

## 1973 Constitution: A Thwarted Compromise between ‘Islamists’ and ‘Modernists’

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### Abstract

Since 1947, various elements and groups successfully tried to project religion as the *raison d'être* of the newly established state and thus demanded Islam as the *grundnorm* of the constitution of Pakistan. While, on the other hand, people, mostly the ruling class (taken as modernists) who were also at the forefront of Pakistan movement, were ambivalent to provide any alternative to the demands of Islamists (both traditionalists and fundamentalists) in the constitution. A compromise between these groups was demonstrated in the constitutions of Pakistan, first in 1956 and finally in 1973. The working of the 1973 constitution in the last forty years shows thwarted confluence between these groups. The PNA agitation against Bhutto in the name of *Nizam-i-Mustafa* in 1977, Zia's Islamization of 1980s, the government and opposition precarious relations in the 1990s and General Musharraf 'enlightened moderation' slogan in 2000s and the reaction of religious groups particularly on the women protection act in 2006 is but an expression of discontent of various groups on the social contract made in the 1973 constitution. The paper attempts to look at some of the social, political and religious questions of the contemporary Pakistan e.g. legitimacy, legislation, *hudoob* laws, extent and limitation of political as well as religious authority in the broader context of divergence of opinion and the failure of 1973 constitution to provide an ideological and theoretical clarity to the people. It is argued that stress should be more on an Islamic society rather than an Islamic state. Methodologically, a close study of the constitution (not that of a legal expert) is followed by the study of acts and policies of various governments/regimes. Religious, political and other interest/pressure groups' statements, speeches and their policies towards the government and others are analysed to substantiate the contention of the writer.

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In political science literature, constitution is considered as 'the organic and fundamental law of a nation or state; establishing the character and conception of its government; organizing such government and regulating, distributing and limiting the functions of different

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departments, and prescribing the extent and manner of the exercise of sovereign powers'.<sup>1</sup> In another source the constitution is referred as 'that assemblage of laws, institutions and customs, derived from certain fixed principles of reasons, directed to certain fixed objects of public good, that compose the general system, according to which the community has agreed to be governed'.<sup>2</sup> Constitution reflects the consensus of public opinion on all the above notions. The process of constitution making inside and outside the constituent/legislative assembly suggest a series of debate among varying interest groups to reach consensus on maximum issues. Moreover, the acumen of all these processes is an agreement on a mechanism to resolve or manage differences on any issue emerging in the subsequent days in the national life. This is the most consequential step in the process of constitution making.

In the present work other aspects of the constitution are set aside and only the location, justification and limitation of political authority and legitimacy is focused which is thought to be still contentious between different groups broadly categorized as 'Islamists' and 'modernists'.<sup>3</sup>

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<sup>1</sup> Henry C. Black, *Black's Law Dictionary* (St. Paul: West Publishing, 1979), 5<sup>th</sup> ed., p.282 cited by Abdullahi Ahmed An-Naim, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse, N.Y.: Syracuse University Press, 1990), p.70.

<sup>2</sup> Lord Bolingbroke as quoted in C.H. McIlwain, *Constitutionalism Ancient and Modern* (Ithaca: Cornell University Press, 1947), p.3 cited by Abdullah Ahmed An-Naim, *ibid.*, p.71.

<sup>3</sup> These terms are problematic in the sense that there is no consensus on the definition of these terms, therefore, each work on the subject defined it differently. In Pakistan context writers used different terms for example Binder used traditionalists, fundamentalists, modernists and secularists. Leonard Binder, *Religion and Politics in Pakistan* (Los Angeles: University of California, 1953 (digital copy), p. 7; G.W. Choudhury without naming them analysed views of Pakistanis in his book *Constitutional Development in Pakistan* (Karachi: Longman Group, n.d., pp.35-57); Shafiqat divided these groups into traditionalists, new-traditionalists and modernists, Saeed Shafiqat, *Political System of Pakistan and Public Policy* (Lahore: Progressive Publishers, 1989, pp.89-90). In the present study all groups are categorized broadly into two groups; Islamists and modernists. Islamists refers to those who attached prefix and suffix to the modern terms like Islamic state, Islamic democracy, Islamic banking etc and for each they had a particular explanation. They came under the influence of Maulana Maudoodi's discourse on Muslim reformation and revivalism encompasses the *ulama* as well. Modernists refers to those who wants to adopt the modern ways but at the same time do not want to detach themselves from

The 1973 constitution is unique in the sense that it is the first among the three constitutions of Pakistan carrying popular support of the people, representing all major political parties and all major religio-political trends in the country. They discussed it, deliberated and signed it in the Parliament on 10 April and implemented on 14 August 1973.<sup>4</sup> Many of the provisions related to the place of religion in the previous constitutions i.e. 1956 and 1962 were retained in this document.<sup>5</sup> All such provisions were considered to be a compromise between the 'modernists' and 'Islamists'.<sup>6</sup> There were scholars who cautioned the modernists while incorporating the views of the *ulama* and other Islamists in the constitution. However the modernists due to political expediency or may be due to their own doubtful commitment to modernism<sup>7</sup> ignored these views and agreed to extent concessions to the Islamists. The Islamic provisions whether justifiable or not justifiable later on became tricky for the state and society in Pakistan.

The declaration of sovereignty of Allah Almighty is apparently consistent with the Muslim belief system and cannot be questioned easily by any Muslim. However when this term is used in the modern nation state (a concept unfamiliar to the traditional Muslim religious scholarship)<sup>8</sup> its connotation carry different meanings in international law, constitutional law and political philosophy. Sovereignty always signifies the highest government or legal authority. It has been defined as

Islam and the Muslims traditions. These are the Muslims who got their education in the Aligarh educational tradition and filled most of the state offices and became the ruling elites whether belonging to Muslim League, People Party or other political parties in Pakistan.

<sup>4</sup> The 1954 constitution was still born since it was not presented to the assembly which was hoping to pass it on 25 December 1954. The 1956 constitution was adopted by a majority and disapproved by the opposition while the 1962 constitution was one-man constitution. See Mushtaq Ahmad, *Politics of Crisis* (Karachi: Royal Book Company, 1987), p.30.

<sup>5</sup> Objectives Resolution was retained as preamble which was considered to be 'the bond which bonds the nation'. Asma Jilani vs. Govt of Pakistan (PLD 1972 S.C. 139) cited by Justice Nasim Hassan Shah, 'The Objectives Resolution and its impact on the administration of Justice in Pakistan', *Islamic Studies*, 26:4 (1987), p.384.

<sup>6</sup> Position of different religious and political groups expressed themselves in the 1940s and 50s on the role of Islam in the constitution of Pakistan.

<sup>7</sup> They can also be labeled as not conscious modernists as compared to those of 1940s and 1950s.

<sup>8</sup> They look at the state in terms of ideology and plead the case as an ideological state which becomes problematic at the implementation stage or in practice.

‘the claim to the ultimate political authority, subject to no higher power as regards the making and enforcing of political decisions’.<sup>9</sup> In the same clause of the Objectives Resolution it is marked that Allah delegated this sovereignty/authority to the state of Pakistan through its people who will exercise it as a sacred trust.<sup>10</sup> One may ask when, how and where this act of delegation took place? *Ulama* consider sovereignty of God and His law as the law of land.<sup>11</sup> The acceptance of Objectives Resolution was considered to be in good faith. The *ulama* thought it the supremacy of *Sharia* while to the politicians (who were mostly modernists) it was acceptable as long as it was not clearly defined.<sup>12</sup> Modernist considered this statement spineless and mere a pronouncement of the greatness of Allah which is cherished in the Muslim belief system. In the political diction if the authority of sovereign is violated by any individual or group he/they are liable to face the might of sovereign/authority or should be brought to the court for justice. But we all are aware that if someone disobeyed Almighty Allah He does not punish him on this earth but in the hereafter because, this is against His scheme, which He has devised for this life on earth. According to His grand scheme, human beings are born free and have been provided the knowledge between good or bad.<sup>13</sup> All such actions have its consequences in the hereafter. For all practical purposes it is the people and political authority which prevails in the modern nation state. In such case, the Islamists particularly the *ulama* do not accept the authority of the people on the notion that in the constitution sovereignty belongs to Allah. They equate the sovereignty of God to the rule of *Sharia* which means for example the parliament cannot legislate when the issue comes in the realm of *Sharia*. That is why they oppose the government and parliament for bringing any change in the *Huddod* Ordinance and resisted the Women Protection Act 2006. On the question of sovereignty, it was observed, ‘The idea of political sovereignty has been illegitimately transferred to

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<sup>9</sup> *The Concise Dictionary of Politics* (New Delhi: Oxford University Press, 2008).

<sup>10</sup> ‘Whereas sovereignty over the entire Universe belongs to Almighty Allah alone and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust’, Preamble of the Constitution of Pakistan.

<sup>11</sup> Leonard Binder, *op.cit.*, p.146.

<sup>12</sup> *Ibid.*, p.144.

<sup>13</sup> ‘Then He showed him what is wrong for him and what is right for him’ (Al Shams, 91:8).

God'.<sup>14</sup> The concept also raised the question of delegating this sovereignty to the people of Pakistan only, and why not to other parts of the world, as God is the sovereign of the entire universe. Consequentially, the people of Pakistan if have been delegated the sovereignty of God must also possess political authority over other parts of the world or God have delegated this sovereignty to different people in different countries. In such cases what will be the situation in the non-Muslim countries if they violate the sovereignty of God?

In the constitution, the Islamists conceded to the modernist by declaring freedom, equality, social justice and democracy which are the cherished values of the modern world but make a suffix 'Islam' to these values. To the modernists all these values represent a progressive liberal world order while the Islamists (who look at the West suspiciously) trace it in the Muslim scriptural and historical scholarship. Consequently whenever there is a reference to these values the religious elements contravene and when it does not suit them they start criticising it. According to Khalid Ahmad the people in Pakistan listen the clerics more than the politicians.<sup>15</sup> For a common Pakistani explaining anything Islamically, is in the domain of a religious person who is properly trained in the Islamic disciplines in a *madrasah*. A highly religious scholar if not graduated from a *madrasah* is not considered by the *ulama* as *alim* and thus not acceptable to the common Pakistani Muslims. The *ulama* also consider companionship (*suhbat*) of the *ulama* as a prerequisite for the religious scholarship. The *ulama* in their weekly sermons and in all discussions emphasize this aspect more than anything else before the common Pakistanis and get a silent allegiance from them. The *ulama* successfully recognized themselves not only from the masses but also from the modern educated people and this gave them leverage over all those who interpret religion differently or challenge the concept of religion of the traditional *ulama*.<sup>16</sup>

The third important provision of the constitution is to enable the Muslims individually and collectively to live according to the tenants of Quran and *Sunnah*.<sup>17</sup> This is providing a freedom to individuals to follow

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<sup>14</sup> Fazlur Rahman, 'Islam and the Constitutional Problem of Pakistan', *Studia Islamica*, 32:4 (December 1970), p.277.

<sup>15</sup> Khalid Ahmad, *Pakistan-The State in Crisis* (Lahore: Vanguard Books Pvt. Ltd., 2002), p.232.

<sup>16</sup> Fazlur Rahman, Ghulam Ahmad Pervez, Javid Ahmad Ghamidi, Zakir Naik and even they questioned Maudoodi's credential as an *alim* on the same ground.

<sup>17</sup> Constitution stated that 'Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance

whichever he/she consider right in the light of Quran and *Sunnah*. Probably the modernists at the time of framing the constitution thought it would relieve them from the hold of the *ulama*. Other Islamic provisions include compulsory teachings of holy Quran, Islamiat and encouragement to learn Arabic, commitment to promote institution of *Zakat*, organize mosques and *Auqaf*, removal of repugnancy between the existing laws and the holy Quran and *Sunnah*. But the provision was used by the Islamists and *ulama* as the sole custodian of interpretation of the holy texts and practices of the Holy Prophet (SAW).

The constitution envisages a mechanism for examining the existing laws and Islamization of laws in the shape of Council of Islamic Ideology.<sup>18</sup> The working and function of this body in the last forty years in itself is a story of dismay for both the Islamists and modernists alike. Both could not act as they pledged in 1973. When it suits the modernists referred to its proceedings and when it does not they ignored it and the same is the case of Islamists and *ulama*. Membership of the council was used to appease some groups in order to get support for the sitting government while on the other hand *ulama* have used this forum to put pressure upon the sitting government for their own agenda. Political consideration<sup>19</sup> are paramount than the meritorious consideration. For examples, on one occasion Maulana Fazl ur Rahman was the chairman of the parliamentary committee on Kashmir while on other Iqbal Ahmad Khan a lawyer by profession, was the chairman of Council of Islamic Ideology. What an irony. When there was a debate over the *Huddod* Ordinance during Musharraf period the government ignored the council, a constitutional body, on the pressure of religious zealots and formed a committee of the *ulama* to examine the deliberation of the parliament on the *Huddod* Ordinance. Both government and *ulama* did not honour what is stated in the constitution.<sup>20</sup> When views of the council do not suit the *ulama* they declared it the mouth piece of the ‘westernised’ people and

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with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah’, Article 31 of the 1973 constitution.

<sup>18</sup> The task was earlier carried out by Pakistan Law Commission in 1956 constitution and Islamic Ideological Council and Islamic Research Institute in 1962 constitution.

<sup>19</sup> Safder Sial (ed.), *Islam, Democracy and the Constitution of Pakistan* (Islamabad: Pak Institute for Peace Studies, 2015), p.40.

<sup>20</sup> In protest of government leniency towards the *ulama*, Javid Ahmad Ghamidi tendered his resignation to the president.

when it is on the other way around the ‘modernists’ show their apprehension on the proceedings of the council.

Looking back to the constitution (also the 1956 and 1962 constitutions), it seems that the modernists succumbed to the conceptual framework of the Islamists. The whole thought of the Islamists particularly in the latter half of the 20<sup>th</sup> century revolve around Muslim revivalism through the establishment of Islamic states. The inclusion of provisions in the constitution provided them inroads to the echelon of political power. The Islamists particularly the *ulama* by their training and education emphasize more on the *qiza* (judicial system) and office of the judge. The *ulama* are not aware that changes have taken place in the judicial system in the last three hundred years. During this period judiciary went from individual perspective to the codification of law and institutionalisation of justice offices and left little room for judges’ arbitrary powers. Some Islamists do not give any heed to the legislature because they think Islam is a complete code of life and there is no need for further legislation and the earlier jurists completed everything for them. They think that the only thing left is to search for the legislation already done by the earlier jurists.<sup>21</sup> This task obviously rests in the domain of *ulama*. However some of the Islamists particularly the Jamaat-i-Islami allowed legislation by the parliament.<sup>22</sup>

Since 1973 the religious politics in Pakistan is focusing on the implementation of *huddod* laws which got a boost during the military government of General Zia-ul-Haq who was in search of legitimacy for his military regime in the late 1970s and 1980s. In fact the movement launched by the political opponents of Z.A. Bhutto in the post 1977 election got fervour when a religious element was inculcated. The movement was widely known as *Nizam-i-Mustafa* which refers to Islamic *Sharia* and law. The ownership of Islamicity of laws was used by Zia for his legitimacy. This raised the issue of legitimacy which seems to be contentious between these groups also. In the same decade and then in decade after i.e. 1990s, the legislative politics is full of introducing *Sharia* bills by individuals and groups/governments in both the houses.<sup>23</sup> The emphasis on the enforcement of *Huddod* Ordinance without a

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<sup>21</sup> Ishtiaq Ahmed, *The Concept of an Islamic State in Pakistan* (Lahore: Vanguard, 1991) p.87; G.W. Choudhury, *op.cit.*, p.48.

<sup>22</sup> *Ibid.*, p.97.

<sup>23</sup> See for details Charles Kennedy, ‘Repugnancy to Islam—Who Decides? Islam and Legal Reforms in Pakistan’, *International and Comparative Law Quarterly*, Vol.41, 1992, pp.769-87 for the struggle of Islamization of laws through institutions particularly judiciary and parliament in the 1980s.

suitable societal accommodation is also against some of the Islamists' contentions like Maudoodi who categorically declared it unsuitable to implement *huddod* laws without preparation of the society to accept such acts. Amendments in the 1973 constitution and the subsequent policies of the governments resulted in eroding the legislative function of the parliament and transferring it to the courts which suits the Islamists. The only exception was the passage of Women Protection Act of 2006 which was the only Islamic legislation done by a popularly elected legislature though under the umbrella of a military general i.e. Pervez Musharraf. The move was described as the first *Ijtehad* done by the collective wisdom as envisaged by Iqbal in the 1920s and 30s. However, it was a short lived move and soon Sherri Rahman, even on government benches, had to withdraw her bill on blasphemy law (2011) in the National Assembly because of the pressure of the traditionalists and political expediencies of her own government. If the process of reviewing of the laws and acts were looked upon by the parliament as in the case of Women Protection Act it would have a far reaching impact upon the relationship of religion and politics in Pakistan.

The governing elites failed to address the question of religion at the state level and thus strengthened the hold of Islamists on the question of religion, its contents, the right of explanation and interpretation, its defence and custodianship. *Ulama* used pulpit which is easily available to them to farther their motives of grabbing power from the 'westernized' governing elite. Dr. Fazl-ur-Rahman, a religious intellectual thinker, described the situation and conditions of the modernists in his writings. These modernists failed to transform the ideals of Islam which they thought were not contrary to the western values into institutionalization or in a tangible form and that the people should have felt a clear demarcation in the pre and post-independence period of Pakistan. The failure of these modernists pushed the ruling elite to the ready-made institutions of the West while the religious segment were already suspicious about the West. The *ulama* even dare to name them hypocrites and the addressees do not bother to respond with the same intensity and without any religious terminology. It is better to describe this situation in the words of Fazlur Rahman as,

... in these circumstances, the term 'Islamic' in the phrase 'Islamic Democracy' has only a moral-psychological meaning, or else it is equivalent to the term 'Muslim Democracy' or even just 'Democracy' both of which the Modernist' says it is not. However, even if it has a moral-psychological meaning, that meaning will gradually vaporize, even if it is not vaporizing already, with perhaps

dangerous consequences, unless the term is given a real meaning. A great challenge is thrown to Modernism by the report of the Enquiry Court (published in 1954, subsequent to the 1953 disturbances) which declared the two alternatives of an Islamic State or a democracy. Or shall the Modernist show a volte-face to the public and to the world? In actual fact, the Modernist is adopting the politico-social values of positive modernity, which, besides, is inevitable. But since these values were initially divorced from, and rejected in the name of, the transcendental idealism by romantic Modernism itself, the Modernist finds, above all, a psychological difficulty in reconciling the two and in Islamically expressing his positive objectives. This inability naturally puts him in the light of a Secularist Westernist in the eyes of the public and the pure Revivalist who are not slow in branding him even as hypocrite. This phenomenon in its turn necessarily retards the process of practical modernization itself.<sup>24</sup>

He even cautioned the modernists about the consequences of the inability of the modernist to cope with the question of religion and politics in the following words: 'In the sum, if the ethos of Pakistan is to survive, let alone prosper and bear fruit, the term 'Islamic Republic' must be given a real content, i.e. the modernist must express Islam and express it in terms of progressive objectives, or else be swallowed up in all sorts of extremes—Revivalism, Communism, etc—it is impossible to predict which of them may be successful'.<sup>25</sup>

The intellectual inability of the modernists to cope with the emerging situation is supplanted with a degrading morality in society and particularly among the ruling elites. Looking back to the history we found false promises on the part of ruling politicians to the traditionalist and Islamists. Continuous breaking of promises leads schizophrenic personality traits among the elite and thus bares them with any inventive idea of resolving the issue of religion and modernity in a cordial way. Pakistan's history is filled with many instances of this aspect. Javed Iqbal (son of Allama Iqbal), recording his own experiences said that after completing his education in the West when he returned to Pakistan he met with President Sikandar Mirza on the latter's request. During their

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<sup>24</sup> Fazlur Rahman, 'Muslim Modernism in Indo-Pakistan Sub-Continent', *Bulleting of the School of Oriental and African Studies*, University of London, Vol.12, No. 1/3. pp.97-98.

<sup>25</sup> *Ibid.*

conversations Javed Iqbal expressed his desire to serve the nation as a member of the commission constituted for the Islamization of laws in Pakistan called Pakistan Law Commission. Sikandar Mirza smiled and replied, ‘... the commission is constituted merely to fulfil constitutional requirements. It will neither work nor do we want it to work’.<sup>26</sup> Another member of the commission also stated after his experiences with the governing elite that probably Pakistan is the only state in the world whose rulers are telling lie at the government level.<sup>27</sup> In General Ayub’s period the name Islamic was dropped from the Islamic Republic of Pakistan. It shows the seriousness of the ruling elite to the question of religion. However, soon after because of pressure from the religious elements the name Islam was again adopted. It should not be either dropped and when dropped it should not be adopted again due to the any pressure. The move gives impetus to use pressure as tactic for acceptance of demands upon the governing elite. The forced exit of Dr. Fazlur Rahman from the Islamic Research Institute (IRI) directorship was another episode of the growing strength of the religious elements. His exit was a great damage to the growth and development of Islamic thought in Pakistan. He is one of the great Muslim scholars Pakistan ever produced and well reputed in the Muslim world as well as in the western world. One may not agree with his ideas but he was the person who questions and face the traditional *ulama* in the domain of religion, as he was well versed in religious disciplines and in modern sciences alike. IRI, primarily established for research, has never been used to conduct original research in Islam rather has remained as a place for the Islamists to reproduce or interpret the early works of jurists. Its main function is publication of certain books and not harboring scholars to cope with the emerging challenges of Pakistan in terms of religion etc. Then comes the alliance of the ruling elites with the *ulama* / religious elites on different occasions e.g. Yahya Khan's alliance with Jama’at-i-Islami in East Pakistan. Zulfikar Ali Bhutto, the second most popular national leader after Quaid-i-Azam, succumbed to the religious elements to declare Ahmadis as non-Muslims in 1973. Earlier he used religious slogan for political agenda e.g. Islamic Socialism. In the last days of his rule he retreated to a great extent when he announced certain provision e.g. relating to *Juma* as holiday instead of Sunday etc. Then comes General Zia-ul-Haq who draw his legitimacy mainly from religious indoctrination

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<sup>26</sup> Javed Iqbal (retired justice), *Apna Garayban Chak* (Autobiography) (Lahore: Sang-i-Meel Publications, 2003), pp.93-94.

<sup>27</sup> Maulana Amin Ahsan Islahi was a member of the Pakistan Law Commission constituted in the 1956 constitution.

and the process of Islamization started in the 1980s. He exploited religion more than any other ruler of Pakistan. His ten years rule greatly damage the equilibrium and government machinery tilted towards religious slogans and its manifestation in metaphorical expression. The international actors equally collaborated with the military regime to exploit religious forces for their own ulterior motives.

The situation in the first decade of Pakistan was to a great extent not problematic as the modernists were more aware of the Islamic teaching/ tenant and responded amicably to the Islamists. According to Sharif ul Mujahid, men like Dr. Ishtiaq Hussain Qureshi, Dr. Mehmud Hussain, and Dr. Umar Hayat pleaded the case of modern Islam in a befitting manner. The same style was adopted by Khalifa Abdul Hakim in his writing and Prof Ahmad Shah Bukhari in his writing for Liaquat Ali Khan, while travelling to the US. The modernists of 1950s rebuked the religious fanatics and they were not obliged to the *ulama* for any interpretation of Islam as the later modernists did in the later days.<sup>28</sup>

The subsequent period, as we mentioned earlier, is a continuous tussle between these modernist and Islamist forces which finally culminated into an armed struggle against the state and people of Pakistan in the beginning of the 21<sup>st</sup> century. A close analysis of the militant discourse is noticeable upon the use of provisions related to political authority, legitimacy and particularly the Islamic provisions in favour of a violent imposition of *Sharia* in Pakistan. They satisfied their followers on the failure of government to honour Islam and its teachings and thus justify their actions. Another reason for the frustration of some of the Islamists is with the notion of democracy which is denoted by them as western democracy and thus inconsistent with Islam. Though the Islamists accepted the principle of democracy as enunciated in the constitution but others still have doubts and despair any change through democracy.<sup>29</sup>

Failure in the legislature of developing any consensus through the consideration of various *Sharia* bills, in the 1980s and 90s, diverted the attention of the Islamists to other means rather than to the legal and constitutional, particularly in an environment of growing militancy on

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<sup>28</sup> Sharif ul Mujahid, 'Rawadari say Guraiz in Pakistani Muashira Awr Adam Rawardari' edited by Hassan Abidi, *Mashal* (Lahore: Usman Blok, 1997), pp.98-99 cited by Dr. Ishtiaq Ahmad Gondal, *Pakistan main Islam awr Liberalism ki Kashmakash* (Lahore: Sheikh Zaid Islamic Centre, 2011), pp.38-39.

<sup>29</sup> For example Maulana Mohammad Shafi Chitrali (religious scholar and columnist) in Safdar Sial, pp.15-16; Sayed Ata ul Mohsin Shah Bukhari in Khaled, *op.cit.*, p.234.

the northwestern part of Pakistan adjacent to Afghanistan. In all these discourses of extremism and militancy, the attitude of the government and non-government elite disappointed the Islamists. The second generation of the Islamists felt themselves pushed towards adoption of extra – constitutional measures for the realization of their idealism. The third generation of the militants emerged more brutal than the earlier in their actions and tactics.

Challenging the writ of the government means rejection of constitution of Pakistan. The heinous crimes of the Muslim militants against humanity and the Muslims did not get condemnation from the main stream religious *ulama* in the country. It is observed that the militants' sympathetic elements in Pakistani society pleaded the case of militancy by quoting the Islamic provisions of 1973 constitution to condemn the ruling and non-ruling elites for the non-compliance of these provisions and thus provided support to these militants.<sup>30</sup> These Islamic provisions created different centers of powers like *madrasas*, religious groups and religio-political parties, *ulama* and *mashaikh*. These centres, more or less ignorant about the intricacies of modern nation state, often created problems for the state internally and externally.

A constitution should ideally be not an obstacle between the principle of mobility and principle of stability. In any living social organization conflict between motion and rest, change and permanence is normal and necessary. The constitution of 1973 if examined in this framework is hardly successful. In broader context modernists and Islamists though agreed on the constitution but they are still contentious what is permanent and what is changing. A variety of Islamists along with Quran and *Sunnah* also consider juristic decisions permanent and thus not open to change while the modernists consider it subject to change. The post 1973 period shows that the policies of one regime when considered by another group as anti-religious they did not honour what they sanctify in the shape of constitution and thus went to the extent to support those elements who worked against the constitution as in the case of opposition of Z.A. Bhutto regime and welcoming a military general Zia-ul-Haq in July 1977. On the other hand the military takeover of General Pervez Musharaf in 1999 and his subsequent liberal policies towards religion and non-religious groups attracted the modernists elements even though he held the 1973 constitution in abeyance. The 1973 constitution seems to have failed to provide such a principle and framework of order in which change should proceed without endangering stability. Failure thus generated discontent and alienation

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<sup>30</sup> For example see Ansar Abassi's columns in the daily *Jang*.

which led to unconstitutional upheavals, and failure to ensure chances of stable progress in society.

### **Conclusion**

The 1973 constitution thought to be a confluence between ‘Islamists’ and ‘modernists’ failed to aggregate the interest of various interest groups for broader national objectives and a direction to strife for their achievement. Pakistanis can revisit these provisions after looking to the performance in the last forty years. A debate can be conducted in Pakistan, as it happened during in 2004-5, on the *Huddod* Ordinance preferably in the private channels along with its coverage in the print media. The modernists in Pakistan should give attention to the role of religion in the state structure; they should transform the ideas expressed in the constitutions, particularly in the Objectives Resolution and Islamic provisions into clear cut shape and not to give any opportunity to the traditionalist to exploit the situation on legal and political grounds. The modernists should equip themselves to engage with the *ulama* in their own domain i.e. religious knowledge and thus restrict their hegemonic authority in religious disciplines. The state should take responsibilities of all religious function letting no one to challenge the writ of state. It is believed that the people if allowed freely will reach to address the issue in the light of revealed knowledge and the experiences of human beings amicably in Pakistan.