

The Council of Islamic Ideology (CII) in the 1973 Constitution: Background, Structure and Performance

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Abstract

Islamization of laws has been a very hot topic in Pakistan. In all the three constitutions of Pakistan including the 1973 constitution, certain institutions or bodies were provided for. The aim of these bodies has been to scrutinize existing laws in Pakistan and help the parliament in connection with new legislation. In the 1973 constitution, the institution to which the task of Islamization of laws has been assigned is provided in Part-IX of the constitution. The institution called Council of Islamic Ideology (CII) spreads over five articles, ranging from Article 227 to 231. Of these articles, Article 230 gives functions of the Council.

The main theme of this paper would be to see whether the CII effectively performing the above functions or otherwise? Moreover what should be done for making it an effective constitutional body? The proposed contents would be: Functions assigned to the council, Strength, appointment of members and chairman, its reports and conclusion.

Key words: *Islamization, Constitution, CII, Islamic injunctions*

Introduction:

Islamization of law has been a hallmark of constitutional development in Pakistan. The adoption of Objectives Resolution on 12th March 1949 by the first Constituent Assembly was the first step to that direction. Constitutional experts term the adoption of the Objective Resolution admirable development. The resolution reinforced that sovereignty over the entire universe belonged to Allah Almighty alone and the authority which He had delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him, was a sacred trust. Besides, the objectives resolution guarded the principles of freedom, democracy, equality, tolerance and social justice as pronounced by Islam. The resolution also pledged to protect fundamental rights and defend the legitimate interests of minorities and backward classes.

The Objective Resolution was like a building plan architected for the upcoming constitution of Pakistan. To proceed further in the matter, and chalk out various details of the future constitution, a committee called, the Basic Principles Committee (BPC) was appointed by the Constituent Assembly on the same day. Mulavi Tameezuddin, the President (Speaker) of the constituent Assembly was designated as chairman of the BPC. When the BPC started its work, it constituted few other subcommittees regarding the structure of federation, provinces, and the distribution of powers, franchise and judiciary. The BPC was aware of the place of Islam in the constitution making of Pakistan. So it recommended for the formation of a board, the one which could advise the BPC on issues arising viz-a-viz Islamization. (Riaz, Constitutional and Political Development in Pakistan 1951-54, 1951, p. 7)

The work of BPC and initial reports submitted by it were marred by criticism from various quarters. The Ulama criticized its religious content and termed it inadequate. It was generally believed that Ulama may not agree on a single constitutional formula, but they surprised many when they met in the capital of Pakistan, Karachi during 21-24 January

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1951. Notable religious scholar Sayyid Suleman Nadwi presided over the convention. The convention agreed upon a formula spreading over 22 points. (<https://historypak.com/ulamas-22-points/> accessed on 24th April 2019)

1. Sovereignty over all the universe and laws is reserved only for Allah al-mighty.
2. The basis of all laws are the Holy Quran and Sunnah of the Prophet (Peace be upon him). All such laws which are in contravention to the Holy Quran and Sunnah of the Prophet (Peace be upon him) will be abrogated.
3. Instead of establishing a state on geographical, racial or linguistic or other considerations, it will be based on Quran and Sunnah and to prohibit those forbidden by it. Beliefs of various sects to be taken into consideration while reviving or establishing Islamic customs, practices and law.
4. It was proposed that Pakistan, being an Islamic state, should strengthen its relations and fraternity with the Muslim world.
5. The Ulama asked the state to provide basic needs to the citizens especially to those who cannot earn. These facilities should be provided to them without any discrimination on the basis of religion, race or creed.
6. As for the fundamental rights of citizens, it was proposed that rights such as freedom of religion, worship, expression, assembly and movement, as well as protection of life and property be guaranteed.
7. These fundamental rights may not be snatched from citizens except under the law of Islam. In this connection, due process of law should be observed.
8. All Muslim sects and denominations should be given opportunity to enjoy their religious freedom within the limits of law. Their education and personal law should be protected.
9. A similar freedom of professing religion and acting upon their personal law should be ensured for non-Muslim citizens of the State in respect of their religion, education and culture.
10. All those agreements which are signed with non-Muslim countries will be honored and non-Muslims should be granted fundamental rights.
11. Head of State must be a Muslim. He must be a male citizen of Pakistan.
12. The Head of State should source of all powers and authority. He may delegate his authority to any other functionary or institution.
13. The Government should adopt consultative character and should not resort to dictatorial tactics. The Head of the State exercise his powers in consultation with the elected members of the assemblies.
14. The Head of the State should not be given power to abrogate the whole or part of the Constitution.

15. The Electoral College for electing the Head of the State must have the power also to remove or suspend him.
16. No immunity should be enjoyed by Head of the State. He may be tried by any court of law in a manner as other citizen are tried.
17. Besides making ordinary citizens accountable and treated by law, the government and its functionaries should also be treated like that.
18. Judiciary must be independent and free from any influence of the executive.
19. No concept and ideology contrary to the fundamentals of Islam be propagated
20. There should be unitary form of government in Pakistan. No tribe, race and ethnic group should be given a chance to secede

Constitution must be based on Quran and the Sunnah. Any of its interpretation should considered as void. (Tabassum, *Riysat-e-Madina Aur Pakistan*, 2019, p. 214)

When the 1956 constitution was adopted, various Islamic Provisions were incorporated into it. Of them, Preamble was first in the row. It comprised of the Objectives Resolution. The Objectives Resolution provided for attribution of sovereignty over the entire universe to Allah al-mighty. The resolution successfully combined democracy and principles of Islam. Next to the preamble, article one, gave symbolic name of Islamic Republic of Pakistan to the country. Similarly promotion of Muslim Unity and International Peace together with Promotion of Islamic Principles were main points of Directive Principles of the state policy. (Islam, *Constitutional Development in Pakistan*, 2018, p. 21)

The constitution put conditionality that President of the state must be a Muslim. In Part XII under articles 197, a body called Organization for Islamic Research and Instruction was provided. The organization was to play a role in the reconstruction of Pakistani society on Islamic principles. Similarly, Article 198 provided for provisions about the Holy Quran and Sunnah. (Abbas, *The Constitution of Pakistan*, 1958, pp, 234 and 287)

Unluckily, the 1956 constitution could not survive for long and was abrogated on 7th October 1958. (Tabassum, *Riysat-e-Madina Aur Pakistan*, 2019, p. 214) Resultantly, the Islamic provisions could not be implemented in letter and spirit.

After an interval of almost four years, a new constitution, that of 1962, was promulgated. The second constitution too embodied in itself several Islamic provisions.

The 1962 constitution also had a preamble comprising the Objectives Resolution There was a separate chapter for Directive Principles of State Policy and Principles of Policy. Article 8 of the constitution contained many steps supposed to be taken in order to ensure the Islamic way of life. (Choudhury, *Documents and Speeches on the Constitution of Pakistan*, 1967, pp.45-46)

In Articles 199 to 206 of the constitution, details about Advisory Council of Islamic Ideology were given. The role and functions assigned to the council included: making recommendations to the Central and the Provincial Governments as how to enable and encourage the Muslims of Pakistan to order their lives in accordance with the principles and concepts of Islam. (Choudhury, *Documents and Speeches on the Constitution of Pakistan*, 1967, pp.45-46)

Islamic Provisions of the 1973 Constitution:

The 1973 possesses more Islamic provisions than the previous two constitutions. Like the previous constitutions, the Objectives Resolution has been included in the preamble of the 1973 constitution. However, General Ziaul Haq made it substantive part of the constitution in the form of Article 2A, through the Eighth Amendment. Now the objectives Resolution was made a part of the constitution under Article 2A. (Ali, *Constitution of the Islamic Republic of Pakistan, 1973*, 2010, P. 4)

The symbolic name “Islamic Republic of Pakistan” has been provided in the beginning of the constitution. Similarly Islam has been declared as the state religion of Pakistan. In part ii of the constitution, the Principles of Policy chapter is spread over many Islamic provisions. Of them, Article 31 is titled as “Islamic Way of life”. According to it, steps such as enabling Muslims of Pakistan to order their individual/collective lives in accordance with Islam. It was also provided that facilities to understand the Holy Quran, to make teaching of Quran and Islamiyat compulsory, facilitation of Arabic language learning, securing correct printing of the Holy Quran, promotion of unity and the observance of Islamic moral standard, and securing the proper organization of *Zakat (Ushar)*, *auquaf* and mosques will be ensured. Several vices and social evils have mentioned in Article 37, sub clauses (g) and (h). The state has vowed to eradicate these evils such as gambling, drugs and publication of aggressive literature.

In chapter 1 of part II of the constitution, Article 41(2) provides for the President to be Muslim. Moreover, his oath in the second schedule of the constitution is loaded with Islamic terms. In chapter 2 of the same part, Articles 62 and 63 have been included. Article 62 clause (d, e, f and g) have enumerated certain conditionalities for prospective and current members of the assemblies and parliament.

The relevant part says that a person having good moral character, knowledge of Islam, Sadiq and Ameen. He has not convicted for a crime and being no declared unsound by a court of law.”

The establishment of Federal Shariat Court is yet another important Islamic provision. In this regard, Article 203(d) says that the court will examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and *Sunnah* of the Holy Prophet (PBUH), hereinafter referred to as the Injunctions of Islam”. (Ali, *Constitution of the Islamic Republic of Pakistan, 1973*, 2010, P. 4)

The Council of Islamic Ideology:

As mentioned, there are several Islamic provisions given in in the 1973 constitution, but the title of “Islamic Provisions” has only been given to five articles in its part-IX. These articles are 227 to 231. Article 227 provides for bringing all the current laws in conformism with the Instructions of Islam as given in the Holy Quran and *Sunnah*. Similarly, the same article vows not to frame any law which is against the injunctions of Islam. Article 228 gives composition of the Council of Islamic Ideology which is to consist of not less than twenty one members to be appointed for a term of three years. The President of Pakistan has the powers to appoint the Council. Besides, at least one women, one third of the members are supposed to be well versed in Islamic research. Furthermore one or two members are to be or have been Judges of the Supreme Court or any High Court of Pakistan. (Articles 228 of the 1973 constitution of Pakistan)

Article 229 gives a procedure as how to refer a matter to the Council. The requirement for such a reference is that the President or the Governor of a Province can send it to the Council. Moreover, two-fifths of the total membership of any House of Majlis-e-Shura or a Provincial Assembly can also refer a matter to the Council. Article 230 is lengthier than other articles of the chapter. It describes functions of the council. Articles 230 of the 1973 constitution of Pakistan. Last but not the least is Article 231, which is about rules and procedure for running the Council of Islamic Ideology. These rule are framed by the council which are approved by the President of Pakistan.

Reports of Council of Islamic Ideology:

There has been a confusion among the people as to whether reports submitted by the Council are implemented by the Government or not. The researcher visited head office of the Council on 28th August, 2019 and conducted interviews with the Chairman Prof. Dr. Qibla Ayaz and Secretary Dr. Ikramul Haq Yaseen. The Chairman expressed his satisfaction over response of the government. He said that ever since taking charge in November, 2017, he has noticed that the government has given full weightage to input of the Council on various legislative proposals. (Interview with Prof. Dr. Qibla Ayaz, 28th August, 2019) He said that there might be problems with recommendations in the pre-1972 reports, but the post-1973 scenario is different and quite conducive for smooth function of the Council. He said that recently, the Council vetted legislative proposals about organs donation and transgender's rights. He said that the Council intervenes when the bill is referred to the Standing Committee of a house of Parliament.

The Council has worked hard in terms giving recommendations and publishing reports. An extract from the performance report of the Council reveals story of the reports:

“The number of Council's publications is 101 which include its annual and other reports. Out of the total 101 publications, 43 are annual reports, 37 are about Islamization of laws, 8 are about Islamization of economy, and one report is on educational reforms, 4 on social reformation, and one on the reformation of media. Moreover, interim reports on *Hudood* and “Islam and Terrorism” were also published. Similarly publications about women's right and regular issues of the Council's journal “*Ejtehad*” were also brought out” (Yaseen, *Islami Nazriyati Council: Idarajat Pas Manzar aur Karkardagi*, 2016, P, 285)

Apart from reporting, the Council has arranged scores of conferences on various themes. The above extract shows that the Council had done a lot of work towards achievement of its goals. The secretary of the commission said that reports of the Council are based on its meetings' proceedings while replies are also sent to various agencies in response to their queries, on regular basis. (Interview with Dr. Ikramul Haq Yaseen, 28th August, 2019)

He said that the reports produced so far by the Council are for the period starting in 1981 and ending in 2015-16. Work on remaining reports was in progress which will be made public soon. (Yaseen, *Hukumati Estefsaaraat (1962-2014)*, 2018, p. 661) The Chairman said that these reports contain very useful proposals for future legislation. However, these are not binding on government. The thing which is binding on government is that whenever the *Majlis-e-Shura* (Parliament) takes up these proposals for legislation, then the Council will exercise its constitutional mandate to give its opinion. (Interview with Dr. Qibla Ayaz, 28 August, 2019)

Conclusion:

Incorporating Islamic provisions in the constitutions of Pakistan has been an undisputed phenomenon. There are few dissenting voices against it but the overwhelming majority of Pakistanis is in its favour. The 1973 constitution contains more Islamic provisions than the previous constitutions. One of the important body provided by the current constitution is Council of Islamic Ideology. Opinions vary on the vitality and performance of the Council. Those who criticize its role are further divided into two groups. One group having secular views, terms it a watchdog which undermines sovereignty of the *Majlis-e-Shoora* (parliament). They, therefore, suggest to discard it from the constitution. The other group of critics are staunch supporters of the Council but they complain that the Council has not been able to Islamize all laws in Pakistan. They always call for proactive role of the Council in this regard.

However, the Council or parliament need not to bow before these extreme views. The actual fact is somewhere between these two radical views. Keeping in view the explicit role of the Council, it is not correct to say that it emasculates supremacy of the parliament. Actually, the Council is an advisory body having no force of Islamization without the input and approval of the parliament. So *Majlis-e-Shoora* (parliament) is more powerful than the Council. The incumbent Chairman of the Council is right to say that giving constitutional status to the aspiration of religion loving people of Pakistan reflects the farsightedness and vision of our forefathers. Had constitutional cover not been provided to aspiration of People, there could have broken out insurgency in Pakistan, he opined.

For better performance, the Council needs to be strengthened in terms of human and financial resources, The current staff comprising a Secretary, a Director General, another Director, Chief Research Officer and their supporting officials, is not enough. The secretariat should be reorganized on the pattern of other federal departments and divisions. Sub offices of the Council's may also be established at provincial headquarters. Pakistani society is prone to many social problems. Due to weak economic conditions, unemployment, disparities, ethnic and sectarian strife and other social evils, we need to restructure our society. This gigantic task can be carried by institutions having good reputation and association of highly qualified people, like Council of Islamic Ideology. The Council should therefore focus on education and reformation of the society as well besides its routine work.

Endnotes:

1. Abbas, Kamaruddin Bin. *The Constitution of Pakistan*, All Pakistan Legal Decisions, Lahore, 1958
2. Ali, Ishfaq. *Constitution of the Islamic Republic of Pakistan, 1973*, Alshams law Books, Lahore, 2010
3. Choudhury, G. W. *Documents and Speeches on the Constitution of Pakistan*, Green Book House, Dacca, 1967
4. <https://historypak.com/ulamas-22-points/> accessed on 24th April 2019
5. Interview with Dr. Ikramul Haq Yaseen, Secretary Council of Islamic Ideology Pakistan in his office at Ataturk Avenue Sector G-5/2 Islamabad, dated: 28th August, 2019
6. Interview with Prof. Dr. Qibla Ayaz, Chairman Council of Islamic Ideology Pakistan in his office at Ataturk Avenue Sector G-5/2 Islamabad, dated: 28th August, 2019

7. Islam, Fakhr-ul. *Constitutional Development in Pakistan*, Pakistan Study Centre University of Peshawar, 2018
8. Riaz, Ahmad. *Constitutional and Political Development in Pakistan 1951-54*, Pak-American Commercial Karachi, 1951
9. Tabassum, Abdurrshid. *Riysat-e-Madina Aur Pakistan*, Misal Publishers, Faisalabad, 2019
10. The 1973 Constitution of the Islamic Republic of Pakistan Articles 228
11. The 1973 Constitution of the Islamic Republic of Pakistan Articles 230
12. Yaseen, Dr.Ikramul Haq *Hukumati Estefsaraat (1962-2014)*, of Islamic Ideology Pakistan, Islamabad, 2018
13. Yaseen, Dr.Ikramul Haq. *Islami Nazriyati Council: Idarajat Pas Manzar aur Karkardagi, Part-1*, Islamic Ideology Pakistan, Islamabad, 2016.
14. Yaseen, Dr.Ikramul Haq. *Islami Nazriyati Council: Idarajat Pas Manzar aur Karkardagi, Part-1*, Islamic Ideology Pakistan, Islamabad, 2016