

## ***Pakistan's First Constituent Assembly's Efforts for the Making of Constitution 1947-1954***

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The Constituent Assembly of Pakistan started functioning in Karachi on 10th August 1947<sup>1</sup> with two objectives: i) as the legislative body of the country and; ii) to frame the first constitution of Pakistan.

Quaid-i-Azam Mohammad Ali Jinnah, in his dual capacity as the founder and the first Governor-General of Pakistan did not live long to guide the Constituent Assembly on many issues. He died on 11 September 1948. Besides, the nascent country had to face a number of problems like influx of refugees, Pakhtoonistan issue, issue of Jammu and Kashmir, resettlement of refugees, and problems with India such as distribution of assets including canal waters. Therefore, the Constituent Assembly took nine years to produce first constitution of the country.

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1 On 11 August the Constituent Assembly elected Quaid-i-Azam Mohammad Ali Jinnah as its president. Under the arrangements of the Indian Independence Act of July 1947 the power was transferred from the British to the Constituent Assembly of Pakistan on 14 August 1947. A ceremony of transfer of power was held in Karachi which was jointly presided over by Lord Mountbatten, the last Governor-General of British India and Quaid-i-Azam Mohammad Ali Jinnah, Father of Pakistan. Although the freedom was to be declared next day i.e. 15 August, since the transfer of power took place one day earlier the Government of Pakistan in the later years decided to celebrate the 14 August as the day of Pakistan's Independence Day.

It was in 1949 that under the guidance of Liaquat Ali Khan, Pakistan's first Prime Minister that the Constituent Assembly passed the Objectives Resolution which underlined the aims and objectives of the future constitution of Pakistan.

The Resolution prompted a heated discussion in the Constituent Assembly of Pakistan (CAP) which continued until 12 March. The Hindu members, led by S. C. Chattapadhyaya were particularly critical of the Islamic provisions of the Resolution.<sup>2</sup> But the Opposition was defeated and, on 12 March 1949, the CAP adopted the Objectives Resolution. The Resolution recognised the sovereignty of God Almighty over the entire universe, which was; however, to be exercised by the State through its people within the limits prescribed by Him. The Muslims were to be enabled individually and collectively to order their lives 'in accordance with the teachings and requirements of Islam'. Fundamental rights of the citizens were to be safeguarded, minorities were to enjoy religious and cultural freedom and the independence of judiciary was fully ensured.<sup>3</sup>

The Resolution was a clever move — it tried to satisfy both the modernists and the orthodox as well as to gain time. The modernists could interpret it as guaranteeing a democratic constitution and the sovereignty of the people, whereas the orthodox could identify sovereignty with God Almighty.<sup>4</sup> Although Liaquat did not use the term 'Islamic Law' in the classical sense, it none the less created the impression that Pakistan would move in the direction of an orthodox Islamic State.<sup>5</sup> It was this interpretation of Islam in the Constitution that later resulted in the Ahmadiya riots in 1953.<sup>6</sup>

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2. For the text of speeches by Hindu members see Sharif al Mujahid, ed. *Ideological Orientation of Pakistan*, (Karachi: National Committee for Birth Centenary Celebrations of Quaid-i-Azam, 1976), pp.9-31.

3. *Ibid.*, pp.100-101.

4. Khalid Bin Sayeed, 'Islam and National Integration in Pakistan', in Donald E. Smith, ed., *South Asian Politics and Religion* (Princeton: N.p., 1966), p.401.

5. *Ibid.* p.402.

6. For details of these riots see Riaz Ahmed, *Constitutional and Political Developments in Pakistan 1951-54* (Rawalpindi: Pak American, 1981), pp.45-56.

Immediately after the passing of this Resolution, the CAP appointed a Committee — the Basic Principles Committee<sup>7</sup> — consisting of 24 members (21 Muslims and 3 non-Muslims) to frame the Constitution. The BPC appointed a Steering Sub-Committee to report on the scope, functions and procedure of the Committee. Consequently, three sub-committees were appointed to make recommendations on the subjects assigned to them: (i) the Sub-Committee on Federal and Provincial Constitutions and Distribution of Powers; (ii) the Sub-Committee on Franchise; and (iii) the Sub-Committee on Judiciary. On the suggestion of Shabbir Ahmad Usmani,<sup>8</sup> the CAP also decided to set up a Board of Ta'limat-e Islamia, consisting of five members, to advise on matters arising out of the Objectives Resolution or on such matters as might be referred to them by the BPC or any other Committee or Sub-Committee.

On 28 September 1950, the Prime Minister, Liaquat Ali Khan, presented an Interim Report of the BPC to the CAP.<sup>9</sup> According to the Report, the Objectives Resolution was to form a part of the Constitution as the 'Directive Principles of State Policy'. The State of Pakistan was to be a federation of provinces. The bicameral central legislature was to consist of a House of Units (Upper House), and a House of the People (Lower House). The former was to be a representative institution of the provinces elected by the provincial legislatures on the basis of equality, while the latter was to be elected by the people on the basis of adult franchise. The life of both the Houses was to be five years and both were to enjoy equal powers. However, in the case of budget or money bills the decision was to be arrived at by a joint session of the two Houses. The Head of the State, too, was to be elected by a joint session and was to hold the office for a term of five years. During his tenure he was to act on the advice of the Prime Minister, even on a matter

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7. Hereafter referred to as BPC.

8. See Shaikh-ul-Islam Hazrat Allama Shabbir Ahmed Usmani, *Khutaba-i-Sadarat, Jamiat-ul-Ulema-i-Islam Conference, Mashriqi Pakistan, Dacca, 1949*, cited by Syed Fazle Payember Naqvi, 'Constitutional and Political Developments in Pakistan. March 1956 - October 1958', unpublished M. Phil. thesis. Islamabad, Quaid-i-Azam University, 1975, p.6.

9. See the text in *CAPD*, VIII, pp.13-50.

like the dissolution of the legislature. The Federal Legislature was, however, empowered to remove the Head of the State on specific charges.

The Interim Report also recommended that each province should have its own legislature, elected on the basis of adult franchise. The life of a provincial legislature was also to be five years. The Head of the Province was to be appointed by the Head of the State for a term of five years. He was to act on the advice of the Chief Minister of the province concerned on all matters. The quorum for a meeting of the provincial or central legislature was one-seventh of the total number of members of the respective legislature.

As regards the distribution of powers between the centre and the provinces, the subjects were divided into three lists, i.e. Federal, Provincial and Concurrent. The Federal List consisted of 67 subjects, the Provincial List of 35 subjects and the Concurrent List of 37 items. The subjects enumerated in the Federal List were in the domain of the central legislature whereas the items mentioned in the Provincial List fell within the jurisdiction of the provincial legislature. In matters relating to items mentioned in the Concurrent List both the central and the provincial legislatures could legislate. The residuary powers were, however, vested in the centre. In case of any dispute the Supreme Court of Pakistan was empowered to interpret the Constitution.

The procedure for amending the Constitution was intentionally made rigid. Any amendment of the Constitution required the approval by a majority vote of the central as well as the provincial legislatures. If a majority of the provinces supported the amendment, it was to be placed before the originating House which was to decide by a two-third majority of the members present and voting. A similar consent was required of the other House. If the other House also approved the motion, the amendment could then be deemed to have been passed.<sup>10</sup> The Head of the State was given emergency powers by which he could abrogate the whole or a part of the Constitution and could also

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10. *Ibid.* p.42.

issue ordinances. Finally, the Report suggested that Urdu should be declared the national language of the State.<sup>11</sup> The Interim Report of the BPC was subjected to an adverse criticism by the opposition members led by S. C. Chattopadhyaya.<sup>12</sup> No doubt there were critics from West Pakistan too,<sup>13</sup> but the East Pakistanis were more vocal. Their attack was mainly directed against the proposals for a strong Centre with vast powers in financial matters.<sup>14</sup> A belief had taken roots in East Pakistan that there were principles in the Report which, if adopted, would reduce the East Pakistan majority into a minority and thus turn East Pakistan into a colony of West Pakistan.<sup>15</sup> The press led by the *Pakistan Times* of Lahore also attacked the 'over-centralization' in the Report and considered the bicameral principle as 'reactionary'.<sup>16</sup>

The adverse criticism of the Report somewhat eclipsed Liaquat's political dominance.<sup>17</sup> He was thus compelled not only to postpone the consideration of the Report in the CAP but also to invite suggestions from various jurists and constitutionalists.<sup>18</sup>

When Liaquat died in October 1951, Khwaja Nazimuddin stepped down from the office of the Governor-General to become the Prime Minister of the country. Ghulam Mohammed, the Finance Minister, was moved upstairs as the governor-general on the recommendation of the Nazimuddin Cabinet. Temperamentally, these two men were diametrically opposed to each other. Ghulam Mohammed was a sharp man with a raging temper and believed in imposing his will on everyone. On the other hand Nazimuddin was a simple man of sober temperament and was

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11. *Ibid.*, p.41. Khalid Bin Sayeed's contention that the Report made no mention of the State language based on a misconception. *The Political System of Pakistan* (Boston: Houghton Mifflin, 1967), p.68.

12. *Ibid.*, p.5.

13. Abdus Sattar Pirzada (1907-1975) was prominent among the West Pakistan leaders. See *ibid.*, p.6.

14. *Ibid.*, pp.5-11.

15. *Ibid.*, p.183 [Views of Nur Ahmad member from East Pakistan].

16. *Pakistan Times*, 30 September 1950.

17. Ikram. p.472.

18. CAPD, VIII, p.181.

given to tackling problems in a gentle way. The fluid political atmosphere constituted a great test for Nazimuddin who had accepted Premiership in the hope that he might be able to preserve the traditions of parliamentary democracy established by Liaquat. He believed that the Governor-General should not interfere with the working of parliamentary practices.<sup>19</sup> He had himself followed this principle during his tenure as the second Governor-General and he expected the same from Ghulam Mohammed. But here he was faced with an utter disappointment. To make matters worse, Nazimuddin was not a tactful politician. In times of crisis he always found himself confused and perplexed and unwittingly afforded opportunities to Ghulam Mohammed to exploit the situation.

On 19 October 1951 Ghulam Mohammed and Nazimuddin took the oaths of their offices.<sup>20</sup> All the members of Liaquat's team, with the exception of Jogendra Nath Mandal and C.D. Nazir Ahmad, were retained in the new cabinet, with some changes here and there in their portfolios. Zafrullah Khan was allowed to keep Foreign Affairs and Commonwealth Relations. Fazl Rahman kept Industries, Commerce, Works and Education. Mushtaq Ahmad Gurmani retained the Ministry of Kashmir Affairs. Changes were, however, made in regard to portfolios of other ministers. Abdus Sattar Pirzada was given Law instead of Health in addition Food and Agriculture. Similarly, Khwaja Shahabuddin had held five portfolios in Liaquat's cabinet were now given only three: Interior Information and Broadcasting. Abdur Rab Nishtar entrusted with the Ministry of Industries instead of Communications, which was handed over to Sardar Bahadur Khan. There were some new entrants to the Cabinet too: Chaudhri Muhammad Ali, Minister of Finance and Dr. A. M. Malik, Minister of Health, Works and Labour. Whereas Dr. I. H. Qureshi and Dr. Mahmud Husain joined as Ministers of State. Ghyasuddin Pathan was made a Deputy Minister.<sup>21</sup> A few weeks later, however, Qureshi and Husain were promoted as full-fledged members of the Cabinet. Dr. I. H. Qureshi

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19. Kazi Ahmed Kalmal, *Politicians and Inside Stories* (Dacca: N.p., 1970), p.138.

20. *The Gazette of Pakistan* (Extraordinary), Karachi, 19 October 1951.

21. *Ibid.*, 25 October 1951, pp.719-20.

was entrusted Ministries of Information and Broadcasting, and Refugee and Rehabilitation while Dr. Mahmud Husain was given the charge of Kashmir Affairs.<sup>22</sup> In provinces, Firoz Khan Noon and Din Mohammad were allowed to continue as the Governors of East Bengal and Sind respectively. New Governors were, however, appointed for the other provinces. On 26 November 1951, I. I. Chundrigar was made the Governor of the Punjab, while Khwaja Shahabuddin was appointed the Governor of NWFP. The provincial ministries were allowed to continue for the time being. Nurul Amin, M. A. Khuhro, M. Mumtaz Mohammad Khan Daultana and Khan Abdul Qayyum Khan retained the Chief Ministerships of East Bengal, Sind, Punjab, and the NWFP, respectively; Baluchistan was administered by Council consisting of 20 members which acted under the chairmanship of Agent to the Governor-General in that 'Province'. Amin-ud-Din was at that time the Agent to the Governor-General and the Chief Commissioner of Baluchistan.<sup>23</sup>

There was thus an experienced team to supervise the central and provincial affairs. Most of these people had participated in the movement for the establishment of Pakistan and they belonged to the PML ruling party. Almost all of them had worked under the guidance of the Quaid-i-Azam and had enjoyed the association of Liaquat Ali Khan. But in spite of this, none of these leaders was recognized as a truly national figure. Most of them were seen as representing either the provinces to which they belonged or some vested interests.

Politicians like Husain Shaheed Suhrawardy and Fazlul Haq who had worked as Chief Ministers of the United Bengal in pre-partition days led the Opposition. They might have risen to the stature of national leadership but since the establishment of Pakistan they had been isolated from political activity. Both were unable to rise from their narrow provincial statures.

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22. *Ibid.*, 26 November 1951, p.791.

23. Whitaker's Almanack (London: N.p., 1953), p.755.

Such was the situation in the country when the Government and the intelligentsia were called upon to turn once more to the constitution-making problem.

The BPC had already on 13 April 1951 appointed a sub-committee to examine the enormous suggestions received from various jurists in response to the controversy excited by the Interim Report of the previous September. But the sub-committee took almost fifteen months to submit its findings to the BPC. Therefore, the final Report of the BPC could not be presented to the CAP until 22 December 1952. In its report the BPC had also drawn from the proposals of its other two sub-committees, constituted in March 1949, to study various questions concerning Judiciary and Franchise.<sup>24</sup> Khwaja Nazimuddin, the Prime Minister, was mainly responsible for steering this Constitutional draft through the CAP. Among the prominent members who appended their signatures to this Report were Maulvi Tamizuddin Khan, Sris Chandra Chattopadhyaya, Maulana Mohammad Akram Khan and Nurul Amin from East Bengal, Sardar Abdur Rab Nishtar and Khan Abdul Qaiyum Khan from Frontier, Mian Mumtaz Mohammad Khan Daultana and Begum Jahan Ara Shahnawaz from Punjab, and Abdus Sattar Pirzada from Sind. Mian Iftikharuddin from the Punjab also signed but added a note of dissent.<sup>25</sup> This BPC Report consisted of 16 parts, 255 paragraphs, and 2 schedules.<sup>26</sup>

The Report envisaged for Pakistan a democratic federal structure. The Objectives Resolution, passed by the CAP in March 1949, was added as the preamble of the proposed Constitution — a fact which underlines the adherence of the State to the Islamic and democratic principles. The Objectives Resolution also formed one of the Directive Principles of the State Policy. Under this the State was required to secure for the people the basic requirements of life and to provide them with the benefits of social welfare and economic uplift without any distinction of religion, caste, or

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24. The proposals of these Committees had been submitted to the BPC in April-May 1952.

25. This note of dissent was not appended to the Report as it was found to be against the requirements of the minutes of the Committee. See CARD, XII. 1952, p.82.

26. For the text of the Report see *ibid.*, pp.80-160.

colour. Measures were also to be taken to safeguard the rights of labour and peasantry and to prevent concentration of wealth in fewer hands.<sup>27</sup> These principles also proposed measures for the protection of minorities, non-exploitation of women and children, and justice for all.<sup>28</sup>

The Head of the State was to be a Muslim. No mention was, however, made whether he was to be called Governor-General or President. The Head of the State was made sovereign in the conclusion of treaties with foreign countries. He also had the ultimate power of declaring war and peace.<sup>29</sup> He could summon, prorogue or dissolve the Parliament. All bills required his assent before they could become laws. He could also grant immunities, pardons and commute sentences.

Parliamentary system of government was another important feature of the Report. The government was to be formed on the basis of majority representation in the lower House of Parliament. Thus a person who commanded a majority in the House of the People was to be appointed Prime Minister by the Head of the State. The Cabinet of Ministers was though appointed by the Head of the State on the recommendation of the Prime Minister, it was responsible to the House of the People.<sup>30</sup>

The Federal Legislature remained bicameral with a five-year tenure but the principle of parity was incorporated to solve the problem of representation from the two wings of the country. Under this principle East and West Pakistan, in spite of the disparity in their size and the number of their units, were recognized as two separate geographical entities having equal representation in both the Houses of the Federal Legislature. Thus the composition of the Parliament was to be based on the principle of parity: the House of Units was to consist of 120 members while the House of the People was to have 400 members. The number of seats in either House was to be equally divided between the two

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27. *Ibid.*, p.84.

28. *Ibid.*, p.85.

29. *Ibid.*, p.148.

30. *Ibid.*, p.92.

wings of the country. The seats allocated to West Pakistan, on the principle of parity, were to be further divided among its nine component units: Punjab, Sind, N.W.F.P., Tribal Areas, Bahawalpur, Baluchistan, Baluchistan States, Khairpur State, and the Capital of the Federation.<sup>31</sup> In the House of Units, for instance, West Pakistan was given 60 seats which were to be distributed among the units as follows: Punjab = 27, Sind = 8, NWFP = 6, Tribal Areas = 5, Bahawalpur = 4, Baluchistan = 2, Baluchistan States = 2, Khairpur State = 2, and Capital of the Federation = 4.<sup>32</sup> Similarly, of the 200 seats of the House of the People given to West Pakistan, the division among the various units was to be Punjab= 90, Sind= 30, NWFP= 25, Tribal Areas= 17, Bahawalpur= 13, Baluchistan= 5, Baluchistan States= 5, Khairpur State= 4, and Capital of the Federation= 11.<sup>33</sup> The non-Muslim communities were given separate representation in the House of the People.<sup>34</sup> The Interim Report suggested equal powers in all cases to both the Houses of the Central Legislature. But the Final Report recommended that both the Houses should have equal powers in all matters, excepting the budget, the money bills and the motions of confidence or no-confidence.<sup>35</sup> It was, however, provided that the money bills should be introduced only in the House of the People. After its passage, the bill was to be sent to the House of Units which was to send it back to the House of the People within 21 days duly approved or rejected, with or without amendments. It was upto the House of the People to accept or reject such amendments. The decision of the House of the People was considered to be final. The originating House was, then, to submit the bill for approval of the Head of the State.

The Report also recommended a procedure to prevent any legislation repugnant to the Qur'an and the Sunnah. This procedure was described in Chapter III (Part I).<sup>36</sup> Under this, if the Islamic

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31. *Ibid.*, p.96.

32. *Ibid.*, pp.93-96.

33. *Ibid.*, p.96.

34. *Ibid.*, pp.97 and 158.

35. *Ibid.*, p.101. Dr. I. H. Qureshi recorded his dissent on this provision.

36. *Ibid.*, pp.86-88.

character of a bill was questioned by any member of the Federal legislature, it was to be referred to a Board of Ulama, constituted by the Head of the State in accordance with the provisions of the Constitution. This Board was to give to the Head of the State its views on the bill within seven days of the receipt of such reference. In case of a disagreement among the members of the Board, the Head of the State was free to pronounce his own 'Islamic' judgement. If, in the unanimous opinion of the Board, the bill (or any provisions thereof) was repugnant to the injunctions of the Shariat, the Head of the State was to return the bill and the views of the Board to the Federal legislature.

Though the Report provided for a Chief Minister and a Council of Ministers, the Governor was theoretically made the most powerful figure in the province. He was not only to appoint a Chief Minister but was also empowered to summon, prorogue, or dissolve the unit legislature.

The provincial legislature, unlike the Federal Legislature, was unicameral. But the number of members for each provincial legislature was not specified. In fact it could vary from 75 to 350 members. The actual number was, however, to be determined by an Act of Federal Legislature.<sup>37</sup> The life of each unit legislature was recommended to be five years.<sup>38</sup>

Under the Report, the highest court was to be the Supreme Court of Pakistan. Then, there were to be a High Court for the provinces of Bengal (East Pakistan), the Punjab, Sind, and the NWFP. The High Court of Sind was also to have jurisdiction over Baluchistan. The Chief Justice of Supreme Court was to be appointed by the Head of the State. The Supreme Court was to consist of between two to six judges.<sup>39</sup> The number could, however, be increased by the Federal legislature. The number of judges for each of the High Courts was to be fixed later by the Federal legislature. The Head of the State was to appoint the judges of the Supreme Court as well as the High Courts in

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37. *Ibid.*, p.110.

38. *Ibid.*, p.113.

39. *Ibid.*, p.127.

consultation with the Chief Justice of the Supreme Court. The judges could resign or they could be removed by the Head of the State on grounds of 'misbehaviour or infirmity of mind or body' on the recommendation of a Bench of three judges of the concerning court.<sup>40</sup> The Supreme Court of Pakistan was made responsible for the interpretation of the Constitution. It was also to decide on inter unit or unit v. Federation disputes.

The rigid procedure of amendment of Constitution was retained in this Report. The Interim Report had also suggested a difficult method in this respect. The present Report retained the rigidity but the procedure was some what changed. For this purpose the subjects were categorized into (a) Specified<sup>41</sup>; and (b) Non-specified. In respect of the specified subjects one-third of the members of either House of the Federal legislature could introduce a bill for the amendment of the Constitution. Such a motion was required to be passed by both the Houses of the Federal legislature. After the approval, a copy of the bill was to be sent to the Chairman of each unit legislature for eliciting their views. If the majority of the unit legislature concurred, the originating House was to re-consider the motion along with the bill to amend the Constitution. If it decided in favour of the motion by a majority of two-thirds, a similar approval of the other House of the Federal legislature was then obtained. If the other House also supported the motion by a similar method, the bill was to be sent to the Head of the State for his authentication. On receiving the authentication, the Constitution was deemed to have been amended. So far as the non-specified subjects were concerned a previous consent of the Head of the State was necessary before the bill could be introduced in the legislature. Thus, the procedure for amending the Constitution was made very rigid. This was done deliberately in order to avoid frequent introduction of amendment motions especially in view of the emotive Pakistani politics. The Report proposed a system of adult franchise. Every citizen of Pakistan who had attained the age of 21 was entitled to vote at elections to

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40. *Ibid.*, p.128.

41. These subjects were not mentioned in the Report. They were, however, to be specified later. See *ibid.*, p.149 (footnote).

the Federal as well as the Unit legislatures.<sup>42</sup> To ensure better representation in the legislatures some conditions were, however, imposed. It was suggested that only a literate citizen could stand for elections to either House of Parliament or the Unit legislature.

Whereas the Interim Report had made Urdu the State language of Pakistan, the present Report remained silent on this issue. Perhaps the framers of the Report wanted to avoid the recurrence of a controversy in this respect.

Taking as a whole, the Final Report of the BPC was decidedly an improvement on the Interim Report and the adapted Government of India Act, 1935. It was a comprehensive constitutional draft. There were defects no doubt, but the Report had suggested measures which would have amicably settled various controversial issues between East and West Pakistan. But the politicians were either too idealistic or too selfish and were thus unable to agree on a Constitution.

The BPC Report was received with mixed feelings in the political circles of Pakistan. The East Pakistan members of the CAP, for instance, were said to be mostly in favour of accepting the Report. The East Pakistan Muslim League, too, welcomed the Report.<sup>43</sup> In West Pakistan Khan Abdul Qaiyum Khan, the Chief Minister of the Frontier, gave full support to the Report.<sup>44</sup> The enlightened among the Ulama also seemed to be in its favour. Similarly, the leaders of the minority groups, especially Swami Kaljuganand Kabirpanthi of the Pakistan Adibasi Achhut League, were full of praise for the Report which had safe-guarded their rights by giving them separate electorates.<sup>45</sup> Some leading newspapers including the *Dawn* of Karachi and the *Morning News* of Dacca also welcomed this 'historic document'.<sup>46</sup>

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42. *Ibid.*, p.112.

43. *Morning News*, 27 December 1952.

44. *Pakistan Times* (Lahore), 7 February 1953.

45. *Morning News*, 24 December 1952.

46. *Ibid.*, 25 December 1952. It may be recalled that this very newspaper had criticised Liaquat's Interim Report in 1950. Also see the *Dawn*, 1 January 1953, and the *Civil and Military Gazette*, 23 and 29 December 1952.

But the detractors of the Report outnumbered its supporters. One of the points of controversy was the Islamic character of the proposed Constitution. A feeling had emerged that a Constitution based on the Report would be a 'hotchpotch' of Islamic and un-Islamic principles.<sup>47</sup> Some, like Allama Inayatullah Khan Mashriqui believed that the Islamic provisions of the Report were actually un-Islamic.<sup>48</sup> Others thought that the creation of an 'Islamic' Board to judge the validity of the legislation was a curtailment of the sovereignty of the Legislature. Some non-Muslims were critical of the Islamic aspect of the Constitutional proposals because no non-Muslim could become Head of the State. Munindra Bhattacharya, a Congress MLA from East Bengal, was particularly critical of this provision.<sup>49</sup> C. E. Gissbbon on somewhat similar grounds, a Christian MLA from the Punjab, characterised the Report as 'outrageous'. In his opinion the recommendations of the BPC were as distant from the Islamic ideal 'as the North Pole from the South'.<sup>50</sup> But leaving aside all such criticism it must be admitted that in the context of modern political ideas the 'Islamic' provisions of the BPC Report were not at all irrelevant. Even the creation of the Board of Ulama was not entirely out of place. It was intended merely to be an advisory body of experts on Muslim jurisprudence. The Board could only advise on matters relating to Islam; it could not dictate.<sup>51</sup>

Another controversial issue was the question of parity between East and West Pakistan and the powers of the Federal Legislature. It was believed by some, as did the working committee of the East Pakistan Awami Muslim League, that by allocating seats between the two wings of Pakistan the Report had 'violated the universal

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47. *Pakistan Times* (Lahore), 25 December 1952.

48. *Ibid.*

49. *Ibid.*, 24 December 1952.

50. *Ibid.*, 25 December 1952.

51. The need for a Board of Ulama in the legislative business of modern Muslim state was also emphasised by Sir Muhammad Iqbal as early as 1930-1932. He advised that the Ulama should form a vital part of Muslim legislative assembly to help and guide free discussion in questions relating to Islam. See Sir Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: M. Ashraf, 1962), pp.175-76).

principles of democracy'.<sup>52</sup> Some like H. S. Suhrawardy, the Convenor of the Pakistan Jinnah Awami Muslim League, opposed the proposal of a bicameral legislature at the Centre.<sup>53</sup> In their opinion the parity formula would heighten provincialism and divide Pakistan into different warring units. Among the other detractors of parity formula were Ataur Rehman Khan and Sheikh Mujibur Rehman, the Vice-President and the Secretary of the East Pakistan Awami Muslim League respectively. They, too, were against a bicameral legislature for the federation.<sup>54</sup> A more forceful condemnation of parity principle came from Allama Mashriqui. He thought that the formula was a dangerous concept for, instead of encouraging unity, it would emphasise disunity between East and West Pakistan.<sup>55</sup> The criticism of Sardar Akbar Bugti of Baluchistan against the parity Formula was based on the fact that it had given Baluchistan inadequate representation — five seats to the province and five more to its states out of the 200 seats in the House of the People allocated to West Pakistan.<sup>56</sup> The Punjab leaders, too, felt that East Pakistan with more representation in the lower House would dominate the less cohesive provinces and states forming West Pakistan.<sup>57</sup> The Press in West Pakistan also joined in the controversy for one reason or the other. Almost all the newspapers of West Pakistan, with the exception of the *Dawn* and the *Civil and Military Gazette*, denounced the principle of parity between East and West Pakistan. *The Evening Times* (Karachi), *The Sind Observer* (Karachi), *The Jung* (Karachi), *The Tameer* (Rawalpindi), *The Anam* (Karachi), *The Millat* (Karachi), *The Zamindar* (Lahore), *The Maghribi Pakistan* (Lahore), all were critical of the BPC Report in this respect.<sup>58</sup>

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52. See the proceedings of the emergency meeting of the Working Committee on 23 December 1952, in the *Morning News*, 24 December 1952.

53. *Evening Times* (Karachi), 27 February 1953.

54. *Pakistan Times* (Lahore), 29 December 1952.

55. *Ibid.*, 25 December 1952.

56. CAPD, XI 1, 1952, p.158.

57. G.W. Choudhry, *Constitutional Development in Pakistan* (Lahore: The Iqbal Book House, 1969), p.74.

58. This is based on a report published in the *Morning News* (Dacca), 30 December 1952.

In spite of such adverse criticism, the principle of parity seems to have been the only possible solution for breaking down narrow provincialism and for restoring mutual confidence among the people of the two wings of the country. By giving due weightage to West Pakistan as the larger territory area a balance was intended against the majority population claim of East Pakistan. Neither could have then thought of dominating the other. But, unfortunately, the spirit of accommodation which the framers of the Report had expected was not forthcoming from the provincial-minded politicians and the problem of parity remained a controversial issue.

Another omission of the Report was that it did not touch the issue of the State language. It meant that either the framers of the Report attached no importance to the language issue or that they had avoided an open verdict in view of the pressure from East Pakistan in favour of Bengali. This silence also suggests another aspect of the matter. Since the Interim Report had already declared in favour of Urdu the framers of the Report felt no need of repeating a 'settled' issue. Otherwise, they would certainly have made a recommendation in a contrary sense.

The BPC Report was scheduled to be discussed in the CAP on 1 January 1953, but on the demand of various political parties, its consideration was postponed. Particular pressure to this effect had come from an All-Parties convention held at Lahore on 28 December 1952. The primary reason behind this demand seems to have been a desire to gain time to study the recommendations. No less an important factor in delaying the consideration of the Report was the anti-Qadiani movement of March-May 1953. The Qadiani issue cropped up in the wake of an aggressive missionary programme of the Ahmadiyya community. The speeches of the Head of the Community, delivered since the establishment of Pakistan and especially during the early fifties indicated presence of a well thought out plan to convert the whole of Pakistan to Ahmadiyya doctrines.<sup>59</sup> Such an aggressive programme was

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59. Government of the Punjab, Report of the Court of Inquiry Constituted under the Punjab Act II of 1954 to enquire into the Punjab Disturbances of 1953, Lahore, 1954, p.261. This Report is popularly known as the Munir Report.

strongly resented by the orthodox opinion in the country and exploded ultimately in the riots of March-May 1953. A demand was raised by the generality of orthodox Muslims to declare all Ahmadis non-Muslims. Indifference on the part of the government resulted in protest meetings and procession which were resisted by the authorities. The policy of the Government to crush the rioters resulted in violence and created a serious law and order problem. It was suspected in political circles that the Punjab Government of Mumtaz Daultana was behind these riots.<sup>60</sup> Daultana's 'plot' was believed to be an attempt to brow beat the Central Government into accepting his views on the national and constitutional issues. Some religious groups unwittingly provided him the actors to stage this drama.<sup>61</sup> But Daultana's scheme back fired. Governor- General Ghulam Mohammed, who was also looking for an opportunity to establish his power, used the Qadiani issue to his own advantage. In April 1953, he played his final card and accusing Nazimuddin for inability to check the riots dismissed him from the Premiership. In the same month he summoned Mohammed Ali of Bogra the then Pakistan Ambassador to the United States, and appointed him the Prime Minister.

Time was also needed by the Bogra Government to thrash out with the provincial governments those constitutional issues which had emerged as a result of the controversy over the BPC Report. Consequently, early in October 1953, a settlement with the provincial governments was arrived at and the CAP resumed discussions on the BPC Report. On 7 October, Mohammed Ali of Bogra moved his new Parity Formula. It was an ingenious scheme:<sup>62</sup>

- i. The upper House was to be composed of 50 members to be equally distributed among five units: (1) East Bengal; (2) the Punjab; (3) NWFP, Frontier States and Tribal Areas; (4) Sind and Khairpur; (5) Baluchistan province, Baluchistan States Union, Bahawalpur and Karachi.

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60. *Ibid.*, pp.270 -72.

61. Leonard Binder, *Religion and Politics in Pakistan* (Berkeley: California University Press, 1961), pp.259-96.

62. For text of the Formula, see CAPD, XV, No. 2, pp.13-14.

- ii. The lower House was to be composed of 300 members to be divided among the five units on population basis as shown below:

	<b>Units</b>	<b>Members</b>
(1)	East Bengal	165
(2)	Punjab	75
(3)	NWFP Frontier States and Tribal Areas	24*
(4)	Sind and Khairpur	19*
(5)	Baluchistan, Baluchistan States Union Bahawalpur and Karachi	17*
	<b>Total:</b>	<b>300</b>

(\* These seats were to be further divided in accordance with the population of the constituent parts of this Unit).

- iii. Both the upper and the lower Houses were to have equal powers. A vote of confidence/no-confidence/election of the Head of the State could be passed only if a majority of the two Houses sitting jointly voted for it, provided, however, that the members voting for it included at least 30 per cent of the members from each zone, i.e., East and West Pakistan.
- iv. In case of a difference of opinion between the two Houses in respect of any measure, a joint session of the two Houses was to be called and the matter decided by a majority vote, provided that the majority included 30 per cent of the members present and voting from each zone. If this measure was not carried or the joint session failed to carry this, the Head of the State could dissolve both the Houses and order fresh elections. But in doing so he was to act on the advice of the 'Ministry'.
- v. The Head of the State was to be elected from a zone different to that to which the Prime Minister belonged.<sup>63</sup>

The Mohammed Ali Formula revolved mainly round two basic issues. First, it gave a new shape to the principle of parity; and secondly, it provided for the election of the Head of the State from the zone other than to which the Prime Minister belonged. Bogra, the architect of the Formula, claimed that his scheme would not only ensure parity between the two zones but would also make them inter-dependent. He emphasised that that would cripple any

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63. *Ibid.*, p.14.

tendencies towards provincialism and thus integrate the various units. It would then pave the way for the enhancement of national feelings.

And indeed the Formula was enthusiastically welcomed by the politically-minded intelligentsia and the press. Jam Sahib of Lasbela (Baluchistan States) and P. D. Bhandara (Punjab) lauded the Formula and its architect.<sup>64</sup> The leaders of the Jamiat Ulema-i Islam, led by Maulana Zafar Ahmed Usmani, were in particular complimentary about the Formula and thought that the Muslims of Pakistan had been saved from a grave crisis.<sup>65</sup> The Press in general welcomed the Formula and some important newspapers such as *The Morning News*, *The Dawn*, *The Pakistan Times*, *The Pakistan Observer*, and *The Civil and Military Gazette*, gave favourable coverages to it.<sup>66</sup> Even *The Statesman* of Calcutta (India) cautiously complemented the Pakistan Prime Minister for his efforts in providing a solution to the parity problem.<sup>67</sup>

The Formula, which was certainly an improvement on the relevant clauses of the BPC Report, had been framed as an answer to the intense reaction which had ensured the publication of the Report. It gave due weightage to West Pakistan comprising larger territory and to East Pakistan having majority population, though the principle of Parity was reflected in case of a joint session of the Federal Legislature. The composition of the two Houses was such that even in case of a conflict there would have been no feelings of mistrust. Besides, a motion could not be passed until it had the support of at least 30 per cent of the members of the legislature from either zone. In this way an attempt had been made to create political harmony in Pakistan.

It cannot, however, be said that there were no critics of the Mohammed Ali Formula. In fact its detractors were quite frank about their opposition. Mian Iftikharuddin, for instance, termed the Formula as 'worthless' and maintained that it would hamper the

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64. CAPD, XV, No. 2, pp.47-48.

65. *Dawn*, 9 October 1953.

66. See the issues of 8 October 1953.

67. *Dawn*, 9 October 1953.

democratic expression of the popular will.<sup>68</sup> Dharendra Nath Dutta from East Pakistan called it a 'fraud' and alleged that it had been prepared in 'pardah', without knowledge of the Hindu members of the CAP.<sup>69</sup> The criticism of Rajkumar Chakraverty was more substantial. He argued that the Formula was 'merely a patch-work' and instead of ensuring checks and balances would encourage provincialism and negate the intentions of the Formula, i.e., 'Pakistan first and the Units next'.<sup>70</sup> But in spite of the Opposition, the ruling party which had an overwhelming majority in the CAP, was able to carry the Formula easily. The BPC Report was accordingly amended.

A general discussion of the BPC Report began immediately after the introduction of the Formula in the CAP on 7 October 1953 and it continued until the 26th of the same month. Afterwards, the clause by clause examination of the Report lasted until 21 September 1954. There were still many controversial points, particularly the Islamic nature of the State, which had to be straightened out. The discussions in the CAP showed that the opinion was sharply divided, especially where minority or provincial interests were involved. But, in order to speed up the work of drafting the CAP, on 14 November 1953, appointed a Drafting Committee, to do its work side by side with the discussions in the CAP. The seven-member Drafting Committee was headed by Sardar Abdur Rab Nishtar and consisted of Fazlur Rahman, D. N. Dutta, Abdus Sattar Pirzada, A. K. Brohi, Chaudhri Muhammad Ali, and Sardar Amir Azam Khan as its members. The Committee was required to prepare the draft Constitution by 1 January 1955.<sup>71</sup>

The discussion on the Islamic provisions of the BPC Report began first. The main attack was directed against the proposal that no legislature could enact laws repugnant to the principles of Islam. The Hindu members of the Pakistan National Congress led the attack. K. K. Dutta believed that the clause was akin to

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68. CAPD, XV, 1953, p.16.

69. *Ibid.*, p.53.

70. *Ibid.*, pp.71-73.

71. *Ibid.*, p.753.

'curtailing the powers of legislatures' which was against the established principles of democracy.<sup>72</sup> Prof. Chakraverty termed this clause as contradictory to the fundamental rights. B. C. Nandy considered the limitations in the powers of the Muslim-dominated House as absolutely redundant and showing a complete lack of confidence in the people. He termed this to be a 'very dangerous thing'. He also thought that the adoption of such a clause would encourage sectarian fanaticism. The rise of communal feelings in Pakistan, he observed, would arouse similar feelings in India where the main sufferers would be Muslims. A. K. Brohi, as the Law Minister, tried to allay the fears of the non-Muslims. He argued that the Objectives Resolution of March 1949 had subjected the legislative competence of the Federal Legislature to the injunctions of the Qur'an and the Sunnah. They had already accepted the Objectives Resolution and it was only logical that they should accept the limitations imposed by it.<sup>73</sup> The legislator could not be trusted to enact laws in conformity with the tenets of Islam, because there was every possibility that ignorance would triumph over the clear injunctions of the Qur'an.<sup>74</sup> But Brohi's arguments had no effect on the Opposition who offered a stiff resistance. In the end, however, the Government was able to win the argument and, on 30 October 1953, the relevant clause regarding the repugnance of laws was passed. However, on the motion of M. H. Kizilbash the CAP inserted an amendment to the effect that the clause would be applicable to a particular sect only in accordance with the interpretations recognised and accepted by that sect.<sup>75</sup>

Originally, the Interim Report of the BPC had recommended Urdu as the national language. There was no mention of Bengali. The Final Report had ignored the language issue. But on 7 May 1954, on Mohammed Ali Bogra's motion, another amendment was accepted under which both Urdu and Bengali were declared to be the national languages of the Republic. The Head of the State was

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72. *Ibid.*, pp.595-96.

73. *Ibid.*, p.618.

74. *Ibid.*, p.619.

75. *Ibid.*, p.628. The amendment was passed on 31 October 1953.

also empowered to give to any other provincial language the status of national language. The members of the legislative assemblies were free to express themselves either in Urdu or Bengali in addition to English. For the purpose of examinations for the central services, all provincial languages were placed on equal footing. It was also recommended that Arabic, Urdu and Bengali should be taught in secondary schools with a view to enabling students to take up either of them in addition to the language used as medium of instruction in that institution. The idea was, as Bogra explained, to provide scope for the evolution of common national language.<sup>76</sup> English was to be continued for official use for 20 years after the promulgation of the Constitution. The Federal Legislature was, however, empowered to extend the use of English beyond the specified period.<sup>77</sup> After the expiry of ten years of the promulgation of the Constitution a Commission was to be appointed to recommend whether to replace or to continue the English language. After introducing a motion in the CAP, Mohammed Ali Bogra explained the purpose of his motion in a long speech.<sup>78</sup> He explained that the solution had not been a unique feature for there were a number of countries who had adopted more than one State languages. Afghanistan, Belgium, Canada, Ethiopia, Finland, Ireland, Luxembourg and Philippines, all had two languages. There were countries like Switzerland, which had even three official languages.<sup>79</sup> The two languages were certainly, he claimed, in consonance with the demand in both the wings of the country.<sup>80</sup>

The Report had recommended that no amendment of the Constitution should be carried out until the Federal and the provincial legislatures had consented to it. This had been done deliberately in order to discourage frequent amendments to the Constitution. But it was felt that there was a need to specify those articles of the Constitution which required the approval of the

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76. CAPD, XVI, 1954, p.87.

77. *Ibid.*, p.93.

78. *Ibid.*, pp.85-89.

79. *Ibid.*, p.86.

80. *Ibid.*, p.88.

Federal and the unit legislatures before they could be presented to the Head of the State for authentication. On 27 May 1954, A. K. Brohi, the Law Minister, introduced a motion to this effect and managed to get it passed the same day.<sup>81</sup> These specific articles included the election and the removal of the President; the extent of the executive power of the Federation; the units; the Federal Judiciary; High Courts; relations between the Federation and the units; list of subjects; the composition of the Federal Legislature; and the prohibition of legislation repugnant to the Qur'an and the Sunnah. In case of an amendment in any other matter either House of the Federal Legislature was empowered to initiate. Support of two-thirds of the members of either House present and voting was necessary. In case of a conflict between the two Houses, the bill was deemed to have been rejected automatically.<sup>82</sup> This procedure of amendment, which enjoyed the support of men like Sardar Abdur Rab Nishtar, had, however, some basic defects. In the first place, it amounted to reducing the amendment bills to the level of ordinary legislative bills which required the approval of the Head of the State in ordinary manner. Secondly in case of non-specified subjects previous consent of the Head of the State was necessary.<sup>83</sup> A bill could not be introduced in the Federal legislature if the Head of the State refused to give his permission.

The BPC Report had provided for separate electorates for non-Muslims. Seats for them were reserved in the Federal as well as in the Unit legislatures. Ministers for Minority Affairs were to be appointed both at the Centre and in the provinces to look after the interests of the minorities. But, ironically, the provision of separate electorates was disapproved by the Hindu members themselves.<sup>84</sup> They wanted to have reservation of seats only for the Scheduled Castes. For everybody else they preferred joint electorates.<sup>85</sup> But this the framers of the BPC Report were not prepared to concede. They were committed to Islamic Ideology. For implementation of

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81. *Ibid.*, pp.146-47 and 153-54.

82. *Ibid.*, p.153.

83. *Ibid.*, pp.149-50.

84. See their views in CAPD, XII, 1952, pp.166-67; and CAPD, XV, 1953, pp.55-60.

85. CAPD, XII, 1952, pp.166-67.

this ideology it was necessary that there should be a distinction between Muslims and non-Muslims in relation to vital national issues. Though the Muslims were to maintain their separate identity, they were to have no feelings of enmity towards non-Muslim Pakistanis. To off set any apprehensions in this regard an amendment was approved by the CAP on 7 September 1954, which brought about a change in the Fundamental Rights clause.<sup>86</sup> Under this clause the citizens of Pakistan were ensured the right of moving the Supreme Court or the High Courts of Pakistan if they felt that their fundamental rights had been usurped. It was also declared that the rights guaranteed by this Article were not to be suspended except as provided in the Constitution. This was a vital amendment as it not only settled a fundamental issue but also restored confidence in the hearts of the citizens of Pakistan.

In September 1954, another heated discussion began in the CAP on the question of the distribution of powers between the Centre and the Units. The controversial point was the grant of residuary powers to the Centre. Particular objection came from Bengal and the Frontier where it was believed in certain sections that the Centre had been made strong at the expense of the units. Therefore, they were in favour of stripping the Centre of all its powers except those of defence, foreign affairs and currency. Dharendra Nath Datta was prominent in demanding maximum autonomy to the units.<sup>87</sup> Similarly, Khan Abdul Ghaffar Khan of the Frontier pleaded that only strong Units would lead to a strong Centre. By supporting the demand for maximum provincial autonomy, he was, thus trying to advance his 'Pakhtunistan' stunt. But the Opposition was unable to carry the House in its favour and residuary powers remained with the Centre.<sup>88</sup>

During the debate on the distribution of powers between the centre and the units the discussion turned to the formation of one unit of West Pakistan. Firoz Khan Noon was mainly responsible for initiating this discussion. He suggested that since an overwhelming opinion was for delegating powers to the East

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86. CAPD, XVI, 1954, p.344.

87. *Ibid.*, p.375.

88. *Ibid.*, p.382.

Bengal legislature, there should be similarly an administration on behalf of West Pakistan provinces which should administer subjects delegated to it.<sup>89</sup> Noon, alongwith Pirzada and Nurul Amin, drew up a list of subjects which they wished to be handed over to the central legislature. The rest were to be delegated to the Units. In West Pakistan they were to arrive at some sort of a system by which these subjects could be managed jointly on behalf of the various provinces. The mover claimed that in Western Pakistan there was 'considerable weight of opinion for giving more powers to the East Bengal Legislature and [for] administering the departments jointly on behalf of West Pakistan provinces'.<sup>90</sup> This, Noon maintained was immensely important for the integrity of the country. He also favoured a unitary form of government.<sup>91</sup> In his opinion this would rule out the possibilities of quarrel between the provinces.<sup>92</sup> Noon's contention, which also had the support of Jam Sahib Mir Ghulam Qadir Khan of Lasbela, was, however, challenged by some influential leaders. Khwaja Nazimuddin would not believe that any of the provinces was in favour of 'One Unit'. He was curious to know why Noon had not raised such a demand during the three years of his association with the BPC.<sup>93</sup> Syed Shamsur Rahman from East Pakistan suspected a foreign hand in the demand for a Zonal Federation for West Pakistan.<sup>94</sup> Khan Abdul Qaiyum Khan of the Frontier asserted that the people of the Frontier were not in favour of such a scheme.<sup>95</sup> Ghaffar Khan, on his part, wanted a verdict of the people before accepting the scheme and proposed that there should be two instead of one unit for West Pakistan. Abdus Sattar Pirzada of Sind, too, declared himself against the 'One Unit' demand.

The discussions on the BPC Report ended on 21 September 1954, and the CAP formally declared its approval by 29 votes to

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89. *Ibid.*, p.356.

90. *Ibid.*, p.357.

91. *Ibid.*, p.357.

92. *Ibid.*, p.357.

93. *Ibid.*, pp.360-62.

94. *Ibid.*, pp.362-63.

95. *Ibid.*, p.364.

11. The Hindu members from East Bengal strongly resisted the passage of the Report. The leader of the Congress Party in the Assembly deplored that the Report had made the Hindus 'outlaws', without any right whatsoever.<sup>96</sup> Such criticism was, however, unjustified because the Report contained a number of Safeguards for the non- Muslims. They could even move the Supreme Court if they thought that their rights had been violated in any way.

The BPC Report, as approved by the CAP, consisted of 17 parts, 276 paragraphs and 2 schedules.<sup>97</sup> The Preamble incorporated all the provisions of the Objectives Resolution passed by the CAP on 12 March 1949. Chapter II of Part I incorporated the Directive Principles of State Policy which were eighteen in number. The State was to be guided by the Objectives Resolution. According to this the Muslims of Pakistan were to be enabled to order their lives in accordance with the precepts of Islam. Drinking, gambling, prostitution, and *riba* were to be prohibited and eliminated. Proper steps were to be taken for the organisation of *zakat*, *waqfs* and mosques. At the same time the State was to endeavour to discourage amongst Pakistanis all parochial, tribal, racial, sectarian and provincial prejudices and to inculcate in them a spirit of unity and solidarity. The State was also to protect 'all legitimate rights and interests' of non-Muslim communities.<sup>98</sup> The State was also to endeavour to remove illiteracy and economic disparity amongst the masses and to look after the social and economic well being of the people. For a smooth working of the State, Judiciary was to be separated from the Executive within three years. These principles of State policy were for the general guidance of the State and in case of violation by the State, they were not enforceable in any court of law. It was, however, the duty of the State to apply these principles in matters of legislation and administration.<sup>99</sup>

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96. *Ibid.*, p.571.

97. Government of Pakistan, Report of the Basic Principles Committee (as adopted by the Constituent Assembly of Pakistan on 21st September, 1954), Islamabad, 1970, pp.1-80.

98. *Ibid.*, p.3.

99. *Ibid.*, p.4.

A procedure for preventing legislation repugnant to the Qur'an and the Sunnah was laid down in Chapter III of Part I of this Report: first, the legislatures were forbidden to enact such laws, and secondly, the Supreme Court was empowered to determine whether or not a particular law was repugnant to the Shariat.<sup>100</sup> Originally, this particular function was to be performed by a Board of five ulama. The Board was required to give its opinion on a bill referred to it by the Head of the State. Their verdict was then to be taken up by a joint session of the Parliament. If the members of the Board were unable to arrive at a unanimous decision, the Head of the State had the power to pronounce his own 'Islamic' judgement. But this was a difficult procedure. First, it was almost impossible for the Board to achieve unanimity. Secondly, as the members of the Board were to be appointed by the Head of the State there was every likelihood that the latter would carry his opinions. And, lastly, this procedure encountered opposition for the legislators who thought that the creation of the Board to review their legislative decisions was an insult to them. For these reasons the procedure was changed. Now, instead of the Board, the Parliament was made sovereign in all legislative matters. To decide whether a certain law was repugnant to the precepts of Islam was left to Supreme Court of Pakistan. The decision was to be arrived at by all the five judges through a majority vote. The laws pronounced 'un-Islamic' by this Bench were to be declared null and void. Thus, unlike the final Report, the amended Report authorised every Pakistani (and not merely the members of the Parliament) to watch the Islamic character of the Constitution. Fiscal and monetary measures, laws relating to banking, insurance, provident funds, loans and such other matters affecting the existing economic, financial and credit systems were, however, exempted from the operation of this clause.<sup>101</sup>

The 'Islamic Republic of Pakistan' was to be a Federal State.<sup>102</sup> The Head of the State was to be a Muslim of at least 40

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100. *Ibid.*, p.4.

101. *Ibid.*, p.5.

102. *Ibid.*, p.5.

years of age. He was to be called President.<sup>103</sup> He was to be elected at a joint sitting of both the Houses of the Federal Legislature for a term of five years, provided 30 per cent of the members from each of the two zones had voted for him.<sup>104</sup> No person would hold office of the President for more than two consecutive terms. In case of a casual vacancy the Chancellor of the Senate, or the Speaker of the House of Representatives, or the Governor of the Unit (in order of seniority) was to act as President until such time as he resumed office or a new President was elected.<sup>105</sup> The President could, however, be removed from office if a majority of the members of either House of Parliament moved a resolution and that resolution was passed at a joint session by at least a two-thirds majority of the total strength of the two Houses of the Federal Legislature. In the discharge of his duties the Head of the State, except where he was expressly empowered to act in his discretion, was to follow the advice of the Prime Minister or the Ministers concerned.<sup>106</sup>

The Cabinet, whose job was to aid and advise the President in discharge of his duties, was to consist of a Prime Minister and several Ministers. The appointments were to be made by the President from amongst the members of Federal Legislature. He could also dismiss any Minister for which action he could not be questioned in any court of law.<sup>107</sup> Though the President had control over the appointment or the dismissal of the Ministers, he was not responsible to the Parliament. It was the Cabinet, which was answerable to the Legislature.

The Report provided for a bicameral Federal Legislature called the 'Parliament'. The upper House was to be called the Senate and the lower House, the 'House of Representatives'. Senate was to consist of 50 members with two additional seats for women. These 50 seats were to be equally divided amongst the five component units as provided in paragraph 41 (2) and (3) of the

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103. *Ibid.*, p.68.

104. The Report recognised two zones of the country.

105. *Ibid.*, p.7.

106. *Ibid.*, p.8.

107. *Ibid.*, p.9.

Report.<sup>108</sup> In case of the Punjab and East Bengal the distribution of seats was easy as both were comprehensive units. Each was given 10 seats in the Senate. But in case of the remaining three units the distribution of seats was a complicated matter. The problem however, was solved amicably in the following manner: (1) NWFP, including the Frontier States was given 10 seats; (2) Sind and Khairpur received 9 and 1 seats respectively; (3) Baluchistan, including Baluchistan States Union, got 3 seats; the federal capital (Karachi) was given 3 seats; while Bahawalpur State received 4 seats. The Head of the Senate was called the Chancellor and that of the House of the Representatives the Speaker.<sup>109</sup> The members of the Parliament were to be elected by the legislatures of the component units on the basis of proportional representation. The House of Representatives was to consist of 300 members with additional 14 temporary seats for women. Out of these East Bengal was given 165 seats and the remaining seats were distributed among the four units of West Pakistan as follows: Punjab = 75; NWFP = 13; Frontier States and Tribal Areas = 11; Sind = 19; State of Khairpur = 1; Baluchistan = 3; Baluchistan States Union = 2; Capital of the Federation = 4; Bahawalpur State = 7.<sup>110</sup> The members of the House of Representatives were to be elected through adult franchise. Every citizen with sound mind who had attained the age of 21 years was entitled to vote at elections to the House of Representatives.<sup>111</sup> The life of either House of the Federal Legislature was five years. The President was, however, empowered to summon, prorogue or dissolve the Federal Legislature at any time.<sup>112</sup> Joint sessions of the Parliament could also be summoned only by the President. Both the Houses were given equal powers, except in the case of money bills which were to originate in the House of Representatives.<sup>113</sup> However, after their passage in the lower House the money bills were required to

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108. *Ibid.*, p.10.

109. *Ibid.*, p.68.

110. *Ibid.*, p.13.

111. *Ibid.*, p.16.

112. *Ibid.*, pp.18-19.

113. *Ibid.*, p.19.

undergo a similar procedure in the upper House. In case of a difference of opinion between the two Houses the matter was to be brought to a joint session summoned by the President. The motion was then to be decided by a majority vote of at least 30 per cent members of the Parliament from each of the two zones.<sup>114</sup> The Parliament was also given the power to change the boundaries of any unit on the initiative of the Head of the State and with the approval of the legislature of the unit or units. At least one session of the Parliament was to be held in Dacca.<sup>115</sup> The Report also recommended the reservation of seats in the House of Representatives for the minorities. The number of seats for each of these communities was, however, not determined in the Report. This was to be fixed at the time of the framing of the actual Constitution.<sup>116</sup> A provision was also made for the representation of Kashmir, Junagadh, and Manavdar in the Parliament at a time when they had finally acceded to Pakistan.<sup>117</sup> Part IV of the Report dealt with the component units.<sup>118</sup> The Executive authority of the Unit was to be vested in the head of the Unit called the 'Governor'. The Governor was to be appointed by the Head of the State for a term of five years or until such time that he ceased to enjoy the confidence of the Head of the State. In the case of the states the existing rulers were to be considered as Governors of their respective states. Except in cases where it was provided in the Constitution, the Governor was to act on the advice of his ministers. The Unit Cabinet was made collectively responsible to the Unit Legislature.<sup>119</sup> Each Unit legislature was to be termed Legislative Assembly.<sup>120</sup> The Legislative Assembly was to be composed of members chosen by direct elections. Its head was to be named as Speaker.<sup>121</sup> It was, however, left to the Parliament to

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114. *Ibid.*, p.23.

115. *Ibid.*, p.18.

116. *Ibid.*, pp.15 & 80.

117. *Ibid.*, p.14.

118. *Ibid.*, pp.25-36.

119. *Ibid.*, p.27.

120. *Ibid.*, p.68.

121. *Ibid.*, p.68.

determine the number of seats for each of the Unit Legislatures. In determining the number of such seats the non- Muslim minorities were to be given the benefit of reserved seats in accordance with their population in a particular State or Province.<sup>122</sup>

The Head of the Unit was empowered to send messages to the Unit Legislature,<sup>123</sup> as well as to summon, prorogue or dissolve it.<sup>124</sup> A Unit legislature was to have its Chairman and a Deputy Chairman. A bill passed by a Unit legislature was to be presented to the Head of the Unit who was to authenticate it or to return it to the House within ninety days. In the latter eventuality, the Unit legislature had the power to override the veto by passing that bill again, with or without an amendment, and then it was binding on the Head of the Unit to assent to the bill.<sup>125</sup> The Unit Legislature was also empowered to discuss and review the annual financial statement laid before it by the Head of the Unit.<sup>126</sup> Money bills, however, were to be introduced in the House only on the recommendation of the Head of the Unit.<sup>127</sup>

The States of Bahawalpur and Khairpur were also given the status of a Province with the exception that instead of the Governors, the constitutional heads of these States were to be their rulers.<sup>128</sup> With regard to Baluchistan, the Report recommended that it should be given the status of a province with special powers to the Governor in order to prevent any threat to peace and tranquillity of the province. The period of these special powers was five years but it could be extended by the Federal Legislature.<sup>129</sup>

The Report provided for three legislative lists, namely, the Federal List, the Unit List, and the Concurrent List. The Federal List consisted of 66 items, the Unit List of 48 subjects, while the

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122. *Ibid.*, p.27.

123. *Ibid.*, p.28

124. *Ibid.*, p.31.

125. *Ibid.*, p.34.

126. *Ibid.*, pp.34-35.

127. *Ibid.* pp.35-36.

128. *Ibid.*, p.37.

129. *Ibid.*, p.38.

Concurrent List comprised of 38 items.<sup>130</sup> The Federal List was the jurisdiction of the Federal Legislature and the Unit List fell within the purview of the Unit legislatures. But on matters enumerated in the Concurrent List both the federal and the unit legislatures could legislate. The Head of the State was, however, authorised to amend or change any of these lists in consultation with the provincial governments.<sup>131</sup> In the event of a clash between the federal and the unit legislatures, the Federal law was to prevail over that of the unit legislatures.<sup>132</sup> Paragraph 175 of the Report provided for a Supreme Court of Pakistan which was to consist of a Chief Justice and between two to six other Judges.<sup>133</sup> The Chief Justice was to be appointed by the head of the State. The other judges were also to be appointed by him on the recommendation of the Chief Justice. The decisions of the Supreme Court were to be final and binding on all institutions of the country.<sup>134</sup> A judge of the Supreme Court could not be removed from his office except on grounds of misbehaviour or infirmity of mind or body and even that was to be done on the recommendation of a Bench consisting of at least three judges of the Court. The Head of the State was only to give effect to the recommendations of the Bench in this respect.<sup>135</sup>

Paragraph 206 (I) of the Report provided for a High Court for four of the units: East Pakistan, the Punjab, Sind and the NWFP. The High Court of Sind was also to have jurisdiction over the province of Baluchistan as well as the Federal Capital. The judges of the High Courts were to be appointed by the Head of the State in consultation with the Chief Justices of the Supreme and the High Courts, as the case may be.<sup>136</sup> Part XI of the Report dealt with the Services and the Public Service Commissions.<sup>137</sup> Paragraph 238

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130. *Ibid.*, p.38. See also Schedule I of the Report.

131. *Ibid.*, p.39.

132. *Ibid.*, p.40.

133. *Ibid.*, p.46.

134. *Ibid.*, p.50.

135. *Ibid.*, p.47.

136. *Ibid.*, p.53.

137. *Ibid.*, pp.58-63.

provided for a Public Service Commission for the Federation and one for each Unit. The Chairman and members of the Federal Public Service Commission were to be appointed by the Head of the State and those of the Provincial Commission by the Head of the Unit. The Chairman and the members of the Commissions could not be removed from office except as provided for the Judges of the Supreme and the High Courts.<sup>138</sup> The Public Service Commissions were to conduct examinations for appointment to the services of the Federation and the Units, as the case may be.<sup>139</sup>

Part XII of the Report dealt with the Elections.<sup>140</sup> An Election Commission was to be constituted which was responsible for conducting elections to the federal and the unit legislatures. The Chief Election Commissioner and the members of the Commission were to be appointed by the Head of the State.<sup>141</sup> The Chief Election Commissioner could not be removed from office by the Head of the State except in the manner and on the grounds laid down for the removal of a Judge of the Supreme Court.<sup>142</sup>

The Head of the State was also empowered to proclaim a state of emergency if the security, the economic life or the stability of Pakistan was threatened to a situation in which the Government of a Unit could not be carried in accordance with the Constitution. In such a situation the Head of the State was also empowered to promulgate ordinances.<sup>143</sup>

Part XIV of the Report dealt with miscellaneous provisions of national and international importance. All the treaties were to be made by the President with the proviso that treaties concerning political alliances were subject to ratification by the Parliament. Karachi was to be the Capital of the country. Judiciary was made responsible for the interpretation of the Constitution.<sup>144</sup>

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138. *Ibid.*, p.61.

139. *Ibid.*, pp.61-62.

140. *Ibid.*, pp.63-65.

141. *Ibid.*, p.63.

142. *Ibid.*, p.64.

143. Part XIII of the Report. See *ibid.*, pp.65-66.

144. *Ibid.*, p.67.

Part XV of the Report dealt with the procedure for amending the Constitution.<sup>145</sup> An amendment could be moved in either House of the Parliament. In the case of a difference of opinion between the two Houses the amendment stood dropped. An amendment could be passed by the Federal Legislature by a two-thirds majority.<sup>146</sup> Thereafter, it required the approval of the President. Upon such an assent having been given, the Constitution was deemed to have been amended. The amendments relating to the clauses such as the election and the removal of President, the extent of executive powers of the Federation and the Units, the subject lists, the composition of the Parliament and the prohibition of legislation repugnant to the Qur'an and the Sunnah required the prior approval of the Parliament as well as of each of the legislative assemblies.<sup>147</sup>

Part XVI of the Report dealt with the transitional provisions which were necessary for the change of constitutional arrangements from the present to the future.<sup>148</sup> And, lastly, Part XVII dealt with the national languages. It included the suggestion of Mohammed Ali Bogra that both Urdu and Bengali should be made the national languages of Pakistan.<sup>149</sup>

The BPC Report was a sort of a Constitutional draft upon which the actual Constitution was to be based. It was a document which had largely removed the mistakes of the previous reports on Pakistan's Constitution. It improved the constitutional set up practised under the Government of India Act of 1935. It curtailed the irritating powers of the Governor-General and delegated those to the Parliament which was now to be the 'sovereign' body of the State. The draft also reflected the efforts for an 'Islamic' constitution. Not only was the State to be called 'The Islamic Republic of Pakistan', it was expected to follow the precepts of Islam. According to the Directive Principles of State Policy the State was to inculcate among Muslims a true Islamic spirit and

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145. *Ibid.*, pp.68-69.

146. *Ibid.*, p.68.

147. *Ibid.*, pp.68-69.

148. *Ibid.*, pp.69-72.

149. *Ibid.*, p.72.

endeavour for the attainment of unity and solidarity of the entire Muslim *millat*. Even the existing laws of the country were to be brought in conformity with the precepts of Islam. In short, the constitutional proposals envisaged a new era for Pakistan.

On 21 September 1954, the discussions on the BPC Report having been completed, the CAP adjourned. It was to re-assemble on 27 October when the Drafting Committee was expected to present its draft on the Constitution. But Ghulam Mohammed had different ideas. He was not prepared to accept the curtailment of his powers by the CAP. His particular objection was to three bills: the first was the one (passed on 2 August 1954) by which the CAP had appropriated to itself the 'power to make constitutional provisions for the whole of the Federation of Pakistan',<sup>150</sup> the second was an amendment (passed on 21 September) which declared the Council of Ministers to be the sovereign executive of the state and bound the Governor-General to the advice of the Prime Minister;<sup>151</sup> and the third was the bill (also passed on 21 September) which repealed the hated Public and Representative Offices (Disqualification) Act of 1949 and stipulated that all the cases instituted under it shall be deemed to have been dropped.<sup>152</sup> As soon as Ghulam Mohammed heard of the CAP'S audacity to prune his powers he called in the Secretary of the Law Department, Sir Edward Snelson, and 'prohibited him from bringing the new constitution on the statute book'.<sup>153</sup> This happened while Bogra was away to the United States on an official visit. Encouraged perhaps by Ayub Khan and Iskander Mirza, Ghulam Mohammed thought of staging another coup. Bogra was ordered to cut short his visit and to return to Karachi at once. The Prime Minister dutifully obeyed the summons but became recalcitrant when he heard of the latter's plans to dissolve the CAP. Under duress, however, he capitulated.<sup>154</sup> On the morning of 24 October 1954, Ghulam

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150. *The Gazette of Pakistan* (Extraordinary), 2 August 1954.

151. *Ibid.*, 21 September 1954.

152. *Ibid.*, 21 September 1954.

153. S. Hashim Raza, 'History of Constitution-making', in *Dawn*, 14 August 1973.

154. *Ibid.*

Mohammed surprised everyone. He dissolved the CAP and declared a state of emergency. His proclamation stated inter alia:

The Governor-General having considered the political crisis with which the country is faced, as with deep regret come to conclusion that the constitutional machinery has broken down. He, therefore, has decided to declare a state of emergency throughout Pakistan. The Constituent Assembly as at present constituted had lost the confidence of the people and can no longer function. The ultimate authority vests in the people who will decide all issues including constitutional issues through their representatives to be elected afresh. Elections will be held as early as possible.<sup>155</sup>

To say the least, Ghulam Mohammed's action was unprecedented. It was not clear how the constitutional machinery could have broken down when the CAP had almost completed its work on the Constitution. In fact the dissolution of the CAP was only a question of time. Once it had finished its constitution-making responsibility it would have dissolved automatically. Ghulam Mohammed's action was thus nothing more than a crude attempt at perpetuating his personal rule. And for that he had not hesitated from sacrificing national interests. Ghulam Mohammed's action becomes all the more untenable because Prime Minister Bogra had even announced 15 December 1954, as the date when the new Constitution was to be promulgated.<sup>156</sup>

Previously, all the orders and proclamations of the Governor-General were issued in exercise of powers under the Act of 1935 or the other accepted laws of the land. But the proclamation of 24 October was issued without reference to any law whatsoever. In his unconstitutional gamble Ghulam Mohammed had been helped immensely by the army generals and the bureaucracy and by the leaders' failure on a Constitution. For more than seven years they had wasted time in mutual recriminations and petty hair splitting. The unnecessary delay caused the CAP to lose confidence among

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155. *Dawn*, 25 October 1954.

156. G. W. Choudhury, *Democracy in Pakistan*, (Vancouver: University of British Columbia, 1963), p.75.

the people and, at the same time, it encouraged the Governor-General to flout this 'unrepresentative' body.<sup>157</sup>

What happened afterwards is beyond the scope of this study. But the dissolution of the CAP reflected some serious flaws in the political life of Pakistan. It pointed to a failure in leadership. The endeavours of the past seven years had gone unproductive. Had the constitutional draft been adopted earlier, Pakistan would have tackled her political and economic problems in a better way. Most of the leaders were prone to putting their self interests before national interest. Personal aggrandisement led to political chaos and thus ensured the continuance of personal rule of an autocrat like Ghulam Mohammed who manoeuvred unscrupulously to undo every thing or every one who opposed him. Such a situation was a serious threat to the evolution of a healthy political atmosphere. The only permanent solution seemed to lie in a viable democratic constitution of the country.

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157. Mian Iftikharuddin and H. S. Suhrawardy were the leading politicians to question this representative character of the CAP. *Pakistan Times*, 29 December 1952.