

# THE STRUGGLE OF DEOBANDI ULAMA FOR THE ENFORCEMENT OF ISLAMIC LAWS IN PAKISTAN: AN ASSESSMENT

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## **Abstract**

The struggle of Deobandi scholars for enforceability of Islam is an important aspect of history of Pakistan. After independence, it was expected that in the new state, every department will have the color of Islam. Its political, economic and civic matters will be reflective of Islamic teachings. In this regard, the Deobandi scholars struggled hard for the enforceability of Islam in the country. In this paper, the efforts of Deobandi ulama and scholars for supremacy of Islamic laws have been highlighted.

On the 10<sup>th</sup> of August 1947, first meeting of Constituent Assembly of Pakistan was held. Allama Shabbir Ahmed Usmani, elected from East Bengal, was also one of its members. Muslim League leadership chose a Hindu as a chair person of this historical meeting instead of choosing any leader from Muslim League. Consequently, a Hindu leader, Mr. Mandal was chosen as a Chairman of first Constituent Assembly of Pakistan. Afterwards, when leadership came into the hands of Quaid-e-Azam Mohammad Ali Jinnah, the next constitutional meeting was started with the recitation of a verse from *Surah Al Imran* (3: 26) by Allama Shabbir Ahmed Usmani<sup>1</sup>.

For the newborn state first and foremost thing was to frame a constitution. However the matters of state were being run according to the Government of India Act 1935. The Government of Pakistan formed a sub-committee to frame the basic principles of Islamic law. Allama Shabbir Ahmed Usmani consulted Allama Syed Manazir Ahsan Gilani and Dr. Hamid Ullah to develop a framework for an Islamic constitution and to set its basic rules.

Constitutional Assembly should have formed a constitution with full zeal but unfortunately it was not done. Instead, a power struggle started, especially after the death of Quaid-e-Azam. In this situation, Muslim scholars got worried as they wanted to develop an Islamic Constitution in the county. Eventually, a conference at Decca was held in February, 1949 wherein the Muslim scholars plainly informed the government that

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if Pakistan was not having an Islamic constitution, the goals and the objectives that were set for this country would not be materialized. Allama Shabbir Ahmed Usmani categorically said that we worked hard and struggled for a separate country and for the well being of Islam and Muslims and stated “we would not abandon our demand that the future constitution of Pakistan should be based on Islamic Ideology wherein Muslims in individual or collective capacity, can shape their lives in Islamic orientations<sup>2</sup>.” In the conference, Allama Shabbir Ahmed Usmani not only challenged Pakistani government but he also presented some proposals for the new born country.<sup>3</sup>

In February, 1949 when Decca Conference was going on, ulama decided to accelerate the struggle in the Constituent Assembly for Islamic provisions of the constitution. Allama Usmani urged the Prime Minister of Pakistan to declare “the Quran and Sunnah as basic of principles of the constitution and no law or constitution would be formalized which is not in accordance with Islamic point of view.” He quoted the Quaid-e-Azam’s letter which he wrote to Mr. Gandhi in 1944:

The Quran is a complete code of life. It provides for all matters, religious or social, civil or criminal, military penal, economic or commercial. It regulates every act, speech and movement, from the ceremonies of religion to those of daily life, from salvation of the soul to the health of body, from the rights of all to those of each individual, from punishment here to that in the life to come. Therefore, when I say that the Muslims are a nation, I have in mind all the physical and metaphysical standards and values<sup>4</sup>.

On 12 March 1949, the Constituent Assembly of Pakistan passed the Objectives Resolution. The resolution, proposed by the Prime Minister, Liaqat Ali Khan, proclaimed that the future constitution of Pakistan would be modeled on the ideology and democratic spirit of Islam<sup>5</sup>. The Objectives Resolution defined the basic principles of the new state and provided that:

Pakistan would be a state wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed; wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out

in the Holy Quran and Sunnah; [and] wherein adequate provision shall be made for the minorities freely to progress and practice their religions and develop their cultures.<sup>6</sup>

The ulama considered it an important move before the framing of constitution and thought it appropriate to present a comprehensive outline of basic Islamic principles of governance to the Constituent Assembly, since they were of the view that the members of parliament could not perform this task because of their lack of expertise in this area. On the proposal of Allama Shabbir Ahmed Usmani, the Prime Minister, Liaqat Ali Khan established a *Taleemat-e-Islamia Board*. Deobandi scholars, Allama Syed Suleman Nadvi and Mufti Muhammad Shafi were also members of this board. The Board formed the details of Islamic law with the cooperation of other members. However, the government neglected its recommendations and did not show any keenness on the recommendations of the Board.

The first attempt to establish Islamic Shariah in Pakistan was made by adopting the Objectives Resolution on March 12<sup>th</sup>, 1949. However, the basic problem in the enforcement of Islam was that the followers of different schools of thought did not trust each other and were not united to follow a single combined school of thought. Finally, in 1950, Syed Suleman Nadvi and Maulana Ehtasham-ul-Haq Thanvi collected 31 scholars from different schools of thought for this purpose, and after a lot of discussion and hard work, they put forth 22 points collectively<sup>7</sup>. The 4-day meeting was presided over by Allama Syed Suleman Nadvi. These 22 Points were presented to Governor General Ghulam Muhammad<sup>8</sup>. These points proved the sincerity of these scholars. Even today these 22 points can be used as a basis for establishing Shariah in the country. These 22 points were unanimously agreed by ulama of all schools of thought in a meeting from 21<sup>st</sup> to 24<sup>th</sup> January 1951.

#### ***Role of Jamiat Ulama-e-Islam***

The Jamiat Ulama-e-Islam was formed when some of its members broke from the Jamiat Ulama-e-Hind in 1945 after that organization backed the Indian National Congress against the Muslim League's demand for a separate Pakistan. Its first president was Allama Shabbir Ahmad Usmani. Unfortunately after the establishment of Pakistan, the Ministry of Foreign Affairs was given to an Ahmadi. Deobandi scholars

and ulama tried to make government know the ticklishness of situation but rulers did not take any notice of situation.

In the year 1953, a vigorous Anti-Qadiani movement started. The objective of the movement was to ensure the removal of all Ahmadis from government service, have them declared non-Muslims, stop them from raising mosques for the community and ban them from preaching or propagating their faith. A vociferous campaign by this movement in 1953 led to widespread rioting all over the Punjab. Several persons were killed and scores injured in the riots which were quickly quelled by the Pakistan army. The anti-Qadiani movement-supported by all mainstream Islamic parties in the country-continued to generate opposition to the Ahmadis through public rallies and court cases.

The objectives of 1953 Anti-Qadiani Movement, however, could not be realized and by the end of this movement political situation was much changed in the county. Many respectable ulama went into seclusion and they restricted their activities to publishing and preaching. To their followers, this situation was very alarming. Moulana Mufti Mehmood convened a convention in Multan in 1956 and in this convention they reviewed the political situation of the country. Moulana Ahmed Ali Lahori was chosen as president of Jamiat Ulama-e-Islam while Moulana Mufti Mehmood was chosen as Vice President. Dr. Ahmed Hussain Kamal has observed in this regard as:

Within ten years, the situation was changed and persons that stood as heirs of Moulana Usmani were lost in their personal affairs and some preferred to remain silent. New generation of Pakistanis had no clear cut direction except to be either looking at all the ills of American Capitalism or the Communism. In this situation there was no other solution than that the people of Islamic orientations should step forward to take Pakistani nation out of the ill politics so that Islam can be provided strength. So to fill the gap, Moulana Ahmed Ali Lahori, Moulana Mufti Mehmood and Moulana Ghous Hazarvi and other ulama came forward in the political arena<sup>9</sup>.

Finally in 1974, under severe pressure from the ulama, Pakistan's first elected Prime Minister, Zulfikar Ali Bhutto, introduced a constitutional amendment - known as the Second Amendment - which declared the Qadianies as non-Muslims.

Since its inception, ideologically, Jamiat Ulama-e-Islam is regarded as non-compromising, rigid, insisting on strict enforcement of traditional Islamic law. Jamiat Ulama-e-Islam helped establish thousands of madrasahs in Pakistan, and is reported to have affiliations with the Taliban movement in Afghanistan.

### ***The Constitution of 1956***

Pakistan remained without a constitution from 1947 to 1956. After the efforts of nine years, Pakistan was successful in framing the constitution which was implemented on March 23, 1956. Article 24 provided that the state should endeavor to strengthen the bonds of unity among Muslim countries. The same article enjoined Pakistan to foster friendly relations among all nations. There was no provision to make Islam as the state religion of Pakistan. Article 21 provided that no person should be compelled to pay any special tax, the proceeds of which were to be spent on the propagation of any religion other than his own. The Head of State was to be a Muslim not younger than 40 years of age.

Islam was given a significance in the 1956 Constitution, in two ways. First, through Article 197 the president was obliged to set up an organization for Islamic research and instruction in advanced studies to assist in the reconstruction of Muslim society on a truly Islamic basis; and under article 198 the President was to appoint a commission of experts to make recommendations' as to the measures for bringing existing laws in conformity with the injunctions of Islam. The Commission was to submit its report to the President within five years of its appointment. This report was to be placed before the National Assembly, and the Assembly after considering the report was to enact laws in respect thereof<sup>10</sup>.

The Constitution of 1956 had something to offer to both sides; it gave grounds to the orthodox traditionalist that his cause might be advanced, while there was nothing in the Islamic clauses to cause a liberal democrat to feel that Pakistan was incapable of becoming the kind of a state he wishes to see. The constitution did little to settle the fundamental issue of the desirable role of Islam in a modern state. Nor did its adoption serve to bridge what Keith Callard called "the wide gulf between the Ulama of the orthodox schools and the intelligentsia"<sup>11</sup>. Jamiat Ulama-e-Islam critically analyzed the constitution and proposed some amendments so that constitution can be made completely Islamic<sup>12</sup>.

***Deobandi Scholars and Muslim Family Laws***

Islamic personal law is the base of any Islamic polity, but in Pakistan differences of schools of thought were the major hurdle in it. So to settle these disputes, the Government of Pakistan formed a commission to explore the possibilities of setting the family laws, according to the teachings of Holy Quran and Sunnah. Moulana Ehtasham-ul-Haq Thanvi was also a member of this commission but unfortunately, rest of its members were not ulama and considered westernized. They presented a report which was widely opposed by Moulana Ehtasham-ul-Haq Thanvi, who in fact wrote a detailed note on it.<sup>13</sup> These recommendations were however translated through Muslim Family Laws Ordinance on March 2, 1961.

Under the Ordinance, unmitigated polygamy was abolished, consent of the current wife was made mandatory for a second marriage and restrictions were placed on the practice of instant divorce where men pronounced it irrevocably by pronouncing *talaq* thrice in one go. The Arbitration Councils set up under the law in the urban and rural areas were to deal with cases of (a) grant of sanction to a person to contract a second marriage during the subsistence of a marriage; (b) reconciliation of a dispute between a husband and a wife; and (c) grant maintenance to the wife and children. All Muslim marriages were to be compulsorily registered with registrars to be appointed by union councils, one in each ward.

Ayub Khan's liberal interpretation of the Islamic principles antagonized Ulama who opposed his Family Law Ordinance to regulate Islamic personal law in a modern Islamic society. His attempts to popularize the family planning program were declared un-Islamic by the ulama who quoted verses from the Holy Quran to plead that the use of contraceptives was prohibited in Islam. Moulana Ehtasham-ul-Haq Thanvi convened a meeting Jamia Ashrafia, Neela Gunband, Lahore, in which Shia, Sunni, Deobandi, Braveli, Ahl-e-Hadees and all other Schools of thought collectively participated and declared that the Muslim Family Laws were against the religion. Same was reiterated subsequently in another meeting convened under the President-ship of Moulana Ahmed Ali Lahori.

In the year 1962 president Ayub Khan gave a new constitution to the county and under it elections were held. Moulana Ghulam Ghous

Hazarvi from Hazara was elected as a member of Provincial Assembly and Mufti Mehmood from Dera Ismail Khan was elected as member of National assembly. Moulana Ghous Hazarvi presented a speech against Family Laws in Provincial Assembly and forcefully said that provincial assembly must recommend abrogation of the Family Laws. During Ayub Khan's talks with the political leaders on 10th March, 1969, in Rawalpindi, leader of Jamiat-e-Ulama-e-Pakistan, Mufti Mehmood, objected to the Muslim Family Laws Ordinance and demanded that the 22 Points agreed by Ulama in 1951 should be implemented in order to make Pakistan an Islamic state.

***Round Table Conference of 1969 and Ulama's Demands for Islamization***

Last days of Ayub's Government saw a political turmoil. Finally, Ayub Khan called a conference of all political parties of Pakistan for having recourse to a joint mode of action. In March 1969, Round Table Conference was held in Rawalpindi, wherein most of the political leadership of the country participated. The consensus decision was to have a parliamentary system of government. Moulana Mufti Mehmood stressed on the Ulama's 22 Points. However, he did not gather much support from the other opposition parties on this issue.

In these circumstances Jamiat-Ulama-e-Islam decided to participate in the 1970 elections. For the struggle of having an Islamic system Jamiat-Ulama-e-Islam, invited other political parties and religious parties for collective struggle. Jamiat performed well in the elections and on the 1<sup>st</sup> May 1972, Mufti Mehmood became the Chief Minister of NWFP (now known as Khyber Pakhtunkhwa).<sup>14</sup>

Moulana Mufti Mehmood took several Islamic measures after taking his oath as the Chief Minister. Drinking was banned immediately. He also imposed complete ban on interest, gambling, wearing English dress in the government offices and dowry. Moreover, the Quranic education was made a condition for admissions in educational institutions and Urdu was declared as the national language at all official levels.

The 1973 constitution of Pakistan also provides for the protection, propagation and enforcement of Islamic Ideology. It also affirms to propagate and implement the basic teachings of Islam. Role of Jamiat Ulama-e-Islam in this context was significant. For the first time, Moulana Mufti Mehmood got included the definition of a Muslim in the

constitution and Islam was declared as the state religion of Pakistan<sup>15</sup>. It was also declared that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Quran and Sunnah and no law shall be enacted which is repugnant to such injunctions<sup>16</sup>.

Though, the Constitution of 1973 comprehensively defined "Muslim", but the followers of Mirza Ghulam Ahmed called themselves as the Muslims. A movement against the Qadianis started in 1974. A new organization, "Majlis-e-Amal Protection of Khatam-e-Nabuwat" formed with the representation of all major political parties, and Allama Syed Muhammad Yousaf Banuri, a renowned student of famous Deobandi scholar of Hadith Allama Anwar Shah Kashmiri was the elected president of this committee. In this regard, meetings and processions were held all over the country. This issue was presented before the Parliament. On 30<sup>th</sup> June 1974 opposition presented a bill in National Assembly to declare Qadianis as non Muslims. A total of 45 other members of the opposition were also there with Moulana Mufti Mehmood who presented the bill. At last on 7<sup>th</sup> Sep 1974, the parliament passed an amendment in the constitution and declared Qadianis as non Muslim minority. The Second Amendment in the 1973 Constitution declared for the first time the Ahmadiyya Community or the Lahore Ahmadiyya Movement (Lahoris) as non-Muslims<sup>17</sup>.

#### ***PNA Movement of 1977***

As the schedule of 1977 General Elections was announced, all the major opposition political parties, including the religious ones got united under the banner of Pakistan National Alliance (PNA). Moulana Mufti Mehmood was chosen as the President of the Alliance. However, the clean sweep in the elections by PPP was a great surprise to everyone and the PNA could not swallow the results and accused Bhutto of systematic rigging in the general elections and boycotted the provincial assembly contest thus making the whole exercise doubtful<sup>18</sup>.

Consequently, a mass movement started against the government. Excessive violence of the government upon the people gave a new trend to the movement and in this way the protest against the rigged general elections became movement of Nizam-e-Mustafa. This movement was also led by Islamic scholar Moulana Mufti Mehmood. Although this movement could not succeed to get their goals, it paved the way of General Zia-ul-Haq's martial law<sup>19</sup>.



In 1980 a Constitutional amendment by General Zia ul Haq's regime introduced a new hierarchy of Islamic courts. This hierarchy consisted of a Federal Shariat Court (at the level of High Court, the highest judicial forum in a Province) and a Supreme Court Shariat Appellate Bench (at the level of the Supreme Court of Pakistan, the highest judicial forum in the Country) as its sole appellate forum. The Federal Shariat Court was given the power to declare any law repugnant to the injunctions of Islam. In case of such a declaration, subject to appeal to the Supreme Court Shariat Appellate Bench, the said law would cease to exist on the date mentioned in the decision declaring it so. The known Deobandi scholar Mufti Muhammad Taqi Usmani, the son of the late Moulana Mufti Muhammad Shafi (the former Grand Mufti of Pakistan) served as Judge of the Shariat Appellate Bench of the Supreme Court of Pakistan from 1982 to May 2002<sup>20</sup>.

The Russian invasion of Afghanistan in 1979 redefined the ideological orientations of Deobandi ulama. The fear of USSR to attack Pakistan led Pakistan to jump into Afghan Jihad. Government radically supported the Afghan Jihad through the provision of volunteers in the form of mujahideen, most of them hailing from Deobandi school of thought. These Deobandi Madrasahs were seen as "supply lines for jihad" in the Soviet Afghan war. Both the U.S. and Arab states joined to help the Afghans wage a jihad against the Communists and also to contain Irani influence. However, after the Soviet Union pulled out of the conflict in the late 1980s the mujahideen fought each other in the subsequent Afghan Civil War. Following 11 September, the international community has seen these madrasahs as schools of militancy and terrorism.

The Deoband ulama have been the center of controversy since 9/11 attack on New York Towers. It was thought that attacks were planned by Taliban who were students of madrasahs run by ulama professing Deoband ideology. Since then, the Deobandi Madrasahs especially from Khyber Pakhtunkhwa are in focus and have come under fire especially from the West.

### ***Conclusion***

Pakistan was carved out of the sub-continent of India to serve as a laboratory for Islam and to promote the separate and distinct identity of the Muslims. The Deobandi ulama strove hard to make Pakistan an

Islamic polity since its emergence on the world map. No doubt, Islamic parties did play some role in creating the urge amongst Muslim masses for Islam, and the Ulama-e-Deoband have launched a sustained campaign for establishing the Islamic system in the country. But these endeavors were never completely successful. In 80s, the General Zia's Hudood Ordinance did not bring unity in the nation. Later in 90s, Shariat Bill brought forward by JUI and Moulana Sami-ul-Haq, the man behind it, was not a success. Politically, during Musharraf era, religious elements under the banner of MMA won partial victory and became the balancing force. Despite that the Jamiat Ulama-e-Islam, be it Sami-ul-Haq's or Fazl-ur-Rehman's, could not become rising star on national horizon or to form federal government as a result of winning the elections.

### ***References***

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2. Munshi Abdul Rehman, *Tameer Pakistan aur Ulama e Rabbani*, Lahore: Idara-e-Islamiyat, 1997, p. 154-155.
3. Sherkoti, *Tajalliat*, p. 703.
4. Government of Pakistan, *Constitutional Assembly of Pakistan Debates, Vol. 1*, Karachi: Manager of Publications, Government of Pakistan, 1949, p. 2.
5. Sherkoti, *Tajalliat*, p. 704.
6. Golam Wahed Choudhury, *Documents and Speeches on the Constitution of Pakistan*, Vancouver: the Publications Centre, University of British Columbia, 1967, P. 23.
7. The other ulama consisting of , Shia, Salafi and Sunni sects included: Moulana Shamsul Haqq Afghani, Moulana Muhammad Badr e Alam, Moulana Ihtesham-ul-Haqq Thanvi, Moulana Abdul Hamid Badayuni, Moulana Mufti Muhammad Shafi', Moulana Muhammad Idris Kandhalvi, Moulana Khayr Muhammad, Moulana Mufti Muhammad Hasan, Pir Ameen ul Hasanat, Pir Manki Sharif, Moulana Muhammad Yusuf Binnori, Khalifa Haji Tarangzai, Qazi Abdus Samad Sirhindi, Maulana Athar Ali, Maulana Mhuammad Salih, Maulana Raghیب Ahsan, Maulana HabiburRahman, Maulana Muhammad Ali Jalandhari, Maulana Dawud Ghaznavi, Mufti Ja'fer

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8. Government of Pakistan, *Parliamentary Debates: Official Report, Pakistan. National Assembly*, Karachi: Manager of Publications, 1972, p. 154.
  9. Ahmed Hussain Kamal Dr., *Tareekh-i-Jamiat Ulama-e-Islam*, Lahore: Makki Dar ul Kutab, 1997, p.74.
  10. An explanation at the end of Article 198 read: "In the application of the article to the personal law of any Muslim sect, the expression Quran and Sunnah shall mean the Quran and Sunnah as interpreted by the sect." In effect of this explanation is officially recognized by all the sects in Pakistan.
  11. Keith Callard, *Pakistan, A Political Study*, New York: The Macmillan Company, 1958, p. 228.
  12. Mehmood Ahmed Zafar, *Ulama Maidan-e-Sayassat Main*, Lahore: Bait-ul-uloom, 2005, p. 596.
  13. Muhammad Farooq Qureshi, *Taqseem-e-Hind Kay Ba'ad Pakistan main Nafaz-e-Islam Kay layeay Ulama-e-Deoband Ki Massai* (Struggle of Ulama e Deoband For Enforcement of Islam in Hind after Partition), *Monthly Al Jamiat*, April 2001, p. 23.
  14. Kamal, *Tareekh-i-Jamiat*, p. 194.
  15. For the first time, the Constitution of Pakistan determined the definition of a Muslim which states: 'Muslim' means a person who believes in the unity and oneness of Allah, in the absolute and unqualified finality of the Prophethood of the Islamic prophet, Muhammad, and does not believe in, or recognise as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad.
  16. For further details, see: Martian Lau, *Islam and Constitutional Development in Pakistan*; Hamid Khan, *Constitutional and Political History of Pakistan*; Golam Wahed Choudhury, *Constitutional Development in Pakistan*.
  17. Part IX of the Constitution: Islamic Provisions

18. Jaffer, Syed, *Bhutto Rigged the Elections: Third Forged Letter Against him*. Available online <http://www.scribd.com/doc/45955561/Bhutto-Rigged-the-Elections-Forged-Evidence-Exposed-by-Syed-Jaffer> (Accessed on April 8, 2011 at 11.00 am).
19. However, it has been argued that the Nizam e Mustafa movement, which comprised almost all factions of religious forces, went in wrong directions and General Zia had taken the due advantage of it. The army staged third coup d'état in Pakistan's history when General Zia ul Haq overthrew the government of Prime Minister Zulfiqar Ali Bhutto and took over as Chief Martial Law Administrator (CMLA) on July 5, 1977. The federal and provincial governments were dismissed; political parties were banned; national and provincial assemblies and the Senate were dissolved; the constitution was put in abeyance; civil courts continued to function as usual but fundamental rights were suspended.
20. He played a key part in the move toward interest free banking and the establishment of Islamic financial institutions in Pakistan. He is considered to be an authority on this subject. Important decisions delivered by the bench include on *rajam*, making of photographs, shuffa, retirement of government servants, Zakat and Ushr, Qisas and Diyyat, and Riba.