

## MEMORANDUM



# Dilemma of Pakistan's Politics Leading to Harj

<b>To</b>	The Prime Minister of Pakistan
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Dear All

السلام عليكم ورحمة الله وبركاته

### FOREWORD

I am addressing you the subject matter before Allah [SWT] as the witness and whilst seeking help from Allah [SWT] I ask His forgiveness for any error, omission or commission in so doing. Pakistan is going through a most difficult time of its history, when Pakistan's politics has come to a cross road where there is a dire need to take a turn to a course leading to 'Vision' and 'Objective' of Pakistan and its governance in accordance with the guidance of Quid-e-Azam Muhammad Ali Jinnah; instead of current course heading to the state of Harj (Article 24 and 25 of the preamble of this memorandum refer).

I am starting from prayer followed by some important relevant text, in the form of preambles to this memorandum, which I will refer to, whilst stating the problems and concerns, and proposing solutions.

### 1 PRAYER

O Allah there is none worthy of worship but You the Mighty, the Forbearing. There is none worthy of worship but You, Lord of the Magnificent Throne. There is none worthy of worship but You, Lord of heavens and Lord of the earth, and Lord of the Noble Throne. O Allah glory is to You, and praise is to You, and there is none worthy of worship but You, and You are the Most Great. O Allah You are dearer to me than all that the sun rises upon [i.e. the whole world]. May the peace and blessing of Allah [SWT] be upon our Prophet, Muhammad (SAW), and upon his family and Companions and whoever follows them in piety until Day of Judgment.

## 2 PREAMBLE

### Article 1

**Reality of Allah [SWT]:** In most Muslim country including Pakistan, by and large, Muslims do not understand the true meaning of Allah [SWT] as most of the resources and available knowledge mislead them to understand Allah [SWT] as a concept and this is the prime reason that people are having no fear of Allah [SWT] and are involved in their daily life towards worldly gains through hook or crook. We must understand that Allah is real, unique and has no plural or gender. Allah is the Almighty, Creator and Sustainer of the universe, Self Sufficient or Self Subsistent. All Praise is due to Allah. His being Eternal is compounded by His being Divine. He is Proud in His Greatness. There is no term for His Divinity nor is there extinction to His domain. He is the first to create; the One Who is eternal even beyond eternity itself. Allah describes Himself as One and Eternal in the Qur'an. Allah is physically alone in His kingship and Lordship and He has always existed and will always exist. He existed before creation and will still exist even if all of creation was to end. He is not subjected to time as He created time and movement Himself. He resides outside of time and outside of all His creation and is physically high above His creation, residing in a manner befitting His Majesty. Allah [SWT] states in the Quran that He has many attributes, which are befitting to Him alone which are beyond human comprehension, such as: His hearing, sight, hands, face, encompassing, His knowledge, His ability, His might and power, His ever-living inheritor of creation, His will and intent, His anger, His mercy, His sovereignty and dominion, and His unity and exclusiveness, and His being above the Arsh. Correct theistic belief requires faith in the existence of these attributes as, Allah [SWT] has described them without applying to them any allegorical meanings or attempting to explain how a certain quality could be - while this is known only to Allah [SWT] – and without comparing them to creation or denying that Allah [SWT] would have such qualities. Accordingly, Allah's Arsh is unimaginable to human comprehension and it is only known to Allah [SWT] as it is above Allah's creation. His Kursi [i.e. chair] extends over the heavens and the earth, which is not to be confused with the al-Arsh, which is much higher and greater than al-Kursi.

### Article 2

There is none worthy of worship but Allah the Mighty, the Forbearing. There is none worthy of worship but Allah, Lord of the Magnificent Throne. There is none worthy of worship but Allah, Lord of heavens and Lord of the earth, and Lord of the Noble Throne. (Sahih Al-Bukhari and Sahih Muslim).

### Article 3

The Quran confirms: *'To Allah belongs whatever is in the heavens and whatever is in the earth. Whatever you show what is in yourselves or conceal it, Allah will bring you to account for it. Then he will forgive whom He wills, and Allah is over all things competent.'* (al-Baqarah 2:284)

### Article 4

The Quran confirms: *'And those who believe in Allah and hold fast to Him – He will admit them to mercy from Himself and bounty and guide them to Himself on a straight path'.* (an-Nisa 4:175).

### Article 5

The Quran confirms: *'And whoever disobeys Allah and His Messenger and transgresses His limits – He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment.'* (an-Nisa 4:14)

### Article 6

Allah [SWT] has said in the Quran: *'Say [O Muhammad], "if you should love Allah, then follow me, [so] Allah will love you and forgive your sins. And Allah is Forgiving and Merciful". Say, "Obey Allah and the Messenger". But if they turn away – then indeed, Allah does not like the disbelievers.'* (Ali-Imran 31-32). Allah has commanded us to follow and obey His Prophet (SAW). Accordingly, loving and obeying Allah [SWT] means obeying the Prophet (SAW) and following his Sunnah.

## Article 7

**Ideology of Pakistan:** Muslims of India demanded that the Muslims' majority areas should be constituted into a sovereign state, wherein they would be enabled to order their lives, individually and collectively, in accordance with the teachings of Holy Quran and Sunnah of the Holy Prophet (SAW) and with a liberty to strengthen the bonds of unity among Muslim countries.

## Article 8

**Objective of Pakistan:** 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".

## Article 9

**Quaid-e-Azam's Vision and Guidelines for Governance:** Some excerpts of the speeches of Quaid-e-Azam are as follows:-

- a) Pakistan would be the embodiment of the concepts of Islamic social justice and equality of man.
- b) The first duty of a government is to maintain law and order, so that the life, property and religious beliefs of its subjects are fully protected by the State.
- c) Constituent Assembly would deal with social evils with iron hand by taking adequate measures as soon as it is possible for this Assembly to do so and we shall make this Constituent Assembly of Pakistan an example to the world. Bribery and corruption, which really is a poison, would be put down; black-marketing which today is a colossal crime against society would be dealt with severely punishment.
- d) I shall never tolerate any kind of jobbery, nepotism or any influence directly or indirectly brought to bear upon me.
- e) We should wholly and solely concentrate on the well-being of the people, and especially of the masses and the poor and work in co-operation, forgetting the past, burying the hatchet to assure success.
- f) My guiding principle would be justice and complete impartiality, and I am sure that with your support and co-operation, I can look forward to Pakistan becoming one of the greatest nations of the world.
- g) Our object should be peace within, and peace without. We want to live peacefully and maintain cordial friendly relations with our immediate neighbours and with the world at large.
- h) This is not the time to think in terms of personal advancement and jockeying for positions but it is the time for constructive effort, selfless work and steadfast devotion to duty.
- i) We follow the teachings of the Prophet Mohammed (SAW). We are members of the brotherhood of Islam in which all are equal in rights, dignity and self-respect and therefore, we have a special and a very deep sense of unity.
- j) We have won the battle of Pakistan's freedom but the grimmer battle for the preservation of that freedom and building it on a firmer and sounder basis is still in progress and that battle has to be fought to a successful conclusion if we are to survive as a great nation.
- k) Pakistan is now brought under a rule, which is Islamic, Muslim rule, as a sovereign independent State. Now, we have much more difficult task ahead--how to reconstruct, how to build it up and how to revolutionise and re-model the past legacies from which we are suffering, namely, the mentality, the character and the evil customs of which we have been the victims for a century or more as slave people.
- l) Praise your government when it deserves, criticise your government fearlessly when it deserves, but, do not go on all the time attacking, including in destructive criticism, taking delight in running down the Ministry or the Officials.
- m) We must work our destiny in our own way and present to the world an economic system based on true Islamic concept of equality of manhood and social justice. We will thereby be fulfilling our mission as Muslims and giving to humanity the message of peace which alone can save it and secure the welfare, happiness and prosperity of mankind.

## Article 10

**Preamble of the Constitution of the Islamic Republic of Pakistan:** The text is reproduced below:

*“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;*

*And whereas it is the will of the people of Pakistan to establish an order;*

*Wherein the State shall exercise its powers and authority through the chosen representatives of the people;*

*Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;*

*Wherein the Muslim 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;*

*Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures;*

*Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;*

*Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;*

*Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;*

*Wherein the independent of judiciary shall be fully secured;*

*Wherein the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights on land, sea and air, shall be safeguarded;*

*So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity;*

*Now, therefore, we, the people of Pakistan;*

*Conscious of our responsibility before Almighty Allah and men;*

*Cognisant of the sacrifices made by the people in the cause of Pakistan;*

*Faithful to the declaration made by the Founder of Pakistan, Quaid-i-Azam Muhammad Ali Jinnah, that Pakistan would be a democratic State based Islamic principles and social justice;*

*Dedicated to the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny;*

*Inspired by the resolve to protect our national and political unity and solidarity by creating an egalitarian society through a new order;*

*Do hereby, through our representatives in the National Assembly, adapt, enact and give to ourselves, this constitution.*

#### **Article 11**

**Concept of Islamic State:** In Islamic concept of State, Sovereignty belongs to Allah [SWT] but the responsibility for the administration of the government, in an Islamic State is entrusted to the head of the state as a trustee from Allah [SWT], who is vested with the mission to carry out and establish the command of the Sovereign. Head of the state may be equated with the Prime Minister or President in the conventional democratic states. He is not free to act as he wishes, but bound to act in accordance with the directives of his Lord as prescribed in the Quran and Sunnah, i.e. he is bound to function within the limits of the Divine Law. He is not above criticism and he is answerable not only to Allah [SWT] but also to fellow-men for his acts of commission as well as omission. It is important to note, that the scope of government activities in Islam is not confined to administrative matters but it encompasses all the spheres of human life, such as: the social, economic, moral, legal, and political.

#### **Article 12**

**Administration of Islamic State:** The political and administrative structure inspired and regulated by ideals of Islam is a comprehensive system through which alone all kinds of different problems facing the mankind, can be resolved in a most effective manner. In traditional democratic system sovereignty belong to the people, by Islamic concept of sovereignty is that political and legal sovereignty belong exclusively to Allah [SWT], since He is the Lord and the Creator and people are His subjects, therefore His Will should reign supreme as the Law. Accordingly, His commands ought to be established and obeyed in man's society<sup>1</sup>.

#### **Article 13**

**Al-Shura and Sovereignty:** Majilis Shura is constituted to undertake the spirit of the Divine law and guide the government in its implementation. Majilis Shura, unlike western concept of parliament, is not a sovereign body as sovereignty belongs to Allah alone, Who is Eternal, Absolute, Indivisible, and Master of all beings. Accordingly, Shura has no power to change or abrogate the Divine law, or to make new law contrary to Quran and Sunnah. It can only make regulations through Ijtihad in the light and spirit of Divine law in those matters not clearly stated therein.

#### **Article 14**

**Appointment of an Amir of an Islamic State:** The basic qualification for the appointment of an Amir is that he should command the confidence of the 'Constitutional Body, (ahulhal wal'aqd), which in turn is recruited from among the notables, scholars (of Islam), and leaders who effectively have the duty to carry out this task of appointing the Amir. Each member of this council must meet three prerequisites, namely: (a) moral credit i.e. possessing piety and high moral standards, (b) religious scholar, i.e. well versed in religion so as to be in a position to make a decision for the selection of Amir, and (c) being able to make good and sound judgement leading to a sharp perception of the person as a suitable candidate for the position of Amir. In short, he should have both virtue and ability to run the high office.

#### **Article 15**

**Obligations of the Government of an Islamic State:** It is one of the major obligations of an Islamic government to assure that public affairs are granted to those who are deserving of them from the point of view of piety and righteousness<sup>2</sup> and not for any rank or other reasons<sup>3</sup>. However, in practice

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<sup>1</sup> The Quran says: To Allah belong the dominion of the heavens and the earth. (Q: 57:1)

<sup>2</sup> Abu Huraira (PBUH) reported that the Messenger of Allah said: 'He, who obeyed me, obeyed Allah and who disobeyed me, disobeyed Allah. And he, who obeyed the ruler, obeyed me and he who disobeyed the ruler disobeyed me. Verily, the ruler is a shield. One fights behind him and is safeguarded through him. If the ruler orders with God-consciousness and acts justly, he is entitled to a reward for that and if he speaks otherwise, he will have to bear a burden of his misdeeds'. (Agreed upon)

in most Muslim countries, bulk of political leaders and bureaucrats, unfortunately are and have been secular minded: without sincere belief in Islamic ethical and moral values, and therefore, have not been interested in an Islamic model of administration. Accordingly, there is no true Islamic State in the world today. However, if we Muslims have not acted upon the Divine Law, the fault lies with us and not with the Islamic legal system. As far as administration is concerned, the Divine Law lays down the rules for the conduct of state and good governance. The Divine law enunciates the basic principles and major elements of Islamic administrative law, rules for judiciary, for the police, administrative bodies, and even in broad terms the conduct of the ruler.

One of the most important sources of principles of administration is the letter of the Caliph Hazrat Ali written to Malik Al-Ashtar the governor of Egypt<sup>4</sup>, as narrated in Inamul Haq Article entitled: 'The concept of Justice and Administrative Accountability in Islam' published in J.R.S.P., Vol. XXXII, No. 2, 1995: "The letter deals with the duties and obligations of the ruler and administrator; the distribution of work among various branches of administration; and coordination and cooperation. The letter advises against corruption, calls for administrative probity, urges effectiveness and efficiency, asks the governor to fight oppression to curb the evils of profiteering, hoarding and black marketing. It discusses the principles of equitable distribution of wealth and opportunity, justice and mercy without class, creed or colour. The governor must be a good ideal for his staff and citizens. He must be impartial. He must supervise the activities of his subordinates. He must consult his staff and keep regular communication. He must not develop traits of self-administration. He must require nothing for himself and his relatives". In an Islamic government, the atmosphere of trust and credibility should prevail, the governor should lead a simple life, law should be enforced equally, and there must be true faith, unity of purpose and ideological motivation among the people.

#### Article 16

**The Right to Justice:** This is very important and valuable right, which Islam has given to man. So much emphasis has been laid on the concept of justice in Islam that around sixty Quranic verses command (those in powers) to do justice<sup>5</sup>. Islam has legislated that nobody to be imprisoned unless his guilt has been proved after fair trial as somebody's action can under no circumstances be transferred to someone else.

#### Article 17

**The Right to Equality before Law, Even Rulers Not Above the Law:** Islam gives its citizens the right to absolute and complete equality in their rights and obligations<sup>6</sup>. The Prophet (SAW) has stressed this right, far and again<sup>7</sup>. The Prophet (SAW) has demonstrated this principle throughout his life<sup>8</sup>. In order to maintain this sort of justice, both Khalifa Umar and Khalifa Ali made sure that judiciary was free from influences and thereby gave to the world the concept of 'independence of judiciary'

#### Article 18

**Delivery of Justice in an Islamic State:** An authentic Hadith from the Prophet (SAW) goes on to say: on the eve of departure of Mua'dh Bin Jabal to assume his office as Judge of Yemen, the prophet (SAW) asked him "According to what will you judge? He replied "according to the Holy Quran". "And, if you do not find it therein"? the Prophet (SAW) asked. "According to the Sunnah of

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<sup>3</sup> Umm al-Hussain reported that the Messenger of Allah said: 'if a disfigured slave is appointed as your ruler who leads you according to the Book of Allah you must listen to him and obey him'. (Muslim)

<sup>4</sup> Nahajul Balagha, Sermon, Letters and saying of Imam Ali (European Islamic Cultural Center) Fourth Edition, Room, Italy 1984, pp. 531-547.

<sup>5</sup> Some verses are cited here. Quran says: 'O you who believe! Stand out firmly for justice, as witness to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor. Follow not the lusts (of your hearts), lest you swerve, and if you distort (justice) or decline to do justice, verily Allah is well acquainted with all that you do'. (Q:4:135). Quran further says: "O you who believe! Stand out firmly for Allah, as witness to fair dealing, and let not the hatred of others make you swerve to wrong and depart from justice. Be just that is next to Piety: and fear Allah. For Allah is well acquainted with all that you do'. (Q: 5:8)

<sup>6</sup> The Quran says: 'The Believers are but a single brotherhood, so make peace and reconciliation between your two (contending) brothers; and fear Allah, that you may receive mercy' (Q:49:10).

<sup>7</sup> The Prophet said: 'The life and blood of Muslims are equally precious' (Abu Dawud & Ibn Maja). The Prophet also said: 'The protection given by all Muslims are equal, even an ordinary man of them can grant protection to any man' (Bakhari, Muslim, Abu Dawud).

<sup>8</sup> A case is cited here when the Prophet was requested not to order the cutting of hand of a woman. The Prophet made the remarks: 'I swear to Allah, Who has the life of Muhammad in His hands, if my daughter Fatimah had committed theft I would have cut her hands'.

the Prophet”, “and if it is not therein?”, the Prophet further asked. “Then I will exert myself to form my own judgment” replied Mu’adh. Thereupon the Prophet (SAW) said, “Praise be to Allah, who has guided the messenger of His Prophet to that which pleases His Prophet”.

*“If the judge exercises Ijtihad and arrives at the correct decision he is doubly rewarded, and if he arrives at the wrong decision he is still rewarded singly provided he exercised Ijtihad.” (related by Al-Bukhari, Muslim, Al-Tirmidhi, Al-Nasa’i and Abu Da’ud).”*

‘Both Dawu’d and Suleman (Peace be upon them) tried to decide the case in right earnest, but their opinions differed. In spite of this difference, both were entitled to reward from Allah, since both of them put their best endeavours in administering justice. However, it should be remembered that Ijtihad is not a task, which everyone can rightly perform. It is a heavy task, which entails heavy responsibilities.

## **Article 19**

**Guidance for the working of the office of a judge in an Islamic State:** Upon appointing Abu Musa Al-Ashari as judge of Al-Kufa, Khalifa Umar wrote the famous letter detailing the laws and their basis that governs the office of judge. The letter contained the text, the English translation of which is as follows:-

*“The office of judge is a definite religious duty and a generally followed practice. Understand the depositions that are made before you, for it is useless to consider a plea that is not valid. Consider all people equal before you in your court and in your attention, so that the noble will not expect you to be partial and the humble will not despair of justice from you. (The equivalent Common Law idea is the rule of natural justice that justice must not only be done but also be seen to be done). The claimant must produce evidence; from the defendant, an oath may be exacted. Compromise is permissible among Muslim, but not any agreement through which something forbidden (haram) would be rendered permissible (halal), or vice versa. (This is comparable with the Common Law idea of compoundable offenses or settlement out of court). If you gave judgment yesterday, and today upon reconsideration come to the correct opinion, you should not feel prevented by your first judgment from retracting; for justice is primeval, and it is better to retract than to persist in error. {This may be contrasted with the Common Law strict adherence to the rule of stare decisions or binding precedents}. But this was not an invitation to keep changing decisions, especially when a Qadi is asked to review his own judgment. Indeed, ‘Umar said on one occasion: “That is what we judged and that is what we now judge (i.e., in this new case)”. Use your brain about matters that perplex you and to which neither the Qur’an nor the Sunnah seem to apply (i.e. apply Ijtihad). Know the similitude and weigh the issues accordingly (i.e. apply qiyas). If a person brings a claim, which he may or may not be able to prove, set a time limit for him. If he adduces evidence within the time limit set, you should allow his claim, otherwise you are permitted to give judgment against him. This is the better way to forestall or clear up any possible doubt. {This is comparable with the idea of limitation (or taqadum) and with the taking out of a summons for directions by a plaintiff}. All Muslims are acceptable as witnesses against each other, except such as have received a punishment provided for by the religious law, such as are proved to have given false witness, and such as are suspected of partiality on the ground of client status or relationship, for Allah, praised be He, forgives because of oaths and postpones punishment in face of the evidence. Avoid fatigue and weariness and annoyance at the litigants. For establishing justice in the courts of justice, Allah will grant you a rich reward and give you a good reputation. Farewell.”<sup>9</sup>*

## **Article 20**

### **Text of the Charter of Democracy**

LONDON, May 15: The following is the text of the Charter of Democracy signed by former prime ministers Benazir Bhutto and Nawaz Sharif here on Sunday:

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<sup>9</sup> (Quoted from ‘Outline of Islamic Jurisprudence’ by Isaq Ghanem published by Saudi Publishing & Distributing House, 1983, pp. 28-29)

We the elected leaders of Pakistan have deliberated on the political crisis in our beloved homeland, the threats to its survival, the erosion of the federation's unity, the military's subordination of all state institutions, the marginalisation of civil society, the mockery of the Constitution and representative institutions, growing poverty, unemployment and inequality, brutalisation of society, breakdown of rule of law and, the unprecedented hardships facing our people under a military dictatorship, which has pushed our beloved country to the brink of a total disaster;

Noting the most devastating and traumatic experiences that our nation experienced under military dictatorships that played havoc with the nation's destiny and created conditions disallowing the progress of our people and the flowering of democracy. Even after removal from office they undermined the people's mandate and the sovereign will of the people;

Drawing history's lesson that the military dictatorship and the nation cannot co-exist – as military involvement adversely affect the economy and the democratic institutions as well as the defence capabilities, and the integrity of the country - the nation needs a new direction different from a militaristic and regimental approach of the Bonapartist regimes, as the current one;

Taking serious exception to the vilification campaign against the representatives of the people, in particular, and the civilians, in general, the victimisation of political leaders/workers and their media trials under a Draconian law in the name of accountability, in order to divide and eliminate the representative political parties, to Gerrymander a king's party and concoct legitimacy to prolong the military rule;

Noting our responsibility to our people to set an alternative direction for the country saving it from its present predicaments on an economically sustainable, socially progressive, politically democratic and pluralist, federally cooperative, ideologically tolerant, internationally respectable and regionally peaceful basis in the larger interests of the peoples of Pakistan to decide once for all that only the people and no one else has the sovereign right to govern through their elected representatives, as conceived by the democrat par excellence, Father of the Nation Quaid-i-Azam Mohammed Ali Jinnah;

Reaffirming our commitment to undiluted democracy and universally recognised fundamental rights, the rights of a vibrant opposition, internal party democracy, ideological/political tolerance, bipartisan working of the parliament through powerful committee system, a cooperative federation with no discrimination against federating units, the decentralisation and devolution of power, maximum provincial autonomy, the empowerment of the people at the grassroots level, the emancipation of our people from poverty, ignorance, want and disease, the uplift of women and minorities, the elimination of klashnikov culture, a free and independent media, an independent judiciary, a neutral civil service, rule of law and merit, the settlement of disputes with the neighbours through peaceful means, honouring international contracts, laws/covenants and sovereign guarantees, so as to achieve a responsible and civilised status in the comity of nations through a foreign policy that suits our national interests;

Calling upon the people of Pakistan to join hands to save our motherland from the clutches of military dictatorship and to defend their fundamental, social, political and economic rights and for a democratic, federal, modern and progressive Pakistan as dreamt by the Founder of the nation; have adopted the following, "Charter of Democracy";

#### **A. CONSTITUTIONAL AMENDMENTS**

1. The 1973 Constitution as on 12th October 1999 before the military coup shall be restored with the provisions of joint electorates, minorities, and women reserved seats on closed party list in the Parliament, the lowering of the voting age, and the increase in seats in parliament and the Legal Framework Order, 2000 and the Seventeenth Constitutional Amendment shall be repealed accordingly.

2. The appointment of the governors, three services chiefs and the CJCS shall be made by the chief executive who is the prime minister, as per the 1973 Constitution.

3. (a) The recommendations for appointment of judges to superior judiciary shall be formulated through a commission, which shall comprise of the following: i. The chairman shall be a chief justice, who has never previously taken oath under the PCO.

ii. The members of the commission shall be the chief justices of the provincial high courts who have not taken oath under the PCO, failing which the senior most judge of that high court who has not taken oath shall be the member

iii. Vice-Chairmen of Pakistan and Vice-Chairmen of Provincial Bar Association with respect to the appointment of judges to their concerned province

iv. President of Supreme Court Bar Association

v. Presidents of High Court Bar Associations of Karachi, Lahore, Peshawar, and Quetta with respect to the appointment of judges to their concerned province

vi. Federal Minister for Law and Justice

vii. Attorney General of Pakistan

(a-i) The commission shall forward a panel of three names for each vacancy to the prime minister, who shall forward one name for confirmation to joint parliamentary committee for confirmation of the nomination through a transparent public hearing process.

(a-ii) The joint parliamentary committee shall comprise of 50 per cent members from the treasury benches and the remaining 50 per cent from opposition parties based on their strength in the parliament nominated by respective parliamentary leaders.

(b) No judge shall take oath under any Provisional Constitutional Order or any other oath that is contradictory to the exact language of the original oath prescribed in the Constitution of 1973.

(c) Administrative mechanism will be instituted for the prevention of misconduct, implementation of code of ethics, and removal of judges on such charges brought to its attention by any citizen through the proposed commission for appointment of Judges. (d) All special courts including anti-terrorism and accountability courts shall be abolished and such cases be tried in ordinary courts. Further to create a set of rules and procedures whereby, the arbitrary powers of the chief justices over the assignment of cases to various judges and the transfer of judges to various benches such powers shall be exercised by the Chief Justice and two senior most judges sitting together.

4. A Federal Constitutional Court will be set up to resolve constitutional issues, giving equal representation to each of the federating units, whose members may be judges or persons qualified to be judges of the Supreme Court, constituted for a six-year period. The Supreme and High Courts will hear regular civil and criminal cases. The appointment of judges shall be made in the same manner as for judges of higher judiciary.

5. The Concurrent List in the Constitution will be abolished. A new NFC award will be announced.

6. The reserved seats for women in the national and provincial assemblies will be allocated to the parties on the basis of the number of votes polled in the general elections by each party.

7. The strength of the Senate of Pakistan shall be increased to give representation to minorities in the Senate.

8. FATA shall be included in the NWFP province in consultation with them.

9. Northern Areas shall be developed by giving it a special status and further empowering the Northern Areas Legislative Council to provide people of Northern Areas access to justice and human

rights.

10. Local bodies election will be held on party basis through provincial election commissions in respective provinces and constitutional protection will be given to the local bodies to make them autonomous and answerable to their respective assemblies as well as to the people through regular courts of law.

## **B. CODE OF CONDUCT**

11. National Security Council will be abolished. Defence Cabinet Committee will be headed by prime minister and will have a permanent secretariat. The prime minister may appoint a federal security adviser to process intelligence reports for the prime minister. The efficacy of the higher defence and security structure, created two decades ago, will be reviewed. The Joint Services Command structure will be strengthened and made more effective and headed in rotation among the three services by law. 12. The ban on a 'prime minister not being eligible for a third term of office' will be abolished.

13. (a) Truth and Reconciliation Commission be established to acknowledge victims of torture, imprisonment, state-sponsored persecution, targeted legislation, and politically motivated accountability. The commission will also examine and report its findings on military coups and civil removals of governments from 1996

(b) A commission shall also examine and identify the causes of and fix responsibility and make recommendations in the light thereof for incidences such as Kargil.

(c) Accountability of NAB and other Ehtesab operators to identify and hold accountable abuse of office by NAB operators through purgery and perversion of justice and violation of human rights since its establishment.

(d) To replace politically motivated NAB with an independent accountability commission, whose chairman shall be nominated by the prime minister in consultation with the leader of opposition and confirmed by a joint parliamentary committee with 50 per cent members from treasury benches and remaining 50 per cent from opposition parties in same manner as appointment of judges through transparent public hearing. The confirmed nominee shall meet the standard of political impartiality, judicial propriety, moderate views expressed through his judgements and would have not dealt.

14. The press and electronic media will be allowed its independence. Access to information will become law after parliamentary debate and public scrutiny.

15. The chairmen of public accounts committee in the national and provincial assemblies will be appointed by the leaders of opposition in the concerned assemblies.

16. An effective Nuclear Command and Control system under the Defence Cabinet Committee will be put in place to avoid any possibility of leakage or proliferation.

17. Peaceful relations with India and Afghanistan will be pursued without prejudice to outstanding disputes.

18. Kashmir dispute should be settled in accordance with the UN Resolutions and the aspirations of the people of Jammu and Kashmir.

19. Governance will be improved to help the common citizen, by giving access to quality social services like education, health, job generation, curbing price hike, combating illegal redundancies, and curbing lavish spendings in civil and military establishments as ostentious causes great resentment amongst the teeming millions. We pledge to promote and practice simplicity, at all levels.

20. Women, minorities, and the under privileged will be provided equal opportunities in all walks of life.

21. We will respect the electoral mandate of representative governments that accepts the due role of the opposition and declare neither shall undermine each other through extra constitutional ways.

22. We shall not join a military regime or any military sponsored government. No party shall solicit the support of military to come into power or to dislodge a democratic government.

23. To prevent corruption and floor crossing all votes for the Senate and indirect seats will be by open identifiable ballot. Those violating the party discipline in the poll shall stand disqualified by a letter from the parliamentary party leader to the concerned Speaker or the Chairman Senate with a copy to the Election Commission for notification purposes within 14 days of receipt of letter failing which it will be deemed to have been notified on the expiry of that period.

24. All military and judicial officers will be required to file annual assets and income declarations like Parliamentarians to make them accountable to the public.

25. National Democracy Commission shall be established to promote and develop a democratic culture in the country and provide assistance to political parties for capacity building on the basis of their seats in parliament in a transparent manner.

26. Terrorism and militancy are by-products of military dictatorship, negation of democracy, are strongly condemned, and will be vigorously confronted.

### **C. FREE AND FAIR ELECTIONS**

27. There shall be an independent, autonomous, and impartial election commission. The prime minister shall in consultation with leader of opposition forward up to three names for each position of chief election commissioner, members of election commission, and secretary to joint parliamentary committee, constituted on the same pattern as for appointment of judges in superior judiciary, through transparent public hearing process. In case of no consensus, both prime minister and leader of opposition shall forward separate lists to the joint parliamentary committee for consideration. Provincial election commissioner shall be appointed on the same pattern by committees of respective provincial assemblies.

28. All contesting political parties will be ensured a level playing field in the elections by the release of all political prisoners and the unconditional return of all political exiles. Elections shall be open to all political parties and political personalities. The graduation requirement of eligibility which has led to corruption and fake degrees will be repealed.

29. Local bodies elections will be held within three months of the holding of general elections.

30. The concerned election authority shall suspend and appoint neutral administrators for all local bodies from the date of formation of a caretaker government for holding of general elections till the elections are held.

31. There shall be a neutral caretaker government to hold free, fair, and transparent elections. The members of the said government and their immediate relatives shall not contest elections.

### **D. CIVIL - MILITARY RELATIONS**

32. The ISI, MI and other security agencies shall be accountable to the elected government through Prime Minister Sectt, Ministry of Defence, and Cabinet Division respectively. Their budgets will be approved by DCC after recommendations are prepared by the respective ministry. The political wings of all intelligence agencies will be disbanded. A committee will be formed to cut waste and bloat in the armed forces and security agencies in the interest of the defence and security of the country. All senior postings in these agencies shall be made with the approval of the government through respective ministry.

33. All indemnities and savings introduced by military regimes in the constitution shall be reviewed.

34. Defence budget shall be placed before the parliament for debate and approval.

35. Military land allotment and cantonment jurisdictions will come under the purview of defence ministry. A commission shall be set up to review, scrutinise, and examine the legitimacy of all such land allotment rules, regulations, and policies, along with all cases of state land allotment including those of military urban and agricultural land allotments since 12th October, 1999 to hold those accountable who have indulged in malpractices, profiteering, and favouritism.

36. Rules of business of the federal and provincial governments shall be reviewed to bring them in conformity with parliamentary form of government

#### **Article 21**

*'And let the People of the Gospel judge by what Allah has revealed therein. And whoever does not judge by what Allah has revealed – then it is those who are the defiantly disobedient.*' (Surah al-Ma'idah 5:47)

#### **Article 22**

*'Indeed, the religion in the sight of Allah is Islam. ....'* (Surah ali-Imran 3:19)

#### **Article 23**

*'Those to whom people [i.e. hypocrites] said, "indeed, the people have gathered against you, so fear them." But it [merely] increased them in faith, they said, "Sufficient is for us is Allah, and [He is] the best Disposer of affairs."* (Surah ali-Imran 3:173)

#### **Article 24**

**Harj:** Abu Hurairah narrated that the Messenger of Allah said, *'The Hour will not be established until there is a lot of Harj.'* It was asked, *'What is Harj, O Messenger of Allah?'* He said, *'Qatl (killing), Qatl (killing).'* Abu Musa said, *'Harj in the Ethiopian language means killing.'* (saheeh of bukhaari).

#### **Article 25**

Abu Musa narrated that Allah's Messenger said, *'There will emerge a Harj before the Hour.'* I said, *'O Allah's Messenger! What is Harj?'* He said, *'Killing ..... some Muslims will kill other Muslims.'* (sunan of ibn maajah)

### **3 INTRODUCTION**

The ideology of Pakistan was not formed on a fixed day of the calendar but it took shape through an evolutionary process. Its base started when Sir Syed Ahmad Khan began the period of Muslim self-awakening; its development began when Allama Iqbal provided the philosophical explanation and then Jinnah translated it into a political reality. Muslims of India believing, that they are a nation in the modern sense of the word with its distinct culture religion and their nationhood is neither territorial, racial, linguistic nor ethnic, demanded separate electorates and their fundamental right to be entitled to self-determination. They demanded that the Muslims' majority areas should be constituted into a sovereign state, wherein they would be enabled to order their lives, individually and collectively, in accordance with the teachings of Holy Quran and Sunnah of the Holy Prophet (SAW) and with a liberty to strengthen the bonds of unity among Muslim countries.

Under the Indian Independence Act of July 18, 1947, the Government of India Act of 1935 became, with certain adaptations, the working constitution of Pakistan. Quaid-i-Azam became the first Governor General of Pakistan and Liaquat Ali Khan took the office of the first Prime Minister of Pakistan. However, the Quaid's aim was the establishment of a truly Islamic society. As a result, a Constituent Assembly was set up under the Independence Act. The Constituent Assembly had a dual purpose; to draft the constitution of Pakistan and to act as a legislative body till the new constitution was passed and enforced.

However, with the birth of Pakistan, Quaid-i-Azam inherited many problems, such as: (a) Refugees, (b) Scarcity of Resources, (c) Indus Water and (d) Accession of Princely States. Also Quid-i-Azam health suffered due to his hard work as since the Lahore Resolution of 1940, he never properly rested even until Pakistan was born and even during resolving its aftermath problems. He, however through his untiring speeches gave us guidance for good governance for running Pakistan as a true Islamic State and to open up a bright future for the people of Pakistan, a better standard of living, economic development, prosperity and a fuller life as free Muslims (Article 9 of the preamble of this memorandum refers). His sickness grew more serious until his death on September 11, 1948.

Being the first Prime Minister of the country, Liaquat Ali Khan had to deal with a number of difficulties that Pakistan faced in its early days. He helped Quaid-i-Azam in solving the riots and refugee problem and in setting up an effective administrative system for the country, established the groundwork for Pakistan's foreign policy, and also took steps towards the formulation of the constitution. He presented the Objectives Resolution, a prelude to future constitutions, in the Legislative Assembly, which was passed on March 12, 1949. It is considered to be the "Magna Carta" in Pakistan's constitutional history. The Objectives Resolution proclaimed that the future constitution of Pakistan would not be modeled on European pattern, but on the ideology and democratic faith of Islam. It proclaimed the following principles:

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1. Sovereignty belongs to Allah alone but He has delegated it to the State of Pakistan through its people for being exercised within the limits prescribed by Him as a sacred trust.
  2. The State shall exercise its powers and authority through the chosen representatives of the people.
  3. The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.
  4. Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings of Islam as set out in the Holy Quran and Sunnah.
  5. Adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures.
  6. Pakistan shall be a federation.
  7. Fundamental rights shall be guaranteed.
  8. Judiciary shall be independent.

The Objectives Resolution<sup>10</sup> is one of the most important and illuminating documents in the constitutional history of Pakistan. At the time it was passed, Mr. Liaquat Ali Khan called it "the most important occasion in the life of this country, next in importance only to the achievement of independence".

Liaquat Ali Khan had been scheduled to make an important announcement in a public meeting at Municipal Park, Rawalpindi, but prior to making such announcement on October 16, 1951 he was assassinated while addressing a rally at Rawalpindi. The security forces immediately shot the assassin, who was later identified as Saad Akbar, but with the killing of the assassin the question of who was behind his murder remained unanswered. Liaquat Ali Khan was officially given the title of Quad-e-Millat [Leader of the Nation] and subsequently also Shaheed-e-Millat [Martyr of the Nation].<sup>i</sup> The inquiry was conducted in the aftermath of the 1951 assassination of Liaquat Ali Khan by a British Team of investigators, but the British team was asked to leave Pakistan before its inquiries were complete and the case was closed.

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<sup>10</sup> The Objectives Resolution became a part of the constitution of Pakistan in 1985 under the Eighth Amendment

Years of debate, however, failed to produce agreement on fundamental issues such as regional representation or the structure of a constitution. This impasse prompted Governor General Ghulam Mohammad to dismiss the Constituent Assembly in 1954. The Supreme Court of Pakistan upheld the action of the governor general, arguing that he had the power to disband the Constituent Assembly and veto legislation it passed. This preeminence of the governor general over the legislature has been referred to as the vice-regal tradition in Pakistan's politics.

After 62 years history of Pakistan, without implementing Pakistan political system to achieve its aim of existence, Pakistan has now come to a cross road when it is incumbent upon us to learn lessons from our mistakes made throughout our history, repent and seek Allah's Mercy and forgiveness for our errors, omissions and commissions in the governance of Pakistan against its ideology and objectives, and guideline given to us from our Quid-i-Azam for its governance (Articles 7, 8, and 9 refer). Pakistan was created on the name of Islam and it is second Islamic State which has been founded on the name of Islam after the first Islamic State of Madinah founded by our Prophet (SAW). Accordingly, our aim is to establish governance of Pakistan on the line of the governance of the first Islamic State of Madinah. Time has come that we must first assess ourselves to find out where we are and then work out a suitable strategy how to get there in achieving our aforesaid aim. Through this memorandum I wish to bring to the attention of our key players of our current Pakistan politics, our current situation Pakistan is facing today and reasons behind this, with the hope and pray that, if they are sincere, they can make a difference to the stability of Pakistan by adopting suitable policies to achieve the aforesaid aim.

#### **4. PROBLEMS AND CONCERNS**

##### **4.1 Current Dilemma of Pakistan's Politics**

Between March 2002 to October 2008 Suicide bombers have struck more than 116 times in Pakistan. The first incident of its kind on 16 March 2002 at an Islamabad church<sup>11</sup>. On March 16, 2002, a suicide bomber blew himself up in a church in Islamabad, killing five people and injuring 40 others, including Sri Lankan high commissioner to Pakistan. Fifty days after this attack, French nationals were attacked by a suicide bomber in Karachi, killing at least 14 persons, including nine French nationals. Since then suicide bombings have continued unabated. Two suicide bombers blew themselves up in 2003, seven attacks in 2004, four suicide attacks were recorded in 2005 while another seven suicide bombers hit their targets in 2006.

In the international press it has been reported that: "Suicide bombers conducted 658 attacks around the world last year (2007) ... more than double the number in any of the past 25 years ... More than four-fifths of the suicide bombings over that period have occurred in the past seven years, the data show. The bombings have spread to dozens of countries on five continents, killed more than 21,350 people and injured about 50,000 since 1983 ... Since 1983, bombers in more than 50 groups from Argentina to Algeria, Croatia to China and India to Indonesia have adapted car bombs to make explosive belts, vests, toys, motorcycles, bikes, boats, backpacks and false-pregnancy stomachs. Of 1,840 incidents in the past 25 years, more than 86 percent have occurred since 2001, and the highest annual numbers have occurred in the past four years."

If we analyze the above news headlines, we will come to a conclusion that, most of the suicide bombing events are post 2001 i.e. post 9/11 event of New York and by and large, victims have been innocent Muslims. But there is misconception in the West that Islamic teachings in any way support the acts of suicide bombing of innocent people or mass murders. On the contrary Islam forbids all such acts and whoever is involved in such acts will go to Hellfire and consider all acts of suicide bombing of innocent people as crimes against humanity. The other observation from the above suicide bombing events is that Pakistan is the prime target as in Pakistan, the year 2007 witnessed the most number of suicide bombings as terrorists attacked 57 targets during the year all over the country, killing over 760 persons, which included the suicide attack on Marriott Hotel of, which was reported by the media as 9/11 of Pakistan, the attack, which was said to be the worst one in Pakistan as 600 kilogram of explosives were used in the blast that killed over 60 people but destroyed infrastructure in two square kilometres area. During the same year, Benazir Bhutto had survived a

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<sup>11</sup> Disclosed data collected by a law-enforcement agency

suicide attack on October 18, soon after she landed in Karachi after years of self-imposed exile, but she remained unhurt but around 150 people were killed in that suicide attack and over 550 sustained injuries. However, in one such attack in Rawalpindi on December 27, Benazir Bhutto got killed with at least 30 people and over hundred injured in the incident.

The above conspiracy against Pakistan, primarily due to post 9/11 Mushraf-Bush Alliance on 'War of Terror', has further been intensified due to some major blunders committed by the Pakistan's political leaders, such as: Issuance of NRO, unlawful removal of Chief Justice of Pakistan from his office and making a joke of rule of law in Pakistan, operation silence, against Lal Masjid Islamabad and killing Pakistan's own citizens including women and children, and many more responsible for further killing of innocent citizens of Pakistan due to 'civil disobedience including the US expansion of Pakistani drone-strike zone killing innocent people, which has created a very serious situation due to further crimes against humanity by insurgence in Swat, Dir (Buner violence) and surrounding areas in the NWF Province and spreading across Pakistan, thereby has brought Pakistan on a cross road when it is incumbent upon us to learn lessons from our mistakes made throughout our history, repent and seek Allah's Mercy and forgiveness for our errors, omissions and commissions in the governance of Pakistan against its ideology and objectives, and guideline given to us from our Quid-i-Azam for its governance (Articles 7, 8, and 9 refer), and avoid Pakistan moving fast to the state of Harj (Article 21 of the Preamble refers). Pakistan was created on the name of Islam and it is second Islamic State which has been founded on the name of Islam after the first Islamic State of Madinah founded by our Prophet (SAW). Accordingly, our aim is to establish governance of Pakistan on the line of the governance of the first Islamic State of Madinah. Time has come that we must first assess ourselves to find out where we are and then work out a suitable strategy how to get there in achieving our aforesaid aim. In order to work out a suitable strategy for future stability of Pakistan, it is incumbent upon us all to understand the reality of Allah [SWT] (refer to Article 1 of the Preamble) and strengthen our faith in Him keeping in mind that "aaj be ho Ibrahim kaa eman peda – aag ker sati hae indaz-e-gultan peda". It is equally imperative that we critically review the history of Pakistan and take corrective actions from lessons learnt from the blunders and mistakes, which have been committed by our politicians over a span of sixty-two years history of Pakistan and seek Mercy and Forgiveness from Allah [SWT].

#### **4.2 Critical Review of early History of Pakistan**

Under the Indian Independence Act of July 18, 1947, the Government of India Act of 1935 became, with certain adaptations, the working constitution of Pakistan. Quaid-i-Azam became the first Governor General of Pakistan and Liaquat Ali Khan took the office of the first Prime Minister of Pakistan. However, the Quaid's aim was the establishment of a truly Islamic society. As a result, a Constituent Assembly was set up under the Independence Act. The Constituent Assembly had a dual purpose; to draft the constitution of Pakistan and to act as a legislative body till the new constitution was passed and enforced.

However, with the birth of Pakistan, Quaid-i-Azam inherited many problems, such as: (a) Refugees, (b) Scarcity of Resources, (c) Indus Water and (d) Accession of Princely States. Also Quid-i-Azam health suffered due to his hard work as since the Lahore Resolution of 1940, he never properly rested even until Pakistan was born and even during resolving its aftermath problems. He, however through his untiring speeches gave us guidance for good governance for running Pakistan as a true Islamic State and to open up a bright future for the people of Pakistan, a better standard of living, economic development, prosperity and a fuller life as free Muslims (Article 9 of the preamble of this memorandum refers). His sickness grew more serious until his death on September 11, 1948.

International Statesmen and Press had paid tribute to Quaid-i-Azam in different words and forms. President Truman remarked: "Quaid-i-Azam was the originator of the dream that became Pakistan, architect of the State and father of the world's largest Muslim Nation. Mr Jinnah was the recipient of a devotion and loyalty seldom accorded to any man". --Lord Pethick-Lawrence, the penultimate Secretary of State for India remarked: "Gandhi died at the hands of an assassin; Jinnah died by his devotion to Pakistan".-- Lord Listowel commented: "Among Jinnah's many qualities of head and heart were his single-mindedness, a strong political will, and his dislike for sectarianism. These qualities of

leadership enabled him to unite the Muslims in India in the Muslim nationhood." -- Statement commented: "Seemingly as hard as a diamond, he had all the diamond's brilliance". -- Time commented: "Few Statesmen have shaped events to their policy more surely than Mr Jinnah. He was a legend in his lifetime". -- Surat Chandra Bose, leader of the Forward Bloc wing of the Indian National Congress, whilst summing up, briefly and concisely personal and political achievements of Jinnah on his death in 1948, in these words: " Mr. Jinnah was great as a lawyer, once great as a Congressman, great as a leader of Muslims, great as a world politician and diplomat, and greatest of all as a man of action, By Mr. Jinnah's passing away, the world has lost one of the greatest statesmen and Pakistan its life-giver, philosopher and guide".

Being the first Prime Minister of the country, Liaquat Ali Khan had to deal with a number of difficulties that Pakistan faced in its early days. He helped Quaid-i-Azam in solving the riots and refugee problem and in setting up an effective administrative system for the country, established the groundwork for Pakistan's foreign policy, and also took steps towards the formulation of the constitution. He presented the Objectives Resolution, a prelude to future constitutions, in the Legislative Assembly, which was passed on March 12, 1949. It is considered to be the "Magna Carta" in Pakistan's constitutional history. The Objectives Resolution proclaimed that the future constitution of Pakistan would not be modelled on European pattern, but on the ideology and democratic faith of Islam.

In 1950, Liaquat Ali Khan prepared a report on the basic principles of Pakistan, which was adopted as an outline of the future Constitution of the country. In 1950, his efforts in signing the Liaquat-Nehru pact pertaining to the minority issue reduced tensions between India and Pakistan. In May 1951, he visited the United States to bring Pakistan's foreign policy towards closer ties with the West. Liaquat Ali Khan had been scheduled to make an important announcement in a public meeting at Municipal Park, Rawalpindi, but prior to making such announcement on October 16, 1951 he was assassinated while addressing a rally at Rawalpindi. The security forces immediately shot the assassin, who was later identified as Saad Akbar, but with the killing of the assassin the question of who was behind his murder remained unanswered. Liaquat Ali Khan was officially given the title of Quaid-e-Millat [Leader of the Nation] and subsequently also Shaheed-e-Millat [Martyr of the Nation].<sup>ii</sup> The inquiry was conducted in the aftermath of the 1951 assassination of Liaquat Ali Khan by a British Team of investigators, but the British team was asked to leave Pakistan before its inquiries were complete and the case was closed. This was a turning point of Pakistan's politics and a hope for Pakistan achieving its ideology and aim became into turbulence.

After assassination of Liaquat Ali Khan, years of debate failed to produce agreement on issues such as regional representation or the structure of a constitution. This impasse prompted Governor General Ghulam Mohammad to dismiss the Constituent Assembly in 1954. The Supreme Court of Pakistan upheld the action of the governor general, arguing that he had the power to disband the Constituent Assembly and veto legislation it passed. This preeminence of the governor general over the legislature has been referred to as the vice-regal tradition in Pakistan's politics.

The revived Constituent Assembly promulgated Pakistan's first indigenous constitution in 1956 and reconstituted itself as the national legislature, the Legislative Assembly, under the constitution it adopted. Pakistan became an Islamic republic. The governor general was replaced by a president, but despite efforts to create regional parity between the East Wing and the West Wing, the regional tensions remained. Continuing regional rivalry, ethnic dissension, religious debate, and the weakening power of the Muslim League, the national party that spearheaded the country's founding, exacerbated political instability and eventually led President Iskander Mirza to disband the Legislative Assembly on October 7, 1958, and declare martial law. General Mohammad Ayub Khan, Pakistan's first indigenous army commander in chief, assisted Mirza in abrogating the constitution of 1956 and removing the politicians he believed were bringing Pakistan to the point of collapse. Ayub Khan, as Mirza's chief martial law administrator, forced Mirza out of power, and assumed the presidency, to the relief of large segments of the population tired of the politicians' continued machinations. This was yet another turning point for Pakistan's politics. Hope of Pakistan people to achieve its cherished aim of implementing system of governance in accordance with Quran and Sunah once again dashed by the military rule in Pakistan.

Although Ayub Khan viewed himself as a reformer, he was predisposed to the benevolent authoritarianism of the Mughal and vice-regal traditions. He also relied heavily on the country's civilian

bureaucrats, who formed the majority of his advisers and cabinet ministers. Ayub Khan initiated a plan for Basic Democracies, a measure to create a system of local government from the grass roots. The Basic Democracies system consisted of a multitiered pyramidal hierarchy of interlocking tiers of legislative councils from the village to the provincial level. The lowest but most important tier was composed of union councils, one each for groups of villages having an approximate population of 10,000. The members of these union councils were called Basic Democrats. The union councils were responsible for local government, including agricultural and community development, maintaining law and order through rural police, and trying minor cases in conciliation courts.

Ayub Khan's martial law regime, critics observed, was a form of "representational dictatorship," but the new political system, introduced in 1959 as "Basic Democracy," was an apt expression of what Ayub Khan called the particular "genius" of Pakistan. In 1962 a new constitution was promulgated as a product of that indirect elective system. Ayub Khan did not believe that a sophisticated parliamentary democracy was suitable for Pakistan. Instead, the Basic Democracies, as the individual administrative units were called, were intended to initiate and educate a largely illiterate population in the working of government by giving them limited representation and associating them with decision making at a "level commensurate with their ability." Basic Democracies were concerned with no more than local government and rural development. They were meant to provide a two-way channel of communication between the Ayub Khan regime and the common people and allow social change to move slowly.

In 1960 the Basic Democrats were asked to endorse Ayub Khan's presidency and to give him a mandate to frame a new constitution. Ayub's constitution, promulgated in 1962, ended martial law, established a presidential form of government with a weak legislature (now called the National Assembly) and gave the president augmented executive, legislative, and financial powers. Adult franchise was limited to the election of Basic Democrats, who constituted an electoral college for the president and members of the national and provincial assemblies. The 1962 constitution retained some aspects of the Islamic nature of the republic but omitted the word Islamic in its original version; amid protests, Ayub Khan added that word later. The president would be a Muslim, and the Advisory Council of Islamic Ideology and the Islamic Research Institute were established to assist the government in reconciling all legislation with the tenets of the Quran and the sunna h. Their functions were advisory and their members appointed by the president, so the ulama had no real power base. What a joke as it was deceiving Allah {SWT} in pretending that Pakistan is a so call Islamic State. This constitution was abrogated in 1969 when Ayub, who by then had lost the people's confidence, resigned, handing over the responsibility for governing to the army commander in chief General Agha Mohammad Yahya Khan. Yahya Khan assumed the title of president and also became chief martial law administrator. This was a progressive disastrous of Pakistan's politics as it lead to the dismemberment of Pakistan

Although Yahya Khan established a semi-military state, he also introduced changes that led to the return of parliamentary democracy. These changes ultimately resulted in the division of the country in two. Yahya held national elections in December 1970 for the purpose of choosing members of the new National Assembly who were to be elected directly by the people. However, the results of these elections, which brought the politicians once more to the fore. Yahya accepted the demand of East Pakistan for representation in the new assembly on the basis of population. As a result, Bengali leader Sheikh Mujibur ("Mujib") Rahman's Awami League won all but two of the 162 seats allotted East Pakistan out of the 300 directly elected seats in the assembly (thirteen indirectly elected women were added), and Mujib wanted considerable regional autonomy for East Pakistan. Zulfikar Ali Bhutto and his Pakistan People's Party (PPP) emerged as the political victors in West Pakistan in the 1970 elections. Bhutto's intransigence, he refused to participate in the discussions to frame the new constitution, led to the continuation of martial law and the eventual political and military confrontation between East Pakistan and West Pakistan, which precipitated civil war and the country's dismemberment in December 1971. With Pakistan's military in disarray, Yahya resigned, and Bhutto was appointed president and civilian chief martial law administrator of a truncated Pakistan. This was yet again a turning point for Pakistan's Politics as it led to the secession of East Pakistan and the creation of an independent Bangladesh in 1971. For this situation, some responsibility has to be attributed to Zulfikar Ali Bhutto as he instead of accepting who uttered to Sheikh Mujibur Rahman to form a government in Islamabad, he uttered the wordsL "uthur tum, ether hum" meaning "you are the leader of East Pakistan and I am the leader of West Pakistan".

Subsequently, Bhutto lifted martial law within several months, and after promulgating an "interim constitution" granting himself broad powers as president, a new constitution was promulgated in April 1973 and came into effect on August 14 of that year, the twenty-sixth anniversary of the country's independence. This constitution represented a consensus on three issues: the role of Islam; the sharing of power between the federal government and the provinces; and the division of responsibility between the president and the prime minister, with a greatly strengthened position for the latter. Bhutto stepped down as president and became prime minister. In order to allay fears of the smaller provinces concerning domination by Punjab, the constitution established a bicameral legislature with a Senate, providing equal provincial representation, and a National Assembly, allocating seats according to population. Islam was declared the state religion of Pakistan.

### **4.3 Critical Review of 1973 Constitution of Pakistan**

4.3.1 Preamble of the Constitution of Pakistan is primarily consistent with the vision and objectives of Pakistan. However its opening statement, viz. *"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 sacred trust"* is misleading as *Sovereignty and Authority of Allah [SWT] cannot be delegated to his creation. We must try to understand the reality of Allah [SWT] (refer to Article 1 of the preamble) as Allah [SWT] is not a concept as widely believed by us, the people of Pakistan. It is not the Authority which is delegated to the people of Pakistan, but the responsibilities of implementing the Authority of Allah [SWT] within the limits prescribed by Him as sacred trust. Accordingly the opening sentence should be revised on this line.* Furthermore, the Constitution itself is not consistent with its preamble, particular in reference to Majlis-e-Shoora; and administrative, distribution of legislative powers and judicial system of Pakistan as all these aspects are contravening to the Quran and Sunnah of our Prophet (SAW).

4.3.2 Under, Article 1(3) and Article 7 of the Constitution of Pakistan, the term [Majlis-e-Shoora (Parliament)] is applied, which is repeatedly used throughout the document. It implies that the selection and functions of the Parliament must be viz-a-viz selection and functions of Majlis-e-Shoora of an Islamic State in its true spirit. If Pakistan Parliament is the same as Majlis-e-Shoora in concept and spirit then it must follow the following requisites and characteristics.

The Quran has laid down the principle of Shoora to guide the community's decision making process as Quran designates the believers as those whose affairs are decided by mutual consultation<sup>12</sup>. Consultation is the key word, which suggests the ideal way in which a good man should conduct his affairs, so that on one hand, he may not become too egotistical, and on the other, he may not lightly abandon the responsibilities which devolve on him as a personality whose development counts in the sight of Allah [SWT]. According to this principle it is the right of every Muslim either to have a direct say in the affairs of the state or to have a representative chosen by him and other Muslims to participate in the running of the state. Shoora, then does not mean that one person asks other for advice, but rather mutual advice through a mutual discussion on equal footing. This directly implies that the head of the state or the Amir cannot simply reject the decision arrived at through Shoora.

In this context it should be noted that due to fallibility of man, it is not always necessary for the decision taken in Majlis Shoora to be correct and beyond any error. However, Shoora is a must, for, it is not only a sign of collective wisdom but also a seat of understanding, unity, and cooperation for the Muslim people. Furthermore, it compels its members to think seriously without reservation about their own problems and to find the way for the community of peace and prosperity. Al-Qasimi has summarized the importance of Shoora in the following words<sup>13</sup>: "Prophet was ordered to conduct his affairs through al-shura for not that he was in need of it because he was guided by revelation. But its purpose was to provide an opportunity for everyone to exercise his opinion to the best of his knowledge and solve their problems in the right way. Thus when Sahaba tried collectively to find correct answers to their problems, it purified their hearts and made them united in pursuit of their objectives. This is the purpose of

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<sup>12</sup> The Quran says: ' Those who respond to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation: who spend out of what we have bestowed upon them for sustenance; And those who, when an oppressive wrong is inflicted on them (are not cowed but) help and defend themselves' (Q: 42:38-39)

<sup>13</sup> Muhammad Jamal Al-Din AL-Qasimi, 'Tafsir Al-Qasimi, Vol. 4', 1957, p.159

al-shura as well as salat al-jama'ah and it is for this reason that al-salat al-jama'ah is better than salat al-munfarid”.

The Basic Principles of Shoorā<sup>14</sup> include:

**Compulsoriness of Al-Shura:** (who do not consult the people of knowledge and religion, have no right to rule and should be removed from their office).

**Al-Shoorā and Ability:** The purpose of Shoorā in Islam is to understand the spirit of Shari'ah and make new regulations in the light of Quran and Sunnah in matter not clearly stated therein. This implies that member should be able people and for them the life of Prophet Muhammad (SAW) should be the best model to follow.

**Al-Shoorā and Sovereignty:** Majlis Shoorā is constituted to undertake the spirit of Shari'ah and guide the government in its implementation. (Refer to Article 13 of the Preambles)

**Al-Shoorā and Freedom:** The Amir or his Ministers should not force their opinion on the members of Shoorā but allow them to express their opinion with full freedom. Umar, the second Khalifa as once expressed his views in a meeting of Shoorā in the following words<sup>15</sup>: 'I have called you for nothing but this that you may have with me the burden of the trust that has been reposed in me of managing your affairs. I am but one of you, and today you are the people that bear witness to truth. Whoever of you wishes to differ with me is free to do so, and whoever wishes to agree is free to do so that. I will not compel you to follow my desires'.

**Al-Shoorā and Majority Opinion:** Since, where there is a freedom of opinion, there is bound to be difference of opinion, therefore, majority opinion prevails. To follow majority opinion is thus a principle of Islamic Law.

**Al-Shoorā and Ijma:** In spite of many problems of the Muslim world which could be very easily solved by Ijma, unfortunately this provision is not utilized in the modern times because there is no institution having the qualifications laid down by Shari'ah and thus can make Ijma on those matters not clearly stated in Quran and Sunnah. Majlis Shoorā, if properly constituted could serve this role. However, there is a difference of opinion among scholars whether majority opinion constitutes Ijma or not, but nevertheless Majlis Shoorā is the appropriate institution to take that role and by convincing arguments should reduce minority opinion and consequent transfer the decision of majority opinion to the status of Ijma.

**Al-Shoorā and Al-'Azm:** The term 'azamta, as some interpreted, does not mean that once Shoorā has reached on some decision, later the Amir has a choice to reject or accept the decision. In Islamic government, Amir as well as whole body of cabinet ministers are members of Majlis Shoorā and are part of the decision making process. Accordingly, Amir is not different from Majlis Shoorā and cannot veto or reject its decision; therefore, once the decision is taken in Majlis Shoorā, it should be enforced immediately without delay.

**Al-Shoorā and Obedience:** In Islamic polity, where the Amir and the members of Majlis Shoorā are required to follow the Shari'ah and sincerely work for its implementation as the law of the land, then according to Quranic injunction, people are duty bound to follow and obey the government. This implies that obedience to Majlis Shoorā is mandatory provided it runs its affairs in the light of Shari'ah.

**Al-Shoorā and the Amir:** Unlike tradition democratic systems, there is no division of power between Executive and Legislative an Amir as well as all cabinet ministers are members of Majlis Shoorā. Amir, in the capacity of the representative of the whole body of Majlis Shoorā,

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<sup>14</sup> Muhammad Shafiq, 'The role and Place of Shura in Islamic Polity', The Search: Journal for Arab & Islamic Studies.

<sup>15</sup> M. M. Sharif, 'Muslim Political Theory and Institutions', Proceedings of the Third All-Pakistan Science Conference, 1962 (Karachi: International Press, 1965), p. 16.

takes decisions on important matters and further assumes the responsibility of implementing them.

**Al-Shoora and Political Parties:** In Islam, there is no ruling or opposition party. Since, Islamic system is based of Shoora and its members are elected on the basis of ability, their aims and objectives are to serve the cause of Islam and seek the pleasure of Allah as well as happiness of people, and the Amir represents the whole of Majilis Shoora, therefore, the concept of political parties is alien to Islam.

- 4.3.4 Under Article 41(1) the president is the Head of the State but Article 43(2) the president is not a member of Majilis-e- Shoora but under Article 50 Majilis-e-Shoora consists of the President and two Houses, which is a contradiction viz-a-viz Majilis-e-Shoora of an Islamic State (see item 3.3.1 above).
- 4.3.5 All the administrative structure and distribution of legislative powers in the Constitution of Pakistan is against the administrative structure and distribution of legislative powers of an Islamic State. The political and administrative structure inspired and regulated by ideals of Islam is a comprehensive system through which alone all kinds of different problems facing the mankind, can be resolved in a most effective manner. In traditional democratic system sovereignty belong to the people, by Islamic concept of sovereignty is that political and legal sovereignty belong exclusively to Allah [SWT], since He is the Lord and the Creator and people are His subjects, therefore His Will should reign supreme as the Law. Accordingly, His commands ought to be established and obeyed in man's society<sup>16</sup>.
- 4.3.6 The Judicature system under the Constitution of Pakistan is against the Judicature system of an Islamic State. Legislation in an Islamic State is ought to be restricted within the limit prescribed by Quran and Sunnah. It is mandatory to accept and obey the injunctions of Allah [SWT] and His Prophet (SAW) and no legislative body can make any alterations or modifications in them or make any law repugnant to them. However, for questions not covered by any specific injunctions of Quran and Sunnah, the regulations could be enacted in regards to those matters. In an Islamic State, the judiciary is not placed under the control of the executive as it is answerable to Allah [SAW] and it derives its authority directly from the Shari'ah.
- 4.3.7 There are many other issues which contravene with Quran and Sunnah, which need to be thoroughly vouched by setting up a commission to critical review the Constitution with particular consideration of all relevant Articles of the preambles of this memorandum, and to bring the draft consistent with the Quran and Sunnah and make recommendation for its legislation and **subsequent** implementation.

#### **4.4 Critical Review of Post 1973 History of Pakistan**

After the promulgation of the 1973 Constitution, Zulfikar Ali Bhutto was sworn in as the Prime Minister of the country, and Fazal Ilahi Chaudhry became the President of Pakistan, on August 14, 1973, for a term of five years. Fazal Ilahi was a mere figurehead since all power and authority rested with the Prime Minister. Bhutto had the opportunity to resolve many of Pakistan's political problems by achieving Pakistan's ideology and objected as the Constitution of 1973 was a step forward, he was not sincere in his intention as he intoxicated in acquiring an absolute power as a ruler of Pakistan, without realizing that it is big responsibility and is a trust from Allah [SWT] which carries heavy responsibility. He exceeded the limit by uttering in a public meeting: "kia huwas thori se pee lata hoon" meaning "it is not a big deal that I drink". This statement as an individual may be forgivable by Allah [SWT] but in his capacity as a head of an Islamic state is extremely serious and if mercy and forgiveness is not sought from Allah [SWT] publically, may lead to punishment in this life. Accordingly, although the country finally seemed to be on a democratic course, but Bhutto lost this opportunity because of series of repressive actions against the political opposition that made it appear he was working to establish a one-party state. In a final step, he suddenly called national elections in March

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<sup>16</sup> The Quran says: To Allah belongs the dominion of the heavens and the earth. (Q: 57:1)

1977, hoping to catch the opposition unprepared and give his party total control of the National Assembly.

When Bhutto's party overwhelmingly won the election which included rigging, the opposition charged voting irregularities and launched mass disturbances requiring action by the army to restore law and order. Bhutto was ousted by the military, which again took control. This action resulted not solely from sheer political ambition but from the military's belief that the law and order situation had dangerously deteriorated. Zia-ul-Haq however, appointed a committee to inquire into the alleged rigging of the National Assembly polls. This committee was reported to have found a blueprint of the plan of rigging from the Prime Minister House. The inquiry committee alleged that Bhutto had prepared this plan as early as April 1976, under the title of "A Model Election Plan", later known as the "Larkana Plan". In an interview to Associated Press of Pakistan, Sajjad Ahmad Jan, the Chief Election Commissioner admitted that the failure of the electoral process was by and large due to the candidates of the ruling party, who exploited their position and party machinery and thus destroyed the sanctity of the ballot box.

In his first address to the nation, General Zia declared that Islamic laws would be enforced and that earnest attention would be devoted towards establishing the Islamic society for which Pakistan had been created. Apparently, General Zia wanted to bring the legal, social, economic and political institutions of the country in conformity with the Islamic principles, values and traditions in the light of Quran and Sunnah, to enable the people of Pakistan to lead their lives in accordance to Islam. The Government of Zia-ul-Haq took a number of steps to eradicate non-Islamic practices from the country. He introduced the Zakat, Ushr, Islamic Hadd and Penal Code in the country. The Government invited eminent scholars to compile laws about Islamic financing. The Zakat and Ushr Ordinance to Islamize the economic system was promulgated on June 20, 1980. It covered only Islamic organizations, associations and institutions. Zakat was to be deducted from bank accounts of Muslims at the rate of 2.5 percent annually above the balance of Rupees 3,000. Ushr was levied on the yield of agricultural land in cash or kind at the rate of 10 percent of the agricultural yield, annually.

A Federal Shariah Court was established to decide cases according to the teachings of the Holy Quran and Sunnah. Appeals against the Lower and High Courts were to be presented before the Shariah Court for hearing. Blasphemy of the Holy Prophet (SAW) would now be punishable by death instead of life imprisonment. Zia-ul-Haq selected his Majlis-i-Shoora in 1980. It was to be the Islamic Parliament and act as the Parliament of Pakistan in place of the National Assembly. Most of the members of the Shoora were intellectuals, scholars, ulema, journalists, economists and professionals belonging to different fields of life. The Shoora was to act as a board of advisors for the President. A number of other Islamization programs were carried out including the teaching of Islamic Studies and Arabic, which were made compulsory. Pakistan Studies and Islamic Studies were made compulsorily for B A, BSc, Engineering, MB BS, Commerce, Law and Nursing students. For professional studies, extra marks were given to people who were Hafiz-e-Quran. The first Ombudsman was appointed to rectify the misadministration of the Federal Government, officials and agencies.

A Shariah Council consisting of ulema was established to look into the constitutional and legal matters of the State in order to bring them in line with Islamic thought. Since Islam does not allow interest, On January 1, 1980, Muhammad Zia-ul-Haq introduced a "Profit and Loss Sharing System" according to which an account holder was to share the loss and profit of the bank. The media was also targeted. Television especially was brought under the Islamization campaign, news in Arabic were to be read on both television and radio, female anchor persons were required to cover their heads, the Azan was relayed regularly on radio and television to announce time for prayers. In the armed forces, the status of the religious teachers was raised to that of a Commissioned Officer. This was done to attract highly qualified individuals from the universities and religious institutions to serve on such assignments.

As the government grew further in its Islamic leanings, the numbers of mosques were increased. Ordinance for the sanctity of Ramazan was introduced to pay reverence to the holy month of Ramazan. The Ordinance forbade public drinking and eating during the holy month of Ramazan. A three months imprisonment and a fine of Rupees 500 were imposed for violating the Ordinance. A program to ensure the regularity of prayers called the Nizam-i-Salaat was launched by General Zia himself. Zia's Government introduced the Hadd Ordinance for the first time in Pakistan, which meant the punishments ordained by the Holy Quran or Sunnah on the use of liquor, theft, adultery

and qazf. Under this Ordinance, a culprit could be sentenced to lashing, life imprisonment and in some cases, death by stoning.

Although apparently, General Zia-ul-Haq wanted to make Pakistan the citadel of Islam so that it could play an honorable and prominent role for the Islamic world, but nevertheless he failed to transform the administration and the people accept the Islamic reforms brought by him, primarily due to the reason that General Zia-ul-Haq he was not sincere but probably used Islam for his political gain against PPP and accordingly did not implement Islamic law as the supreme law of the country but just an element of law enforceable in parallel to the mundane law of the country.

In 1988, President Zia-ul-Haq dissolved the Junejo Government and announced that fresh elections would be held in November 1988. General Muhammad Zia-ul-Haq was killed in an air crash on August 17, 1988. He had gone to Bhawalpur to see a demonstration of tanks where he was accompanied by a number of Generals, including the Chairman Joint Chiefs of Staff Committee, Chief of General Staff, high-ranking Military Attaches, as well as the USA Ambassador to Pakistan. On his return journey, his military transport aircraft, a C-130, exploded in mid-air a few minutes after takeoff from Bhawalpur airport, killing all passengers aboard including the President. The cause of the crash was not known and the enquiry report was never made public. With the death of General Zia, the 11-year military rule came to an end. This was yet another turning point of Pakistan politics.

After the crash, a high level meeting was held in Islamabad to decide the question of succession. Some of the participants in the meeting were in favor of imposition of Martial Law. However the military Chief present did not support the idea. Under the Constitution, whenever the office of President becomes vacant by reason of death or resignation, or removal of the President, the Chairman of Senate acts as the President until a new President is elected. As a result Ghulam Ishaq Khan, Chairman of the Senate, became the next acting President of Pakistan.

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Elections for the National and Provincial Assemblies were held on November 16 and 19, 1988, respectively. The Revival of the Constitutional Order had amended the Constitution, which empowered the President to appoint, at his discretion, any member of the National Assembly as Prime Minister. Ghulam Ishaq Khan appointed Benazir Bhutto as Prime Minister of Pakistan on the condition that she would offer full support to him in the forthcoming presidential elections. Benazir Bhutto, daughter of Zulfikar Ali Bhutto, was sworn in as the Prime Minister, the first woman to govern an Islamic State. Soon after taking oath, Prime Minister Benazir Bhutto announced that the ban on Student Unions and Trade Unions would be lifted. The PPP Government hosted the fourth SAARC Summit Conference in December 1988. As a result of the Conference, Pakistan and India finalized three peace agreements. But soon, Benazir's Government started facing problems on the political front. ANP deserted the Pakistan People Party and on November 1, 1989, a no-confidence motion was moved against the Prime Minister by the opposition. Benazir was barely able to pull through with 12 votes to her advantage. MQM, which had formed an alliance with the PPP also broke away and started creating trouble in Sindh Province of Pakistan.

According to the deal between Ghulam Ishaq Khan and Benazir Bhutto, Pakistan People Party voted for Ghulam Ishaq Khan. Ghulam Ishaq Khan was also the consensus candidate of Islami Jamhuri Ittehad. Four candidates took part in the elections, with Ghulam Ishaq Khan winning and securing the highest 608 votes. Constitutional Amendments made by the RCO and the Eighth Amendment, that had given the President a great deal of power, inevitably led the President and the Prime Minister into conflict. The conflict between the President and the Prime Minister arose in two areas; the appointment of the Military Chiefs and the Superior Court Judges. The conflict between the President and the Prime Minister had its drop scene on August 6, 1990, when the President dissolved the National Assembly and Benazir Bhutto was dismissed from power. The dissolution of the National Assembly was soon followed by the dissolution of the Provincial Assemblies. Fresh elections were scheduled on October 24, 1990. President Ghulam Ishaq Khan appointed Ghulam Mustafa Jatoi as the caretaker Prime Minister. Elections for the National and Provincial Assemblies were held on October 24 and 27, 1990, respectively. Mian Muhammad Nawaz Sharif was elected as Prime Minister on November 1, 1990. Nawaz Sharif's Government remained in power till April 19, 1993. President

Ghulam Ishaq Khan again dissolved the National Assembly, exercising his power once again through the Eighth Amendment, and appointed Mir Balakh Sher Khan Mazari as the caretaker Prime Minister. General Elections were scheduled to be held on July 14, 1993, but were canceled when the Supreme Court quashed the Presidential Order and reinstated Nawaz Sharif as the Prime Minister.

Differences between Nawaz Sharif and Ghulam Ishaq Khan arose once again. This time they deepened to such an extent that they led to the resignation of both President Ghulam Ishaq Khan and Prime Minister Nawaz Sharif on July 18, 1993. The National and Provincial Assemblies were also dissolved. Moin Qureshi was appointed as the caretaker Prime Minister, and Ghulam Ishaq Khan was appointed the caretaker President. Fresh elections for the National and Provincial Assemblies were held on October 6 and 9 1993. The elections were boycotted by the MQM. No party emerged with an absolute majority in the elections. As a result the PPP formed the new government with the help of alliances. Benazir Bhutto took oath as Prime Minister on October 19, 1993. The Presidential election was held on November 13. Farooq Ahmad Khan Leghari, the PPP candidate won by 274 to 168 votes against the then acting President Wasim Sajjad.

In April 1994, Benazir visited the US and projected Pakistan's stance on the F-16 fighter planes withheld by the US despite payments. Her visit resulted in the passing of the Brown Amendment by the US Senate on September 21, 1995, easing restrictions on Pakistan. It also helped in attracting foreign investors. On the domestic front she continued facing problems with MQM. In spite of all her political endeavors, a smooth relationship could not be established between the Government and MQM. Also in the autumn of 1994, Nawaz Sharif led a "train march" from Karachi to Peshawar. Benazir Bhutto's brother, Mir Murtaza Bhutto, was assassinated under mysterious circumstances in a police ambush on September 20, 1996. The high-profile killing of her brother in her tenure damaged her political career. Things were not going well between the President and Benazir's Government. Differences soon appeared and the Government felt that there was interference in the political matters of the Government by the President. President Farooq Leghari dismissed Benazir Bhutto's Government on charges of corruption, extra-judicial killings and mismanagement on November 5, 1996, under the Article 58(2) b, of the Eighth Amendment. After Benazir, Malik Meraj Khalid, Rector of the International Islamic University, was appointed as caretaker Prime Minister. The next elections were scheduled to be held on February 3, 1997.

As scheduled, elections were held on February 3, 1997. Pakistan Muslim League won with an overwhelming majority with absolutely light and slight opposition. The Muslim League was able to obtain a two-third majority in the National Assembly and Mian Nawaz Sharif was re-elected as Prime Minister. He obtained a vote of confidence from the National Assembly on February 18, 1997. A number of very important Constitutional Amendments were introduced during Nawaz Sharif's second term. These include the termination of the Eighth Amendment, passing of the Thirteenth Amendment and the Ehtesab Act, 1997. Nawaz Sharif faced a serious confrontation with the Judiciary and the Executive, which eventually led to the resignation of President Leghari on December 2, 1997. Muhammad Rafiq Tarar, a former Judge of the Supreme Court and a Senator, was elected as the ninth President of Pakistan. He took oath to his office on January 1, 1998. Rafiq Tarar seemed to be an unassuming and ceremonial President with a low profile, who kept away from the press. Immediately after taking over, he declared that from then onwards, the Presidency would not work in conspiring against the elected Government, he declared that he would confine himself to powers available to him under the Constitution and would not aspire for anything more. He honored his word, and unlike the precedent set by his predecessors, he didn't criticize any Government policy.

Pakistan carried out its nuclear tests on May 28, 1998, in response to the Indian detonation of its five nuclear devices. The Nawaz Government had found it imperative for Pakistan to carry out these nuclear tests, in order to provide an effective defense, and to deter Indian adventurism. The Nawaz Government proclaimed an emergency on May 28, 1998; the day these nuclear tests were conducted. and Pakistan became a nuclear power when it successfully carried out five nuclear tests at Chaghi, in the province of Baluchistan. This was in direct response to five nuclear explosions by India, just two weeks earlier. Whilst, widely criticized by the international community, Pakistan maintains that its nuclear program is for self-defense, as deterrence against nuclear India. A former Prime Minister of Pakistan, Zulfikar Ali Bhutto, offered justification for Pakistan's nuclear program when he said that if India were to produce a bomb, Pakistan would do anything it could to get one of its own. It has always been maintained by Pakistan that a nuclear threat posed to its security can

neither be met with conventional means of defense, nor by external security guarantees. India had already posed a nuclear threat against Pakistan ever since it tested a nuclear device in May 1974. At that time Pakistan had no nuclear weapons. India maintained that its nuclear program was based on their requirement to have a minimum nuclear deterrence, and that it was not against any specific country.

After the tit-for-tat nuclear explosions, the United Nations Security Council unanimously passed a resolution urging India and Pakistan to halt their nuclear weapons programs. The United States and other Western states imposed economic sanctions against both the countries. The U. N. Secretary General, Kofi Annan, urged both the countries to sign the Comprehensive Test Ban Treaty, which Pakistan agreed to sign if India did the same. After the tests, both sides declared that they had completed their series of nuclear testing and both announced a moratorium on future testing. Pakistan announced the moratorium on June 11, 1998, and offered to join in new peace talks with India. Even long before these tests, Pakistan has time and again proposed for a nuclear weapon-free zone in South East Asia.

All fundamental rights were suspended and all the foreign currency accounts in Pakistani banks were frozen. On August 28, 1998, Nawaz regime introduced the Fifteenth Amendment. The Bill generated heated debate throughout the country but was passed on October 9, 1998, by the members of the National Assembly. The Bill, however, was not put before the Senate within 90 days as was required by the Constitution. The Bill was held back, as Nawaz Sharif did not had the required two-third majority in the Senate

The Fifteenth Amendment was presumed to be an effort by Nawaz Sharif to acquire additional powers for himself. Soon a serious conflict and confrontation emerged on the scene between him and the Military Generals. This confrontation led to the resignation of General Jehangir Karamat on October 7, 1998. General Karamat was replaced by General Pervez Musharraf. The Kargil Operation in its aftermath again led to tense relations between Nawaz Sharif and the armed forces. This tension culminated into the removal of Nawaz Government by General Pervez Musharraf on October 12, 1999, thus bringing to an end the second term of Nawaz Sharif's Government. This was another turning point in Pakistan's politics.

Chief of Army Staff General Pervez Musharraf assumed the title of Chief Executive. Although the use of the term "Martial Law" was avoided, Pakistan once again came under military rule. It was claimed that the Army was forced to take this step to save the country from "turmoil and uncertainty". The Supreme Court, in a ruling on May 12, 2000, accepted that a constitutional deviation had taken place in pursuit of rather noble objectives, such as economic reforms and bringing to book the corrupt politicians, bureaucrats and businessmen. The 12 judges based their ruling on the principle of "salus po puli ex supreme lex", meaning that the welfare of the people is the supreme law of any land. The court took the view that there was no other way to remove a corrupt Government except through the intervention of the armed forces. The Supreme Court also directed General Musharraf to hold general elections within three years.

After the military takeover, the former Prime Minister Nawaz Sharif, Shabbaz Sharif (his brother and former Chief Minister of Punjab) and five other officials were booked on charges of hijacking, kidnapping and attempted murder in the "Plane Conspiracy" case. Later on, Mr. Nawaz Sharif was, however, pardoned and exiled by the military government to Saudi Arabia on conditions that he would forfeit Rupees 500 million (equivalent to roughly US\$ 8 million) in property and stay out of politics for the next 21 years.

On June 20, 2001, General Pervez Musharraf while he was also Chief Executive took over the office of the President of Pakistan under the PCO by removing Rafiq Tarar before he was allowed to complete his five-years tenure and he dissolved the suspended Senate, National and Provincial Assemblies with immediate effect and dismissed the Chairman of the Senate and the Speaker of the National Assembly. General Pervez Musharraf, after assuming the new office as President, announced, "The change will augur well for the future of Pakistan"; and uttered, "I think I have a role to play; I have a job to do here; I cannot and will not let this nation down", by giving three reasons for taking over as the President of Pakistan, namely: constitutional, political, and economic.

The critical moment in General Musharraf's presidency was 9/11. On September 11, 2001, with the collapse of the World Trade Centre started what the U.S. called "the war against terrorism". U.S. President George Bush termed it an act of terrorism and threatened strong action against the people who had carried out the attack. It was the Taliban and the Saudi millionaire-turned-militant Osama bin Laden who were eventually held responsible for it. President Bush said that the U.S. would do "whatever it takes" to hunt down "terrorists" and that if Osama bin Laden thought he could hide, "he was mistaken". Pakistan became the centre of world attention after the September 11 attacks. It was placed in a difficult situation as the USA threatened to carry out military strikes on the Taliban. Pakistan was faced with a tough choice and irresistible pressure from the United States, an old ally and sole super power, to support a military strike against Osama bin Laden. That pressure, however, was combined with extreme reluctance to abandon Afghanistan's ruling Taliban, an old friend and neighbour. Pakistan in this difficult situation was left with actually little choice except to comply with USA demands. The Government, despite the protest of the religious parties, decided to cooperate with the USA. This was another turning point of Pakistan's politics.

#### **4.5 Critical Review of Post 9/11 Politics of Pakistan**

Pakistan became the centre of world's attention after the September 11 attacks. It was placed in a difficult situation as the USA threatened to carry out military strikes on the Taliban. Pakistan, faced not only with international pressure to take part in curbing the war on terrorism but also a strong domestic pressure not to side with the US against an Islamic country, sought to assume a delicate balance between the US demands and an expected backlash from internal militant and religious organizations. General Musharraf made efforts to persuade the country's political and religious leadership to support an alliance with the US but was partially successful in his efforts. Liberal-minded politicians agreed to back the government while leaders of some hard-line Islamic parties were not happy to the extent that several groups threatened to start a countrywide uprising in protest against any US attack on the Taliban. The Pakistan Government, despite the protest of the religious parties, decided to cooperate with the US with a proviso that Pakistan would extend full cooperation to the international community in its fight against terrorism without involving its forces in any action beyond its geographical boundaries. Subsequently, Pakistan gave permission to make use of Pakistani airspace for US missile or aerial strikes against targets in Afghanistan and also agreed to the exchange of intelligence and logistic facilities and to the closing of Pakistan's border with Afghanistan.

The Afghan Government refused to meet American demands of closing alleged terrorist training camps, handing over the leaders of the Al-Qaeda network, and return of all foreign nationals, including American citizens detained in Afghanistan. This situation led the US attack against the ruling Taliban. The US and their coalition partners carried out extensive aerial bombardment of Afghanistan that also led to the killing of large number of innocent civilians and to the takeover of the Taliban strongholds one after another. The Taliban regime was toppled and a transitional government of Taliban opposition was installed in its place. With this situation, in the wake of US military action in Afghanistan, Pakistan was once again faced with the refugee problem. Thousands of Afghans fleeing their country rushed to the Pak-Afghan border, which added to the problems of already bearing the burden of millions of Afghan refugees, resulting in deployed additional forces to prevent the entry of displaced people into Pakistan. After the aerial offense, the ground offensive eventually started to oust the number of Taliban left in Afghanistan as the US continues to focus on tracking down the remaining Al-Qaeda and Taliban leaders, thereby justifying long term maintenance of a significant military force and continuing to play a role in the region in the future. Pakistan once again supported the US, in its military action and consequently forsook its old friend and neighbour. This element of the Pakistan's foreign policy was a major blunder of the politicians.

Before the scheduled general elections, a referendum was held on April 30, 2002 for General Pervez Musharraf to be elected as the President of Pakistan for another five years. The basic reason for holding the referendum was that the General wanted to abide by democratic principles and establish legitimacy for his rule though in the Constitution there was no provision to become President through referendum. According to the General, he wanted to stay as President in order to continue the economic recovery, ensure social stability, to counter unnamed destabilizing influences, and to eventually return to "true democracy". The Opposition parties, however, opposed the referendum. A 15-party Alliance for the Restoration of Democracy was set up, including Pakistan's two main political parties, the PPP and the Pakistan Muslim League. The alliance considered President Musharraf's decision as unconstitutional and announced peaceful rallies to oppose it and called for a boycott of

the voting. The referendum took place on April 30, 2002, with no competition and no option but to vote for General Musharraf. The referendum question put forward to the people was: "For the survival of the local government system, establishment of democracy, continuity of reforms, end to sectarianism and extremism, and to fulfill the vision of Quaid-i-Azam, would you like to elect President General Pervez Musharraf as President of Pakistan for five years?" The referendum result was quite a big question mark. Politicians and political analysts considered the referendum to be unconstitutional, as under the Constitution, the President could be chosen not via direct vote, but by the elected members of the National Assembly, Provincial Assemblies and the Senate. However, the referendum certified the continuation of President General Pervez Musharraf's rule for another five years.

On August 24, 2002, General Musharraf issued the Legal Framework Order 2002, announcing general elections for the National and Provincial Assemblies to be held in October 2002, and Constitutional Provisions were amended for smooth and orderly transition of power to the newly elected Prime Minister after the elections.

President General Musharraf held elections in October 2002 as mandated by the Supreme Court. In the election, with no party emerging with a simple majority Pakistan faced menace of a hung parliament. A coalition government was, however, set up with Mir Zafarullah Khan Jamali, the candidate of PML (Q) as the Prime Minister of Pakistan with the help of MQM, a number of independent candidates and 10 members of the Pakistan People Party Parliamentarians (PPPP) who defected from the party to form their own Forward Block. Mir Zafarullah Khan Jamali's Government faces tough challenges ahead. He not only faces a strong opposition in the National Assembly, but also has to keep his multi-party coalition together while sharing power with President Pervez Musharraf. The President still retains the ultimate power, with the authority to dissolve Parliament and sack the Prime Minister. All of a sudden, in June 2004 Mir Zafarullah Khan Jamali resigned from the post of the Prime Minister of Pakistan

On June 30, 2004 Ch. Shujaat Hussain, who heads the ruling faction of the Pakistan Muslim League, PML (QA) took the post in a caretaker Prime Minister. He however stayed Prime Minister for 45 days and willingly taking into consideration that "the success of the next government will be evaluated on its economic performance," he led the Pakistan Muslim League and its allied parties to select Finance Minister Shaukat Aziz as the next Prime Minister in place of him. He exited out with dignity and honour. Shaukat Aziz became the 23rd Prime Minister of Pakistan on August 23, 2004. Shaukat Aziz also retained the Ministry of Finance. After taking oath as Member of the National Assembly, Shaukat Aziz has also declared that efforts would be made for provision of good governance, improvement in legal and police systems and provision of opportunities to the people, especially the common man. During this period suicide bombing continued which included recorded seven attacks in 2004, four suicide attacks in 2005 while another seven suicide bombers hit their targets in 2006. In May 2004 Pakistan reinstated as full Commonwealth member.

On 7<sup>th</sup> May 2005, Iftikhar Muhammad Chaudhry was appointed as chief justice. In March 2006 onward, raids on al-Qaida compound in tribal Pakistan lead to death of at least 300 militants. During this period President Musharraf made many blunder, the notable ones include: (a) On March 09, 2007, suspension of Mr Iftikhar Muhammad Chaudhry as chief justice pending corruption charges, which led Lawyers movement; and (b) on July 11, 2007 military operation of Lal Masjid in Islamabad. Pakistan remained the prime target as in Pakistan, the year 2007 witnessed the most number of suicide bombings as terrorists attacked 57 targets during the year all over the country, killing over 760 persons, which included the suicide attack on Marriott Hotel of, which was reported by the media as 9/11 of Pakistan, the attack, which was said to be the worst one in Pakistan as 600 kilogram of explosives were used in the blast that killed over 60 people but destroyed infrastructure in two square kilometres area. On July 20, 2007 Supreme Court of Pakistan reinstated Mr Iftikhar Muhammad Chaudhry. On September 10, 2007, Mr Nawaz Sharif returned to Islamabad but prevented from leaving plane, and forced to fly to Jeddah. On October 18, 2007 soon after she landed in Karachi after years of self-imposed exile, Benazir Bhutto had survived a suicide attack but she remained unhurt but around 150 people were killed in that suicide attack and over 550 sustained injuries. On November 03, 2007 Musharraf Declared state of emergency; blames judiciary over interference and extremists for destabilising country. On November 08, 2007 Ms Bhutto was placed under house arrest. On November 25, 2007: Mr Sharif flies back to Pakistan and is allowed to return to public life. On November 28, 2007 Musharraf relinquished army role. On November 29, 2007 Musharraf took oath for second term as civilian president. On December, 15 2007 Musharraf ended State of emergency. On

December 27, in one of terrorist attacks in Rawalpindi Benazir Bhutto got killed with at least 30 people and over hundred injured in the incident.

On February 18, 2008 General elections held and pro-Musharraf parties were defeated against a coalition between Ms Bhutto's Pakistan People's party (PPP) and Mr Sharif's Pakistan Muslim League (N) On March 25, 2008 PPP vice chairman Yousaf Raza Gillani was sworn in as Prime Minister on newly elected Government. On May 13, 2008 Pakistan was readmitted to Commonwealth. On August 07, 2008: PPP and PML (N) decided that they will prepare impeachment charges against Mr Musharraf. Musharraf, however on August 18, 2008 whilst defending record but announced resignation in national address on state television. The Pakistan-U.S. partnership under Parvez Musharraf and George W. Bush was proven a dysfunctional relationship of failed policies as their joint war on terrorism and promotion of democracy had in fact resulted in a dangerous increase of the former and no aid to the latter. This was another turning point of Pakistan politics. Subsequently,

After successfully removing Gen Musharraf from presidency in August 2008, Asif Ali Zardari secured the prime post for himself to become next president of the country. Majority of the people believed that Asif Ali Zardari would reinstate deposed judiciary and withdraw some presidential powers as promised to restore parliamentary democracy. But his core team of advisors, mainly comprising non-constituency-based politicians told the masses to forget Chief Justice's restoration by stating that Chief Justice has politicized himself, so no question of his restoration now. But at the same time they appointed the PPP affiliated persons in top judiciary. The situation led to enhanced frustration among lawyers' community as well general masses and many PPP activists, workers and supporters, who were disappointed and not expecting such kind of lies and betrayals from their party whose slain leader Benazir Bhutto herself made repeated assertions on record to restore the deposed judiciary. The disqualification of the two top PML-N leaders (Nawaz and Shabaz) by the controversial judiciary added fuel to the fury of masses that turned against Zardari.

Power made Zardari blind to such extent that he conveyed to Prime Minister Syed Yousuf Raza Gilani and other influential players, including probably the Army that he would single handedly cope with the lawyers and opposition parties. Zardari saw no law and order problem posed by the present protest. Zardari thought the long march, which will not be allowed to take place, was transitory and a one-time affair and the PPP would form its government even in the Punjab. In meetings with powerful visitors to the Presidency, reportedly Zardari asserted that: "I alone can handle this crisis. I will set everything right". Zardari was totally inflexible on the issues of Iftikhar Chaudhry's restoration and the disqualification of Nawaz Sharif and Shahbaz Sharif as he was of the view that there would be no end to such demands if he surrendered to the pressure being exerted by the lawyers and the PML-N. But a massive long of lawyers and political activists on 16 March 2009 forced the PPP government to bow before peoples will and reinstate the Chief Justice'

However, Zardari bowed down and had to succumb to the pressure, making itself a laughing stock with extremely diminished popularity and reinstated the Judiciary against the successful long March coupled with US pressure alongside Gillani' and Army's disapproval of his stance.

Zardari and his PPP can only repair the damage by recognizing the ground realities and doing away with power politics obsession. Now situation has changed as now they have to deal with an aware media, a new layer of motivated lawyer leaders, revolutionary civil society activists and radicalized masses much aware of their rights. Unlike previous decades of politics, there is no room now to run Pakistan in the style of power politics.

#### **4.6 Critical Review of the Charter of Democracy (Article 20 of the Preamble)**

This document is not in any way a solution to the current political problems of Pakistan is not any reform or improvement to the constitution; code of conduct; free and fair elections; civil and military relations as it is far away from the principles of Islamic law and practical morality which is the current need of political reforms of Pakistan.

### **5 SUMMARY AND CONCLUSION OF POLITICAL HISTORY OF PAKISTAN**

Era of Pakistan Politics equivalent of life span of 62 years has lapsed and what we have seen Pakistan's politics as a system of beleaguered democracy and military rule instead of a system based on the precepts of Madinah State, which is the reason for existence of Pakistan.

The people of Pakistan have always hopes to pattern their state on Islamic principles and practices and they desired Pakistan to be an Islamic state which the founder of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah had defined as the embodiment of the concepts of Islamic social justice and equality of man. On August 11, 1947, Jinnah was elected President of Pakistan Constituent Assembly and the title of "Quaid-i-Azam" conferred on him. He delivered Presidential address in the Constituent Assembly. The excerpts of the address are as follows<sup>1</sup>:

*" I sincerely hope that with your support and your co-operation we shall make this Constituent Assembly an example to the world. The Constituent Assembly has got two main functions to perform. The first is the very onerous and responsible task of framing the future constitution of Pakistan and the second of functioning as a full and complete sovereign body as the Federal Legislature of Pakistan. We have to do the best we can in adopting a provisional constitution for the Federal Legislature of Pakistan. .... Dealing with our first function in this Assembly, I cannot make any well-considered pronouncement at this moment, but I shall say a few things as they occur to me. The first and the foremost thing that I would like to emphasize is this: remember that you are now a sovereign legislative body and you have got all the powers. It, therefore, places on you the gravest responsibility as to how you should take your decisions. The first observation that I would like to make is this: You will no doubt agree with me that the first duty of a government is to maintain law and order, so that the life, property and religious beliefs of its subjects are fully protected by the State. The second thing that occurs to me is this: One of the biggest curses from which India is suffering - I do not say that other countries are free from it, but, I think our condition is much worse - is bribery and corruption. That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this Assembly to do so.*

*Black-marketing is another curse. Well, I know that blackmarketeers are frequently caught and punished. Judicial sentences are passed or sometimes fines only are imposed. Now you have to tackle this monster, which today is a colossal crime against society, in our distressed conditions, when we constantly face shortage of food and other essential commodities of life. A citizen who does black-marketing commits, I think, a greater crime than the biggest and most grievous of crimes. These black-marketeers are really knowing, intelligent and ordinarily responsible people, and when they indulge in black-marketing, I think they ought to be very severely punished, because the entire system of control and regulation of foodstuffs and essential commodities, and cause wholesale starvation and want and even death. The next thing that strikes me is this: Here again it is a legacy which has been passed on to us. Along with many other things, good and bad, has arrived this great evil, the evil of nepotism and jobbery. I want to make it quite clear that I shall never tolerate any kind of jobbery, nepotism or any influence directly or indirectly brought to bear upon me. Whenever I will find that such a practice is in vogue or is continuing anywhere, low or high, I shall certainly not countenance it. .... All the same, in this division it was impossible to avoid the question of minorities being in one Dominion or the other. Now that was unavoidable. There is no other solution. Now what shall we do? Now, if we want to make this great State of Pakistan happy and prosperous, we should wholly and solely concentrate on the well-being of the people, and especially of the masses and the poor. If you will work in co-operation, forgetting the past, burying the hatchet, you are bound to succeed. If you change your past and work together in a spirit that everyone of you, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges, and obligations, there will be no end to the progress you will make.*

*..... I shall always be guided by the principles of justice and fairplay without any, as is put in the political language, prejudice or ill-will, in other words, partiality or favoritism. My guiding principle will be justice and complete impartiality, and I am sure that with your support and co-operation, I can look forward to Pakistan becoming one of the greatest nations of the world. ...."*

On August 15th, 1947 Quaid-e-Azam addressed over the radio from Lahore: "The creation of the new state has placed a tremendous responsibility on the citizens of Pakistan. It gives them an opportunity to demonstrate to the world how a nation containing many elements can live in peace and amity and

work for the betterment of all its citizens irrespective of caste or creed. Our object should be peace within, and peace without. We want to live peacefully and maintain cordial friendly relations with our immediate neighbours and with the world at large."

On 18 August 1947, when Quaid-e-Azam offered his Eid prayers on Bunder Road. His Eid day message was broadcast to the people of Pakistan. Some excerpts of his message are stated herein below:

*"This is our first Eid immediately following in the heralding of free independent Sovereign Pakistan having been established. This day of rejoicing throughout the Muslim world so aptly comes immediately in the wake of our national state being established, and therefore, it is a matter of special significance and happiness to us all. I wish on this auspicious day a very happy Eid to all Muslims wherever they may be throughout the world --an Eid that will usher in, I hope, a new era of prosperity and will mark the onward march of renaissance of Islamic culture and ideals. I fervently pray that God Almighty make us all worthy of our past and hoary history and give us strength-to make Pakistan truly a great nation amongst all the nations of the world. No doubt we have achieved Pakistan, but that is only yet the beginning of an end. Great responsibilities have come to us, and equally great should be our determination and endeavour to discharge them, and the fulfillment thereof will demand of us efforts and sacrifices in the cause no less for construction and building of our nation than what was required for the achievement of the cherished goal of Pakistan. .....Let us not, on this occasion, forget those of our brethren and sisters who have sacrificed their all, so that Pakistan may be established and we may live. We fervently pray that their souls may rest in peace and we shall never forget the memory of those who are no more and those who have suffered. .... I shall never forget their support, nor do I hope the majority provinces in Pakistan will fail to appreciate that they were the pioneers in the vanguard of our historic and heroic struggle for the achievement of Pakistan, which today is an accomplished fact. Pakistan Zindabad!"*

Sanity, it appears, has deserted us individually, collectively and institutionally and we have forgotten all the messages of Quaid-e-Azam. Over 62 years ago millions of Muslim people all around India rushed to Pakistan, the new homeland of dreams, for a better life for them and for their future generations. But their dreams have been shattered by the parasitic, scrounging and bloodsucking ruling class and successive governments of beleaguered democracy and military rule. We have become laughing stock of the world at large. Institutionally we miserably failed as those who interpret and enforce the rule of law have themselves been so deep buried in corruption and nepotism. Individually and collectively, we talk of law, decency, fair-play and what not, but when our self-interest is threatened we are always ready and even determined to throw all these values to the wind. We give lip service to noble deeds, noble sentiments, talk of legality, morality and Islamic virtues endlessly day and night. In spite of our high ideals we have proved ourselves a bunch of hypocrites. We have failed to understand that we owe our duties to Allah [SWT], ourselves and our fellow human being, which ought to be fulfilled, and our honesty and upright conduct should not be a mere matter of policy or convenience but it demands that our life in this world must be lived as in the presence of Allah [SWT]. We also failed to understand that it is incumbent upon us all that we must stand firm and unswerving in steadfast courage to preserve and to retrieve our mistakes and obey Allah [SWT] and cannot afford to be indifferent, exclusive and arrogant. We have failed to understand that it is our solemn duty to open wide our minds to all the realities of life and stretch our arms to all people of whatever class, creed, race or nationality.

Some people charged that the spirit of Islamic culture is on the verge of disintegration in Pakistan due to widespread corruption, illiteracy, ignorance, poverty, nepotism, red tapism, disease, violence, crimes and other cultural pathologies included but not limited to sectarianism, regionalism, and factionalism. The situation has been further contaminated by a diversity of self-contradictions, upheavals, conflicts, tensions, political turmoil's and ethnic riots within our social set-up. Pakistan has failed to provide a suitable system to eliminate corruption from all segments of society. Our rulers and people in authority failed to understand that they had to carry many responsibilities and obligations which are sacred, humane and also divine. They failed in owing duties to Allah [SWT] as well as in themselves and their fellow human being. The rulers have been making slogans such as "Islam is our life, Islam is our nucleus and we should make efforts to spend our practical life in accordance with the injunctions of Islam" for reason of not that they believe in such slogans but just to win their vote bank by playing with the emotions of masses. Our rulers failed to understand that such slogans will fully

materialise only when they take Islam seriously by putting it in practice and associated with others in the kind humane spirit of Islam. The whole history of Pakistan is full of wars, crises, betrayals, experiments, working-class movements, and social and political explosions, and military interventions. The weak indigenous ruling class, the colonial state structure, the strong establishment and imperialist domination, created many problems for the Pakistan which have become bigger and more complicated. Chronic poverty, repression, injustice, unemployment, hunger, super-exploitation, police brutality, misunderstood religious extremism, military domination, inefficient and corrupt civil bureaucracy, the rotten capitalist and feudal system, are the everyday realities faced by the masses even after over 62 years of independence. The majority of the population is still living well below poverty line without proper healthcare, education, sanitation, clean drinking water, housing and transport, etc. and having feelings of betrayed by the ruling elite, and seeing no future. Also feelings of disappointment and desperation are running high among the masses of Pakistan. Poor people are committing suicide and selling their human organs to survive. In Pakistan politics, Islam has been used as a systematic tool for furthering political aims by almost all rulers of its history but no ruler has understood the requisites of Islam in the governance of Pakistan

Pakistan had been in deep crises in recent years, the increased political, social and economic crisis had developed serious tensions within the state institutions. The crushing military domination over all the other state institutions had created a situation in which different sections had started taking on each other, fighting to control the state apparatus. There was a very strong reaction from some sections of the civil bureaucracy and politicians against military domination. Former and serving senior military officers occupied almost all the key posts in the administration, as well as public-sector departments and corporations. The most attractive civilian posts also went to military officers. The regime of General Pervez Musharraf was forced to change the decades-old policies of the Pakistani state after the 9/11 (September 11, 2001) events in the US. Pakistan became the centre of world attention after the September 11 attacks. It was placed in a difficult situation as the U.S. threatened to carry out military strikes on the Taliban. Faced not only with international pressure to take part in curbing the war on terrorism, but also a strong domestic pressure not to side with the United States against an Islamic country, Pakistan sought to assume a delicate balance between the U. S. demands and an expected backlash from internal militant and religious organizations. General Musharraf made efforts to persuade the country's political and religious leadership to support an alliance with the United States but was partially successful in his efforts. Liberal-minded politicians agreed to fully back the government while leaders of some hard-line Islamic parties were not happy. Several groups threatened to start a countrywide uprising in protest against any U.S. attack on the Taliban. All the religious parties and various political parties like the Jamiyat-i-Ulema-i-Islam, Jamaat-i-Islami, Pakistan Tehrik-i-Insaaf, shared the same opinion on the possible US military action against the Taliban regime and use of Pakistani soil. They were not only against attacking Afghanistan from Pakistan soil, but were also against offending Pakistan's closest brotherly neighbour, whom Pakistan had supported against the Soviet Union at the cost of burdening itself with a large number of refugees.

Pakistan was faced with a tough choice and irresistible pressure from the United States, an old ally and sole super power, to support a military strike against Osama bin Laden. That pressure, however, was combined with extreme reluctance to abandon Afghanistan's ruling Taliban, an old friend and neighbour. Pakistan in this difficult situation was left with actually little choice except to comply with U.S. demands. The Government, despite the protest of the religious parties, decided to cooperate with the U.S. However, it made it very clear that Pakistan would extend full cooperation to the international community in its fight against terrorism without involving its forces in any action beyond its geographical boundaries. The U.S. was given permission to make use of Pakistani airspace for U.S. missile or aerial strikes against targets in Afghanistan. Pakistan also agreed to the exchange of intelligence and logistic facilities and to the closing of Pakistan's border with Afghanistan

US attack against the ruling Taliban started almost a month after the September 11 attacks as the Afghan Government refused to meet American demands of closing alleged terrorist training camps, handing over the leaders of the Al-Qaeda network, and return of all foreign nationals, including American citizens detained in Afghanistan.

As U.S. bombing on Afghanistan started, it was however forecasted on the bases of the Afghan resistance to the Soviets and all previous invaders since Alexander, that the Taliban would never give

up their arms. The Americans would have to engage in a long, bloody, guerrilla warfare that would take months, if not years, to yield results. Snow would come and make fighting impossible. Further, sympathetic Muslim sentiment would topple the Musharraf regime and threaten others. It didn't happen that way; history did not repeat itself. The Americans and their coalition partners carried out extensive aerial bombardment of Afghanistan that led to the killing of large number of innocent civilians and to the takeover of the Taliban strongholds one after another. The Taliban regime was toppled and a transitional government of Taliban opposition was installed in its place. Pakistan was once again faced with the refugee problem in the wake of U.S. military action in Afghanistan. Thousands of Afghans fleeing their country rushed to the Pak-Afghan border. The Government of Pakistan, already bearing the burden of millions of Afghan refugees, deployed additional forces to prevent the entry of displaced people into Pakistan. In spite of the fact that the borders remained closed, some 10,000 people or more crossed at various border points from Afghanistan into Pakistan, further increasing the number of refugees. After the aerial offense, the ground offensive eventually started to oust the number of Taliban left in Afghanistan. The U.S. continues to focus on tracking down the remaining Al-Qaeda and Taliban leaders in Afghanistan. This means that the US will maintain a significant military force and continue to play a role in the region in the future.

Pakistan was forced to change its long-held Afghan policy. There was a dramatic policy shift on many issues. The Pakistani state was forced to act against the Islamic fundamentalist groups which it created and developed in the 1980s and 1990s. Musharraf also made some changes in Kashmir policy and started dialogue with India. He started speaking against the jihadi culture and banned some Islamist organisations. But these policies have not only enraged Islamic fundamentalist elements in the state apparatus but also hurt the feelings and interests of conservative and nationalist elements.

The removal of the Chief Justice had brought a change in the attitude of the judiciary. It had reacted strongly against the removal and started to take independent decisions against the executive. There were members of the higher judiciary who sided with the executive, but they were isolated. It was the first time that these two old and traditional partners are stood face to face. Most state institutions had already lost their credibility with working-class people. The people had no respect for the police, the most hated state institution. The army was the most respected in many parts of the country and among many sections of the population, but stage came when even the army had started to lose that credibility. There was a massive fall in support for the army because of its political role. The state had practically lost control over many parts of the country, to Islamist groups or nationalist militias. Feudal lords and criminal gangs had developed their own respective states within the state. The national question was becoming a very explosive issue in Baluchistan and Sindh. The rising tide of Islamic extremism and armed groups were directly challenging the writ of the state as they ran parallel administrations in many areas. The rising social and political polarisation along with increased class tensions were further increasing the state crisis. Sections of the ruling class and state officials were becoming increasingly concerned about the situation. The Pakistan-U.S. partnership under Parvez Musharraf and George W. Bush was proven a dysfunctional relationship of failed policies as their joint war on terrorism and promotion of democracy had in fact resulted in a dangerous increase of the former and no aid to the latter. This was another turning point of Pakistan politics. Subsequently,

After successfully removing Gen Musharraf from presidency in August 2008, Asif Ali Zardari secured the prime post for himself to become next president of the country. But his core team of advisors, mainly comprising non-constituency-based politicians told the masses to forget the previous commitments of PPP including Chief Justice's restoration by stating that Chief Justice has politicized himself, so no question of his restoration now. But at the same time they appointed the PPP affiliated persons in top judiciary. The situation led to enhanced frustration among lawyers' community as well general masses and many PPP activists, workers and supporters, who were disappointed and not expecting such kind of lies and betrayals from their party whose slain leader Benazir Bhutto herself made repeated assertions on record to restore the deposed judiciary. The disqualification of the two top PML-N leaders (Nawaz and Shabaz) by the controversial judiciary added fuel to the fury of masses that turned against Zardari.

Power made Zardari blind to such extent that he conveyed to Prime Minister Syed Yousuf Raza Gilani and other influential players, including probably the Army that he would single handedly cope with the lawyers and opposition parties. Zardari saw no law and order problem posed by the present protest.

Zardari thought the long march, which will not be allowed to take place, was transitory and a one-time affair and the PPP would form its government even in the Punjab. In meetings with powerful visitors to the Presidency, reportedly Zardari asserted that: "I alone can handle this crisis. I will set everything right". Zardari was totally inflexible on the issues of Iftikhar Chaudhry's restoration and the disqualification of Nawaz Sharif and Shahbaz Sharif as he was of the view that there would be no end to such demands if he surrendered to the pressure being exerted by the lawyers and the PML-N. However, he had to succumb to the pressure, making himself a laughing stock with extremely diminished popularity and reinstated the Judiciary against the successful long March coupled with US pressure alongside Gillani' and Army's disapproval of his stance. Zardari and his PPP can only repair the damage by recognizing the ground realities and doing away with power politics obsession. Now situation has changed as now they have to deal with an aware media, a new layer of motivated lawyer leaders, revolutionary civil society activists and radicalized masses much aware of their rights. Unlike previous decades of politics, there is no room now to run Pakistan in the style of power politics.

## 6 PROPOSED SOLUTION

First of we must seek Allah [SWT] Mercy and Forgiveness for all blunders we have made in not implementing the Authority of Allah [SWT] in the governance of Pakistan. Throughout the 62 years history Pakistan has been governed against its vision, objective and guidelines given by Quaid-e-Azam. We must understand that Allah [SWT] is sufficient for us and he is the best disposer of affairs and we must understand reality of Allah [SWT] and have full faith on Him. (Refer to Articles 23 and 1 of the preambles).

Since, Pakistan is the only Muslim State founded on the name of Islam after the Madinah State founded by our Prophet Muhammad (SAW) in first year of Hajrah, therefore Pakistan desperately needs the implementation of Islamic Law and Practical Morality on the basis of Madinah State. The few simple beliefs of Islam i.e., precondition and the pronouncement of the Kalima is just a formal pledge but this in itself is not enough. It must be understood by us all Pakistanis that the relation between ideology and law is the same as between the soul and the body. The soul cannot exist (cannot be identified in existence) except in a body with a definite shape and attributes. Similarly Islamic ideology can only be identified in Islamic Law and Morality.

The moment the spirit of Islam is separated from the concrete laws and sound practical rules of conduct, the body of Islam is dead and identifiable individuality of the spirit is lost. This is why in Pakistan, most people are Muslims by names only and the governments are spiritless. It is unfortunate that rulers, scholars, and jurists of Pakistan knowingly failing to follow the path shown by Allah [SWT], the Creator Himself through His Messenger, Prophet Muhammad (SAW) . Allah [SWT] says in the Quran:

*'O you who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lust (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do'. (Surah as-Nisa 4:135)*

*'O mankind! There hath come to you a direction from your Lord and healing for the (diseases) in your hearts – and for those who believe, a Guidance and a Mercy' (Surah Yunus 10:57)*

*'Fulfil the Covenant of Allah when you have entered into it, and break not your oaths after ye have confirmed them: indeed ye have made Allah your surety; for Allah knoweth all that ye do'. (Surah an-Nahl 16:91)*

*'Glorify the name of thy Guardian-Lord Most High, Who hath created and further given order and proportion; Who hath ordained laws and granted guidance;' (Surah al-A'la, 87: 1-3)*

The Prophet (SAW) stressed to follow the Quranic injunction and his Sunnah in many occasions. During the Prophet's historic message to Muslims (the last sermon) delivered to the gathering at Arafat more than 1426 years ago, the Prophet said: *'Verily, I have left among you the Book of Allah and the Sunnah of His Apostle which if you hold fast, you shall never go astray'*. In another occasion,

as related by Al-Tirmidhi, the Prophet (SAW) said: *'Allah sent down this Quran to command and prevent, and as a Sunnah to be followed and a parable. It contain your history, information about what came before you, news about what will come after you and correct judgement between you. Repetition does not wear it out and its wonders do not end. It is the truth. It is not a jest. Whoever recites it speaks the truth. Whoever judges by it is just. Whoever argues by it wins. Whoever divides by it is equitable. Whoever acts by it is rewarded. Whoever clings to it is guided to a straight path. Allah will misguide whoever seeks guidance from other than it. Allah will destroy whoever judges by other than it. It is the Wise Remembrance, the Clear Light, the straight Path, the Firm Rope of Allah and the Useful Healing. It is a protection for the one who clings to it and a rescue for the one who follows it. It is not crooked and so puts things straight. It does not deviate so as to be blamed. Its wonders do not cease. It does not wear out with much repetition.'*

In another occasion the Prophet (SAW) said:

*'Any man whom Allah has given the authority of ruling some people and he does not look after them in an honest manner, will never have even the smell of Paradise'.<sup>17</sup> The Prophet also said: 'If any ruler having the authority to rule Muslim subject dies while he is deceiving them, Allah will forbid Paradise for him'.<sup>18</sup>*

If we analyse the systems and laws of governance of Pakistan in the light of above injunctions of the Quran and the Sunnah, we come to a conclusion that, by and large, we are miserably failing in our obligations and responsibilities towards Allah [SWT] as well as the Muslim Ummah.

There are many reasons which are keeping away from the implementation of Islamic laws and morality in Pakistan, such as the following:

Generally speaking most of us Pakistani do not understand the true philosophy of Islam and its several inherent virtues and characteristics, some of these include: (a) Islam is the greatest unifying force in the world and the greatest spiritual force in the moral development of man (b) the life of a Muslim ought to be filled with godliness, piety, righteousness and truthfulness, (c) a true Muslim thinking shall not be polluted with evil thought and perverse ambitions and he or she ought to abstain from seeing evil, hearing evil, and doing evil, (d) a true Muslim is an embodiment of goodness and nobility, who upholds right and truth even at the cost of his or her life and never yields to evil, how dear the defiance will cost him or her, (e) a true Muslim is never a party to oppression or violation of human rights and honour and never utters a word of lie, (f) a true Muslim always keeps in view that one day he or she will have to return to the Lord and submit an account of his entire life and sense of accountability always remains firmly implanted in him or her mind.

Again generally speaking, in Pakistan, our culture is contaminated by diversity of contradictions, conflicts, tensions, turmoil and ethnic rights within its social set up to the extent that our entire culture is plagued by rampant corruption, dishonesty, cheating, nepotism, widespread possession and use of firearms, lack of faith, illiteracy, poverty, red-tapism, crimes, violence, sectarianism, regionalism, factionalism and polluted with innovative superstitions. All these social evils are against the basic tenets of Islam and act as opposing forces against the successful implementation of the Islamic law and practical morality in Pakistan.

Generally we Pakistani do not appreciate that the Shari'ah is the manifestation of Allah's infinite mercy and is the only true embodiment of, and the best way, to justice for mankind.

I appeal to all Pakistani to and for that matter to entire Muslim Ummah to take the Quranic injunctions and the Sunnah's precepts seriously and ask Allah's forgiveness of not upholding these in the past and strive hard in its pursuit of re-adoption of Shari'ah for the benefit of Muslim Ummah and for that matter the entire mankind. The Muslims ought to have a firm belief that in order to better our lives in this world as well as the world hereafter, there is no other course open to us but to re-adopt to Shari'ah.

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<sup>17</sup> Al-Bakhari, 9:264

<sup>18</sup> Al-Bakhari, 9:265

In Pakistan our current systems need reform in religion, education, economic, legal, broadcast & publishing, and cultural fields to bring them in line with Shari'ah laws and principles. In this regard, it should be kept in mind that though Shari'ah confers upon the ruler the right to legislate, but such right is not absolute as it is restricted to the condition that whatever the ruler legislate must be compatible with the general principles, text and the spirit of the Shari'ah. This restriction confines the right of legislation to two categories, namely: (a) executive legislation intended to guarantee the implementation of the provisions of Shari'ah, and (b) organizational legislation intended to organise the society, protect it and meets its needs in accordance with the Shari'ah.

In this context it must be understood that since, the Principles of Jurisprudence and the Philosophy of Shari'ah cover among other things levels of obligation of the individual and the society, motive and its effects on Judgments regarding actions and recompense thereupon in this life and life hereafter, therefore, the true Islamic spirit in culture and civilization in Pakistan will be born only when laws and morality are practiced through the whole gamut of life and certainly not without it.


Finally, I urge the Government as well as the People of Pakistan to take current situation seriously and must strive hard to develop penetrating and practical policies and bring about much needed reforms based on the higher purposes and values of Shar'ah and Siyar, We must bring necessary amendments to our constitution in line with true Islamic law and practical morality and implement Shar'ah in our whole system of the governance of Pakistan all level, otherwise we will continue to be faced with deeper and more damaging crises, defeats, and losses and we would be dragging Pakistan to the state of Harj. Accordingly, we must realize sooner that any laws and systems without the enforcement of Shari'ah and principles of Siyar in its entirety is merely an illusion and cannot be a sound practical reality in the form of a true Islamic State, similar to the one, Prophet Mohammad (SAW) developed in Medinah. (Articles 11 to 19, 22 and 23 refer). History tells us that within sixty (60) years of the Prophet's death, his empire of Islam encompassed half of the three continents. Alas! We forgot to follow our high ideals!

## **7 CONCLUDING REMARKS**

It is unfortunate that we as a nation do not understand the reality of Allah [SWT] (refer to Article 1 of the preamble) and we have forgotten the vision and objective of Pakistan and we have totally ignored the Islamic principles and guidelines of Quaid-e-Azam for its governance (Articles 7, 8 and 9 refer). All our leaders, politician and for that matter electronic media have played a very negative role in understanding Islam as Islam is a religion from Allah [SWT] and has been perfected by Him through its practical interpretation by our Prophet (SAW) over a period of 23 years and finally reminded on the last sermon (Akhri Kutba) to us that if we hold it fast, we shall no go astray. Islam is not a subject to debate or a subject of second opinion as Islam cannot and must not be opinionated. Anything to talk about Islam or governance of Islamic state must be evidence based from precepts of our Prophet (SAW) and the precepts of Khulfa-e-Rashidune.

On 04 May, 2009, whilst highlighting the problems our beloved country is facing today and proposing solution, I have done my duty by issuing you this Memorandum in good faith before Allah [SWT] as the witness for your perusal and implementation. The Result only lies with Allah [SWT]

Signed, Sealed and Delivered on 04<sup>th</sup> May 2009 before Allah [SWT] as the witness.

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