisonment for life which means imprisonment until death. The proof for an offense liable to *Hadd* is on the confession of the accused person or on the testimony of at least two Muslim adult male witnesses other than the victim of the theft, about whom the court is satisfied that they are truthful persons and abstain from major sins, and who give evidence as eyewitnesses of the occurrence. However, the offense of theft is liable to *Tazir* when the proof required for *Hadd* is not forthcoming and the punishment of theft liable to *Tazir* is the punishment as already provided in the Pakistan penal code. The punishment of robbery/dacoity (*baraabah*) varies with the gravity of the offense, so much so that if a person is guilty of this offense and in the course of the same he commits murder, he is punishable with death imposed as *Hadd*. The standard of proof required for establishment of this offense when liable to *Hadd* is the same as above. But when the offense is liable to *Tazir* the punishment of the same is as already provided in the Pakistan penal code for such offenses. It can be argued

that Islamic punishments for these offenses are harsh and brutal. But juridically speaking these are essentially meant to be a deterrent as the standard of proof required for establishing an offense liable to *Hadd* is not ordinarily available or is extremely difficult to come by. Indeed, the theory is that a hand should be amputated as punishment for theft in the light of the relevant Quranic verses. But when it comes to executing the same, *Fiqah* has prescribed about sixty-nine exceptions. For instance, some of the exceptions in the case of theft are: if committed between daybreak and night prayers, when not testified by two eyewitnesses of upright character, without confessional statement of the thief, by a mentally deranged person or one suffering from kleptomania, etc. In *Fiqah* certain other kinds of similar offenses would not constitute theft liable to *Hadd*: e.g., misappropriation, shoplifting, child lifting even when laden with gold, etc. In the judicial history of Muslim India the punishment of theft by hand-chopping was rarely resorted to. Even in Pakistan the punishment had been introduced since the past five years but no hand had been amputated so far, although hundreds of thefts, robberies or dacoities take place in the country every day, and in such cases the *Tazir* punishment is usually awarded.

III. The Offense of Zina (Enforcement of Hudood Ordinance, 1979)

This law relates to the offenses of fornication, adultery, rape, unnatural offense and certain other allied offenses. Broadly speaking *zina* is said to have been committed if a man and woman willfully have sexual intercourse without being validly married to each other. The offense is liable either to *Hadd* or *Tazir*. In general terms *zina* is liable to *Hadd* if there is sexual intercourse between a male aged eighteen years and a female aged sixteen years (or between persons who have attained puberty), who are not validly married to each other, whether with or without consent, of any of them. The punishment of *zina* liable to *Hadd* is different for an accused

person who is a married adult Muslim (man or woman) from that of an unmarried one. If the accused person is married when he or she commits the offense, he or she is to be stoned to death at a public place. But if the accused person is not married, he or she, shall be punished at a public place with whipping numbering 100 stripes. The punishment for rape in the case of a married person is the same as for *zina* liable to *Hadd* and if the accused person is not married, then he can also be sentenced to death in addition to whipping numbering 100 stripes. The proof for *zina* or rape liable to *Hadd* as laid down in *Fiqah* is either on the confession of the accused person or on the testimony of at least four Muslim adult male witnesses about whom the court is satisfied that they are truthful persons and abstain from major sins, and who give evidence as eyewitnesses of the act of penetration necessary for the offense. In the case of an accused person who happens to be a non-Muslim the number of the eyewitnesses remains the same although they can be non-Muslims. *Zina* or rape which is not liable to *Hadd* or for which the proof as required for *Hadd* is not available, is liable to *Tazir*. The punishment for *zina* liable to *Tazir* is rigorous imprisonment up to ten years and with whipping numbering thirty stripes and also liable to fine. The punishment for rape liable to *Tazir* is rigorous imprisonment for twenty-five years and with whipping numbering thirty stripes.

Punishment of a hundred lashes for *zina* is prescribed in the Quran (24: 2). But for the punishment of stoning to death at a public place reliance has been placed on a tradition of the Holy Prophet. In the early juridical history of Islam if the punishment of stoning to death had been awarded to an accused person it was only on the basis of his or her confession for being purified of the offense. But there is not a single reported case where the offense could be proved or established on the basis of ocular testimony of the standard required for the said offense as fixed by *Fiqah*. It can, therefore, be said that the punishment is only a deterrent with a rare likelihood of execution. The law was introduced in

Pakistan in 1979 and there must have been a number of cases in which the offense of *zina*, rape or child-abuse had been committed but up to this day none of the accused persons has been awarded the sentence of being stoned to death for having committed the said offense. If the offenders had been sentenced, they had been awarded the *Tazir* punishment.

IV. Offense of Qazf (Enforcement of Hadd) Ordinance 1979

Qazf, in general terms, means false imputation of *zina*. This offense has also been categorized as *Qazf* liable to *Hadd* and *Qazf* liable to *Tazir* and is punishable differently. *Qazf* liable to *Hadd* is proved if the accused person makes a confession before a competent court or commits the offense of *Qazf* in the presence of the court or in the presence of at least two Muslim adult male witnesses about whom the court is satisfied that they are truthful witnesses and abstain from major sins and who give direct evidence of the commission of this offense. The punishment of *Qazf* liable to *Hadd* is whipping numbering eighty stripes. Proceedings for this offense can be initiated only on a report made by the person in respect of whom *Qazf* has been committed (the aggrieved person or complainant) or if he is dead on the report of any of his ascendants or descendants.

Qazf which is not liable to *Hadd* or for which the standard of proof as required for *Qazf* liable to *Hadd* is not available, would be considered as an offense of *Qazf* liable to *Tazir* and is punishable with imprisonment up to two years and with whipping not exceeding forty stripes and also with a fine. This piece of legislation likewise deals with *lian* which, in general terms, means the accusation of adultery made by a husband against his wife. When a husband before a court accuses his wife of adultery he shall make his statement before the court on oath and if the wife in reply to the husband's allegation also makes a statement before the court on oath denying the allegation, then the court shall pass an order dissolving their marriage.

Needless to say that the procedure for the trial of offenses under Islamic penal laws is the same as laid down in the Criminal Procedure Code as amended by the *Criminal Procedure Code (Amendment) Ordinance 1979*. This means that the existing procedure for the registration of a case, investigation by police and adversary system of trial by Courts also applies to these offenses except that the presiding officer of the trial court or appellate court where the accused person is a Muslim shall be Muslim and that the forum of trial for such offenses which are punishable with amputation, stoning to death or with whipping exceeding eighty stripes, shall be the Court of Sessions.

As no offender has been stoned to death and no hand has been amputated, may people in Pakistan have misgivings about the efficacy of these laws. However, the point should be kept in mind that where Islam prescribes deterrent or exemplary punishment for offenses liable to *Hadd*, it also requires, most justifiably, a very high standard of unimpeachable evidence to prove and establish the same as a safeguard against the conviction of an innocent person.

The punishment of whipping under Islamic penal laws is specifically governed by *Execution of the Punishment of Whipping Ordinance, 1979*. This Ordinance not only gives specifications of whip to be used (e.g. one single piece having no knob and its length and thickness not to exceed 1.22 meters and 1.25 cm. respectively) but also provides the conditions and mode of execution of punishment of whipping. These conditions/mode of execution include, among other things, such restrictions as forty years age limit, leaving the clothes on the body of the convict, not to apply the stripes on the head, face, stomach, chest or any other delicate part of the body of the convict, executioner not to raise his hand above his head while applying the whip, not to lacerate the skin of the convict, and to apply the whip with moderate force etc. Thus, from this ordinance it is evident that the punishment of whipping to be awarded in any case of violation of Islamic penal laws, is necessarily in the form of admonition and it is

not that kind of whipping or lashes which are governed by the existing whipping act or that which may be awarded under any of the regulations of martial law introduced during the British times and handed over as a colonial legacy.

There has been a significant increase in crime in Pakistan. The causes for the increase have not yet been determined but one could say that it may be due to the movement of the population from rural to urban areas. It may also be due to the smuggling into Pakistan of such U.S. and Indian movies which are obscene, full of bloodshed, violence and sadism. The censorship laws in Pakistan are very strict and, therefore, such movies cannot be publicly exhibited in any cinema hall. But a large number of people in the country have VCRs where these movies are exhibited clandestinely. From 1977 onwards there have been a few shocking cases of child abuse followed by gruesome murders of children as well as violent robberies or dacoities coupled with rape and murder, so much so that there had been a persistent public demand that the culprits charged with such offenses should be tried by the military courts and if the death sentence were awarded to them, it should be executed publicly. The reason for this public demand is that the ordinary civil courts take at least one or two years to dispose of and decide such matters due to the pressure of work and the sentences usually awarded after that length of time under the Anglo-Saxon penal code are of a lenient nature. In response to the public demand the military courts, which are also operating in Pakistan at present, decide such cases expeditiously within two to three weeks and under their orders, in all such cases the sentence of death by hanging has been executed publicly.

Every society desires to eliminate crime and has adopted different methods to accomplish the object. For instance, in the Peoples' Republic of China, punishment for all criminal offenses is death. In the Western countries as well as those countries of the Third World which have evolved their legal systems under Western influences, the concept that a person is to be deemed innocent until proved guilty beyond any

shadow of doubt, is generally accepted as the foundational principle for safe administration of criminal justice. But it may not be wrong to say that in the developed and more advanced countries the public sympathy is usually for the accused person and the sufferings of the victim are virtually ignored. However, in the developing countries of the Third World, generally speaking, in addition to acceptance of the above foundational principle, the public sympathy is usually for the victim. If one is to acknowledge the existence of this form of imbalance among the developed and developing societies, it may be correct to make the statement that harshness in the nature of punishment of crime depends entirely on the question as to how a society reacts towards crime.

The present government in Pakistan has also introduced some reforms pertaining to civil law in order to implement the economic and welfare aspects of Islam. While inaugurating an International Seminar at Islamabad on November 9, 1979, on the application of Shariah law, General Muhammad Ziaul Haque pointed out that the need of the hour was to first bring out the economic and welfare aspects of Islam so that the problems of hunger and poverty could be resolved. He further explained that if only the Penal side of Islam was implemented without solving the economic problems of the community, then Islam would be misunderstood as the religion standing only for flogging and stoning people to death. Consequently the Zakat and Ushr Ordinance, 1980 was promulgated. The philosophy behind *zakat* is that whatever remains surplus with a Muslim after a year, a portion of the same must be contributed towards the betterment of the community. Thus, those who possess more than the prescribed minimum, the surplus of the liquid assets, to the extent of 2½ percent of the same, shall pay as *zakat* i.e. a contribution towards looking after the needy, orphans, widows, wayfarers and other public welfare purposes sanctioned by Islam.

On the other hand, *Usbr* is to be drawn from the produce of land to the extent of 5 percent, which is to be used for the *betterment of the rural community. Before the enforcement of the aforesaid ordinance, the authorities left zakat etc. to be contributed voluntarily and collected privately by the Muslim community. However, after the enforcement of the ordinance a Central Zakat Council has been established at the national level. It is headed by a Judge of the Supreme Court of Pakistan and has eight other members from various departments of the federal government and a set of another eight members from eminent people who have made their mark in learning, teaching and practicing Islam. At each of the four provincial levels there is a council headed by a judge of the High Court of the Province and ten other members similarly appointed. There are further lower tiers in the form of district, tehsil and local councils which are managed by elected representatives. The entire organization (except a few ex-officio nominated members) is comprised of elected representatives who give their time and energy voluntarily to run the same.*

The total number of people who are involved in the entire project is more than 300,000 in the country. The average collection of *zakat* per annum over the last three years has been over 50 million dollars. These collections were compulsorily made from the fixed deposits in the banks and corporate investments at the rate of 2½ percent. There were voluntary contributions as well. But it must be noted at this stage that *zakat* is collected only from the Muslims of Pakistan. It is neither collected from non-Muslims nor from those Muslims whose claim is that according to their interpretation of Islam they are not liable to pay *zakat* to be managed by the government. Consequently, the entire system works in a manner which is in accordance with the belief and choice of Muslims belonging to different sects as well as non-Muslims.

So far as *Usbris* concerned, its collection was 8.4 million dollars from the Punjab last year. The amount received through *Usbr* is exclusively to be used for the uplift of the

rural communities and for providing modern facilities to the villagers.

According to the published figures *zakat* disbursement in 1981-82 countrywide was made in favor of 242,709 orphans, 543,487 widows, 450,037 disabled people, 168,871 needy students in religious institutions and 265,827 others. In the province of the Punjab 450,000 institutions have benefitted at the local level; of these, 52,166 were religious schools, 10,525, vocational institutions, 40,950, health institutions and 2,515, scholarships to students. The total disbursement in the last three years has been to the tune of 109.1 million U.S. dollars.

These are not the only Islamic measures which have been adopted in the socio-economic field. An experiment is also being made to introduce interest-free banking in the country. Profit and loss counters in banks have been opened; a House-building Finance Corporation is advancing money as a loan against sharing the rent of the building when constructed, instead of charging interest. Laws pertaining to public revenue, insurance, and so forth are being examined for Islamization.

In the same way, amendments in the Evidence Act and other enactments so as to bring those existing pieces of legislation in conformity with Islamic provisions are being contemplated. Law of *Qisas* and *Diyat* is in the process of being made. The issues as to what is the position of a female witness in Islamic Law of Evidence, or the determination of blood money of a deceased woman are being debated between the conservatives and modernists. It is also contemplated that the Courts of the Qadis which were abolished by the British in 1864 should be reestablished in the country for dealing with cases pertaining to Islamic penal and in some cases civil laws.

All this is likely to lead to a multiplicity of forums, e.g. the Courts of the Qadis, the Courts of the Magistrates, the Courts of the Civil Judges as well as those of Sessions, the High Court, the Supreme Court of Pakistan, the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court beside numerous other Courts and Tribunals of special

jurisdiction. Furthermore, so long as martial law continues, military courts will also function in the country which deal with criminal cases of a gruesome nature and of public importance as well as cases pertaining to preventive detention.

The benefit of the process of Islamization cannot be ascertained in a short span of time, because very little has been realized so far and much needs to be done in this field. What is really required to be accomplished is the streamlining of Islamic legislation in such a way that it is completely incorporated in that form of secular legislation which is not repugnant to the injunctions of Islam. It is also necessary to get over the problem of multiplicity of courts which is likely to transform them into a cluster of isolated islands. The people want justice which is cheap, quick and available at their doorstep. Besides that if the development of liberal and progressive thinking is to be encouraged, then this ideal can only be achieved through dynamic interpretation of Islamic provisions.

It is premature to comment as to what would be the significance of the experiment of Islamization in Pakistan for the rest of the Muslim world. There are some Muslim countries where Shariah laws are enforced or Shariah courts are functioning exclusively or side by side with secular courts. But the experiment which is being made in Pakistan is that Islamic penal laws have been incorporated in the penal code and some measures have been adopted through legislation in order to realize the welfare aspects of Islam. In due course of time the judges and lawyers who are acquainted with the principles of modern jurisprudence and who are likely to become familiar also with the principles of *Fiqh* may apply the principles of modern jurisprudence to the traditional *Fiqh* and while remaining within the scope of the Quran and *Sunnah*, may advance such interpretations of Islamic law which are in conformity with the needs and requirements of modern times. This dynamic interpretation, which is bound to result from the process of Islamization in Pakistan, may eventually have an impact on the rest of the Muslim world.

PROSPECTS OF ISLAMIZATION IN PAKISTAN

I. Historical and Intellectual Obstacles to Islamization

The process of Islamization, as projected by the Government of Pakistan, over the last few years, has emphasized the legal rather than the ethical or the social content of Islam. A critical evaluation of the steps hitherto taken indicates that we have striven more for form than the content of Islam, more for the individual than the collective aspects of this all embracing philosophy, and as a result, contented ourselves with the shell rather than the kernel of this ideology. There are sound historical and intellectual reasons why the socially revolutionary aspects of Islam suffered complete neglect compared to the cosmetic and individual aspects of religion. After the first four caliphs, virtually the entire history of Islam is steeped in monarchical and feudalistic tradition, which never allowed the growth of the social aspects of the philosophy of Islam. The result is that we were left with only the five pillars of the faith, a list of *haram* victuals, and a number of dents of which the more significant ones are those relating to mingling of sexes, liquor and gambling. Some of these don'ts, if we go to the original sources, tend to overstate their Islamic content, and reflect more the feudal notions of propriety of conduct.

This is the fundamental reason why the Ulema, as a general rule, were opposed to the creation of Pakistan. If the

five pillars of faith, the items of *haram* food, and the three major don'ts constitute the core of Islam, then this could be implemented in our lives without creating a separate state. This posture of the Ulema receives considerable support from the fact that the Muslims who have been left behind in India, notwithstanding all their suffering, on account of their relegation to second class citizenship in that country, are probably ahead of their Pakistani counterparts in the matter of five pillars of the faith, abstention from *haram*, and the three main don'ts. So the basic fault of the Ulema was not in their posture, it stands vindicated by the reality of life in the two countries. The fault was in their lack of grasp of the social content of Islam and its revolutionary implications.

On the other hand, it was this very social content which was the guiding light for the intellectual leadership of Pakistan, which reached its pinnacle in Iqbal, and also for the political leadership which achieved its highest projection in Quaid-e-Azam. Iqbal in his famous Allahabad address of 1930, in which he first unfolded the ideal of Pakistan, does not even once talk of the five pillars of the faith, or *haram* victuals, or the three don'ts, as the reason for his flash of genius. These are anyway parts of the Muslim psyche. He talks of the "ethical ideal" of Islam, of a "social structure regulated by a legal system". According to him "The nature of the Holy Prophet's religious experience...is...creative of a social order." (Tariq, *Speeches and Statements of Iqbal* pp. 3, 4, 8 respectively). It is this premise which leads him to his historic conclusion. Again in his elaboration of what constitutes Islamic culture in his famous rebuttal of articles by Pandit Nehru, he singles out the potential capability of the traditions and heritage of Islam to provide livelihood to all, which cannot be achieved in a united Indian culture.

If we turn to Iqbal's Letters to Jinnah we find that he first poses the question "how is it possible to solve the problem of Muslim poverty?" (p.17) He proceeds to answer, "Happily there is a solution in the enforcement of the Law of Islam and its further development in the light of modern ideas.

After a long and careful study of Islamic Law I have come to the conclusion that if this system of Law is properly understood and applied, at least the right to subsistence is secured to everybody. But the enforcement and development of 'the shariat of Islam is impossible in this country without a free Muslim state or states'(p.18) He is not talking of five pillars of the faith, of *haram* victuals or of the three don'ts, because, firstly, they are as mandatory in Darul Harb as in Darul Islam, secondly, while these may need restatement in the idiom of every age, these do not stand in need of "further development in the light of modern ideas". What stands in need of this development is the corporate aspect of Islam, its social philosophy, its "social democracy" as Iqbal calls it. He writes, "For Islam the acceptance of social democracy in some suitable form, is not a revolution, but a return to the original purity of Islam." (p. 19)

That this analysis of Iqbal was fully concurred in by the Quaid-e-Azam is expressly conceded by him in his Foreword to these letters. Quaid-e Azam writes," His (i.e. Iqbal's) views were substantially in consonance with my own and had finally led me to the same conclusions."(p. 6)

Similarly, if we read the speeches of the Quaid-e-Azam, he does not even once mention either the five pillars of the faith, or the *haram* victuals or the three prohibited items as the objective of his relentless struggle for Pakistan. He talks of advancement of the weaker elements of the population, of release of women for full participation in national life, of spread of education, of advancement in industry and agriculture, of social justice in all its manifestations, of free press, of uninhibited democratic institutions, of untampered autonomy of the judiciary, of developing a credit system reflecting Islamic traditions and of ensuring livelihood for all.

The misfortune of Pakistan is that the Ulema, the only section of the population, who signally failed to understand the significance of the Pakistan movement, as proved by their opposition to it, as a general rule, at least upto the elections of 1946, after the creation of the country, by an ironic twist of

destiny, started insisting and eventually achieved the distinction of the sole interpreters of the polity of Pakistan. This was something which Iqbal had clearly warned against in his Allahabad address. "In the world of Islam", he wrote, "we have a universal polity whose fundamentals are believed to have been revealed, but whose structure, owing to our legists want of contact with the modern world, stands today in need of renewed power by fresh adjustments." (Tariq, cit. op. p. 6)

The Quaid-e-Azam was no less conscious of this major obstacle in the way of proper interpretation of the concept and strategy of an Islamic State. Answering a question put by a delegation of students in Hyderabad (Deccan) in 1940, regarding elaboration of the proposed Islamic state, he said, "Without understanding either the nature or true outlines of this task, a section of our ulema regard this task as their monopoly. In spite of gifts of competence and energy, they cannot reflect your aspirations or their own. The kind of dynamic thinking necessary for this work is not often found among them, nor do they possess the talent of getting help from the capability of others." (Quaid-e-Azam Papers, F.No 1357)

This thwarting of the purpose, objectives and destiny of this country could have been countered if we turned to Iqbal's *Reconstruction of Religious Thought in Islam*, and made it our guiding star. But we find even the path to that book barred and closed. The main plea of Iqbal is for rekindling the spirit of *ijtihad*, but the obscurantists tell us a list of conditions before one can be permitted to speak on the subject of "fresh adjustments" of Iqbal or "dynamic thinking" of Quaid-e-Azam. The Ulema cannot give those "fresh adjustments" because of "want of contact with the modern world". And those who know the modern world cannot talk of "fresh adjustments" because they do not fulfil the pre-conditions the ulema insist on imposing. If these conditions had been imposed by the Holy Quran or the Holy Prophet, one would understand their validity. But the spirit of both is completely contrary to the stand of the ulema. The

Quran addresses itself to every reader and repeatedly exhorts him to see, reflect and conclude. Allah refrains from imposing even the belief in His own Being, without advancing compelling reasons for it. The Holy Prophet emerges as the greatest liberator of human thought, in the hadith ascribed to him, which says that any one who ponders over any problem of faith, and reaches a wrong conclusion, will have one *sawab*, and if he reaches the right conclusion, will have two *sawabs*. The point to be noted is that the Holy Prophet does not limit thinking to those who must necessarily reach right conclusions. He knew the value of wrong conclusions in the evolution of dialectical process, which the obscurantists appear incapable of understanding. Knowledge cannot advance without a spirit of free enquiry and free debate. The social philosophy of Islam is no exception to this general rule.

II. Steps Towards Islamization and Fruits Thereof

In this historically stunted and intellectually anaemic environment process of Islamization could not perhaps have been much better than what it is. First we will list the steps that have been taken and then give a short critical appraisal of them. Ahmadis had been declared non-Muslims, Friday declared a holiday, and liquor prohibited before the government of General Zia took over. This government issued orders that government servants should pray during office hours, legally established the of *ramadan* by prescribing punishment for those seen not observing it, tightened the prohibition of liquor still further by closing all liquor shops, prohibited gambling and horse-racing, prescribed *salwar* and *kurta* as national dress, passed Hudud Ordinance prescribing ulemas understanding of punishments for *zina*, theft, false imputation of immorality, established a pale caricature of Zakat, issued *ushr* Ordinance, started a profit and loss counter in the banks as a start towards the abolition of interest, authorized the superior courts of the country to strike down all anti-Islamic laws, which could have been a historic

contribution if several items of vital relevance, including those relating to monetary and fiscal issues, had not been kept out of their jurisdiction. The shape of things has not improved by the dispensation of the normal requirements hitherto observed in the matter of selection of judges at this level.

Let us assume, for the sake of argument, that all actions taken are truly Islamic, then these should have led to some revolutionary consequences. With the introduction of Islamic polity, according to what we read in our history books, a sea-change should have occurred, and people should have gone round wishing to pay *zakat* and should not have found one willing to accept it. In actual practice we have neither assured livelihood for every one, nor health care, nor sanitation, nor assurance of law and order, nor justice, nor even such small things as removal of stinking garbage heaps from thoroughfares or provision of proper public transport.

A tree, they say, is recognized both by its roots and its fruits. Before we dig out the roots, let us examine the fruits of all our endeavours over the last thirty five years. Our adult literacy is 24 per cent, compared to 36 per cent for India, 26 per cent for Bangladesh, 67 per cent for Burma, 85 per cent for Sri Lanka, 62 per cent for Indonesia, 50 per cent for Iran, 60 per cent for Malaysia and Turkey, 87 per cent for Vietnam (*World Development Report* by World Bank, 1981, pp. 134-5)

Energy consumption per capita, converted to kilograms of coal, is 218 in Pakistan, against 242 in India, 237 in Indonesia, 767 in Malaysia, 807 in Turkey, 835 in China, 565 in Egypt, and 3643 in Israel (*ibid*, pp.146-7)

Our foreign indebtedness had reached the level of 7,998 million dollars in 1979, against 15,641 million dollars for India, with nine times the population of Pakistan. Every man, woman and child in Pakistan carries the burden of more than 100 dollars of foreign loans, against an identical burden for every Indian of 23.72 dollars. Our indebtedness as a percentage of GNP had reached 38.5 per cent in 1979, against 12.3 per cent of India, 15.4 per cent of Malaysia, 19.0

per cent of Turkey, 24 per cent of Korea, (ibid, pp. 162-3 read with p. 134)

According to the figures given by Dr Mahbub-ul-Haq, we get a total foreign aid of 1.5 billion dollars a year, but have to pay back 1.2 billion dollars out of it as service charges, which primarily means interest on previous loans. (*Dawn*, 19th July, 1982). This means that although we can use only 20 cents out of every, dollar we get as loan, we have to pay interest on the entire dollar debited to our name.

Our international reserves can cover only 2.5 months of our imports, against 4.1 months of Sri Lanka, 8.9 months of Nepal, 10.2 months of India, 7.7 months of Jordan, 5.6 months of Malaysia (ibid pp. 162-3)

Our population growth at 3.1 per cent is the highest of all low income countries with the sole exception of Tanzania at 3.4 per cent. India's growth rate is 2.1 percent and that of Bangladesh 3.0 per cent (ibid., p. 166)

Our defence expenditure at 31.4 per cent of Federal Government expenditure in 1978, is highest of all low income countries. In the whole world only Syria, Korea and Israel have a higher percentage of defence expenditure, (ibid, pp. 180-181)

Our per capita expenditure on education is the lowest of all countries of the world. We spend 1 dollar per head per year on education, against the next lowest expenditure of 2 dollars each by Ethiopia, Nepal and Burma. Expenditure by India and Bangladesh is not given in the World Bank Report. Sudan spends 4 dollars and Sri Lanka 8 dollars. Our expenditure on health is also 1 dollar per head, per year, which again is the lowest in the world, though some other countries also share this dubious distinction with us. (ibid, pp. 180-181)

Living beyond our means has become a way of life with us, and leadership in the matter has been assumed by the successive Governments of Pakistan. For the sake of brevity we will join together deficit figures of Federal budget for five year periods. From 1951 to 1955 the total budget deficit was

1.8 billion rupees; from 1956 to 1960 it soared to 5.8 billion rupees; from 1961 to 1965 it rose to 4.0 billions; from 1966 to 1970 it spurted to 15.8 billions; from 1971 to 1975 it escalated to 28.6 billions; and from 1976 to 1980 it leaped ahead to 59.0 billions. This means that during the last five years our budgetary deficit exceeded the total deficit of the previous twenty five years. (*International Financial Statistics*, 1981, of International Monetary Fund)

In fairness to objective reality, it must be confessed that our Islamization is not primarily responsible for these figures, but the point being made is that our Islamization has done nothing to improve these figures. Another qualification that needs to be introduced is that there are areas in which we appear to fare better than at least the other countries of the sub-continent, for example our per capita income is the highest in the area. But this position will change if we continue to lag behind in education, technology and industry. For the present, we perhaps eat better, dress better and live better than any other people in this area, which would have been a matter of great satisfaction if it did not reflect on our low rate of saving and high indebtedness. Our social fabric is better woven and polarization of wealth is less acute, at least compared to India, but this was a distinctive feature of this part of the sub-continent, even before partition. There is, therefore, no reason for us to feel complacent about our deeply disturbing deficiencies.

The figures of these deficiencies are enough to show whether we have made any advance in the direction of *raison d'être* for the creation of this country which, in the words of Iqbal was to develop a distinctive "social structure regulated by a legal system". So far as his second target of attaining an "ethical ideal" is concerned, we do not even need the evidence of figures, as every day experience is adequately compelling. No unadulterated food is available anywhere in the country. Except for two other countries of the sub-continent this distinction is unmatched by any other country in the world. Smuggling is a major vocation. Corruption and

profiteering are rampant. Houses were never safe from robbers, now even buses and trains can be held up, petrol pumps, shops and banks can be looted in open day light. No one can get justice unless he commands some push or some pull. Illicit distillation of liquor, and distribution are some of the new vocations opened up by our blind faith on the advice of the obscurantists. It is clear that our Islamization programmes appear perceptively to push us farther from Islam than bring us nearer to it. Let us therefore turn from evaluation of fruits to the examination of roots, and critically recheck every step we have taken on our march towards Islamization.

III. Cases of Over-action in Our Islamization

This criticism of our Islamization process is being made in all humility, and without any claim of its being necessarily correct. It is only a point of view which may help resolve some of the difficulties, or open up the possibility of some better resolution. On the face of it, it is possible to show that in most cases we have over-acted, and in some we have under-acted. The result is that in most of the steps so far taken we do not exactly conform to the delicate balance which is the distinctive hallmark of Islam's social philosophy. We shall first examine the cases of over-action and then those of under-action.

Declaring Ahmadis as non-Muslims apparently appears justified, even if we leave out of consideration their peculiar belief in the prophethood of Mirza Ghulam Ahmad, by the fact that it was the Ahmadis who first declared all non-Ahmadis as *kafirs*, segregated themselves in social and religious life, to the extent that they declined to inter-marry with them, or even join in their *nimaz-e-janaza*. An aspect that does not appear to have been considered is the verse of the Holy Quran which prohibits us from regarding any one as non-Muslim if he says *assalamu alaikum* to us. (4: 94) If we accept the supreme authority of the Holy Quran, our action does not appear to remain free from doubt. It exhibits greater

zeal and lesser restraint than what Holy Quran appears to demand of us.

Declaring Friday as holiday has no Islamic content at all. There is no concept of sabbath in Islam. The Quran asks the faithful to come to the Juma prayer when they hear the call for it, and when they have finished the prayer they should resume their vocations. If a weekly off day is necessary, it can be any day, including Friday. But we should not regard the shift in holiday from Sunday to Friday as anything related to Islam.

Prohibition of liquor needs to be looked into both from Islamic and functional points of view. Illicit distillation, distribution and consumption are not any the more Islamic than doing these within the legal framework. Even if we overlook the permissive verse of the Holy Quran (16:67), and confine our consideration to the prohibitive one (5:90), the operative word is "abstain", it is not "prohibit". The order is addressed to the individual and not to the state. By prohibition we take away the choice which the Quran appears to confer on the individual. In our excessive zeal if we go beyond Islam, it will be as un-Islamic as falling short of it.

No *hadd* is prescribed either by the Quran or the hadith. Hazrat Umar imposed *hadd*, but it was on drunkenness and not on drinking. Imam Abu Hanifa held the view that *hadd*, will not apply, of intoxication, from certain varieties of drinks. (*Hedaya*, vol. 4, pp. 305, 308) Imam Mohammad held the view that intoxication attracts *hadd*. (ibid, pp. 305, 308) Imam Yusuf first held the opinion of Imam Muhammad but later shifted to that of Imam Abu Hanifa. (ibid, p. 305) According to *Fatawa-i-Alamgiri*, *hadd* is applicable only when a person gets drunk. (Vol. 9, p. 203) Although there are jurists of the stature of Imam Abul Jafar and Imam Sarkhasi who hold that *hadd* will not apply even in that case, it appears reasonable to hold that no society, much less an Islamic one, can permit drunkenness, as contrasted with drinking, to go unpunished.

Coming to the steps of Islamization taken by this Government, all liquor shops are closed, even foreigners and non-Muslims can get only stringent quotas. For this there is not only no sanction in Islam, it runs counter to certain specific provisions of it. For instance import duty (which, if we follow the fiscal spirit of Islam, will include excise duty) on liquor is included among items of revenue of zakat. Hazrat Umar called it *sadaqat-ul-kehamr*. The same construction is employed by Imam Abu Ubaid. (*Kitabul Amwal*, vol. 2, p. 39) *Hedaya* includes, this duty in *Kitab-uz-Zakat*. A question that needs to be considered is whether an Islamic state has the authority to strike out an item of zakat revenue, and regard this anti-social, and apparently anti-religious act as advancement towards Islamization.

Issuing order to civil servants to pray during office hours again appears to be a case of over-action. Neither the Holy Prophet nor his caliphs issued any such order. Prayer is a qualitative act, which therefore cannot be enforced, contrasted with zakat, which is a quantitative performance, and can therefore be enforced. Prayer is an external manifestation of the feeling of devotion felt by an individual. No one can inject feeling of devotion by an executive order. *Iqamatas salat* does not mean ordering men to pray, but making it convenient for them to do it, for instance by providing arrangements for it, and persuading them to do so by example, and by *moiza* and *bikmah*. Order is more than *moiza* and has nothing to do with *bikmah*. To this extent it is an un-Islamic order. There is a sense in which it crosses the bounds of an un-Islamic order, and becomes an anti-Islamic one. Suppose there is a civil servant, who would not have prayed in the absence of this order, and now feels forced to do so either to win the approval of his superiors, or to ensure a good entry in A.C.R. or to win a promotion, he will not be prostrating before Allah, but before his official superiors. We cannot exclude the possibility of *shirk* being committed in such cases. Any order which can possibly lead to *shirk*, or

even a semblance of it, cannot be considered an Islamic order.

Order concerning *iharam-e-ramadan*, and the punishment prescribed for its violation, has no sanction either in the Quran, or the *hadith* or even *fiqh*. *Ramadan* is prescribed, not *iharam-e-ramadan*. The ailing, the travellers, and the aged have expressly been permitted non-observance. Now any one who does not fast, on account of a valid *shar'i* reason, is confronted with the law of *iharam*, and cannot find anything to eat and drink, however necessary it may be for his health or even life. This too is not only an un-Islamic order, but has an element of anti-Islamism in it. It tends to encourage hypocrisy, as it is not concerned with fasting but with *appearing* to be fasting. To the extent that it institutionalizes hypocrisy, it becomes an anti-Islamic provision.

Salwar and *kurta* are a convenient dress, and from various national considerations the order deserves all support and compliance. But when it is claimed to be an Islamic step, we again tend to transgress. Islam does not prescribe any dress. The *lungi* of Bangladesh and western dress of Turks and Albanians are equally good dresses from the Islamic point of view.

The *hadd* ordinances regarding *zina* and theft are very difficult and contentious issues, and the present writer does not claim any special competence for straightening out this tangled skein, particularly in view of the limited space that can be given to these in small paper. The observations that follow may be regarded merely as a plea for re-examination of the whole thing in much greater depth than appears to have been done.

Punishment for *zina* is 100 lashes, prescribed by the Holy Quran (24:2) Feudal notions of morality appear to have led to the evolution of a concept distinguishing married men and women from unmarried ones, and prescribing *rajm* for the former category. This not only conflicts with the above clear provision of the Quran, but is firmly repudiated by two more verses. In the case of married slave girls the punishment

prescribed is one half of the one prescribed for married free women. (4:25) For wives of the Holy Prophet the punishment prescribed is twice that for free married women. (33:30) If we regard 100 lashes as punishment for adultery, it can be halved as well as doubled. But if we regard *rajm* as punishment, it can neither be halved nor doubled. These three verses should have been enough to fix 100 lashes as the maximum punishment and repudiate the case for *rajm*.

Those who stand for *rajm* rely on some ahadith, three or four most important of which suffer from such implausibility, besides internal contradiction, that these cannot be brought forth as testimony against three clear verses of the Quran. One Saeed Bin Musaib relates that Hazrat Umar said that there was a verse in the Quran for stoning to death of old men and women, if they committed adultery. He is further reported to have said, "I swear by God who commands my life, that I would have inserted this verse in the Quran, if people were not to say that Umar has made an addition in the book of Allah" (*Mota* p. 682). Every step of this *hadith* is so queer and contradictory, that one cannot place any reliance in it. To say there was a verse in the Quran which is no longer there conflict with the claim and promise of Allah that He has sent this book and He will protect it. (15:9) Subsequent words put in the mouth of Umar do not conform to his intellectual eminence of which we are aware. If the verse was in the Quran, he should have put it in it, and there was no point in his keeping back for fear of the charge of addition. If it was no addition, the question of this charge does not arise. And if it was an addition, Umar had no right to do it, and very correctly did not actually do it.

Our obscurantists get out of this difficulty by claiming that this verse had become *mansookh*, i.e., deleted. But it was deleted only so far as the reading of it was concerned, but was not deleted so far as the order was concerned. This again is equally self contradictory. How can we have an order whose text has been deleted? If the text is deleted, the sense

conveyed by the text is also deleted. Meanings and words stay together, either both stay or both disappear.

There is yet another hadith which shows Holy Prophet to have given the punishment of *rajm* to an adulteress. Hadith does not show whether the punishment was given before or after the revelation regarding punishment of 100 lashes. It is highly improbable that the Holy Prophet would deviate from the punishment prescribed by Allah. Even assuming this punishment was given after revelation of the verse regarding 100 lashes, it appears probable that it was not a punishment for adultery, but for four repeated announcements of having committed it. We have it on the authority of the same Saeed Bin Musaib that both Hazrat Abu Bakr and Hazrat Umar advised him to seek forgiveness for his sin and not announce it. (*Mota* p. 679) Announcement of this sin appears to be regarded a greater social evil than the sin itself.

Whichever way we look at it *rajm* has no sanction in Islam, and we have clearly overstepped its bounds.

The *hadd* ordinance regarding imputation of immorality on innocent women is completely in accord with Islam. Only priority given to it is doubtful, on account of its rare relevance.

IV. The Hadd for Theft

Theft is a matter of far greater complication than even *zina*. From the point of view of social morality and ethical conduct it is of much wider application, and whatever decision we take, is bound to be of greater far reaching consequences. This, therefore, deserves the most careful consideration of those gifted with goodwill and vision, and concerned with the projection of Islam as a meaningful social option in the confused world of today.

In this matter we have developed a queer combination of a harsh stance, with a profusion of conditions imposed, which reduces the punishment to virtual non-existence. There is a yawning gap between what we profess and what we perform, between our theory and our practice. The theory

says that a hand should be chopped off as punishment for theft, on the basis of the relevant Quranic verse. When it comes to practicing it, *fiqh* prescribes some 69 exceptions to it. The definition of theft is narrowed to virtual non-existence. Let us examine a few of the exceptions prescribed by *fiqh*. There is no theft from day break to *isha* prayer. There is no theft which is not testified by two witnesses. These witnesses must be closely cross-questioned to create the possibility of avoiding *hadd*" (*Ghail-ul-Autar*, Vol. 2, p. 448) There is no theft without confession. The judge should warn the accused not to confess. "This direction", says the jurist, "is to avoid *hadd*". (ibid. Vol. 2, p. 450) Misappropriation is not theft; shop lifting is not theft; child lifting, even when laden with gold, is not theft; removal of *ghilaf-e-Kaaba* is not theft; removal of anything from a hotel is not theft; removal of anything from *bait-ul-mal* (and therefore, in todays parlance from government treasuries and government owned banks) is not theft. Only 10 exceptions have been given. There are 69 in all. After reading the entire list one reaches the conclusion that nothing can fall in the definition of theft, which may attract the punishment of *hadd*.

There is no doubt about the enormity of juristic vision and humanistic underpinning in all these exceptions, but the net result is that what we prescribe as punishment for this offence becomes virtually redundant. In our entire history hand-chopping has been rarely resorted to. Except in one country, it is nowhere practiced today. *Hadd* ordinance for theft was issued several years back in Pakistan, but no hand has been chopped till this day, although hundreds of thefts take place in the country everyday. Is it not a situation which is worthy of giving some further thought, particularly in the direction of re-examining the verse of the Quran itself?

Since this area falls completely outside the competence of the present writer, involving as it does philological and semasiological studies, which he is far from equipped to undertake, he leaves it to these who are well-versed in these sciences. But even a layman might list a few relevant lines of

enquiry. What is the meaning of that hadith of the Holy Prophet which says that the Quran has seven *qirats*? Does it merely mean multiple ways of reading the Quran, or the possibility of evolution of new meaning with the passage of time? Does not this latter interpretation find support in the utterance of some of those people who had great insight into the meanings of the Quran, Rumi writes:

Marfi Quran ra madan ke zahir ast
 Zairi zahir batane ham qahir ast
 Zaire aun batan yake batne diger
 Kheera gardad androul fiqa-o-nazar

Somewhat inadequately these verses of the *Masnawi* may be translated as under:

Do not regard the word of the Quran merely from what is obvious
 Below the obvious there is an inner layer which is equally effective.
 Below the inner meaning, there is yet another inner meaning,
 Which dazzles both thought and vision.

The impact of passage of time on the evolution of meaning of verses of the Quran is expounded by Iqbal in the following verses:

Choon Mussalmanan agar daree nazar
 Dar zameer-ekhaish-o-dar Quran nigar
 Sad jahane taza dar ayate oost
 Asr ha paicheeda dar anate oost
 Yak jahanash asr-i-hazar ra bas ast
 Geer agar dar aeena dil mani ras ast
 Bandai mo'min ze ayate khudast
 Har jahan ander bare ou choon kabast
 Choon kuhan gardad jahane dar barash
 Mee dehad Quran jahane deegarash

These verses of *Javid Nama* have been translated into English verse as under:

Hast thou the will
 Of men of faith, then into thy own self
 And holy Book delve deep. A hundred worlds
 Which are unseen as yet its verses hold,
 And aeons in its moments are concealed.

A single world out of its myriad ones
 Encompasses this modern age, believe
 If thou dost own a comprehending mind.
 The man of faith is God's own symbol clear,
 Each age apparels him in e'ernew garbs;
 And if one be outworn, the Book bestows
 A different world on him, a new attire.

So the first question is that in view of the dynamic march of History, with the attendant transformation of values and notions, is it permissible to seek "a new attire", or a new meaning for the word *yad*, with which we are concerned at the moment? The second question is whether the word lends itself to any new meaning? Picking up an Arabic dictionary we find numerous meanings of word *yad*, including such relevant ones to our purpose as *inam-o-ikram* or bounty. Can *qat'i yad* be interpreted as divesting the culprit of all or some significant social bounty, e.g. property? Is it a fact that in several verses of the Quran *yad* is used in its metaphorical meaning of power, competence or effectiveness? Can we interpret *yad* in this meaning in this verse as well? Is it a fact that this metaphorical meaning of this word is common to all languages of the world? Does not the adoption of this meaning help us to avoid any shift of meaning? Can it be argued that the hand was cut, as that was the most effective way of depriving one of power, at that time, and we now, let us say, confiscate property, as this has now become a more effective way of depriving the culprit of power, besides being an equally deterrent punishment for this age?

There is a third line of enquiry. What is the punishment prescribed by Islam for profiteering, black marketing, adulteration of items of consumption including medicines, bribery, smuggling, ghonda tax, and similar other social evils? If the answer is no *hadd* has been prescribed for these offences, does it not sound somewhat irrelevant that *hadd* is prescribed for imputing blame on innocent women? Without questioning the theoretical importance of this provision, would we be within our rights to demand from Islam a

remedy to cure the ailments we actually suffer from? We have hitherto indulged in a long exercise narrowing the meaning of *sarqa* until nothing has survived of it, for all practical purposes. Would it not be more meaningful and socially relevant, without being religiously prohibited, to now start expanding the meaning of *sarqa*, till all varieties of it, including all social evils are covered by it? The material and moral consequences of *sarqa* and the social evils listed above are exactly identical. How can it be that one variety of material aggrandisement may be chosen by Islam for *hadd*, and leave other even more heinous forms of aggrandisement and infliction of loss free from punishment? Can we substitute the line of expansion in meaning, in place of contraction? Iqbal, who persuaded us to claim this country, appears to give a positive answer, and this is spread all through the bulk of his *Reconstruction of Religious Thought in Islam*, as the very name of the book indicates.

There is a fourth line of enquiry which, on account of the space it will take, and its overall importance in the matter of evolving an ethical posture in the social structure of Islam, will be taken up separately towards the end of the paper.

V. Cases of Under-Action Compared to Islam

In contrast to over-action in the matter of Islamization in various areas, we now turn to cases of under-action. Zakat falls in this category. As introduced in Pakistan, it is a far cry from its real purpose and goal. The faults are not only operational and technical, but also conceptual.

At the conceptual level the Government is not very much to blame, although all deviation stares at the conceptual level. The Government has allowed itself to be swayed by the notions of our present day ulema, that no change either in tax ratio or in tax items is permitted, even though as will be presently pointed out, they tend to admit these changes, whenever they feel like it. The basic issue is that of eradication of poverty. This has to be attacked on two sides. We have to have a principle of production, which may result

in a revolutionary activation of growth, so that on the one side there is a vast increase in the tax base, and on the other significant contraction in the area of privation. The principle of production, with exactly these consequences, spelled out by the Holy Quran, is the abolition of interest. Unless this is done, poverty will rule the roost. As this first step has not been taken, except at a cosmetic, self-deceptive level, zakat can never produce adequate results, particularly when rigidity in the matter of rates and items of wealth has not been dispensed with.

Let us see the results we have achieved on account of the narrow approach we have adopted. In 1980-81, the total collection of zakat was 84.3 crores, out of which 41.1 crores were distributed to 1.2 million *mustabequeen*. It comes to an average of Re 342/-, per *mustabiq* family, for a whole year, i.e., 93 paise per day, per family. In the six month period from July to December, 1981, a total of 25.8 crores has been distributed among 1.4 million *mustabequeen* so the allocation has risen, compared to the earlier year, and works out to almost exactly Re. 1/- per day, per family. (Figures worked out from the data in Pakistan Economic Survey. 1981-82, pp. 198-9) I leave it to the reader to judge whether we are distributing zakat or encouraging beggary.

Notwithstanding the transformation of objective conditions when abolition of interest precedes or accompanies zakat, it is possible to conceive, at least initially, of demands of social justice exceeding available resources. There is no answer to this except in reverting to, in the words of Iqbal, "the original purity of Islam". We must abide by the verse of the Quran which asks us to spend "what is beyond our needs" (xx 2:219). The differentiation between *zakat* and *sadaqat*, to which our ulema appear firmly wedded, is a feudal encrustment on Islam. In the Quran and the *ahadith* there is no distinction between the two. In fact there is not a single example, either in the Quran or the *ahadith*, of the use of word *sadaqa*, in the context of *infaq fi sabeel illah*, in any sense other than zakat. So if we return to "the original purity of

Islam”, there is no dearth of resources for social justice, after production has been activated to its technological limit by the abolition of interest.

Thirdly our model of zakat involves a serious duplication of taxes. Now either we should have the traditional Islamic fiscal, system or the modern one. We have opted for both which, notwithstanding the valid reasons for it, leads to a certain measure of duplication of taxes. Besides we do not appear to have given sufficient thought to the observation of the late Aga Khan that the simultaneous imposition of both varieties of taxes would introduce fiscal dichotomy in place of the cohesive vision of Islam.

These problems could be solved in a significant measure by an operational transformation in which the Government may extricate itself from both the collection and disbursement of zakat. It should be the duty of local bodies, at the grass root level, to do both. The Holy Prophet wanted us to ensure that no one suffered privation in 40 houses around us. It is only at this level that answers to most of our problems, including the ones relating to zakat, can be found. At this level we can know who are the widows, the orphans, the disabled, the children deserving to go to school, the unemployed young men for whom creative work is to be provided. It is also at this level that, resources to meet these objectives can be collected through the social persuasion of a democratic process. Ours is perhaps the only country in the world which has the least developed local bodies apparatus. This is the major reason why problems multiply faster than solutions can be found for them. For introduction of effective Islamization, we need to have a democratic framework, which is not confined merely to the federal and provincial levels, contrary to the view of the general run of our political leadership but extends, nay even precedes it, at the local level.

There are several other no less compelling reasons for adopting this course. When a distant agency like the Federal Government collects, zakat and distributes it through

committees, which for the most part are nominated, and therefore answerable only to the Government, even without reports of leakages, political patronage and downright embezzlements, the springs of social concern start getting clogged. 'Even people who are all for zakat, and in fact would be, willing to pay twice as much, if they knew that this money is, visibly being well spent, start finding subterfuges to avoid paying it. Many people have already opted for Fiqh Jafria to evade it. Many, more will do it, so that the return will keep tapering down. At the local bodies level, the funds will be collected, disbursed and accounted for in broad daylight, and will generate a genuine social concern, in place of apathy, which is the: result of present operative framework. It is also probable that sectarian differences, along with problems connected with percentages and wealth items, will be resolved in the light of the needs of every locality.

Finally there are minor technical issues which would, best be solved in this manner. For instance, industry and commerce have been included in *amwal-e-batin*, contrary to the fact of their being *amwal-e-zahir*. It has to be conceded there are good reasons for doing this, in view of the multiplicity of taxes discussed earlier. But the same argument should have logically been extended to investments on the stock exchange, which really partake of the character of *amwal-e-batin*, and have incorrectly been included in *amwal-e-zahir*. This has led to a further depression of the stock exchange, which needs to be geared ahead. Similarly the requirement of a complete year, for an item of wealth to be taxable, has been discarded, again for fairly compelling reasons. But there are cases in which this involves great hardship, which cannot be sorted out at the Government level, but can be attended to at the local level. Similarly gold *nisab* has been discarded, and silver *nisab* adopted, for which again good reasons can be advanced. But there are areas where even silver *nisab* does not operate, e.g. investments on the stock exchange.

Since most of these changes have been introduced with the explicit or implicit concurrence of the ulema, these minor

technical issues have been discussed to underline their permissiveness to changes in the incidence of zakat, in practice, while sticking to the notion of theoretical unchangeability. It will perhaps do some good to their posture, if they allowed their theory and their practice to converge.

VI. The Power of Superior Courts to Strike Down Un-Islamic Laws

A point for which great credit should be given to this Government is the power it has given to the superior courts to, strike down any un-Islamic law. This is a long drawn out process, by which in due course of time hundreds of references will be made, and as each point is examined and relevant authorities are quoted and evaluated, we will tend to evolve a comprehensive judicial code of Islam. It is possible courts may err in one or more cases, but a subsequent reference may tend to rectify whatever mistake was committed earlier. In the absence of any full-blooded intellectual climate which may help sort out the difficulties we confront, this is a very dependable way of providing a catalytic to diverse approaches that can be made in reference to any practical problem.

If in spite of this, the provision is being included in cases of under-action, it is because the entire fiscal and monetary field is excluded from their jurisdiction, apart from some other items. This means that if a person feels aggrieved by successive lead deficit budgets of the Government, because these lead to erosion in the value of his savings, he cannot go to the court with the plea that a deficit budget is an un-Islamic one. This may or may not be a good case. But the point is our superior courts are not empowered to examine it.

Similarly a debtor who is being deprived of his collateral security by a bank in recovery of its loan along with interest, cannot knock the door of the court with the plea that the claim of interest is un-Islamic. He cannot even go to the court to seek a declaration that Profit and loss counter, and

mark-up on which it is based, is really only another name of interest. This means that some of the most vital and highly relevant areas have been excluded from judicial scrutiny.

Yet another development has adversely affected the great promise that this reform held out. There is an area of Islam in which the ulema are fairly competent to express authoritative opinion, and this is an area in which no one disputes with them. There are other areas which relate to social philosophy, to polity, to economic structure, to crime and punishment, to legal process in which their views often tend to take the line of reactionary thinking, nurtured more by our feudal past than the original sources of Islam. In these areas they obstruct those who following the lead of savants of Islam from Shah Waliullah to Iqbal take a progressive line, and are willing to prove before a court of law that this is not only a more creative interpretation of Islam, but also closer to both the Holy Book and the Holy Prophet. The ulema will be within their right to contest the posture of progressive thinkers, and allow the courts to evaluate evidence on both the sides and give their decision. Unfortunately they have found it more convenient to force the Government to (dispense with the rules governing induction to the bench at this level, so that they can be appointed as judges. This opens up the possibility of their giving decisions, according to their pre-conceived notions. Now if a party to a dispute is elevated to the bench, it amounts to scuttling the sublimity of the entire concept. Justice not only needs to be done, it should also appear to be done.

VII. Abolition of Interest

While we meet with a profusion of lip sympathy for this objective, and a long list of actions already taken to meet it, even slightest critical examination reveals that we have done nothing so far, even to meet the fringe of the problem. The exclusion of NIT units and ICP from interest bearing investments is marginal in the sense that these never had any sizeable interest bearing investments, and inconsequential in

the sense that those who wanted to invest, without getting any interest, always had the open field of stock exchange investments. The problem was not of non-interest investment of spare funds, but how to get money without the payment of interest. This was the issue which confronted the nation, and this is the one that has hitherto been side-tracked.

House Building Finance Corporation now advances money on sharing the rent instead of interest. From a superficial point of view this is an advance. In reality interest remains our point of reference. Because the return from sharing of rent is no less than the one from interest, therefore it was among the first non-interest steps that were taken. It was not realized that the quantum of rent itself is one of the myriad functions of interest. Rent is made up of several things of which interest is an organic portion.

Profit and loss counter in banks is merely interest called by another name. However the counter is popular because it gives a return of 9 per cent against 7½ in the savings bank. Since more and more saving bank accounts are attracted to PLS counter, it affords an excellent opportunity to project the success of our "Islamization" endeavours. The success would be still more if the rate of return on this counter is raised still further!

Let us examine whether PLS counter is what its name implies or a mere subterfuge for interest. Where do the banks invest the money that they receive on this counter? They obviously lend it to the Government or various Government agencies. Pakistan Economic Survey 1981-82 describes the situation as under, "The resources generated by PLS deposits were employed in safe and profitable avenues of (i) financing of commodity operations of the Federal and Provincial Governments and their Agencies (ii) financing of trading operations of Rice Export Corporation of Pakistan, Cotton Export Corporation, Trading Corporation of Pakistan and Utility Stores Corporation, (iii) negotiation of export bills, import bills and documentary inland bills under Letters of Credit..." It is claimed, "In all these financing activities,

interest element is not involved. Instead, bank remuneration is generated on the basis of mark-up in prices, profit and loss sharing, exchange rate differential and commission.” (p. 204)

Let us examine how far this claim is correct that “interest element is not involved”. Financing of commodity operations, for which it is claimed banks advance PLS deposits to the Government is an operation involving perpetual loss to the Government, and hundreds of crores are provided in the Federal budget as subsidy for these operations. PLS deposits are obviously not sharing any of this loss. What is the basis of this advance? The answer is mark-up. Now what is mark-up? This means that a sack of wheat purchased, let us say, for Rs. 200/-, involves an identical loan by a bank to the Government, and the bank marks-up the price of wheat, which in effect means the quantum of the loan by, let us say Rs. 20/-, and enters Rs. 220/- in the debit account of the Government. The net effect is that although the bank has paid only Rs. 200/- on behalf of the Government, it will receive back Rs. 220/- from the Government, after a stipulated number of months. This means that there is a fixed advance, a fixed schedule of repayment, and a fixed return, and this exactly is the definition of interest. Its nature does not change by calling it “mark-up”.

It is not explained in the *Survey* how this mark-up is calculated. When PLS scheme was explained last year in the International Islamic Monetary and Fiscal Conference at Islamabad, the Chairman of a premier Pakistani Bank gave a detailed exposition. When he was asked to explain the basis of calculation of this “mark-up”, his reply was as brief as it was forthright: “On the basis of the current rate of interest. It was no surprise that Dr. Umar Chapra, Advisor Saudi Monetary Agency, was compelled to remark that we are like a child who does *sajda* without *wudu*, without knowing what he has to say in his *sajda*, and without knowing the direction of *Qibla*.”

It would really make no difference if we shifted the basis of mark-up from "the current rate of interest" to something lower or something higher. In the former case we will be lowering the rate of interest, and in the latter raising it. The issue is not of the level of interest, but the fact of interest. Mark-up is fully covered by the definition of interest.

Similarly trading agencies are advanced loans on the basis of mark-up. If it were not so Cotton Export Corporation which suffered a huge loss last year, should have been reflected in the return on PLS accounts. Again encashment of bills, whose maturity runs for some period, suffer deduction of discount, which cannot be called "profit and, loss sharing, exchange rate differential and commission", but is pure and simple the current rate of interest.

The future programmes like leasing and investment auctioning¹ are as much interest bearing as mark-up happens to be. If we do not want to abolish interest, let us not pretend to ourselves that we are doing it.

It is sometimes argued that changing over to interest-free economy is a highly complicated business, and that we will have to advance it gradually. This can be conceded. But it does not justify our tinkering with the problem. Even if we overlooked the merely cosmetic nature of our various moves towards narrowing the area of interest, the strategy adopted is basically incorrect. Our approach is in the horizontal dimension, whereas we have to proceed in the vertical one. There is no reason why we cannot lower the bank rate which will have a significant impact on the entire range of the economy, study the results, and prepare for the next step. After all till early seventies the bank rate was 5 per cent, and there is no reason why cannot revert to it, as a first genuine move towards eradication of interest. This will activate investment, reduce unemployment, increase production, lower inflation, invigorate under-employed machinery, restore health to at least half the sick mills, boost the stock exchange, reduce imports, potentiate exports, spurt the budgetary receipts of the Government, enabling it to discard deficit

financing, which of course is essential to hold the price line, if activation of investment is not to exert inflationary pressure. Since the demand for loans will rise, we should be prepared to meet the needs of credit expansion, for which the only sensible answer is reducing the statutory reserve. After all American banks function at half the statutory reserve maintained in Pakistan. So the shortage of credit is partly artificial and partly generated by budgetary deficit of the Government, both of which can be cured simultaneously by slashing by one half the bank rate and the statutory reserve, as our first genuine moves towards abolition of interest.

After we have examined the healthy results of this triangular move, viz., reducing interest, reducing statutory reserve and eschewing deficit financing, we will be ready to make the next move of reducing interest once again by 50 per cent, so that bank rate is reduced to 2.5 per cent. It may not be known to many people that bank rate in Switzerland is the lowest in the world, has averaged 2.45 per cent over a period of 32 years from 1949-1980. (*International Financial Statistics Year Book* for 1979, p. 392, read with identical publication for 1981, p. 374, both by I.M.F.) Its per capita income at 13,290 dollars is the highest in the industrialized world, and second only to Kuwait in the whole world. (*World Development Report* of World Bank for 1981, p. 135) Even more remarkable is the result that its level of unemployment averaged 0.4 per cent over the years 1975-1980. (*Year Book of Labour Statistics*, 1981, by I.L.O. p. 325) Its rate of inflation at 5.4 per cent is again lowest of all industrialized countries. (*World Development Report*, cit. op. p. 135). This gives some idea of the functional primacy of the abolition of interest, although in the process it tears to tatters the entire fabric of mainstream economics, which has dazzled the eyes of our "experts", and rendered them incapable of getting any guidance from objective reality.

So if we reach in two or three stages 2.5 per cent bank rate, we will not be doing anything remarkably novel, but we will start garnering all the advantages which another country has achieved, by steadfastly following this line for more than

30 years. Our target is zero rate of interest. Let us be clear, abolition of interest does not mean anything else besides introducing zero rate of interest. This, however, cannot be achieved till we discover a new basis of banking, and enable ourselves to devise a new banking structure.

So while we engage ourselves in a vertical attack on interest till we reach 2.5 per cent, we should concurrently engage ourselves in research for evolving a new basis of banking which may help us to lower interest to zero per cent. The only basis which answers this demand is what is called Time Multiple Counter Loan concept. Those who have spent their lives studying this problem, have not been able to reach a straighter, simpler, more effective and more secure all embracing basis of lending and borrowing at zero rate of interest. This is no place to expound this basis of banking. Suffice it to say that we have either to accept it, or devise something equally effective. Till we have done that there is no question of our having done anything towards abolition of interest, and in fact, of having done anything for Islamization.

Suppose we became good Muslims, so that we obeyed all *awamir*, and gave up all *nawahi*, without abolishing interest. We will not be an Islamic state, because we would be, in the words of the Quran "at war with God and His Prophet". Now take the opposite case that we disobeyed all *awamir*, and adopted all *nawahi*, but abolished interest, we will have taken a great leap towards becoming an Islamic state, because we would have declared cease fire with God and His Prophet, though we would of course be very sinful Muslims. This gives an idea of the religious primacy of the abolition of interest.

VIII. The Ethical Ideal of Islam

Having given some thought to some of the vital issues relevant to what Iqbal called "social structure of Islam", we may proceed to the next reason he gave for claiming a separate homeland for us. What is the "ethical ideal" of Islam on which Iqbal laid such a great stress in his Allahabad address. Since our ulema have confined Islam to five pillars

of the faith, avoidance of *haram* victuals, and the three prohibited items, it becomes necessary to go to the one who brought this religion to us, to understand the meaning of this ideal.

There are about fifty *abadith* available on the subject, because an event happened as many times in the life-time of the Holy Prophet. Whenever a Muslim died, the companions would come to the Holy Prophet with the request to lead his *janaza* prayer. Invariably, and *without a single exception*, the Holy Prophet would enquire, "does he owe anything to any one?" This question is obviously pregnant with profound meaning. The companions would naturally confine themselves to the first layer of meaning, and gather the information whether the deceased owed any debt to any one. Thus far, all *abadith* narrate the same story. After the companions made their enquiries, naturally different situations emerged. If the companions reported that the deceased did not owe a debt to any one, the Holy Prophet would go and lead the *janaza* prayer. If the companions reported that the deceased owed this and that person, such and such an amount of money, the Holy Prophet would say let the debts be cleared, before he was asked to lead the prayers. If the debts were cleared, the Holy Prophet would lead the *janaza*. There are some cases in which nobody cleared the debts, and the Holy Prophet himself cleared the debts of the deceased, and led the prayers. But there are also cases in which neither the descendants or friends of the deceased cleared his debts, nor the Holy Prophet thought fit to clear his debts, so the Holy Prophet told his companions to go and say his *janaza* prayer, but *declined to join the prayer himself*.

Now there is a whole world of ethical meaning in this posture of the Holy Prophet, which does not find even a mention in the sermons of our ulema. He declines to join the *janaza* prayer of those "who owe anything to any one". It is obviously not merely a question of non-payment of debt, but extends to any variety of trampling of any one's rights, which one may have perpetrated whether through adulteration,

through injustice, through bribery, through nepotism, through profiteering, through unjust persecution or in any other way. This is a glimpse of the expanse of the vision of the Holy Prophet, which is supported by another set of *ahadith*, to which we shall revert in a moment.

The second note-worthy point is that the Prophet does not ask any of the things which the ulema now regard as most important. He does not ask did he regularly pray, did he fast regularly, did he ever touch liquor, did he ever fornicate. From the Holy Prophet's point of view the sole test of whether a person led an ethical life was the answer to the single question, "does he owe anything to any one". It must be confessed that the meaning of Islam as an ethical ideal has undergone a complete somersault, since the days of the Holy Prophet. How else can we join *haj* with smuggling, prayer with adulteration, *tasbeeh* with bribery? We have completely lost our grip on the core of our faith. This core in the eyes of the Holy Prophet is covered by a single word, integrity. If some of our people adopt religion as a profession, and start living by selling verses of the Holy Quran, they come to have good reason not to emphasize earning of honest bread, no matter how far this posture may be from that of the Holy Prophet.

This involves us into an inquiry regarding the first significant step we took in our march towards Islamization, viz; the establishment of Islamic Advisory Council. This body has been in existence for almost a quarter century now. We have a right to inquire what recommendations this body has been making to the Government. Why are the reports of this body treated as confidential documents? Did they ever wrestle with the problem of integrity, which the Holy Prophet regarded the sole test of the life of a Muslim? If not, does it not mean that the very purpose of the creation of this body will remain unfulfilled till we change the criterion of its membership. We need scholars, thinkers and Islamists on this body, whose sole criterion should be their integrity, besides their devotion to Islam, and not people who have lost their

hold on the essential thing is that all reports sent to the Government should be published, so that scholars can express their opinion on them, and all reports sent in future should also be published, so that a climate of free debate instead of intellectual stagnation should be encouraged.

Iqbal was conscious of the incapacity of the present day ulema to understand Islam. That was why he was keen that we should learn our faith directly from the Holy Prophet, and should avoid getting waylaid by some of his present day intermediaries. He cautioned us

Bi Mustafa, bi rasan khaish ra ke deen hama oost

Agar beou na raseedee tamam Bu Lahabeest

An inadequate rendering would be:

Take thyself to Mustafa because he represents our entire deen

If you do not reach him, you are only following Bu Lahab.

To revert to the subject of Holy Prophet's approach to life, although the *abadith* already referred to are enough to indicate the crux of religious life in Islam, but since the Holy Prophet was the last to convey to man what constituted piety, he took yet another and equally telling line to expound his meaning. A martyr, as we know, is forgiven all his sins. But the way the Holy Prophet expresses it is somewhat different. In one hadith, a martyr is not forgiven his debts. In another he is not forgiven *haquq-ul-ibad*. Even he, in other words, is not forgiven if "he owes anything to any one". The rights of men, in which obviously debts can be subsumed, are not forgiven even to a martyr!

Naturally the companions were quite anxious to know what would happen to a martyr who also "owes anything to any one". So the Holy Prophet told them of the entire procedure Allah would adopt in his case. The martyr will not proceed to paradise till his affairs with his claimants are settled. These will be settled in the currency of the next world, viz., good and bad deeds. First the good deeds of the martyr, except his martyrdom, would be transferred to the claimants. In case, even after transfer of all good deeds, the claims remain unsatisfied, the bad deeds of the claimants will

start getting transferred to the martyr, till all *haquq-ul-ibad* have been completely provided for. Now the martyr will be left with his sins and his martyrdom. But these sins would all be those of Allah, and therefore He will forgive them.

Let us ponder for a while over all the *abadith* referred to above, in connection with the ethical ideal of Islam, and recall that the Holy Prophet propounding this philosophy was only an *ummi*. Can the greatest of thinkers, the greatest of writers, discover a more incisive manner of communicating this idea? If we still, do not know the meaning of Islamization, can the blame be laid at the door of the Holy Prophet?

This in brief is the "ethical ideal" of Islam. Men should earn their living by the honest sweat of the brow. Never should they trample on the rights of others. Do we not recall that the Holy Prophet was called *siddiq* and *ameen* before he was chosen by Allah to become His last Prophet? So the ethical ideal of Islam is to be what the Holy Prophet was before his elevation to a level we cannot reach. We should be truthful and we should be honest, because we cannot be either without being both. Everything else is secondary and subordinate to this ethical ideal, at least in the eyes of the Holy Prophet.

JUSTICE

'Justice' is one of the most baffling problems of positive morality. I have used positive morality to distinguish it from ideal morality. Positive morality is the ethical code accepted by an age or people as correct principles for determining the true worth of actions. Positive morality is therefore relative and liable to change. For instance, among ancient Egyptians brothers could marry their sisters, but the Greeks detested such a practice. Again the ritual of Satti in India was stopped during the course of social evolution. Ideal morality, on the other hand, is the morality of religious or of utopias. It is abstract, inconceivable but permanent as regards value. Positive morality is in fact derived from Ideal morality.

Strictly speaking, no ethical question can be answered unless and until we solve the enigma, whose good is to be actually promoted; or among the different classes of people who is really deserving to enjoy it?

Among the Greeks, Sophists, the professional teachers of philosophy and rhetoric in the 5th century B.C. are regarded as the pioneers in ethical sciences, and their conception of justice, as we shall presently see, was purely egoistic. Thrasymachuo identified justice with the private interests of those who have power. Socrates considered it as one of the cardinal virtues, attaching abstract value to it. The Cynics, after Socrates exaggerated it to the endurance of pain and cultivation of contempt for pleasure. The cyrenaics, on the other hand, laid stress on its 'pleasure aspect.'

Plato, though profoundly influenced by Socrates, has much to say about the problem we are considering here. The purpose of his "Republic" was essentially to determine the nature and worth of justice. Justice, externally is good for society and internally, for the individual who practices it. He regards it as an attribute of the state and is accomplished by the 'division of labour', that is 'doing your own business and not interfering with that of other people.' So much about the objective aspect of it. Internally, it is spiritual beauty and health. It is, according to Plato, the highest of cardinal virtues – wisdom, fortitude and temperance; because it includes all of them. Justice, in short, is intelligence, strength and unity combined. Hence in this sense justice becomes a private affair. The just man is he who, led by wisdom, aims at practically realizing the conception of harmonious and vigorous developments of parts within a whole, and he seeks to realize this ideal within his own soul, so he seeks also to realize it in the state of which he is a member.

Plato's conception of justice, as we have noticed, is more or less an ideal conception. He expects too much from an individual whom he considers a part in a whole. Aristotle, unlike Plato, is more concrete, positive and practical. For him, justice is the obedience to the law of the state. His ideal of justice is a conception of perfection not of individual but of social virtues. Aristotle discusses justice in a narrower sense as compared with that of Plato, and goes into its minute details. His 'Particular Justice' is divided into (i) Distributive and (ii) Corrective Justice. Distributive justice uses two principles – one is that a man is to receive profit from an undertaking in proportion to the amount that he contributes; the second is that he is to contribute to public expenses in proportion to his belongings. Corrective Justice, on the other hand, deals with infringement of the law of the land, the penalty or compensation is measure by the degree of injury.

Epicurus, like Hume, considers justice as conventional and not natural. According to him, it springs from the need felt by each rational member of society for an adjustment of claims.

Hence it is a contract entered into by the various members of a society, by which each individual agrees to abstain from harming others, on the understanding that they are to abstain from harming him. This conception was later developed by Hobbes.

The stoics, as we have as many inspiring examples of them, passing orders of crucifixion for their own dear sons to maintain the prestige of the ideal that Justice is a law of nature, a product of universal reason and not a mere convention, as Epicureaus thought.

When the question "What is Justice?" is put to a layman, he utters unhesitatingly "Justice is Equality" or "Justice is just recompense or reward." The defect in all such laymens' definitions is that they try to solve a puzzle by referring it to another puzzle. Thus the vagueness of the problem persists. In this peculiar case of justice, the fact cannot be denied that 'equality' or 'just recompense or reward' do count. But we are immediately confronted with many such questions as – what is equality? Or if equality is some applicable formula, then what sort of equality is needed to define the ideal of justice? What should be the basis for just recompense or reward?

Coming to grips with the actual problem, we are at once met with two conflicting ideals, each of which has value. The principle that every human being is of equal intrinsic value, and is therefore entitled to equal respect, appeal to our common-sense. On the other hand, the principle that the good ought to be preferred to the bad, or reward ought to be given according to the merit, is one which no less commends to our moral consciousness.

Let us examine the first principle – that every human being is of equal intrinsic value. The famous Benthamite maxim "Every one to count for one and nobody to count for more than one" can be fixed here. This maxim, abstractly considered seems rational. But what if an equal distribution diminishes the amount of good to be distributed? Men's capacities for different goods vary enormously, and an equal distribution of the conditions would not result in an actual

equality of enjoyment. Distribution of food, for instance, which takes no account of the varying appetites of different individuals may produce a lower average of actual health.

The most glaring weakness of Dentham's argument is that if 'everyone is to count for one and nobody to count for more than one' – the society would be required to treat a drunken idler and an industrious workman alike, which seems preposterous. The kind of socialism that insists that all should be miserable rather than that anyone should be made a little happier than anybody else, has been justly described by some as 'individualism run mad.' Thus, as Rashdall thinks, people should have a certain proportion of material conditions, according to the various power of utilizing them for their own well-being and the well-being of others.

Before commenting on this, I would like to quote an interesting example. Supposing on a front, somewhere near the German border, few starving soldiers protected by a natural feature, await their doom. Their number is, say, fifteen, but they have rations left only sufficient for two of them, and probably there is no hope for any immediate reinforcement. What would be the course of justice here? Obviously Bentham's principle: 'everyone to count for one and nobody to count for more than one' would make all of them miserable. Perhaps all of them would die. On the other hand if, a Rashdall proposes, two of them were to be made a little happier than the rest, this would not work either. No doubt, if two of them were allowed to use the rations and the rest perished, those two would keep the enemy engaged for a little more time. But who should be the lucky two? If good is to be preferred from bad, or merit or ability is to count – who would be the judge? Here lies the very core of the problem. I needn't support any view. It is up to you to decide.

By the above example, it is clear, at least to me that equality in its abstract sense is a least workable principle. For defining justice, only a restricted sense of the term might be taken. But what would be that restricted sense? Shall we say 'equality of opportunity' is rather more useful than equality

abstractly considered? Rashdall beautifully remarks, "the opportunity is no more a good to the man to whom nature has denied the capacity for using it than a pair of spectacles is a good to a blind man." We, therefore, must have some sort of inequality of opportunity – both for the existence of more good on the whole, and to a more equal distribution of that good.

Can a state grant each child an equally good mother? Should there be an equal educational opportunity for an idiot and a genius? Should the sick and the healthy, the good and the bad be treated as equal? Is not there inequality in Nature's bounty? In fact, strict equality of opportunity would reach at similar results as the conception of abstract equality has made us reach. What is necessary, however, is that attempts should be made to reduce the obvious inequality of wealth, culture, freedom and so on. It should be borne in mind that unchecked equality of opportunity would base too hard on the weak.

Rashdall believes that there is only one sort of equality which is practical and always right. That is 'equality of consideration'. Since we can always give each individual equal consideration in making up our mind whether this or that would be on the whole for the general good. The principle certainly requires us to aim at greater equality of actual well-being – only on condition that the greater equality will not violate the equal right of each to enjoy as much good as it is possible for him to enjoy.

Individuals with higher capacities have a right to more than mere equal consideration as compared with those of lower capacities. Hence the formula: every one to count for one and nobody to count for more than one' must be interpreted to mean: 'everyone's good to count for as much as the like good of anyone else.' We are bound to agree with Rashdall when we survey the lives of prophets, great leaders, generals, poets, artists etc. and can say that the realization of such superior capacities by those who possess them is for the ultimate good of the whole of human race.

To sum up, for defining justice, we have so far considered the questions: what is equality? If equality is some applicable formula, then what sort of equality is needed to define the ideal of justice? We have reached at the conclusion that equality in the abstract sense of the term is not a workable principle. Some sort of inequality is a condition of well-being. Further, we have seen, equality of opportunity is also absurd. The only useful formula, that can work within limits is the equality of consideration.

Now we turn to the other aspect of the problem, i.e. "Justice is just recompense or reward" Let us examine it. There are two views which are often considered in this connection. Sometimes the maxim is "to everyone according to his merit," at other times "to everyone according to his work." In the first case, merit may be understood in terms of a moral, in the second, in an economic sense.

Rashdall gives for interesting illustrations to define both the views. Think of a picture painted with the toes by a handless artist. It may show more perseverance as well as more skill than one painted in the usual way. If the two pictures were of equal artistic worth, the painter's ought, according to the second formula: "to every man according to his work" to be rewarded equally while, according to the first: "to every man according to his merit", the toe-painter should receive, it may be, five or ten times the reward of the hand-painter.

Again if, for instance, the question is raised that a doctor does not perform a greater service to society than a ploughman and therefore he is not to receive an equal reward – the right answer would be "It is needless to dispute on it. In a given society a sufficient number of doctors as well as of ploughmen are needed. And when the two conditions are secured, no further production either of bread or of medical attendance will be of any value to the community. But if it is asked, which is more valuable when you cannot have enough of both – it must be confessed that a ploughman performs the more indispensable service. If then this is the sense

implied by the principle "to everyman according to his work", it would seem that the ploughman should be paid more than the doctor. But it is impossible to admit the justice of the principle thus interpreted.

Payment in proportion to the value of everyone's work looks plausible so long as we have forget that the economic value is relative and not absolute. But payment in proportion to merit would be better for the development of higher capacity because it is of more worth as compared with the development of lower capacity and consequently ought to be provided with all the condition necessary for its exercise.

Hence a community, having the conditions of happiness or well-being, should distribute them, in accordance with merit and moral worth of the individual concerned, because our goal is to make as many people as possible, since goodness leads to happiness and badness to misery. Thus all kinds of higher life – moral, intellectual or aesthetic, should be treated as more valuable than the lower life.

Rashdall rightly infers, "the tailor's function, his activity and therefore a large part of his good consists in doing his tailor's work and finding his own good in it, and the scholar's good consists in leading a scholar's life. You cannot distribute to the tailor the scholar's good, which consists mainly in leading a scholar's life. All social progress, all culture, all civilization involves a constantly increasing "differentiation". It is only in an extremely simple state of society that the lives of different people can exactly resemble one another." Rashdall adds, "schemes of socialism which aim at an absolutely dead level of material conditions, at an extinction of all differences in education, in culture, in modes of life, in quantity and quality of work; to socialism which proposes to impose six hours' manual work a day on everyone – on physician and scholars and inventors for instance, would mean a return to barbarism."

To sum up our conclusions so far, we have seen, firstly, that the most workable definition of justice is equality of

consideration; and secondly, that reward ought to be given in accordance with merit and not in accordance with work.

Now only one more aspect of the problem remains, i.e. what should be the right guide in our judgements, our emotions or our reason? Moral philosophers differ in their views. But let me illustrate my view point by an example. Say, if a culprit who has committed the offence of theft asks the judge: "my lord, I have stolen that which belonged to someone else, but how do you infer that the fault lies in me. I am sure, I would have been as good as yourself. The difference in you and me is this that you were brought up in better environments and therefore you did not cultivate bad habit – whereas I was of poor parents, hence my poverty, my company, my conditions, ought to be blamed and not myself. What right have you to punish me? If my environments had been as good as that of yours, and yours as mine then I would have been seated on that chair today and you would have been standing thus before me. So tell me, where lies my fault? Am I not as good as any other human being? Am I not as good as any other human being?" The right judge would reply: "Indeed I shall consider you as good as anyone else. Indeed I shall consider that your environments had a hand in your offence. Indeed I shall agree that you might have been a gentleman if your conditions were better. But, since there is something in yourself which did not stop you from committing the offence. Since you acceded to the dark whisperings of your evil self in preference to your moral self. Since you could refrain yourself from committing it and yet you did not. Therefore you will get the reward in accordance with your merit. Be bold and confess that you committed the offence, and accept the punishment." The thief might say: "I confess I committed the offence. I confess I could refrain myself and yet I did not. Still I implore your lordship to pardon me this time and I give my word of honour that I would never commit such an offence again."

Here lies all the difference of opinions. The judge can be moved by the intensity of truth in the emotions of the culprit

and give orders for his release saying: "Forgiveness would make him a better man in the future. So let the past be overlooked." Or he might say like Kant: "No. I must punish you since punishment is retribution. It is an end in itself, not a means to any end beyond itself. It looks to the past, not to the future. Hence woe to him who creeps through the serpent-windings of Utilitarianism to discover some advantage that may discharge him from the justice of punishment or even from the due measure of it."

In my opinion the guide in our judgement ought to be essentially reason. I would prefer to hold the view like Kant. "Justice ought to be done though the heavens might fall." As regards emotions, which mean forgiveness or chastity, in my view, these are the attributes of God. Hence it should be left for Him to pardon and to forgive.

PAKISTAN'S IDEOLOGICAL FOUNDATION AND THE PRINCIPLE OF ISLAMIC LEGISLATION

What the League has done is to set you free from the reactionary elements of Muslims and to create the opinion that those who play their selfish game are traitors. It has certainly freed you from that undesirable element of Maulvis and Maulanas. I am not speaking of Maulvis as a whole class. There are some of them who are as patriotic and sincere as any other; but there is a section of them which is undesirable. Having freed ourselves from the clutches of the British Government, the Congress, the reactionaries and so-called Maulvis, may I appeal to the youth to emancipate our women. This is essential. I do not mean that we are to ape the evils of the West. What I mean is that they must share our life not only social but also political.

(Quaid-i-Azam)

A nation reverts to the purity of its foundational principles usually when it faces serious problems or when, in the course of time, decay sets in and such principles are distorted either for the sake of expediency or to suit the convenience of those who derive some transitory benefit from them.

Pakistani Muslims today have unfortunately been placed in such a state of confusion. On the one side they are afflicted

with political, linguistic, ethnic, regional and sectarian dissensions, and on the other, the enemy is knocking at their gates with aggressive designs. It is, therefore, necessary that an attempt is made to rediscover the ideological basis on which the country was founded.

There is no denying the fact that Pakistan was created in the name of Islam, because Islam operated as a nation-building force in the Subcontinent and the Muslims were persuaded to develop a sense of belonging to one another on the basis of a common faith or a common spiritual aspiration, rather than on common race, language and territory. Thus, when the Muslims had developed a national consciousness, they started the struggle for and eventually managed to achieve Pakistan as their homeland.

The question arises that if Islam is its ideological basis then on which interpretation of Islam is Pakistan founded? Or on following which interpretation of Islam depends the collective survival of its people? During the Pakistan movement many such interpretations of Islam were advanced which were against the very establishment of Pakistan. For instance, it was argued that if Pakistan was created Islam would cease to exist in India and Muslims would disappear from Pakistan. Similarly, there are at present numerous interpretations of Islam in circulation within Pakistan. For instance, it is held out by some that Pakistan may have come into being as a result of a democratic process but the fact remains that democracy and Islam are in conflict with one another and cannot co-exist.

The founders of Pakistan certainly had a very clear vision. They approved of a definite interpretation of Islam on which they founded Pakistan, and according to them, it was only through that interpretation that the Muslims could possibly realise their objectives in the newly created Muslim state. The list of eminent founders of Pakistan starts from the name of Sir Syed Ahmed Khan and comes down to Quaid-e-Azam Muhammad Ali Jinnah. But, for the present, an attempt will

be made to explain Pakistan's ideological foundation only in the light of the teachings of Quaid-e-Azam and Allama Iqbal.

In what sense did Quaid-e-Azam desire Pakistan to be an Islamic state? It is evident from his writings and speeches that, according to him, a parliamentary form of democracy was not repugnant to the injunctions of Islam. He had declared time and again that all the Muslim sects, as well as, non-Muslim minorities in Pakistan would be treated with equality, justice and fair play. He attached great importance to the fundamental rights of the citizens of Pakistan. He did not want the judiciary to be subservient to the executive but desired it to be completely separate and independent from it. He was against the establishment of one-man's rule or one party's authority in Pakistan. He has categorically stated:

“Let us lay the foundations of our democracy on the basis of truly Islamic ideals and principles. Our Almighty has taught us that our decisions in the affairs of the state shall be guided by discussions and consultations.”

(Speech: Sibi Darbar Feb 14, 1948).

It is evident from this quotation that, according to Quaid-e-Azam, Parliament was not expected to be merely an “advisory” body but a “consultative” body which was to manage the affairs of the state with mutual consultations. In other words, he believed in the supremacy of the Parliament.

What is his concept of Islam? It is that *Taubid* (Unity of God) teaches us to believe in human equality, fraternity and liberty. He states:

“No doubt there are many people who do not quite appreciate when we talk of Islam It (Islam) is based on the highest principles of honour, integrity, fair play and justice for all. One God and the equality of man is one of the fundamental principles of Islam. In Islam there is no difference between man and man. The qualities of equality, liberty and fraternity are the fundamental principles of Islam.”

(Address: Bar Association Karachi, Jan 25, 1948).

Quaid-e-Azam did not envisage Pakistan as a backward theocratic state ruled by religious leaders or where only people of a particular religion, for example, Muslims of the

majority sect, would be full citizens and non-Muslims as well as Muslims of minority sects would not be full citizens. He proclaimed:

“The great majority of us are Muslims. We follow the teachings of the Prophet Muhammad (may peace be upon him). We are members of the brotherhood of Islam in which all are equal in rights, dignity and self-respect. Consequently, we have a special and a very deep sense of unity. But, make no mistake: Pakistan is not a theocracy or anything like it. Islam demands from us the tolerance of other creeds.

(Broadcast to the people of Australia, Feb 12,1948).

He further proclaimed:

“The Muslim League is already pledged to its basic principle of freedom for all religions and sects. The League will never interfere with faith and, belief of any sect amongst Musalmans or non-Muslim minorities.”

(Message to Shia Conference, 1945).

Quaid-e-Azam was continuously harassed by the Ulema, particularly by those with Congress orientation. They stood for the status quo as far as Islam and Muslims were concerned, and regarded new ideas such as the Two-nation theory, the concept of Muslim nationhood and the territorial specification of Islam through the establishment of Pakistan, as innovations which they were not prepared to accept under any circumstances.

It was in this background that Quaid-e-Azam pointed out to the students of Muslim University Union:

“What the League has done is to set you free from the reactionary elements of Muslims and to create the opinion that those who play their selfish game are traitors. It has certainly freed you from that undesirable element of Maulvis and Maulanas. I am not speaking of Maulvis as a whole class. There are some of them who are as patriotic and sincere as any other; but there is a section of them which is undesirable. Having freed ourselves from the clutches of the British Government, the Congress, the reactionaries and so-called Maulvis, may I appeal to the youth to emancipate our women. This is essential. (Address: Feb 5, 1938).

In this address, Quaid-e-Azam used rather strong words against the worldly-wise Ulema due to their bigotry and conservatism, and had included them in the category of exploitative forces like the British government and the Congress. Perhaps it would have been better if he had not been so harsh on them. But it is evident from his remarks that his faith in Islam was totally free from any kind of bias, bigotry, narrow-mindedness and conservatism. As a Muslim, he was a liberal and wanted to see Pakistan as an embodiment of dynamic and forward-looking Islam. The Objectives Resolution adopted in 1949 reflects his concept of Islam, and this document has rightly been adjudged as the political ideal as well as charter of Pakistan's freedom.

Before we proceed to consider the ideas of Allama Iqbal on the subject, a quotation about Iqbal from the work of Maulana Najmud-din Islahi (an ardent follower of Maulana Husain Ahmad Madani of Deoband) may be cited for the interest of the readers.

He writes:

“We acknowledge Dr. Iqbal as a poet and a philosopher. But for us to give him a status more than that would amount to committing a religious (Sha'ri) crime. We have read his works carefully There are many of his verses which openly strike at Islam and Islamic way of thinking.”

He further states:

“In Pakistan the principles of Islamic legislation can indeed be formulated in the light of the thought of Iqbal, because the Islam on which Pakistan has been founded is the other name of the philosophy of the late Iqbal.”

(*Makinbaat-i-Sheikh-ul-Islam*, Lahore, 1944. Vol 3, p. 141).

This passage has been reproduced here for two reasons. First, in order to show that there are some Ulema who regard Iqbal as a mere poet and a philosopher, and they consider that his faith in Islam was not in conformity with the Islam that should be professed by all Muslims. Second, that according to them, Pakistan has been founded on a specific brand of Islam which is the other name of the philosophy of Iqbal. Therefore, the principles of Islamic law-making in

Pakistan, according to Maulana Islahi, can exclusively be formulated in the light of Iqbalian thought. Now we may proceed to examine this aspect of Iqbal's thought. Iqbal had dreamt of the establishment of a new Muslim society, and throughout his life he strived to lay down principles on which it could be founded in the proposed new Muslim state to be carved out in the Subcontinent. Briefly speaking, in this respect, he lays emphasis in his writings on three basic requirements:

1) A changed attitude towards theology: In order to encourage the development of a correct understanding of religion, he desired the formulation of a new *Ilmul Kalaam* (science of interpreting revelation). He was of the view that the conventional *Ilmul kalaam* was based on the conclusions arrived at by the Greek speculative sciences, and being time-worn, was of little benefit to the modern Muslims. According to him, Sir Syed's attempt to provide a scientific or *naturi* interpretation of revelation failed because he had based it on *Mutazillite* thought which was also founded on Greek rationalism. He was of the opinion that the new *Ilmul Kalaam* should be prepared on the basis of the discoveries of modern empirical sciences, because their findings were in harmony with the Quranic revelation and that such a scientific form of religious knowledge would certainly strengthen the faith of modern Muslims in Islam.

He states:

“Classical Physics has learned to criticise its own foundations. As a result of this criticism the kind of materialism, which it originally necessitated, is rapidly disappearing; and the day is not far off when Religion and Science may discover hitherto unsuspected mutual harmonies.”

(Preface to *Reconstruction*, 1986, Ed. p. xxii).

2) Reinterpretation of Islamic Law through Ijtihad: According to Iqbal, the definition of Shariat is the compilation of rulings/decisions of ancient jurists which cannot claim finality, but due to the changed conditions of modern life, requires a review. He argues:

“Owing to a spectacular change that has taken place in modern times, new cultural needs have arisen. As a result the decisions of jurists, the compilation of which is generally known as

Shariat-i-Islami, requires a review. I do not mean to say that there is any inherent defect in the injunctions of religion due to which they fail to provide appropriate legal solutions of our present-day cultural problems. But I do wish to point out that under the broad and multi-dimensional principles laid down in the Quran and the Traditions, some of the decisions given by the jurists at one time or another, are indeed such which held good and were valid in those specific times, although they may not be quite applicable to and suitable for our present day needs and requirements.”

(Paper “Qaumi Zindagi”. *Makhsan*, Lahore, Oct 1904).

3) Combining Islamic sciences with modern sciences: Iqbal envisaged a vital change in the field of education. He believed that under the influence of the Quranic teachings Muslims developed the experimental method and, therefore, they were the original founders of modern empirical sciences and technology. He was of the firm view that the combining of Islamic sciences with modern sciences would rekindle the spirit of inquiry, research, creativity and innovation amongst the younger generation of Muslims. According to him if this cultural revolution could be accomplished in Muslim countries, it would eventually lead to their economic and technological emancipation. He also believed that a revival only of religious sciences would not lead to a cultural renaissance of the Muslims since the religion of Islam cannot be separated from its culture.

It is evident that these ideals of Iqbal could only be realised through the establishment of a state. Therefore, it is necessary to examine as to what was his concept of a modern Islamic state. According to Iqbal, the formation, of elected assemblies in some Muslim countries was a return to the original purity of Islam. Relying on Sura 42 Verse 38, he argues that if any foundational principle regarding the management of a state can be deduced from the Quran, it is the principle of election. He writes:

“The republican form of government is not only thoroughly consistent with the spirit of Islam, but has also become a necessity in view of the new forces that are set free in the world

of Islam.”

(*Reconstruction*, 1986, Ed. p. 125).

He lays the foundations of a modern Islamic state on three principles: Equality, human solidarity and freedom. He argues:

“The essence of “Tauhid” (Unity of God) as a working idea, is equality, solidarity and freedom: The state from the Islamic standpoint, is an endeavour to transform these ideal principles into space-time forces, an aspiration to realise them in a definite human organisation.”

(*Reconstruction*, 1986, Ed. pp. 122 & 123).

Furthermore, the ultimate aim of Islam, according to Iqbal, is not only to create a democratic order in the materialistic sense but also to make it obligatory on the Muslims to establish a genuine “spiritual democracy”. He writes:

“Let the Muslim of today appreciate his position, reconstruct his social life in the light of ultimate principles, and evolve, out of the hitherto partially revealed purpose of Islam, that spiritual democracy which is the ultimate aim of Islam.”

(*Reconstruction*, 1986, Ed. p. 142).

In his Allahabad Address (1930), which unfolded Iqbal's dream for the establishment of Pakistan, he, while talking about religious tolerance in the proposed Muslim state in the light of the Quranic teachings, declared:

“A community which is inspired by feelings of ill will towards other communities is low and ignoble. I entertain the highest respect for the customs, laws, religious and social institutions of other communities. Nay, it is my duty according to the teachings of the Quran even to defend their places of worship, if need be.”

(Iqbal's Speeches and Statements, Ed. by A. R. Tariq, p. 10).

It is clear from Iqbal's letters to Quaid-e-Azam that in the proposed Muslim state he wanted to see the establishment of such a social democracy which had the approval of Islamic Shariat. But, as it has been pointed out above he had pleaded for the reinterpretation of the Sharia law through Ijtehad to suit the modern needs and requirements of the Muslim community, and was of the view that if such a

reinterpretation was possible, the Muslims could certainly benefit from the material blessings of Islam.

Now, we may turn our attention to another important question and that is what is the methodology proposed by Iqbal for practising Ijtehad? Iqbal wants to take away the power of Ijtehad from individual jurists and to hand it over to the elected members of a Muslim assembly as only they are competent to make laws. According to him, this is the new form which can possibly be given to Ijma-e-Ummat (consensus of the community) in modern times.

The next question is, that although the elected members of Parliament would be predominantly Muslim, one cannot expect them to be also capable of understanding the intricacies of Islamic Shariat, and therefore how could the possibility of erroneous interpretation of Shariat on their part be excluded? In this connection, Iqbal suggests that a board of Ulema can be constituted by the government on the basis of nomination, so that they could guide, help and assist the elected members in the process of Islamic law-making in Parliament. But he is not in favour of granting them the power to veto the laws made by the legislative assembly as held by the Walayat-e-Faqih under the Iranian constitution. On the contrary, he is of the opinion that if this dangerous dispensation is adopted in Sunni countries, it should be adopted only as a temporary measure. Why is Iqbal against the idea of permitting the Ulema to play a leading role in Islamic law-making? This is a subject of a separate discussion which cannot be taken up in this paper. According to Iqbal, the correct way of removing the possibility of erroneous interpretation is the election of such lawyers as members of Parliament who are not only familiar with the traditional Islamic fiqh but are also well-versed in the study of modern jurisprudence. In this regard, he wants to bring about certain basic changes in the method of legal instruction at the universities. But he would not like that the sovereignty of Parliament be impaired in any manner.

The inclusion of provisions relating to the Council of Islamic Ideology in all the constitutions framed for Pakistan so far, is an attempt to give a practical shape to this very suggestion of Iqbal. He writes:

“The transfer of the power of Ijtehad from individual representatives to a Muslim legislative assembly which, in view of the growth of opposing sects, is the only possible form Ijma can take in modern times, will secure contributions to legal discussion from laymen who happen to possess a keen insight into affairs. In this way alone can we stir into activity the dormant spirit of life in our legal system, and give it an evolutionary outlook One more question may be asked as to the legislative activity of a modern Muslim assembly which must consist, at least for the present, mostly of men possessing no knowledge of the subtleties of Muhammadan Law. Such an assembly may make grave mistakes in their interpretation of law. How can we exclude or at least reduce the possibilities of erroneous interpretation? The Persian constitution of 1906 provided a separate ecclesiastical committee of Ulema, having power to supervise the legislative activity of the Mejliss....But whatever may be the Persian constitutional theory, the arrangement is not free from danger, and may be tried, if at all, only as a temporary measure in Sunni countries. The Ulema should form a vital part of a Muslim legislative assembly helping and guiding free discussion on questions relating to law. The only effective remedy for the possibilities of erroneous interpretation is to reform the present system of legal education in Muhammadan countries, to extend its sphere, and to combine it with an intelligent study of modern jurisprudence.”

(*Reconstruction*, 1986, Ed. pp. 138-140).

It is self-evident that there is complete harmony in the views of Quaid-e-Azam and Allama Iqbal regarding the establishment of a modern Islamic democratic welfare state in Pakistan.

Now we can proceed to examine Iqbal's views regarding the traditional Islamic fiqh and as to why he felt the necessity of Ijtehad or its reinterpretation. In his prose works, Iqbal has discussed in detail the reasons why the Sharia law has been made immobile. He states:

“It is necessary, before we proceed further, to discover the causes of this intellectual attitude which has reduced the law of Islam practically to a state of immobility.”

(*Reconstruction*, 1986, Ed. p. 118).

He is also of the opinion that due to the extreme conservatism of the Muslim community, the judges in the courts, while writing their judgments, have to depend entirely on the ancient works of fiqh for the interpretation of the Sharia law. The result is that although Muslims move forward, Islamic law continues to lag behind. He points out:

“In view of the intense conservatism of the Muslims, judges cannot but stick to what are called standard works. The result is that while the peoples are moving the law remains stationary.”

(*Reconstruction*, 1986, Ed. p. 134).

Iqbal felt the necessity of Ijtihad also for the reason that the founders of the schools of Islamic law, while interpreting Sharia, never claimed that their interpretations had attained finality. Even otherwise, according to Iqbal, Islamic Shariah was a collection of decisions (fatawa) of ancient jurists, and as these decisions were merely individual opinions, no finality could be attached to them. He argues:

“But with all their comprehensiveness these systems (of law) are after all individual interpretations, and as such cannot claim finality. I know the Ulema of Islam claim finality for the popular schools of Muhammadan law, though they never found it possible to deny the theoretical possibility of a complete Ijtihad. I have tried to explain the causes which, in my opinion, determined this attitude of the Ulema; but since things have changed and the world of Islam is confronted and affected today by new forces set free by the extraordinary development of human thought in all its directions, I see no reason why this attitude should be maintained any longer. Did the founders of our schools ever claim finality for their reasonings and interpretations? Never The closing of the door of Ijtihad is pure fiction suggested partly by crystallization of legal thought in Islam, and partly by that intellectual laziness which, especially in the period of spiritual decay, turns great thinkers into idols. If some of the later doctors have upheld this fiction, modern Islam is not bound by this voluntary surrender of intellectual

independence ... Neither in the foundational principles nor in the structure of our systems, as we find them today, is there anything to justify the present attitude. Equipped with penetrative thought and fresh experience the world of Islam should courageously proceed to the work of reconstruction before them."

(*Reconstruction*, 1986, Ed. pp.133,134,141, & 142).

Since Iqbal stands for a complete Ijtehad in "Muamalat" (mundane affairs), he, agreeing with Imam Karkhi, is of the view that the future generations of Muslims are bound by Ijma-e-Sahaba-e-Karam (unanimous decision of the Companions) only when it pertains to a question of fact. But when it provides an interpretation of a question of law, then the future generations would not be bound by their unanimous decision. He states:

"But supposing the Companions have unanimously decided a certain point, the further question is whether later generations are bound by their unanimous decision..... I think it is necessary in this connection to discriminate between a decision relating to a question of fact and the one relating to a question of law. In the former case, as for instance, when the question arose whether the two small Surahs known as Muwwiddatan formed part of the Quran or not, and the Companions unanimously decided that they did, we are bound by their decision, obviously because the Companions alone were in a position to know the fact. In the latter case, the question is one of interpretation only, and I venture to think, on the authority of Karkhi, that later generations are not bound by the decisions of the Companions."

(*Reconstruction*, 1986, Ed. p. 139).

Similarly relying on the views expressed by Shah Wali Ullah in his magnum opus *Hujjat Allah-al-Balighab*, Iqbal believes that the Islamic punishments for crimes are not an end in themselves and therefore they cannot be strictly enforced in the case of future generations. It may be noted that Iqbal had always been keen to seek and study the works of Shah Wali Ullah of Delhi, whom he considered to be 'the first Muslim who felt the urge of a new spirit in him' (*Reconstruction Lectures*, 1986 Ed. p. 78). Iqbal gives a

summarized version of a very significant passage from *Hujjat Allah-al-Balighah* on this point. The passage has also been quoted by Maulana Shibli Nomani in his *Al-Kalaam* at pages 114-115. Iqbal writes:

“Shah Wali Ullah has a very illuminating discussion on the point, I reproduce here the substance of his view. The prophetic method of teaching, according to Shah Wali Ullah, is that, generally speaking, the law revealed by a prophet takes especial notice of the habits, ways and peculiarities of the people to whom he is specifically sent. The prophet who aims at all-embracing principles, however, can neither reveal different principles for different peoples, nor leave them to work out their own rules of conduct. His method is to train one particular people, and to use them as a nucleus for the building up of a universal Shariah. In doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of the specific habits of the people immediately before him. The Shariah values (Ahkaam) resulting from this application (e.g. rules relating to penalties for crimes) are in a sense specific to that people; and since their observance is not an end in itself they cannot be strictly enforced in the case of future generations.”

(*Reconstruction*, 1986, Ed. p. 136 & 137).

Iqbal has reproduced the view of Shah Wali Ullah about this matter because he attaches more importance to the material blessings or benefits of Islam rather than the penalties from crimes. Thus, like any reformer his approach is positive and not negative.

If the ideological foundation of Pakistan is approached in the light of the teachings of Quaid-i-Azam and Allama Iqbal, one is bound to arrive at the conclusion that the views held by both these eminent founders of Pakistan regarding Islam were liberal, dynamic and forward-looking. They both were misunderstood during their respective times and were declared renegades or apostates (kafir) by the Ulama. Nevertheless, the Muslims of the Subcontinent accepted their views, and under their guidance and leadership, achieved Pakistan.

After the establishment of Pakistan, particularly during the early phase, guidance was sought from the ideas of Quaid-i-Azam and Allama Iqbal as is evident from the adoption of the Objectives Resolution (1949) as a foundational principle for Islamic legislation in Pakistan, and the inclusion of provisions relating to the Council of Islamic Ideology in the first Constitution (1956) framed for Pakistan. But as time passed, the direction seems to have changed. Instead of strengthening the democratic order in Pakistan, the country drifted towards martial law and one military dictatorship after the other. As a result, tolerance and liberalism were replaced by bigotry, narrow-mindedness and conservatism.

As for conservatism, at least in Pakistan, it is multifaced. It may be sectarian or religious, but can also assume linguistic, ethnic or regional forms. During the dictatorship of Ayub Khan, it appeared in the linguistic and regional forms, and eventually led to the breaking up of the country in the times of the dictatorship of Yahya Khan. Thereafter under the "democratic dictatorship" of Zulfikar Ali Bhutto, what was left of Pakistan was afflicted by linguistic, as well as religious conservatism. This short lived era was followed by the dictatorship of Zia-ul-Haq, when linguistic, ethnic as well as religious bigotry developed further and touched the extreme, so much so that the concept of a democratic and dynamic Islam was discarded, and instead, the development of conventional or fundamentalist Islam of the Mullah was encouraged in order to provide strength as well as legitimacy to the autocratic rule of Zia-ul-Haq.

According to the founders, at critical moments in their history, it was Islam that had saved the Muslims and not vice versa. But in Pakistan a practice has been developed of invoking street power by raising the slogan that Islam is in danger. The practice has been adopted to engender a spirit of frenzy and agitation leading to political breakdown. It has been successfully used by political opponents for the destruction of democratically elected governments and it usually leads to the imposition of martial law in the country.

The important question which required an answer is as to whether the Islamic laws implemented during the dictatorship of Zia-ul-Haq and retained subsequently by the democratic governments, as well as new Islamic legislation on the same lines proposed by certain quarters, are in conformity with the views held by the founders of Pakistan. If the answer to this question is in the affirmative, then we do not really mean what we say; and if it is in the negative, then we have abandoned the ideology on which Pakistan had been founded and are moving in an altogether different direction.

THE PLENARY TO IMPLEMENT THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

1. The situation with regard to the implementation of the Declaration on the granting of independence to Colonial Countries and peoples. (88);
2. Assistance to Africa – a United Nations programme for independence (22(a));
3. Question of the representation of China in the United Nations (90);
4. Restoration of the lawful rights of the People's Republic of China in the United Nations. (91);
5. Question of Tibet (83);
6. Question of Hungary (89);
7. United Nations year for International co-operation. (95).

Compiled by Javid Iqbal,
Alternate representative on
the Plenary
(28-12-61)

1. The situation with regard to the implementation of the Declaration on the granting of independence to Colonial Countries and peoples. (88)
2. Assistance to Africa: (a) A United Nations programme for independence (22(a))

Item 88 above had been proposed by the U.S.S.R. (refer to documents A/4889 dated 27 September, 1961 and A/4859 dated 29 August, 1961) to be discussed in the Plenary.

Item 22 (a) above, originally proposed by the U.S. as part of the heading "Africa - a United Nations programme for independence development", had been allocated to the Plenary.

When the discussion started on item 88 above, the representative of Nigeria proposed that item 22(a) was so important and urgent that it should be granted priority. He also suggested that the above two items should be discussed separately.

The representative of Poland opposed the Nigerian motion, and suggested that item 88 and 22 (a) should be considered jointly.

This led to a procedural debate in which the representatives of Ethiopia, Guinea and Ghana also participated. Eventually the representative of Ghana proposed the adjournment of the meeting. The Assembly adopted this proposal by 78 votes to none, with 17 abstentions. Pakistan abstained from voting on this motion.

The following day, the Assembly adopted without objection the proposal of the representative of Madagascar that agenda items 88 and 22 (a) be discussed jointly.

The following draft resolutions had been submitted before the Plenary:-

- (a) Draft Resolution A/L.354 submitted by Netherlands and concerning Netherlands New Guinea (West Irian). It decided to set up a United Nations Commission for Netherlands New Guinea; requested the Commission to investigate the possibilities of an early implementation of resolution 1514 (XV) in respect of Netherlands New Guinea and to inquire into the

political, economic, social and educational conditions in the Territory the opinion amongst the population as to its present situation and its future, the possibility of organising a plebiscite under the supervision of the United Nations in order to register the wishes of the population concerning their future, and the timing of the plebiscite, the desirability and possibility of bribing the Territory, during the interim period, partially or wholly under the administration of an International Development Authority, established by and operating under the United Nations. It requested the Commission to report to the General Assembly at its Seventeenth Session, and further requested the Secretary General to make available to the Commission necessary staff and administrative facilities.

Later on a revised text A/L.354/Rev.1 of the above draft resolution was also circulated. It added, in the first operative paragraph, that the members of the proposed United Nations Commission for Netherlands New Guinea be nominated by the President and appointed by the General Assembly in its present Session. However, the revised text was withdrawn and document A/d1354 remained valid. (Refer to Docu. A/L.354/Rev.1/Corr.1).

(b) Draft resolution A/L.355, submitted by the U.S.S.R. This draft resolution called for the immediate implementation by all states administering Trust and other Non-Self-Governing Territories of the United Nations Declaration on the granting of independence to Colonial Countries and peoples; and declared that the final and unconditional liquidation of colonialism in all its forms and manifestations must be implemented not later than the end of 1962. It called upon States administering Trust and other Non-self-Governing Territories to proceed immediately to give the indigenous population the opportunity of exercising democratic rights and freedoms, freedom of speech, of the press etc., to revoke all laws permitting racial discrimination, to proclaim an unconditional amnesty for all political prisoners, to hold elections on the basis of universal suffrage and to establish national democratic institutions, to put an end to all organs of colonial administration, to withdraw all

troops of the administering countries and to dismantle foreign military bases in dependent territories, to cancel all agreements which were designed to restrict the sovereignty of the future independent states, to revoke actions designed to ensure the union of particular parts of dependent territories with the administering countries etc. It decided to establish, on the basis of equal representation of the three main groups of States a special Commission to conduct a full and comprehensive inquiry into the situation with respect to the implementation of the Declaration on the granting of independence to Colonial Countries and peoples and of the resources for carrying it into effect. It directed the Commission to report to the General Assembly at its seventeenth Session on the execution of this resolution; and decided to include the question of the completion of the implementation of the Declaration on the granting of Independence to Colonial countries and peoples in the agenda of its seventeenth Session.

(c) Draft resolution A/C.357 submitted by Nigeria. It solemnly proclaimed that all Colonial, dependent etc., territories and peoples in Africa should attain independence by, before, and not later than 1st December, 1970. The administering Powers should prepare the African peoples of those territories for the complete management of their affairs between now and 1970. The provisions of the United Nations Charter, the Universal Declaration of Human Rights and this Declaration should be faithfully and strictly observed by the administering Powers in all territories of Africa. The administering Powers should report at regular intervals the steps they had taken in implementation of this Declaration. The administering Powers should abstain from using all forms of repressive measures for the purpose of frustrating the rightful and just claims of African people under their jurisdiction etc. The nations and States of the world should refrain from all acts and conducts that would interfere with the peaceful and steady progress and development of the now independent and would-be independent African territories,

and thereby undertake to insulate the African continent, from the ideological and political and economic rivalries of Great Powers.

(d) Draft resolution A/C.366 submitted by 37 Afro-Asian countries inciting Pakistan. This draft resolution solemnly reiterated and reaffirmed the objections, and principles of the Declaration contained in the General Assembly resolution 1514 (XV) of 14th December, 1960. It called upon, the States concerned to implement the Declaration without further delay. It decided to establish a Special Committee of seventeen members to be nominated by the President of the General Assembly at the current session. It requested the Special Committee to examine the application of the Declaration, to enable suggestions and recommendations on the progress and extent of the implementation of the Declaration, and to report to the General Assembly at its seventeenth Session. It directed the Special Committee to carryout its task by employment of all means within the framework of the procedures and modalities which it should adopt for the proper discharge of its functions. It authorised the special Committee to meet outside the Headquarters of the United Nations for the effective discharge of its functions in consultation with the appropriate authorities. It invited the authorities concerned to afford the special Committee their fullest co-operation in carrying out its tasks. It requested the Trusteeship Council the Committee on Information from Non-Self-Governing Territories and the specialized agencies concerned to assist the Special Committee in its work within the respective fields of their activities, and requested the Secretary-General to provide the Special Committee with all the facilities and the personnel necessary for the implementation of the present resolution.

(e) Draft amendment A/L.370 (to the above draft resolution) submitted by the U.S.S.R. They amended the operative paragraph 2 of the above draft resolution to read as follows:

“Calls upon States concerned to take action without further

delay with a view to the faithful application and implementation of the Declaration and solemnly proclaims 1962 the year of the *elimination of colonialism*.”

They also amended operative paragraph V of the above draft resolution to read as follows:

“Requests the Special Committee to examine the application of the Declaration contained in General Assembly resolution 1514 (XV), to make suggestions and recommendations on the immediate application of the declaration and the completion of its implementation and to report to the General Assembly at its seventeenth Session.”

(f) Draft resolution A/L.368 submitted by the Brazzaville Group of the African States and concerning West New Guinea. It urged the Governments of Indonesia and the Netherlands to resume negotiations without delay with a view to reaching an agreement on the future of the territory of West New Guinea, without prejudice to respect for the will and self-determination of the peoples. It requested the Secretary-General to use his good offices in the negotiations by taking all possible steps to facilitate the resumption and continuance of these negotiations. It decided to establish a commission composed of five members appointed by the General Assembly on the proposal of its President. It requested the Secretary-General to inform that Commission of the result of the negotiations by 1 March, 1962. It instructed the Commission, if the parties had not reached a negotiated agreement by 1 March, 1962, to carry out an investigation into the conditions prevailing in the territory, to examine the possibility of establishing, for an interim period, an international system for the administration and supervision of the territory, and to report to the General Assembly at its seventeenth session. It declared that nothing should prejudice the right of the population to decide in the last resort, the status of the territory, and requested the Secretary-General to provide the Commission with the necessary staff etc.

(g) The revised Indian draft resolution A/L.367/Rev.1 also sponsored by Bolivia, Congo (Leonoloville), Guinea, Liberia, Mali, Nepal, Syria and the U.A.R. and concerning West Irian

(West New Guinea). It urged the Governments of Indonesia and the Netherlands to engage themselves in further negotiations under the aegis of the President of the General Assembly with a view to finding a solution of this question in conformity with the purposes and principles of the United Nations Charter. It requested the President to facilitate bilateral negotiations between the parties; and requested Indonesia and the Netherlands to co-operate in starting further negotiations, and to resort to the United Nations General Assembly at its seventeenth session.

(h) Draft amendment A/L.371 (to the above draft resolution) submitted by the Brazzaville Group of the African States. It added the following words at the end of operative paragraph 1 of the above draft resolution:

“and, in particular, with the wishes of the peoples and their right of self-determination.”

Later on, however, this amendment was withdrawn.

(i) Draft resolution A/L.369 submitted by Mexico. It decided to establish an *Ad Hoc* Committee, composed of States to be appointed by the President of the General Assembly at the current session, to perform the following functions:

- (1) To examine all cases of Won-Self-Governing Territories etc. in order to indicate which of them were already in a position to attain full independence immediately.
- (2) To recommend, in the light of special circumstances of each defendant territory, the measures and conditions under which such territories might be placed, for minimal period of time, under the joint administration of the United Nations or of an International agency operating under its authority and affording safeguards to enable the populations of such territories to remain in a position to exercise their right of self-determination as soon as possible.
- (3) To report to the General Assembly at its seventeenth session.

It declared solemnly that in such territories where the title to sovereignty was in dispute, their temporary placement under United Nations trusteeship should prejudice neither their final destiny nor such rights as other states might claim over them, and should not limit the right of the population of such territories to self-determination. It urged all state parties to any international dispute concerning the title to sovereignty over a particular territory to submit their differences to the International Court of Justice in order to find a peaceful and just solution of those differences. It urged all States to grant the *Ad Hoc* Committee the fullest co-operation and finally asked the Secretary-General to provide the *Ad Hoc* Committee for the effective liquidation of colonialism with all the services and staff required for the discharge of its task.

(j) Draft resolution A/L.365 submitted by 34 Afro-Asian countries including Pakistan, and relating to the Algerian political prisoners. It appealed to the Government of France, in accordance with established international practice and humanitarian principles, to redress the legitimate grievances of the Algerian prisoners in recognizing their status as political prisoners with a view to making possible the immediate termination of the hunger strike.

(The above draft resolution was introduced by the representative of Pakistan, Mr. Zafrullah Khan as a matter of urgent and emergency importance. He said the resolution related to humanitarian question. It related to several thousand Algerian prisoners in France who were on a hunger strike. Mr. Borard (France) said that the question had no relation to item under discussion. It was merely for propaganda purposes, and this manoeuvre would not contribute to the settlement of the Algerian question. Statements were then made by the representatives of Libya and Morocco. Mr. Zafrullah Khan (Pakistan) then moved that general debate on item 88 be suspended and that draft resolution A/L.365 might be brought under immediate consideration. He also replied to the objections raised by the representative of France. He pointed out that the draft

resolution was wholly relevant to the item under consideration. It was not a propaganda manouever for it is sponsored by 34 States. The grave situation to which the draft resolution referred and often in France and had not been created by any of the sponsoring States. He also said, that the draft resolution was intended to make the negotiations easier, facilitated and expedited. No objection was raised to the proposal of Pakistan, and the General Assembly decided to suspend the General debate so as to give immediate consideration to draft resolution A/L.365. Statements on the draft resolution were made by the representatives of Saudi Arabia, Upper Volta and Indonesia. Then Mr. Zafrullah Khan (Pakistan) moved for the closure of the debate on draft resolution A/L.365 and requested the Assembly that it should proceed to the vote on it. Then followed the explanations of vote before the vote by the representatives of U.S.A. Cameroun etc., eventually draft resolution A/L. 365 was put to the vote. A vote was taken by roll-call. The draft resolution. (A/L.365) was adopted by 62 votes to none, with 3! abstentions. Pakistan voted in favour of it. General Assembly Resolution 1650 (XVI)).

Mr. Lapin (U.S.S.R.) in his statement on those items condemned the Colonial Powers emphasized that a time limit must be established for a complete and final liquidation of the colonial administration. He proposed that the final liquidation of Colonialism, in all its guises and manifestations, be implemented not later than the end of 1962.

Mr. Luns (Netherlands) spoke in support of the draft resolution (A/L.354). He said that only the Papuan people were entitled to decide the future of Netherlands New Guinea; that the Netherlands' Government had repeatedly offered to submit the territorial dispute (as to whether sovereignty over New Guinea rested with the Netherlands or with Indonesia) to the International Court of Justice, but Indonesia had consistently refused to do so.

The representative of Indonesia, exercising his right of reply said that the term 'Papuan' was a contemptuous term, and that the people of West Irian were Indonesian.

Mr. Wachuku (Nigeria) spoke in support of the draft resolution (A/L.357) submitted by Nigeria. He said that the blanket date for the end of colonialism had been fixed as "by, before, and not later than 1 December, 1970", because there were many things to be taken into consideration. There should be orderly and peaceful development in Africa.

The representative of Indonesia made a long statement maintaining that West Irian was part of Indonesia, and that the Netherlands draft resolution was anti-Indonesian and mischievous.

Mr. Godber (U.K.) stated that the Soviet Union was dragging the problem of Colonialism into the arena of the cold war. His country's record in this respect was clean. His Government had always pursued the policy of bringing its dependent territories to self-Government, self-determination and independence.

Mr. Javid Iqbal (Pakistan) stated that imperialism was in the process of being wound up and that the colonial problem would be solved. Colonialism, as a system, was untenable, whether it existed in the conventional form or in the unconventional form. Without the co-operation and collaboration of the administering authorities it was idle to determine target dates or to discuss when a specific territory would attain freedom and independence. Furthermore, the peoples of the dependent territories should be speedily trained in the exercise of political authority. Fixing of an absolute and immediate blanket date, uniformly applicable to all the dependent territories throughout the world, was unrealistic and arbitrary.

As regards the Netherlands draft resolution (A/L.354), he said the proposal contained therein could not serve as a settlement of the dispute concerning West New Guinea. Such a dispute could only be settled by agreement between the Netherlands and Indonesia. The claims of Indonesia to the

sovereignty and administration of West New Guinea must be determined on a fair and just basis. The Government of the Netherlands should withdraw its draft resolution, and seek an amicable settlement of the West New Guinea dispute with Indonesia. But if it is to press the draft resolution to a vote, then Pakistan would oppose it.

Mr. Bingham (U.S.) stated that, the U.S. was not new to the spirit of anti-colonialism. His was the first nation in modern times to emerge from colonial domination into independence. He said the problem of colonialism should be considered in its entirety. Although the eastern Powers had relinquished their former rule over colonial territories, the Soviet Union had subverted or absorbed many independent countries in Eastern Europe or Communist China. He spoke in favour of the Netherlands' draft resolution (A/L. 354).

When the general debates on these items was concluded, statements in explanation of vote before the vote on the draft resolutions (before the Plenary) were made by the representatives of numerous countries.

On a point of order, the representative of Nigeria informed the Assembly that his delegation would not press draft resolution A/L.357 to a vote at this time.

The representative of the U.S.S.R., on a point of order also informed the Assembly that his delegation would not press draft resolution A/L.355 to a vote.

In response to an appeal by the representative of India, the representative of Mexico agreed not to press draft resolution A/L.369 to a vote.

In response to an appeal by the representative of the U.S., the representative of the Netherlands agreed not to press draft resolution A/L.354 to a vote.

The Assembly proceeded to vote on the remaining draft resolutions and amendments before it. The results of the voting were as follows:-

(a) U.S.S.R. amendments in A/L. 370 to draft resolution A/L. 366:

Amendment 1 (roll-call), 19 in favour, 46 against, with 36 abstentions. Not adopted. Pakistan voted against it.

Amendment 2, 22 in favour, 36 against, with 35 abstentions: Not adopted. Pakistan voted against it.

(b) Draft resolution A/L.A366 (roll-call), 97 in favour, 0 against, with 4 abstentions adopted. Pakistan voted in favour of this draft resolution.

(c) By 43 votes to 37 with 13 abstentions, the Assembly adopted the proposal of the representative of Cameroun to give priority in the vote to draft resolution A/L. 368. Pakistan voted against this proposal.

Having failed to obtain the required two-thirds majority by a roll-call vote of 53 to 36, with 14 abstentions, the last preambulatory paragraph of draft resolution A/L. 368 was not adopted. Pakistan abstained from voting in it.

The separate vote on operative paragraph of draft resolution A/L.368 was rejected by 45 votes to 38, with 12 abstentions. Pakistan abstained from voting on it.

In a series of procedural votes the assembly rejected the request of the representative of Liberia that operative paragraph 1, 5 (b) and 6 of draft resolution A.L. 368 be voted on separately. Pakistan abstained from voting on it.

Draft resolution A/L.368 as a whole, as amended, having failed to receive the required two-thirds Majority by a roll-call vote of 53 to 41, with 9 abstentions, was not adopted. Pakistan voted against the draft resolution.

(d) Draft resolution A.L.367/Rev. 1, having failed to receive the required two-thirds majority by a roll-call vote of 41 to 40, with 21 abstentions, was not adopted. Pakistan voted in favour of this draft resolution.

Statements in explanation of vote were made by the representatives of the U.K., Iran and Indonesia.

Thus the Assembly concluded the consideration of these items.

1. Question of the representation of China in the United Nations (90)

2. Restoration of the lawful rights of the People's Republic of China in the United Nations (91)

The above two items (90) and (91), considered together by the General Assembly, were proposed by New Zealand and the U.S.S.R. respectively (refer to documents A/4873, dated 17 September, 1961 and A/4874 dated 18 September, 1961)

The following draft resolutions and amendments were submitted before the plenary:-

- (a) Draft resolution A/L.360 dated 27 October, 1961, submitted by the U.S.S.R. This draft resolution resolved to remove immediately from all United Nations organs the representatives of the "Chiang Kai-Shek clique" who were unlawfully occupying the place of China in the United Nations; and invited the Government of the People's Republic of China to send its representatives to participate in the work of the United Nations and of all its organs.
- (b) Amendment A/L.375 to the above draft resolution submitted by Cambodia, Ceylon and Indonesia. The amendment would have the operative paragraphs deleted from the above draft resolution, and substituted by the following:

"Decides in accordance with the above declaration that the representatives of the Government of the People's Republic of China be seated in the United Nations and all its organs."

(c) Draft resolution A/L. 372 dated 1 December, 1961, submitted by Australia, Colombia, Italy, Japan and the U.S.A. This draft resolution decided in accordance with Article 18 of the Charter that any proposal to change the representation of China was an important question (and therefore required two-thirds majority).

The general debate on the above two items was opened by the representative of the U.S.S.R. Mr. Zorin stated that the question of the restoration of the legitimate rights of the people's Republic of China in the United Nations was an extremely simple question, the decision of which should not give rise to any judicial or procedural complexities, provided

that the States Members, when taking a decision on this question, would base themselves on the provisions of the United Nations Charter. The United Nations did not have, and, owing to its nature, could not have any relation to the internal development in China. On a number of occasions the United Nations in full conformity with the Charter, did take a correct stand in regard to internal developments in some States, including a change of power — e.g., the 1952 Revolution in Egypt, the 1958 Revolution in Iraq etc. It was the U.S. and her allies and dependents who had successfully kept out and deprived the Government of the People's Republic of China of its rightful seat in the United Nations and its bodies. The U.S. would try at all costs to prevent the positive solution of the question of the restoration of the lawful rights of the People's Republic of China in the United Nations. This was the object of draft resolution A/L.372, which was nothing but a procedural maneuver of the U.S. and some countries which had joined with them in this procedural stratagem.

Mr. Stevenson (U.S.A.), speaking on behalf of the U.S.A. stated that communist China was aggressive - it had been aggressive against Korea, against the Government of the Republic of China on its island refuge, against Tibet, and against South and Southeast Asia. It violently defied the principles of the United Nations and the resolutions of the General Assembly. Such warlike authorities of Communist China could not claim the right to occupy the seat of China here, and demand that the representatives of the Republic of China be ejected from the United Nations.

He said, it would be dangerously unrealistic if this Assembly were to bow to the demands of Peking to expel and replace the Republic of China, in the United Nations. It would be ignoring the warlike character and the aggressive behaviour of the rulers who dominated 600 million people and who talked of the inevitability of war as an article of faith and refused to denounce the use of force.

He said that Communist China was training young men from Asia, from Africa and from Latin America in its training centres for guerrilla warfare, in sabotage and guerrilla tactics for eventual use in their own countries. Its admission, in circumstances in which it continues to violate and to defy the principles of the Charter, could seriously shake public confidence in the United Nations. The Peking authorities had shown nothing but contempt for the United Nations. The motion of expelling the Republic of China was absurd and unthinkable. It is impossible to speak seriously today of bringing Communist China into the United Nations. No basis existed on which such a step could be taken.

He declared that the U.S. will vote against the Soviet draft resolution and give its full support to the continued participation of the representatives of the Government of the Republic of China in the United Nations. He also stated that the U.S. had joined with other delegations in presenting a draft resolution, under which the Assembly would determine that any proposal to change the representation of China would be considered an important question in accordance with the Charter. Indeed, it would be hard to consider such a proposal in any other light, and he trusted that it would be solidly endorsed by the Assembly.

Mr. Godber (U.K.) stated that the five-power draft resolution (A./L.372) did not preclude discussion of or any vote upon the subject at issue. It proposed only that decision to make a change in Chinese representation required a two-thirds majority. The basis for such a proposal was that the question of Chinese representation in the United Nations was an important one. No one could deny that it was an important question. He said that although the U.K. believed that the facts of International life required the presence of the Chinese People's Republic in the United Nations, his Government also believed that the aim of the United Nations must be to reach a solution to the question of Chinese representation acceptable to a wide majority of Member

States and as far as circumstances permit to all the interested parties.

Muhammad Zafrullah Khan (Pakistan) said that the attitude of Pakistan on the question of the representation of China in the United Nations was the same today as it was eleven years ago.

He stated that the question before the Assembly was not the admission or non-admission, as it was often described, of the People's Republic of China to the United Nations. It was a state that was admitted to the membership of the United Nations and not the government. China had been a member of the United Nations since its inception and it was a permanent member of the Security Council. The sole and simple question was, who was entitled to represent China in the United Nations? The People's Republic of China had exercised effective authority and jurisdiction over the whole of the mainland of China for more than twelve years. Pakistan recognised that Government nearly twelve years ago. In the circumstances, it was clear that, in the view of Pakistan, the People's Republic of China was entitled to represent China in the United Nations.

He further stated that his government was unable to support or oppose the five-power draft resolution as, in his opinion, the question of the requisite majority needed for a resolution could not be determined in advance without reference to the exact language of the resolution which was to be voted upon. It was the language of the resolution that would determine what the question was on which the Assembly was voting and that, in turn, would determine whether the question was an important one within the planning of that expression in Article 18 of the Charter. If the Assembly voted in support of or opposition to this draft resolution, it would not know what it was voting for. Consequently Pakistan would abstain from voting on this draft resolution.

When the general debate on the above items had been concluded and explanations of vote given by the

representative of some countries, the representative of Australia requested that priority in the vote be given to draft resolution A/L.372.

The representative of the U.S. spoke in favour of the Australian motion and the representative of the U.S.S.R. spoke against the motion.

By a roll-call vote of 61 to 21, with 21 abstentions, the Assembly adopted the motion of priority. Pakistan abstained from voting on this motion.

The Assembly then proceeded to the vote, with the following results:--

- (a) Draft resolution A/L.372 (roll-call), 61 in favour, 35 against, with 7 abstentions. The draft resolution was adopted. Pakistan abstained from voting on this draft resolution.
- (b) Draft Amendment A/L.375 – Separate votes were requested by the representative of Nigeria on the words “in accordance with the above declaration.” (roll-call), 23 in favour, 41 against with 39 abstentions. It was not adopted. Pakistan voted in favour of the retention of the above words.

And on the word “that the representatives of the Government of the People’s Republic of China be seated in the United Nations and all its organs.” (roll-call), 30 in favour, 45 against with 29 abstentions. It was not adopted. Pakistan voted in favour of the retention of the above words.

- (c) Draft resolution A/L.360 (roll-call), 36 in favour, 48 against, with 20 abstentions. (Subsequently, Norway requested that its vote on A/L.360 be recorded as in favour and not as an abstention.) It was not adopted. Pakistan voted in favour of this draft resolution.

The consideration of the above items was thus concluded by the General Assembly.

5. Question of Tibet (83)

The above item had been proposed by Malaya and Thailand (refer to doc A/4848 dated 18 August, 1961).

A draft resolution A/L.376 submitted by El Salvador, Federation of Malaya, Ireland and Thailand was before the Plenary.

The draft resolution reaffirmed its conviction that respect for the principles of the Charter and the Universal Declaration of Human Rights was essential for the evolution of a peaceful world order based on the rule of law. It solemnly renewed its call for the cessation of practices which deprived the Tibetan people of their fundamental human rights and freedoms including their right to self-determination; and expressed the hope that member States would make all possible efforts as appropriate towards achieving the purposes of this resolution.

Statements were made by the representatives of the Federation of Malaya, el Salvador, the U.S., China and Ireland. On a motion by the representative of New Zealand, the General Assembly, under rule 79(b), decided by 47 votes to one with 14 abstentions, to adjourn the meeting. Pakistan voted in favour of this motion.

The following day, Wednesday 20 December, 1961, statements were made by the representatives of New Zealand, Czechoslovakia, Thailand, the U.S.S.R., Albanua, the U.K. and France. The representative of the U.S. also made a statement.

On the conclusion of the general debate on this item, draft resolution A/L.376 was put to the vote, and was adopted by a roll call vote of 56 to 11, with 29 abstentions. Pakistan abstained from voting on this draft resolution.

6. Question of Hungary (89)

The above item had been proposed by the U.S.A. (refer to document A/4872 dated 16 September, 1961). The Report of Sir Leslie Munro, United Nations Special representative on the Question of Hungary (A/4996) had also been circulated. A reply to this report had been circulated as Doc. A/5028 dated 12 December, 1961, in the form of a letter from the Chairman of the Hungarian Delegation addressed to the Acting Secretary-General.

A draft resolution A/L.380 submitted by China, Colombia, Costa Rica, Federetion of Malaya, France, Guatemala, Italy, Luxemburg, New Zealand, Nicaragua, Panama, Philippines, Spain, U.k., U.S., and Uruguay was before the Plenary.

The draft resolution deplored the continued disregard by the U.S.S.R. and the present Hungarian regime of the General Assembly resolutions concerning the situation in Hungary.

Statements were made by the representatives of the U.S. Hungary, Australia, the U.S.S.R., and the U.K. Owing to the limited time at the disposal of the General Assembly, the general debate on this item was brief, and when it was concluded, draft resolution A/L.380 was put to the vote. The draft resolution was adopted by a roll-call vote of 49 to 17 with 32 abstentions. Pakistan voted in favour of the draft resolution.

7. United Nations Year for International Co-operation

The above item was proposed by India (refer to docu.A/4972 dated 16 November, 1961).

A draft resolution A/L.382 submitted by India (and later co-sponsored also by Nepal, Afghanistan and Ghana) was before the Plenary. The draft resolution decided to designate the year 1963 as "United Nations year for International Co-operation." It requested the President to nominate a Preparatory Committee of 12 members of the Assembly. It further requested the President to nominate a Preparatory Committee to report to the seventeenth session of the General Assembly on the measures and activities that should be undertaken in pursuance of this resolution by States and by and through Specialized Agencies and international organizations in the United Nations Year for International co-operation. It invited Member-States, Specialized Agencies and all others concerned to render all assistance to the Preparatory Committee; and requested the Secretary-General to provide all necessary facilities to the Preparatory Committee for the accomplishment of its task.

Formerly, in the General Committee, the proposal to consider the above item at the resumed session having obtained, 8 votes in favour, 8 against, with 2 abstentions, was not adopted. The President, therefore, had stated that it would be considered before the adjournment of the present session of the General Assembly.

However, on 20 December, 1961, the last day of the present session, following a statement by the President, the General Assembly decided without objection to defer consideration of this item to its seventeenth session.

Adjournment of the Sixteenth Session of the General Assembly

The President adjourned the Sixteenth Session to 15 January, 1962.

THE INDEPENDENCE OF JUDICIARY*

There are two interesting opinions of eminent judges respecting the controversial judgments in Tamizuddin Khan's case, Governor General's Reference No. 1 of 1955 and Dosso's case. Chief Justice (r) Dr. Nasim Hassan Shah maintains that although the doctrine that a new legal order created by a revolution is itself a law-making fact is of doubtful validity, it ensured governance according to law rather than on the whims of a military commander. He thinks that in the light of Dosso's ruling the Martial Law regime was made to realize that under the Law (Continuance in Force) Order 1958, Pakistan was to be governed as nearly as may be in accordance with the late Constitution of 1956, except to the extent where its provisions were modified through an express order of the President or the Chief Martial Law Administrator. (Address: Role of the Judiciary in maintaining Rule of Law in Pakistan).

The second opinion is of Justice Yaqoob Ali Khan (as he then was) who has observed that the judgments delivered in these three cases had a profound effect on the constitutional development of Pakistan, that a country which came into

* This paper was written before the Presidential Reference to the Supreme Judicial Council for removal of Mr. Justice Iftikhar Muhammad Chaudhry, the present Chief Justice of Pakistan and his restoration by the Supreme Court. It was written for the seminar on the Golden Jubilee Celebrations of the Supreme Court, but was not presented in 2006-2007.

being with a written constitution providing for a parliamentary form of government with distribution of state power, was converted into an autocracy and eventually degenerated into a military dictatorship. (Observations in Asma Jilani's case: PLD 1972 S.C. 139).

The Judiciary is essentially a creature of the constitution. It was marginalized when Pakistan had no constitution but whenever it had been ruled under a constitution, the Judiciary as an institution was prompt to uphold the supremacy of the constitution and the rule of law. For instance, when General Ayub Khan's Martial Law was lifted with the promulgation of the 1962 Constitution, the superior courts became assertive and proceeded to consider the matters involving constitutionality of Martial Law Regulations as well as the ouster of the jurisdiction of the courts. But when the 1962 Constitution was abrogated and Pakistan was again placed under the Martial Law of General Yahya Khan on 25th March 1969, the courts were made to recede into the background under the Jurisdiction of Courts (Removal of Doubts) Order, 1969 which held the field until the removal of General Yahya Khan.

Soon after his removal, particularly between December 1971 and April 1972, the Supreme Court did deliver some very important judgments including Asma Jilani's case in which Chief Justice Hamood ur Rehman overruled the principle enunciated in Dosso's case holding that it laid incorrect law and had placed the country on wrong lines. General Yahya Khan was declared a usurper, and an attempt was made by the Supreme Court to warn the future military adventurers that if they took advantage of revolutionary legality and considered themselves as the new law-givers, then they would be treated as usurpers. In short the effect of this judgment was to reemphasize the power of judicial review and to widen the scope so as to include reversing the principle of *stare decisis*.

The important point to note at this stage is that the jurisdiction of the superior courts was not only curtailed

during the autocratic military regimes, but also during the democratically elected civil governments. The 1973 Constitution was based on the consensus of the elected representatives and the leaders of all political parties. But Zulfikar Ali Bhutto as Prime Minister, with a rubber stamp majority in the National Assembly, made numerous amendments in it, including those which curtailed the powers of the superior courts as is evident from 1st, 4th, 5th, and 7th Amendments of the 1973 Constitution.

The civilian government of Zulfikar Ali Bhutto lasted for less than six years. Then the army struck again and Martial Law was imposed in the country on 5th July 1977 by General Zia ul Haq. On this occasion, the 1973 Constitution was not abrogated but was stated to be held "in abeyance". When this action was challenged, the Supreme Court reconsidered Dosso's and Asma Jilani's cases and Chief Justice Anwar ul Haq laid down that the conditions prevailing in the country justified the imposition of Martial Law under the principle of "state necessity", that the 1973 Constitution had not been abrogated, therefore, there was constitutional continuity and that since it was held "in abeyance" for a limited period, it did not amount to a revolution of the nature described in Dosso's case, but only a constitutional deviation necessitated by the circumstances prevalent in the country. (PLD 1977 S.C. 639).

Since the Supreme Court had conferred upon General Zia ul Haq the power to amend the Constitution, he made major amendments in the 1973 Constitution *inter alia* to oust the jurisdiction of the superior courts to review the orders passed by the Martial Law authorities and to remove judges from the High Courts and Supreme Court who were not acceptable to the "establishment".

After obtaining a five years term to continue as President through a Referendum in 1984, General Zia ul Haq held general elections on non-party basis. The Parliament elected in 1985 under the leadership of Muhammad Khan Junejo adopted the heavily amended 1973 Constitution, including

Article 58(2)(b) by means of the Revival of the Constitution 1973 Order (President's Order 14 of 1985). Consequently the superior courts managed to assert themselves once again when the Martial Law was lifted. But from 29th May 1988 to 12th October 1999 the constitutional history of Pakistan is dominated by what can be called the era of "Presidential Authoritarianism".

On 29th May 1988 the government of Prime Minister Muhammad Khan Junejo was dismissed by President General Zia ul Haq under Article 58(2)(b) of the Constitution. As a result of the general elections Benazir Bhutto, leader of the Pakistan Peoples Party, was sworn in as Prime Minister. But on 6 August 1990 her government was dismissed and the National Assembly was dissolved by President Ghulam Ishaq Khan under Article 58(2)(b). In the elections that followed, Mian Nawaz Sharif's Muslim League obtained majority in the National Assembly and he was sworn in as Prime Minister. But on 18th April 1993 President Ghulam Ishaq Khan dismissed his government and dissolved the National Assembly in exercise of the powers conferred on him under Article 58(2)(b)

But on this occasion the Supreme Court set aside the order of the President on the grounds that the action taken did not fall within the ambit of this provision (PLD 1993 S.C. 473). As a result the National Assembly was restored. Mian Nawaz Sharif obtained a vote of confidence and again became Prime Minister.

This judgment of the Supreme Court was a departure from the previously established tradition. It was considered as a leap towards supremacy of the Constitution and independence of the Judiciary. But it disturbed the "establishment". Prime Minister Nawaz Sharif inexplicably resigned and the National Assembly stood dissolved.

New elections were held and Benazir Bhutto became Prime Minister for the second time. Since her government was apprehensive of the newly found assertiveness of the Judiciary, she embarked on a course to make the Judiciary

subservient to the Executive. Numerous devices were adopted in order to tame and emasculate the Judiciary. However, Benazir Bhutto's government was dismissed and the National Assembly was dissolved by President Farooq Ahmad Khan Leghari on 5th November 1996 exercising his powers under Article 58(2)(b).

In the subsequent elections held in February 1997, the Muslim League won with an over-whelming majority and Mian Nawaz Sharif became Prime Minister for the second time. An amendment deleting Article 58(2)(b) from the Constitution was hurriedly and unanimously passed by both the Houses of Parliament, bringing an abrupt end to the era of "Presidential Authoritarianism".

Unfortunately, between 1997 and 1999 Pakistan witnessed another Constitutional crisis in the form of a confrontation between Chief Justice Sajjad Ali Shah of the Supreme Court and Prime Minister Mian Nawaz Sharif. In the course of this confrontation the Supreme Court building was attacked by the supporters of the Prime Minister and hearing of the cases could not be carried out. On the other hand since Chief Justice Sajjad Ali Shah, who had superseded three colleagues on his appointment as Chief Justice by ex-Prime Minister Benazir Bhutto, did not apply the seniority principle in his own case as laid down in the famous Judges case, his fellow judges remained alienated from him. Eventually Chief Justice Sajjad Ali Shah was put under restraint through the orders of his own colleagues, his appointment as Chief Justice was held as illegal by a larger bench of the Supreme Court and thereafter he was made to retire as an ordinary judge of the same court.

The moral of the story is that this "variety" of judicial activism without judicial restraint can be self-destructive. In this clash between the Executive and the Judiciary, the Executive survived unhurt but the Supreme Court was badly bruised and mauled. It will have to lick its wounds for a considerably long time before its health is fully restored. An illegally appointed Chief Justice by the Executive is not in a

position to teach a lesson to it, if he so desires, in isolation from his colleagues. The superior courts' judges must always keep themselves equipped with a consensus of the judges, particularly on the issue of maintaining independence.

Be that as it may, Prime Minister Mian Nawaz Sharif's triumph was also short lived. On 12th October 1999 Martial Law was again imposed by General Pervez Musharraf. The Constitution was again held "in abeyance". Mian Nawaz Sharif's government was dismissed and the Assemblies were suspended. As usual the matter came up before the Supreme Court. The action was held as valid on the ground of "state necessity/survival". General Pervez Musharraf was granted three years period for holding general elections in the country and for the restoration of democracy. He was also given the power to amend the Constitution *without disturbing its salient features*. (PLD 2000 S.C. 869).

This brief survey reveals that so long as the country was governed under a constitution, the judges of the superior courts performed their functions to the best of their ability in order to uphold the rule of law. The constitutional crises which jolted the country and led to the delivery of some controversial judgments were not the creation of the Judiciary. The superior courts were called upon to resolve conflicts which were political in nature and led to the imposition of Martial Law under which the Constitution was either abrogated or held "in abeyance". In this scenario it was not easy to maintain the tradition of judicial independence; on the contrary the judges deemed it fit to exercise judicial self-interest i.e. to preserve the Judiciary or at least to make it survive as an institution. They were aware that an opinion which ran contrary to the interests of the "establishment" would not be acceptable. If they delivered a judgment which was not going to be implemented, then their defiance may not be of much advantage to them but it would be detrimental to the prestige of the Judiciary, as the "establishment" could brazen-facedly remove the judges and replace them or infest the courts with incompetent sitting or

retired army officers. Such an action would have passed unnoticed in a country like Pakistan where there had never been any pressure of public opinion or the media for upholding independence of the Judiciary. In this background the method of reasoning employed by Chief Justices Muhammad Munir, Anwar ul Haq and the others who delivered judgments on the same lines may be described as one of "judicial prudence" or "judicial pragmatism" as opposed to "judicial purism" reflected in the pronouncements of Chief Justices Hamood ur Rehman, Cornelius, Ajmal Mian and the other eminent judges who followed the example set by them.

The position at present is this that on the basis of a Referendum held in 2002, General Pervez Musharaf is holding office of the President of Pakistan for a term of five years. General elections were also held in 2002 and the 1973 Constitution had been restored with numerous amendments including the re-introduction of Article 58(2)(b). Parliament and Provincial Assemblies as well as superior courts are functioning under the Constitution. The Head of State is wearing two hats, one of the President and the other of the Army Chief of Staff. He nominates the Prime Minister and the Prime Minister holds office at the pleasure of the President. If the Prime Minister nominated by the President is not an elected member of the National Assembly, the political party approved by the President gets him immediately elected from a "safe" constituency. In this year i.e. 2007 the constitutional questions which the Supreme Court may be called upon to determine are as follows:

1. Whether the salient features of the 1973 Constitution are intact or have been disturbed.
2. Whether the President can contest election in uniform under the Constitution.
3. Whether the same Parliament can constitute an electoral college for electing the President in uniform for the second term.
4. Whether a newly elected Parliament is required under

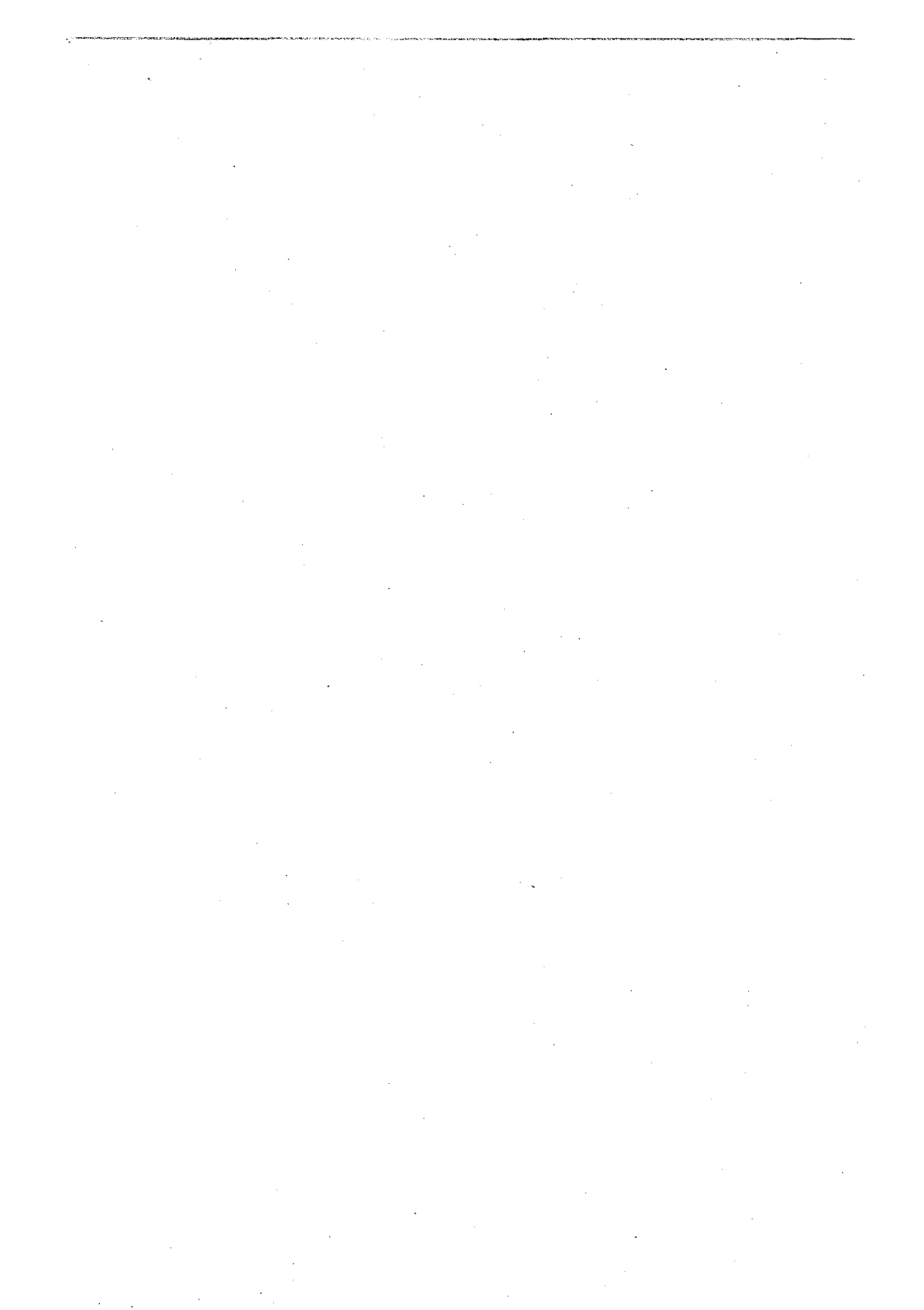
the Constitution to elect a new President.

Since Pakistan is now being governed under a constitution, can one assume that the doctrine of "state necessity" has been finally buried? The doctrine has already been declared "false" by Chief Justice Ajmal Mian as it encouraged illegal military take-overs and retarded or rather stunted the growth of democracy in Pakistan. (PLD 1999 S.C. 504). Can we expect that the time has now arrived when the superior courts, upholding the rule of law under the Constitution shall adopt the course of "judicial purism" while deciding these constitutional issues and discard the outdated, time-worn and conventional philosophy of "judicial prudence" or "judicial pragmatism"?



CURRENT AFFAIRS





CRIMES AGAINST WOMEN IN PAKISTAN

There is a popular notion in this country that all legal disputes involve 'zan', 'zar' and 'zamin' (i.e. woman, money and land). This shows that we consider woman (zan), like money (zar) and land (zamin), as part of our property and just as the safeguarding of money and the preservation of ownership of land are symbols of individual or family respect, we view the control over woman also as a matter of our honour and prestige. These are the characteristics of a conservative, feudal and male dominated society and in today's world wherever such societies exist, they are afflicted by dominance of custom, abundance of ignorance and economic backwardness.

In such a situation a woman's problems tend to increase and multiply. Her movements are restricted to the four walls of the home. She is not encouraged to receive education or to seek employment. On the contrary she is sometimes married to the Quran in order to deprive her of her inheritance; she is often sold in marriage, or her hand is given in exchange for another woman ("watta-satta"). It is generally expected of her that she should serve her husband and his family like an unpaid servant. In case she becomes a widow or the husband divorces her, she may be among the fortunate few who can get married for the second time. Otherwise in order to maintain the family honour, she has to spend the rest of her life as a dependant of her in-laws or her own family. In either case she has no status except that of a menial domestic.

The nineteenth century Islamic reformist movement in the sub-continent had, among other issues, drawn the attention of the community to the problems of Muslim women so that their condition could be improved. There has been some improvement in the educational and social position of women in big cities. However the female literacy rate in Pakistan is still less than 16% and even urban educated women have numerous problems of their own which require solution. As far as rural areas are concerned, there has been no noticeable improvement in the condition of women over the past century. They are still regarded as chattel. For instance, according to a news report, a local landowner forcibly married his tenant's widow because he claimed that her husband owed him money, consequently after his death whatever he owned belonged to the landowner (The Daily Jang' Rawalpindi 10 February 1988).

At this stage I do not want to get involved in semantics regarding the status accorded to women by Islam, I only wish to draw your attention to the amount of dirt we have swept under the rug while trying to put our house in order.

Three aspects of the problem will be examined during the course of this discussion. First, as to what is the nature of conventional crimes against women in this country; second, what is the effect, particularly, of Zina Ordinance on the rights of women; and third, the identification of new crimes which are being committed against them.

Conventional Crimes:

The most common of these are: traffic in women, abduction, prostitution, rape, physical mutilation and murder. Pakistani women are neither criminal nor immoral by temperament. In addition they are brought up under the strict vigilance of their families. They become the victims of crime mainly due to poverty, illiteracy and ignorance.

Among the poor classes, if a man wants to get married, he usually purchases the girl by making payment to her parents (this transaction is called "walwar"); or he obtains her in

exchange by giving the hand of his sister or some other girl of his family ("watta-satta"); or he establishes friendly relations with her and after abducting her, marries her. Men who purchase girls from their parents for marriage are usually much older than them and most of them already have a first wife. The usual practice is that girls of thirteen or fourteen years of age are purchased from distant areas of Pakistan on the pretext of marriage and thereafter such ostensible husbands use them as a source of income by turning them into prostitutes in big cities, or they are further sold at a higher price. According to a report of the Pakistan Women's Division, about 60% of the professional prostitutes in the brothels of the country are procured through the practice of "walwar".

In the "watta-satta" form of marriage, if the woman on one side is divorced, the other side also turns out the woman. 20% of the prostitutes of the country consist of this type of divorced women or widows who have been lured into the profession either through fraud or some kind of temptation.

In Pakistan abduction usually takes place with the consent of the woman. Young or unmarried girls run away from their homes alone or with some boy-friend because of the cruelty of their parents or step-mothers, or sometimes under the temptation of becoming a movie star. But married women elope with some sympathiser to escape wife-bashing by elderly husbands, physical torture, perverse attitude of the in-laws or for similar reasons. 20% of such abducted women end up in brothels as prostitutes because if the man becomes fed up of her or leaves her alone and disappears due to some other reason, society does not provide adoption of any other way of life for her.

Sometimes a woman is forcibly abducted in order to take vendetta and thereafter she is subjected to rape. For instance, if a man has an illicit relationship with a girl, the members of her family may forcibly abduct and rape his sister in order to take revenge from him for violating their family honour. It is

obvious that women are victims on both sides under this concept of justice.

A woman of any age can become the victim of rape; female children and old women are both subjected to this kind of crime. The incidence of sex crimes has been on the increase in this country since the past few years. According to the figures given by the Punjab Police one case of rape is registered in Punjab after every seven hours (The Daily 'Nawa-e-Waqt' Lahore 6 April 1988). The actual incidence is much higher since many such cases are never reported. On many occasions the family of a girl who has been subjected to sexual violence are reluctant to accept her back due to fear of public disapproval. Sometimes the incident is covered up by assuming the pretence that it never happened.

Women are frequently subjected to physical assault and battery at various levels of our society. A report of the Pakistan Women's Division ascribes the prevalence of this practice to poverty, personal deprivations and frustrations of men, tensions caused due to unemployment and drug addiction.

Among the poor classes, grown up daughters are often beaten by parents over trivial matters. Many women are reportedly beaten by their inlaws as well as their husbands and sons. Women often flee from their homes to escape from this kind of violence. Physical brutality is sometimes accompanied by sexual assaults by the father, uncle or other close male relative. If a girl or married woman is suspected of having developed illicit relations with a stranger, the husband or close relatives are traditionally entitled to disfigure her by cutting off her nose and hair for having tarnished their family honour. Sometimes her face is disfigured by acid or a sharp edged weapon if she resists the sexual advances of a close male relative.

Under the laws of this country a man is considered justified in killing a woman of his family if she is involved in "siyahkari" (illicit sexual relationship). That is, if a man finds a woman of his family in a compromising position with a

stranger he can murder her. The Penal Code places this kind of offence in the category of killing under “grave and sudden provocation, i.e. culpable homicide not amounting to murder”, and in such cases the accused is usually sentenced to imprisonment of a few months only.

In certain areas of Pakistan “siyahkari” is used as a defence in cases of intentional murder of an enemy. This is accomplished by separately murdering the enemy and one’s own close female relative and then placing their dead bodies together in a compromising position. It is then claimed that they were both killed under grave and sudden provocation and in order to vindicate the family honour.

During my tenure as Judge of the High Court a case came before me where a man had killed his enemy and then fired at his fourteen year —old blind daughter with a shot gun. Some of the bullets accidentally injured his buffalo which happened to be nearby. His concern for the safety of the buffalo prevented him from transporting the body of his daughter and placing it near to that of his enemy in time, and it was thus revealed that he had murdered his daughter intentionally in order to dispose of his enemy.

Women are sometimes murdered by their husbands for being rude or disobedient. In such cases the man is not sentenced to death, he usually gets off with a sentence of ten years or life imprisonment. Sometimes a woman is burnt to death by the husband or inlaws and it is reported that she died accidentally while preparing meals over a defective oil or gas stove.

The laws of “Qisas” (retaliation) and “Diyat” (blood money) have not yet been enacted or enforced in Pakistan. However the superior courts allow the offence of murder to be compounded if a compromise can be effected between the parties to the satisfaction of the court before the final decision. In such cases the death sentence of the accused can be converted into a lesser penalty. One of the terms of such a compromise can be the giving of the hand in marriage of the sister or daughter of the accused to the brother or son of the

deceased. Such a marriage which is a partial substitute for blood money is called "swara". The Supreme Court of Pakistan at present does not accept a compromise which contains such an obnoxious condition as "swara". Such injustice cannot be tolerated that a sister should be compelled not only to give up her share in patrimony for the sake of her brother, but also to become a beast of sacrifice in order to save him if he commits murder.

Adverse effects of Zina Ordinances

The promulgation of the Zina Ordinance has been widely criticised not only by women but also by the International Commission of Jurists as a gross violation of women's rights. The enforcement of these laws in Pakistan has raised three important issues which concern us all.

The first issue is that the enforcement of the Zina Ordinance has replaced the fundamental principle of criminal jurisprudence followed in this country, that the accused is presumed to be innocent until proved guilty beyond any shadow of doubt, with the new principle that the court will consider the aggrieved party or prosecutrix to be guilty until she proves herself innocent. For example a women complains that she has been raped by 'A'. In this complaint she legally admits the factum of sexual intercourse having taken place, therefore she prima facie implicates herself as a party to the offence. It is then left to the court to determine whether, in view of the circumstantial evidence, her testimony can be considered reliable regarding the charge of rape or whether she is to be convicted as a consenting party. It is also possible that the trial court may accept her testimony and acquit her but the appellate court may upset the judgment on appeal of the accused party and holding the woman as guilty may convict and punish her. Thus when a woman files a complaint of this nature, instead of seeking justice she places herself at the mercy of the court. If the court accepts her testimony in the light of supporting evidence her innocence will be established. But if in the opinion of the court the

corroborative evidence does not support her statement, it would be inferred that sexual intercourse took place with her consent and consequently she will be found guilty of having committed 'Zina'. The decision will depend a great deal on the personal whim of the judge as to whether he considers the testimony of a female reliable or not. If the court holds that the circumstantial evidence does not establish that 'A' was responsible for raping the women, 'A' will be acquitted, but the woman will be punished since she has admitted that illicit sexual intercourse took place.

Let us examine the other side of the picture. A woman is raped but due to considerations of family honour or fear of disgrace, the matter is not reported to the police. If she subsequently becomes pregnant as a result of the rape, she will be prosecuted for Zina and punished accordingly. Thus in both situations the woman who is subjected to rape will always be apprehensive that she is likely to be convicted, whether she reports the matter or conceals it.

Under the recently repealed provisions of the Pakistan Penal Code if a female adult was abducted by a man, and a case of abduction was registered against him, the man would be exonerated if the woman stated that she had gone with him of her own free will. Similarly in cases of rape if the woman's testimony was supported by medical and circumstantial evidence, it would be sufficient to convict the male accused. A female prosecutrix was provided this special legal protection in relation to sexual offences because women were considered an oppressed class in our social order. Consequently if a sexual offence such as rape or abduction was established, the male accused was usually punished. But since the promulgation of the Zina Ordinance, women are no longer provided this legal protection despite the fact that they are still the most victimised and oppressed segment of society. Now if a woman leaves her house in order to escape the cruelty of her step-mother or husband and takes refuge in her sister's house, she and her brother-in-law can be accused

of Zina and abduction, and they can both be arrested and punished.

A woman who is arrested on the charge of Zina or abduction, is normally not released on bail, and even if the High Court admits her to bail, only her parents, husband or other- "mehram" can stand surety for her, which means that she is at the mercy of the very parties whose cruelty she sought to escape. If the parents or husband have got the case registered against her they will certainly not be willing to bail her out. Many such unfortunate women are languishing in our prisons today. Due to the volume of cases pending in the courts, their cases are not heard. If they have small children, they are confined to prison with them and grow up in that environment. Prisons are not safe places either because there are several reports of sexual assaults on these victims while in confinement.

The second problem is that of conflict between various provisions of the Muslim Family Laws Ordinance and the Zina Ordinance. According to the Family Laws, if a man decides to divorce his wife, he has to send verbal or written intimation of divorce to his wife and also to get it registered with the local Union Council. The Chairman of the Council then constitutes a conciliation committee which tries to bring about a reconciliation between the spouses. If these efforts fail, the divorce becomes effective ninety days after its registration with the Union Council. The woman can then remarry after the expiry of the 'Iddat' period. Very often the husband disregards these provisions and divorces his wife without getting the divorce registered with the Union Council. Due to ignorance of the law, women usually accept such a divorce as valid and effective and contract a second marriage after the 'Iddat' period. Legally the first marriage is still subsisting, and a second marriage in such circumstances amounts to admission of Zina with another man. The husband who made the invalid divorce then perversely files a complaint of Zina against his ex-wife and her new husband, and gets them both arrested. The courts have not so far

considered the element of "mens rea" or wilful intent to commit Zina as a relevant factor in such cases.

The Family Laws have adopted the procedure of "Talak Ahsan" rather than the prevailing "Talak Bidaat", because under the latter method the man can instantly and arbitrarily divorce his wife, whereas in the former case it becomes effective after a period of ninety days, and thus offers some protection to a woman. Ironically those provisions of the law which were designed to protect women, now provide the means of convicting them for Zina. As a result of this inconsistency in the law, eight out of every ten women in the jails today are those charged with the offence of Zina and no legal aid is available to them. The Chairman of the Shariat Appellate Bench of the Supreme Court has felt the necessity to instruct the wardens of women's jails to assist these women in filing jail appeals.

No proceedings are taken under the "Qazf" (slander) law against a person who makes a false accusation of Zina against a woman. If a husband accuses his wife of Zina or alleges that her children are illegitimate, the wife cannot charge the husband with "Qazf" even if these allegations are incorrect. She can only get her marriage dissolved on the basis of "liaan" (false imputations of unchastity). In our social setup she has to live with the ignominy that she was divorced on the basis of adultery.

The third problem is that of the misuse of the provisions of Zina Ordinance. In this connection I will quote a few examples from my experience as a Judge:-

In Multan a woman sought refuge with her sister in order to escape the physical cruelty of her husband, and filed a suit for dissolution of marriage against him. The husband filed a complaint that she was committing Zina with her brother-in-law, on the basis of which they were both arrested. In view of the circumstances I released them on bail. I do not know what was the ultimate outcome in that case.

In Rahimyar Shan a sixty year old man and his sixteen year old daughter-in-law were arrested on the charge of Zina

because they refused to grease the palms of the police patrol at the railway station. They had arrived in Rahimyar Khan from Karachi at midnight after seeing off the girl's husband. They were obliged to spend the night in the waiting room as there was no transport available for their village at that hour. They were released on bail after spending twelve days in confinement.

In Grujranwala, on the basis of political rivalry, a man was charged with committing Zina with a widow. The complainant alleged that while he was passing the widow's hovel, he heard some peculiar sounds and on peeping through a chink in the door he saw his political rival and the widow committing Zina together. He ran and called three other friends and all the four witnessed the occurrence. They forced the door open after the offence had been completed and entered the room in order to capture the culprits. However, according to them, the male accused succeeded in escaping but the poor widow was caught and handed over to the police. The male accused was subsequently arrested from his own house. It is strange that four witnesses failed to catch one male offender but succeeded in capturing a lonely widow.

A most unfortunate example of the misuse of this law came before me in Bahawalpur. A female college student entered her male professor's office to discuss an academic question. Some students of an opposing faction bolted the door from outside and summoned the Imam of an adjacent mosque to witness that the professor and student were committing Zina. The professor and student were frantically beating at the door, and when the door was opened they emerged in a bewildered and distraught condition. The police registered a case and arrested them on the basis of the statements of the Imam and the mischievous students. The lower court refused to grant them bail as Zina is a non-bailable offence. When the case was placed before me I summoned the Imam in my chamber and asked him to divulge the true facts. Initially he supported the version of the students, but subsequently stated that he had believed their

story merely because he had found the professor and his pupil in a state of confusion. Later his religious order had warned him not to deviate from the preliminary statement he had given to the police, otherwise he would get into trouble.

According to a newspaper report a man left his young wife with his parents when he proceeded to the Middle East to seek employment. His parents were indebted to someone and instead of paying the debt, they delivered their daughter-in-law to the creditor in settlement of his account. When the husband returned, he filed a complaint of 'Zina' against his wife and the creditor, as a result of which they were both arrested. He later got his wife released on bail, but withdrew his surety when he was returning to the Middle East and she was rearrested.

Sometimes if the parties accused in a Zina case are untraceable, the relatives of the woman lodge a complaint against the old parents of the male accused for having hidden both the accused. The police then arrests the parents as abettors in the crime of Zina. Many such aged parents are in judicial lockup as a result of such complaints.

Such oppressive laws are very likely to be abused in a society like ours, where people frequently resort to falsehood in order to secure their petty interests, and where the police has unlimited powers and a reputation of being corrupt and of siding with influential persons. Obviously this has an adverse effect on the rights of women.

New Crimes:

Recently women have become the victims of many novel and unusual crimes. It is reported that in certain rural areas women have been forcibly stripped and paraded naked in the streets in order to settle old scores. This has led to the introduction of a new provision in the Penal Code under which this offence is punishable with death or life imprisonment. In Wazirabad a man was arrested on the charge of exhuming the dead body of a twenty-one year old girl and then committing the offence of rape. There was no

punishment prescribed for an offence of this nature in our Penal Code, since this kind of crime had probably not been committed before. There has also been an increase in the incidence of forced abductions and rape of young girls and female children in big cities. They are later murdered and their bodies are abandoned in deserted places. Women are also being used as carriers for smuggling narcotics and other contraband goods. If a female carrier is caught and punished, the man behind the crime usually disappears. Women often become victims of fraud and cheating. Incidents of purse-snatching are also on the increase.

The most heinous new crime against women is armed robbery or dacoity accompanied with rape. Every home is vulnerable to this kind of violation. Recently a gang of nine dacoits were arrested in Lahore. They were all educated and belonged to well-to-do and influential families. According to a newspaper report they confessed to having committed fifty-eight such crimes. In view of the unsatisfactory law and order situation prevailing in the country, any family can become the target of such a crime. It is evident that a woman is not secure even within the confines of her "chadar and chardewari" and she is not afforded any legal protection against the consequences of such a crime. She can either admit to being a victim of rape or conceal the fact. In both cases she runs the risk of being punished as a guilty party.

Is the degraded position given to woman in our society a true reflection of her status in Islam or have we failed to elevate her status according to Islamic standards? It is a fact that the best tradition of a nation can only be safeguarded by its women. On this premise Allama Iqbal said in his address to the Anjuman Khawateen-i-Islam Madras (7 January 1929):-

"I need not emphasize that Islam maintains absolute equality between men and women, this is what I infer from the Quranic verse.....but since the past five or six hundred years the Islamic Shariah has remained static..... Some well known books of 'Fiqh' were written about six hundred years ago. The rulings (Fatawa) given in those times were according to those

conditions. Today circumstances have changed, and the principles of the Shariah Law should be reviewed in the light of the changed conditions. If women decide to secure for themselves the rights accorded to them by Islam, I assure you that life will become difficult for men Therefore you should insist on obtaining your rights. The Quran has already accorded to a woman every right that she can ever demand on the basis of justice and reason.”

The Quaid-e-Azam was also fully aware of the fact that our nation cannot achieve the heights of greatness unless our women work side by side with men according to the Quranic concept of equality (Musawaat). He correctly pointed out in his address at the meeting of the Muslim League held at Aligarh University on 10 March 1944:-

“We are victims of evil customs. It is a crime against humanity that our women are shut up within the four walls of their houses like prisoners. I do not mean that we should imitate the evils of Western life. But let us try to raise the status of our women according to our own Islamic ideas and standards. There is no sanction anywhere for the deplorable conditions in which our women have to live. You should take your women along with you as comrades in every sphere of life.”

There are many educated women present in this gathering today who have been liberated from the bonds of ignorance and custom. Are you aware that the advent of Islam was in reality a message of liberation for women from all forms of exploitation? That is why the first person to embrace Islam was a woman, and in the early days many men embraced Islam on the persuasion of their women-folk. But now perhaps we are passing through a phase of decadence and mental servility. We are trying to lower the status of Muslim women instead of raising it. If we take one step forward we are made to retreat two steps back. In Pakistan we have not only deprived women of the protection they were given by the Penal Code, we have also enforced the law of Zina with utter disregard to the changing needs and requirements of modern times and without resorting to Ijtehad as envisaged by Muslim reformats. The result is that it has become

impossible to distinguish between the innocent and guilty, and women who were already an oppressed class have been further degraded in our country.

Our National and Provincial Assemblies have not felt the need to discuss the intolerable condition of women in Pakistan, nor have they considered the possibility of introducing suitable amendments in the law to remedy the situation. Although special seats have been reserved for women in these assemblies, the election of women to these seats is by an electoral college of men, therefore these female members cannot be considered the representatives of women at all. Probably that is why they are not even aware of the problems that an average Pakistani woman has to confront. In these circumstances I feel that Islam and the founders of Pakistan have placed a tremendous responsibility on your shoulders to plead the cause of your oppressed sisters and to strive constantly for the rights of those women for whom life has been made unbearable in this so-called Islamic society which is based on hypocritical and double standards.

FRIENDS AND FOES

Justice Javid Iqbal, son of poet-philosopher Mohammed Iqbal, has been the Chief Justice of the Punjab High Court in Lahore and retired as a judge of the Supreme Court of Pakistan. Later, he was elected a senator to Pakistan Parliament. He spoke to Ather Farouqui on the impact of September 11 terror strikes on the Islamic world and the future of democracy there:

No two countries in the world are as culturally close to each other as India and Pakistan. Yet, they have a history of hostile relations. How do you look at the relations between the neighbours and what remedies do you suggest for peaceful coexistence?

India has a lot of variations in culture. Generally, culture can be examined at different levels — local, regional, national or universal, but it is not necessary that every time the result will be the same. India and Pakistan are the best examples in this context, and it cannot simply be stated that today India and Pakistan have the same civilisational backdrop. A lot of water has flown down the rivers after Partition.

Leaders from both the countries should admit that India and Pakistan are flooded with problems and that even basic issues such as primary education and healthcare have not been addressed. It is better if they start thinking of solving basic issues so that the countries don't remain backward.

9/11 has led to the demonisation of Islam in the western world. Militant Muslim groups that went underground immediately after the attack have now resurfaced. How do you look at the post-9/11 events?

I agree that the tragic event of September 11 made an impact upon global society and it has damaged the position of

Muslims, particularly that of modern Muslims, the world over. If the Muslim militants under the leadership of Osama bin Laden were responsible for this event, one is not sure what the real credentials of Osama bin Laden are. He, like Saddam Hussein, was once upon a time, considered a friend of the US. He worked under the US command in Afghanistan for pushing out the Soviet army. If he had planned the 9/11 attacks, he certainly did not plan it as a friend of the Muslim world. If his strategy was that by demolishing the World Trade Center, he would smash US economic power, he managed to destroy only a building and not US economic power.

Secondly, if by destroying a portion of the Pentagon, he imagined that he had destroyed US military power, his confidence was misplaced as that too meant the damaging of a building.

Thirdly, his statements projected at the crucial stages of the recent US elections may have helped George Bush to win a second term. In this scenario, it is difficult to say whether Osama and his terrorist supporters are well-wishers of Islam, or, because of their stupidity, they are indirectly working as agents or instruments of the US imperialism.

Do you think that sooner or later Muslim theocracies will be forced to adopt democracy?

In my view there are no theocratic states existing in the Muslim world. If the question relates to the kingdom of Saudi Arabia, then even that state is not theocratic, although it is a monarchy. If it is about Iran, then too the question is not relevant because Iran is neither a monarchy nor a dictatorship. If religious leaders dominate in Iran, that is because they have gained power through their own version of democracy. As for Saudi Arabia and other Muslim countries where non-democratic governments prevail, it is up to the people of those countries to transform their political systems into democracies. I am sure that political pundits in India with their experience of democracy are much more competent than me to make a prediction as to how and when

these countries would dress themselves in the garb of democracy.

How has the post-9/11 developments affected Pakistan? Can we say that the fallout of the events has helped the present Pakistani regime to sustain itself by joining the US camp?

The present Pakistani military regime has not gained any special concessions after 9/11. The strategic position of Pakistan is such that it was not in a position to give a negative answer to the US question: "Are you with us or against us?" Even if there had been a constitutionally elected government in Pakistan, it would have adopted the same course of action as the military regime. The world is passing through a phase of US imperialism as it is the only great power left after the collapse of the Soviet Union.

9/11 led to a change of regime in Afghanistan. What do you think is the future of democracy in Afghanistan?

It is difficult to predict the future of democracy in Afghanistan. History indicates that the mullahs have always dominated the people there.

Besides that, Afghanistan consists of different racial groups like the Pakhtuns, Hazaras and Uzbeks, who were bundled together under the arbitrary rule of the amirs. My sympathies are, like any Pakistani or Indian, with the success of democracy and its institutions in Afghanistan.

I wish, and desire, that democracy develops firm roots in that country as this will benefit not only Pakistan but also the entire South Asia.

(The Times of India, New Delhi, April 18, 2005)

KASHMIR AND SOUTH ASIAN SECURITY

The territorial dispute between India and Pakistan actually relates to two completely different and diametrically opposed perception of what is generally known as the problem of Kashmir.

The problem is a legacy of the British rule. There are many such instances in the Third World where the receding colonial powers have left behind such problems with a view that the underdeveloped countries should remain locked together in conflict with one another and thus continue to remain dependent on their erstwhile rulers militarily and economically.

On 26 October, 1947 when the Dogra ruler of a Muslim majority territorial unit - the State of Jammu and Kashmir, acceded to India, the accession was proclaimed by the Government of India as provisional, subject to ratification by the people of the State through adult franchise. But the opinion of the people was never solicited and this led to the development of tension in Indo-Pakistan relations which subsists even today.

Instead of getting the accession ratified by the people, India approached the United Nations and even then blamed Pakistan for aiding the rebels in Kashmir, which according to India, had become part of the Indian territory. Pakistan denied the allegation and on the contrary charged India with illegal intervention by sending her troops into the State in order to prevent the people from expressing their opinion. It

was in this background that the United Nations adopted the 1948 Resolution declaring that the only way to settle the Kashmir problem peacefully was to demilitarize the State and thereafter to hold a plebiscite under the auspices of the United Nations in order to determine whether the State wanted to accede to India or Pakistan.

Subsequently, numerous United Nations resolutions were adopted to more or less the same effect. But while, according to the United Nations, the future of the State was still undecided, India unilaterally declared that the State was an integral part of the Indian Union.

It is evident that according to the Simla Agreement (1972) there is admittedly a Pakistan factor in the Kashmir problem, which awaits final settlement without recourse to force and in accordance with the United Nations Charter. Therefore, a question may well be raised: What is the basis on which India and Pakistan should proceed in these bilateral negotiations?

Pakistan's official stand is that both India and Pakistan gave a solemn pledge to the people of the State that they would be allowed to decide their own future in a free plebiscite and that it was this promise, which was subsequently incorporated in the mutually accepted United Nations resolutions. In this background when Pakistan asserts that the Kashmir problem should be resolved on the basis of these United Nations resolutions, she is only emphasizing that the principles of the Charter be applied for the solution of the problem and this is precisely what is contemplated as well as provided in the Simla Agreement. Thus India's allegation that by making this demand Pakistan is repudiating the Simla Agreement is without any merit.

India's declared official position is that Pakistan cannot ask for a plebiscite in the State after having entered into Simla Agreement with India, that the United Nations resolutions of 1948 and 1949 are dead that the people of Kashmir have participated in numerous elections held in the State on an All-India basis, which indicates that they have accepted the State as an integral part of India, and that therefore a plebiscite on

this issue now after the lapse of more than forty years is simply out of the question. It is also contended that the acceptance of the demand of Pakistan would amount to a second partition of India on the 'basis' of religion and that this would strain Indian national unity. India further maintains that since the Muslims as a whole constitute the largest minority in India, Pakistan should not insist on holding plebiscite in the State for the sake of their security.

As we all know that since 1972, due to numerous reasons, there was no further progress respecting the solution of the Kashmir problem. The suggestion of India through the diplomatic channels that the bilateral negotiations could proceed on the basis of rationalizing the present cease-fire line as permanent international frontier, was justifiably turned down by Pakistan as it ignored the right of self-determination of the people of Kashmir. On the other hand the suggestion of Pakistan that the bilateral negotiations could commence on the basis of excluding the Hindu majority territory of Jammu, and holding plebiscite only in the Kashmir valley, was not acceptable to India. Thus although tension continued to remain in Indo-Pakistan relations, the Kashmir issue if not dead became dormant. However, it has recently been brought back to life by the Kashmiris themselves when eventually the alienated population has risen in militant protest against India.

India alleges that the current turmoil in Kashmir has been engineered by Pakistan, which is aiding the militants and the fundamentalists, and thus encouraging various subversive groups in the valley to secede and join Pakistan. This charge has been vehemently denied by Pakistan primarily on the ground that since the accession of the State remains undecided how can the question of its secession arise.

It would not be wrong to say that the recent uprisings in Kashmir against oppression and violation of democratic rights are the result of the winds of change and are part of a global movement which has swept all over Eastern Europe as well as Central Asian republics of the Soviet Union.

Pakistan can only give moral and political support to the Kashmiris in their struggle for freedom as she is not in a position to help them militarily. As for the persistent allegation on the part of India that Pakistan is militarily helping the Kashmiris, it is similar to the charge voiced in Pakistan that India is militarily assisting the subversive elements in Sind. But such charges and counter-charges are probably the result of the prevalent distrust and antagonism between the two countries.

At this stage, I would like to present before you an unofficial Indian viewpoint on the Kashmir issue expressed by the Progressive Study Group. The Group contends that if the Government of India still maintains that the question of the State's accession to India has already been settled, one can simply ask, by whom? According to the Study Group: "On the one hand lies the fact that the people of the State were made to join the Indian Union without taking into account the wishes of those very people themselves; on the other lies the experience of these people during the period of their association with India, which has given them nothing except misery and neglect, and humiliation and repression". (The Kashmir Problem, Why? Report of the Indian Progressive Study Group. Viewpoint Lahore, October 11, 1990 p. 30).

It is contended by the Group that the Kashmir problem is not a "military-diplomatic squabble" between India and Pakistan; it is the denial of rights of the Kashmiris as they have been forcibly barred from deciding for themselves the fate of Kashmir.

The findings of the Group are that there were, according to the 1981 census report, three hundred thousand unemployed in the State which is 20% of the able-bodied population, that it is the only state in India which lacks a legally backed minimum wage rate, that in the agricultural sector also there is a constantly growing pauperization of the poorer sections in the villages, and finally, that Kashmir is a state in India where even the basic prerequisite of democracy, i.e., an election free from rigging and intimidation is yet to be

held, the methods of rigging ranging from issuing pre-stamped ballot books and booth-capturing to counting irregularities.

The main argument of India against holding a plebiscite is and has always been that the people of Kashmir have participated in numerous elections held in the State on an All-India basis which indicated that they have accepted the State as an integral part of India. Respecting this contention the findings of the Study Group are that before every elections, the workers of the opposition were arrested and this had been the recurrent pattern of events ever since the first elections in 1951. According to the Group, there was no balloting at all in 1951 because the opposition candidates were forced to withdraw by sheer intimidation, and again in 1957, the same story was repeated. In 1966 the date chosen for the elections was 21 February, when the crippling cold prevented people from coming to polls while members of the opposition parties were put behind the bars. Similarly in the 1972 elections the leaders of the opposition parties were externed from the valley and the elections were a one-sided affair. Even the 1977 elections, which had been claimed to be free from rigging, had their due share of intimidation of opposition parties. Thus according to the Study Group, there is ample evidence available in support of the reasoning that the Kashmiris as a whole never participated in any of these elections. On the contrary, the Group holds: "Ever since 1947 the people of the State have voiced their discontent against the farce of a democracy that the Indian rulers and their collaborators in the State have imposed on them". (Ibid., p. 31).

The conclusion of the Indian Study Group is: "One cannot understand how the unity of Indian people can be impaired if the Indian people wage a consistent, many-sided battle for democracy in the process upholding the rights of nationalities and rejecting the imposition of state terrorism. This is the only way the real unity of the Indian people will be forged They must demand that the Kashmiri people be

granted their demands of self-determination This is the only road to the just solution of the Kashmir problem and the creation of a democratic India". (Ibid., p. 32).

It is evident that there is a dichotomy in the Indian official and non-official viewpoints. The reason appears to be that the official Indian position is political whereas the unofficial viewpoint is founded on a realistic appraisal of the prevalent situation in the valley.

We go back to the question: On what basis should the bilateral negotiations between India and Pakistan proceed? Needless to say that if these are to proceed on the basis of the allegation that Pakistan is aiding the "rebels" in Kashmir, or that the present Line of Control be rationalized and straightened in order to convert it into an international frontier, or that between the two parts of the State namely, Azad Kashmir and India-held Kashmir, a "soft frontier" be established, then this would obviously be a futile exercise and Pakistan must not sit on the negotiating table.

In order to work out a stable friendship between the two countries, it is necessary to resolve the Kashmir problem where bulk of the population has risen in revolt, and this is only possible through democratic means and by accommodating democratic descent as well as respect for a distinctive Kashmir identity in accordance with the wishes and aspirations of the people of the State. Therefore the only basis on which bilateral negotiations between India and Pakistan can proceed is the chalking out of a methodology for holding plebiscite in Kashmir. The realization of this objective again depends on a Gorbachev-like large-hearted and courageous leadership of India. It has probably correctly been suggested by Mr. B.J. Verghese, an eminent Indian journalist that: "India's interests need redefinition. They do not lie in continuing confrontation or an escalating arms race. Regional cooperation can help resolve many national problems in view of the close inter-action of internal and external factors in South Asian relations". (An Indian View.

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Indian leaders have repeatedly declared that they want friendship with Pakistan. Obviously normalization of relations between both the countries will establish regional security. They have, however, so far not adopted an appropriate policy which could lead to that friendship. On the other hand, Pakistan has not made any really determined effort to establish friendly relations with India, but has maintained a competitive and combative posture.

This specific policy has cost Pakistan the squandering of enormous resources on the military. As a result, her educational system has languished, literacy has declined, medical care is not available except to a few fortunate individuals in the cities, and industrialization in the country has remained marginal. Fortunately, despite war rhetoric on both sides, neither army has moved so far. Evidently both sides want peace and neither side wants to risk war that they cannot afford.

If India and Pakistan mutually agree on the methodology of holding plebiscite in Kashmir, then the remaining disputes between the two countries, e.g., those pertaining to distribution of waters or involving trade and commercial relations, are such which are negotiable and can be resolved.

There are 100 million Muslims in India and in frequent communal riots Muslims usually suffer. At present, within India it is generally felt that the future of secularism is in jeopardy and there are many circles which have been criticizing Indian leaders for the failings of secularism as well as the violation of human rights. Therefore, for the sake of Muslim minority, Pakistan should encourage the development of genuine secularism in India.

As for South Asian security, the agreement between India and Pakistan not to attack one another's nuclear installations has been so far successfully achieved.

Pakistan has declared time and again that she is ready to sign the Nuclear Non-proliferation Treaty and to accept

International Atomic Energy Agency safeguards on her nuclear programme along with India, to conclude a bilateral agreement with India for mutual inspection of each other's nuclear facilities, to make a joint declaration with India renouncing nuclear weapons, and to enter into a bilateral or regional nuclear test ban agreement with India. Pakistan has also sought to strengthen non-proliferation in South Asia through its proposal for a nuclear weapon-free zone.

The Siachen sector, where armies of both India and Pakistan are locked at high altitudes, is a terrain which has hardly any strategic value. Therefore, if the Kashmir dispute between India and Pakistan is resolved, both the parties can take steps to implement the agreement for a mutual pull-back agreed upon in 1989. The Siachen accord can become the starting point for a demilitarized Himalayan-Karakoram peace zone.

These steps can be followed by a no-war pact and by securing a mutual reduction in the conventional arms. Regional security will be further strengthened if tripartite negotiations are undertaken to bring Peoples Republic of China's participation. Currently, Chinese perception of threat emanating from the Soviet Union is on the low ebb as the USSR, or whatever is left of it, and the United States are engaged in negotiations for disarmament.

Such confidence-building measures can lead to a detente between the two countries on the basis of a broad-based and multidimensional treaty of friendship. Under this treaty many areas of cooperation can be considered. The freer movement and exchange across the Indo-Pakistan border on people to people basis can also strengthen ties of amity and goodwill.

Finally, the possibilities may be explored as to how far SAARC can provide a framework for still wider cooperation amongst all the countries of South Asia. No doubt our present bears a heavy burden of the past, but we must make all efforts to deal with it in such a manner that it should weigh lighter in the future.

“THE COWARD – THE SLAVE”

Socrates fought for freedom in old Athens but was poisoned by those who pretended to hold the reigns of peace and tranquility. His death was not a death, but it was a rebirth in the folds of Eternity. We are also fighting a moral fight and thus shall either win or never die.

The whole of Punjab has turned into an infinite volcano ejecting volumes of wrath anger and filth upon the Ordinance Rule. The Fascist complexioned Punjab Ministry has been reduced to a mockery and they shall suffer more till the devil is buried deep in the dark dungeon of its own defeatist conscience.

The dying tyrant never repents, it is said, but becomes more callous as the hour of his doom approaches. So is the situation here. Our, students who defy Section 144 are actually flogged inside the Police Station. They are not sent to hospital but are thrown out in the streets. Children who by now understand what liberty means are kicked and caned. Women who marched out to smash the ban are lathi-charged and teargased. They are not handled or arrested by Women Police, but under the charge of steel helmeted Anglo Indian Sergeants they are filled in the Vans. They have been insulted and jeered at by the guardians of so called peace and tranquility. Their destination is not jail, but after sunset they are wheeled off to the outskirts of urban Lahore and are forcibly pushed out to come back on foot to their distant homes holding innocent babies in their arms.

And now, just for a moment think of our poor Premier, the tall man with trembling heart, the arch-representative of the hoodlums who claimed majority in the House. His villa is situated at a distance of about eight miles from the centre of Lahore and it is ever guarded by a squad of policemen, so that the beloved leader of the House may not be molested by his very few enemies. And still, as it has been confirmed, it is an ordeal for the poor soul to pass his night. With blinking eyes, it is said, he counts the series of moments as they glide. In the morning before leaving for Secretariat, he bids his chauffer to come in and asks, "See if there is a bomb in my car".

The hour of his departure arrives with shivering hands he opens the door of his smoke glassed limousine, snatches a hasty glance inside, and then sits heaving a long sigh of relief. His fleet starts with an arrow's speed (two cars occupied by ten rifled constables ahead, and a van with wireless equipment behind). It takes its route through the deserted roads of Lahore. Whole of the crew is grim, as it rushes forth, concentrating all their attention upon their ears, because no one knows when a pistol shot is heard.

No sooner he approaches his white master Jenkins, he feels consoled and placing his hand upon his breast smiles to show that he is as firm as a rock and not afraid at all. "O the Musalmans", he says, "I shall beat them" – and faster beats his heart. He looks aground as if there was a bomb in the Governor's room. "I shall be sleeping in the Government House Your Excellency, I hope you will make necessary arrangements" he cries. Then enter the scene Bennet, the Inspector General of Police, accompanied by Macdonald, the Home Secretary. They all sit together and make plans to crush the 'glorious rebellion'. While our Premier bends in an obtuse 'angle supplementing Jenkins. "Knit a cob-web of plain-clothed police constables all over the Punjab", he whispers. (But why, after all what shall they detect?).

Thus it has become a daily routine with Tiwana to be afraid of bombs and pistol shots. They say he never sleeps,

and if he sleeps he is haunted by the slogan 'down with Khizr the coward, the slave' which ever floats around his tremendous containing a wilderness of hair.

And shall we cease after all this merciless flogging, lathi charges and gas business? No. We have adapted our energies in positive channels. Our thought is crystallised. We know that only our prodigious labour can beat into submission the few remaining angularities of this already flattened Ministry and therefore we shall not stop till either, an equilibrium is formed between us and the 'over dogs', or they oblige themselves by retiring to their respective dens.

We are fighting with clear conscience and clean hands. We are non-violent, and non-communal. Never such a discipline in the processionists has been exhibited in the whole of the political history of India. We have a firm belief that nothing but obstinate fulfilment of duty and action can goad us towards the painful victory of Pakistan. And thus shall we continue:-

Tomorrow, and tomorrow and tomorrow.

It is yet a rehearsal, a prelude.

UNDER A FAILED GENERATION

During Zia's regime further steps were taken to enforce Islam. The 1973 constitution was amended so as to highlight discrimination between "Muslim" and "Non-Muslim" in all important personal documents like identification cards, passports, etc. Changes were made in the Pakistan Penal Code imposing restrictions on the "Ahmadis" in the use of Islamic modes of worship. The blasphemy law was enforced and its likely abuse could not be prevented through the improvement of procedure of its application owing to the pressure of the ulema. As a result this piece of legislation created insecurity among the already discriminated minorities.

Through further amendments in the 1973 constitution Islam was declared the state religion of Pakistan and the objectives resolution was made a substantive part of the constitution. Certain provisions of Islamic Criminal Law (Hudood) were added to the Pakistan Penal Code. Similarly changes were made in the evidence act. A Federal Shariat Court with a restricted jurisdiction was created to hold trials and impose penalties in Hudood cases. Methodology was evolved to collect "Zakat", "Ushr", etc., but due to corruption of the authorities, the deserving people could not benefit from these welfare measures.

Zia's Islamization was based on a personal restrictive interpretation of the Shariah laws and it was never subjected to "Ijtihad" in Parliament. The bulk of Islamic criminal

legislation was merely decorative or cosmetic because penalties under the Hudood laws could not be imposed owing to strict standards of proof.

As a result these laws did not in any manner improve the deplorable law and order situation in Pakistan, but rather it worsened the miserable condition of women who were victimized under these laws. In brief, the form of Islamization introduced by Zia was a complete departure from the interpretation of Islam favoured by the founding fathers of Pakistan. It disseminated intolerance and sectarianism which increased to such an extent, that rival groups of sectarian terrorists did not hesitate to slaughter their fellow Muslims even while they were praying in the mosques.

The founding fathers did not visualize that the new and fragile Muslim democracy would not only be subject to pressures of Islamization along the conventional patterns under the influence of religious zealots, but that its immature and inefficient political leadership would become an easy prey to frequent interventions of the army. Consequently Pakistan has remained under military rule for more than half of its 55 years of national existence.

Democracy in Pakistan has passed through numerous stresses and strains. No elected government was ever given an opportunity to complete its term. The military interfered again and again under the pretext that a balance could not be worked out between the powers of the president and the prime minister, despite the fact that in a federal parliamentary dispensation, the president only represents the unity of the federation whereas all the executive powers are concentrated with the prime minister. Jinnah himself set the precedent. He, as governor-general, never interfered in the administrative powers of Prime Minister Liaquat Ali Khan. However, the 1956 Constitution was abrogated because it did not give those powers to the president which Iskander Mirza wanted for himself.

Thereafter the experiment of a presidential form of government was tried in the 1962 constitution to suit the

requirements of Field Marshal Ayub Khan. But under the 1973 constitution the president was again reduced to a mere figurehead and Prime Minister Bhutto became all powerful. On Bhutto's fall, Zia mutilated the 1973 constitution through the addition of Article 58(2)(b) whereunder the indirectly elected president was given powers to dismiss the prime minister and his cabinet as well as to dissolve the National Assembly. Later by a unanimous decision of the House the constitution was again amended, Article 58(2)(b) was deleted and federal parliamentary form of democracy was restored.

Eventually under Pakistan's fourth military regime of General Pervez Musharraf, a package containing many amendments to the 1973 Constitution was introduced. Article 58(2)(b) was restored, although the exercise of this power by the president (i.e. Pervez Musharraf) was made subject to the advice of a newly created forum called the National Security Council. About the National Security Council, which consisted of four armed forces chiefs, beside other members, it was explained in a press briefing by Musharraf that the device would stop further coups by the army in Pakistan, and that to keep the army out it was necessary to bring them in, and that in the presence of the National Security Council, the Army Chief could not take over. Thus a permanent role of the army in the political system of the country was institutionalized through making a provision for the National Security Council in the constitution.

Just as there was a complete departure from the implementation of Islam in Pakistan as visualized by the founding fathers, there had also been a complete departure from their aspiration of constructing permanent democratic political structures in the country.

These problems raise another set of questions: The two-nation theory, which created Pakistan, cannot be underestimated as it will always distinguish the Pakistani Muslim nation from the Indian nation. However, now Pakistan is the homeland of a single Muslim nation. What is

the relevance of discrimination between Muslims and the non-Muslim minorities?

How should the regional and ethnic forces in Pakistan be absorbed within the framework of Muslim nationalism so that national solidarity is strengthened and these forces do not threaten the territorial integrity of Pakistan? What system of accountability should be introduced to eradicate corruption from the country and to restore the health of its economy? Finally how should Pakistan stop the spread of extremism, sectarianism and the persecution of certain minorities before it destroys the country?

Of all the problems confronting Pakistan, the rapid growth of religious terrorism is inarguably the worst. It is frightening to realize that the idealism which laid the foundations of Pakistan, is being overtaken by terrorism that can demolish the pluralistic civil society and the founders' vision of a democratic state in Pakistan.

The phenomenon of terrorism is one of the most perplexing problems confronting the international community. Yet there is no agreement on the definition of "terrorism." The western mind generally believes that terrorism in all forms must be condemned. Pakistan also condemns terrorism, but its attitude takes into consideration the liberation struggles of the peoples of Palestine and Kashmir; it lays emphasis on the removal of the causes of terrorist activity, and condemns retaliatory reprisals.

Pakistan has been a victim of all varieties of terrorism: domestic, international as well as transnational. The acts of sabotage and terrorist subversion inspired and abetted from across its southeastern border in Pakistan are increasing every day. At the domestic level, religious terrorism is also on the increase ever since Pakistan joined the US-led war on terror. Musharraf's decision to change the Afghanistan policy and to abandon the Taliban has provoked hardline Islamic groups and militants to launch a series of bloody attacks on western and Christian targets in Pakistan. As prejudice against Muslims grows in the western world, there is every likelihood

that the extremist elements would gain more strength in Pakistan and a clash between Islam and the west would become a reality.

Even before the catastrophic terrorist attacks on the World Trade Centre and the Pentagon on September 11, 2001, with the presumed involvement of Afghanistan, there existed an impression in the west that Islam is an intolerant creed which encourages its adherents to kill innocent people with terrorist methods. This impression is based on the assumption that after the collapse of the Soviet Union, Islam is the next ideology of hate and the world is likely to witness a clash of cultures between Islam and the west in the 21st century. The main concern in this debate is that, under the new world order, the global Islamic conglomerate serves as a threat to the basic values and interests of western civilization.

There is no real possibility of a general clash between Islam and the west at present. But if the terrorist activities of some Muslim militants against the all-powerful US lead it to retaliate by launching missile attacks or carpet-bombing on Muslim states like Iraq or Iran, instead of picking up the culprits by other means, then the liberal Muslim governments are likely to be destabilized by the spill-over effects of war. The overthrow of these governments may lead to their replacement by extremist elements and the fragmentation of these states.

Although in the past 55 years Pakistan has drifted away from the ideals of the founding fathers, the preponderant majority of Pakistani Muslims has always been moderate by temperament. They subscribe to the liberal view of Islam propounded by Jinnah. They believe in cultural pluralism and peaceful coexistence with others. But since the past two decades they are being held hostages by the extremist minority that has emerged with the encouragement of the military dictator Ziaul Haq, who exploited them as his own power base.

The Islamic identity of Pakistanis is a strong emotional link between them and the rest of the Muslim world. They are

deeply concerned with the merciless killing of innocent Afghans and Iraqis, who had nothing to do with terrorism, by the invading US army, the systematic genocide of the Palestinians by Israel with US support, and the atrocities being committed against Muslims in Kashmir to which the international community has turned a blind eye.

It is unfortunate that the repeated military coups in Pakistan have not allowed dynamic democratic leadership to develop in the past. Pakistanis are capable of developing their polity along the lines envisaged by the founding fathers if the democratic institutions are permitted to flourish without impediments created by the outgoing military regime which on every occasion results in power being transferred to the same elements who had earlier been responsible for causing a breakdown of the democratic dispensation.

The politicians quarrel. The army takes over. The politicians agitate for restoration of democracy. The army transfers power to them. The politicians again quarrel. The army again takes over. Even if it is claimed that the cult of personality has been suppressed, that political parties will be encouraged to gain strength, and that opportunities will be provided to the educated, intelligent and talented young men and women to participate in the political progress and economic development of their country, the same feudal aristocracy, corrupt bureaucracy, remnants of the colonial past, opportunist industrial magnates and drug barons, with a different face, collude with the "fauji" wielders of power and step in since all of them have a common interest that the status quo should prevail.

Pakistan is trapped in a vicious circle. Progressive, educated and committed individuals, who could contribute to the development of Pakistan, are constrained to consider other avenues of developing their potentials such as migrating to countries which would provide them better opportunities. If data is collected regarding the numbers of young Pakistanis who annually apply for citizenship abroad, it would become evident that those who have the potential of being leaders of

the new generation are contemplating abandoning this country to its misfortunes, since they see no likelihood of their being able to participate in bringing in a government which represents their ideals.

The low turnout at the polls in elections is also indicative of the fact that the majority of Pakistanis have lost faith in the manner in which the electoral process is conducted.

The process of accountability on every occasion is selectively exercised, and even those who come within its net, are at liberty to enjoy their ill-gotten gains by surrendering part of these to the prosecutors who are legally permitted to share the recovered spoils. A new power elite has emerged which is out to dominate the political, cultural and economic scene with the vast resources at its disposal collected through dubious methods.

Unless a system is evolved whereby honest, committed and educated individuals are enabled to participate in the governance of the country and development of stable democratic institutions that can ensure the availability of opportunity to every citizen to develop his/her potential, the political independence that has been attained by the establishment of Pakistan will remain an illusion.

The founding fathers and their generation have long since departed; the following generation has failed to discharge honourably the trust that was reposed in them. Pakistan is not a failed state; it is in the hands of a failed generation.

Pakistan stands on a crossroads. Its only hope of salvation is to entrust the new generation with the responsibility of managing its affairs. Pakistan has vast human and material resources; its ideology is derived from a liberal, humanistic and egalitarian vision of a state, which is to be run according to modern, democratic and Islamic ideals interpreted on the basis of "ijtihad" in every sphere of the collective life of the people of Pakistan. It is the responsibility of those who wield power to persuade and encourage the educated and dedicated young men and women to grasp this opportunity to fulfil the dream of the founding fathers of Pakistan.

UNITED NATIONS SEMINAR ON THE ENCOURAGEMENT OF UNDERSTANDING, TOLERANCE AND RESPECT IN MATTERS RELATING TO FREEDOM OF RELIGION OR BELIEF

Introduction

A. Organization of the seminar

1. At its thirty-ninth session on 9 March 1983 the Commission on Human Rights adopted resolution 1983/40 concerning the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (annex I). By this resolution, the Commission, conscious of the need to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, requested the Secretary-General to hold within the framework of the Advisory Services Programme in the period 1984-1985 a seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief. This request was endorsed by the Economic and Social Council in its decision 1983/150 adopted at its first regular session in 1983.

2. The seminar was held from 3 to 14 December 1984 at the Palais des Nations, Geneva, Switzerland.

B. *Participation*

3. Invitations to nominate participants were extended to the Governments of Argentina, Brazil, Canada, China, Costa Rica, Egypt, Finland, Greece, India, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Poland, Saudi Arabia, Senegal, Thailand, Togo, Union of Soviet Socialist Republics, United States of America and Yugoslavia. An invitation was also extended to the Holy See to send an observer.

4. The following specialized agencies were invited to send representatives: Food and Agriculture Organization of the United Nations, International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization. An invitation was also addressed to the Office of the High Commissioner for Refugees to send a representative.

5. The following regional intergovernmental organizations were invited to send observers: Council of Europe, League of Arab States, Organization of African Unity, Organization of American States and Organization of the Islamic Conference.

6. The following national liberation movements were also invited to send observers: African National Congress of South Africa, Palestine Liberation Organization, Pan Africanist Congress of Azania (South Africa) and the South West Africa People's Organization.

7. Non-governmental organizations in consultative status with the Economic and Social Council, whose purposes and programmes are closely connected with the subject-matter of the seminar, were invited to send observers.

8. Participants from the following countries attended the seminar: Argentina, Brazil, Canada, Costa Rica, Egypt, Finland, Greece, India, Ireland, Israel, Italy, Japan, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Poland, Saudi Arabia, Senegal, Thailand, Union of Soviet Socialist Republics, United States of America and Yugoslavia.

9. Algeria, Australia, Cuba, Democratic Yemen, Germany, Federal Republic of, Iraq., Islamic Republic of, Iran, Jordan, Kuwait, Netherlands, Norway, Peru, Sudan, Syrian Arab Republic, Turkey and Yemen Arab Republic designated observers to attend the seminar.

10. A list of persons who attended the seminar will be found in annex III to the present report.

C. Opening of the seminar and election of officers

11. The seminar was opened on behalf of the Secretary-General of the United Nations by Mr. Kwadwo F. Nyamekye, Deputy Director, Centre for Human Rights, who made a statement. The text of the statement is reproduced in annex II.

12. At the invitation of the Centre for Human Rights, participants and observers at the seminar attended a special commemorative session to celebrate the thirty-sixth anniversary of the Universal Declaration of Human Rights.

At this celebration a statement was read on behalf of the Secretary-General of the United Nations. The Chairman of the seminar, as well as a representative of the non-governmental organizations, and other participants and observers made statements on this occasion.

13. The following officers were elected by the seminar:

Chairman:	Prof. Adam Lopatka (Poland)
Vice-Chairmen:	Mrs. Maria Teresa Meriadri de Morini (Argentina)
	Mr. Abdel Hamid Abdel-Ghani (Egypt)
	Mr. K.H. Patel (India)
Rapporteur:	Mr. Kevin Boyle (Ireland)

14. The Secretary-General was represented by Mr. Kwadwo F. Nyamekye, Deputy Director of the Centre for Human Rights, and in his absence by Mr. Emmanuel Mompont, Chief, International Instruments and Procedures Section and Mr. Boris Nazarov, Chief, Advisory Services and Publications Section. Mr. Munzer Anabtawi, Chief, Advisory Services Unit, was Secretary of the seminar.

D. Agenda

15. The agenda of the seminar was as follows:

1. The principle of tolerance in the United Nations Charter and freedom of religion or belief under international instruments on human rights.

2. Nature and dimensions of contemporary manifestations of intolerance of religion or belief.

3. Models of national or local action to prevent or combat intolerance of religion or belief.

4. Education programmes to foster tolerance of religion or belief.

5. Future activities to promote and to protect freedom of religion or belief with particular reference to the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

E. *Documentation*

16. The following background papers were prepared for the seminar at the request of the United Nations Secretariat:

HR/GENEVA/1984/BP.1 - Background Paper prepared by Professor Adam Lopatka, Minister, Head of the Office of Church Affairs, Polish People's Republic.

HR/GENEVA/1984/BP.2 - Working paper prepared by Mrs. Elizabeth Odio Benito, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

HR/GENEVA/1984/BP.3 - Background Paper prepared by Professor Roger S. Clark, Rutgers University School of Law, Camden, New Jersey, United States of America.

17. The following working papers were prepared by participants and observers:

HR/GENEVA/1984/WP.1: Judge Voitto Saario
(Finland)

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| " | 2: International Association for the
Defence of Religious Liberty |
| " | 3: B.K. Sister Jayanti (Brahma
Kumaris World Spiritual
University) |
| " | 4: Holy See |

- " 5: Mr. Kevin C. Boyle, Professor of Law, University College, Galway, Ireland
- " 6: Prof. Iwao Munakata, Faculty of Literature, Sophia University, Japan
- " 7: Mr. Aleksandar Fira, Judge, Constitutional Court (Yugoslavia)
- " 8: Mr. Javid Iqbal, Chief Justice, Lahore High Court (Pakistan)
- " 9: Baha'i International Community
- " 10: Mr. Georges Thiathy Dione (Senegal)
- " 11: Mr. Makumi Mwangiri, Second Secretary (Legal) Kenya High Commission, London
- " 12: H.E. Mr. Maarouf Al Dawalibi, Counsellor, Royal Court, Riyadh (Saudi Arabia)
- " 13: Dna. Maria Teresa M. de Morini, Subsecretaria de Culto del Ministerio de Relaciones Exteriores (Argentina)
- " 14: Mr. James Finn, Editorial Director, Freedom House, New York (United States of America)
- " 15: The International Labour Office
- " 16: Mr. Isaac Lewin, Agudas Israel World Organization
- " 17: Mr. K.H. Patel, Deputy Director, Ministry of External Affairs, New Delhi (India)
- " 18: World Muslim League
- " 19: Mr. Saneh Vadanathorn, Deputy Permanent Secretary, Ministry of Interior (Thailand)

18. The following documents and publications were also made available to participants and observers:

(a) *Basic documents*

1. G/SO 216/3 (37) - Memorandum on International

Seminar on the Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief.

2. General Assembly resolution 36/55 - Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
3. General Assembly resolutions 37/187 and 38/110 - Elimination of All Forms of Religious Intolerance.
4. Commission on Human Rights resolutions 1983/40 and 1984/57 - Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
5. E/CN.4/1983/SR.49 and SR.50.
6. Sub-Commission resolution 1983/31 - Elimination of All Forms of Religious / Intolerance.
7. HR/GENEVA/1984/BP.1-3.
8. E/CN.4/Sub.2/1984/28 - Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. Preliminary report by the Special Rapporteur.

(b) *Reference documents*

1. E/CN.4/Sub.2/383/Rev.1 - Francesco Capotorti - Study on the rights of persons belonging to ethnic, religious and linguistic minorities.
2. E/CN.4/Sub.2/1982/2/Add.7 - Final report by Special Rapporteur Mr. Martinez Cobo - Study of the problem of discrimination against indigenous populations.
3. E/CN.4/1983/34 - Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
4. E/CN.4/Sub.2/1983/29 - Elimination of All Forms of Religious Intolerance. Note by the Secretary-General.
5. ST/HR/1/Rev.1 - A compilation of international instruments on Human Rights.

6. ST/HR/4/Rev.4 and 5 - Signatures, ratifications, accessions etc.
7. E/CN.4/Sub.2/200/Rev.1 - Arcot Krishnaswami - Study of Discrimination in the matter of religious rights and practices.
8. SS-79/CONF. 607/10 - UNESCO - Final Report - Meeting of Experts on the Place of Human Rights in Cultural and Religious Traditions - Bangkok (Thailand) -3-7 December 1979.
9. New South Wales Anti-Discrimination Board 1984 - Discrimination and Religious Conviction.
10. ST/HR/SER.A/2 - Seminar on National and Local Institutions for the Promotion and Protection of Human Rights.
11. A/36/440 and A/38/416 - Reports of the Secretary-General on National Institutions for the Promotion and Protection of Human Rights.
12. ST/HR/1/Rev.2 - Human Rights, A Compilation of International Instruments.
13. ST/HR/2 - United Nations Action in the Field of Human Rights.
14. Charter of the United Nations.

CHAPTER I

The Principle of Tolerance in the Charter of the United Nations and Freedom of Religion or Belief Under International Instruments on

Human Rights

19. Item 1 of the agenda was considered at the 3rd and 4th meetings on 4 December 1984- Mr. Aleksandar Fira (Yugoslavia) acted as discussion leader.

20. In introducing the item, the discussion leader observed that there was a provision in the preamble of the Charter of the United Nations in which the peoples of the United Nations expressed their determination to practice tolerance and live together in peace with one another as good neighbours. Freedom of religion or belief was proclaimed in the Charter of the United Nations, in the Universal Declaration of Human Rights and in various other international instruments dealing with human rights. Reference was made in particular, to the preamble of the Charter and Article 1, paragraph 3, which states that one of the goals of the United Nations is to achieve international co-operation in solving international problems and in promoting and encouraging the respect for human rights and fundamental freedom for all without distinction as to, *inter alia*, religion. Articles 4 and 18 of the International Covenant on Civil and Political Rights, article 13 of the International Covenant on Economic, Social and Cultural Rights, the ILO Convention on Discrimination in Respect of Employment and Occupation and the UNESCO Convention against Discrimination in Education, also contained provisions relating to the right of everyone to manifest and practice religion or belief. The discussion leader emphasized that States which had ratified or adhered to the above-mentioned instruments were under international legal obligations to ensure within their territories the full implementation of the rights contained therein. He further observed that the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was adopted by the General Assembly in 1981 contained detailed indications of what the right to freedom of thought, conscience and religion implied and what steps were required of States.

21. It was generally agreed that the recognition of the principle of tolerance and of the right of everyone to freedom of religion or belief was of paramount importance for the effective protection of other human rights and fundamental

freedoms. The interrelationship between the right to, freedom of conscience and belief and other rights was stressed. It was said that care should be exercised to ensure that differences in religion or belief should not lead to friction among States. Suggestions were made that the Seminar should invite States parties to give the highest priority to activities relating to the implementation of United Nations standards for the protection of freedom of religion or belief and in particular the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

22. It was pointed out that freedom of thought, conscience, religion or belief provided for in the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, protected not only the right to profess any religion but also the right to profess no religion or to change religious belief, or to adopt beliefs other than religious beliefs according to the individual's conscience. The Declaration also provided that no one should be subjected to coercion in the matter of belief. Nor should anyone be discriminated against on the ground of belief whether religious, atheistic or agnostic.

23. The importance of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was particularly noted. It was said that it could be used as a valuable guide for the interpretation of existing international instruments as it contained detailed provisions which gave more detailed content to the right to freedom of religion or belief in those instruments. The international instruments relating thereto should therefore be read as a body.

24. Many participants referred to the situation in their respective countries to illustrate the meaning they attached to the principle of tolerance and the nature of the rights relating to religion and belief protected in the international instruments. They pointed out that the principle of

understanding and tolerance in matters relating to religion or belief had been incorporated into the Constitutions of their countries. All speakers emphasized the universal character of the principle and its positive impact on national legislation. Some speakers observed that only in conditions of peace, development and active coexistence of different political, social and economic systems, was it possible to secure the full enjoyment of all human rights, including freedom of religion or belief. Some participants suggested that each State should re-examine its constitutional provisions with a view to providing adequate constitutional guarantees for freedom of religion or belief consistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. States should re-examine their legislation with a view to ensuring that freedom of religion or belief was assured in a concrete manner, discrimination on grounds of religion or belief was proscribed, and that adequate safeguards and remedies were provided against such discrimination.

25. The view was expressed that freedom of religion or belief was closely linked with the overall situation throughout the world as regards respect for other human rights such as the right to live in peace and the right to development - to mention just a few. It was thus considered important that the principles of tolerance and non-discrimination as regards religion or belief should be universally applied and respected.

26. Various opinions were expressed on the interpretation to be given to the terms "tolerance" and "freedom". The opinion was expressed that while tolerance meant acceptance by individuals of the right of other individuals to hold different views, the concept of freedom went beyond the situation of individuals; it involved the State and placed heavy responsibilities upon it, in particular. The duty to guarantee religious freedom and to ensure that discrimination on religious grounds was proscribed by law. It was also said that tolerance was not just a matter of non-discrimination but an act of understanding which had to

come from the individual rather than from the State. However, the State should take measures to encourage such attitudes of tolerance and to ensure respect for different religions and beliefs. It was also noted in this connection that while tolerance entailed respect for the religion or belief of others, it needs not imply approval of all beliefs. In the view of some participants, the principle of tolerance should not be considered as something absolute. There were other fundamental values that a society had to defend and, therefore, there could be limits to the application of the principle of tolerance with respect to freedom to manifest religion or belief. Tolerance in this view meant only that it was not legitimate to exert physical or psychological pressure on persons because of their religion or belief. Some participants further noted that in relations between States, tolerance contributed greatly to the maintenance of peace and security.

27. Referring to the teaching of the great religions of the world, many participants observed that tolerance presupposed respect for others as human beings. The application of the principle of tolerance, it was said, was particularly important when a change in life circumstances, such as migrations or population displacements on a large scale, occurred. Tolerance, in the opinion of many participants, was a value which was linked to the inherent dignity of the human person and, as such, had clear implications for the human rights policies of States. In that connection, it was also stressed that the right to freedom of religion had the special status of a right from which no derogation might be made under article 4 of the International Covenant on Civil and Political Rights.

28. Some participants drew attention to various problems relating to the implementation of the principle of tolerance. It was said, for example, that the right of young persons to manifest their religion or belief, was closely linked with the question of conscientious objection to military service. The view was held that the determination of the age at which a

child could take a decision concerning his own development, including on matters in relation to religion or belief was a question worth raising. Another question raised concerned the right to practise one's own religion in countries having an established religion or a State Church. Reference was also made to the proliferation of religious sects in certain regions of the world. In this context, it was said that in some instances religion was being used as a weapon to achieve political ends and to destabilize constitutional Governments.

29. The view was expressed that the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief should be followed by the elaboration of a convention. Such a convention would help to promote religious freedom by establishing international supervisory machinery for the implementation of its provisions. Another view was that a convention was not strictly necessary, because standards were already firmly established at the international level. According to this opinion, the obligations assumed by States under the International Covenant on Civil and Political Rights were explicit and the Covenant and the Optional Protocol thereto were being well served by the Human Rights Committee.

30. Summing up the debate, the discussion leader noted that it had been wide-ranging and said that the seminar unanimously felt that international instruments dealing with freedom of religion and belief had a positive impact on national legislation and practice. He emphasized the importance of the principle of tolerance and non-discrimination as regards religion or belief, in conditions of peace, development and active coexistence of States with different political, social and economic systems. He suggested that the Seminar considers at a later stage the possibility of elaborating a new international instrument dealing with the elimination of intolerance and discrimination based on religion or belief, taking into account the views expressed during the course of the discussion of item 1.

CHAPTER II

Nature and Dimensions of Contemporary
Manifestations of Intolerance of Religion or Belief

31. Item 2 of the agenda was considered at the 5th to 8th meetings on 5 and 6 December 1984. Mr. K.H. Patel (India) acted as discussion leader.

32. In introducing the item the discussion leader noted that although the right to freedom of religion or belief was recognized as a fundamental human right in various international instruments, manifestations of intolerance and discrimination based on religion or belief continued to occur in various parts of the world. In his view the seminar should determine the nature and the causes of such manifestations, examine the various forms that they took, and consider the problem in all its dimensions, paying particular attention to the role played by political, economic, social, cultural and historical factors. He then urged the seminar to undertake an in-depth analysis of the violations relating to the specific rights listed in the Declaration.

33. It was noted that countless wars had been waged throughout human history in the name of religion. Speakers were unanimous in recognizing that the world today was witnessing widespread manifestations of intolerance or discrimination on grounds of religion or belief. Reference was made in this connection to numerous ethnic and religious groups which, it was said, were victims of such manifestations in various countries. Intolerance was manifested between different religious belief systems, and between religious and non-religious beliefs. It was also noted that tolerance might be lacking between the adherents of the same beliefs and that it was necessary to guarantee the rights of individuals with regard to religious groups.

34. The view was expressed that there was inadequate information on and understanding of the phenomenon of

religious intolerance, and that multidisciplinary research on the subject should be undertaken.

35. For many participants, manifestations of intolerance on grounds of religion or belief were attributable to the unwillingness to accept the right of everyone to be different. Intolerance, they argued, stemmed basically from a lack of respect for the belief of others, and was often associated with the domination exercised by a majority over minorities with different beliefs. They stressed that such an attitude led first to discrimination, then to persecution, and even to the most extreme forms of persecution: the physical elimination of persons.

36. Prejudice, feelings of superiority, including feelings of racial superiority, and the need to find a scapegoat for social or economic ills were also mentioned among the causes of religious intolerance.

37. In the opinion of some participants, the question of freedom of religion should not be considered only from a legal point of view. It was necessary, also, to consider how the legal system was applied in practice. Its sociological aspect should equally be taken into account. It was stressed in this regard that religion was often the essential characteristic of an ethnic group. History, they noted, taught us that on many occasions, religion and not language was the primary factor in the preservation of the identity and the unity of a group.

38. Many participants stressed that the teachings of the great religions of the world extolled the principle of tolerance. In this connection, some speakers expressed the view that religions, however originally tolerant, altruistic, humanistic they might be, nurtured the seeds of intolerance when they were professed in a rigidly dogmatic manner, which divided peoples between believers of the faith and non-believers. Such an exclusivist approach generated prejudice and helped create negative stereotypes. The view was expressed that dogmatic theism as well as dogmatic atheism could lead to manifestations of intolerance. However, other participants did not consider that intolerance was inevitable where

religious beliefs differed, nor was it inevitable as between religious and other beliefs. It was suggested by some participants that the seminar should recommend that case studies be undertaken on the social and cultural conditions which generated intolerance. It was said that such studies could be inadequate if it treated religious beliefs only as social phenomena. The spiritual essence of a religion for believers must be appreciated in such studies.

39. It was also suggested in this connection that a study should be undertaken on the development of norms concerning the propagation of faith, so that such activity could be pursued in an atmosphere of peaceful coexistence and co-operation of different religions or beliefs.

40. The view was also expressed that when a religion had been declared official or a State religion, manifestations of intolerance for other religions by the State concerned might occur through a variety of means, such as the adoption of discriminatory measures or crude attempts at forced conversions. Other participants however expressed the conviction that tolerance could exist in a State where there was no separation between temporal and spiritual powers provided that freedom of religion or belief was legally guaranteed. The view was also held that the separation of State from religion, constitutional guarantees for freedom and equality of treatment of all religions and institutional arrangements for redress of grievances helped secure religious freedom.

41. It was emphasized that while tolerance of all religious beliefs and faiths should be regarded as a cardinal principle by every State, Governments had also the responsibility to ensure that communal passions did not threaten the integrity of the State.

42. It was pointed out that while tolerance was in its true sense an attribute of the individual, manifestations of intolerance were in many instances attributable to prevailing social conditions, and became, thus, an expression of collective behaviour. It was strongly stressed, however, that

although such manifestations could be the consequence of inadequate social structures, their occurrence was not limited to certain regions. The view was expressed that such manifestations should not be regarded as inherent in a particular social or political system. On the other hand, it was said that manifestations of intolerance and discrimination concerning beliefs often reflected structural factors in a society and the basic causes had therefore to be addressed.

43. It was said that in many parts of the world persons belonging to minorities continued to suffer from the worst forms of inequality, in all spheres of life. Reference in this regard was made to the protection provided by article 27 of the International Covenant on Civil and Political Rights, which concerned minorities in general but also minorities distinguished by religion. Some participants deplored that in some countries religious minorities were not allowed to participate in the political life of their countries. In some countries, where one religion was declared a State religion, all those who did not conform to that religion were either persecuted or obliged to practise their religion in secrecy. Such an attitude was said to be short-sighted and dangerous for internal peace. Numerous examples in recent history showed that, depending on their size, cohesion and leadership, religious minorities did not submit to the injustices to which they were subjected.

44. Attention was drawn to the violation of the right to freedom of religion or belief of the population in certain situations including those under the criminal system of *apartheid* and in territories under foreign occupation. It was said that the denial to the population of these areas of the right to worship in the churches of their choice constituted a violation of article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief which proclaims the right of everyone, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. It was suggested that the seminar urges all Member States of the United Nations to redouble efforts in the struggle to put an end to such situations.

45. It was also emphasized that in multinational and multi-confessional States, where the equality of national groups is a *sine qua non* for stability, manifestations of intolerance, even in a minor form, could have serious consequences.

46. Some participants felt that the collection and monitoring of information on manifestations of intolerance throughout the world would be useful. They also stressed that concern for public order should not be used as a pretext to justify limitations of the right to freedom of religion or belief. On the other hand the opinion was strongly expressed that the Declaration should not in any circumstances be used as a pretext for interference in the internal affairs of States.

47. Some participants evoked the situation of young people who claimed their right to freedom of belief when making conscientious objection to military service. Another question evoked was the determination of the age at which a child could adopt the religion of his choice. In this connection, reference was made to article 5 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief which guaranteed "the right of the parents or, as the case may be, the legal guardians of the child to organize life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up". It was suggested that the seminar should recommend to the Working Group of the Commission on Human Rights on the Rights of the Child to consider the above question. It was also suggested that an intensive and widespread campaign to educate children on the importance of the principle of tolerance should be undertaken.

48. In summing up the debate, the discussion leader noted the magnitude of intolerance and discrimination based on religion or belief, despite the existence of various constitutional provisions and relevant laws in national legal systems. Referring to the policy of *apartheid* he said that all people should be enabled to enjoy the "right either individually or in community with others or in public or private, to manifest his religion or belief in worship, observance,

practice and teaching” as provided in article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. He finally expressed the hope that the enjoyment of the right to freedom of religion or belief would remain possible for the people in all countries irrespective of their different systems of government.

CHAPTER III

Models of National or Local Action to Prevent or Combat Intolerance of Religion or Belief

49. Item 3 of the agenda was considered at the 9th and 10th meetings on 7 December. Judge Voitto Saario (Finland) acted as discussion leader.

50. In introducing the item, the discussion leader observed that, in considering models of national or local action to prevent or combat intolerance based on religion or belief, due account should be taken of the cultural and social as well as the legal dimensions of the problem. Therefore, in addition to the necessary legislative and administrative measures needed to ensure the implementation of relevant existing international norms, efforts should be made to change or eliminate all stereotyped ideas and prejudices in the field of freedom of thought, conscience and religion through educational means. He stressed the considerable social function of religion or belief in all societies. He stated that the role of religion or belief in the everyday life of countries and the problems relating to its manifestations could occur in various ways. Religious believers, he added, might need to be protected by specific measures in order to be able to conform to religious precepts and observe certain rituals, ceremonies or modes of worship deriving therefrom, whereas secular believers could enjoy freedom of belief through mere implementation of the general freedom of speech, assembly and association guaranteed by most constitutions. He observed that in multi-religious societies certain specific

limitations might be necessary in order to reconcile the various interests of the different religious groups of the society, and stressed the necessity to decide, in each particular case, the scope of such limitations. He stressed the need to reconcile traditional values and the alternative positive values resulting from the evolution of modern societies. He suggested various measures which could be taken in order to ensure the effective implementation of rights enshrined in relevant international instruments in the field of freedom of religion or belief. As examples of protective measures which could be effective in combating intolerance he cited the review, in the light of existing international instruments, of national legislation and the consequent review of administrative practices; the guarantee of an effective remedy, through judicial institutions or independent mediators, against violations of freedom of religion or belief; the provision of political, economic and social guarantees for the enjoyment of such freedoms. In the field of promotional measures, he mentioned the role of education, the contribution of relevant national institutions in the field of human rights, the establishment of a constructive dialogue between various religious groups, the role of non-governmental organizations and mass media in combating attitudes of prejudice and intolerance.

51. In the ensuing debate, participants reviewed the situation in their countries in the field of freedom of religion or belief. Some referred to specific historical circumstances which had in their respective countries fostered tolerance and understanding between the tenets of various faiths, and had resulted in a favourable trend towards freedom of religion or belief. Others expressed the opinion that the main source of tolerance was to be found in religious precepts which preached non-discrimination, fraternity and mutual respect between human beings. A number of participants stressed the importance of tolerance and non-discrimination in multi-religious societies.

52. Many participants referred to the primary responsibility of States in safeguarding rights and freedoms enshrined in the Universal Declaration of Human Rights and other relevant instruments dealing with matters of freedom of religion or belief. In this connection, mention was made of relevant constitutional and other legal provisions in this field. Different aspects of rights covered by such provisions were evoked, such as the right of all to equal treatment without discrimination on grounds of religion or belief; the freedom to have or not to have a religion or belief; the freedom to profess, practise, teach and propagate any denomination or belief; or more specific rights relating to certain particular manifestations of freedom of religion, such as those pertaining to religious charitable or educational institutions, or to the observance of certain rituals and the production of objects and articles used in religious practice. Reference was also made to specific problems which might derive from the observance of some religious precepts, such as the question of objection to military service on religious grounds, and to solutions envisaged in some countries for such issues. The necessity to provide legal directives for affirmative action to ameliorate the situation of some religious groups which might be particularly disadvantaged and the existence of such directives in the legislation of some countries was mentioned. It was suggested that States should examine the possibility of establishing or designating national institutions charged with the task of promoting tolerance of religion or belief and of combating discrimination.

53. A number of speakers raised the issue of limitations which should apply to the right to freedom of religion. It was stated that the right to worship was not to be considered as a right to disturb others in their worship and that the right to exercise religious liberty ceased when it transgressed the rights of others. The view was also expressed that religion should not be used for political manipulations, or to propagate hatred or hostility against the State. It was also said that limitations on rights relating to religion or belief should

be interpreted strictly and in favour of the right at issue. In that regard it was said that article 18 of the International Covenant on Civil and Political Rights and article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief distinguished between the right to freedom of thought, conscience and religion which was Absolute and could be subject to no limitation and freedom to manifest one's religion or belief which could be subject to limitations but only on the grounds mentioned in these instruments.

54. The opinion was expressed that various factors such as economic, social, cultural or political conditions had a decisive impact on the religious life of a country, and that the lay character of a State should not be considered as an obstacle to the enjoyment of various religious rights. The view was also expressed that the lay character of a State and the full enjoyment of equal treatment without discrimination on grounds of religion need not inhibit a constructive dialogue between a State and religious groups nor the entering into conventions or protocols between States and churches. Some participants stated that freedom of religion related to the inner conscience of the individual and therefore belonged to the sphere of private affairs, and that the full enjoyment of freedom of religion or belief could best be guaranteed through a separation of Church and State. The view was, however, expressed that a State religion teaching mutual respect and understanding could very well safeguard tolerance and religious freedom.

55. It was observed that legislation did not always provide sufficient means to guarantee the effective implementation of principles and standards relating to freedom of religion or belief, and various concrete measures were cited which complemented legislative action in protecting and promoting tolerance and religious freedom in everyday life. In this connection, mention was made of the essential role of education in combating patterns of discrimination and intolerance. The teaching of human rights and of the values

of tolerance and mutual respect, it was said, could take place at various levels in schools, or be promoted by religious institutions themselves. The importance of establishing constructive dialogue between believers of different faiths, through the holding of seminars or the establishment of inter-faith councils was also stressed, and concrete examples were cited in this regard. The role of religious and non-governmental organizations in favouring such dialogue was emphasized. Other examples of positive action were given such as the activities of human rights commissions or other national institutions in the field of human rights, the establishment of advisory services at various and particularly grass-root level, the provision of effective judicial and other recourse against unintended or individual cases of violations of religious freedom, or the utilization of mass media in instilling ideals of tolerance and mutual comprehension through better understanding of other creeds and beliefs.

56. In summing up the debate the discussion leader highlighted the main points which had been raised during the consideration of the item. He observed that many participants had stressed the need to reinforce legislative measures through concrete action in the field of education and constructive dialogue among different faiths and beliefs. He observed that many ideals and values were common to religious as well as non-religious beliefs, and that better mutual understanding of such values would greatly contribute to the eradication of intolerance of religion or belief. He noted with satisfaction that the various measures he had suggested in the field of the protection and promotion of religious freedom seemed acceptable to the participants and could therefore constitute a positive basis for further deliberations in various United Nations bodies as well as for Governments to take immediate steps to implement the principles enshrined in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

CHAPTER IV

Education Programmes to Foster Tolerance of Religion or Belief

57. Item 4 of the agenda was considered at the 11th to 13th meetings on 10 and 11 December 1984. Mr. Georges Thiathy Dione (Senegal) acted as discussion leader.

58. In introducing the item, the discussion leader said that the time had come for the consideration of specific suggestions concerning the education programmes that could be undertaken in order to foster tolerance of religion or belief. In his view action should be taken at three levels: at the level of the State, at the level of the family and at the level of the mass media. He observed that while the State had the responsibility to elaborate educational programmes in such a way as to foster a climate of tolerance of different religions and beliefs, it was in the family that children acquired the spirit of tolerance and acceptance of others. He further stressed that the mass media had a major role to play in disseminating information on human rights and respect for the beliefs and aspirations of different communities.

59. Several speakers explained the circumstances obtaining in their own countries. Some of them emphasized that although there was an official religion in their countries, minority religions were both respected and welcomed. Indeed, it was suggested that in the context of the right to freedom of religion or belief, it was better to use the word "respect" instead of the word "tolerance". Religions, it was said, should not simply be "tolerated" but given the means to prosper in peace.

60. The view was expressed that differences between religions were often more apparent than real. All great religions had, at their core, the idea of universal brotherhood and a common message of compassion and love. It was important to seek common denominators of all the great religions. It was suggested, in this regard, that students be

exposed to the teachings of different religions and that stress be laid upon the unity of spiritual teaching.

61. Some speakers advocated greater dialogue between religions. Such a dialogue would produce common concepts: ideas of justice and liberty were common to most religions. Societies should seek to protect minorities from feelings of alienation. Pluralism meant that all communities had something of value to offer - something which should be welcomed and treasured by the Majority.

62. It was observed that common church services and joint prayers would help build bridges between different religions. Churches, it was also said should foster among their own congregations understanding and respect for neighbouring religions and communities.

63. Some speakers said that though changes brought by education may be slow, nevertheless for the development of climates of tolerance continuing emphasis on education was required. The importance of formal school education in shaping attitudes of tolerance and non-discrimination in matters of religion or belief was stressed. Educational authorities it was argued, should ensure that a balanced, enlightened and tolerant approach was used in the teaching process, and that children were not taught intolerance. It was said that vigilance should be maintained to ensure that school textbook materials did not contradict the principle of tolerance. Curricula for educating teachers should emphasize the importance of human rights including the freedom of religion, belief or conviction. The teaching of human rights at school was cited as a measure that could foster tolerance in matters of religion or belief. The special responsibilities of religious schools were also emphasized.

64. Speakers generally agreed that adequate education programmes were an essential condition for the success of national action in fostering tolerance and belief. Changing or eliminating all stereotyped ideas and prejudices in the field of freedom of religion or belief, it was pointed out, should be the primary aim at all levels and in all forms of education. The

decisive role of Governments in educating citizens in the spirit of tolerance of religion or belief was emphasized. It was noted that Governments directed the actions undertaken in that sphere, and that they could use a wide range of measures in order to prevent and eliminate discrimination on the grounds of religion or belief. The importance of legislative measures was stressed and it was observed that Constitutions were also an instrument for educating societies, by providing an expression of values and giving a hierarchy of values to which societies adhere or should adhere. It was observed that governmental action against discrimination could have an educative effect on individuals. The importance of providing effective mechanisms for the concrete implementation of rights relating to freedom of religion or belief and of educating individuals in order to make them aware of their rights in this field was stressed.

65. It was stressed that, in accordance with relevant provisions of the Universal Declaration of Human Rights, the Convention against Discrimination in Education, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the spirit of tolerance should prevail in education in schools and teaching institutions of all types and at all levels, and that the curricula for educating teachers and tutors for schools at all types and levels should deal extensively with problems of tolerance.

66. Referring to the role of non-governmental organizations, including churches and associations of every type - civil, political, trade-union - in disseminating knowledge and understanding of the principles of the Declaration, some speakers expressed the opinion that one of the main responsibilities of such organizations was to contribute to public consciousness and awareness of human rights and fundamental freedoms. Employers also had a contribution in the work place to advance tolerance of different beliefs. Guidelines on the avoidance of discrimination could be introduced as they have been already

in some countries. Their contributions, it was said, could occur through constructive dialogue between tenets of various faiths, the celebration of commemorative days, and the holding of conferences. These organizations, it was added, might organize special colloquia relating to the teachings of various religions and to the principles of tolerance or undertake a number of cultural programmes which would encourage religious understandings. It was noted that religious bodies in particular could enhance mutual understanding through inter-faith bodies. Their own attitude, in the profession of their faith, could be a good example of tolerance.

67. The opinion was expressed that the development of an appreciation for the common values of all religions was essential in fostering religious tolerance. It was noted that the most important role in teaching and propagating a religion was played by religious leaders and that the education and teaching of religious leaders in the spirit of tolerance determined the degree of tolerance of a given religion. In the opinion of some participants, religious leaders should address themselves to the whole field of human rights and not simply to matters concerning their own particular beliefs. Indeed, religious leaders were well placed to familiarize their own communities with human rights in their broadest sense. These leaders could, for example, distribute the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Church leaders might also address the Declaration in their preaching.

68. The importance of cross-cultural understanding of religions and beliefs was emphasized. The difficulty to provide an objective description of religions and beliefs, which are primarily based on personal faith and conviction, was stressed. However, it was added, there existed certain possibilities to provide an adequate and objective picture of each religion or belief in non-propagandistic ways. In this connection, it was suggested that the Centre for Human Rights, acting jointly with the United Nations University, be

asked to set up a research group of experts in order to elaborate and publish educational material including a series of publications on the major religions and other belief systems in the world to foster tolerance of religion or belief. It was noted that two main approaches could be envisaged in the preparation of such educational material: a direct approach, more suitable for mature and high school students, in which existing facts of intolerance and discrimination are exposed by teachers; and an indirect approach avoiding specific reference to blunt facts of discrimination but rather presenting various values, symbols and rituals of different religions and beliefs. It was said that it was important that scholars involved in the proposed studies of different religions and beliefs should include adherents from within the particular religions and beliefs.

69. Some participants observed that the teaching of history was often distorted. Children acquired attitudes of intolerance from a distorted teaching of history. In this regard, it was said that history textbooks should be improved. The improvement of history textbooks was a task which either UNESCO or other experts should undertake with a view to fostering inter-cultural respect.

70. Speakers generally agreed that the mass media could play a major role in educating society in a spirit of tolerance, by disseminating information on the recognition of freedom of religion or belief, by presenting cases of intolerance, and stimulating action to combat intolerance.

71. The opinion was also expressed that people in the literary and artistic world could also play a role in fostering tolerance, by promoting values which were helpful in shaping tolerant attitudes, and by avoiding the dissemination of values based on hatred and prejudice.

72. The role of UNESCO in fostering tolerance of religion or belief was emphasized. It was noted that this specialized agency, whose sphere of action is education and culture could, by means of posters, placards, leaflets, audiovisual aids and appropriate educational material, head a

world crusade against intolerance and in favour of human rights, tolerance and respect between individuals and between peoples, focusing on children and young people.

73. It was also suggested by some speakers that 25 November of each year should be celebrated as the Day of Religious Tolerance - this would mark the anniversary of the adoption by the General Assembly of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

74. Some speakers asked whether sufficient efforts were being made to bring to the attention of people around the world the Universal Declaration of Human Rights and the various international human rights instruments. The dissemination of those instruments was of great importance. Such dissemination should be greatly increased beyond present levels. Schools the world over should receive human rights documentation. In the opinion of some participants Governments should be encouraged to reprint United Nations texts and the texts of human rights instruments for national distribution. This was, he said, an area where States could contribute directly to the dissemination of human rights information. Some participants reported that this was already the case in their own countries - with human rights texts reproduced for national distribution.

75. The situation of migrant workers and their families was raised. It was felt that societies concerned should find means to ensure access to their own culture by such minorities and greater understanding of their beliefs by the host country. Alienation of such minorities often gave rise to stereotyped ideas and fostered suspicion and intolerance.

76. In accordance with relevant provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, some speakers urged that appropriate legislative measures be taken so that children in school should not be forced to receive religious instruction contrary to their parents' convictions.

77. Other suggestions made by speakers included:

(a) the proposal that the United Nations Secretariat should arrange the preparation of a study by experts on how educational programmes might best be developed. The United Nations University, it was said, could help in that regard. It was also suggested that the Centre for Human Rights might organize another seminar to examine the results of such a study; (b) the suggestion that educational programmes be included in a lawyer's training. It was said that the legal profession should be made sensitive to the whole question of intolerance and prejudice. Courses on human rights in law schools should be organized.

78. In summing up the debate, the discussion leader underlined the extremely important role that education could play in promoting the principle of tolerance in matters relating to religion or belief. He noted that it was emphasized during the debate that schools should establish programmes which included the teaching of human rights in general, and in particular the right to freedom of religion or belief. He further observed that the United Nations and other international organizations, and in particular, UNESCO, as well as nongovernmental organizations should redouble efforts to help promote the rights in question. He referred to the view expressed by many participants that the United Nations, through the Centre for Human Rights and the United Nations University, should undertake research studies with a view to drawing up relevant educational material. He also referred to the role that the mass media could play.

CHAPTER V

FUTURE ACTIVITIES TO PROMOTE AND TO
PROTECT FREEDOM OF RELIGION OR
BELIEF WITH PARTICULAR REFERENCE TO
THE IMPLEMENTATION OF THE
DECLARATION ON THE ELIMINATION OF
ALL FORMS OF INTOLERANCE AND OF
DISCRIMINATION BASED ON RELIGION OR
BELIEF

79. Item 5 of the agenda was considered at the 14th to 16th meetings on 11 and 12 December 1984. Mr. Bernardo Baruch (Costa Rica) acted as discussion leader.

80. In introducing the item, the discussion leader referred to measures to be taken at the international level to eliminate, prevent and combat intolerance and discrimination based on religion or belief which had been proposed by Mrs. Elisabeth Odio Benito, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the background paper she had prepared for the Seminar (HR/GENEVA/1984/BP.2).

81. In this connection, he drew the attention of the Seminar to the question of the elaboration of an International Convention on the elimination of all forms of intolerance and discrimination based on religion or belief which could stimulate States parties, through binding legal provisions, to fully respect and implement the principles of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief that they had already accepted in 1981. In his opinion such a Convention could define the concepts of religion and belief and discrimination on grounds of religion or belief and could

specify what kind of freedoms were included in practice in the *right to freedom of thought, conscience and religion*.

82. In addition, the discussion leader, referring to various working papers prepared by participants of the Seminar, stressed that besides States, leaders of all religions also had an important role in promoting respect and understanding among different religions and beliefs. He stated that at the international level, the elaboration of educational programmes to promote such respect and understanding should fall under the responsibility of the United Nations acting in close co-operation with UNESCO. Furthermore, he expressed the opinion that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in particular, could prepare studies on ways and means to implement the 1981 Declaration with a view to making recommendations to the Commission on Human Rights.

83. In the ensuing debate, participants commended Mrs. Odio Benito for her work as Special Rapporteur and pointed out that the Sub-Commission should continue to undertake studies on this and similar topics as a meaningful contribution to tolerance, understanding and friendship among peoples. Some participants said the proposals made by Mrs. Odio Benito in her background paper deserved close attention. Other participants while appreciating the value of Mrs. Odio Benito's ideas and proposals noted that the Special Rapporteur's study was not yet complete and detailed proposals in a final form could best be considered in the competent forum on completion of the study.

84. A number of participants considered that priority should be given to ratification of existing international instruments which included protection of religion or belief. Participants also noted that tolerance could be promoted through united efforts to promote peace and self-determination. It was also said that matters of religion or belief should not be the source of interference in the internal affairs of countries and that it was important to note that the international standards gave equal protection to atheistic as

well as religious belief. In this regard the view was expressed that differences in religion or belief or in ideology should not lead to confrontation between States. Tensions could thereby be reduced and a reduction in armaments obtained. Everyone irrespective of religion or belief should promote peace, harmony and social progress in accordance with the Charter of the United Nations, particularly given the existing threat to peace in the world.

85. Several participants stressed the importance of the existing obligations accepted by the international community to put into practice the right to freedom of religion or belief under international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. These participants expressed the view that the International Covenant on Civil and Political Rights in particular contained substantial guarantees for the protection of freedom of religion and belief and that the seminar should urge all States which had not yet done so to ratify that international instrument. Appeals were also made for the ratification by an increasing number of States of the Optional Protocol to the Covenant. However, many participants noted that, although, on the one hand the trend of the discussions in the seminar appeared to indicate the continued desire of the international community in general to prevent intolerance and discrimination based on religion or belief, on the other hand, the magnitude of the nature and dimensions of the phenomena of religious intolerance and discrimination still existing in the contemporary world and the massive violations of the basic principles of the 1981 Declaration, called for further positive action. In this context, wide support was expressed for the elaboration by competent United Nations organs of an international convention on the elimination of all forms of intolerance and of discrimination based on religion or belief which would constitute, with its legal

obligations for States parties, a logical follow-up to the 1981 Declaration.

86. The view was also expressed that any such convention might have implementation machinery patterned on the lines of the one established by the International Covenant on Civil and Political Rights, or other international instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Discrimination against Women.

87. A new Convention might incorporate in its binding legal provisions all the principles and rules of the 1981 Declaration and include, besides the definition of religion and belief and discrimination on grounds of religion or belief, a definition of religious groups. It could also include provisions relating to the right not to have a religion or belief, the right to change religion or belief, the right to free access to holy places and the right of parents, as the primary source of moral education for children, to provide them with instruction on religion or belief without State or other external interference.

88. For some participants, however, there was no urgent necessity to elaborate a convention. In this connection, the view was expressed that other human rights projects should have higher priority in the activities of the United Nations, particularly with a view to making existing protections more effective in practice. In this regard, it was said that a gap could well exist between formal legal protection and the factual situation in the enjoyment of human rights. Concrete decisions by courts ensuring religious freedom could be more important than the mere existence of legal provisions that might not be effective in practice. Empirical studies as an aid to measuring the extent of religious observance and violations of religious freedom or belief were also mentioned. Information on religious observance would also be valuable as a guide to state policy in relation to religious education.

89. A number of participants referred to ways and means to strengthen and to make more effective the existing international instruments and procedures which included provisions for the protection of the freedom of religion or belief.

90. It was suggested that United Nations organs and specialized agencies dealing with human rights might encourage States, as well as non-governmental organizations, to disseminate widely information on the standards set forth in the 1981 Declaration, and in particular, to judges, legislators, magistrates, lawyers, public officials, civil servants and other officials whose duties might involve the protection of the right to freedom of religion or belief. To this end, it was necessary that the text of the Declaration be made available as soon as possible, at least in the six official languages of the United Nations, as provided for by Economic and Social Council decision 1982/138 of 7 May 1982.

91. Furthermore, participants considered it essential that States should, where necessary, adopt appropriate constitutional, legislative, judicial and administrative measures to ensure that all the rights set forth in the 1981 Declaration would be adequately and fully protected by national law. To this end, the technical assistance of the Centre for Human Rights should be utilized by States if required for drafting new legislation or reviewing existing legislation with a view to implementing the provisions of the 1981 Declaration.

92. Some participants suggested that, in accordance with Article 64 of the Charter of the United Nations, the Economic and Social Council could request Member States to submit periodic reports on their implementation of the 1981 Declaration, which could include, *inter alia*, information on the degree of tolerance existing in each country for the cultural and religious traditions of minority groups such as indigenous peoples. However, it was pointed out that the general trend of Governments and United Nations organs was to rationalize the already heavy burden imposed on

Member States by numerous reporting systems established by various international instruments and procedures.

93. Several participants drew attention to ways and means of making more effective, in particular, the implementation of the International Covenant on Civil and Political Rights and especially the provisions concerning the right to freedom of thought, conscience and religion which was contained in its article 18. In this connection, it was noted that the provisions of article 27 of the Covenant dealing with the rights of minorities were linked to those of article 18 and it was suggested to recommend to the Human Rights Committee to establish under the Covenant that the implementation of article 27 should be extended to religious minorities. In addition, it was suggested that a study might be undertaken by an appropriate human rights organ of the United Nations on the Human Rights Committee's consideration of the measures that States parties to the Covenant had taken to fulfil their obligations under article 18 of the Covenant, and that the Human Rights Committee should be guided by the provisions of the 1981 Declaration in examining the compliance of States parties with article 18 of the Covenant.

94. Reference was made during the debate to obstacles still preventing individuals from a full and active participation in the manifestations of their religions. Concern was expressed at encroachments upon the sacred places of many indigenous peoples. Deep concern was also expressed by several participants over violations of the right to profess and practise religion, acts of violence committed against members of religious groups, denials of access to places of worship and acts of destruction to which religious sites had been subjected. Limitations of freedom of movement applied in some countries to people and religious ministers propagating their faith were also referred to. The exclusion of women, established by various religions, from priesthood or from an active role in the practice of the religion in which they believed was also raised as a subject on which there should be further study. The exercise of freedom of religion or belief by

persons who were not citizens of the country in which they lived, migrant workers and prisoners was also raised as requiring further consideration.

95. It was stressed that the right to freedom of religion or belief was closely linked to all the other fundamental human rights and interconnected with them, and that it was not possible to enjoy freedom of religion or belief if the enjoyment of other human rights were denied.

96. Participants recalled that educational measures were the best means to combat intolerance and that, at the international level, UNESCO should play a considerable part in religious education. It was stated that education brought knowledge which was necessary to dialogue and that through dialogue it was possible to achieve tolerance, respect and understanding which were necessary to create harmony among peoples.

97. It was pointed out that future activities of religious communities and non-governmental organizations dealing with human rights should include the commitment to continue the process of communication among faiths and to develop mutual respect and understanding, especially in urban areas where different cultures and religions had to live together, often in very close contact. It was also suggested that the establishment of a regular interreligious dialogue could be promoted under the auspices of the United Nations. Research projects and studies on different religions, a compilation and an analysis of existing legal and other provisions encouraging religious tolerance were indicated among the measures to be taken under the responsibility of experts of the United Nations University in Tokyo, in order to achieve a real interreligious dialogue.

98. Furthermore, educational programmes should be encouraged at the national level: they could include the study of the 1981 Declaration and other international instruments protecting freedom of religion or belief and the use of text books, teaching methods, training activities, etc. aimed at promoting understanding and tolerance. Co-operatives, trade-

union political parties, etc., could also be involved in such educational programmes and financial assistance should be provided by Governments for education in religious tolerance and especially for the teaching of religions of minority groups, and indigenous populations which were, it was said, among the most disadvantaged and defenceless groups in society.

99. Further measures were suggested to encourage the respect for and protection of the right to freedom of religion or belief at the international level. The view was expressed that other United Nations seminars and regional seminars could be organized which would examine particular regional situations and aspects with regard to the promotion of understanding and tolerance in matters relating to freedom of religion or belief. It was also proposed that every year, 25 November, the date of the adoption of the 1981 Declaration, should be celebrated by the United Nations as Universal Religious Tolerance Day. It was observed that all these initiatives would contribute to the advance in the future beyond the stage of tolerance in order to reach the stage of respect for religion or belief in the international community. It was pointed out, in this connection, that in all existing international instruments, studies and procedures, freedom of religion or belief was defined as a fundamental human right and rights could not be merely tolerated, but had to be fully respected.

100. In summing up the debate, the discussion leader referred, in general, to the main points raised by participants and drew attention in particular to the discussion among the participants with regard to the necessity of elaborating an international convention on the elimination of all forms of intolerance and of discrimination based on religion or belief. He expressed the hope that the seminar would be in a position to adopt a recommendation on the subject so that the drafting of the convention could be undertaken by a competent United Nations body as soon as possible. He recalled the preamble of the Declaration on the Elimination

of All Forms of Intolerance and of Discrimination Based on Religion or Belief which affirmed that religion or belief, for anyone who professed either, was one of the fundamental elements in his conception of life.

CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

A - CONCLUSIONS

101. The seminar considers that:

(a) To practise tolerance and to live together in peace with one another as good neighbours is a duty accepted by Member States of the United Nations under the Charter. Tolerance, understanding and respect for religion or other belief is essential for living in peace. The full and faithful implementation of the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination would contribute greatly to the promotion of tolerance and to peaceful and good neighbourly relations. Therefore, the highest priority should be given to the universal ratification and full implementation of these instruments.

(b) Freedom of thought, conscience, religion or belief is a fundamental right to be guaranteed to all without discrimination.

(c) Manifestations of intolerance and the existence of discrimination in matters of religion or belief are still unfortunately in evidence in some parts of the world. Deep concern was expressed by participants over violations of the right to profess and practise religion, acts of violence against members of religious groups and acts of destruction perpetrated against places of worship.

(d) The religions of the world and the systems of humanistic belief are in their essence tolerant and have the same moral dignity. While safeguarding their own principles they can guide their followers or adherents to increasing harmony based on the dignity to be accorded to each human being and based on mutual tolerance, respect and understanding for their respective interpretations of the truth.

(e) Action is required at all levels to eliminate intolerance and discrimination from the world and to ensure respect for and freedom of religion or belief.

B - RECOMMENDATIONS

102. The seminar recommends that:

(a) High priority be given to activities for the implementation of United Nations standards for the protection of freedom of religion or belief and in particular the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

(b) Each State, in accordance with its own constitutional system, should provide, if necessary, adequate constitutional and legal guarantees for freedom of religion or belief consistent with the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief with a view to ensuring that freedom of religion or belief is assured in a concrete manner, discrimination on grounds of religion or belief is proscribed, and that adequate safeguards and remedies are provided against such discrimination.

(c) States examine the possibility of establishing or designating national institutions charged with the task of

promoting tolerance of religion or belief and of combating discrimination.

(d) Organs and institutions responsible for education and culture include such promotional programmes in their ongoing activities.

(e) States examine, where necessary, the training of their civil servants and other public officials with a view to providing adequate instruction and guidelines in the exercise of respect for different religions or beliefs in order to preclude discrimination against persons professing different religions or beliefs.

(f) The spirit of tolerance prevails throughout society, in the family, in the workplace, in education, in schools and teaching institutions of all types, from kindergarten to universities. The importance of education for tolerance from the earliest years should be emphasized.

(g) The curricula for educating teachers and tutors for schools and institutions of learning of all types and levels emphasize the importance of human rights and deal with freedom of religion or belief in the context of an understanding of the international instruments on human rights.

(h) Religious bodies and groups at every level have a role to play in the promotion and protection of religious freedoms or beliefs. They should foster the spirit of tolerance within their ranks and between religions or beliefs. Inter-faith dialogue based on the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief should be pursued at all levels. The seminar also recommends that the text of the Declaration be disseminated to their members as a basis for instruction and that religious bodies consider recommending a common day of prayer or of dedication to the aims set out in the Declaration. Other groups are similarly recommended to consider a day of dedication to the aims of the Declaration.

(i) A major role in educating society in the spirit of tolerance as regards religion or belief can be played by the

mass media - press, radio, television and information agencies. They may disseminate information on the recognition of freedom of religion or belief, convince their audience that tolerance is not only desirable, but also practically possible and that it has a positive effect on the life of the individual and of society in general.

(j) Individuals everywhere have a right to know of the international standards protecting their rights. The seminar, therefore, recommends that States ensure that the texts of the international instruments, particularly the Universal Declaration of Human Rights and the International Covenants on Human Rights are widely available in national and local languages.

(k) Adequate publicity for international standards dealing with freedom of religion or belief is also crucial. The seminar recommends that the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief be translated into as many national and local languages as possible and disseminated throughout the world. An urgent action programme should be launched to this effect by the United Nations, specialized agencies concerned especially UNESCO, ILO, regional intergovernmental organizations and nongovernmental organization in consultative status.

(l) A special publication containing the various international standards relating to freedom of religion or belief should be issued by the United Nations and widely disseminated in as many languages as possible.

(m) The study under preparation by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the current dimensions of the problems of intolerance and of discrimination on grounds of religion or belief is of the greatest importance and should be given high priority by the Sub-Commission. In addition to this study, the United Nations University and other academic and research institutions are recommended to undertake a programme of

special studies to combat and to eliminate intolerance. As part of this programme, case studies of contemporary manifestations of intolerance and discrimination could be undertaken. Studies on the major religions or beliefs in the world could also be undertaken with the object of providing factual portrayals of the ideals and beliefs of others to believers and non-believers alike and to promote mutual tolerance.

(n) In the context of the Second Decade to Combat Racism and Racial Discrimination, the seminar recommends that studies also be made of situations where intolerance, denial of religious freedom and discrimination on grounds of religion or belief is linked to discrimination on grounds of race or ethnic or national origin.

(o) Governments, which wish to review, or draft further legislation for the promotion and protection of freedom of religion or belief or for the establishment or development of related national or local institutions are recommended to utilise the advisory services of the Centre for Human Rights. A compendium of the national legislation and regulations of States on the question of freedom of religion or belief with particular regard to the measures taken to combat intolerance in this field would be valuable as a guide and aid to Governments.

(p) Non-governmental organizations have an important role to play in the promotion and protection of freedom of religion or belief. They may initiate, develop, publish and present proposals on tolerance, on issues of religion or belief. They may also play a valuable role in disseminating international standards, particularly the text of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

(q) The need to develop further international standards for the protection of freedom of religion or belief should be kept under continuing review in the light of experience. While continuing emphasis should be placed on the implementation of existing standards, attention could also be given to the

question of drawing up an international convention for the promotion and protection of freedom of religion or belief.

Annex I

Declaration on the Elimination of All Forms of Intolerance
and of Discrimination Based on Religion or Belief.

Proclaimed by the General Assembly of the United Nations
on 25 November 1981 (resolution 36/55)

The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and

belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialize agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief:

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and*

are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to

combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3> of the present Declaration.

Article 6

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the

Universal Declaration of Human Rights and the International Covenants on Human Rights.

Annex II

Statement by Mr. Kwadwo F. Nyamekye, Deputy-Director,
Centre for Human Rights

Distinguished Participants, Ladies and Gentlemen,

I am deeply honoured to be addressing distinguished specialists and experts from a number of Member States of the United Nations, regional intergovernmental organizations, specialized agencies, organs and departments within the United Nations system and non-governmental organizations assembled today for the Seminar on the Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief. I am very happy to welcome you all and to convey to you warmest greetings from the Assistant Secretary-General for Human Rights, Mr. Kurt Herndl, who regrets very much that he is unable to welcome you himself at the opening of this seminar. Mr. Herndl has had to be away at the United Nations Headquarters in New York where the General Assembly is currently discussing human rights questions. He will, no doubt, follow your deliberations with the keenest interest. We expect him back before the end of the Seminar.

The promotion of understanding, tolerance and freedom relating to religion or belief has been one of the major concerns of the United Nations from its inception. One of the purposes of the United Nations outlined in Article 1, paragraph 3 of the Charter is to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. Article 13 states that the General Assembly shall initiate studies and make recommendations for the purpose, *inter alia*, of assisting in the realization of

human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Article 55 provides that the United Nations, with a view to the creation of conditions of stability and well-being, shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. This concern for the freedom of religion or belief was given further concrete expression in the provisions of the Universal Declaration of Human Rights which was adopted in 1948, two years after the United Nations was born. The International Covenant on Civil and Political Rights also has an important provision on freedom of religion or belief. It is worth mentioning that one of the first substantive resolutions to be considered and adopted by the General Assembly of the United Nations related to "religious and so-called racial persecution and discrimination". By this resolution adopted on 19 November 1946 the General Assembly declared that it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination, and called on all Governments and responsible authorities to conform both to the letter and to the spirit of the Charter of the United Nations, and to take the most prompt and energetic steps to that end. Between 1960 and 1962 the questions of religious intolerance and racial prejudice were subjects of broad measures adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights, the Economic and Social Council and the General Assembly. In 1962 the General Assembly called for the preparation of both a draft declaration and a draft convention on the elimination of all forms of racial discrimination and a draft declaration and a draft convention on the elimination of all forms of religious intolerance.

On 25 November 1981, the General Assembly proclaimed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or

Belief which provides in its very first article that "Everyone shall have the right to freedom of thought, conscience and religion". "No one", the Declaration further states, "shall be subject to discrimination by any State, institution, group of persons or persons on grounds of religion or other beliefs". Since the adoption of the Declaration, human rights organs have placed great emphasis on its implementation. The Seminar on encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief, is one part of this process. It is being organized by the Secretary-General within the framework of the programme of advisory services in the field of human rights at the request of the Commission on Human Rights contained in its resolution 1983/40 of 9 March 1983. The General Assembly of the United Nations, in its resolution 38/110 of 16 December 1983, pledged its determination to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief and expressed its hope that this Seminar would contribute towards the realization of these aims.

The topics for discussion at the seminar concern (a) the principle of tolerance in the Charter of the United Nations and freedom of religion or belief under international instruments on human rights; (b) nature and dimensions of contemporary manifestations of intolerance of religion or belief; (c) models of national or local action to prevent or combat intolerance of religion or belief; (d) education programmes to foster tolerance of religion or belief and (e) future activities to promote and to protect freedom of religion or belief with particular reference to the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

As part of the same implementation process and taking into account the importance which the realization of the provisions of the Declaration assumes in the world of today, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in 1983, designated a Special

Rapporteur, Ms. Elizabeth Odio-Benito, a former Minister of Justice and Attorney-General of the Republic of Costa Rica, to undertake a comprehensive and thorough study of the current dimensions of the problems of intolerance and of discrimination on grounds of religion or belief. Ms. Odio-Benito who is also a former member of the Sub-Commission has especially been invited to participate in the Seminar. She presented a preliminary report to the Sub-Commission in August this year and is expected to present a further report to the Sub-Commission next year.

Before concluding this statement I would like to recall briefly the nature of seminars such as the present one. Seminars organized as part of the programme of advisory services in the field of human rights are meant to afford an opportunity to qualified participants from different parts of the world to share ideas and experiences, to profit from analyses and discussions and through their reports, to contribute to the work of the United Nations human rights organs such as the Commission on Human Rights. It has been the practice in organizing United Nations seminars that participants take part not as representatives of their Governments, but as independent experts who act in their personal capacity. The basic idea in organizing United Nations seminars this way is to gather persons whose functions or activities are closely related to the topics to be discussed by the seminar. Over the years, this arrangement has proved to be very useful in ensuring creative discussions free from formalities. It follows that in United Nations seminars voting is not a procedure to be followed, nor the adoption of resolutions; however, the opinions and suggestions of the participants are summarized in a report which may also include conclusions and recommendations which are agreed to by consensus. This Seminar is being organized on a similar basis. The report adopted by the seminar will be submitted to the competent United Nations organs. In this connection, I may mention that the General Assembly and the Commission on Human Rights have on

several occasions emphasized the importance of the work of these seminars and indeed a good number of their resolutions have been based on conclusions and recommendations contained in reports of such seminars.

I wish you every success in your deliberations during the next 10 days. I am confident that your conclusions and recommendations will contribute to the advancement of human rights in the spirit of the noble ideals of the Charter of the United Nations. May I now declare open the Seminar!

Annex III

ATTENDANCE

A. Participants and alternates nominated by Governments

Argentina

Senora Dna. Maria Teresa Meriadri de Morini, Subsecretaria de Culto del Ministerio de Relaciones Exteriores y Culto

Mr. Jaime Sergio Cerda,* Second Secretary, Permanent Mission, Geneva

Brazil

Mr. Anuar Nahes, Secretary of Ministry of External Relations

Canada

Mr. Henry W. Richardson, Deputy Director, United Nations Affairs Division, Department of External Affairs

Costa Rica

Mr. Bernardo Baruch, Chief of Delegation

H.E. Elias Soley Soler,* Ambassador, Permanent Representative, Geneva

Mr. Jorge Rhenan Segura,* Counsellor, Permanent Mission, Geneva

* Alternate.

* Alternate.

* Alternate.

Egypt

H.E. Mr. Abdel Hamid Abdel-Ghani, Ambassador, Senior Member of the Egyptian United Nations Association

Mr. Wafik Zaher Kamil,* Counsellor, Permanent Mission, Geneva

Finland

Mr. Voitto Saario, former President of the Court of Appeal, Helsinki

Greece

Mr. Alexis Heraclides, Special Adviser on Human Rights, Department of International Organizations and Conferences at the Ministry of Foreign Affairs

India

Mr. K.H. Patel, Deputy Director of the United Nations Division, Ministry of External Affairs

Mr. Jayant Prasad,* First Secretary, Permanent Mission of India, Geneva

Ireland

Mr. Kevin Boyle, Dean of the Faculty of Law and Professor of Law, Director of the Irish Centre for the Study of Human Rights, University College, Galway

Mr. John D. Biggar,* First Secretary, Permanent Mission, Geneva

Israel

Professor Aviezer Ravitzky, Department of Jewish Philosophy, Hebrew University, Jerusalem

H.E. Ephraim Dovek,* Ambassador, Permanent Representative, Geneva

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- * Alternate.
 - * Alternate.
 - * Alternate.
 - * Alternate.

Mr. David Danieli,* First Secretary, Permanent Mission, Geneva

Italy

Professor Dr. Francesco Margiotta Broglio, Faculty of Political Science, University of Florence

Mr. Enrico de Maio,* First Counsellor, Permanent Mission, Geneva

Japan

Professor Iwao Munakata, Faculty of Literature, Sophia University

Kenya

Mr. Makumi Mwangiri, Second Secretary (Legal), Kenya High Commission, London

Morocco

M. Mekki Naciri, Membre de l'Academie du Maroc, President conseil des ulemas de la capitale marocaine

M. Omar Hilale,* Premier secretaire, Mission permanente, Geneve

Nicaragua

M. Oscar-Rene Vargas, Conseiller du Gouvernement, Managua
S.E. M. Gustavo Adolfo Vargas,* Ambassadeur, Mission permanente, Geneve

M. Norman Miranda Castillo,* Ministre conseiller, Mission permanente, Geneve

Nigeria

H.E. Mr. Nuhu Mohammed, Ambassador, Director-General, Ministry of External Affairs, Lagos

* Alternate.

* Alternate.

* Alternate.

* Alternate.

* Alternate.

Mr. Abdu Usman Abubakar,* Second Secretary, Permanent Mission, Geneva

Pakistan

Dr. Javid Iqbal, Chief Justice, Lahore High Court
H.E. Mr. Mansur Ahmad,* Ambassador, Permanent Mission, Geneva

Poland

Professor Adam Lopatka, Minister, Head of the Office of Church Affairs

Saudi Arabia

H.E. Mr. Maarouf Al Dawalibi, Counsellor, Royal Court, Riyadh
Mr. Ali Hassan Jafar,* Second Secretary, Permanent Mission, Geneva

Senegal

M. Georges Thiathy Dione, Chef de la Division Consultation-Contentieux, Ministere des affaires etrangeres, Dakar
M. Samba Cor Konate,* Deuxieme conseiller, Mission permanente, Geneve

Thailand

Mr. Saneh Vadanathorn, Deputy Permanent Secretary of Interior, Ministry of Interior
Mrs. K. Ampawan Vadanathorn, Lecturer, Srinakharinwirot University, Bangkok
Mr. Chamnong Chalermchat, V Deputy Director of Information and Foreign Affairs Division of the Permanent Secretary, Ministry of the Interior
Mr. Snanchart Devahastin,* First Secretary, Permanent Mission, Geneva

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- * Alternate.
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 - * Alternate.
 - * Alternate.
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Union of Soviet Socialist Republics

Mr. Pyotr V. Makartsev, Vice-Chairman, Council for Religious Affairs, USSR Council of Ministers

Mr. Leonid A. Skotnikov,* Second Secretary, Treaty and Legal Department, Ministry for Foreign Affairs

Mr. Teimouraz O. Ramichvili,* Attache, Permanent Mission, Geneva

United States of America

Mr. James Finn, Editorial Director, Freedom House, New York

Mr. Robert M. Perito,* First Secretary, Permanent Mission, Geneva

Yugoslavia

Professor Dr. Aleksandar Fira, Judge of the Constitutional Court, Beograd

Miss Zagorka Ilić,* Counsellor, Permanent Mission, Geneva

B. Government Observers Algeria

Algeria

Mr. Ayache Omari, Attache, Mission permanente, Geneve

Australia

Ms. Juliet Sheen, Research and Policy Division, New South Wales Anti-Discrimination Board, Sydney

Mr. Jirra Moore,* First Secretary, Permanent Mission, Geneva

Cuba

Sr. Julio Heredia Perez, Primer Secretario, Misidn Permanente, Ginebra

Democratic Yemen

* Alternate.

* Alternate.

* Alternate.

* Alternate.

* Alternate.

S.E. M. Mohammed S. Al-Qutaish, Ambassadeur, Representant permanent, Geneve

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Mr. Frank Lambach, First Counsellor, Permanent Mission, Geneva

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Mr. Hisham Muhaisen,* *Minister Plenipotentiary, Permanent Mission, Geneva*

Kuwait

H.E. Mr. Hassan Ali Dabbagh, Ambassador, Permanent Representative, Geneva

Netherlands

Mr. Alexander Heldring, Counsellor, Permanent Mission, Geneva

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Representative, Geneva

H.E. Mr. Omar Babiker Shouna,* Ambassador, Deputy
Permanent Representative, Geneva

Mr. Yousif Ismail,* Minister Plenipotentiary, Permanent
Mission, Geneva

Mr. Mohamed Salah El Din Abbas,* Counsellor, Permanent
Mission, Geneva

Mr. Yehia Abdelgalil Mahmoud,* Second Secretary, Permanent
Mission, Geneva

Syrian Arab Republic

M. Hicham Joundi, Ministre Conseiller, Mission permanente,
Geneve

M. Fahd Salim,* Deuxieme Secretaire, Mission permanente,
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Turkey

Mr. Naci Akinci, Counsellor, Permanent Mission, Geneva

Mr. Süphan Erkula,* Second Secretary, Permanent Mission,
Geneva

Yemen Arab Republic

Mr. Abdul Elan Hajar, Counsellor, Permanent Mission, Geneva

Mr. Ahmed Basha,* Third Secretary, Permanent Mission,
Geneva

C. Non-Member State Holy See

* Alternate.

* Alternate.

* Alternate.

* Alternate.

* Alternate.

* Alternate.

* Alternate.

* Alternate.

Holy See

Reverend Dr. Rene Coste, Professor of Social Theology, Faculty of Theology, Catholic Institute of Toulouse (France); Director of the Centre of African Studies, Catholic Institute of Toulouse

Monsignor Giuseppe Bertello,* Counsellor, Permanent Mission, Geneva

D. United Nations Organs and Bodies United Nations High Commissioner for Refugees

United Nations High Commissioner for Refugees

Ms. Barbara Grainger, Legal Officer, Division of International Protection

E. Specialized Agencies International Labour Organisation
International Labour Organisation

Mr. Claude Rossillion, Chief, Equality of Rights Branch, Geneva

Miss M. Hasegawa,* Equality of Rights Branch

Mr. Georges Minet,* Equality of Rights Branch

F. Intergovernmental Organizations League of Arab States

League of Arab States

S.E. M. Moncef El May, Ambassadeur, Observateur permanent, Delegation permanente, Geneve

M. Misbah Oreibi,* Observateur permanent adjoint, Delegation permanente, Geneve

M. Osman El Hajje,* Attache, charge des Affaires juridiques et sociales, Delegation permanente, Geneve

Organization of the Islamic Conference

M. M.H. Belkhodja, Secretaire general de l'Academie du droit islamique, Jedda, Arabie Saudite

* Alternate.

* Alternate.

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* Alternate.

G. Liberation Movements

African National Congress

Mr. Raymond Mokoena, Administrative Secretary, Department of International Relations, Lusaka

Pan Africanist Congress of Azania

Mr. Joseph Mkwanazi, Administrative Secretary; Lay Preacher of Methodist Church in South Africa, Swaziland, Britain and Tanzania

Palestine Liberation Organization

Mr. Nabil Ramlawi, Director, Permanent Observer, Geneva

H. Non-governmental organizations Category I

Category I

International Council of Women: Mrs. Daisy Raymond

Mrs. Jeannine de Bocard

Muslim World League: Mr. Najib El-Rawi

Mr. Hafid Ouardiri

Dr. Omar Khaliq

United Towns Organization: Mr. Henry Bandier

World Federation of United

Nations Associations: Mr. Michael M. Roan

Category II

Amnesty International: Mrs. Claudine Rey

Arab Lawyers' Union: Mr. William Soliman Kilada

Baha'i International Community: Mr. Brian Lepard

Baptist World Alliance: Rev. John M. Wilkes

Professor Dr. Thorwald Lorenzen

Caritas Internationalis: Miss Mary Tom

Commission of the Churches on
International Affairs: Mr. Eric Weingartner
Co-ordinating Board of Jewish

Organizations: Mr. Daniel Lack
Four Directions Council: Mr. Leroy Littlebear
Friends World Committee for
Consultation: Mrs. Judith Baker

International Association of

Democratic Lawyers: Mrs. Renée Bridel
International Catholic Migration
Commission: Mr. Anton Binzegger

International Commission

of Jurists: Dr. Hein Roeder

International Council of

Jewish Women: Mrs. Andrée Farhi

International Fellowship of

Reconciliation: Mr. René Wadlow

International Institute of

Humanitarian Law: Miss Donatella Luca

International League for

Human Rights: Mr. Sidney Liskofsky

International Organization for

Elimination of Racial

Discrimination (EAFORD): Mr. Etienne Mathiot

International Movement for

Fraternal Union Among

Races and Peoples: Mr. C. M. Eye Nchama

Salvation Army: Mr. Robert Chevalley

Women's International

Zionist Organization: Mrs. Alena Lourie

World Association of

World Federalists: Mr. René Wadlow

World Conference of Religion

and Peace: Dr. Günther Gebhardt

World Jewish Congress: Prof. Jean Halpérin

World Union of Catholic

Women's Organization: Mrs. Solange des Gachons

ROSTER

B'nai B'rith International: Mr. Daniel Lack

Brahma Kumaris World

Spiritual University: Miss Brajma Kumari

Kirpalani

Mr. Donald Fulcher

International Association for the

Defence of Religious Liberty: Mr. Gianfranco Rossi

Mr. Jeremiah S. Gutman

International Humanist and

Ethical Union: Mr. A. James Dilloway

Minority Rights Group: Mrs. Judith Baker

Mr. S. Nasir Ahmad

Mrs. Renee Bridel Mr. Anton Binzegger Dr. Hein Roeder Mrs.

Andree Farhi Mr. Rene Wadlow Miss Donatella Luca Mr.

Sidney Liskofsky

Mr. Etienne Mathiot

Mr. C.M. Eya Nchama A

Mr. Robert Chevalley

Mrs. Alena Lourie

Mr. Rene Wadlow

Dr. Günther Gebhardt

Prof. Jean Halperin

Mrs. Solange des Gachons

Mr. Daniel Lack

Miss Brajma Kumari Kirpalani A Mr. Donald Fulcher

Mr. Gianfranco Rossi Mr. Jeremiah S. Gutman

Mr. A. James Dilloway

Mrs. Judith Baker Mr. S. Nasir Ahmad

THE PROBLEM OF MORALITY IN DEVELOPING SOCIETIES

The developing societies particularly of Asia and Africa, were composed of heterogeneous groups of people, who had, generally speaking, lost respect for piety, character, knowledge and even wealth, and to whom the politico-economic subjugation of the West had taught to bow before nothing but power. They were stagnant multitudes of people who managed to survive either because of the vastness of their number or through fear, cowardice, treachery, corruption, begging and imitating their masters.

However, the later half of the nineteenth century saw the emergence of leadership among these peoples who attempted to reconcile concepts of alien Western culture with indigenous traditions, conventions, and customs. As a result, institutional rigidities were broken, fundamental moral issues were debated with vigour and a new sense of purpose, and the desire for social betterment gradually led to the formation of movements for political independence. The battle for political freedom was fought at various levels and on different fronts and the selection of means depended on the existence of a particular set of empirical facts which justified their adoption so long as the desired end could be achieved. At any rate, by the middle of the twentieth century new communities, new societies, new nations, new countries and

new sovereign states appeared on the maps of the continents of Asia and Africa and this process is still continuing.

These new societies are said to be developing because there exists within them a demand for rapid change which is the motive force behind the idea of progress. Change in societies has always involved the moral question, for it is only in changing societies that morality is in a state of flux.

It can be said that owing to different cultural backgrounds of new nations of Asia and Africa, the moral problems they confront may also vary accordingly. But this variation is only superficial. Although most of these developing societies have attained political freedom, the bulk of the people who constitute them has not yet attained that position of freedom in which they could purchase food, clothes, and whatever medical care, education or training they require. Consequently, the position of freedom, in the moral sense, is available only to the privileged few in such societies. The rest of the members have yet to be released from the age old passivity of agrarian poverty, ill-health and illiteracy.

It can also be said that the problem of poverty does not involve morality but it is a problem of Economics and Industrial Organization. This statement is only partially correct because it attempts to answer the question: "Why are the poor poor?" But if the question is framed thus: "Who are the poor?" Its answer will certainly involve morality because if the poverty of the poor results from waywardness, it ought to be morally condemned; if it results from ignorance, then it is the moral duty of the educated class of these societies to teach and instruct them how to live to a better station of life. The question which is being raised in every developing society and which is essentially moral in nature, is this: "Are all the people to assist the survival of some people, or some people must reinforce the will of the society to survive as an organic whole?"

The object of this paper is neither to formulate rational or acceptable criteria for moral certainty which should lead to unanimity, nor to legislate a methodology of ethics to be

adopted by developing societies. Undoubtedly the moral philosopher suggests actions which influence men to live differently. But such moral recommendations cannot be made in developing societies because what principle is to be adopted or what judgment is to be arrived at by an individual in such societies depends entirely on the conditions and environments under which he happens to be living. Hence the object of this paper is only to state the conditions, environments and empirical facts which raise the problem of morality in developing societies.

Traditional Morality

Whenever an ordinary man asks: "How can I tell right or wrong? How can I tell what I ought to do?"—he raises moral questions. The answer to such questions can obviously be found in the traditional morality of a particular society. For instance, in the Pakistani Society, which claims to be founded, generally speaking, on the precepts of Islam, an ordinary Muslim is expected to know the answer to these questions because Islam categorically lays down as to what is right and what is wrong, and so long as a Muslim can distinguish between right and wrong, he has no difficulty in arriving at a judgment or acting thereupon.

According to Islam, God created man of two conflicting elements, namely, right and wrong; but at the same time, He infused in man the freedom to choose between right and wrong. Subsequently, through Revelation He objectively laid down as to what was right and what was wrong, and warned man that if he exercised his choice rightly, he would be rewarded in recompense; and if he exercised his choice wrongly, he would be punished in retribution in the Hereafter. The prophets through whom the Revelation was sent, were made models of ethical ideal for their respective communities. Accordingly the life and practice of the Holy Prophet of Islam is the model for the Muslims to follow.

When Pakistanis adhere to a common absolute moral criterion, and they could also live in conformity with it, then

why, it can be asked, they have so far failed to establish an orderly society based on their moral ideal? The answer to this question necessitates a survey of existing empirical facts which determine the moral attitude of the Pakistani Society. Ever since the attainment of political freedom, Pakistanis have witnessed the rise and fall of a series of governments wedded to inequality, secretiveness in administration, monopolistic privilege, and intolerance of nonconformity. The movement of opinion of those who held positions of power and influence, instead of setting up an example in moral leadership and higher standards of social responsibility, has encouraged the climbing up and down the ladder of ends and means. The result is a morally disorderly society of more explicit discontents and of more articulate expectations. In such societies duty is usually sacrificed for expediency, ideals for practical politics, moral law for worldly wisdom and conscience for common-sense. These factors naturally engender moral doubt and when individuals labour under moral doubt, it is impossible to construct an orderly society based on any absolute moral criterion.

Economic Order

It has been held by some moral philosophers, though cynically, that morality involves the question of 'affording' to be moral. In other words, only those individuals should be expected to be moral who were economically in a position to afford to be so. In order to properly appreciate this argument, it is necessary to study the economic order of developing societies.

It is an accepted fact that most of the developing societies felt obliged to choose between one of the two types of economy, namely, socialist or capitalist. With the exception of perhaps few, most of the developing societies have chosen capitalist economy on the grounds that it suited the needs and requirements of such societies more than socialist economy. This exercise of choice in favour of capitalist economy has led to the development of a pragmatic attitude in developing

societies. This new category of thinking adopts prosperity or happiness through economic growth as the ultimate end. In order to realize this end, the means should be chosen with an amoral attitude. If the selection of means raises moral issues, then instead of changing the means, morality must be rationally made to conform to them. For example, if industrial organization on a capitalist pattern leads to the growth of bribery, corruption, nepotism or favouritism, then these problems must be approached pragmatically. The result is that in an atmosphere of moral irresponsibility, the rich are free to grow more rich, the poor are condemned to be reduced to greater poverty, and for every morally reprehensible act, a pragmatic explanation is forthcoming.

Promises for Social Betterment

Most of the developing societies are passing through an era of rising expectations. They seem conscious of the inherent illogicalities and contradictions in the managerial capitalist system. Consequently they demand real and not superficial equality in matters of primary importance. They clamour for a redistribution of wealth and demand state intervention for the establishment of social services. Those who hold positions of power and influence among them, constantly promise that their objective is to establish a welfare state and that in due course of time social services will be made available. But the acts and deliberations of the makers of private fortunes have almost exploded the myth of welfare state in developing societies. The result is the development of a trend of professional neutralism and emphasis on conformism to and political consensus on the maintenance of *status quo*.

Political Structure

In all developing societies such moral issues as freedom and justice have been raised. These issues automatically involve the consideration of the question as to whether consent or force ought to be regarded as the basis of the

State. The question is not that one basis is right whereas the other is wrong, but which one of the two is morally preferable. It has been remarked that government, whatever its form, is one of the determining forces of a people's character.

Whenever an unregulated multitude is organized, it ceases to be a crowd and is transformed into an association, community or society. Organizations have always been subjected to formulated rules of behaviour. The consideration of these formulated rules raises the question as to whether such organizations be governed by force or by consent. Those who advance their argument in favour of force, claim that in order to establish stability and to eliminate the possibility of chaos, the individual must be made to surrender his rights. They maintain that the ruled, if they rationally think it out, would arrive at the conclusion that it paid them better to obey their rulers than to attempt a revolution. The force theory accepts the principle that the State's right of coercion is generated automatically. The result is annihilation of political obligation and the establishment of arbitrary or irresponsible power.

On the other hand, the supporters of consent theory regard the individual as real and the State as simply a contrivance produced by the community to control and govern itself on its own terms. According to this view-point, the State by consent is invented to guard the life, person, liberty and property of the individual and so to maintain and uphold the essential equality of all individuals. It lays emphasis on the supremacy of Rule of Law, so much so that this concept achieves a kind of independent reality. Rule of Law guarantees the inviolability of the individual and insists that every man must be treated as an end in himself and not as an instrument for promoting the well-being of another man or group of men. Consequently no state based on consent can be conceived except within a theory of moral rules which bind the members of the community. Its essential

rule is that those who are elected to rule should admit the obligation to keep contracts.

Thus according to this view-point, the State ought to be constructed on a very solid moral foundation. It should in itself be a moral individual. The individual member of the community has not merely the right but a duty to challenge, and in the last resort, to disobey State legislation if it transgresses the limits laid down in its Articles of Association.

In short, the consent theory is committed to the idea of equality and social justice as a matter of principle. Thus the democratic state has a moral basis for it guarantees natural and inalienable rights of man as well as the supremacy of Rule of Law.

What type of state is best suited for a developing society. The answer to this question must depend on a system of moral philosophy which is itself firmly established in such society. If such society respects the importance of an individual, it must subscribe to the principle of rule, by consent. But if such society drifts in a state of moral doubt and attaches no significance to an individual, it is bound to be ruled by force of some form or the other.

The developing societies have only one legacy from the past, namely, the respect and reverence for nothing but power. This mentality has not yet undergone a change. The result is that such societies continue to be dominated by fear, cowardice, treachery, corruption and begging. In such societies, the dynamic of history or the laws of economic development or just plain luck may throw up successful or unsuccessful tyrants from time to time, but it is unlikely if their political structure could be built on a solid moral foundation at least in the immediate future.

In conclusion, morality is a problem in developing societies because firstly, the force theory is generally imposed under the cloak of the motto: Stability at all costs. Secondly, the traditional morality continues to remain suspended as it would be in a state of emergency. Thirdly, the ultimate aim of state activity being economic development, the sole criterion

for determining right or wrong is whether it tends to promote or obstruct such development, with the result that human actions are justified on the grounds of realism, expediency and common-sense. Lastly, unending promises for social betterment are made. But these remain, generally speaking, too remote to be fulfilled. Under such conditions all moral foundations of human activity can naturally be expected to disappear.

THE QUESTION OF THE MOSLEM – TURKISH MINORITY IN BULGARIA IN TURKISH – BULGARIAN BILATERAL AGREEMENTS

The Muslim – Turks settled in Bulgaria when it constituted part of the Ottoman Empire. In 1878 Bulgaria became an autonomous principality. At that time the Muslim-Turkish population living in Bulgaria is reported to have exceeded the Bulgarian population. Subsequently in 1941, with the annexation of certain territories from Romania, 150,000 Turks, who resided there, were added to the Bulgarian Muslim-Turkish population.

According to the official statistics published by the Bulgarian authorities on 1965, out of the total population of 8,228,956, the Muslim population was 780,928. Thereafter according to the 1971 census, the Muslim population in Bulgaria was 1,234,000 (Turk: 880,000; Pomak: 320,000, Gypsy: 24,000; and Tatar: 10,000). The growth rate among Muslims is estimated to be about 2% annually. Since 1975, accurate information about the Muslim population in Bulgaria is not available in the official documents. However, according to the 1980 census the population of the Bulgarian Peoples' Republic is 8.862.000 and the Muslim population is estimated to be about 1,500,000 i.e. 17% of the total population.

It may be noted that ever since 1878 Muslims have been forced to immigrate to Turkey and Turkey has always offered to take more immigrants from Bulgaria. This flow of immigration continued without interruption upto 1978 when the Bulgarian government abruptly stopped it and started pursuing a policy of assimilation of the Muslim minority. The first victims of this policy were Pomak Muslims, but in 1984-85 the campaign assumed alarming proportions when it ruthlessly proceeded to destroy the religious, cultural and ethnic existence of the entire 1.5 million Muslim minority, despite the fact that its status and rights had been guaranteed under the Bulgarian Constitution as well as treaties signed by Bulgaria.

Under the assimilation policy, Muslims are forced to give up their Islamic/Turkish names and to take Slavic/Bulgarian names back to three generations. They must surrender their old identity cards and get new ones with Slavic/Bulgarian names. If this is not complied with, Muslim students cannot enter the universities or institutes of higher learning and employment opportunities are not available to them. Similarly, registration of children's' birth, marriage contracts, academic certificates, salaries and pension for old age are not processed without change of names. Letters addressed to people with Islamic or Turkish names in Bulgaria are returned with "unknown" stamped on them. Telephone calls between Muslim Turks and relatives living abroad are interrupted and disconnected if Turkish is spoken or the name-changing campaign is mentioned. Muslim religious endowments (Awqaf) have been expropriated. Islamic schools have been closed and the teaching of the Turkish language forbidden. Muslims are penalized for even speaking Turkish among themselves in public. The circulation of the Quran and Islamic literature among Muslims is banned. A strict control is imposed in order to prevent import of Islamic publication into Bulgaria. Islamic rituals like circumcision or burying the dead according to the Islamic rites in Muslim cemeteries are not allowed. Muslims are prevented from contracting marriages

in accordance with Islamic practice. Muslim girls are transferred to other populated areas with the object of mixing them with non-Muslims in dwelling houses and at work. Muslim's are likewise prevented from fasting in the month of Ramadan or to perform the pilgrimage. Similarly, the celebration of Muslim feasts and festivals is prohibited. Most of the mosques have been closed down. Those which have not been converted into churches have been transformed into museums or government centers. Some of them have been destroyed under the pretext of road-building. Muslims who attend prayers at the remaining mosques are identified and taken into custody or punished. Thus Muslims have been deprived of their basic rights, and they have no representation in the government or the Bulgarian Peoples' Assembly.

It is not only turkey which is concerned about the plight of the Muslim minority in Bulgaria. But regarding this matter, the U.A.S., the Council of Europe as well as the North Atlantic Assembly have adopted very strong resolutions supporting the Turkish position. The sub-commission of the Human rights commission on discrimination of Minorities at its meeting held in Geneva in august 1985 as well as amnesty International in April 1986 have charged Bulgaria with abuses of human rights and the killing of hundreds of ethnic Muslim Turks.

Bulgaria, on the other hand, had been denying the very existence of the Turkish ethnic minority in the country. Its position is that there are no Turks in Bulgaria but only Bulgarians who have previously been Turkified by "enslavers". It has protested over the "interference" of Turkey in Bulgaria's internal affairs and asserted that the assimilation of the Turkish minority is a "spontaneous renaissance", that the communities involved are ethnic Bulgarians who had been forcibly converted to Islam under the Ottoman rule and that they have voluntarily decided to "restore" their Slavic/Bulgarian names.

The question of the Muslim Turkish minority in Bulgaria was considered at the 16th Islamic Foreign Ministers

conference in January 1986. The conference adopted Resolution 30/16-P expressing its solidarity with the Muslim minority in Bulgaria and entrusting the Secretary General with the task of appointing a three-member contact Group to examine the situation of the Muslim minority in Bulgaria and to make recommendations with a view to facilitating a political solution. The resolution also expressed the hope that in the light of its relations with the Islamic world, the Bulgarian Government may provide the best possible opportunity to the OIC to examine this matter.

In Pursuance of this Resolution a three-member Committee was nominated. But the Group's visit to Bulgaria was postponed twice in 1986 for the reason that the Bulgarian Government was only prepared to receive that the Bulgarian Government was only prepared to receive the members of the Group in their individual capacity and not as, an delegation. Eventually the face - finding three-member delegation of the OIC visited Bulgaria from June 1 to 3, 1987. The Group has not yet submitted its report which may take some time before it is published by OIC.

Before the OIC Group, the Grand Muftis of Syria and the Yemen Arab Republic had visited Bulgaria in 1986 under an official invitation of the Bulgarian Government. But it is difficult to say if their impressions were based on information collected through contact with ordinary members of the Muslim Turkish community. In fact foreign observers, diplomats, journalists etc. have been refused access to such areas where the Muslims predominate and those who are allowed into these restricted areas go there only under official supervision. However in this respect we have detailed first-hand account of Muhammad bin Nasir Al-Aboudi, who was leader of a non-official delegation consisting of five members drawn from different walks of life in Saudi Arabia and organized by the Muslim world League. The purpose of he visit was to investigate the condition of the Muslim communities in Eastern Europe and to offer help in the preservation and maintenance of their mosques and other

religious institutions. The visit took place between July 19 and August 11, 1985 and included countries like Yugoslavia, Hungary, and Romania Bulgaria. This report has been published in the Journal: Institute of Muslim Minority Affairs, London, January 1986 issue (pages 109-115). The relevant portions are as follows:

“Having crossed the Bulgarian frontier the bus came to a stop at Balgig, a tourist area on the Black Sea Coast. There the delegation saw a mosque that had been converted into a church, with the Cross at the top of the minaret. The lady tourist guide claimed it was a church. There were some Turkish workers in the area. Among them the delegation encountered two elderly women who worked in gardens, and inquired from them about the condition of Muslim in Bulgaria. They stated that the government had forced Muslims to change their Islamic names and many of them had been killed and imprisoned for refusing to do so. The two women appealed to the delegation to convey their plight to the Muslim world and to help them migrate to turkey. When the two women came to know that the delegation had come from the Holy Land, they asked for a copy of the Holy Quran. They were given two copies of Juz amma which they hid under their garments. This was our first symbolic encounter in Bulgaria.

On resuming its journey from Balgig the delegation reached Varna City, which is the third largest Bulgarian city. It was then crowded with tourists, most of whom had come from Europe. So the delegation could not find berth in any hotel. We were forced to go to a government office in charge of hotel accommodation. The woman supervisor informed the delegation that they could be allowed only one night's accommodation and they would have to leave the next day at 4 P.M., because their visas would not be valid after that and no hotel could provide them with accommodation beyond that period.

Following a short rest at the hotel, the delegation headed for the city mosque where they came upon an elderly woman

accompanied by two children. Inquiring about the imam of the mosque, the woman told them that he was not available and the mosque was closed. Then the delegation asked her about the conditions of life of the Muslims. She complained that they were being forced to be Bulgarians thought they were originally Muslims. The Bulgarian Government had imposed Christian names on Muslims. It had also killed and detained many Muslims, including doctors and engineers, Turkish and Islamic education was banned, religious books were confiscated, and mosques were only attended by old people who came for Friday prayers. Their number did not exceed ten worshippers. Muslims suffered many problems caused by the Government to force them to give up their religion. In answer to a question about other mosques in the city, the old woman told the delegation about another demolished mosque in Varna.

We went and saw the outside of the mosque with a collapsed ceiling and fallen walls, thought the minaret was standing high, in a building nearby we came across two women, one young one old. Their features betrayed their Turkish origin. When we asked them in Turkish about the entrance to the mosque, for we wished to offer our prayers, the old woman answered that the mosque was closed and deserted. She advised us to go to the mosque at Danov Street. This was the first mosque in the city that we had visited. When we asked her about the condition of Muslims, she replied that Muslims pray, fast and freely perform their religious rituals and also celebrate their religious and national festivals. While the old woman was speaking, the young woman behind her was waving her hand silently in disagreement.

On the morning of Wednesday, we visited the only open mosque in the city in an attempt to meet its imam. There we found the imam Ismail Elyas with whom we held a private meeting outside the mosque. We came to know that in pursuance of its policy of forcible change of names, the government had changed the Imam's name from Elyas to

Rafael though he requested to be named Israfeel, after the name of the Angel who would summon people to resurrection on Doomsday. The Imam went on to say that thousands of Muslims had been killed and detained. In answer to a question about Islamic education, the Imam stated that it was absolutely banned and Muslim children only learnt subjects taught at government schools. When we offered to provide Islamic literature, the Imam said that the government strictly prohibits supply of such books. We came upon an old copy of the Holy Qur'an in addition to a modern copy of thirty separate volumes placed in a special box. This was a gift donated to the mosque by the chairman of the Libyan Islamic Call Society.

Concerning circumcision of Muslim children, the Imam said that this was never carried out. Dead Muslims are buried in public cemeteries together with others. Marriage contracts were signed under official supervision. The Imam expressed his desire to perform Hajj, but has not been able to obtain official permission. The mosque in which Ismail Elyas works as imam is the only active mosque in Varna City. It is called Khayria mosque and was built in 1251 H. This big mosque is visited by tourists coming to the city. Its ceiling is already cracked and indicated the need for urgent repair and renovation. The other deserted mosque visited by the delegation was the Azizia Mosque at Bonive Street. We expressed our desire to repair both Khayria and Azizia mosques. The Imam advised us to discuss the matter with Al mufti Hajj Mohamed Topchiev and Government officials in Sofia. On the way back to the hotel, the delegation saw at a strategic location in the city centre a mosque which had been converted into a church. Arabic writhing on the Mehrab was still clearly visible from the outside.

Delegation members encountered many Turkish and Bulgarian Muslims in the hotel as well as other public places, but efforts to engage them in conversation were often unsuccessful.

Arriving in Sofia on Friday we tried to contact the Mufti of Bulgaria through the telephone numbers we had. Following several attempts, someone from his home answered us in a language other than English or Arabic. We made use of an Arab resident at that hotel, who knew a little Bulgarian, to talk to him. Later, that person came to us in the hotel and informed us that the Mufti had gone to Varna the day before. We tried to persuade that person to arrange for us contact with any Imam or religious scholar, who could speak Arabic or English. He replied that there is only one mosque in the capital city, but it was closed and its Imam does not know even a little Arabic.

When we told the man that we have been purposively sent by the Muslim World League to meet Muslim leaders and offer necessary funds for mosque repairs, his tone softened a bit and he said, "Muslim have become few in number and their children know nothing about Islam. Muslims are totally ignorant of Islamic teachings." In saying this he appeared nervous and soon after left, promising to come again the next morning. We never saw him again.

Under these circumstances the delegation decided that there was no pint in searching for someone who could be entrusted the task, with the Rabia's help, of repairing and renovating mosques and arranging to re-open closed ones. The effort to involve the Mufti of Bulgaria also seemed futile, because it appeared to us from all indications that this office was entirely under the control of the government and no Muslim functionary was capable of taking any independent initiative.

This brought us to the end of our visit to Bulgaria. the delegation decided to end its tour and to proceed to Istanbul to obtain indirect information from Turkish sources about the area we had just traveled through which would serve to clarify and confirm the information we had gathered ourselves first-hand."

Now let us briefly examine what commitments have been made by Bulgaria from time to time in her bilateral treaties

with Turkey regarding the rights of the Muslim Turkish minority.

Bulgaria entered modern history in 1878 in the form of an autonomous principality under the suzerainty of the Ottoman Sultan. This phase lasted until 1908, during this period of thirty years the status and right of the Muslim Turkish community were protected under the Berlin Treaty of 1878. In other words, Bulgaria from its very inception as a state undertook to respect and protect the rights and liberties of the Muslim Turkish minority.

In 1908 Bulgaria declared her independence and became a kingdom. A year later in 1909, the Istanbul Protocol followed by a Convention were signed by the Kingdom of Bulgaria and the Ottoman Sultanate. Under the Protocol and Convention also the rights of the Muslim Turkish minority were guaranteed. Thereafter in 1913, at the end of the Balkan war, a Peace Treaty was signed between Turkey and Bulgaria followed by another Convention, whereby again the minority rights and freedoms of the Muslim minority was to enjoy equal civil and political rights with the majority community, having their religious freedom as well as the right to manage Waqf properties, the then existing Islamic institutions and Waqf properties attached to them were acknowledged and these were safeguarded. The Treaty regulated the Mufti system in Bulgaria and allowed the Muslim minority to run its own educational institutions. In short this treaty guaranteed the rights of the Muslim-Turks in Bulgaria to preserve their own religion, language, customs and traditions as well as to run their own schools and to manage their religious endowments through Muftis.

After the First World War again under the Neuilly Peace Treaty of 1919, Bulgaria guaranteed complete equality to all minorities with the majority community irrespective of differences of race, language as well as religion. However, subsequently when Turkey abolished the Sultanate and became a Republic, the Turkish-Bulgarian Treaty of Friendship of 1925 was signed by the two countries. Under

article 1 of this Treaty both countries agreed to maintain cordial relations with each other as well as to maintain unbreakable peace and friendship. The provisions of the Neuilly Peace Treaty regarding the protection of minority rights were affirmed and re-extended to the Muslim-Turkish minority. Thus there was reiteration of the undertaking on the part of Bulgaria to protect and to preserve the ethnic existence as well as the religion and culture of the Muslim-Turkish minority. Along with this Treaty was also signed the Convention of Establishment (1925) whereby the contracting parties undertaking to create no obstacles in the voluntary immigration of Turks of Bulgaria and Bulgarians of Turkey. So the free immigration of Muslim Turks of Bulgaria to Turkey was regulated for the first time by this Treaty read with the Convention. The Turco-Bulgarian Convention of Establishment (1925) is still in force and therefore both the contracting parties are under an obligation not to prevent voluntary immigration of the Turks from Bulgaria to Turkey or vice versa.

The communists took over Bulgaria in 1944 and it was transformed into the Peoples' Republic of Bulgaria. As result the voluntary immigration of the Turks of Bulgaria was disallowed. However in 1950 there was an abrupt change in the policy and the new Bulgarian government demanded that Turkey should accept 250,000 Turkish immigrants from Bulgaria within a period of three month. The action was not in compliance with the Convention of Establishment but was in fact implementation of a deportation policy where under the Muslim-Turkish minority was forced to mass immigration. The immigrants poured into turkey for two years and then the Bulgarian frontiers were again closed on them. This resulted in the division of many Turkish families as members of some crossed over but their relatives were left behind. Eventually in 1968 a Migration agreement was signed between Turkey and Bulgaria for the union of divided Turkish families and relatives. Under this agreement 130,000 immigrants from Bulgaria came over to Turkey from 1969 to

1978. As result some divided families were united whereas the others were re-divided and remained stranded in Bulgaria as no one has been permitted to leave Bulgaria since 1978.

In the word of Lanterpacht, "The rights and duties of States are determined in the first instance, by their agreement as expressed in treaties When a controversy arises between two or more states with regard to a matter regulated by a treaty, it is natural that the parties should invoke the provisions of the treaty in question."

The Vienna Convention on the Law of Treaties concluded in 1969 and which entered into force on January 27, 1980 is the main source of the Law of Treaties. Generally speaking, it declares the existing law. The Convention is applicable to treaties concluded between States (Article 1), it defines "Treaty" as an International Agreement concluded between States in written form (Article 2). The "acceptance" of a Treaty by a State means in each case the international act so named whereby a State establishes on the international place its consent to be bound by a Treaty (Article 2). Every Treaty in force is binding upon the parties to it and must be performed by then in good faith (Article 26). A party may not invoke the provisions of its internal law (or policy) as justification for its failure to perform a Treaty (Article 27). A Treaty which does not contain a provision regarding its suspension or termination and which does not provide for renunciation or withdrawal is no subject to suspension, termination, renunciation or withdrawal unless the parties indeed to admit such a possibility, or such right could be implied by the nature of the Treaty (Article 56). The violation of a provision essential to the accomplishment of the object or purpose of the Treaty would constitute a material breach (Article 60).

Speaking in terms of International law sometimes Governments may enter into definite agreements for the regularization of their future conduct when such agreements are "non-legal" in character. These Treaties fall into the category of "gentlemen's agreements". In such cases the

parties make a commitment to perform certain acts or refrain from them. Even though such commitments are regarded as "non-legal", there is expectation of, and reliance on, compliance by the parties. An example is the agreement made in 1908 by the U.S.A and Japan, relating to immigration which was observed for nearly two decades although it was probably considered as not legally binding.

From the above cited bilateral Treaties signed by Bulgaria and Turkey, spread over a period of more than a century. It is evident that the Turkish presence in Bulgaria has consistently been acknowledged by the contracting parties. Some of these treaties like the Convention of Establishment (1925) are still in force and have not been specifically suspended, terminated, renounced or withdrawn. Even if these Treaties are to be considered as "non-legal" in character or falling in the category of "gentlemen's agreements", there is expectation of their compliance by the parties. In case one of the parties is violating the provisions necessary for the attainment of the objects of these Treaties and thus committing a material breach, the other party has the right to agitate the matter before the International community and cannot be blamed for having interfered in the internal affairs of the defaulting party.

Under the Constitution of the Peoples' Republic of Bulgaria the status of minorities has been recognized and their rights guaranteed. The existence of the Muslim-Turkish minority and its contribution to building up socialism in Bulgaria had even been acknowledged by the President of Bulgaria. In that view of the matter, to deny the very existence of the Turkish ethnic minority in the country and to advance the reasoning that there were no Turks in Bulgaria but only Bulgarians who had been Turkified in the past by "enslavers", can hardly be accepted. If the assimilation of the Turkish minority is not coercive but spontaneous and the Bulgarian Turks are voluntarily changing their Muslim names because they had been forcibly converted to Islam, then why should the Bulgarian borders be closed on them and why

should access be refused to those foreign observers, diplomats, journalists etc. who desire to visit the areas where the Muslims predominate?

Turkey cannot remain indifferent to the fate of the Bulgarian Turks because ethnically they are kith and kin of the Turks. Therefore any action taken in this respect on the part of Turkey cannot be considered as interference in the internal affairs of Bulgaria. The Islamic World or the OIC is perturbed over the plight of the Muslim-Turks in Bulgaria because they are Muslim and the OIC is bound by its Charter to take care that the rights of Muslim minorities in non-Muslim countries are protected and safeguarded. Similarly the international community is deeply concerned about their fate because there is evidence of abuses of human rights in Bulgaria.

In the circumstances it is essential that the international community should put moral pressure on Bulgaria and should try to persuade her to review her policies, to fulfill her contractual commitments and, if necessary, to enter into negotiations with Turkey in order to find a solution to this human problem.