ISLAMIC ASPECTS OF
THE NEW CONSTITUTION OF PAKISTAN

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On October 7, 1958, the then President of Pakistan, Mr. Iskander Mirza abrogated the Constitution of 1956, imposed Martial Law in the country with General Mohammad Ayub Khan, Commander-in-Chief of the Army, as the Chief Martial Law Administrator. Soon after Mohammad Ayub Khan assumed all powers after Iskander Mirza quite dramatically had resigned from the presidency of Pakistan. At first it was generally believed that the revolutionary régime under Ayub Khan would swing towards secularism. However, these fears were soon allayed by President Ayub's public statements emphasizing the positive rôle of Islamic ideology in the making of Pakistan. Of course, the President probably had in his mind a more liberal understanding of Islam adaptable to the twentieth century requirements. The need for the building up of Pakistan in accordance with the teachings of Islam was felt even more sharply because of the comparative lack of national cohesion between the two far-flung wings of the country sharply differing in culture, language and habits. The only unifying force between them is Islam. Therefore, political integration of Pakistan can best be achieved by permeating our national ideology with Islamic ideals. This means, in other words, that Islam should have primacy among the essential elements of our national culture.¹

Although, there was almost a general recognition of the necessity of integrating Islamic principles in the Constitution of Pakistan, yet there has been no consensus of opinion on the nature and scope of Islamic state and as to the methods of establishing it. The 'Ulama' of Pakistan unequivocally demanded that Pakistan should be made an Islamic state according to the precedents of the early Islamic political experience; hence they were identified as Traditionalists. The Fundamentalists, basing their arguments on the Qur'an and the Sunnah, wanted to construct a totalitarian Islamic state in Pakistan. The liberal League leadership, the de facto holder of political power, aimed at
striking a synthesis between Islamic principles and modern life within a democratic constitutional framework. The Constitution of 1956 enshrines and represents an epitome of political compromise on Islamic provisions.

The new Constitution, as promulgated by President Mohammad Ayub Khan in June 1962, reproduces the Islamic provisions of the old Constitution of 1956 with some modifications. The Islamic provisions of the Constitution have been couched in a more liberal language. President Ayub Khan's speech promulgating the new Constitution reflects his broad and liberal understanding of Islam, and gives an insight into his deep, emotional and intellectual dedication and loyalty to Islamic ideals:

Being an ideological State, our first objective must be to adhere unflinchingly to our ideology—the ideology of Islam. It is for this that we demanded and obtained Pakistan. It is source of our strength and cohesion. We must do all we can to promote it so as to gain unity, equality, brotherhood and social and economic justice. In doing so, we shall be performing another important duty too. In this world of growing scepticism, penetrating enquiry and exacting reason, we shall be proving that Islam is timeless; that it is dynamic and can move with times; that it is a practical code of life here and an effective passport for life hereafter.

The foremost question that came to be discussed in Pakistan since 1947 was whether or not there were any Islamic constitutional principles to be found enunciated in the Qur'ān and the Sunnah. The 'Ulama' applied themselves to the task of discovering the rules which should form the basis of Pakistan's Constitution. Many of the eminent 'Ulama' publicly and categorically asserted that there were very clear rules on Islamic Constitution; as a representative view, a passage from Mufti Muhammad Shafi' is reproduced below:

The Holy Qur'ān is a complete and perfect Code of Guidance for all peoples and races of mankind and for all aspects and walks of life. It deals not only with metaphysical verities like God, soul and the Hereafter, and spiritual institutions like prayer and fasting, but also with the Constitution of the State and the different branches of Law. Therefore, the 'Ulama' of Pakistan, at a conference in Karachi, unanimously adopted a set of Constitutional Demands wherein they enunciated those Islamic principles which are considered to be the sommum bonum of any genuinely Islamic Constitution. They focussed their attention primarily on the problem of Sovereignty. They had, perhaps, observed that the constitutions, particularly those of the Muslim countries, generally incorporated the principles
of "national sovereignty". But this principle of national sovereignty was found obviously contrary to Islam. However, notwithstanding the repugnancy of this doctrine it was considered to be the pivotal concept of the modern state. Therefore, the problem was to enunciate the Islamic notion of sovereignty which could serve as the foundation stone of the new policy in Pakistan. In redefining the term "Sovereignty" in its Islamic sense, the 'Ulama' seemed to have adopted Mawłānā Mawdūdī's Islamic political theory which centred round the concepts of Divine Sovereignty, Khilāfah and theodemocracy. According to this view, there cannot be any sovereign in an Islamic state in its modern sense of "a human determinate superior". Therefore, they transferred the concept of sovereignty in its political sense to God Almighty and asserted, that in an Islamic state, the final, absolute, unlimited, inalienable and indivisible supreme political power belongs to Allāh alone. In order to substantiate Allāh's sovereignty in the practical sense they asserted further that an Islamic state must be subject to the Qur'ān and the Sunnah as the expression of the Divine Will. This statement alone could not constitute a logical theory of Islamic state; therefore, they introduced the Islamic notions of "delegation" and "trust" in order to reconcile the moral sovereignty of Allāh with the political sovereignty of the people. All authority, according to them, exercisable by the state or people, is mandatory by nature as it constitutes a trust from Allāh. People were only Allāh's vicegerent on earth; the authority that the people exercise is limited by the limits prescribed by Him. These limits were to be found in the Qur'ān and the Sunnah. This theory had two significant implications: first, that the sovereignty of Allāh connoted, for all practical purposes, the sovereignty of the Divine Law (Shari'ah); this further implied (i) that no legislature could make laws repugnant to the Qur'ān and the Sunnah; and (ii) that Islam does not recognize sovereignty of the fictitious person of the state in its modern sense. This way the term "Sovereignty" used in its contemporary political-science sense was given a new theological interpretation in Islamic terminology.

In the case of the text of the new Constitution of 1962 some definite changes have been made in the phrasological construction of the doctrine of Divine Sovereignty. In its text of 1956 "the authority to be exercised by the people of Pakistan within the
limits prescribed by Him" is changed into "the authority exercisable by the people is a sacred trust." This brief and logical statement widens the interpretative scope of the term "sacred trust" since "within the limits prescribed by Him" is not explicitly mentioned—the intention being a freer implementation of the principles of Islam. This is logically commensurate with the modifications of Article 198 of the old Constitution in which the phrase "the Qur'an and the Sunnah" is replaced in the new Constitution by "Islam". This in effect means further liberalization of the repugnancy clause. Thus the Divine Sovereignty clause is made logically consistent with the repugnancy clause of the new Constitution. This further implies a more emphatic minimization of the possible danger of "priestocracy" as envisaged by the Basic Principles Committee (B.P.C.) Report.

At this stage a reference needs to be made to the Report of the Constitution Commission. The Constitution Commission had issued a detailed questionnaire about the new Constitution soliciting public opinion. The questionnaire was based on the text of the Constitution of 1956. About the Islamic provisions of the old Constitution, the Commission had formulated the following questions:

(a) Is it necessary to incorporate, in the new Constitution, the Preamble to the old;
(b) Are the Islamic provisions of the late Constitution to form part of the new Constitution;
(c) Is it necessary to make provision, in the new Constitution, to assist Muslims in the study of the basic values of Islam and of their application to the changing conditions of life; and if so, what should be those provisions? (p. 144).

Presently, we are concerned with the question (a) and the other two questions will be dealt with at their appropriate places. According to the Commission’s analysis of the answers to question (a) "the preponderance of opinion (95.64%) is in favour of adopting this Preamble and a minority opinion did not consider it necessary to adopt this Preamble". The Commission in its report, therefore, recommended that the incorporation of the Preamble except its clause 3 in the new Constitution is in no way detrimental to the interests of religious minorities, because they did not envisage to impose a theocratic government. Further, it appears that a point of psychological relief was provided deliber-
ately to these religious minorities by means of effecting a change in the nomenclature of the State. In the new Constitution, the word Islamic is deleted from the Islamic Republic of the old Constitution. This change, in fact, was brought about immediately following the abrogation of the old Constitution by the new Martial Law régime.

The other two clauses, (b) and (c) of the Preamble relating to Islam, were the necessary corollaries of the clause of Divine Sovereignty. There are further provided in (d) safeguards for the religious minorities. These enunciations determine the nature and scope of the Islamic State as visualized by the framers of the Constitution of Pakistan during its different phases. Whereas the affirmation of the doctrine of Universal Divine Sovereignty in the Constitution provides the ideological foundation of Pakistan, the other three clauses, namely (b), (c) and (d), constitute the Islamic principles of governance. In order to realize these objectives, the new Constitution provides institutions such as the Advisory Council of Islamic Ideology and the Central Institute of Islamic Research.

PRINCIPLES OF LAW-MAKING

Since it was not possible to revert to the early Khilafah form of government in Pakistan, there was a demand that the legislature should not be invested with the power to enact any law repugnant to the Shari'ah as interpreted by the recognized Ulama. It was further demanded that the existing laws should be brought into conformity with the Shari'ah law. This, in effect, meant to curtail the legislative authority of the National Assembly. This was the position taken by the Ulama of the country. On the other hand the liberal leadership in the country, while recognizing the need for preventing any un-Islamic legislation and restoring Islamic laws, refused to relegate power of legislative veto to the Ulama as they firmly believed that it would be tantamount to theocracy categorically denounced by Islam. Therefore, for them the problem was to devise a method whereby this difficulty might be overcome without impairing in any way the legislative sovereignty of the Parliament.

As a result the old Constitution envisaged in Article 198:

(1) No law shall be enacted which is repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and
Sunnah, hereinafter referred to as Injunctions of Islam, and existing laws shall be brought into conformity with such Injunctions.18

With this objective in view, under section (3) of the same Article the President was authorized to appoint a Commission within one year to make recommendations as to the measures for bringing the existing laws into conformity with the Injunctions of Islam and also to compile in a suitable form such Injunctions of Islam, for the guidance of the National and Provincial Assemblies.19 A section of the people represented by the traditionalist 'Ulamā' demanded a Board of 'Ulama' to serve as the ultimate guardian of the Islamic provisions.

In reply to the questionnaire of the Constitution Commission on this point, according to their reported analysis, an overwhelming majority, i.e. 97.23% favoured the adoption of the provisions of the old Constitution (Article 198). However, the Commission felt that this majority had not fully considered the difficulties involved in this question.20 According to the Report, 1.14% of the answers consider that laws should be brought into conformity only with the Qur'ānic principles and that the expression Sunnah should be deleted from the Article.21 However, there were others who held the view that the Sunnah could not be excluded since it is the commentary upon the text of the Qur'ān. According to the Report, the view held by the official delegation reflects an advanced liberal interpretation. They suggested that the Islamic provisions should be confined to the Preamble and should not be included in the operative clauses of the new Constitution but that if a more specific provision was considered advisable it may be laid down that no law should be enacted which is repugnant to the principles of Islam as enunciated by the Qur'ān and the Sunnah with the right of Ijtihād to meet the requirements of present-day society. They also suggested that this power should be vested in the Supreme Court.22

The foregoing analysis throws up clearly the whole spectrum of views about this part of the Islamic provisions. These views reflect a wide range of difference in the interpretation of Islam in modern times. The Constitution Commission considered these views and concluded that before existing laws are changed in order to bring them into conformity with Islamic principles, measures should be taken to create an atmosphere of amity among different
sects of Islam and this should be followed by endeavours to prepare the commonly accepted principles which should be regarded as the standard to which the law of the country should conform. For this purpose the Constitution Commission proposed that a Commission, comprising carefully selected members, should undertake this task. This Commission should also seek the cooperation of other such Commissions all over the Muslim world. The objective of the Commission will be to examine the corpus of Traditions in order to establish their general "authenticity". The Commission will also examine how far the situational content of the *Sunnah* of the Prophet should be applied literally in the various countries regardless of the local conditions to which people of those countries have all along been accustomed, and how far only the principles have to be deduced.23

The Commission's Report on the question of preventing un-Islamic legislation raises a number of intricate and controversial issues which are to be examined. As regards the necessity of providing for preventing un-Islamic legislation, there seems to be no serious objection from any quarter except a minority of secularists. However, with regard to the content and method of Islamic legislation there is a sharp cleavage of thought. As far as the content of Islamic law is concerned, the traditionalists take a narrow legalistic-formalistic view maintaining that the rules of Islamic law are laid down clearly in the Qur'ān and were exemplified by the model conduct of the Prophet. These rules of law were elaborated and systematized by jurist-theologians during the early formative phase of Islamic law. In modern times the basic problem is to restore these laws in the Muslim lands. Thus, they take a static view of Islamic law.24 On the other hand, the liberal scholarship maintains that the development of Islamic law had been a continuing activity within the early Muslim community. It is true that the Qur'ān and the *Sunnah* do exhort people to regulate their conduct according to moral norms revealed to the Prophet, but these constitute the bases of Islamic law rather than the Islamic legal system itself. Many of these rules as laid down in the Qur'ānic text have situational reference although there is also a substratum of value meant for all times and places. According to them these universal values are of relevance to our modern times and could form the basis of all Islamic legislation; however, they do deny emphatically that
these rules can and should be applied literally since this would mean reversion to the days when these were formally formulated in Arabia centuries ago. They recognize the progress in time and situation involving intricate social, political and technological change in human society. Therefore, they hold that Islamic legislation in modern times must take into consideration these changes. This means, in other words, a continuous activity of interpretation of the Qur'anic rules and the *Sunnah* of the Prophet. So long as the Muslim community maintained this continuity of interpretation, the society remained dynamic but no sooner did this activity come to an end than the progress in all walks of life was arrested and stagnation started. Therefore, the regeneration of the Muslim community is possible only if that free activity of independent thought and interpretation is restored. This may help bring about the much desired synthesis between the Islamic values and the requirements of modern life. If this can be achieved, it will not only be saving the Muslim society from its logical annihilation but will also constitute a major contribution to the world at large. Their problem was to maintain the spiritual continuity with the past while moving ahead with the materially advancing world of today. With this philosophy in mind, the endeavour of the liberal leadership was to avoid any reference to the formal sources of Islamic law, namely the Qur'an and the *Sunnah*. Among them some were prepared to refer only to the Qur'an. Their anxiety was to get rid of the shackles of amorphous Traditions which were the only source of the *Sunnah*. Their argument was that much of the Tradition literature was either fabricated and unreliable or simply reflected partisan prejudices and, therefore, could not be relied upon in matters of modern Islamic legislation. For them conformity to the *Sunnah* would mean restoration of Islamic law as formulated in the early Islamic society which would be an anachronism in modern society. Reference to the Qur'an was not seriously objected to because the Qur'anic formulations without their historical context could be interpreted independently and could be adjusted to modern institutions.25 Another reason for avoiding the reference to the *Sunnah* was that this would raise questions of sectarian interpretations which may accentuate conflicts within the community. There are the Ahl al-Hadith, Ahl al-Qur'an, the Shi'ah, the Sunnis and many others. The liberals wished to minimize differences by
broadly defining Islam. This is perhaps the reason why the Constitution Cabinet Sub-Committee decided to delete altogether any reference to the Qur'an and the Sunnah and employed the term Islam in enunciating the first principle of law-making in part II of the final draft of the new Constitution.\textsuperscript{26} But mere deletion would not solve the problem because whenever the Provincial Legislative Assemblies or the National Assembly would discuss any Bill involving Islamic principles reference would naturally be made to the Qur'an and the Sunnah. This is sufficiently borne out by the proceedings of the recent National Assembly sessions.

A cursory study of the development of Islamic society in its historical context would show how in the early formative phase the jurist-theologians resolved their problems in the light of the Qur'an and the Sunnah. This early Muslim community was free from prejudices and superstitions. There was always an élite which exerted independent judgment in the practical application of the Injunctions of the Qur'an and the Sunnah in different walks of life. In this process they interpreted the Injunctions of Islam as contained in the Qur'an and exemplified by the Sunnah. The Sunnah, according to Professor Fazlur Rahman, implies a behavioral concept which must necessarily distinguish its situational content from its concept as the normative behaviour of the Prophet. It is this Normative Sunnah, in contradistinction with the Descriptive Sunnah, as interpreted by successive generation into a specific content that constitutes the Living Sunnah.\textsuperscript{27} The Ḥadīth movement was sponsored by the Muḥaddithūn to restrict the indiscriminate process of the interpretation of the Sunnah in different time-space contexts.\textsuperscript{28} For this purpose the Isnād was utilized by the Muḥaddithūn as a device of external criticism to link up the Sunnah concept with that of the Prophetic Ḥadīth; and as a result there was left little scope for continuing interpretation of the Sunnah through the mechanism of the Ijtihād-Ijmā' process. Consequently the development of the Sunnah concept was retarded and the Ummah failed to adjust its concepts of law and doctrine to the ever-changing social and economic conditions.\textsuperscript{29} So long as the free activity of interpretation through Ijtihād-Ijmā' continued in the Muslim community there was no problem. However, as soon as this process was stopped, the development of Fiqh also ceased and once the Fiqh schools were crystallized into rigid
systems, there was left no scope for adjusting these systems to the changing social requirements. From this time onward there followed a period of intellectual sterility and uncritical Taqlīd which still continues. However, reformist movements have been launched since the mid-nineteenth century to regenerate Islamic principles through fresh activity of independent interpretation of the Qurʾān and the Sunnah in the context of the twentieth century requirements. But there has been no sense of direction. Neither there is any consensus as to the methods by which this objective can be realized. In this state of confusion the solution lies in resorting to the techniques which were adopted by the Muslims of early centuries who maintained the dynamism of Islamic community through the continuing process of interpretations of the Qurʾān and the Sunnah in accordance with the needs of changing social phenomena. This means that neither ultra-modernism nor secularism nor traditionalism is the appropriate solution. The need of the present-day is to re-examine the corpus of Islamic values and principles. In order to maintain continuity with our past, we should concentrate on the task of fresh interpretation of the Qurʾānic Injunctions and the Sunnah of the Prophet. This would in no way mean a return to the past since the function of interpretation would be the application of these values and principles to modern conditions. This process implies a rejection of formalistic interpretation of the Qurʾān and the Sunnah. In other words, as it has been pointed out by another scholar, there is the necessity of axiological interpretation of the Qurʾān and the Sunnah.

Now if we accept this methodology, there is no harm in mentioning the Qurʾān and the Sunnah as the sources of Islamic law. Therefore, the provision in the chapter on the Principles of Law-making in respect of the repugnancy clause may be interpreted to mean the Qurʾān and the Sunnah. However, if the public opinion still agitates for a more specific enunciation of the phrases of the Qurʾān and the Sunnah, these phrases may be added and further qualified “as interpreted and applied to modern conditions of life”. This insertion would eliminate dangers of traditionalist incursion upon future Islamic legislation.

THE ADVISORY COUNCIL OF ISLAMIC IDEOLOGY

The Constitution Sub-Committee of the Cabinet following the recommendations of the Constitution Commission decided to create
such permanent institutions as may help bring about the desired Islamic orientation of the Muslim community in Pakistan. The old Constitution had provided that the President would appoint a Commission for this purpose. The new Constitution proposes that:

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.

About the structure of the Advisory Council there is not much in the above provisions of the Constitution except that the members of the Council shall be appointed by the President and the numbers of the members shall not be less than five and not more than twelve. The last provision is significant since it gives us a clue to the nature of the composition of the proposed Council. There are two important qualifications envisaged for the members, first, that they must have understanding and appreciation of Islam; and second, that in selecting a person for appointment to the Council, the President shall have regard to the person’s understanding and appreciation of the economic, political, legal and administrative problems of Pakistan. This does not explicitly or implicitly refer to the possibility of inclusion of the representatives of the 'Ulama' organizations, although this does not preclude inclusion of an 'ālim in his individual capacity. In other words, it does not require the specialized knowledge of Islam that only the 'Ulamā' are supposed to possess. The phrase 'understanding and appreciation' is of general purport in the above provision. Perhaps, the Constitution envisages that the expert opinion on the different subjects would be coming forth from the other institution proposed by the Constitution, i.e. *The Islamic Research Institute*. The second qualification guarantees against either any abrupt change in the administrative structure or any illiberal legislation. It implies that the Council should consist of such persons as are qualified to interpret Islam in the light of economic, political and legal problems of Pakistan (see Appendices A and B). It is a realistic approach. The Advisory Council of Islamic Ideology shall be constituted by the President.
This means that the National Assembly or Provincial Assemblies shall have no say in the affairs of the Council except that this body shall provide them with their opinions in relation to such bills under consideration of the National or Provincial Assemblies for enactment as involve questions of repugnancy to Islam. In other words, this Council shall be an integral part of the Executive. This may give rise to a suspicion in the minds of the legislators that the Executive shall be in a position to influence the trend of Islamic legislation. But it is provided further in the new Constitution that 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 a particular question arose should not be postponed until the advice is furnished, the law may be made before the advice is furnished. 33 But the fundamental guarantee against any fears of encroachment of the Executive through the Advisory Council is its purely advisory capacity which does not materially affect the law-making power of the legislatures.

Article 204 lays down the functions of the Advisory Council of Islamic Ideology as follows:

(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; and

(b) to advise the National Assembly, a Provincial Assembly, the President or a Governor on any question referred to the Council under Article 6, that is to say, a question as to whether a proposed law disregards or violates, or is otherwise not in accordance with the principles of law-making. 34

Since we are discussing the problem of legislation, we are concerned with section (b) of the above article at this stage. The primary function of the Advisory Council shall be to advise the National Assembly, a Provincial Assembly, the President or a Governor on such questions as are referred to the Council for opinion whether the proposed Bill was consistent with the first principle of law-making, i.e. whether or not it was repugnant to Islam. Part II, Chapter I of the new Constitution, deals with the principles of law-making and of policy, which are, as is evident from the very title of the chapter itself, only a statement of principles and of policies, not justiciable before any Law court. Section 2 of Article 6 says, "The validity of a law shall not be
called in question on the ground that the law disregards, violates or is otherwise not in accordance with the principles of law-making.’  

This precludes reference of such matters as fall within the scope of this provision to the Supreme Court or any lower court. In other words, the Supreme Court has not been vested with the authority of determining whether any law disregards or violates or is otherwise not in accordance with the principles of law-making. Section 1 of the same Article stipulates clearly, “The responsibility of deciding whether a proposed law does not disregard or violate or is otherwise not in accordance with the principles of law-making is that of the legislature concerned.” However, in the same Article it is further stipulated, “but the National Assembly, a Provincial Assembly, the President or the Governor of a Province may refer to the Advisory Council of Islamic Ideology for advice any question that arises as to whether a proposed law disregards or violates, or is otherwise not in accordance with, those principles.”

The nature of Islamic legislation in Pakistan would be determined by the dynamics of political conflict between the traditionalists and the liberal leadership. In this conflict lies a great danger lest it might prepare the ground for the secularist-minded modernists who will surely steer clear of the Islamic principles. Therefore, the solution can be found only in the mutual adjustment of views through compromise within a democratic framework. For this the National Assembly or a Provincial Assembly is the right place. In this task the Advisory Council of Islamic Ideology can play a very important rôle. It is true that it will not act as a Dār al-Iftā’ or a body of mujtahidūn. However, it will be in a position to clarify involved issues. It will objectively analyse conflicting opinions and formulate them. In this process the Council may be motivated to bridge the widening gulf of difference through the exercise of independent reason in the light of the relevant materials from Islamic literature. The Council would help the legislatures to arrive at new solutions of the present-day problems in the light of Islamic principles. The Council would also assist the legislatures in discovering the commonly acceptable content of Islam for legislative implementation.

In the long run the Advisory Council would also endeavour to reduce the area of sectarian differences. In the text of the old Constitution at the end of Article 198 there was a note which reads as follows:
Explanation:—In the application of this Article to the Personal law of any Muslim sect, the expression "Qurʾān and Sunnah" shall mean the Qurʾān and Sunnah as interpreted by the sect.  

This implied a permanent recognition of sects within the Muslim community. But the new Constitution does not contain any such reference. In the light of the recommendations of the Constitution Commission, it appears that they had envisaged to cut across differences among various "schools of thought" as a pre-condition of compiling a universally acceptable code of Islamic law to which all legislation should conform. It seems that this task of preparing a climate for commonly acceptable Islamic legislation by all sects in the country would naturally devolve upon the Advisory Council.

In a nutshell, the basic function of the new institution is to elaborate, reconstruct, systematize, formulate and define the constituent elements of Islamic ideology in accordance with the requirements of modern life. This need for a common Islamic ideology has most acutely been felt by all sections of the people since the establishment of Pakistan. This search for an ideology can be discerned in the contemporary writings of this country. In one of his speeches, President Mohammad Ayub Khan discussing the need for an Islamic ideology remarked emphatically:

While looking after our material prosperity and progress we in Pakistan, cannot ignore the fact that our country is the product of the ideology of Pakistan. This is the foremost justification for our existence and we cannot be true Pakistanis without being true to this ideology.

The objective should be to evolve an ideology which is consistent with progress and modern science. Emphasizing this point, the President said:

To liberate the spirit of religion from the cobwebs of superstition and stagnation which surround it and move forward under the focus of modern science and knowledge is, therefore, one of the major demands of our system of education.

ISLAMIC RESEARCH INSTITUTE

In accordance with the objectives set forth in the preamble of the old Constitution in relation to Divine Sovereignty, Islamic principles of social justice, and the clause determining the nature of Islamic state, "Wherein the Muslims of Pakistan should be enabled individually and collectively to order their lives in accordance with the teachings and requirements of Islam, as set out
in the Holy Qur'an and Sunnah," the Constitution proposed to set up a Research Institute. In Part III dealing with the Directive Principles of State Policy, Article 25, Section (1) reasserts the last of the above-mentioned objectives and further provides in Section (2), Sub-section (a) "to provide facilities whereby they (Muslims) may be enabled to understand the meaning of life according to the Holy Qur'an and Sunnah; (b) to make the teaching of the Holy Qur'an compulsory; (c) to promote unity of observance of Islamic moral standards; and (d) to secure the proper organization of zakāt, waqfs and mosques." These objectives could be achieved only if a complex of institutions was created to conduct research in Islamic sciences, permeate liberal education with instruction in Islam, organize Zakāh, Waqfs and the mosques. In order to realize these objectives effectively the Constitution envisages in Article 197 that the President shall set up an organization for Islamic research and instruction in advanced studies to assist in the reconstruction of Muslim society on a truly Islamic basis. The rôle of the proposed Commission has already been discussed above. In addition to these institutions, there was the need for organizations for the administration of Zakāh fund, management of Waqfs and mosques which are the social mechanisms through which ultimately Islamic ideals can be realized in the Muslim community. This further necessitated a radical reorientation of government's educational policy.

For the sake of clarity it is proposed to study these institutions under three general categories:

(a) Islamic Research Institute;

(b) Islamic Education Policy;

(c) Administration and management of Zakāh, Waqfs and mosques.

The Constitution Commission strongly recommended, "We would, therefore, recommend the adoption of Article 197 of the late Constitution with suitable amendments so as to make the continuance of the Research Institute obligatory. We would retain the provision empowering the Parliament to impose a tax on the Muslims alone to meet the expenses of the Institute." The genesis of the Islamic Research Institute can briefly be summarized at this stage. It was during 1952 that there was a demand for such an organization in the first Constituent Assembly. The idea of setting up an organization for research on Islam was taken up by the Cabinet. A decision was taken to that effect. The Ministry of
Education was called upon to initiate proceedings. In principle many of the details were worked out by the Advisory Board of the Ministry of Education sometime in 1954. The Institute started functioning in 1955 when Professor 'Abd al-'Aziz Memon, a prominent Arabist, was appointed Director of the Institute and continued until its re-organization in 1960 under the new régime. The credit goes to him for having formed a nucleus of the Institute's library which is rapidly growing. The Institute was reorganized in 1960 when Professor Ishtiaq Husain Qureshi was appointed as the first full-fledge Director of the Institute. The Board of Governors was reconstituted by the President who became the Patron-in-Chief of the Institute.

The functions and rôle of the Institute are very important. The constitution of the Institute as approved by the Board of Governors enumerates in Article 3, four objectives:

(i) to define Islam in terms of its fundamentals in a rational and liberal manner and to emphasize among others, the basic Islamic ideals of universal brotherhood, tolerance and social justice;

(ii) to interpret the teachings of Islam in such a way as to bring out its dynamic character in the context of the intellectual and scientific progress of the modern world;

(iii) to carry out research in the contribution of Islam to thought, science and culture with a view to enabling the Muslims to recapture an eminent position in these fields; and

(iv) to take appropriate measures for organizing and encouraging research in Islamic history, philosophy, law and jurisprudence, etc.

In fact these objectives fix the scope of the functions of the Institute, and determine the direction of its research activity. It is quite clear that the main objective of the Institute according to Article 197 of the Constitution is "to assist in the reconstruction of Muslim society on a truly Islamic basis". This provision of the old Constitution has been retained in substance with some minor changes. Section (2) of the same Article providing for levying special tax on Muslims alone for meeting the expenses of the Institute has been deleted although the Constitution Commission had recommended the retention of that provision. This means that there has been no change in the concept of the objectives of the Institute. The primary objective remains the "reconstruction of Muslim society on a truly Islamic basis". Although all sections
of people talk about reconstruction of Muslim society, but there exists wide divergence of opinion about the nature of this reconstruction and the methods to achieve it. The traditionalists would have us believe that the major cause of the decline was the large-scale inroad of innovations under the pressure of Westernization. Therefore, according to their view, the only way to regulate Muslim society was complete restoration of the medievel Islamic institutions. The liberals on the other hand hold the view that the degeneration of the Muslim community has been caused primarily by stagnation in the evolutionary process of Islamic institutions. These institutions failed to adapt themselves to the kaleidoscopic social, economic and political changes. The steady growth of Islamic Fiqh, Qur'anic exegesis, traditions and politics was arrested because of the ceasing of the continuous application of the \textit{Ijtihād-Ijma'} process which was always instrumental, in their view, in striking a synthesis between the immutable principles of Islam and the exigencies of time. Thus the process of practical application through continuous interpretation of the Islamic principles had ceased and hence caused the rapid degeneration of the Muslim society. Therefore, according to the modernist viewpoint the remedy lies in restoring the free activity of interpretation afresh of the Islamic principles in the light of the requirements of modern age. It is interesting to note how Basic Principles Committee's Report (Article 1, Section 3\textsuperscript{49} providing for an organization for Islamic research) reflected the conservative approach, whereas the new Constitution projects the progressive view. The text of the Constitution also cautiously leaned towards conservatism. The liberal leadership of the Martial Law régime has positively reaffirmed in unequivocal terms the liberal objectives of the Islamic Research Institute. The then Minister of Education, Mr. Habibur Rahman, while welcoming the Patron-in-Chief to the first meeting of the Board of Governors held in July, 1960 at Rawalpindi, remarked that it would be one of the most important duties of the Institute to interpret Islam and represent it as a body of thought that could meet the challenge of modern times and fulfil the requirements of a modern scientific society. The Institute would render a great service by interpreting the teachings of Islam in a rational, liberal and intelligible manner.\textsuperscript{50} Similarly the President in his inaugural address stressed the urgent need for mobilizing Islamic
thought. He referred to the dead weight of formalism which proved a bane in case of many a religion. In his words, “In case of Islam as well we must be clear about the basic principles and the modes of their implementation so that there was no confusion left in the mind about the alterable and unalterable.” Therefore, he suggested, “If we fail or refuse to bring about adjustment between Islam and the dictates of modern life the fear is that the Muslims will drift away from Islam.”

This view recurs frequently in all his speeches whenever he makes any pointed reference to Islam.

In the light of this primary object of the Islamic Research Institute should be viewed the objectives of the Institute as contained in its constitution. Within this framework, the first objective should be to explain Islam in the light of its fundamentals. This is essential since most of the stagnation in Islamic thought is due to the too much emphasis upon the details and forms rather than upon the substance and spirit of Islam. This is quite characteristic of traditionalism which is formalistic in substance and legalistic in approach. The new approach should emphasize the eternal principles underlying the Qur’anic injunctions and the early practice. It does not necessarily mean that the details are to be ignored but the right method would be to work out the details afresh in the light of the Islamic universals in the modern context. In this respect, as pointed out by the President, a distinction should be made between the basic principles of Islam and the modes of their implementation. This method should be applied in modern researches on Islam within the Institute. The other ingredients of the new methodology of Islamic research are a recognition of rationalism and liberal orientation. These two elements are in fact not new devices borrowed from the West but can be traced back to the Middle Ages of Islamic history. It would be erroneous to maintain that rationalism and liberalism in the contemporary Islamic world are the exclusive products of the West. The rise of philosophical speculation, mysticism and scholasticism in the Medieval Islamic Civilization are the main-springs of Muslim liberalism in modern times. Therefore, the reassertion of these would not mean in any way a slavish imitation of the West provided the scholars in the Institute have their moorings firm in the works of medieval Muslim scholars.

Since another important function of the Institute is to clarify and elaborate the Islamic ideology which may be offered to the
conflict-ridden humanity as a panacea for modern ills, it is naturally necessary for the Institute to formulate and explain the Islamic ideals of universal brotherhood, tolerance and social justice. This implies that the research workers in the Institute are under an obligation to define the political and social ideals of Islam. The concept of universal brotherhood is to be studied in the background of the political chaos prevailing in the world under the divisive forces of aggressive nationalism, parochialism, racialism and many other such prejudices. In enunciating the principle of tolerance, our research scholars should be able to demonstrate, with reference to the practice of Islam, how a society can be erected on the foundations of the ethical values of Islam without injuring the rights of the religious minorities. This means that religious tolerance is the keynote of Islam. In working out the detailed system of social justice we shall be demonstrating to the world how a social order is capable of resolving many of the economic injustices and social evils because of being rather rooted in God-consciousness. This would be a reply to modern Godless Communism and Western Capitalism. This objective can best be achieved by creating cells of scholars in the Institute with specialized knowledge of modern political science, economics and Islamic sciences. The cooperation of the scholars of sociology and cultural anthropology should be sought in the fulfilment of the objectives of the Institute so that an empirical and scientific survey of the Muslim society can be undertaken which would provide materials to the scholars in enunciating Islamic ideals.

The second objective emphasizes the rôle of the Institute as the interpreter of Islamic principles and institutions in a manner that the dynamic nature of Islam can objectively be demonstrated. Further it also implies a recognition of the applicability of Islam in modern times. The endeavour of scholars should be to prove how Islam can be reconciled with advances in science and technology of modern times.

Another important function of the Institute is to assess the contribution of the Muslims to thought, science and culture. It is always necessary for a conscientious nation to draw inspiration from the glorious chapters of her past civilization. This would restore our self-confidence and inspire us to recapture respectability in contemporary civilization.
In addition to these general objectives, there is a specific provision for organizing research in Islamic history, philosophy, law and jurisprudence, etc. The medieval literature in these fields is very rich and little fundamental research has yet been done in any of these spheres for which we can take legitimate pride. The publications that are pouring in are either superficial or anachronistic or at least apologetic. There is a lack of research training in the respective fields. In order to produce first-class research works, it is, therefore, absolutely necessary that the Institute should be well equipped with trained personnel, and a specialized library containing books on Islam, fundamental treatises on politics, economics, history, etc. The research done in the Institute can produce good results only if corporate and team work in different fields can be organized under the guidance of trained experts.

It may not be out of place here to mention an important recommendation of the Constitution Commission in respect of the functions of the Institute. The Commission in its report calls upon the Institute to prepare an edition of the Qurʾān with the Arabic text and its rendering into English and Pakistani languages in such a manner that the verses of the Qurʾān are classified subject- and topic-wise. This is necessary for easy reference. The purpose behind this recommendation is according to the report:

We make this suggestion because we think that we should first try to get our young men to know what the Qurʾān says, so that they may no longer labour under a misapprehension about its teaching. If once the misconception, that Islam deals with ancient and out-of-date theories, is removed, then the basic principles of Islam, with reference to modern knowledge, will be understood in their proper perspective.

The concept of the Islamic Research Institute was projected as a complex of institutions operating at national and provincial levels. Therefore, the existing Institute of Islamic Culture of Lahore headed by the late Khalīfah ʿAbd al-Ḥākim and the newly set up Islamic Academy at Dacca headed by a former General Secretary of the Bengal Muslim League, Mr. Abuʾl Ḥāşim were affiliated to the Central Institute of Islamic Research in Karachi working under the auspices of the Central Government. This Institute is also collaborating with other research bodies. The purpose of integrating the activities of these different research bodies is to avoid overlapping of research projects.
The new Constitution does not say anything about the nature of relationship between the Central Institute of Islamic Research and the Advisory Council of Islamic Ideology. However, perhaps, a relationship is implied in so far as the provisions relating to the Advisory Council and the Institute aim at a common objective. President Ayub in a speech after the appointment of the Advisory Council clearly emphasized the positive rôle that the Institute is destined to play in respect of Islamic legislation. But, the Institute is primarily concerned with research on Islam, and the Council is concerned with the legislative implementation of Islam. The Institute may be called upon by the Advisory Council to supply it with information and expert knowledge on different legislative issues under consideration by the Council. With this possibility in view, it would be necessary for the Institute to have a unit of workers concentrating their researches in the spheres likely to be referred to it ultimately either by the Legislatures or by the President or Governors through the Council. In other words the Institute's research projects should be geared to the needs of the society. The Institute should always, therefore, keep itself informed about all the legislative measures that originate in the National Assembly or the Provincial Assemblies.

ISLAMIC EDUCATIONAL POLICY

In accordance with the objectives set forth in the new Constitution it was natural that the Government should devise a new scheme of education based upon the requirements of modern society and embedded in the Islamic ideology. Now we have to examine how the new educational policy can implement the Islamic objectives of the new Constitution. In other words we are to see how Islamic ideology has been blended with the new educational policy in Pakistan. The Commission on National Education appointed by the President has gone into the problem of integrating religious instruction at different levels with secular and technical education. The authors of the Report, in Section 8 of their Introduction, say:

Our educational system must play a fundamental part in the preservation of the ideals which led to the creation of Pakistan and strengthen the concept of it as a unified nation. The desire for a homeland for Muslims on the subcontinent grew out of their wish to be in a position to govern themselves according to their special set of values. In other words, our country arose from the striving to preserve the Islamic way
of life. When we speak in this context of the Islamic way of life we have in mind those values which emanate from the concept of universe governed by the principles of truth, justice, and benevolence, where human relationships are based on the ideal of universal brotherhood, and where all these are rooted deeply in religious belief. The moral and spiritual values of Islam combined with the freedom, and strength of Pakistan should be the ideology which inspires our educational system.56

The Commission treats the problem in two chapters dealing with Religious Education and Maktab and Madrasah Education.57 A close examination of the views and suggestions contained in these chapters shows that the necessity of imparting religious education at higher, secondary and primary stages is realized. The Commission has felt the need for modernizing and streamlining of the Maktab and Madrasah education. But it is quite debatable whether the Commission was successful in making effective and useful suggestions in this connection. In respect of the religious education, the Commission recommends three clear-cut stages: the compulsory, the optional, and the research stage. Imparting of religious education up to Class VIII is made compulsory with a syllabus spread over eight years. The syllabus is recommended to comprise preliminary reading, memorization of the Qur'anic verses, with translations, containing social virtues. In Classes IX and X it should be made optional and at Intermediate level it should constitute a part of Islamic Studies as an independent subject. At higher level of education, the Commission recommended the creation of Institutes of Islamic Studies in both wings and called upon the University scholars to raise the standard of scholarship in Islamics so as to attract scholars of eminence from abroad in the respective institutions of higher learning. As far as the Maktab and Madrasah education is concerned, the Commission recommended that traditional emphasis upon age-old syllabi of these institutions should be changed so as to stress in a scholarly manner the dynamic nature of Islam. They also recommended that the curricula of these institutions should give proper attention to modern subjects and vocational training as well.

It seems that the Commission could not perhaps pay due attention to a few very important problems arising out of a necessity for ideological orientation of our religious educational policy. First and foremost, the Commission does not say anything about the dangerous consequences of continuing dualism in our
educational system which was the outcome of a deliberate policy of the alien British Government before Partition. The fact that the Commission continues to make a distinction between religious and secular education is of great importance. This means, in other words, that they favour the view that the modern educational institutions should exist side by side with the religious seminaries. This separation is justifiable at a research level, but the existence of purely religious institutions as a system of education parallel to modern institutions at all levels is quite different. An attempt should be made to integrate these two systems of education progressively in a unified scheme of educational policy. Second, following the above logic, it would have been rational to recommend that (a) the instruction in the Qur’ān and the Sunnah, and morals should be made compulsory up to Secondary stage instead of making it optional; and that teaching of Islamic principles underlying society, state, economics, and Islamic history should be integrated, after proper review, with the general courses on History, Civics, Politics, Economics, Sociology, Philosophy, etc. This would ultimately do away with the existing dualism which is the remnant of the influences of a foreign civilization. This would also bridge the yawning gap between the Western educated élite and the tradition-bound 'Ulamā'. It would further place the two classes of people at par as far as the economic opportunities are concerned. Perhaps this is the only way in which the distinction between a Mawlawī and a Mr. in our society can gradually go away. However, this does not mean that for the sake of specialized work, higher research in Islamics cannot be established in the shape of expert bodies. Such an educational policy is necessarily a natural corollary of the aims and objectives set forth in the old as well as the new Constitutions.

ZAKĀH, WAQFS AND MOSQUES

Like the old Constitution, the new also proposes to utilize the traditional Islamic institutions of Zakāh, Waqf and mosques in the task of implementing Islamic ideology in Pakistan. These institutions had played a tremendous rôle in moulding and maintaining the character of Muslim society. But due to the dead weight of formalism and centuries of alien rule these institutions have either ceased to play any constructive rôle at all or have remained uncared for through centuries. Therefore, it was in the fitness of things to revitalize these institutions in order to promote
Islamic ideals of social justice, and the general welfare of the community. For the proper organization and disposal of collection and disposal of Zakāh funds as provided in the Constitution, Government is taking necessary steps. With regard to the management and administration of Waqfs and mosques the Government has already set up a Department of Auqaf headed by Mr. A. H. Qureshi, a member of the Civil Service of Pakistan. The Department is paying its full attention to the state of affairs of existing Awqāf and has recently, after the promulgation of an Ordinance to this effect, undertaken management of such Awqāf as have not been properly administered till recently. The Department has also set up at Quetta an Islamic Academy for the training of Imāms and ḫatībs. A rational syllabus in the light of the needs of modern society has been drawn up by experts and the Academy has started functioning under the guidance of modern trained scholars.*

These new institutions can be of great use if somehow a relationship is established between them and other Islamic institutions provided by the new Constitution such as the Islamic Research Institute.

ERADICATION OF SOCIAL EVILS REPUGNANT TO ISLAM

The new Constitution like the old one emphasizes the urgent need for reconstructing Muslim society in a practical way by means of providing institutions which would aim at cultivating Islamic moral standards among the people. The most important of these provisions is the one which forbids usury. However, there is no unanimity of opinion as to what constitutes ribā (usury). The bank interest has been excluded from the definition of ribā by liberal Muslim scholarship. However, the traditionalists still assert that ribā covers usury on loans as well as the bank interest. Apart from this intellectual confusion about the scope of the definition of ribā, there is no doubt about the evils of the practice of high exploitative rates of usury charged by indigenous money-lenders and this must stop forthwith. Similarly in our present-day Pakistan society gambling and alcoholism are rampant. The Constitution lays down that these practices be made unlawful and institutions be created to enforce these prohibitions. Trafficking in women, slavery, sale of narcotics and other harmful drugs are forbidden under the new Constitution contained in the

*The first Islamic University under the auspices of this Department will start functioning at Bahawalpur from September 1, 1963.—(Ed.)
Chapter on Principles and Policies. Prostitution is an age-long evil in our society. This must also go. In pursuance of these objectives the Government has set up a high-powered Commission on Eradication of Social Evils under the chairmanship of an eminent educationist and social worker, Mr. A. B. A. Haleem, a former Vice-Chancellor of the Karachi University. This Commission is now busy writing its Report after having finished with the business of interviewing people, collecting statistics and data and is expected to submit its Report in June, 1963,* which would be considered by the Government.

**ISLAMIC INTERNATIONALISM**

The new Constitution like the old one recognizes the international implications of the ideological foundations of Pakistan as an Islamic State. It rejects the idea of reviving the Universal Khilafah but at the same time affirms the need for "promoting bonds of unity among the Muslim states." This ideal has ever remained one of the main foreign policy objectives of Pakistan. In fact Pakistan has always taken a leading rôle within the U.N. in sponsoring, espousing and championing the cause of all Muslim peoples. Similarly Pakistan is firmly committed to pursue a policy of peace. She denounces plainly the immoral doctrine of war of aggression as an instrument of national policy. This attitude of Pakistan in her foreign relations is conditioned by Islamic ideology which justifies war either in self-defence or against aggression, injustice and oppression. Pakistan has also entered into many bi-lateral and multi-lateral treaties of different types and holds membership in many international agencies. These treaties and conventions are legally binding upon her. Pakistan respects these understandings not only as a principle of modern international law but also because Islam enjoins on her to respect the pacts and treaties. Islam does not accept the rule "Pacta sunt servanda" merely as an initial hypothesis as is the case with the modern international law but very emphatically affirms the doctrine being well-founded in the Qur'anic Injunctions.

**CONCLUSION**

In conclusion it can be safely maintained that as far as the Islamic provisions are concerned, the new Constitution has not

*The Commission presented its Report to the President, on June 18, 1963, at Rawalpindi.—(Ed.)
very sharply deviated from the basic constitutional philosophy underlying the old Constitution. In respect of minor issues the new Constitution, unlike the old one, adopts a more liberal view. However, many major changes have been made in so far as the structure of Government is concerned. Federalism is retained with a greater degree of decentralization and autonomy for the regions, and the Parliamentary system is replaced by the Presidential system.

The early Islamic Khilâfah started as a highly centralized and unitary Government but under the pressure of territorial expansion and relative lack of communications it came to be federalized and decentralized. The later 'Abbâsid Khilâfah had become more or less federalized in so far as the division of power had taken place between the central Khilâfah and the outlying princedoms. These princes, although technically subordinate to the Khalifah, enjoyed de facto sovereign status within their respective dominions. These rulers had declared themselves autonomous in secular administration by dint of either military force or diplomatic manoeuvres. Al-Mawaiardi treats this problem in his famous treatise al-Ahkâm al-Sultânîyah under Imârah istîlā. He reconciles the institution of Imârah by usurpation with the ideal theory of Khilâfah by means of a constitutional device according to which the Khalifah and the Amir mutually recognize each other's jurisdiction through the instrumentality of a concordat. In view of this political solution offered by a medieval Muslim jurist, it may be concluded safely that the principle of "federalism" may be applied in Pakistan as an Islamic solution.

Not only the traditionalists but also the Muslim experts on Constitutional Law at the Political Science Conference held in 1951 at Peshawar strongly confirmed the view that the Presidential form of Government was most akin to the early Khilâfah practice. On the contrary the Muslim League Parliamentarians generally held the view that the Parliamentary democracy was most conducive to Islamic ideology. Therefore, the League politicians had come to look upon the Presidential form of Government as dictatorial and undemocratic. There is no doubt that the concept of Khalifah in Islamic political theory is very much similar to that of the American President. The Khalifah in early Islamic practice was elected in two ways: (i) election by the
Ahl al-Hall wa'l-'Aqid which was more or less similar to the modern electoral college; (ii) and by bay'ah—public acclaim. It would not be hard to reconcile this twofold process of the election of the Khalifah with the modern practice of the Presidential election. But all this theoretical quibbling is of little practical significance, since any form of government can be described as Islamic that can successfully fulfil the Islamic ideals. The new Constitution adopts the Presidential type of Government because in the words of Field-Marshak Mohammad Ayub Khan it is easy to understand and is best suited to the genius of the people. The Constitution guarantees the much-desired political stability that is a sine qua non of economic development. This also eliminates the danger of a clash of personalities that is inherent in the Parliamentary system where the Parliament, the Prime Minister and the Head of the State equally share the executive authority.

With the promulgation of the new Constitution, the National and Provincial Assemblies have started functioning. The Martial Law has been withdrawn and constitutional Government restored. The National Assembly has passed the Political Parties Bill laying down the condition under which the political parties can revive their political activities. The main objective of the Bill is to discourage the unwieldy growth of political parties as was usual in the pre-Martial Law days. The Bill permits only such political parties to function as stand for Islamic ideology and Pakistan's territorial integrity and political independence.

In view of the political forces presently active in Pakistan it is difficult to predict the shape of things to come, however, it may be said with confidence that with a strong leadership in control of administration and stable governments at the Centre and in the Provinces, Pakistan shall steer clear of all political difficulties.

NOTES

1. Field-Marshak Mohammad Ayub Khan, Speeches and Statements (Pakistan Publications, Karachi), vol. III.
In January 1951 the ‘Ulamā’ Conference held in Karachi formulated 22 principles. These principles are contained in a pamphlet, *Fundamental Principles of an Islamic State*, Karachi, n.d.


Mufti Muḥammad Shafi’, op. cit., p. 4.


The Questionnaire was published by the Constitution Commission and is contained in the Commission’s Report under *Appendix*, p. 143.


*The Constitution* (1962), p. 1. Sections (b) and (c) read as follows:

(b) the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, should be fully observed in Pakistan;

(c) the Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam.


‘Ulamā’i’s Amendments to the Basic Principles Committee’s Report’, Jama'at-e-Islami Pakistan, Karachi, p. 13. The ‘Ulamā’ Conference was convened in January 1951 to consider the B. P. C. Report. The Conference insisted on the inclusion of five ‘Ulamā’ in the Supreme Court which should be empowered to review legislative measures involving the repugnancy clause.


Abu'l A'īā Mawdūdī, op. cit., pp. 41-126.

Ghulām Aḥmad Parvēz, *Ţulũ‘-i Islām* (periodical representing the anti-Hadīth group).


33. Ibid., pp. 96-7.
34. Ibid., p. 96.
35. Ibid., p. 4.
36. Ibid., p. 4.
37. Ibid., p. 4.
38. Dar al-Ifta' is a body of jurisconsults who can express authoritative opinions on Islamic Law; the mujtahidūn comprise jurist-theologians who are competent to resolve difficult questions of law through independent interpretation of the Qur'ān and the Sunnah.
42. Ibid., p. 53.
44. Ibid., p. 7.
45. Ibid., p. 59.
47. Based upon oral interview with Dr. I. H. Qureshi, ex-Director of the Institute.
48. Roneoed copy of the constitution of the Institute as provided by the Office, p. 1. However, in the last meeting of the Board of Governors some amendments were made with regard to the abolition of the post of the Registrar and the creation of the post of Executive Secretary and a few other minor changes.
51. Ibid., p. 2.
52. Ibid., p. 2.
54. Now the Institute of Islamic Culture is headed by Prof. M. M. Shafīf.
57. Ibid., pp. 285-487.
58. Since November, 1962, Mr. S. M. Ikram, a senior member of the Civil Service of Pakistan and an eminent cultural historian of Islam, has assumed charge as the Chief Administrator of Auqāf.
60. Ibid., p. 15; this is in fact the reproduction of Article 24 of the old Constitution with a minor change in its phraseological construction.
62. Ibid., p. 32.
63. The Proceedings of the Second All-Pakistan Political Science Conference.
64. Ibid., pp. 4-5.
Announcing the establishment of the Advisory Council of Islamic Ideology, the Government of Pakistan issued the following Press Note on July 30, 1962, from Rawalpindi:

As directed by clause (1) of Article 201 of the Constitution and after taking into consideration the requirements of clause (2) of that Article, the President has been pleased to appoint the following persons as members of the Advisory Council of Islamic Ideology:

1. Mr. [Abū Šāliḥ] Muḥammad Akram, formerly Chief Justice of the Dacca High Court and a Judge of the Supreme Court of Pakistan—Chairman.
2. Mr. Muḥammad Sharīf, formerly a Judge of the Supreme Court of Pakistan,
3. Mawlānā [Muḥammad] Akram Kẖān, East Pakistan,
4. Mawlānā 'Abd'ul Ḥāmid Badāyūnī of Karachi,
5. Mawlānā Kifāyāt Ḥusayn of Lahore,
6. Dr. I. H. Qureshi, Head of the Islamic Research Institute, Karachi, and
7. Mawlānā Abu'l Ḥāshim of the Islamic Academy, Dacca.

The name of the eighth member, who will be from East Pakistan, will be announced in a few days' time. [The name of Mawlānā 'Abd'ul Ḥaye of Hatiya was later announced.]

The functions of the Council shall be—

(a) To make recommendations to the Central Government and Provincial Governments as to the 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;

(b) To advise the National Assembly, a Provincial Assembly, the President or a Governor on any question referred to the Council under Article 6 of the Constitution, that is to say, a question as to whether a proposed law disregards or violates, or is otherwise not in accordance with the principles of law-making.

The proceedings of the Council shall be regulated by the rules of procedure to be made by the Council with the approval of the President.
Appendix B

Explaining the functions of the Council, the (then) Law Minister, Mr. Muhammad Munir, a retired Chief Justice of Pakistan, made the following Press statement, the same day (July 30, 1962):

Under the Constitution, the minimum number of members of the Council is five and the maximum twelve. To begin with, eight persons have been appointed, leaving room for the appointment of another four should circumstances require enlargement of the Council. In selecting a person for appointment to the Council, the Constitution requires the President to have regard to his understanding and appreciation of Islam and of the economic, political, legal and administrative problems of Pakistan. These qualifications are cumulative and not alternative. Some difficulty was, therefore, felt in making the selection because persons having an understanding and appreciation of Islam and also of the economic, political, legal and administrative problems of Pakistan could not be easily chosen. Anyhow, an effort has been made to comply with this constitutional requirement.

As one of the functions of the Council is to advise the President or a Governor or an Assembly on any question referred to it under Article 6, namely, whether a proposed law disregards or violates or is otherwise not in accordance with the principles of law-making, it was necessary to have on the Council persons who not only have requisite understanding and appreciation of Islam, but have also a thorough grasp of Constitutional Law, because under the principles of law-making, though the first principle is that no law should be repugnant to Islam, there are 15 other principles which have no direct relationship with Islam and in the nature of an enunciation of human rights recognised by the United Nations of which Pakistan is a member.

These principles can be given effect to only if a constitutional and juristic approach is made to a question as it arises. The President has, therefore, included in the Council two eminent persons both of whom have been judges of the Supreme Court and who can also appreciate the religious side of the problems that are likely to present themselves. One of these gentlemen had once before been deputed by the Government to bring the existing law into conformity with Islam while the other had been selected as Chairman of the Islamic Laws Commission whose function was to prepare a
code of the injunctions of Islam. Another member of the Com-
mission has been engaged for several years on research in Islamic
Law as Director of the Central Institute of Islamic Research and
has high academic qualifications in Western education.

The remaining members are learned divines who are experts in
the Shari‘ah and Fiqh and who understand the problems with which
Muslim philosophy of life is confronted today. In the Constitution
of a Council like this we naturally anticipate criticism. No person
who was required to perform the function entrusted by the Consti-
tution to the President, could have, in a matter like this, escaped
criticism.

The Council will make its own rules of procedure, but these
will require the approval of the President. It is proposed to
suggest to the Council that the rules should provide that when a
matter is referred to the Council, it should require the Islamic
Research Institute to collect the material and undertake other
preliminary work. The Institute should then formulate its own
opinion and, together with the material on which it is based, send it
to the Council. Thereafter, the Council should not only consider
the opinion of the Institute but also undertake, where necessary,
an independent study with the assistance of other learned divines
who may be specialists in the branch of law to which the problem
relates.

If the problem has an economic, political or administrative
aspect, the Council should also consult a person who is fully con-
versant with the implications of the problem. Such person may be
the Governor of the State Bank of Pakistan or the Chairman or
Deputy Chairman of the Planning Commission, or an officer having
abundant administrative experience.

The Council may well have a standing body of such advisers.
Having thoroughly sifted the material and discovered the essential
principle, it will be for the Council to apply it to the concrete
situation and to return an opinion.

In returning the opinion, the Council should forward to the
referring authority the proceedings of the Islamic Research Insti-
tute, the opinion offered by the advisers and its own opinion. If
the Council is not unanimous, it should forward all the opinions by
its members.

It should be borne in mind that the Advisory Council of Islamic
Ideology is only an advisory body and that it will be for the Legis-
lature concerned to accept or reject its opinion, because the responsibility of deciding whether a proposed law does, or does not, disregard or violate or is, or is not, otherwise in accordance with the principles of law-making is that of the Legislature concerned.

The second function of the Council will be to make recommendations to the Central Government and the Provincial Government as to the 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.

The Council shall thus be a standing body engaged in discovering the principles and concepts of Islam, and the deviations or departures from such principles and concepts current among the Muslims of Pakistan. Here it may have to draw a distinction between the discretionary and the mandatory and to determine the area of human action in which complete freedom is given by Islam to the individual or society.

If Muslim society is to be reconstructed on a truly Islamic basis, such basis will have to be determined and declared with precision which is an essential attribute of law enabling it to claim obedience. In this connection, the shift from the old to the new modes of life and activity will have to be located and appraised in the light of the relevant forces and responsibilities of reversion or variation to be judged.

There are two ways of making men order their lives in accordance with certain concepts, namely,

(i) voluntary effort to induce people to mould their lives in the desired manner, and

(ii) legal compulsion to make them to do so.

Both these methods are open to the Council to be recommended to the Government in the form of concrete proposals, but it will be for the Government to decide whether in the circumstances the proposals are feasible.

One more point regarding the Advisory Council of Islamic Ideology is that it is a creation of the Constitution and has therefore to function within the limits, and it is not entitled to ignore or disregard any provisions of the Constitution.

It is to my mind the first instance where, in modern history, an effort is being made to bring Islam in impact with modern political, legal, ethical, social and economic conditions and to present new and unanticipated problems for solution to a jurisprudence which
for almost one thousand years has been in a static condition in the belief that the rules embodied therein are eternal, which are capable of application to all given situations, irrespective of variations of time, place and conditions. In other words, the experiment being tried here is intended to generate a process to apply Islam to present conditions which, as respects the production, distribution and consumption of wealth, and the conception of the State and of its relationship with the individual and with other states in times of peace and war, are entirely different from the conditions in which the jurisprudence took its birth and developed.

*We shut our eyes to realities if we suppose that the present age does not hold a challenge to Islam and we misunderstand Islam if we think that it does not hold a challenge to present values.*

The process to be adopted by the Council will, in essence, be judicial interpretation and will have to be performed in definite legal terms as one law, when in conflict with another, has to yield to or override the latter. But no judicial interpretation, however rational, can ignore or mutilate the text unless the text itself be held to have been meant for a different situation or a temporary purpose.

In every respect, it is a novel method likely to bring quicker results than the scheme in the 1956 Constitution and the result of the Council's endeavours will be watched by the whole world with interest.

Appendix C

No. F.15-1/59-E.IV

Government of Pakistan

Ministry of Education.

Rawalpindi, the 10th March, 1960.

NOTIFICATION

Sub:- Establishment of Central Institute of Islamic Research.

With a view to organise research on Islam, to give it a rational and scientific interpretation in the context of the modern age and to bring out the achievements of Muslims in the fields of History, Philosophy, Science and Culture, the President is pleased to establish a Central Institute of Islamic Research.
2. **OBJECTIVES**:

    The objectives of the Institute shall be—

    (i) To define Islam in terms of its fundamentals in a rational and liberal manner and to emphasize, among others, the basic Islamic ideals of universal brotherhood, tolerance and social justice;

    (ii) To interpret the teachings of Islam in such a way as to bring out its dynamic character in the context of the intellectual and scientific progress of the modern world;

    (iii) To carry out research in the contribution of Islam to thought, science and culture with a view to enabling the Muslims to recapture an eminent position in these fields;

    (iv) To take appropriate measures for organising and encouraging research in Islamics, history, philosophy, law and jurisprudence, etc.

3. **AFFILIATED BODIES**:

    To secure coordination of research in these fields the Central Institute of Research may grant affiliation to the following:

    (i) Institute of Islamic Culture, Lahore.

    (ii) Islamic Academy, Dacca.

    (iii) Iqbal Academy, Karachi.

4. **PATRON-IN-CHIEF**:

    The President of Pakistan shall be the Patron-in-Chief of the Central Institute of Islamic Research.

5. **BOARD OF GOVERNORS**:

    The control and administration of the Institute shall vest in a Board of Governors, to be appointed by the Government of Pakistan. The Board shall be composed of the following:

    **Chairman**

    Minister for Education of Pakistan ...... (ex officio)

    **Members**

    1. Director of the Institute ...... To be nominated by the Central Government.

    2. One representative of the Islamic Academy, Dacca

    3. One representative of the Institute of Islamic Culture, Lahore

    4-5. Two Vice-Chancellors of the Universities in Pakistan

    6-9. Four other members ......
6. **DIRECTOR:**

The Director will be appointed, his tenure of office and the terms and conditions of service determined, by the Board of Governors with the approval of the Patron.*

The appointment of the first Director will be made by the Patron who will also determine the tenure of office and the terms and conditions of service.

7. **COORDINATING COMMITTEE:**

To secure coordination in research in the Universities of Pakistan in the fields mentioned in para 4 of clause 2 above there shall be a standing committee called the Co-ordinating Committee composed of the following:

1-4. Directors of—

(i) The Central Institute of Islamic Research (Karachi).

(ii) Institute of Islamic Culture, Lahore.

(iii) Islamic Academy, Dacca

(iv) Iqbal Academy, Karachi

5-8. One representative of the Boards of Governors of—

(i) Central Institute of Islamic Research, Karachi. To be nominated by the Central Government.

(ii) Institute of Islamic Culture, Lahore.

(iii) Islamic Academy, Dacca

(iv) Iqbal Academy, Karachi

9-11. Three Heads of Departments of Islamic Studies in the Universities of Pakistan.

12-14. Three members

The functions of the Co-ordinating Committee shall be to assess the facilities of research available in the Universities and to advise the Board of Governors on the allocation of research projects among the Universities.

8. **TENURE OF MEMBERSHIP:**

Members other than *ex officio* members of the Board of

*The concluding portion of this clause was subsequently amended by a Gazette of Pakistan notification dated Rawalpindi, the 16th August, 1962, to read as “... by the Patron-in-Chief”.—(Ed.).
Governors and the Co-ordinating Committee shall hold office for a period of three years.

9. **FINANCE:**

Funds of the Institute shall comprise—

(i) Grants from the Government of Pakistan;
(ii) Grants from other Governmental sources;
(iii) Donations from non-Governmental sources;
(iv) Income from other sources, such as sale of books, etc.

The accounts of the Institute shall be maintained in a Bank selected by the Board of Governors and shall be audited once a year by a firm of registered accountants, appointed by the Board of Governors. A copy of balance-sheet of the accounts, signed by the auditors, shall be forwarded every year to the Ministry of Education, Government of Pakistan, for information.

10. **POWERS OF THE BOARD OF GOVERNORS:**

The Board of Governors shall have the power to—

(i) approve the budget of the Institute and frame rules for expending its funds;
(ii) to determine scales of pay and conditions of service of the staff of the Institute;
(iii) to appoint, on the recommendation of the Director, staff for carrying out research;
(iv) to frame rules and regulations and by-laws of the Institute;
(v) sanction grants for specific projects of research to be undertaken by affiliated bodies and the Universities;
(vi) arrange publication of research work approved by it;
(vii) do all acts that may be necessary for carrying out the purposes of the Institute.

11. **LOCATION OF OFFICES:**

The offices of the Institute shall be located at Karachi.

This supersedes the Ministry of Education notification No. F. 19-5/57-E. IV, dated the 8th July, 1958.

(Sd.) S. M. SHARIF,
Secretary.

No. F. 15-1/59-E. IV
Government of Pakistan, Ministry of Education.

Rawalpindi, the 11th March, 1960.

**NOTIFICATION**

Sub.—Establishment of Central Institute of Islamic Research—
Nominations on the Board of Governors.

The Government of Pakistan is pleased to nominate the following as Members of the Board of Governors of the Central Institute of Islamic Research, under clause 5 of the Ministry of Education notification No. F.15-1/59-E.IV, dated the 10th March, 1960.

1. Dr. I. H. Qureshi.*

2. Mr. Justice Hamoodur Rahman, Judge, High Court of East Pakistan, Dacca.

3. Mr. Justice S. A. Rehman, Judge, Supreme Court of Pakistan, Lahore.

4. Dr. Raziuddin Siddiqui, Vice-Chancellor, Sind University, Hyderabad.

5. Dr. M. Ahmed, Vice-Chancellor, Rajshahi University, Rajshahi.

6. Mr. Mumtaz Hasan, Deputy Chairman, Planning Commission, Karachi.

7. Dr. Moazzam Hossain, Member, Federal Public Service Commission, Karachi.


9. Mr. S. M. Sharif, Secretary, Ministry of Education and Scientific Research.

(Sd.) S. M. SHARIF,
Secretary.

*He was replaced by Dr. Fazlur Rahman, Professor in the Institute on and from 4th August, 1962.—(Ed.).