

# **COUNCIL OF ISLAMIC IDEOLOGY OF PAKISTAN: THE EXTENT OF ITS LEGISLATIVE ROLE**

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## **Abstract:**

The legislature in every country has the significant role of law making. However, being an Islamic Country, Pakistan has an Islamic legal system. According to the constitution of Pakistan no law can be made which is against the basic norms of Islam. To maintain the checks and balances on the legislative assembly regarding the promulgation of laws related to Islam through the amendment of the constitution of Pakistan, the Council of Islamic Ideology was formed. It is the council, which ensures the consistency and conformity of legislations with

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Sharia Law. It has an important role for the supremacy of Islam in Pakistan and has been frequently discussed in the recent past. This paper analyses the rationale behind the formation of this Council by looking into the history that dates back to the era of two-nation theory. Furthermore, the functioning and role of the council is to analyze critically from the perspective of the Constitution of Pakistan to evaluate its degree of effectiveness specially on the issues of the extent of its role as legislature in the presence of the parliament; it discusses some controversial verdicts issued by the Council. Furthermore, it throws light on the relevant provisions of law and its practice.

**Keywords:** Council of Islamic Ideology of Pakistan, Provisions of law, Legislative role, Purpose, Controversial verdicts, Procedure of rulling.

### **1. Introduction:**

The Council of Islamic Ideology is an independent constitutional organ which is considered as the highest forum to make recommendations for the Islamization of laws in Pakistan. Its major function is to check the existing as well as newly legislated laws on the touchstone of Shriah; it embarks upon the inquisitive process to probe whether new legislation or amendment is in accordance with the injunctions of Islam or not.

The function of the Council of Islamic Ideology is directory in nature and it, by itself, does not legislate any law. However, its relationship with the parliament is supervisory in nature. In other words, though Parliament has the sole authority to legislate and not the Ideology Council yet Parliament is directed to make legislation in accordance

with recommendations of the Council. The Council of Islamic Ideology has immense importance due to its effective role in Islamization of laws, not only in Pakistan but also all over the Islamic world.

## **2. Historical Background:**

The creation of Pakistan was based on the ‘two nation theory’. The two nation theory played the role of bedrock on which the structure of the Muslim state was erected. Muslim India sought independence from the British Raj but also deemed separation from Hindus as inevitable. The rationale behind the two nation theory was the existence of two different nations in the same geographical territory, i.e. Sub-continent; it was based on the problematic co-existence of two separate nations who had distinct, rather conflicting, religious backgrounds leading to two different cultures and societies. Therefore, the slogan “Pakistan Ka Matlab Kia, La ilaha illallah” was introduced. The slogan reflected the idea of Pakistan as an Islamic State in letter and spirit with an intention to make all legislation in the country in accordance with the Islamic values. With a view to ensure checks and balances on the legislature, the requisite amendment<sup>4</sup> was introduced that created the Council of Islamic ideology which would have the constitutional power regarding the legislation related to Islam.

The president of Pakistan has power to nominate the members of the council from different schools of thought who have knowledge of the

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<sup>4</sup> The notification constituting the council of Islamic ideology, see Gaz. Of Pakistan 1974. Ext. PL 11.P 165

basic turpitude of Islam and have an understanding regarding the economic, legal, political and administrative problems for the period of three years. Members of the council would be in between eight to twenty. Two members would be a retired judge of the High Court or Supreme Court of Pakistan. One third member would be religious scholars who have more than fifteen years research experience as a religious scholar. One member must be from the women and the President has the power to nominate one member as chairman of the council. Furthermore, members of the council can resign on their own accord or can be removed by the president of Pakistan on the basis of the recommendation of the majority members.<sup>5</sup>

### **3. Functions of Council of Islamic Ideology**

#### **3.1. What is the procedure for issuing ruling?**

Members of the Council would be from all over the Pakistan. Whenever any question is put up to the Council for advice, they by performing their functions, discuss under the injunctions of Islam and issue ruling. The Parliament is to consider the ruling of the Council in its legislative proceedings.

It is very pertinent to mention here the power and functions of the Council, Whether it has a Constitutional role in legislation or it just plays the role of an advisory body? The Article 230 of the constitution, describes the duties of the council <sup>6</sup> as to make suggestions and to

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<sup>5</sup> Art. 228 of the Constitution of Pakistan, The notification consisting the council of Islamic ideology, see Gaz. Of Pakistan 1974. Ext. PL 11.P 1727.

<sup>6</sup> The operations of the Islamic Council will be:

advise legislative authorities, including Parliament, Provincial Assemblies, President and Governor with regard to Islamization of laws in Pakistan.

Article 230 of the constitution, 1973 does not authorize the Council to legislate as the parliament does. It is nothing but an advisory body.<sup>7</sup> Now, the question arises whether recommendations given by the council are considered binding on legislators or not? The answer is “Yes” in simple words as the law imposes obligation on the legislators to reconsider the law so made by the council. The Council places recommendations before the Parliament, which seldom gives any importance to these recommendations. Here the issue is that if the legislators do not act upon the recommendations given so far, and what

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1. a. To issue guidance to the Parliament and Provincial Assemblies to adopt methods and resources to help Pakistani Muslims organize their lives in conformity with the teachings of Shariah and Islam.

b. To guide Upper & Lower House, Provincial Assemblies, the President, or a governor on any issue referred to the Council for its expert opinion on a prospective bill whether or not it is in conformity with the ordains of Shariah or not.

c. To insure conformity of existing laws with the shariah and issue recommendations accordingly.

d. To issue guidelines regarding Islamic Injunctions in an appropriate format for the consultation of the Parliament and Provincial Assemblies.

2. If the proposed legislation is urgent keeping in view of the public interest, the legislation can be made without the advice of the council postponing the same for an appropriate time in future. Provided that, the future advice of the council on the legislation will be taken in to consideration by the respective legislative organ.

The Islamic Council shall submit its final report within seven years of its appointment, and shall submit an annual interim report. The report shall be put forward for debate before the Parliament and each Provincial Assembly within six months. The assemblies after taking in to consideration the report, shall legislate accordingly within two years of the final report.

<sup>7</sup> See Articles 229 and 230 of the Constitution of the Islamic Republic of Pakistan

shall be the fate of these recommendations. The law is silent on this phenomenon. It means that Council is nothing but an advisory constitutional body.

### **3.2. Purpose of the Council:**

The purpose of establishing the this council was to bring all the laws of Pakistan within the footprint of Islam as being available in the Holy Qur'an and the Sunnah, no law shall be made against the Islamic norms.<sup>8</sup> The other purpose was to answer the controversial questions against Islam, arising in the modern minds of the Muslims. In order to achieve this goal, the council of Islamic Ideology was created to provide equal representation to various schools of thought in Pakistan so that jurists from all major schools of thoughts could decide unanimously in order to avoid differences among the Muslim community.

### **3.3. Is Council deviating from its core object?**

The question is that weather Council is achieving its goal under which purpose it was created? Secondly, is the Council is performing its functions according to constitutional requirements?

Council is under constant attack by some NGO's (of Human Rights) and media reports, especially on the rights of women. It had been observed that occasionally Council was wasting his precious time by discussing such questions/issues on which they are not bound to give recommendations. Council is performing extra constitutional functions.

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<sup>8</sup> See Articles 227 of the Constitution of the Islamic Republic of Pakistan

In May 2016, the council ruled that “A husband can beat his wife lightly”.<sup>9</sup> It causes great hue and cry with enormous sarcasm by human rights activists and media. Though, the media were not highlighting the preconditions under which a husband may be allowed to beat her wife lightly, but the issue was whether the council was asked by law making institution for recommendations on beating of women? It was not only inappropriate but also unconstitutional for the Council to give verdicts on such particular issues publicly. This society is already dominated by men. Every day, we see many cases in which women are victims of their husbands’ cruelty and brutality. Council would have to lay down procedure to curtail the cruelty of husbands rather than allowing for beating women. There was not any instance in the whole of the Islamic history, which suggests that Prophet Muhammad (PBUH) had ever beaten any of his wives. Here, I am not talking about the permissibility or prohibition of beating one’s wife under the injunctions of Islam. The main issue is that the duty of the council is not to give verdict on every matter. Council has to be regulated only to such jurisdiction and power which is given under article 230 of the constitution of Pakistan.<sup>10</sup>

Moreover, this is the forum where representatives from all schools of thought gather under one umbrella to discuss issues faced by the state and decide unanimously. The question is: do the members of the

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<sup>9</sup> See <http://www.dawn.com/news/1260803> dated May 26, 2016

<sup>10</sup> Subs by the constitution (fourth Amdt) order,1980 (P .O, No. 16 of 1980) Art, 2 for”fifteen”. Subs by the constitution (third Amdt) order,1982 (P .O, No. 13 of 1982) Art, 2 for”class 4”. Subs by the constitution (Eighteen Amdt)) act,2010(10 of 2010), 85 for four.

Council represent all major schools of thoughts and how they are selected? <sup>11</sup> Whether they are recommended by the president on fair basis or by the wish of the political parties? It is noted that members of the Council are not having equal representation and they are being selected on a political basis by the President. It is quite fatal for fair process of legislation. No doubt, this worthy constitutional institution is an umbrella for selected jurists (Mujtahideen) from all over the Pakistan, presenting various schools of thought. This procedure requires deep exertion on the basis of knowledge and research on the principles of Islam. <sup>12</sup> It has also been observed for the last two decades that the Chairman of the Council is being constantly selected from only one religious political party. The President of Pakistan has the power to select the members of the Council on prescribed highly qualification and sound juristic research work on contemporary issues.

#### **4. Role of the Council:**

Here, we critically evaluate some instances from recent rulings of the Council. Indeed, Council has given rulings on hundreds of issues and topics related to administrative, criminal, civil, financial and family matters. However, the behavior of the legislators shows that in most cases, they are reluctant in applying the recommendations of the council while legislation.

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<sup>11</sup> See Article 228 of the Constitution of the Islamic Republic of Pakistan, in which detailed discuss about the formation of the ideology council of Pakistan and discuss about the members, strength of the council. Further, discuss about the chairman would be from the member of the council and all the member would be selected for three years. The qualification of the member is also discuss.

<sup>12</sup> Subs by the constitution (Eighteen Amdt)) act,2010(10 of 2010), 85 for four.



Council, for instance, has recommended imposing ban for usury as ordered under the injunctions of Islam (Quran: 2:75). But the modern minds considered that if the ban is imposed, then how can the expenditures of the banks be recovered?

In another case, The Council has viewed that the husband wants another marriage, then no need to seek permission from the wife. <sup>13</sup>

Modern minds thought that if the husband is allowed to marry other women unconditionally, he could do injustice between wives and women's rights might be dishonored e.t.c.

There are many examples which describe that the rulings of the Council are considered impracticable in modern needs of the society by the legislators.

Here, the question arises: Is code of Islam incomplete and has failed to tackle the contemporary issues of the modern age? The answer is "No", because it is not the imperfection of Islam but the followers of Islam. Indeed, Islam is a complete code for life. It provides solution to all past and present problems of the society.

In supra, I have enunciated some instances, where legislators hesitated to act upon the rulings of the Council. They even did not bother them and continued to legislate according to their wishes. Vividly, this behavior shows the ineffectiveness of the Council of the Islamic Ideology.

Council could only have an effective role if it, along with its ruling, could provide an alternative practicable solution. For example, in case of ban on interest, what will be the alternate to tackle the

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<sup>13</sup> Daily News Paper, The News International and Express Tribune, of 11.3.2014

expenditures of the banking systems and in case of second marriage, how justice can be done and rights of the women can be protected under the law. For its effectiveness, the core thing which the council has to perform is to convince the legislators on the benefits and suitability of the recommendations.

### **5. Conclusion**

The Council needs substantive revision in its structure and procedure. Effective role can be played if members of the Council are to be selected on the basis of their higher level of knowledge and experience. The council must perform their functions under its given domain. Since 1962, the Council has held more than 200 sittings, reviewed legislation of Pakistan and submitted more than 90 reports. Indeed, it is an example of a great collective juristic work ever produced by any Islamic Institution in Pakistan. Council has given verdicts on hundreds of issues and topics related to all matters, including administrative, criminal, civil, financial and family. But, It has been noticed that most of the recommendations were abandoned and only a few of them were pondered over by legislative assemblies. Therefore, if Parliament of Pakistan wishes Islamic system under the injunctions of Islam, it has to consider the rulings of the council. Otherwise, the value of these rulings so given by the council is only futile exercise.

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