

**CONSTITUTION, 1962**  
**PART - X**  
**ISLAMIC INSTITUTIONS**  
**CHAPTER 1.-ADVISORY COUNCIL OF ISLAMIC**  
**IDEOLOGY**

**199.** There shall be an Advisory Council of Islamic Ideology.

**200.** The Council shall consist of such number of members, being not less than five and not more than twelve, as the President may determine.

**201.** - (1) Members of the Council shall be appointed by the President on such terms and conditions as the President may determine.

(2) The President shall, in selecting a person for appointment to the Council, have regard to the person's understanding and appreciation of Islam and of the economic, political, legal and administrative problems of Pakistan.

**202.** - (1) A member of the Council shall, subject to this Article, hold office for a period of three years from the date of his appointment.

(2) If a resolution recommending the removal of a member of the Council from office is passed by a majority of the total number of members of the Council, the President may remove that member from office, but a member shall not otherwise be removed from office.

(3) A member of the Council may resign his office by writing under his hand addressed to the President.

**203.** The President shall appoint one of the members of the Council to be the Chairman of the Council.

**204.** - (1) The functions of the Council shall be - -

(a) to make recommendations to the Central Government and the Provincial Governments as to means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam <sup>1</sup>[to examine all laws in force immediately before the commencement of the Constitution (First Amendment) Act, 1963, with a view to bringing them into conformity with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah]; and

<sup>2</sup>[(b) to advise the National Assembly, a Provincial Assembly, the President or a Governor on any question referred to the Council under Article 8, that is to say, a question as to whether a proposed law is or is not repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah.]

(2) When, under Article <sup>3</sup>[8], a question is referred by an Assembly, the President or a Governor to the Council for advice, the Council shall, within seven days thereafter, inform the Assembly, the President or the Governor, as the case requires, of the period within which the Council expects to be able to furnish that advice.

(3) Where the Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice is furnished, the law may be made before the advice is furnished.

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1. Added by the Constitution (Fast Amendment) Act, 1963 (I of 1964), section 8

2. Submitted, *ibid*, for the original sub-clause (b)

3. Substituted by the Constitution (First Amendment) Act, 1963, (I of 1964), s.8 for "6"

<sup>4</sup>[205.-(1)] The proceedings of the Council shall be regulated by rules of procedure to be made by the Council with the approval of the President.

[<sup>5</sup>(2) The Council shall, not later than the fifteenth day of January in each year, prepare a report in regard to its proceedings during the year ending on the previous thirty-first day of December, and submit the same to the President, who shall cause it to be laid before the National Assembly.]

**206.** In this Chapter, "the Council" means the Advisory Council of Islamic Ideology.

## **CHAPTER: 2.-ISLAMIC RESEARCH INSTITUTE**

**207.--** (1) There shall be an organization to be known as Islamic Research Institute, which shall be established by the President.

(2) The function of the Institute shall be to undertake Islamic research and instruction in Islam for the purpose of assisting in the reconstruction of Muslim society on a truly Islamic basis.

### **COMMENTS**

Ever since the establishment of Pakistan, the desire of the people in power to introduce by law the Islamic way of life for the Muslim citizens of the State has found expression in different ways. In the draft Constitution prepared by the first Constituent Assembly, a Board of Ulema was to be set up, to propose legislation from an Islamic angle. Under the 1956 Constitution passed by the second Constituent Assembly no law was to be enacted which was repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah, and existing law was to be brought into conformity with such injunctions.<sup>6</sup> To this direction effect was to be given by the appointment of a Commission--

(a) to make recommendations--

(i) as to the measures for bringing the existing law into conformity with the injunctions of Islam; and

(ii) as to the stages by which such measures should be brought into effect; and

(b) to compile in a suitable form, for the guidance of the National Assembly and the Provincial Assemblies, such injunctions of Islam as could be given legislative effect.

It was the duty of the National Assembly to enact laws in respect of the injunctions so compiled<sup>7</sup> in the present Constitution, the Board and the Commission have been replaced by the Advisory Council of Islamic Ideology and the Islamic Research Institute. In the desire to introduce Islamic ways of life, the distinction between laws that are constitutional in character and those that are not, has throughout been overlooked, the emphasis having always been on non-constitutional Islamic Laws, with the result that nobody can claim that the Constitution at any stage was or is an Islamic Constitution in the sense of its being an instrument laying down an Islamic mode of Government.

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4. Article 205 re-numbered as clause (1) of that Article, *ibid.*, section 9

5. Clause (2) added *ibid.*

6. Art, 198, Constitution of 1956

7. Art, 198, Constitution of 1956

The first Islamic Institution under the present Constitution is the Islamic Research Institute to be set up by the President, which has to engage itself in the task of research and instruction in Islam with the object of assisting in the reconstruction of Muslim society on a truly Islamic basis. Apart from the Constitution under which they live, members of a truly Islamic society have to regulate their conduct in the following respects:-

- 1) they have to know what the essentials of Muslim belief are;
- 2) they have to know what their obligations to the Creator are and how they are to be discharged; and
- 3) they are to know and observe rules by which their conduct towards their fellow beings is governed.

The third set of rules is divisible in (1) rules which are enforced by the State (Law proper); and (2) rules which are not so enforced, but regulate the individual's conduct in society. Thus, to assist in the reconstruction of a society on a truly Islamic basis, the Islamic Research Institute has to undertake research in---

- (1) the essentials of belief;
- (2) Islamic religious rites and observances;
- (3) Islamic law;
- (4) Islamic institutions, political, social and economic.

Essentials of Islamic belief and Islamic ritual are almost universally known and practiced, and not much research is needed in this field. But Islamic law and ethics have to be formally stated not only in their original form but in their application to present-day society. The Institute is not expressly required to study the question of application of Islamic law and ethics to modern conditions, but if no such task is undertaken by it, and the basic principles deduced from past practice and precedent are not examined in their application to present conditions, little useful work can be done by it.

The second Islamic institution set up by the Constitution is the Advisory Council of Islamic Ideology.

Its functions are-

- (1) to make recommendations to the Government as to the means to be adopted to enable and encourage the Muslims to order their lives in all respects in accordance with the principles and concepts of Islam;
- (2) to examine all laws in force on 9th January, 1964, in order to bring them into conformity with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah; and
- (3) on the question being referred to it, to advise whether a proposed law is repugnant to the teachings and requirements of Islam as set out in Holy Quran and Sunnah.

The other Islamic features of the Constitution are:

- (1) the name of the State (Islamic Republic of Pakistan);
- (2) the statement in the Preamble that the authority exercisable by the people is to be exercised within the limits prescribed by Him (Allah);
- (3) the statement in the Preamble that the teachings and requirements of Islam mean the teachings and requirements as set out in the Holy Quran and Sunnah.
- (4) Principle I of Article 8 that no law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought in conformity with the Holy Quran and Sunnah;
- (5) Principle 1-A of Article 8 that the Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam, and should be provided with

facilities whereby they may be enabled to understand the meaning of life according to those principles and concepts.

- (6) Principle 18 of Article 8 that Riba (Usury) should be eliminated.
- (7) Principle 20 of Article 8 that the consumption of alcoholic liquor should be discouraged; and
- (8) Principle 21 of Article 8 that the bonds of unity amongst Muslim countries should be preserved and strengthened.

**Quran and Sunnah.**-Ever since the birth of Islam, the Holy Quran and the Sunnah have been the foundation of Muslim thought and action. The word "Sunnah" is a general word, and apart from the Sunnah of the Holy Prophet, includes the Sunnah of the first two Caliphs, and occasionally the Sunnah of the first four Caliphs of the Islamic Republic who are usually described as the rightly-guided Caliphs. While the Holy Quran was the primary source from which a considerable part of the law was derived, the Holy Prophet himself had settled many questions by ad hoc decisions. Later his words, actions and approvals were formally drawn up and reduced to writing, though not as precisely as the Holy Quran. It is in this sense that the word "Sunnah" seems to have been used in the Constitution. The Sunnah's relation with the Holy Quran may be of three kinds,-

- (1) in accordance with the Holy Quran;
- (2) explanatory of the Holy Quran; and
- (3) not directly connected with any text in the Holy Quran.

Hadith is a record of the actions, sayings and approvals of the Holy Prophet and his Companions. Theoretically, the Hadith is not the same thing as the Sunnah, but in practice, they coincide, and in fact some of the Hadith books have the title "SUNNAH".

Since the end of the Islamic Republic there has been a continued tendency to bifurcation of jurisdiction in the administration of the Law. This tendency started with the Umayyeds, and with the exception of a few brief periods during the Turkish regime when some of the pious Caliphs unsuccessfully attempted to revert to the original system, has continued up to the present time. One common feature of this bifurcation has generally been that while the law relating to crime, finance, commerce, landed property, international relations and war, became more and more the responsibility of the temporal power, that relating to public worship, religious dedications, marriage, divorce, dower and guardianship continued to remain the chief concern of the Qazi. The essential feature of an Islamic State is that there should be no such bifurcation and that the administration of law should remain in the hands of those who know the law.

To bring the laws into conformity with the Holy Quran and Sunnah is a gigantic task. If the object be merely to draw up a list of those legal rules which are in conflict with the Holy Quran and Sunnah, it may perhaps be possible to state the repugnancies and inconsistencies between the two; but if, on the other hand, the object be to recast all the existing laws into what may be called the Islamic mould, the task presents formidable difficulties and can only be performed by those who are fully conversant with both the systems. Any attempt to discover the ratio *decidendi* from decisions and precedents and the essential principle from a textual statement and to apply such ratio *decidendi* and principle to modern conditions presupposes, on the part of those entrusted with the job, a thorough conversance with the complexities of present-day life and international relations and thought. The body which has been primarily entrusted with this work is the Advisory Council of Islamic Ideology whose members, in recognition of the principle stated above,

are appointed by the President "having regard to the persons' understanding and appreciation of Islam and of the economic, political, legal and administrative problems of Pakistan." On the right selection of the men chosen for this work will depend whether Islamic institutions can be presented to the present-day world in an unhesitatingly acceptable form.