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GOVERNMENTALITY IN PAKISTAN: A STUDY OF COUNCIL OF  
ISLAMIC IDEOLOGY (1956-1988)

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*This thesis is dedicated to my daughter Ayat*

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**Mansoor Ahmed**

# GOVERNMENTALITY IN PAKISTAN: A STUDY OF COUNCIL OF ISLAMIC IDEOLOGY (1956-1988)

## *Abstract*

Pakistan came into being after the British rule ceased to exist in the Sub-continent at the night of August 15, 1947. This dominion of Pakistan was later renamed as ‘Islamic Republic of Pakistan’ on 23 March 1956 after the promulgation of its first indigenous constitution. This adverb Islamic to its name aspired from its governments to govern through specific registers which involved the use of Islam to govern population. Consequently, the constitution of 1956 provided the Islamic Laws Commission to recommend such measure that can be given legislative effect to make society Islamic and examine the existing laws. After abrogation of said constitution in 1958, the next constitution drafted by the military government of General Ayub Khan in 1962 renamed this body as Advisory Council of Islamic Ideology with likewise duties. After the abrogation of this constitution in 1969, the present constitution of 1973 drafted by the elected government of Zulfikar Ali Bhutto renamed it as Council of Islamic Ideology with further increased duties. Presently Council of Islamic Ideology is a permanent constitutional body, and its duties are to examine the repugnancy of laws in the lights of Quran and Sunnah and recommend measures to be promulgated as legislations to promote Islamic way of life in the country. It used to send its recommendation to the respective governments ‘confidentially’ until 2005 when its earlier report since its creation were declared public formally. These reports on the one hand provide a glimpse into the issues faced by the society during those years and further provide an insight to look into the hidden mentality of respective government to govern through the politics of Islam. The study traces the causes of its persistence in the constitutions, evolution as an institution, and the role played by the Council from 1956 till 1988 in governmentality. The period selected for the study is significant in the sense that, Pakistan had vacillated between indirectly elected government of President Iskander Mirza, to military government of General Ayub Khan and elected government of Zulfikar Ali Bhutto with the slogan of ‘Islamic socialism’ to the military government of General Zia ul Haq, self-called ‘soldier of Islam’. This study draws extensively on the proceedings of the Council by contrasting its recommendations with the legislations that were promulgated on the name of Islam, newspaper archives and the legislative Assembly debates. It concludes that the existence of the Council and its evolution as an institution shows that governmentality of using Islam was alike during all the governments irrespective of the fact that they were directly elected, indirectly elected or the military governments. It further concludes that the recommendations of the Council played not just an important role in the legislations that were promulgated by the different governments but also impacted the basic fabric of the society in the following years.

Key words: Council of Islamic Ideology - Islamisation - Islamic Ideology – Governmentality – Politics in Pakistan – Politics of Islam.

# **GOVERNEMENTALITÉ AU PAKISTAN : UNE ÉTUDE DU CONSEIL D'IDEOLOGIE ISLAMIQUE (1956-1988)**

## **Résumé**

Le Pakistan est né après que l'autorité britannique ait cessé d'exister dans le sous-continent indien dans la nuit du 15 août 1947. Le territoire du Pakistan a été renommé "la République islamique du Pakistan" le 23 mars 1956, après la promulgation de sa première constitution. L'adjectif « islamique » ajouté son nom devait inciter les gouvernements à employer des registres spécifiques impliquant l'utilisation de l'islam pour gouverner la population. En conséquence, la constitution de 1956 créa la « Islamic Law Commission » (Commission des lois islamiques) pour recommander des mesures législatives pour donner naissance à une société islamique, et examiner les lois existantes. Après l'abrogation de la constitution en 1958, la constitution suivante rédigée par le gouvernement militaire du général Ayub Khan en 1962 a transformé cette « Islamic Law Commission » (la Commission de la Loi islamique) en un « Advisory Council of Islamic Ideology » (Conseil consultatif de l'idéologie islamique) avec les mêmes missions. Après l'abrogation de cette constitution en 1969, la constitution de 1973, rédigée par le gouvernement élu de Zulfikar Ali Bhutto et qui est toujours en vigueur, l'a modifié en un « Council of Islamic Ideology » (Conseil de l'idéologie islamique) avec de nouvelles missions. Actuellement, le conseil of de l'idéologie islamique est une organisation constitutionnelle permanente et sa mission principale est d'examiner la conformité des lois avec le Coran et la Sunna, et recommander des mesures devant être promulguées comme des lois pour promouvoir le mode de vie islamique dans le pays. Le conseil envoyait ses recommandations aux gouvernements successifs « confidentiellement » jusqu'en 2005, date à laquelle elles sont devenues publiques. Ces rapports fournissent d'une part un aperçu des questions auxquelles la société fut confrontée au cours de la période concernée, et ils fournissent d'autre part des données pour examiner la « mentalité » cachée des gouvernements successifs en relation avec la mise en œuvre d'une politique islamique. Cette étude met également à jour les causes de la persistance du conseil dans les constitutions successives, son évolution en tant qu'institution, et le rôle joué par le Conseil de 1956 à 1988 dans la gouvernementalité. La période choisie pour l'étude est significative dans le sens où les Pakistanais avaient hésité entre le gouvernement indirectement élu du Président Iskander Mirza, le gouvernement militaire du Général Ayub Khan avant d'élire finalement le gouvernement de Zulfikar Ali Bhutto avec le slogan de « socialisme Islamique » démis de ses fonctions par le général Zia ul Haq, autoproclamé « le soldat de l'Islam ». Cette étude s'appuie largement sur les comptes rendus du Conseil, en contrastant ses recommandations avec les législations qui ont été promulguées au nom de l'islam, sur les archives de presse et les débats de l'assemblée législative. Elle conclut que l'existence du Conseil et son évolution en tant qu'institution montrent que le type de gouvernementalité qui utilisait l'islam était semblable sous tous les gouvernements, indépendamment du fait qu'ils aient été directement élus, indirectement élus, ou bien des dictatures militaires. Elle démontre par ailleurs que les recommandations du Conseil ont non seulement joué un rôle important dans les législations qui ont été promulguées par les gouvernements successifs, mais qu'elles ont aussi eu un impact profond sur la cohésion même de la société pakistanaise dans les années qui ont suivi.

Mots clés : idéologie islamique, politique en islam, le conseil de l'idéologie islamique, gouvernementalité, politique au Pakistan, islamisation.

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## INTRODUCTION

British rule ceased to exist in the Sub-continent at the night of August 15, 1947 by dividing it into two sovereign states namely India and Pakistan. The dominion of Pakistan was later renamed as 'Islamic Republic of Pakistan' on 23 March 1956 after the promulgation of its first indigenous constitution and this name endures till date. Name of a country or an individual is one of the most discernible features of its identity because it may reflect its history, notion behind its creation, place, or the identity of its population. Likewise, this expression reflects a simmering link between 'Islamic', 'Republic', and 'Pakistan'. It required the respective governments to come to power and extend control over population through specific registers, most significant among them was to embody the fact that laws and other measures promulgated by them were 'according to Islamic principles'. It further required them to promulgate legislations to provide Islamic way of life, imposition of the Islamic Laws (that were yet to be codified) and more importantly nothing repugnant to the principles of Islam. It was for these endeavours that Islamic Law Commission, Advisory Council of Islamic Ideology and Council of Islamic Ideology were provided by the constitution of the 1956, 1962 and 1973 constitutions respectively for nearly the alike purposes. These institutions are the subject of this study as in 2005 its 'confidential reports' were made public for the preceding years. These reports encapsulate the valuable knowledge about the aspiration of the respective governments in their interaction with the Council. This study by going through its proceeding and contrasting them with the social, political and legislative developments will provide a pen picture of the governmentality in Pakistan and consequently the role of the Council and its predecessors in the measures introduced in Pakistan by the respective governments on the name of Islam during the years 1956 to 1988.

Respective governments in Pakistan since its creation have been confronted with the challenges about the contentious role that Islam should manifest in the legislations and examination of the inherited laws from the colonial master and the social norms of the country. One of the reasons for this challenge was firstly because of the paradoxes which were in built in its very creation that whether it was created as the 'beacon light for the rest of the Islamic world' or a place where '... you may belong to any religion or caste or creed- that has nothing to do with the business of the

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state...'<sup>1</sup> Secondly the pressure exerted by the leadership of the religiopolitical parties both within the Constituent Assembly and out of it. These groups of people will be referred in this study as *ulema* (plural of *alim*, a person having knowledge about Islam). This group is and was quite complex and heterogenous in the context of Pakistan because they simply cannot be referred as those having religious education, or those who were the head of the religiopolitical parties. This term *ulema* is developed with further details in the first chapter of the study, here it would be pertinent to mention that despite the fact different *ulema* were divergent in demands regarding the future role of Islam but the most common denominators among them was seen that the future constitution should be based on Islamic principles, so that they could themselves be recognised as the authority to define the word, 'Islamic' in the future polity of the country. This study instead of focusing specifically on the *ulema* or the other visible power manipulators like army or the civil bureaucracy would focus on the policy adopted by the respective governments by consistently providing the institutions like the Council and its predecessors in its attempts to keep its working confidential and taking up those recommendations which suited their political interests. In search to better explore this relationship of the Council and its predecessors with respective government it would be interesting to borrow some vocabulary from the works of Michel Foucault.

Foucault's ideas have affected the knowledge of various disciplines ranging from history, economics, philosophy, anthropology and strategies of power adopted by the states in modern Europe. The reason that makes Foucault the most distinguishing philosopher among his contemporaries is the attribute that he did not developed a specific state structure theory, instead he provided a broad range of 'think through ways': discourse, knowledge, governmentality, power, insanity and sexuality and furthermore he wanted researchers to become users of his ideas rather than being the reader only to 'short-circuit' the bodies of knowledge.

“... all my books are little boxes. If people want to open them, to use this sentence or that idea as a screwdriver or spanner to short-

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<sup>1</sup> Maulana Shabbir Ahmed Usmani, *The Constituent Assembly of Pakistan debates*, Official Report, vol. V (Karachi: Government of Pakistan, 1949), 44-45. In his speech at March 9, 1949 he cited several expressions of late Mohammad Ali Jinnah to prove that he desired that country should be an Islamic country and Objectives Resolution being discussed in the House was in line with these statements. For the later discourse that politics must not be mixed with religions see Jinnah's Presidential address at August 11, 1947: *The Constituent Assembly of Pakistan debates*, Official Report, vol 1, no 2 (Karachi: Government of Pakistan, 1947), 18-20.

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circuit, discredit systems of power, including eventually those from which my books have emerged... so much the better.”<sup>2</sup>

The first part of the title of this study, ‘Governmentality in Pakistan’ is the practical manifestation of this approach of using the idea provided by Foucault to understand the approach of the different governments ranging from the indirectly elected one of Iskander Mirza (1956-1958) to the military ruler of General Ayub Khan (1958-1969) and then from the elected government of Zulfikar Ali Bhutto (1973-1977) to another military ruler General Zia ul Haq (1977-1988). However, it is pertinent to mention here that this study will not be a complete Foucauldian analysis instead it will employ the vocabulary provided by Foucault to explain the relationship between the Council, its predecessors and the respective governments. The term, Governmentality is derived from the French word, ‘*Gouvernemental*’ which literally means ‘concerning the government’. Foucault used this notion during the series of lectures which he delivered at College de France during the late 1970, these different series of lectures were centred around the ‘genealogy of the state’.<sup>3</sup>

The series of lectures delivered by Foucault from January 11, 1978 to April 5, 1978 were translated later as ‘Security, Territory and Population’. These lectures focused among many other issues on the point that how the power of the state had changed especially in western Europe after the 19<sup>th</sup> century. Foucault during his lecture dated February 8, 1978, asked a question that ‘why study Governmentality’, and himself answered ‘to tackle the problem, of the state and population...’.<sup>4</sup>

In these series of lectures, he pointed out the three broad notions related to power and correlated them with divergent phases in history: ‘State of justice’ (sovereign power), ‘The administrative State’ (disciplinary power) and ‘the State of Government’ (which he himself later renamed ‘governmentality’).<sup>5</sup> Sovereign power corresponds to written laws and the litigations, while the disciplinary power corresponds to ‘regulation and disciplines’ of the society related to the aspect of day to day life and the third form of power governmentality corresponds with managing the

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<sup>2</sup> Michel Foucault. "Interview to Le Monde"(1975), cited in Sara Mills, *Michel Foucault* (London: Routledge Taylor & Francis group, 2003), 6.

<sup>3</sup> Michel Foucault, *Society Must be Defended: Lectures at the College de France 1975-1976* (New York: Picador, 2003); Michel Foucault, *Security, Territory, Population: Lectures at College de France 1977-1978* ed. Michel Senellart, François Ewald and Alessandro Fontana, trans. Graham Burchell and Arnold I. Davidson (City: Palgrave Macmillan, 2009) and Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978-1979* (City: Palgrave Macmillan, 2008).

<sup>4</sup> Foucault, *Security, Territory, Population*, 161.

<sup>5</sup> *Ibid*, 87-133.

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population with techniques to behave them in a certain way.<sup>6</sup> According to Foucault, governmentality was a process by which the sovereign power of 'Middle ages' transformed to disciplinary power in fifteenth and sixteenth century and was gradually governmentalized in the nineteenth century.<sup>7</sup> He defined power: 'not be taken as sign of repression, understanding of exercise of power tend to be understood in term of love (love of master) and desire (of the masses)'.<sup>8</sup> Thus governmentality emerged according to Foucault in the West after the 19<sup>th</sup> century and we live in an era of governmentality and it is because of these techniques that had allowed the present states to exist in Europe.<sup>9</sup> He says governmentality is the type of power, which led to the development of specific apparatus on one hand and development of knowledge on the other.<sup>10</sup> He also observes that the exercise of power through governmentality can be more effective than the use of coercive or punishing or prison techniques to make them governable bodies.<sup>11</sup> In the light of above discussions it can be said that governmentality is not just the examination of who is governed but it also chalks out the tools and means by which the specific behaviour of the population is attained by gaining the knowledge about them.

The notion Governmentality has been seen differently by the various authors in their works. According to Sara Mill 'it is not just the analysis of who can govern and who is governed but also the mean by which the shaping of someone else's activities is achieved'.<sup>12</sup> According to Dr Thomas Lemke, Governmentality is: 'concerning the reciprocal constitution of power techniques of regimes and modes of intervention'.<sup>13</sup> Andrew Barry in his work points out that it is 'European centred' notion and 'it fails to consider how transformations on a national level are linked with the international developments'.<sup>14</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Michel Foucault, "Powers and strategies" in *Power/Knowledge: Selected interviews and other writings 1972-1977*, ed. Colin Gordon, Trans. Colin Gordon, Leo Marshall, Johan Mephram, Kate Soper (New York: Pantheon Books, 1980), 134.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Foucault, *Society Must be Defended*, 37-50.

<sup>12</sup> Mills, *Michel Foucault*, 47.

<sup>13</sup> Dr Thomas Lemke, "An Indigestible Meal? Foucault, Governmentality and State Theory," *Scandinavian Journal of Social Theory*, no. 15 (2007): 1-2.

<sup>14</sup> Andrew Barry, "The European Community and European government: Harmonization, mobility and space," *Economy and Society*, no. 22 (1993): 314-326.

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In the light of above discussions, it can be said that governmentality is about the exercise of power, but not by coercion which is evident from the fact that Foucault uses the term govern (*gouverner*) that means to follow the path, in the sense of support. What is evident from this approach is that governmentality is centred towards the population and not territory, structures or state as these are achieved by commanding or ruling. Governmentality presents a new paradigm by which knowledge is entangled with the power to provide the government with a new control over the population to govern them in better way. It is because of this dynamism that many authors have employed this idea to explore the approach of the government in modern world. It is in this context that this study will borrow this notion of the governmentality to study the establishment of the Council its survival and working with various governments during the said period to explore the inner thinking of the Governments in Pakistan to tactically deal the problem of condoning the demands of the *ulema* and the religiopolitical parties regarding introducing more and more Islamic measures in the polity.

In the light of above discussions governmentality can be defined as the exercise of those techniques which guide the behaviour of the population as the government deem appropriate to better govern. To frame those techniques, the government needs the knowledge that can be ascertained from the certain class of specialists of that respective field. As for instance, an economist can provide technical knowledge about the economic apprehensions of the population and the defence analyst can provide the technical information about the aspirations of the population to the governments from the perspective of security. Likewise, *ulema* can provide knowledge to the government about the aspiration of the population regarding the active role of Islam in the domain of politics especially in the context when the understanding of Islam in that society is based on the interpretations given to them. Then finally it would be onto the political strategy of the government to act among recommendations of *ulema* those which suited its vested interests. As Mitchell Dean points out in his study that Governments are for 'each and all' thus government involves the health, welfare, prosperity and happiness of the population.<sup>15</sup> The happiness of the majority population in the case of Pakistan also involves understanding the pulse of the population regarding their understanding of Islam. This study will attempt to extend the lens of governmentality provided by Foucault for analysis of the governmental rationales to better understand the power entanglement

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<sup>15</sup> Mitchell Dean, *Governmentality: the power and rule in Modern Society* (London: Sage Publications Ltd, 2010), 28.

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by the Pakistani government to explore the genealogy of the Council of Islamic Ideology and its predecessor institutions and further see its working and transformations with the respective regimes.

Now it takes me to the second part with in the title of the study regarding ‘a study Council of Islamic Ideology 1956-1988’. The Council of Islamic Ideology was provided in the 1973 constitution of the country as a permanent institution to be composed of person having knowledge of Islam or the understanding of political, legal and administrative problems of the country. The stated purpose of providing this institution was to examine all the laws of the country with in seven years of its creation, respond to the questions sent by the legislature to the Council for advice and to recommend government measures that can be given legislative effects.<sup>16</sup> The provisions related to the Council in the 1973 constitution manifested that for a country like Pakistan which is predominately Muslim and a majority believes or is made to believe, that *raison d'être* of the country is Islam it is obvious that the government will rule through a paradigm keeping Islam at focus. It was because Pakistani governments since the establishment of the country were confronted with the problems regarding the demands of the *ulema* for having their considerable role in country’s legislative process and on the other hand government’s need to keep them controlled.

The provisions that provided the establishment of the Islamic Law Commission in the 1956 constitution which was the first constitution promulgated after nine years of country’s creation cannot be understood unless the paradoxes in the creation of the country itself, both before and after 1947 are not explored. The first legislative development after the creation of the country by the Constituent assembly was the approval of the Objectives Resolution passed by the first Constituent Assembly in 1949. It was to be permeable for the future constitutions and it provided that future constitution would be drafted based on Islamic principles. This resolution had its cord in the movement that culminated in its creation. ‘*Pakistan Ka Matlab Kia? La Ilaha Illallah*’,<sup>17</sup> was one of the widely used slogans in the rallies of the All India Muslim League during the final years of Pakistan Movement especially after 1945. This expression in its nomenclature exhibits the type of religiosity of the movement which culminated in the creation of Pakistan. Since the

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<sup>16</sup> The Constitution of the Islamic Republic Pakistan 1973, in Part IX, article 228 (2) and article 230 (a) (b) (c) (d).

<sup>17</sup> Pakistan means nothing else except Allah. This was the title of the poem written by Professor Asghar Sodai in 1944.

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establishment of the All India Muslim League in 1906 (Muslim League) that proved to be the champion party for the creation of Pakistan. Contrarily the Muslim religiopolitical parties for instance *Jamiat Ulema-e-Hind* (JUI-Hind), *Majlis-i-Ahrar-ul-Islam* (Ahrar) and *Jamaat-e-Islami* (Jamaat) were hostile to the stance of All India Muslim League (League).<sup>18</sup> Primarily on the guise that they believed that the ‘*bourgeois*’ leadership of League would be unable to introduce Islamic system of government in the new country even if it is created.<sup>19</sup> However some *ulema* were in its support as well for instance Shabir Ahmed Usmani as he supported the stance of separate Muslim nationalism propagated by Muslim League. In response to the question that ‘Can Muslims vote for Congress’, he had earlier responded that, despite the disliking of League by few *ulema*, he cannot recommend Muslims ‘to vote for Congress’.<sup>20</sup> He met with Jinnah and joined League as a member in 1944 and later founded *Jamiat Ulema-e-Islam* (JUI) in 1945 to counter the propaganda against Muslim League by the Congress and the *Jamiat-i-Ulema-Hind*.

The leadership of League knew the importance of Muslim communal vote in the 1945-1946 elections to gain ground against the Congress. After getting the support of JUI under the leadership of Shabir Ahmed Usmani, in its torso to further the religious emblem appointed a twelve members committee named as *ulema and mashaikh committee* to gather support of the Muslim population at grass root level.<sup>21</sup> It was because of these manoeuvres that it could perform out of expectation on the Muslim reserve seats in the 1945-46 elections. After the creation of Pakistan, many of the *ulema* that were earlier hostile or if not, hostile they were not supporting the creation of Pakistan

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<sup>18</sup> For more details see: Ziya-ul-Hasan Faruqi, *The Deoband school and the demand for the Pakistan* (London: Asia Publishing House, 1963). Further regarding the role of Jamaat before the Pakistan movement see: Kamran Aziz, "Religion and politics in Pakistan: The Role of the Jamaat-i-Islami 1972-2007" (PhD Thesis, University of Punjab Lahore, 2011), 222-229; and *Seyyed Vali Reza Nasr, Mawdudi & the making of Islamic Revivalism* (New York: Oxford University Press, 1996).

<sup>19</sup> Maulana Ashraf Ali Thanwi (1863-1943) a renowned *alim* gave this opinion when he was asked by the residents of Jhansi whether to vote for Congress or League in 1937 elections for more details see: Khalil Ur Rehman, "Sheikh Zafar Ahmad Usmani Aur Unki Ilmi Khidmat" (PhD Thesis, University of Punjab Lahore, 1991), 144-160, accessed November 8 2016, <http://eprints.hec.gov.pk/8507/1/5847H.html>.

<sup>20</sup> Ibid.

<sup>21</sup> *Ulema and Mashaikh* committee consisted of 12 members few of them were of unquestionable position, like *pir* of Manki Sharif, Pir Jamaat Ali shah but amusing part is that those men who were not much known for their religiosity, were also included in this with religious titles like, Khan Iftikhar Husain Khan of Mamdot was described as Pir Mamdot Sharif, Sirdar Shaukat Hayat Khan as *sajjada nashin* of Wah Sharif, Malik Feroz Khan Noon as Darbar Sargodha Sharif and Nawab Muhammad Hayat Qureshi as *Sajjada Nashin* of Sargodha Sharif for more details see, Government of Punjab, *Report of the Court of Inquiry Constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953*, (Lahore, Superintendent Government Printing, 1954), 255.

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hastened to new land, to give a ‘helping hand’ to save the Muslims of Pakistan. Shabir Ahmed Usmani was nominated as the member of the Constituent Assembly by the League leadership. Although *ulema* were not in majority position at Assembly still they were indeed at the pivotal position with the support of many *pir*’s in the legislature for instance *pir* of Manki Sharif.<sup>22</sup> It will be debated in the first chapter of the study that if it was only the pressure of the *ulema* or the discourse of the government as well due to which Objectives Resolution was approved by the first Constituent Assembly and the Islamic Renaissance department was established at Punjab.

After the approval of Objectives Resolution, Maulvi Tamizuddin Khan headed the Basic Principles Committee to draft the constitution. It was aspired by the press that draft constitution would be ready by 1950.<sup>23</sup> However it was not until 1956 that a constitution was promulgated, among other reasons the central reason for this delay was the role of Islam in the future constitution. These factors are discussed in detail in the first chapter of the study and how ultimately the solution sought for these issues was the provision that provided the establishment of ‘Islamic Law Commission’ to bring the existing laws into conformity with ‘injunctions’ of Quran and Sunnah and recommend those measures which can be given legislative effect to make country Islamic.<sup>24</sup> It was further to be collaborated with Islamic Research Institute to provide modern research to *ulema* to find the solution of modern day to day issues.<sup>25</sup> The governmentality will be explored through the composition and the working of the said Commission in the first chapter of the study.

This constitution was abrogated in 1958, the said Commission also got vanished in the pages of history. However, the next chapter of the study will trace its roots in the appointment of the Advisory Council of Islamic Ideology that was provided by the 1962 constitution which was promulgated by the military ruler General Ayub Khan, the Chief Martial Law Administrator and later President. The differences in the working modalities, expectations, and discourse of the

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<sup>22</sup> His actual name was Muhammad Amin-al-Hasanat. He along with his *murids* (disciples) played a crucial role in supporting league to win in the referendum to be part of Pakistan against the nationalist *Khudai Khidmatgar* movement. He had got assurances from Jinnah about safeguarding the role of Muslim *ulema* and their religious places in the country on several occasions. for more details see Jinnah, Amin-al-Hasanat collection (Manki collections) in Sayed Wiqar Ali Shah, "Muslim Politic in the North-West Frontier Province 1937-1947" (PhD Thesis, University of Oxford, 1997), 18-240.

<sup>23</sup> Mazhar Ali Khan, "Pakistan’s Future Constitution", Pakistan Times, June 8, 1949.

<sup>24</sup> The Constitution of Islamic Republic of Pakistan, Article 198 (1)(2)(3)(4).

<sup>25</sup> *Ibid*, Article 197 (1) (2).

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government about the ideology will be explored through the working of the Advisory Council in the second chapter of the study. After the abrogation of this constitution and the resignation of Ayub another army General Yahya Khan took over the country and eastern part of the country became Bangladesh after the 1971 war and the West Pakistan remained that is today called Pakistan.

The next chapter discusses the provision related to the establishment of the Council of Islamic Ideology provided by the 1973 constitution. It will be explored in this chapter that what were the intentions of the first ever directly elected government for the creation of Council and to observe that how it was different from the preceding Advisory Council. Further the role of the religiously charged opposition dominated by the religiopolitical parties will be discussed with reference to the interaction of the government with the Council of Islamic Ideology. The working of the Council and the measures promulgated by the government that were recommended by the Council will be pointed out based on which it will be concluded that the role which Council had in the governmentality of said government. Lastly the government of General Zia ul Haq who took over the country during the protests against Bhutto government for the demand of the imposition of Islamic system in the country during 1977 will be explored in this chapter. Instead of focusing on the approach of Zia towards Islamisation or the genesis of the legislations promulgated during his government this study focuses on the role of the Council during his ten-year rule. The working of the Council at different stages of Zia government during his initial years when he was trying to control the governmental affairs. Secondly after hanging the Bhutto, his interactions with the Council and lastly during final years after the election during Zia's struggle as President with Mohammad Khan Junejo as Prime Minister will be contrasted with the working of the Council under three different Chairmen of the Council during respective periods. The governmentality of this government through the working of the Council is explored with details in this chapter.

The span of this study has been limited to 1988, the end of Zia government as it is an institution that will persist until the 1973 constitution continues to be the law of the land and it will continue manifesting its role in governmentality during coming years. The reason for limiting the years of the study was firstly to limit its scope for the purpose of the limited time of degree and secondly to have analysis of the different modes of government which existed in Pakistan during these years. This time span covers the Islamic Law Commission provided by the 1956 constitution drafted by

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the indirectly elected constituent assembly, Advisory Council provided by the 1962 constitution drafted by the military regime, the Council of Islamic Ideology provided by the 1973 constitution drafted by the directly elected government and lastly the Zia's military government during which it became the linchpin to govern. This variation in the mode of the government during the selected span of this study makes it interesting in the sense that during these years Pakistan went through two long martial law regimes under General Ayub Khan (1958-1969) and General Muhammad Zia ul Haq (1977-1988) having entirely different approach to have Islam in the apparatus of the country and the first directly elected government of Zulfikar Ali Bhutto (1973-1977). The consistency in all the three constitutions for the provisions that provided this institution, makes it penetrating institution to study the way it persisted and evolved as an institution during these years. It is for this reason that the scope of this historical study has been limited from *ab-initio* to 1988 and this study does not shed light on the working of the present Council because a good understanding about the past legacy of the Council will help the researchers in the coming years to explain its present contentious role.

Lastly, before going towards the key question of the study, it would be important to mention here that the Annual reports of the Council and the Advisory Council as their working procedures were confidential and meant for governmental use only. It was only after 2005 during General Parvez Musharraf's government under Chairman, Dr Khalid Masud that its previous reports were made public. It was because of this constraint very few works have dealt with Council and its predecessors specifically, historians, legal experts, sociologist and experts on political affairs have given it very less attention by the time this study is carried out. In the light of which it would not be wrong to say that this study will be among the few pioneering ones that went through the annual and the special reports of the Council to contrast the working of those government with reference to measures on the names of Islam from the recommendations by the Council and its predecessors.

## **KEY QUESTIONS:**

This study is an attempt to trace the causes of the establishment and persistence of Council of Islamic Ideology and its predecessors in 1956, 1962 and 1973 constitutions. Further in doing so, it also explores the role played by the Council and its predecessor during the said years in the governmentality by contrasting the measures introduced on the name of Islam by the respective

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government and recommendations of the Council. The following are the key questions of the study:

What was the intention of the government behind the creation of the Council of Islamic Ideology and its predecessors and how it sustained, mutated, and evolved during various respective governments between 1957-1988? This question is embedded with further sub-questions, firstly how the internal working of the Council explains the approach of respective governments to use Islam to better govern? Secondly how the profiles of the Council members manifest the governmentality of the respective governments? And finally, the credit of the provisions related to the Council or its predecessors goes to *ulema* or the respective governments? The second key question of the study is related to the working of the Council that what role did the recommendations of Council had in the legislative measures that were promulgated in the name of Islam during the period of study?

## **HYPOTHESIS**

The present understanding of topic based on the studies is that the role of the Council appointed by the government was to be a rubber stamp which was created to control Islam and intention of its creation was to appease *ulema* who were demanding the establishment of likewise institution since the creation of the country. The findings of this study will raise the questions against this prevailing view. Contrary to the mainstream view the central hypothesis of the present study contends that although *ulema* were demanding the establishment of likewise institution but the will of the government behind its creation was to have knowledge about the pulse of *ulema* through its recommendations in confidential manner to select those measure which suited their political strategy to appease population and during this equation, it passively played a significant role in the introduction of several legislative measures on the name of Islam during the said period but was largely invisible due to more visible manifestations and nature of its confidential reports.

## **REVIEW OF LITERATURE AND SOURCES**

The primary sources over which this study is based are: The annual and special reports of the Council of Ideology, legislative Assembly debates, Newspaper clippings, relevant provision of the constitutions, interviews, research publications and published academic books. Council of Islamic

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Ideology and its predecessors had existed in the country for more than fifty years since its creation. Despite its significance, the secondary literature specifically about the Council of Islamic Ideology is sporadic. This leads to question that why the Council under review has received little attention from the indigenous scholars and foreigner scholars. There are multiple significant reasons that can explain this scarcity. Primarily because the visibility of more visible manifestations with reference to Islam, for instance, Federal *Shariat* Courts, *Jihad*, *Jamaat-i-Islami* and *ulema* in general, were taken up by the researchers and another technical that why the Council was out of the radar of most of the researcher is the fact that its Annual and special reports were confidential and available for official use only until 2005.

For the convenience of this study, I will divide the available sources into three broader groups. Firstly, those studies which dealt directly or indirectly with the Council. Secondly, those that are related to the studies of governmentality in South Asia and lastly the section which holds the bulk of resources are those secondary works which deal in general about the *ulema* Islam and ideology in Pakistan. Among the most recent one, Sara Holz explore that how the present Pakistani government works with the term 'Islamic', by the Council of Islamic Ideology.<sup>26</sup> Her study is about the working of the Council and explores the selection of the members of the Council and what makes an institution Islamic. She further explores its working mechanism and its interactions with the government. She argues in her works that the Council of Islamic Ideology that was created as a platform for consensus building, instead had the potential to polarise the Pakistani society. I came to know about her work during second year of research during fieldwork at the office of Council of Islamic Ideology. What make this study distinguished from her work is that, she instead of contrasting the assembly debates, newspaper archives and Council report focused on the working of the Council in recent days based majorly of interviews and the available reports based on which she concludes that Council through its genesis had the potential to polarise the present government. However, this study explores the history of the Council in the period from 1957 to 1988 by going through its Reports and contrasting them with the Assembly debates and contemporary newspapers

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<sup>26</sup> Sarah Holz, "Governing the Islamic in the Republic- A study of the Council of Islamic Ideology" (PhD Thesis, Freie Universität Berlin, 2017). Sarah Holz, "With the Potential to Polarise? The Council of Islamic Ideology as a platform for consensus building," *Scrutiny*, National Institute of Pakistan Studies Quaid-i-Azam University Islamabad, vol. 7 & 8, (2017): 123-163.

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to conclude that its role in the legislative process in the surge that a better understanding of the past of the Council will contribute to better understand its present role in more precise manner.

Another distinguished scholar who has worked about the Council is Professor Jamal Malik. He examined the Islamisation process in Pakistan through the functioning of the various institutions that included: The Council of Islamic Ideology, *Auqaf* (Religious Endowments), *Dini Madaris* (Religious Schools) and *Zakat and Ushr* system.<sup>27</sup> The author's take of the Council is 'it a forum of legitimation for state policies' as 'because of the heterogeneity of Islam in Pakistan, the administration has little difficulty in using it as an instrument for its own purpose'.<sup>28</sup> This study by going into analysis of the reports of the Council and contrasting with the activities of the respective governments will extend his argument in a diverse way by contending that although it was a governmental body to colonise Islam but it had the aspiration of *ulema* as well as in its creation. It was due to this aspiration and desire of the *ulema* from religiopolitical parties due to which it persisted in the 1956, 1962 and even with an increased role in the 1973 constitution. Secondly this study further contends that although the respective governments took only those recommendations which suited their political strategies to prolong their rule, however despite this selectivity, the Council's recommendation became the basis of several legislations. For instance: *The Ehtram-e-Ramazan Ordinance*, *The Qanun-e-Shahadat* ordinance, *Zakat and Ushr* ordinance that continue to affect the Pakistani society till date. This study further contends that its recommendations were also the basis for the establishment of several institutions. For instance, Federal Shariat Courts, International Islamic University and Ministry of Religious Affairs. So, on the basis of these facts this study will contend that it manifested more important role in the polity of the country during the said years that were earlier invisible due to the confidential nature of its reports.

Syed Afzal Haider's work is an insider's account of the Council, as he has remained the member of the Council from 1990 to 2003. He points out the hurdles which the Council had to face in in discharge of the duties.<sup>29</sup> His work provides the consolidated summaries of its annual reports which were publicised only one year before this book was published and his interactions with the

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<sup>27</sup> Jamal Malik, *Islamisierung in Pakistan 1977-1984* (Heidelberg: Heidelberg University, 1988); Jamal Malik, *Colonialization of Islam: Dissolution of traditional institutions in Pakistan* (New Delhi: Manohar publishers, 1996) and Jamal Malik, *Islam in South Asia* (Brill: Leiden, 2008).

<sup>28</sup> Malik, *Colonialization of Islam*, 10 and 48.

<sup>29</sup> Syed Afzal Haider, *Islami Nazariyati Kaunsal: Irteqai Safar Aur Karkardagi* (Lahore: Dost publications, 2006).

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Chairmen of the Council to provide an idea about the working mechanism with in the Council and the relations between the members and the Chairman. At the end he provides the solutions to the government to make Council more efficient organisation. However, this study lacks any critical analysis about the approach of the government toward the Council, this is what makes the present study distinctive from his work.

Dr Mohammad Amin and Rubya Mehdi both have worked on the Islamisation of the laws in the country and discussed partially the role of the Council during Zia era.<sup>30</sup> They have very different opinions about the Council as Amin start his work from the conviction that country was created in the name of Islam and the Council because of its composition during Zia era was best suited for Islamisation and goes to this extent that in order to improve its performance it should be awarded ‘the status of the ministry’.<sup>31</sup> Whereas Mehdi starts from the conviction that rulers of Pakistan resorted to Islam because it was the most convenient possibility for ‘dominant ideology’ and going through the Islamisation drive of Zia she concludes about the Council that its recommendations were not implemented during Ayub and Bhutto government however it was Zia who took special interest in implementation of its recommendations because it suited his interests.<sup>32</sup> Lastly, the works of Dr Fazlur Rahman the director of Islamic Research Institute during Ayub era also traces the Council’s internal working with reference to its tension with the Institute which ultimately resulted in his resignation.<sup>33</sup> In his works, he blames the conservative internal environment of the Council due to its member and the modernist environment of the Institute responsible for the tussle between the both, especially during Ayub era.

Regarding the second group of works that are related with the works inspired by the Foucault’s notion of governmentality especially in the non-western world after the publication of *Foucault effect: Studies in Governmentality* in 1991 we can see how the ideas and vocabulary provided by Foucault have begun to get filtered gradually into the South Asian studies as well. One of the most

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<sup>30</sup> Dr Mohammad Amin, *Islamization of Laws in Pakistan* (Lahore: Sang-e-meel publications, 1989) and Rubya Mehdi, *The Islamization of the law in Pakistan* (Surrey: Curzon Press Ltd, 1994).

<sup>31</sup> Amin, *Islamization of Laws in Pakistan*, 68.

<sup>32</sup> Mehdi, *The Islamization of the law in Pakistan*, 206-207.

<sup>33</sup> Fazlur Rahman, "Islam and the New Constitution of Pakistan," In *Contemporary Problems of Pakistan*, ed. J. Henery Korson (Chicago: University of Chicago, 1974), 30-43; Fazlur Rahman, "the ideological experience of Pakistan," *Islam and the modern age*, vol. II, no. 4: 1-20 and Fazlur Rahman, *Islam* (London: Weidenfeld and Nicolson, 1966).

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visible work in this regard is by S. M. Shamsul Alam.<sup>34</sup> In this work, he used the concept of Governmentality provided by Michel Foucault along with the 'Counter-Hegemony' notion of Antonio Gramsci to explain the conduct of the Pakistani state when Bangladesh was a part of Pakistan and was known as East Pakistan. Each chapter in this book takes up an event and exhibit how it showed the governmentality of Punjabi elite-dominated state. For instance, the opposition of the Bengali as a national language or mentality of using Islam to keep the country united were the kind of events which showed the governmentality of disavowing differences and resulted in the counter-hegemony in the masses and impression that they are once again colonised after getting free from the British colonisation. His conclusion that Islamic governmentality was responsible for the counter-hegemony of the Bengali population. My study will also use the framework of governmentality as used by Alam, but it will use it instead to explore the working of the Council.

Markus Daechsel, in his work also uses the notions provided by Michel Foucault to study the nexus of power in Pakistan during Ayub era.<sup>35</sup> This study is about the developmental works during the Ayub government and the approach of the government behind these projects with special reference to the Korangi Township project which was then called one of the largest rehabilitation projects in South Asia. He believes that the purpose of constructing this establishment was to show as a sovereign that he can make quick decisions and to show the international community the success of his regime and endorse the indigenous view that rather than political rule the rule by an individual sovereign is much better. He argues that the 'Sovereign' Ayub, failed to entangle the masses in the web of governmentality using knowledge instead it executed only short-term projects which resulted in the reliance on the power of the sovereign. This study in an interesting way uses the vocabulary provided by Foucault, like 'sovereign', 'territory', 'governmentality', 'power', and other to explore the power nexus and the inner thinking of the government behind the developmental project during Ayub era. Another author that has used the term governmentality to explore the working of the Indian government with reference to its use of technology to manifest itself to the poor people is Stuart Corbridge.<sup>36</sup> He attempts to answer the question based on

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<sup>34</sup> S. M. Shamsul Alam, *Governmentality and Counter-Hegemony in Bangladesh* (Basingstoke: Palgrave Macmillan, 2015).

<sup>35</sup> Markus Daechsel, "Sovereignty, Governmentality and Development in Ayub's Pakistan: The case of Korangi township," *Modern Asian Studies*, vol 45, no 1, (2011): 131-157.

<sup>36</sup> Stuart Corbridge, Glyn Williams, Manoj Srivastava, and Glyn Williams: *Seeing the state: Governance and Governmentality in India* (London: Cambridge University Press, 2005).

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Foucauldian analysis that how modern-day technologies and knowledge acquired by the Indian state is used to manifests itself.

As I mentioned earlier that much of the work done with reference to religion and politics is about the *ulema*, *mullah-military* alliances, ideology, and elite politics. There are many authors which argue centrally around the theme that Islamic ideology in Pakistan was basically promoted by the military leadership or the political elite and the state in order to create a niche for themselves.<sup>37</sup> Simultaneously, there are equal number of authors contrary to the above argument that desire of the Islamic Ideology was an outward manifestation instead their work are centred on the argument that country was desired to be an Islamic country and it was because of the male practices by the state that country not just broke into two parts but also was unable to Islamised yet.<sup>38</sup> Then there are few authors which argue around the theme that neither it was the state nor the people of Pakistan instead it were the *ulema* who after the creation of country bent upon to put Islam and became the custodian of faith.<sup>39</sup>

Further relevant literatures to the topic are the doctoral thesis that are carried out in the renowned universities of Pakistan especially during and after the Zia's Islamisation drive. Tanvir Khalid in his work contends that the concept of the Islamic state has dominated religiopolitical thinking in Pakistan ever since its creation in 1947 all the governments including the one by General Ayub

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<sup>37</sup> Few examples include, Hussain Haqqani, *Pakistan between the mosque and military* (Washington: Carnegie Endowment for international peace, 2005); Maleeha Lodhi ed. *Pakistan Beyond the Crises State* (Karachi: Oxford University Press, 2012); Ian Talbot, ed. *The Deadly embrace: Religion, politics and violence in India and Pakistan 1947-2002*; Rubya Mehdi, *The Islamisation of the law in Pakistan* (Surrey: Curzon Press Ltd, 1994); Stephen P Cohen, *The Pakistan Army* (Karachi: Oxford University Press, 1992); Hassan Abbas, *Pakistan's drift into Extremism: Allah, the army and America's war of Terror* (New York: M. E Sharpe Armork, 2005) and Shahid Javed Burki and Craig Baxter , *Pakistan under the military: eleven years of Zia ul Haq* (London: Westview Press, 1991).

<sup>38</sup> Few examples include: Naseer A Sheikh, ed. *Pakistan Aik Qaumi Jamhoori Riyasat Kyn Na Bn Ska?* (Lahore: Nigarishat, 1978); Dr Afzal Iqbal, *Islamisation of Pakistan* (Delhi: Idar-i-adabiyat-i-Delhi, 2009); Ishtiaq Hussain Qureshi, *Perspectives of Islam and Pakistan* (Karachi: Maa'arif Limited, 1979); Dr Mohammad Amin, *Islamisation of Laws in Pakistan* (Lahore: Sang-e-Meel publications, 1989); Javed Iqbal, *The Ideology of Pakistan and its implementation* (Lahore: the Pakistan Times Press, 1959); Dr Safdar Mehmood, *Pakistan Kyn Tota* (Lahore: Jang publishers, 1990) and Azhar Sohail, *Sazisho Ka Daur* (Lahore: Feroz Sons Ltd, 1990);

<sup>39</sup> Anwar Hussain Syed, *Pakistan: Islam, politics and national solidarity* (New York: Praeger publishers, 1982); Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodian of Change* (New Jersey: Princeton University Press, 2002); Ziya ul Hasan Faruqi, *The Deoband school and the demand for Pakistan* (London: Asia publishing house, 1963); Ishtiaq Ahmed, *The Concept of an Islamic state: an analysis of the ideological controversy in Pakistan*, (London: Frances Printers, 1987); Seyyed Vali Reza Nasr, *Mawdudi & the making of Islamic Revivalism*, (New York: Oxford University Press, 1996) and Asghar khan, ed. *Islam politics and the state: the Pakistan experience* (London: Zed books limited, 1985)

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Khan was confronted with the debate to Islamise the country.<sup>40</sup> He further opinions that emphasis on the Islamic ideology was necessary to condone the indigenious differences which include the ethnic, lingual and political difference to strengthen the unity of the multi-ethnic country. Another relevant doctoral research work is by Syed Mujawar Hussain Shah.<sup>41</sup> He in his work emphasized the rule of Zia era. He concludes that the Islamisation drive of Zia resulted in the sharp differences in the different sections of the society because the drive was not from bottom to top but vice versa. He blames *ulema* for the failure of Islamisation of Zia because they were not ready to interpret Islam according to the modernist parameters and opinions that this dilemma will continue until the *ulema* are not ready to accept the modernistic interpretations. Kamran Aziz in his doctoral thesis sees the Islamisation from the perspective of the *Jamaat-i-Islami*.<sup>42</sup> The author concludes that it played a crucial role in the country's politics especially from 1972 to 2007. He argues that strategy of the Jamaat was different in different regimes, it was because of this approach that despite being a successful pressure group it was never able to be form a majority government of its own at provincial or national level. He also concludes that another reason of the failure of the Jamaat to gain electoral success was the rivalry of the religious group, as the masses in Pakistan are divided into many sects and each sect had its own religiopolitical party.

While appreciating the prospect of the above-discussed works this study is distinctive from the sense that it will contribute a full fledge historical study about the Council to determine its role in the Islamisation, governmentality and the approach of the government towards Islam during the specified period. It was in this backdrop that said topic was selected for research. This work will offer a historical perspective using the notion of governmentality in the history of Pakistan that lacks in the research carried out till date. Despite having many secondary sources available the present research would rely on the declassified reports of the Council and the assembly debates as the main source. So, it would be my desire that this study based on the descriptive data interpreted

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<sup>40</sup> Tanvir Khalid, "*Islamisation in Pakistan: A political and Constitutional Study from 1947-1988*" (PhD thesis, University of Karachi, 2004).

<sup>41</sup> Syed Mujawar Hussain Shah, "*Interplay of Religion and Politics in the Pakistan 1972-1988*" (PhD thesis, Quaid-i-Azam University Islamabad, 1994).

<sup>42</sup> Kamran Aziz, "Religion and politics in Pakistan: the role of the Jamaat-i-Islami 1972-2007" (PhD Thesis, University of Punjab Lahore, 2011).

## **Introduction**

from the reports of the Council would stimulate an appetite among the future researchers to work more about the Council from more different perspectives in the years to come.

## **RESEARCH METHODOLOGY**

This study provides the lucid and precise history of the Council of Islamic Ideology and its predecessors from 1956 to the 1988 by performing the content analysis of the annual and the special reports of the Council by contrasting them with the debates in the legislature, daily newspapers and legislations which were promulgated on the name of Islam in the country. Its findings provide an explanation of its existence and its role in the polity of the country.

The most important sources that has been consulted to reach conclusion for this study are the annual reports and the special reports of the Council. These reports were confidential till 2005 as per its working procedures and were send to the Legislature or Ministry or President or Martial Law Administrators depending on the respective government. In order to amend its working procedures, Council required the assent of the President, to make these report public for which it has requested repeatedly during Zia era so that population come to know about the work done by the Council, but this did not materialise until 2005. It was because of the efforts of its Chairman Dr Khalid Masood, that President General Parvez Musharraf allowed to declassify its previous Annual reports. These are now available in at the Council office that can be obtained by getting the written permission from the Secretary who is the administrative in charge of the Council. This study will contrast the recommendations given in these reports with the Assembly debates and the subsequently promulgated legislations promulgated by the respective governments during these years.

The reports that are now available of the proceedings of the Council since 1962 onward, for collecting these reports I visited the Council office several times during the first field work for data collections from January 2017 to July 2017. The reports of the Advisory Council from 1962-1971 were in English, although the opinion of some of the members are in Urdu as well in these reports. However, from 1973 onward, these reports were in Urdu and some parts of the reports specially during General Zia ul Haq era had few portions in Arabic which are then translated in Urdu and then to English by the Council itself. These reports proved the mines of knowledge for this study.

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Further in addition to these annual reports, there are some special reports which the Council sent to the respective governments which were about the questions sent to the Council and sometimes they complied the recommendation of any specific topic given since its establishment. The dissenting notes of the members of the Council and the discussions held within the meetings of the Council provides an insider's view of Council, and in between the lines the study explores the governmentality of the respective governments. This study will be among few pioneering studies about the Council as after the publication of its reports it came into the radar of many researchers interested in politics of religion in Pakistan.

After going through the reports, the methodology involves going through the newspapers of the relevant period and to compare the recommendations sent by the Council to the legislature, or the president or the minister during several years confidentiality and the statements given by the government official about the endeavours of the government on the name of Islam. Press Information Department, Islamabad maintains all the newspapers in the form of catalogues. The collection is well preserved and compiled in a suitable form. The Pakistan Times, the Dawn and the *Nawai-i-Waqt* for the said period were skimmed and scanned for this study.

Third major source of this study is the debates in the National Assemblies and the legislations promulgated through the Assemblies or through Martial Law ordinances which became the legal body of the country. The proceedings of the National Assembly were collected from the archives for the respective years from the National Assembly archives. The debates of Constituent Assembly were the only source from where the Islamic Laws Commission which is discussed in the first chapter is brought to light to explain the governmentality of those in power.

Archival data was consulted during research to see the executions of the recommendations of the Council and lastly the Interviews of the research staff of the Council were conducted during fieldwork. These interviews provided an insider's sight that how the different and divergent opinions of the Council members were attempted to be agreed on some common agenda and then compiled in the form of reports.

## **STRUCTURE OF THE THESIS**

## Introduction

This study is divided into four chapters excluding the introduction and the conclusion. First three chapters deal with the role of the Islamic Law Commission, Advisory Council of Islamic Ideology and Council of Islamic Ideology in the constitution of 1956, 1962 and 1973 respectively. Further these chapters also examine the role which these institutions had in the governmentality of the respective government and the measures taken by the respective governments on the recommendations of the Council. Fourth chapter deals with the working of the Council under the military government of General Zia ul Haq and finally the conclusion will summarise the findings of the study.

First chapter with the title, tracing the contours of governmentality from ‘Department of Islamic Reconstruction 1947’ to the ‘Islamic Law Commission 1957’ provided by the first constitution. This chapter deals with the working for the Islamic Law Commission that was provided by the 1956 constitution. It traces the roots of this department from 1947, when the province of Punjab established another likewise department named Department of Islamic Reconstruction that ceased to exist after 1949. The major source for the writing in this chapter are the Constituent Assembly debates, the report of the several committees like *Board of Talimaat-e-Islamia* and the gazette notifications through which these Boards were appointed. This section of the study attempts to trace out the approach of the government through the debates in the Constituent Assembly from 1947 to 1956 until the first constitution was drafted. Secondly it also traces the inner thinking by going through the profiles of the members of the Islamic Laws Commission that was appointed by the government.

The second chapter is with the title: Discourse, ideology and governmentality manifested through Advisory Council of Islamic Ideology 1962-1971. The first section of the chapter deals with the initial years of the army takeover from 1958 to 1962 until the constitution was promulgated by thought that what was the approach of the Ayub Khan towards the *ulema* by providing his pen picture and vision of Ideology and discourse through his speeches and statements during these years. Second part of the chapter deals with the clauses of the 1962 constitution promulgated by his government and its evolution from the Islamic Law Commission, and the question related to the Advisory Council like why were its report kept confidential? Why was it that in the first amendment it was given back the added duty to examine existing laws like its predecessor. The last section of the chapter deals with the recommendation of the Advisory Council that were taken

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up by the Ayub government and further other that were taken over by the later regimes. This section also deals the difference of the Advisory Council with the Islamic Research Institute during these years. Lastly, the blue print prepared by the Council in the final years of the Ayub government having same demands as were reiterated by the religiopolitical parties that were protesting against Ayub is also explored in this chapter.

The next chapter is with the title: Governmentality of democratically ‘elected’ government of Zulfikar Ali Bhutto through Council of Islamic Ideology 1973-1977. First section of this chapter deals with the struggle between the Bhutto government and the *ulema* of the religiopolitical parties during the elections of 1970 which ultimately resulted in the separation of the East Pakistan in 1971. Second section deals with the situation in which the 1973 constitution was drafted and impact of the demands of the religiopolitical parties on the functioning of the Council of Islamic Ideology that was provided by the 1973 constitution. A comparative analysis of the Council of Islamic Ideology with both its predecessor institutions, Advisory Council of Islamic Ideology and Islamic Law Commission is also discussed in these sections. The third section of the chapter deals with the functioning of the Council from 1973 to 1975 when the first report of the Council was submitted to the National Assembly, after which the government amended the working procedures of the Council, the inner thinking is traced that what was the reason that these procedures were amended due to which report of the Council were not to be sent to the legislature and instead to the Ministry of Religious Affairs. Last section of this chapter deals with the working of the Council from 1976 onward when Bhutto government was facing the protests from the religiopolitical parties with the demand to introduce the Islamic system in the country which ultimately resulted in the takeover by General Zia ul Haq on 5<sup>th</sup> July 1977.

The fourth and the last chapter of the study is titled: The role of Council of Islamic Ideology in governmentality of ‘*Nifaz-e-Islam*’ during General Zia ul Haq regime 1977-1988. This chapter correlates the working of the Council of Islamic Ideology under three different Chairman i.e. Justice Afzal Cheema, Justice Tanzil-ur-Rehman and Dr Hali Pota with the three stages of his government. The first phase pointed out in this chapter is the one when he is under the Bhutto paranoia from 1977 till 1979 when the cases against Bhutto were in court and Zia, was delaying the elections that were to earlier to be held in ‘ninety days’, during this phase the working relationship of the Council and the measures which were promulgated on the recommendations of the Council are explored

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in the first section. The second section starts in the working of the Council when he was confident and the sole contender of power after Bhutto was hanged in a murder case. During this phase the bitter relations between the Council and the government which are visible in the proceedings of the Council are visible. Last section of the chapter deals with the working of the Council when the non-party based government was elected and the slot of the Chairman and members was left vacant for two years, it deals with the reasons of the bitter relations between the Council and the government and its working in the final years of the Zia government until he died in 1988 in plane crash the definite reason for which are unknown till date. At the end the conclusion will summarise the descriptive findings of the chapter in the light of the key questions raised at start about the reasons of its existence and evolution in its functioning and the governmentality manifested by the Council and its predecessors in the power nexus of the respective governments during the period of the study.

## **TRACING THE CONTOURS OF GOVERNMENTALITY FROM 'DEPARTMENT OF ISLAMIC RECONSTRUCTION 1947' TO THE 'ISLAMIC LAW COMMISSION 1957'.**

After the creation of Pakistan, the Constituent Assembly of Pakistan adopted the 1935 act as its constitution until an indigenous constitution was to be drafted by it. The first institution set up as a governmental body to recommend the measures to make society Islamic at provincial level was 'Department of Islamic Reconstruction' in 1947. This chapter will contour the odyssey of the country from this nascent department at Punjab to the 'Islamic Law Commission' that was provided by the first indigenous constitution of the country promulgated in 1956. The findings of this chapter will help to answer the key question of the study that deals with the traces of Council of Islamic Ideology. It will further add to conclusion by manifesting the approach of the government during these years which later resulted in the establishment of the Advisory Council of Islamic Ideology (1962) and Council of Islamic Ideology (1973) in later years. It will conclude that the establishment of the Islamic Laws Commission by the 1956 constitution manifests the governmentality by the then governments to develop a web around the *ulema*, however it was not only the government that was interested in provisions related to it, the *ulema* also wanted their future role in the governmental setup. Secondly the functioning of the Islamic Law Commission was directly related with the stability of the government which itself was trembling, so this commission latter provided the grounds for the Advisory Council of Islamic Ideology and the Council of Islamic Ideology in the later constitutions.

This chapter is divided into four major sections, the first section will highlight the paradoxes encapsulated into the genesis of Pakistan's independence and the conducive hybrid environment that led to the rise in the strength of the *ulema* who aspired to have veto power over the future legislature. It will also explore the establishment of 'Department of Islamic Reconstruction in Punjab' under the Chairmanship of Muhammad Asad, talks of Maulana Mawdudi, lobbying by Shabbir Ahmed Usmani and the governmentality of Liaqat Ali Khan's government which led to the approval of Objectives Resolution. The next section will deal with the working of the Basic Principles Committee appointed by the Constituent Assembly to draft the future constitution and their endeavour in the appointment of *Board of Talimaat-e-Islamia* (BTI) to deal with the issues related with Islam. It will continue to discuss the causes of failure of BTI that resulted in the rise

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of power of *ulema* who came directly in contact with the government leading to the evident changes from the first BPC in 1951 draft to the Bogra formula in 1954. It will be followed by the second last section that deals with the working of the second Constituent Assembly and the influence of the *ulema* on the draft of the constitution that was promulgated on 23 March 1956 and last section will deal with the working of the Commission, reasons for the delay in its appointment, its composition, and its functioning until the constitution was abrogated by Iskandar Mirza in 1958. Finally, the concluding paragraph will summarise the findings of this chapter.

### 1.1 HEIRLOOM OF CONSTITUENT ASSEMBLY AND THE PARADOXES IN DOMAIN OF POLITICS AND RELIGION

Pakistan appeared on the map of the world at the night of 14<sup>th</sup> August 1947 as consequence of independence from British rule. This creation of Pakistan was the consequence of ‘struggle of Indian Muslim for their new homeland’ or, ‘the charisma of Muhammad Ali Jinnah’ or ‘he was protégé of British’ all of these discourses had already been pondered by various authors.<sup>1</sup> The divergence of these discourses leads to the inkling that, Pakistan’s connotation was divergent to various groups striving for it before partition which led to the odyssey that the first Constituent Assembly took nine long years to draft first indigenous constitution.

The first assembly of Pakistan that was both its Constituent Assembly (CA) and the Legislature met for the first time on 10<sup>th</sup> August 1947 and elected Mohammad Ali Jinnah (Jinnah) as its Governor-General. Next day while giving the speech as the head of the state, addressing to the future framers of the constitution and elaborating the sketch of the future constitution Jinnah said: ‘...we are all citizen and equal citizen of one state... in course of time, Hindus will cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense but because that is the personal faith of each individual, but in the political sense as citizens of state...’.<sup>2</sup>

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<sup>1</sup> For more details see: Choudhry Khaliqzaman, *Pathway to Pakistan* (Lahore: Longmans, Pakistan Branch, 1961); Venkat Dhulipala, *Creating a New Medina: State Power, Islam, and the Quest for Pakistan in Late Colonial North India* (Delhi: Cambridge University Press, 2015); Akbar S. Ahmed, *Jinnah, Pakistan and Islamic identity: the search for Saladin* (London and New York: 1997, Routledge); and Ayesha Jalal, “The struggle for Pakistan: a Muslim homeland and global politics,” in *Pakistan beyond the crises state*, ed. Maleeha Lodhi (Cambridge: Oxford university press, 2012), 7-21.

<sup>2</sup> Jinnah’s Presidential address in the Constituent Assembly of Pakistan, August 11, 1947 in *Constituent Assembly of Pakistan debates*, Official Report, vol. 1, no. 2 (Karachi: Government of Pakistan, 1947), 18-20.

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Simultaneously, on the other hand, giving the ceremonial task of hoisting flag in East Pakistan to Mufti Muhammad Shafi and in West Pakistan to Shabbir Ahmed Usmani, the use of slogans like: ‘*Pakistan Ka Matlab Kia? La Ilaha Illallah*’. Such slogans in the rallies of League mainly manifest the other side of the picture and also explains the nature of aspiration of *ulema* from the new country. Further actions like: appointment of *Ulema and Mashaikh committee* and Jinnah’s consent to the representative of *Jamaat al-Safia* at Manki Sharif, NWFP that, ‘laws in the new country should be according to Quran and Sunnah and before approval laws should be sent to the *ulema* and measures recommended by them will be presented to the Constituent Assembly by the Muslim League...’ were not ignorable.<sup>3</sup>

As a consequence of these paradoxes both: Bhupendra Kumar Datta (Datta) and Shabbir Ahmed Usmani (Usmani) had entirely distinct perspectives during discussion on the Objectives Resolution, the first legislative development of the country that provided the guidelines for the future constitution. Datta, a member of East Pakistan during the discussion in CA on the Objectives Resolution in March 1949, while suggesting an amendment in it, said that: ‘...I have reason to believe that were this resolution to come before this House, within the life of great creator of Pakistan Quaid-i-Azam it would not have come in its present shape...’<sup>4</sup> While Usmani, also from East Pakistan referred the statements of Quaid-i-Azam from the letters which he wrote to Gandhi in August 1944 and from the extracts of his Eid greeting message, contended that, ‘it is wrong to say If Quaid-i-Azam had been alive this resolution would not have come up before this House’.<sup>5</sup>

These were the kind of paradoxes inbuilt into its creation in initial days that led to believe the *ulema* and consequently to majority common population that *raison d’être* of the new country was Islam. On the other hand, promoting confidence to those who believed that politics and religion are two different domains, and usage of Islamic notion by the governments will be the only mean to keep united the otherwise fragile country. This led to the attitude of the government which is

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<sup>3</sup> Dr Abdur Rasheed, *Tasawwuf Awliya-e-Manki Sharif Aur Tehrik-e-Pakistan* (Karachi: Awliya Academy Pakistan, 1991), 192-230. Syed Wiqar Ali Shah, *Pir Sahib Manki Syed Amin-al-Hasanat Aur Unki Siyasi Jadojehad*, (Islamabad: Qaumi Idara Baraye Tahqiq Tareekh Aur Saqafat, 1990), 143-160.

<sup>4</sup> Bhupendra Kumar Datta, *The Constituent Assembly of Pakistan Debates*, March 9, 1949, Official Report, Vol. V (Karachi: Government of Pakistan, 1949), 14.

<sup>5</sup> Shabbir Ahmed Usmani, *Constituent Assembly of Pakistan debates*, March 9, 1949, 45.

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referred here as governmentality in the context as provided by Michel Foucault that ‘the methodological set of tactics based on the major form of knowledge which allows the exercise of albeit power having the population at its target and having security apparatus as its essential instrument’.<sup>6</sup> Thus governmentality in Pakistan involves the attempts of the Pakistani government to extend its power to the domain of religion i.e. Islam. Edward Saeed in his essay, ‘*Foucault and the Imagination of Power*’, also points out that according to Foucault in modern government there is an unstoppable expansion of power, this increase in the domain of power support the administrators and technocrats to establish a disciplinary society.<sup>7</sup> The surge of the various governments in Pakistan to adopt the techniques to integrate *ulema* in the regime to have knowledge about their aspiration was their attempt to extend their control over them to better govern the population and make them better governable. Before going to discuss the Objectives Resolution, that retrospect the governmentality of the Liaqat Ali Khan’s government it would be necessary to see briefly what were the factors which led to the opinions of the members of the CA during the constitutional development process for which it would be necessary to understand that what was the understanding of the Pakistani population at that time with the term Islamic country?

### 1.1.2 UNDERSTANDING ‘PAKISTANI ISLAM’

First population census of then Pakistan which included East Bengal province (called Bangladesh after 1971) was held in 1951 according to which its population was 75687 thousand, having ten percent population in urban areas, with the literacy rate of 13.8 percent and the percentage of minorities was little above fourteen percent.<sup>8</sup> Having this stumpy literacy rate, with the mere definition of ‘ability to read any language’ manifests the intellectual level of the majority population. Any understanding of Islam or Islamic system of government can be traced only from history of the Muslims that lived in united India before partition under the British rule or ever before that under the Kings. It is visible that before partition, the education or the political opinion

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<sup>6</sup> Michel Foucault, *Security, Territory, Population: Lectures at College de France 1977-1978* ed. Michel Senellart, François Ewald and Alessandro Fontana, trans. Graham Burchell and Arnold I. Davidson (City: Palgrave Macmillan, 2009), 87-133.

<sup>7</sup> Edward W. Said, “Foucault and the imagination of power,” in *Foucault: A Critical Reader*, ed. David Couzens Hoy (New York: Basil Blackwell, 1986), 149-150.

<sup>8</sup> The term literate was defined as ‘ability to read any language’ for more details see: Census of Pakistan 1951, Provisional tables of population Census Bulletin No 1, Office of the Census Commissioner, (Karachi, April 1951), 1. Ibid, Census Bulletin No 2, Urban and rural population & area, Census Bulletin No 3 (Karachi, September 1952), 2.

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of the Muslim population depended to a larger extent of the local *imam/alim/Sufi* in their area. As for instance, the people of Jhansi asked the opinion of the Maulana Ashraf Ali Thanwi (1863-1943) to vote for Congress or League in the 1936-1937 elections and same was done by the disciples of *Pir* of Manki Sharif who voted for Pakistan against the *Khudai Khidmatgar's* in North West Frontier Province (NWFP).<sup>9</sup> The importance of these Sufis/*alim*/religious scholars (referred hereafter as *ulema*) can also be seen for this incidence that League became popular only after it brought many renowned *ulema* members in its pool. The fact was also pointed out by the Constitution Commission later appointed by the Ayub Khan in 1961 that the 'understanding of the majority population depends on the knowledge which the local *Imam* tells them, and they further depend on the bounty given to them by the rich members of the society so they cannot criticise any ritual even if it is un-Islamic and anti-social'.<sup>10</sup>

Based on these discussions it would not be wrong to say that among other factors, in their understanding of Islam and even their political opinions were somehow crystallised by a local *imam/alim/Sufi* saint. They are normally the custodian of the indigenous mosque or a religious seminary usually selected and/or appointed by the influential of the village or the area or due succeeding his father as a successor *pir* also called *sajjada nashin*. Further an average Imam may impart the knowledge about the rituals of Islam, but he may not be able to convey the knowledge about the principles of Islam especially in the light of the modern conditions to inculcate rationalist thinking in the otherwise illiterate population. Another crucial factor to be kept in mind about these *ulema* which the sources of knowledge for the both the literate, semiliterate, and illiterate population is that they themselves are not a homogenous in their thoughts. Instead that are divided into various sects, and each having his own interpretations of the Islamic principles, Islamic state, Islamic mode of government and role of non-Muslims in an Islamic country. Paradoxically many have no disagreement that Islam should be the political system of the country and while saying so they ignore the conflicting and struggling discourses. They contend that solutions to every problem could be devised from the Quran and Sunnah, and then due to multiple interpretations they became the irreconcilable adversary of each other. It is due to these sources of knowledge and during later

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<sup>9</sup> Rasheed, *Tasawwuf Awliya-e-Manki Sharif Aur Tehrik-e-Pakistan*, 192-230; Shah, *Pir Sahib Manki Syed Amin-al-Hasanat Aur Unki Siyasi Jadojehad*, 143-160.

<sup>10</sup> Muhammad Shahabuddin, *Report of the Constitution Commission, Pakistan 1961* (Government of Pakistan, 1961), 125-126.

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years the ideological inculcation by the respective governments that they not only have a specific understanding of Islam but of Indian history as well. For instance Pakistani people feel proud in tracing their lineage with the Arabs instead with the Indian and for them, history starts with the arrival of Mohammad bin Qasim and attempts to present the foreign invaders like, Sultan Mahmood of Ghazni and Sultan Shahab Uddin Muhammad Ghauri as their heroes while ignoring indigenous Indian defenders.<sup>11</sup> It is due to this specific kind of understanding in Pakistan that in order to increase its power state deemed it appropriate to authenticate them with the stamp of Islam to provide a reason for obedience for the masses through various institutions which ranged from Islamic Law Commission to the Council of Islamic Ideology in the subsequent years.

### 1.1.3 ULEMA? THE DEFINITION

Before going further, it would also be important to define the scope of this notion which is used frequently in this study i.e. *ulema*. It is a plural word of *alim* an Arabic word that literally means the ‘one who is educated’ or ‘learned’ and epistemologically it is perceived as the person who has spent some time in religious seminary (*Madaris*), irrespective of the fact that he has completed his religious education or not. The term *ulema* is not just plural in its literal sense it is heterogeneous and multiheaded in the sense of connotation as well. While going through the history of Pakistan it can easily be found that it is used for groups having divergent aspirations. For instance, Maulana Mawdudi, Maulana Asad, Maulana Shabbir Ahmed Usmani, Pir Syed Amin-al-Hasanat are few names visible in the initial years with their own distinctive demands to have Islam in the political setup on the ground that *raison d'être* of the country was Islam or being a Muslim dominated country it was the responsibility of the government to introduce Islamic system of government. Each of them had the different educational background, varied understanding for the Islamic principles to be incorporated in the constitution, different political party, and few even not participating in politics and but had a different political constituency and a large following, this study is using this term, *ulema* for them.

From these names, it is debatable that whether Mawdudi can be called an *alim* or Muhammad Amin-al-Hasanat a *pir* can be referred as an *alim* because each not having attended a traditional

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<sup>11</sup> K. K. Aziz, *The murder of history: A critique of history textbooks used in Pakistan* (Lahore: Vanguard books Ltd, 1993), 188-232. Dr Afzal Iqbal, *Islamization of Pakistan* (Delhi: Idarah-i adbaiyat-i Delhi, 1984) 1-20 and for more details see course books of Pakistan Studies Books printed by Punjab text board for Intermediate.

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religious seminary. However, the basis on which they are put in one group in this study is that one common denominator among them was that reason due to which they excelled in politics in their constituency was their knowledge of Islam whether gained from a religious seminary or succeeded hereditary in the case of *pir*'s. Another distinguishable feature of those included in this umbrella term is which make the distinguishing is that they can give those verdicts about Islam which otherwise politicians like Liaqat Ali Khan, or Khawaja Nazim ud Din and other cleanshaven politicians cannot.

There were many visible cracks among the *ulema* themselves as well, for instance, they were divided into sects and had different political ambitions, so each has his own line of direction.<sup>12</sup> The Inquiry Commission of the Punjab disturbances, 1953 by Justice Munir which interviewed the following persons and also referred all of them to one term as *ulema*, as they are referred in this study. The members of above said commission interviewed Abul Hasanat (President, Jamiat Ulama-e Pakistan), Maulana Ahmed Ali (*Jamiat Ulama-e Islam*, West Pakistan), Maulana Abul Ala Mawdudi (*Amir Jamaat-e-Islami*), Mufti Muhammad Idris (*Jamia Ashrafia Nila Gumbad*, Lahore), Hafiz Kifayat Hussain (*Idara-e Haqooq-e Tahaffuz Shia*), Maulana Abdul Hamid Badayuni (President Jamiat Ulama-e Pakistan), Maulana Amin Ahsan Islahi and Maulana Muhammad Ali Kandhalawi, to define the term 'Muslim' as part of the Inquiry to determine the causes of disturbances.<sup>13</sup> Each of them gave a varying definition, of the simple question that 'who is a Muslim', the report summed up that 'if we adopt the definition given by one, we remain Muslim according to that *alim* and *kafir* according to the definition of everyone else'.<sup>14</sup>

Despite their differences due to the specific understanding of Islam as discussed above and their ground at grass root level, it became unavoidable for the government to side-line them, instead, it resorted to integrate them by having their opinion on the issues related to Islam while framing the constitution that are discussed in this chapter. The one common denominator demand by the *ulema* was to promote '*Islami Tarz-e-Hayaat*' (Islamic way of life) for the Muslims in the country so that

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<sup>12</sup> Munshi Abdur Rehman Khan, *Tameer e Pakistan Aur Ulamaey Rabbani* (Multan: Idara Nashr al maraad, 1956); Muhammad Taqi Usmani, *Nifaaz-e-Shariat Aur Us Kay Masail* (Karachi: Maktaba Darul Uloom, 2002); and Hazrat Allama Shah Turab ul Haq Qadri, *Takhleeq-e-Pakistan mein Ulama-e-ahl-e Sunnat ka kirdar* (Karachi: publication Ahl-e Sunnat, 2007).

<sup>13</sup> Muhammad Munir, *Report of the Court of inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953* (Lahore: Superintendent Government printing, 1954), 215-218.

<sup>14</sup> *Ibid*, 218.

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population can live their lives according to the ‘principles of Islam’. What was the Islamic way of life and what were these principles on the basis of which they wanted it to base were dubious, but what was certainly attached with this demand was their future role in the political sphere of the country because each considered himself or his party to be the sole authority on this. As the study will develop it will become evident that this demand of Islamic way of life changed gradually into the ‘Islamisation’, ‘enforcement of *Sharia*’, ‘*Nifaz-e-Islam*’ and soon. This part of the study will now discuss the demand of *Islami Tarz-e-Hayaat*, the most visible demand of *ulema* during these years.

### 1.1.4 ISLAMI TARZ-E-HAYAAT AND EXPECTATIONS FROM GOVERNMENT IN A MUSLIM DOMINATED COUNTRY’?

Having discussed briefly the understanding of Islam in the country and the term *ulema* used in the study it would be pertinent to have a better understanding about the term *Islami Tarz-e-Hayaat* a most distinguishable demand by the *ulema* in the initial years. What is its meaning? what does this notion mean for the government in a Muslim dominated country like Pakistan? Islam as a religion has existed since the seventh century when the prophet of Islam, came to Arabia, several caliphates and kingships dynasties existed since then in various parts of the populated world. The adherent of Islam i.e. Muslims, in general, believe that their religion is complete ‘code of conduct’, by which they mean it is not just a set of religious practices like *Namaz*, *Roza*, *Haj* and *Zakat* but it directs the social, legal, economic and remaining aspects of life as well. The modalities of the Islamic governments are traced from the Quran, the traditions of the Prophet, and the system of government from the caliphate in early years of Islam. Many authors from the Muslim world had debated since long about the tenants of Islam related to the government.<sup>15</sup>

Muslim majority nation-states that emerged during the nineteenth century had various kinds of models appeared during different years for instance in modern Turkey after the first world war (secular Islamic government), Iran after the 1979 revolution (rule of theocracy) and Saudi-Arabia (kingship). This decade also involved the codification of Islamic laws that was not carried out

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<sup>15</sup> Fazlur Rahman, *Islam* (Chicago: Holt, Rinehart and Winston, 1966) and Nicholas Heer, ed. *Islamic law and jurisprudence* (Seattle and London: University of Washington press, 1990). Akbar S Ahmad, *Discovering Islam: Making sense of muslim history and society* (London: Routledge, 2002) and Ishtiaq Ahmed, *The Concept of an Islamic state: an analysis of the ideological controversy in Pakistan* (London: Frances Printers, 1987).

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earlier. The differences in interpretation can be seen when based on same principles the codification in the three Islamic countries, i.e. Iran, Libya and Pakistan on the Hudood crimes discussed in the fourth chapter of this study the punishment prescribed were different. Ann Elizabeth Mayer has worked on the differences in the punishment prescribed in the different Muslim countries and pointed out the differences in the codification of laws carried out in several Muslim countries, Saudi Arabia, Libya, Iran, Sudan, Pakistan despite having the same hierarchy of sources.<sup>16</sup> This lead us to a further debate that what is meant by *Sharia*? At this stage, it would be pertinent to define the term as well because it will also be used often in the coming chapters as one of the demands of *ulema* to be enforced in the country.

The term '*Sharia*' is also referred commonly as *Shariat* or *Shariah* in Pakistan. This term is defined with different meanings, for instance, the Cambridge dictionary defines it as 'the holy law of Islam that cover all part of Muslim's life' and the Oxford Advance learning dictionary defines it as 'Islamic canonical law based on the Hadith and Sunna.'<sup>17</sup> In the light of above discussion it can be said that it is a process which deals with the codification of the Islamic laws. So, it deals with making the laws from the principles given in the Quran, the Sunna and the *Ijtihad* (consensus) of the Muslim community. This process of implementing the *Sharia* is named differently in different parts of the world for instances, 'Islamification', 'Islamism', 'Mohammedanism' or 'Islamisation' are few names given to the political and legal manifestation of Islam. There are pivotal differences in the approach of *ulema* and the intelligentsia about the imposition of *Sharia* for the former ones the *Sharia* is already complete and just need to be enforced whereas the academic intelligentsia believed that laws should be devised considering the modern democratic states based on the basic principles of Islam using *Ijtihad* (Consensus).

During the early years after the creation of Pakistan the least common denominator word replicated with varying means to achieve it in the works and talks of Maulana Muhammad Asad as Chairman of the Department of Islamic Reconstruction Maulana Mawdudi in his speeches, Shabir Ahmed Usmani's debates in the CA, works of, Zafar Ahmed Usmani, Ghulam Ahmed Parwez was the

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<sup>16</sup> Ann Elizabeth Mayer, "The Shariah: a methodology or a body of substantive rules" in *Islamic law and jurisprudence*, ed. Nicholas Heer (Seattle and London: University of Washington press, 1990), 177-198.

<sup>17</sup> Cambridge English Dictionary, online edition, "*Sharia*," accessed January 8, 2018, <https://dictionary.cambridge.org/dictionary/english/sharia> and Oxford English Dictionary, online edition, "*Sharia*," accessed January 8, 2018, <https://en.oxforddictionaries.com/definition/sharia>.

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inclusion of *Islami Tarz-e-Hayaat* by the government of Pakistan so that Muslim population can live their life according to the Islamic principles.<sup>18</sup>

This demand which initiated with the Islamic way of life gradually changed within years to the application of *Sharia*, also called Islamisation of the country. Various authors have given divergent definitions of the notion Islamisation as for instance Hassan Abbas attached this process with the demands of the clergy to which he calls *ulema* which are like the 'Brahman' in the medieval India who stratified the Indian society and divided it into strict castes.<sup>19</sup> Mufti Taqi Usmani says that Islamisation involves applying the principles suggested by Quran and the Sunnah not only in the constitution but also in all aspects of life'.<sup>20</sup> At the same time for I. H. Qureshi refers this process with the purpose to establish 'such a society where community of believers live together to facilitate for itself the adherence to the teachings of Islam'<sup>21</sup> In the light of these definitions it can be said that this Islamisation is the combination of two words, 'Islam' and 'ization' the application of Islam in different field of life which involves, legal, social, economic and all other aspects of life, it focuses on using Islam as a verb for the society and instead as a noun.

In the case of Pakistan, this process involved the rewriting of the penal laws and amendments in the constitution and establishing the new departments to collect and disburse Zakat, renaming the parliament house as *Majlis e Shura* and most importantly having the endorsement from the *ulema* that aforesaid act of the government was not against the Islamic injunctions. Once having agreed to the demand of the *ulema* being a Muslim dominated country, it gradually became the responsibility of the government to introduce Islamic way of life, it was aspired to function through specific registers in the sense that government should not be neutral in the religious issues of the population. In this regard, it would be important to mention here that although Pakistan was a Muslim dominated country in 1947, however, this does not mean that there were no minorities.

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<sup>18</sup> See for more details, Asad, *The Principles of State and Government in Islam* and Ghulam Ahmad Parwez, *The Genesis and Ideology of Pakistan* (Lahore: Idara-Tulu-e-Islam, 1989), 752-765 and Seyyed Vali Reza Nasr, *Mawdudi & the making of Islamic Revivalism* (New York: Oxford University Press, 1996).

<sup>19</sup> Hassan Abbas, *Pakistan's Drift into Extremism: Allah, the Army and America's war on Terror* (New York: M.E. Sharpe, Armork, 2005), 3-5.

<sup>20</sup> Usmani, *Nifaaz-e-Shariat Aur Us Kay Masail*, 7-19.

<sup>21</sup> Ishtiaq Hussain Qureshi, *Perspectives of Islam and Pakistan*, (Karachi: Maa'arif Limited, 1979), 25-26.

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The next section will now discuss the position of minority members and their fears from the demands of the *ulema* in the CA.

### 1.1.5 MINORITIES IN PAKISTAN DURING INITIAL YEARS

According to the first official census of the country that was held in 1951, minorities were 14.1 percent of the total population and in East Pakistan and West Pakistan, they composed the 23.2 percent and 2.9 percent respectively.<sup>22</sup> Although *ulema* were demanding active role of Islam in the legislation which is clear as during debates about Objectives Resolution, Maulana Shabbir Ahmed Usmani, (Usmani) said that, ‘it is the duty of the Islamic state to fully safeguard the lives, property, honour, religious freedom and civil rights of a loyal non-Muslims within its jurisdiction’<sup>23</sup> whereas the minority member Birat Chandra Mandal the member of the CA from East Bengal on the same day responded that, ‘... *ulema* are insisting to base the constitution on Islamic principles, are their no *pandits* in India who could insist political thinkers of India to adopt such a constitution?... neither in England nor in America Bishops have any voice... the Prime Minister is leading us to commit a serious blunder.’<sup>24</sup> These words and as earlier discussed the speeches of the other minority members on the Objectives Resolution especially the Hindu members in the CA manifest the fear from the aspiration of *ulema* which were to prove correct in the years to come as will be seen along with other issues in the coming chapters.

Although the institutions under study here, the Islamic Law Commission 1957, Advisory Council of Islamic Ideology (1962) and Council of Islamic Ideology (1973), clearly mentioned in the constitution that nothing in this functioning will impact the non-Muslims of the country and so never any non-Muslim member was ever appointed as their members but it would be wrong to say that its recommendations and the consequent legislations did not impact the lives of the non-Muslims. As many of the legislations and measures taken by the respective governments on the recommendations of the Council and its predecessors from changing the syllabus to introduction of blasphemy laws, banning of alcohol impacted the non-Muslim minorities living in the country

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<sup>22</sup> Office of Census Commissioner, Census of Pakistan 1951: Population according to religion, Table 6, Bulletin no 2, (Karachi: Ministry of Interior, 1952), 1.

<sup>23</sup> Maulana Shabbir Ahmed Usmani’s speech in the Constituent Assembly of Pakistan, March 9, 1949 in *Constituent Assembly of Pakistan debates*, Official Report, Vol. V (Karachi: Government of Pakistan, 1949), 46.

<sup>24</sup> Birat Chandra Mandal’s speech in the Constituent Assembly of Pakistan, March 9, 1949, *Ibid*, 48.

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as well. It was in this backdrop that Johan O'Brien, a Christian theological resource person for the local church, wrote the impact of the cultural osmosis on the understanding of Christianity among the Christian community due to the Islamisation in Pakistan in such words that, 'Jesus is our prophet', 'Christmas is our Eid', 'we are *Ahl-ul-kitab*'.<sup>25</sup> These measures are discussed in details in coming chapters, especially in chapter four that deals with the working of the Council of Islamic Ideology during the General Zia ul Haq regime. Now having discussed the basic term that are to be used in this study, it now focuses on the factors that led to the predecessor institutions of the Council of Islamic Ideology under study here.

### 1.1.6 DEPARTMENT OF ISLAMIC RECONSTRUCTION AT THE PROVINCIAL LEVEL IN WEST PUNJAB

The province that was then called West Punjab (later called Punjab) till 1955 after the partition, was one of the largest province by population and it was only second to largest one then called East Bengal (later in 1955 renamed as East Pakistan and Bangladesh after 1971).<sup>26</sup> Nawab Iftikhar Hussain Mamdot, and one of the biggest landlords of Punjab who supported Mohammad Ali Jinnah to secure support against the unionist party in Punjab, elected as the members of the Punjab legislative assembly in 1946 was appointed as its Chief Minister of the East Punjab. Lubna Kanwal in her work had studied the working relationship between the provincial government of Punjab and the central administration from 1947 to 1955. She argues about Mamdot that 'he was conservative in political outlook and resisted the interference of centre in provincial matter'.<sup>27</sup>

It was because of this ongoing struggle that provincial government was dissolved on charges of 'misuse of position as premier, maladministration and misappropriation of public funds' on 24<sup>th</sup> January 1949.<sup>28</sup> In this background it would not be wrong to say that to influence the Constituent Assembly, he invited Maulana Asad (Asad) and an institution namely 'Department of Islamic

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<sup>25</sup> Johan O'Brien, "Christians in Pakistan," in *Islamochristiana: Christian and Muslim views*, vol. 39 (Roma: *Pontificio istituto di studi Arabi e d'Islamistica*, 2013), 175-189.

<sup>26</sup> The population of West Punjab state according to the 1951 census was 2,06,51,140 having area 79,716 sq mile while the population of the East Pakistan was 4,20,62,610 and having an area 54,141 sq mile. Office of Census Commissioner, *Census of Pakistan 1951: Urban and Rural population and Area*, Bulletin no 3, (Karachi: Ministry of Interior, 1952), 18-30.

<sup>27</sup> Lubna Kanwal, Azra Asghar Ali and Massarrat Abid, "The interim constitution 1947: Centre-province relations and Punjab 1947-1955," *Pakistan Journal of Social Sciences*, vol. 32, no. 1 (2012): 123-135.

<sup>28</sup> *Ibid.*

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Reconstruction’ was established and Asad was appointed as its Chairman. Being the first governmental institution that had Islamic in its nomenclature established by the provincial government of East Punjab to deal with the issues related with Islam and to influence the Constituent Assembly so that the Constitution that was to be drafted will be based on the Islamic principles. This department existed for nearly a year and later became dormant, the information about it can only be traced in chunks from the books of the Muhammad Asad, its chairman.<sup>29</sup> The second set of important sources regarding this department are the Provincial assembly archives to see if any budget was allocated to it and then lastly from the handbook of history of the Council of Islamic Ideology itself.<sup>30</sup>

Asad in his work wrote about his meeting with the Chief Minister East Punjab, Nawab Iftikhar Hussain Mamdot. The later asked his opinion to contact the central government to consider the Islamic aspect while drafting the future constitution. Asad says that, he suggested the Chief Minister to ‘...take the initiative and establish such a department in Punjab that will bring to discussion the ideological issues on the basis of which Pakistan came into being...’<sup>31</sup> According to Asad the stated purpose of creating this institution was to ‘elaborate the intellectual and sociological principles which should underline our new society and new state.’<sup>32</sup> The annual budget allotted to this department for the years 1948-1949 was 76,440/- PKR.<sup>33</sup> This department became dormant after 1948 when Asad was appointed at Punjab University, Lahore and later transferred to foreign services as the in-charge of the Middle Eastern division with the task to establish relation with these countries.

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<sup>29</sup> Allama Muhammad Asad (1900-1992) his earlier name was Leopold Weiss, an Austrian Jew who converted to Islam in 1926 and came to India in 1932. After 1959 he resigned from the government of Pakistan service and lived his remaining life in Morocco and died later in Spain. His famous works include: *The Principles of State and Government in Islam* (Berkeley and Los Angeles: University of California Press, 1961). *The Road to Mecca* (New York: Simon & Schuster, 1954). *Islam at the Crossroads* (Kuala Lumpur: The other press, 2005) and *The Unromantic Orient: A Journey in the Middle East*, trans. Elma Ruth Harder (Kuala Lumpur: Islamic Book Trust, 2004).

<sup>30</sup> Muhammad Asad, *The principles of state and government in Islam* (Los Angeles: University of California, 1961), ix-xii; Council of Islamic Ideology, *Idarajati Pase-i-Manzar Aur Karkardagi* (Islamabad: Musa printers, 2016), 70-82.

<sup>31</sup> Muhammad Asad, *The principles of state and government in Islam* (Los Angeles: University of California, 1961), ix-xii.

<sup>32</sup> *Ibid*, ix.

<sup>33</sup> Government of West Punjab, *Budget 1948-1949 with detailed estimate of revenue and expenditure*, (Lahore: Superintendent Government Printing, 1948), 99

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One of the reasons for the disappearance of this department was that it was established on the personal desire of the Chief Minister, and he himself resigned in 1949 due to differences with the central leadership of League, and formed his own political party, 'Jinnah League' and contested the 1951 provincial elections against League and led opposition in the newly elected provincial assembly. This episode of his differences with the central leadership of League also explains that the mentality of the creating such a department at provincial level was to influence the Constituent Assembly in the constitutional development process. It became evident when the department sent a 'Memorandum for enforcement of *Sharia* in Pakistan' to the CA on 18<sup>th</sup> August 1948, which said that 'what is most urgently needed is unambiguous declaration on the part of the government that the establishment of an Islamic policy was not just a pre-partition slogan but the real aim behind its demand'.<sup>34</sup> This memorandum further mentioned the functions and the duties of this department and suggested to set up the regional councils in all the cities of the country which should be composed of prominent citizens and social workers to help building up a truly Islamic society and separate '*Shariat* committee' to be set up composed of 'responsible *ulema*' of all school of thought to codify laws devised from Quran and Sunnah.<sup>35</sup> Further the lectures of its chairman were also broadcasted by the Lahore Broad Casting station which were about the principles of Islam and were significant for the public opinion. These lectures centred around the theme that it was government that was responsible to provide conducive environment where population can practise the lives according to the principles devised from injunctions of Islam.<sup>36</sup>

This department established at Punjab was unable to directly impact the working of CA with reference to constitution making during 1948, however the Objectives Resolution that will now be discussed in this part of the study had some suggestions sent by the Asad in his memorandum for instance bestowing the sovereignty to Allah, and later the appointment of *Board of Talimaat-e-Islamia* as the memorandum laid down that a '*Shariat* Committee must be appointed by the government in near future that should be composed of responsible *ulema* from all the sects to carry

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<sup>34</sup> Director of Islamic Reconstructions Government of West Punjab, "Memorandum-Enforcement of *Sharia* in Pakistan" August 18, 1948, In Council of Islamic Ideology, *Idarajati Pase-I-Manzar Aur Karkardagi* (Islamabad: Musa printers, 2016), 81.

<sup>35</sup> Ibid.

<sup>36</sup> These lectures were later republished by his wife Paula Hameeda, first edition in 1986. Muhammad Asad, *This Law of ours and other essays* (Kuala Lumpur: Islamic Books Trust, 2001) 91-118. Asad, *The principles of state and government in Islam*, ix.

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out the codification the social and economic laws from the Quran and Hadith that can be promulgated in the country'. Although I was unable to find any direct credit given to the department of Islamic Reconstruction during the available proceedings about the Objectives Resolution or the later in the appointment of the *Board of Talimaat-e-Islamia*. After the resignation of Chief Minister in 1949 and the appointment of the Asad in the Middle East division of the foreign service by the central government so that he could work to create good ties with the Muslim world, this department vanished in the pages of history. Having discussed here the working of this department it can be said that despite the fact that it was a provincial department that nothing directly to contribute to the constitutional development but still its role is not ignorable as the Objectives Resolution (1949) and the establishment of *the Board of Talimaat-e-Islamia* (1950) was the steps ahead in the same direction.

### 1.1.7 ROLE OF JAMAAT-E-ISLAMI AND JAMIAT ULEMA-E ISLAM

Jamaat-e-Islami (Jamaat) was an organised, religiopolitical organisation at the time of creation of Pakistan. Its foundations were laid in 1941 by Mawdudi, although before partition it is hard to find a statement of Mawdudi in which he supports the League leadership for the cause of the partition of the sub-continent. The major reason of this relationship was because he believed that the leadership of league was 'Pro-British and westernised' but after partition, when he shifted his party head office to Pakistan, it is visible that he took the self-assumed responsibility to pressurise the government to draft an Islamic constitution. At start, Jamaat took the solo flight without getting in coalition with Shabbir Ahmed Usmani and Jamiat Ulema-e Islam (JUI). As the former had none of its members in the CA, and it took the course to pressurise government through public campaigns and confronting the government and issuing decrees to the government servants those who were its members not to take oath of allegiance from the Pakistani state until it drafts an Islamic Constitution and not naming the continuing fight in Kashmir as *Jihad*.<sup>37</sup> It was because of these activities that he was arrested and sent to prison. According to Leonard Binder some representatives of JUI met Mawdudi in January 1948 but were not successful to overcome the hostility Mawdudi towards them.<sup>38</sup> Although both Jamaat and JUI were on two corners of the same line initially, to bend government to draft a constitution based on Islamic principles. As part of his

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<sup>37</sup> Khan, *Tameer e Pakistan Aur Ulamaey Rabbani*, 147.

<sup>38</sup> Leonard Binder, *Religion and politics in Pakistan* (Los Angeles: University of California press 1963), 98.

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public campaign from March-May 1948, Mawdudi went across the major cities of West Pakistan and addressed large gatherings of the population to propagate among them the desire of Islamic Constitution and hinted of a grand Islamic alliance, a suggestion that league viewed with concern.<sup>39</sup> It was in this backdrop that Liaqat Ali Khan mooted the Objectives Resolution on 7<sup>th</sup> March 1949, about which Jamaat claimed that the draft of the Objective Resolution was presented to Mawdudi in prison before being discussed in the CA.<sup>40</sup>

### 1.2 OBJECTIVES RESOLUTION 1949: A MANIFESTATION OF GOVERNMENTALITY

The first step toward the constitutional development by the CA was approval of the Objectives Resolution on 12<sup>th</sup> March 1949, it was called Objectives Resolution because it chartered the goals of the future constitution. This first Constituent Assembly (CA) composed of sixty-nine members, among them, eighteen were non-Muslim members. It was Muslim League dominated assembly but there were two visible opposition groups as well. First opposition group was composed of members of the Pakistan National Congress, it was composed of activists of Congress that lived in Pakistan to protect interest of the Hindus and minority population which were more than twenty-three percent of the total population, their organisational strength came mainly from East Pakistan. The second group members were those having leftist inclinations most visible among them was Iftikhar ud Din. CA met four times before the session of March 7, 1949 during which the Objectives Resolution was presented and passed by the CA. In earlier sessions it had finalised the Pakistani flag, new members were included in CA and Jinnah was given the title Quaid-i-Azam.

Quaid-i-Azam died in September 1948 and after him, Khawaja Nazim ud din (the Chief Minister from East Pakistan) became the Governor General of the country and Liaqat Ali Khan continued as its Prime Minister and he mooted this resolution on March 7, 1949. It was after extensive lobbying by Shabbir Ahmed Usmani<sup>41</sup>, as he called it ‘beacon of light’ during debates. Other

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<sup>39</sup> Seyyed Vali Reza Nasr, *The vanguard of the Islamic revolution: the Jama'at-i Islami of Pakistan* (London: IB Tauris, 1994), 119.

<sup>40</sup> He was arrested on the charges of sedition along with the tails of his disloyalty to the Pakistan movement because of his challenge to the Pakistani government as fatwa against proxy war in Kashmir despite having interim cease fire in April 1948 with India cited in: Kamran Aziz Khan “Religion and Politics in Pakistan: The Role of Jamat-i-Islami” (PhD diss., University of the Punjab, 2011), 20.

<sup>41</sup> Shabbir Ahmed Usmani was the President of the Jamiat *Ulema-e Islam* that was established in October 1945 to

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backdrops which included the memorandum by the Department of Islamic Reconstruction, the government of Punjab and Jamaat's public gatherings were of great significance. Further, the government knew the country itself came into being having the burden of many problems: refugee issue, infrastructural shortage, language issues, no land border between the two wings of the country, weak league leadership, a succession of princely states and ideological contours. These problems have been discussed in detail by various authors<sup>42</sup>, so it would be unnecessary to go into further detail of these problems. Rather the more important would be to mention here that each problem had its own significance but in longer run, the Ideological issues were the one which affected it more gravely than anything else. These issues involved the recourse of the government on Islam and developing the respective governmentality that there is no difference among the population on this issue resulted in the surge of many new adventures which included the establishment of *ulema* boards and Islamic Laws Commission discussed with details in the later part of the chapter.

The Objectives Resolution which was passed by the CA embodied the principles which were to become the basis over which the constitution was to be based it laid down the 'Sovereignty of Allah over all universe and authority be delegated to the state of Pakistan through its people to exercise within limits prescribed by him,' it further laid down that state was to observe 'tolerance', 'social justice', 'democracy' and 'Muslims shall be enabled to live their lives in individual and collected spheres as prescribed in Quran and Sunnah', 'independent judiciary', 'safeguard to the interest of minorities, backward and depressed classes'.<sup>43</sup>

After presenting the resolution, Liaqat Ali Khan in his speech assured the minority members which were in a considerable number from Eastern part of the country that the Resolution assures the rights of the minorities and following that he took the credit for presenting this resolution. After his speech Prem Hari Barma, a member from East Bengal said that 'the motion be circulated for

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counter the anti-Muslim league propaganda of Jamiat-e *Ulema* Hind of Maulana Hussain Ahmed, for more details about him and his disciple Zafar ahmed Usmani, see Khalil Ur Rehman "Sheikh Zafar Ahmad Usmani aur Unki Ilmi Khidmat" (PhD diss., University of the Punjab, Lahore, 1991),155-200.

<sup>42</sup> Ian Talbot, *Pakistan a Modern History* (Karachi: Oxford University Press, 1999), 135. Ayesha Jalal, "The struggle for Pakistan: a Muslim homeland and global politics," *Pakistan beyond the crises state*, ed. Maleeha Lodhi (Cambridge Oxford university press, 2012), 7-21.

<sup>43</sup> Text of the Objectives Resolution approved by the Constituent Assembly of Pakistan, March 12 1949 in *The Constituent Assembly of Pakistan Debates*, Vol. V (Karachi: Government of Pakistan, 1949), 100-101.

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eliciting opinion on the resolution by 30<sup>th</sup> April 1949, because this resolution was to be the foundation of the constitution which will govern the people of Pakistan for centuries.’<sup>44</sup> And the next day Bhupendra Kumar Datta another member of the PNC from East Pakistan suggested an amendment to omit the clause related to the ‘sovereignty of God’ as he believed that it should rest with the people.<sup>45</sup> He elaborated this move on following grounds that: ‘politics and religion are two distinct regions of the mind, politics relates to reason while later to faith and Intermingling both will lead to the criticism on the religion as religious texts are always open to multiple interpretations by the believers and theologians’.<sup>46</sup> He further said that if not in our lifetime this clause had the potential to be misused when a political adventurer, may use this clause to justify his rule as he just has to declare that he is the ruler of the country anointed by this clause.<sup>47</sup> Lastly, he said if it is now approved it can later develop ‘into the demand of a full fledged, caliphate, abolition of the whole banking system and the establishment of *Muhtasib* system...’.<sup>48</sup>

The move for elicit opinion was rejected by Liaqat because the majority of the members of the CA were present and Datta’s response was also criticised. I. H. Qureshi on March 9, 1949 during his speech in CA said that our ‘religion is not like a Sunday suit, which can be put on while entering the place of worship and put off when coming to day to day life.’<sup>49</sup> He further referred that Islam does not support the priesthood so why Islamic democracy cannot be taken as synonymous with ‘secular democracy’, in Islam religion and politics cannot be separated.<sup>50</sup> Liaqat Ali Khan in his speech in order to set aside the suspicions of the opposing members that Resolution guarantees their ‘religious freedom’, ‘advancement of their culture’ and ‘equality in the eye of law’.<sup>51</sup> Shabir Ahmed Usmani, termed this resolution: ‘beacon of light’ for rest of the Muslim world by expressing the hope that Pakistani state would continue working on the excellent principles provided by Islam and citing the speech of Jinnah when he was addressing ‘All India Student Federation’ at Jullundur 1943: ‘in my opinion our system of government was determined by Quran

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<sup>44</sup> Prem Hari Barma speech in Constituent Assembly of Pakistan, March 7, 1949 in *The Constituent Assembly of Pakistan Debates*, 7.

<sup>45</sup> Bhupendra Kumar Datta, *The Constituent Assembly of Pakistan Debates*, March 8, 1949, 14.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> I. H. Qureshi, *The Constituent Assembly of Pakistan Debates*, March 9, 1949, 38-42.

<sup>50</sup> Ibid.

<sup>51</sup> Liaqat Ali Khan, *The Constituent Assembly of Pakistan Debates*, March 12, 1949, 96.

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some 1350 years ago' and while referring to the letter written by Jinnah to *Pir Sahib* of Manki Sharif in November 1945.<sup>52</sup> Such repose of full serenity by the Shabbir Ahmed Usmani also supports the argument that he was the real mind behind this resolution. On March 12, 1949, this resolution was approved by the CA with an overwhelming majority and the Basic Principles Committee under Maulvi Tamizuddin Khan was appointed to draft the constitution.

The minds involved in proposing the resolution were not the graduates of the religious institutions neither were the majority in CA nor the Shabbir Ahmed Usmani and his likeminded ones<sup>53</sup> were in enough majority to bring government to accede to their demands for a constitution based on Islamic principles. What made the government realise that best resort is Islam to keep united otherwise fragile nation had a topic of discussion for various other authors as well for instance Muhammad Waseem, Binder and Talbot had mentioned in their works that that the newly established CA, which had its leadership in the elite that came from India, found Islamic Ideology as way out to the challenges which were encountered to it that's why the Objectives Resolution was not considered alarming by the 'modernists' in CA because for them it 'merely affirmed the need to use Islam as moral force in combination with politics'.<sup>54</sup> In the light of above discussion, this can be contended that this resolution manifested the governmentality of the Liaquat government to use Islamic notion in the legislative development of the country to defy the other problems in order to better govern otherwise ethnically, geographically and lingually fragile nation.

For all practical purpose this resolution was the start of the Odyssey which will never end from then onwards it ascertained that politics in Pakistan would not have to be attached with reason instead with the faith. It also gave rise to demands like introducing the 'Pak-Bangla script' by transforming the Devanagari script of Bengali to make it 'acceptable' to Muslim majority, or to declare Arabic as the national language and to bring all the Muslim countries together in a block.<sup>55</sup>

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<sup>52</sup> Maulana Shabbir Ahmed Usmani, *The Constituent Assembly of Pakistan debates*, March 8, 1949, 43-48.

<sup>53</sup> Khan, *Tameer E Pakistan Aur Ulamaey Rabbani*, 149-150. Author mentions that Shabbir Ahmed Usmani, Maulana Muhammad Shafi Deobandi and Maulana Syed Manazar Ahsan Gillani and Maulana Dr Hameed Ullah Sahb Hayderabadi were the framers of the Objectives Resolution.

<sup>54</sup> Muhammad Waseem, "Political sources of Islamic militancy in Pakistan," in *The Deadly Embrace: Religion, Politics, and Violence in the Indian Subcontinent, 1947-2002*, ed. Ian Talbot (Karachi: Oxford University Press, 2007), 48 and Binder, *Religion and politics in Pakistan*, 144-145.

<sup>55</sup> M. Rafique Afzal, *Pakistan: History and Politics 1947-1971* (Karachi: Oxford University Press, 2001), 99 and Aslam Siddiqi, *Pakistan seeks security* (Karachi: Longmans Green Pakistan branch, 1960), 82-89.

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The Jamaat applauded the approval of the objectives resolution to the extent that it has agreed to the few basic principles as bestowing sovereignty was one of the pivotal demand given by Mawdudi. The Jamaat claimed the credit of the Objectives Resolution although it expressed dissatisfaction that it did not declare clearly that Pakistan is an Islamic state, however Mawdudi from prison asked the other members of Jamaat to start educating the general population on its contents.<sup>56</sup>

Mooting the Objectives Resolution on the part of the government manifested that on the part of the government it had realised from very initial days that for the acceptability of laws for the population that they were to be drafted according to the principles of Islam, or at least given the impression that they were not against the injunctions of Islam. In this regard in the years to come it resulted in the creation of an advisory body of experts on Islam from among the *ulema* to recommend legislative assembly the measures to transform society on Islamic guidelines, to percolate the laws, in the light of the Quran and Sunnah, codify that what is Islamic system of government, what is Islamic system of election and many other such questions. So, it would not be wrong to say that the principles mentioned in this resolution involved in the creation of an institution composed of *ulema*, which became the cleavage for the inner thinking of the respective governments, which are discussed in the following pages as predecessors of the Council of Islamic Ideology.

### 1.3 BOARD OF TALIMAAT-E-ISLAMIA: AN ATTEMPT TO ENMESH KNOWLEDGE WITH POWER

On March 12, 1949, after the approval of the Objectives Resolution, the CA appointed Basic Principles Committee (BPC) to draft future constitution. It was presided by Maulvi Tamizuddin Khan and was composed of twenty-four other members including Shabbir Ahmed Usmani. The members of the BPC expressed hope that draft constitution would be ready by the end of 1950 and the first elections would be held a year after the completion of the constitution.<sup>57</sup> Although it was not until 1956 that the indigenous constitution was promulgated. A detailed analysis of the delay in constitutional development would be beyond the scope of this study, it would be enough to refer

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<sup>56</sup> Nasr, *The vanguard of the Islamic revolution*, 123-124.

<sup>57</sup> Mazhar Ali Khan, "Pakistan's Future Constitution", *Pakistan Times*, June 8, 1949.

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here that among the key issues that resulted in the delay of the constitution were related to the precise role that Islam should manifest in the setup and the provincial autonomy issue from East Pakistan. BPC started working by dividing itself into three sub-committees; its subcommittee on ‘Federal/Provincial Constitution and Distribution of Power’ further established *Board of Talimaat-e-Islamia* (BTI) in September 1949 to have the view of the *ulema* on issues related with Islam. The official report of the BTI mentions that it has been appointed to tender its opinion on following point coming up for consideration before the sub-committee, ‘How to enable the Muslims to order their lives in accordance with the tenants of the Quran and Sunnah as laid down in the Objectives Resolution?’, ‘what should be the procedure for the choice of the Head of the state, his duties and respective qualifications?’.<sup>58</sup>

It was the first official body of *ulema* appointed by the BPC that existed till the first CA was dissolved by the then Governor General in 1954, the reason for which are detailed in the later paragraphs. Here it would not be wrong to say that the appointment of the BTI can be called an attempt by the framers of the constitution to integrate them in the government instead to go directly to the Jamaat leadership or the other religiopolitical parties. So, it was an attempt by the government to develop a web of *ulema* to have the knowledge about their aspiration regarding the Islamic system of government. In order to better understand the working and the appointment of the BTI, it would be very interesting to understand this extension in power of the governments in the nineteenth century as Foucault discusses it in following words. He explains the process of exercising ‘power’, ‘it is employed and exercised through a net-like organisation... individual are the vehicles of power, not its points of application’.<sup>59</sup> Whereas examining the problems of government he underscores the relationship between the techniques of power and the forms of knowledge. The government of Pakistan in pursuit of drafting the constitution required an institution to elaborate the principles of Islam to which it had agreed by approving the Objectives Resolution. Edward Said also points out this approach of the Foucault that there is ever increasing and unstoppable expansion of power by the governments in the modern time for favouring the disciplinary society in his essay *Foucault and the Imagination of Power*. He says that while

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<sup>58</sup> Board of Talimaat-e-Islamia, *Report of the Views of the Board of the Talimaat-e-Islamia, on certain items referred to them by the sub-committee on Federal and Provincial Constitutions and Distributions of powers with annotations* (Karachi: Army Press, 1951), 2.

<sup>59</sup> Michel Foucault, “Two Lectures,” in *Power/Knowledge: Selected Interviews and other writings 1972-1977*, ed. Colin Gordon (New York: Pantheon Books, 1980), 98.

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Foucault's vision of the social world is about the order of discourse (*l'ordre de discours*) as it admires the drive towards coherent order.<sup>60</sup> The establishment of the BTI as the board of *ulema*, having its members not from religiopolitical parties or only the *ulema* expresses the expansion in the power of the government during the said period.

The composition of the Board manifests the governmentality of those in power because none of the members of the JUI, Jamiat Ulama-e Pakistan (JUP) or Jamaat was nominated in it and instead those appointed were from divergent backgrounds. Its President and secretary were Syed Suleman Nadvi and Maulana Zafar Ahmed Ansari respectively. The other nominated members were, Mufti Muhammad Shafi, Professor Abdul Khaliq, Dr Hamid Ullah and Mufti Jafar Hussain. Nominated President Syed Suleman Nadvi was the head of Darul Uloom Nadwatul Ulema, India and at that time of being nominated in BTI, he was living in India, however later he came to settle in Pakistan. He died on 22 November 1953 and was buried at Islamic College Karachi. The impetuosity is evident in the appointment of its President from the fact that even his consent was not taken prior to his nomination which is evident from the fact that he came to Pakistan in June 1950 and never participated in the proceedings of the BTI. Instead, he was persuaded by the Ehtesham ul Haq Thanvi and Mawdudi to preside the *ulema* convention which was to be held in Karachi in January 1951. The nomination of Nadvi also shows that government was not interested in appointing any one from among the religiopolitical parties that were pressurising the government, because incorporating one's leader will anger the other so that the recommendations given shall be acceptable to all the stakeholders because he was respected by all the quarters. It is evident from the fact that later he presided the *ulema* convention of the representatives of all the religiopolitical parties. Among the other members, Maulana Zafar Ahmed Ansari the secretary of the Muslim League appointed as its secretary. Professor Abdul Khaliq, an Independent member of East Bengal Legislative Assembly, Mufti Jafar Hussain a Shia member, Dr Hamid Ullah was PhD from France teaching at Sorbonne, Paris.

A brief analysis of the profiles of these members show that except Syed Suleman Nadvi and Mufti Muhammad Shafi no one had background of traditional madrassa education so cannot be called from among the *ulema* in the literal sense. This composition showed that on the one hand, it tried

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<sup>60</sup> Edward W. Said, "Foucault and the Imagination of Power," in *Foucault: A critical reader*, ed. David Couzens Hoy (New York: Basil Blackwell, 1986), 149-157.

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to appoint those who were conformist to the policy of the state to use Islam as only moral binding force and simultaneously it did not include any of the members among religiopolitical parties. The government does not want to give the impression that it was on its knees to the demand of the *ulema* in general instead had its own net to exercise power. The government wanted to have its own stake on the religious issues, instead of giving *ulema* the pivotal position as it used to be during the medieval kings where religious clergy used to be part of the court to give its opinion but by integrating them as they did not afford to completely ignore them. The inclusion of Shia member in BTI showed that it recognised the multiplicity of the approach of *ulema* from various sects and intended to have a diversified opinion as well. Lastly, the inclusion of foreign qualified Dr Hamid Ullah gives the impression that it wanted to have modernised interpretation of the Islam to make it acceptable to the government and to ‘advance’ the population. It was also to weaken the stance of the *ulema* that government itself is taking measures as recommended by the BTI to introduce the injunctions of Islam.

### 1.3.1 SECTARIAN DEBACLE IN PAKISTAN

Pakistan at the time of its creation was a predominantly Muslim country according to the first census of the country the Muslim population was more than eighty-five percent of the total population.<sup>61</sup> However this cluster of population does not exhibit that they were demanding one line of action with reference to the application of Islam because, they were divided in sects. Most prominent division of sects in Pakistani society is Sunni and Shia. The exact figures are unknown till date as none of the census of the country collected data about the sectarian divide in the country. However there are inflated and deflated claims from the religiopolitical parties of both the sects, as according to deputy secretary general of *Majlis Wahdat-e Muslimeen* (MWM), Syed Nasir Shirazi, ‘Shia population is more than twenty-five percent’ while simultaneously according to Maulana Saad Ullah the district President of the Pakistan Ulama Council the Shia population is between ‘ten to fifteen percent’.<sup>62</sup> Based on these facts it would not be wrong to say that Shia population is between fifteen to twenty-five percent. The differences between these two sects not

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<sup>61</sup> Office of Census Commissioner, Census of Pakistan 1951: Population according to religion, Table 6, Bulletin no 2, (Karachi: Ministry of Interior, 1952), 1.

<sup>62</sup> Syed Nasir Shirazi, interview by author, MWM secretariat Islamabad, November 1, 2017. And Maulana Saad Ullah, interview by the author, Pakistan Ulema Council, 13 November 2017.

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just confined to the day to day religious practices but also on the modalities with which to implement Islam. Sunnis are in majority and they are divided in Ahl-i-Hadith, Barelvi and Deobandi. Among this broader sect, the Barelvi are the followers of the teachings of the Ahmed Raza Khan from Bareilly a city in Indian state of Utter Pradesh. Their political representation in Pakistan is through Jamiat Ulama-e Pakistan (JUP). While the Deobandi adhere to the teaching of the Darul Uloom Deoband and their political representation in politics is by JUI.

Similarly, among the Shia population major division in Pakistan is Isma'ili who are organised under the leadership of Prince Karim Agha Khan and the *Ithna Ashari* Shia, that are in majority and are followers of the twelve Imams. Further, there are many other subdivisions like the followers of *Tablighi Jamaat*, *Jamaat-e-Islami*, *Ahrar*, *Pir's and Mashaikh* unions (Sufi saint) which can or cannot be referred as sects in the literal sense, but each has their own opinion regarding the measures which are Islamic according to them. Then in addition to all these there are few 'unrecognised' sects/communities to which all of the above sects agree that they are non-Muslim, but the adherents of those sects contend that they are Muslim for instance Qadiani who are also referred as Ahmadi or Lahori. During initial years the protests against them by the *ulema* led to the riots, violence and the dismissal of the Punjab government, however, it was in 1974 that the government in Pakistan declared them non-Muslim and during later years further legislations were promulgated against them that will be discussed in the later parts of the study. To keep 'religious harmony' no official census of Pakistan till date had taken data about the sects in the country, instantly after the creation of Pakistan for the first five years, there were no visible sectarian conflicts. It was in this backdrop that thirty-two *ulema* met in 1951 and presented unanimously twenty points, although mentioning that future constitution will respect the personal laws of 'recognised sects' and they should be free to practise and preach their teachings. It was for first time in 1953 when Anti-*Ahmadi* riots made the sectarian differences clear.

### 1.3.2 REPORT OF BOARD OF TALIMAAT-E-ISLAMIA

The constitution of India was promulgated in January 1950 and the Pakistani Prime Minister explained the delay in Pakistan's constitution in these words '...this delay was inevitable because we want to frame our constitution on a new ideology, on Islamic principles'.<sup>63</sup> The report of the

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<sup>63</sup> Binder, *Religion and Politics in Pakistan*, 201.

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BTI was the first official document that used the word ‘ideological state’, it says that ‘decision made by the CA in the form of Objectives Resolution to give Pakistan the character of the Islamic state i.e. ideological state which makes it different from a nation-state and with its own distinctive implications’.<sup>64</sup> The report of the BTI was sent to the members of the BPC, its first report also mentioned that the BTI was consulted for some issues. The complete report of the BTI was kept classified and not even given to the general members of the CA during the debates.<sup>65</sup> While going through this report available in the archives this study will now elaborate that what were the recommendations of this government appointed body composed of *ulema* and whether government indeed incorporated some of the recommendation of the BTI cognitively in the Basic Principles Committee(BPC) reports that were presented in the later years.

BTI report defined the Islamic state in these words: ‘a state can be called Islamic only where the divine orders contained the Quran and Sunnah reign supreme and business of the government is conducted under the will of the Allah’.<sup>66</sup> In order to attain such a state which is the corollary of the Objectives Resolution, it recommended the establishment of the ‘Federal Committee of Experts on *Sharia*’, to be appointed by the President, to decide whether or not a particular law mitigates with the requirements of *Sharia*.<sup>67</sup> The BTI members left it up to the government to decide the numbers of the members, criteria of their selection and their qualifications. However in the section during which it dealt with the qualification for the Head of the state of the country, it mentioned that, he must be, ‘Muslim’, ‘male in sex’, ‘virtuous in terms of *Sharia*’, ‘sound minded’, ‘not blind or dumb or totally deaf’.<sup>68</sup> Although the first BPC report discussed in the Constituent Assembly presented by the government on the first page mentioned that ‘A special subcommittee held discussion with the members of the BTI and their report was considered...’.<sup>69</sup> However a thorough comparison of both BPC’s report and the BTI’s proposal manifest that it had none of the provision related to the appointment of the Federal Committee of Experts on *Sharia* neither any other

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<sup>64</sup> Board of Talimaat-e-Islamia, Report of the *Views of the Board of the Talimaat-e-Islamia*, 2.

<sup>65</sup> Manzooruddin Ahmed, *Pakistan: The Emerging Islamic State* (Karachi: Allies Book Corp, 1966), 91.

<sup>66</sup> Board of Talimaat-e-Islamia, Report of the *Views of the Board of the Talimaat-e-Islamia*, 3.

<sup>67</sup> Ibid, 4.

<sup>68</sup> Virtues in term of *Sharia* was also defined by the BTI in following words, ‘The one who observes the limits prescribed by Allah, principles laid down by *Sharia* and is not guilty of sins’, Report of the *Views of the Board of the Talimaat-e-Islamia*, 6-8.

<sup>69</sup> “Interim Report of the Basic Principles Committee regarding the Federal and Provincial Constitutions and Distribution of Powers,” September 28, 1950 in *The Constituent Assembly of Pakistan debates*, Vol. viii, no I, 13.

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mechanism to abstain the future legislatures to draft anything contrary to the injunctions of Islam as recommended by the BTI. This attitude of the government manifest that it was the intention of the government that despite being appointing the Board composed of *ulema*, by keeping its report confidential even from the members of the Constituent Assembly except the members of the BPC and by not incorporating its recommendation but at the same time having the ascent that the *ulema* were consulted was the governmentality of the government. However, the rejection and the severe criticism by the members of the CA of this BPC report proved to be last opportunity for the government to ignore the recommendation of the *ulema* body. As the future two reports of the same committee and the 1956 constitution promulgated based on these recommendations incorporated the mechanism by providing a permanent state institution to abstain the future legislature from drafting any repugnant laws and even examination of existing laws.

### 1.4 REJECTION OF FIRST BPC REPORT AND MECHANISM TO SADDLE THE DEMANDS

First BPC report presented in the CA on September 28, 1950 and consequent debates held over it till November 21, 1950. This report incorporated the Objectives Resolution ‘as the Directive Principle of state policy, subject to the condition that this will nor prejudice the incorporation of Fundamental rights in the Constitution at the proper place’ and it further said that ‘government shall take such steps that would enable the Muslims to live their lives in accordance with the principles of Islam but it is not possible to enumerate the details of such activities in the constitution’, It further mentioned that ‘special committee held discussions with the members of BTI and their report was considered...’.<sup>70</sup>

During debates, Mufti Muhammad Shafi gave his opinion in these words: ‘it lacks any of the requirement prescribed by Islam and the objectives resolution’.<sup>71</sup> Otherwise, fragile opposition seemed united to criticise it.<sup>72</sup> According to Mazhar Ali Khan, in his editorial of ‘Pakistan Times’, The intensity of criticism on this report made it vital for those in government to have increased

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<sup>70</sup> Ibid, 16.

<sup>71</sup> Associated Press, “Parliament debates on fundamental rights,” The Pakistan Times, October 5, 1950. Binder, *Religion and politics in Pakistan*, 218.

<sup>72</sup> “Postponement of consideration of Interim report of the Basic Principles Committee,” November 21, 1950 in *The Constituent Assembly of Pakistan debates*, vol. viii, no. vi, 181-185. “Joint Front against League, Mamdoot’s announcement”, The Pakistan Times October 6, 1950.

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role of Islam in the future draft constitutions on the one hand and the unity of *ulema* on the other.<sup>73</sup> The criticism over this draft was based mainly on two grounds, firstly for having less role of Islam and secondly from the representatives of East Pakistan for more autonomy in the light of Lahore resolution, 1940 and not recognising the Bengali to be the national language.<sup>74</sup> It was because of this criticism it was sent back to the BPC, with the purpose to ‘enable the Committee to consider any concrete and definite proposal that are in conformity with the Objectives Resolution...’<sup>75</sup>

Apart from the attitude of the government to ascertain the permanent role of *ulema* in the future legislative setup of the country, there were some drawbacks in the working of the BTI as well whose suggestions were not thought considerable by the members of the BPC and were ignored. Among the reason for not considering the recommendations of BTI, the one was absence of its Chairman. As Syed Suleman Nadvi, never took part in its proceedings, so without his consent recommendation of the BTI cannot be assumed to be comprehensive report prepared by all the members. Another reason was that the opinions of BTI were not endorsed by the religiopolitical parties contrarily they pursued its Chairman Nadvi not to join it the convention of the *ulema* invited from all over the country.

These BTI existed officially until the first Constituent Assembly was dissolved itself in 1954, as can be seen that budget allocations were made for it during subsequent years.<sup>76</sup> This was despite the fact all the members of the BTI except for Dr Hamid Ullah who went back to Paris, participated in the Ulema convention and later became the active part of the anti-Ahmadi riots in 1953 against the same government from which they were receiving the financial benefits. This paradox of the members of the BTI was staunchly criticised by Justice Munir as well in his report of the ‘Punjab disturbances’. He said that, Muhammad Shafi and Zafar Ahmad Ansari who were ‘the member of the BTI they were also party to the direct action against their own employer as decided by the anti-

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<sup>73</sup> Mazhar Ali Khan, "Postponement", The Pakistan Times, November 23, 1950.

<sup>74</sup> Associated Press, "Protest against report on Basic Principles, all parties meetings in Chittagong", The Pakistan Times, October 12, 1950. Associated Press, "Ulema demand annulment of Basic Principles report", The Pakistan Times, November 2, 1950. Binder, *Religion and Politics in Pakistan*, 210. and G. W. Choudhury, *Constitutional Development in Pakistan* (Lahore: Longman, 1969), 73.

<sup>75</sup> "Postponement of consideration of Interim report of the Basic Principles Committee," *The Constituent Assembly of Pakistan debates*, November 21, 1950, 181-185.

<sup>76</sup> "The Central Budget List of Demands and Estimated expenditure of the assembly for the years 1954-1955," *Constituent Assembly of Pakistan Debates*, March 14, 1954, 3-11.

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Qadiani movement if they were really perturbed over the *Qadiani* issue they should have first resigned being the member of the Board...’ consequently, he held them as much responsible for disturbances as the other members of the convention that resulted in the disturbances.<sup>77</sup>

The rejection of the first report of the BPC by the members of the CA, resulted in the apparent unity of the *ulema* which was visible when they agreed to the twenty-two principles to be incorporated in the future draft of the BPC. Another change visible after this episode was that they appeared as visible stakeholder in the future legislative development of the country. It consequently resulted in the governmentality of establishing the permanent institution in the future constitution to have Islamic Law Commission to have knowledge about the pulse of the religious constituency instead of dealing directly with the opposition of the religiopolitical parties.

### 1.4.1 AUTHORITATIVE UNITY OF *ULEMA* IN RESPONSE TO BPC REPORT

In order to have the increased role of Islam in the future constitutions and to increase the pressure on government *ulema* geared up their activities and more importantly to have their presence in the future political scenario. The religiopolitical parties along with other opposition parties which were striving on their own resorted got united for the better say of their demands which were actually unique for each. In this regard, a preliminary meeting was held between the representatives of Jamaat, JUI, Jamiat *Ahl-Hadis*, Awami Muslim League, Jinnah Muslim League and Azad Pakistan Party at the headquarters of the Jamaat in Lahore.<sup>78</sup> When the Basic Principles report was deferred back it also invited suggestion from the people, regarding the principles in conformity with the Objectives Resolution to be embodied in the future report to have a constitution based on Islamic principles.<sup>79</sup>

A convention was called from 21-24 January 1951 by Ehtesham ul Haq Thanvi, he invited thirty-one *ulema* from the different schools of thoughts, Deobandi, Barelvi, Ahl-i-Hadith, Shia, Jamaat and all the members of BTI (except Dr Hamid Ullah because he was not regarded as a traditional

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<sup>77</sup> Munir, *Report of the Court of inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953*, 252.

<sup>78</sup> Associated Press, “Exploring possibility of forging united front, opposition parties conference in Lahore”, *The Pakistan Times*, November 23, 1950.

<sup>79</sup> Associated Press, “Consideration of Basic Principles Report deferred, suggestions invited”, *The Pakistan Times*, November 22, 1950.

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*alim* ), and renowned *pirs*.<sup>80</sup> The purpose of the convention was to agree on *sommum bonun* of an ideal Islamic government and to manifest that they are united for the future constitution to be Islamic. It was to be chaired by Syed Suleman Nadvi who was earlier appointed as the head of the BTI, but he did not take charge of the post. The outcome of this convention was known as *Dastur-i-Islami ke 22 Mutfika Nukat* (Twenty-two unanimous points for Islamic Constitution). It was due to reservations of the Mawdudi that, these demands were not referred as unanimous demands from the government of Pakistan for inclusion in the next constitution, instead of the *Sommum Bonun* for any Islamic government anywhere in the world. The convenor of this convention satirically referred to the government in these words: ‘You used to say that *ulema* can never agree, see we are united now... You used to say what is Islamic government, so we have told you... Now What?’<sup>81</sup>

These points included: Sovereignty to be bestowed upon Allah, future constitution to abstain the legislature from drafting any repugnant law and devise a mechanism to change the present laws according to the principles of Islam and wanted that ‘*mussalima*’ (recognised) Islamic sects should be free to practise according to their teachings and personal laws drafted will be according to their respective teachings. Qasim Zaman while analysing these twenty-two points says that many of these demands were just the vague clauses and common denominator among the *ulema*.<sup>82</sup> A careful analysis of these twenty points shows that there was nothing new in them for instance demand for the sovereignty to the almighty, safeguard from the constitution to abstain the future legislatures to draft anything repugnant to the Quran and Sunnah and devising a mechanism to provide such an environment where Muslims can live their lives according to Islam. Majority of these demands had been previously voiced from various quarters, however the major visible change was that they were presented these demands unanimously. In fact, these demand shows the emerging complications as between the sects, and the personal laws to be drafted according to the teaching of that particular sects and go further ahead by saying the Qazi courts may be established to work

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<sup>80</sup> Prominent names included, Syed Suleman Nadvi, Maulana Mawdudi (Jamaat-e-Islami), Maulana Abdul Hamid Badayuni (President Jamiat *Ulema-e* Pakistan), Maulana Haji Muhammad Amin (Amir Jamaat-e-Najia Sarhad), Maulana Muhammad Ismail (Jamaat Ahl-i-Hadith), Maulana Shams ul Haq Fareedabadi (Jamiat-e *Ulema* Islam, East Pakistan), Pir Sahib Muhammad Amin-al-Hasanat (Pir of Manki Sharif) and other *ulema* participated in it.

<sup>81</sup> Maulana Ehtesham ul Haq Tanvi, *Islami Mumlikat Ke Bunyadi Asool*, (Karachi: Chirag-i-Rah, 1951).

<sup>82</sup> Muhammad Qasim Zaman, *The ulama in contemporary Islam: custodian of change* (New Jersey: Princeton university press, 2002), 91.

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according to the teachings of each sects. Interestingly while referring to the word sect, they referred to it as ‘recognised sects’.

The term recognised sect was used specially to exclude Qadiyani’s, as many of those present here regarded them as non-Muslim and only after one year a full fledged violent movement was launched in Punjab by these *ulema* with the demand from the central government of Khawaja Nazim ud din to declare them non-Muslim and depose Zafar Ullah Khan Noon the foreign minister of the country because he was an Ahmadi. This vagueness is evident in these demands as on the one hand they wanted laws to Islamise and on the other hand, they were demanding the personal laws specified for each sect. Similarly, it is further evident in the over generalised demand that ‘Islamic economic system’ should be provided in the country without going into the details that what they mean by such system. Another vagueness was when they demanded that constitution must make sure that the head of the state should be Muslim, without defining the term itself. These divergent opinions became evident during the Punjab disturbances report 1953 when Justice Munir interviewed many of them and concluded that ‘they cannot agree even simple definition of the word Muslim’.<sup>83</sup>

These twenty-two demands were sent to Maulvi Tamizuddin who was the head of the BPC as unanimous demands of the *ulema* to include in the future report of BPC to recognise it as Islamic constitution along with the signature of all those who attended the convention. Although this convention had not any official status neither does the BPC’s second report mentioned it with reference but the increased number of Islamic clauses and the contacts of Khawaja Nazim ud Din directly with the *ulema* afterwards while ignoring the officially existing body i.e. BTI shows the effectiveness of this convention. The second draft of the BPC report was to be presented in the CA on November 22, 1952 but after meeting with the few *ulema* who were present in the convention

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<sup>83</sup> Munir, *Report of the Court of inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953*, 215-218. During the proceedings the members of the inquiry committee interviewed Maulana Abul Hasanat, Muhammad Ahmad Qadri (President, JUP), Maulana Ahmad Ali, (President, JUI-West Pakistan), Maulana Abul Ala Mawdudi (Amir, Jamaat) Ghazi Siraj-ud-Din Munir, Mufti Muhammad Idris (Jamia Ashrafia, Nila Gumbad Lahore), Hafiz Kifayat Hussain (*Idara-i-Haqq-i-Tahaffuz-i-Shia*), Maulana Abdul Hamid Badayuni (Jamiat Ulama-e-Pakistan), Maulana Muhammad Ali Kandhalvi (Darush-Shahabia, Sialkot), Maulana Amin Ahsan Islahi, and Sadar Anjuman Ahmadiya (Rabwah).

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it was delayed until December 22, 1952 to include some more clauses to make it acceptable to them.<sup>84</sup>

This was an evident change in the attitude of the government which had now resorted on Islam to avow the other difference like provincial autonomy, language disputes, economic issues on the name of Islamic nationalism for the purpose of which the support of *ulema* was vital. The BTI which was set up earlier for the above-said purpose had failed to deliver as per aspirations of the government and despite existing on paper it became part of the *ulema* block in general. The unity of the *ulema* had paid them off it manifested the increased power of the *ulema* within five years of the creation of Pakistan and the later firmly developed governmentality by the forthcoming government to try to extend their power to them by appoint them as the member of the Council or a commission of advisory nature composed of those who are conformist to the policy of the state and then chose the measures which made suite their political strategy.

### 1.4.2 SECOND/THIRD BPC REPORT AND THE INFLUENCE OF *ULEMA*

After the assassination of Liaqat Ali Khan, Malik Ghulam Muhammad the Finance Minister became the Governor General and Khawaja Nazim ud Din who was earlier Governor General, took over as Prime Minister. The second report of BPC was laid down in the CA by him at December 22, 1952. The influence of the demands of *ulema* was evident in this draft. It omitted the subjugation of Objectives Resolution to the fundamental rights as was done in the previous draft. Unlike the previous draft now it mentioned the steps which were to be taken on the part of the future governments to enable Muslims live their lives according to the principles of Islam which included the compulsory teaching of Islamic Studies, prohibition of drinking, gambling, prostitution, elimination of *riba*, (interest), promotion of Islamic moral standards, governmentally managed system of Zakat, Waqf and mosques by the government, establishment of an organisation '*Amar-Bil-Marooif Wa Nahi Anil Munkar*' (for ordering good deeds and stopping from bad deeds).<sup>85</sup> Regarding the reiterated demand of abstaining the future legislatures, from drafting the repugnance laws it purposed the establishment of an '*ulema* board' with authority to annul any law

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<sup>84</sup> Khan, *Tameer e Pakistan Aur Ulamaey Rabbani*, 187.

<sup>85</sup> "Basic Principles Committee Report, Chapter II Directive Principles of State policy and Chapter III: Procedure for preventing legislation repugnant to the Quran and Sunnah," *The Constituent Assembly of Pakistan debates*, December 22, 1952, 80-160.

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which it considers repugnant to the principles of the Quran and Sunnah. This study will now focus on the provisions in the constitution, its functioning and profile of its members because it was to be the predecessor of the Council of Islamic Ideology and its working will manifest the governmentality of the respective government.

### 1.5 THE PROVISIONS OF A 'BOARD' AT CENTRE AND PROVINCES

According to the draft of the second BPC report, the Head of the state was to be appointed for five years a Board for which the maximum membership was five, who were to be well versed in Islamic Law. This draft also elaborated the working mechanisms of this Board, according to which if any member of the legislature raises objection regarding repugnancy of law in discussion, the Chairman of the house should inform it to the Head of the state, who would in turn consult the Board to ascertain its repugnance.<sup>86</sup> Further if the Board is unanimously of the opinion that it is repugnant it should be returned to federal legislature with the message of the Board that it should be reconsidered on the line suggested in message when the point raised by the Board are disposed of as prescribed, it should be resubmitted to the Head of the State and same kind of procedure was to be adopted at level of units (Provinces).<sup>87</sup>

This purposed Board was called '*supra legislature*' by the editorial of Pakistan Times because the *ulema* who were eager to participate in politics were to have share in power and further said that by proving such Board the BPC had exceeded the limits prescribed by the Objectives Resolution.<sup>88</sup> A brief analysis of the provisions of this Board suggests that instead of working in the support of the government it could have led to the deadlock and the delays in the legislation. As any member of the legislature can point out for any legislation with delaying intention to be referred to Board. The draft was silent about the qualification of the members of the Board while giving the leverage to appoint anyone as its members unlike the stance of *ulema* who considered themselves custodian of religion because of having *madrassa* education.

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Inam ur Rehman, *Public opinion and political development in Pakistan* (Karachi: Oxford University Press, 1982), 34 and Mazhar Ali Khan, "Basic Principles", Pakistan Times, January 11, 1953.

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Zafar Ahmed Usmani, called for the second convention of *ulema* so that instead of each giving separate opinion it would be better to give a unanimous opinion about the draft. From January 11-18, 1953 to give an opinion about the second draft of the BPC nine sessions were chaired by the renowned *ulema*.<sup>89</sup> Among the recommendations of this convention, regarding the Board with the authority to decide the repugnancy, the *ulema* said that it is not suitable to appoint such a Board composed of multiple *ulema* instead they recommended giving this authority of deciding the repugnancy of laws be delegated to the Supreme Court.<sup>90</sup> They further elaborated in this regard that that for the next fifteen years until the judges of the Supreme Court can give decisions according to Islamic laws, as interim setup, five *ulema* may be appointed at the Supreme court with the qualification that they should have at least ten years of teaching experience in a religious madrassa, or in any areas they should have the authority to give religious decree(*fatwa*) for last ten years or should have been *Qazi* for at least ten years.<sup>91</sup> Further, these suggestion said that regarding the clauses which exempted the monetary bills from this procedure this should be only for five years unless proper mechanisms are devised in this regard.<sup>92</sup>

Third BPC was also called as Bogra Formula, because it was presented in the CA by the next Prime Minister Mohamad Ali Bogra appointed by the Governor-General on October 17, 1953 and it was passed by CA on September 21, 1954, during the final voting for adopting this report eleven member all from the minorities voted against its approval.<sup>93</sup> This approved draft incorporated most of the demands suggested by the *ulema* in response to the 2<sup>nd</sup> BPC, it bestowed the authority of repugnancy to the Supreme Court, instead to the Board which was earlier recommended in the 2<sup>nd</sup> BPC report on the desire of the *ulema*. Further, it gave the right to challenge any law not just to members of the legislature but to every citizen of Pakistan and the monetary measures relating to the banking, insurance loans and other matters were given twenty-five years to amended according to principles prescribed by the Quran and Sunnah for which a separate commission was to be

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<sup>89</sup> Maulana Syed Suleman Nadvi, Muhammad Hassan Amritsari, Maulana Zafar Ahmed Usmani, Maulana Abul Hasanat, Maulana Dawood Ghaznavi and the sessions were held from 11-18 January 1953.

<sup>90</sup> Hafiz Mujadidi, *Bunyadi Asoolo Ki Committee Per Pakistan Ke Har Maktab-i-Khiyal Ke Muqtadar Ulema Ka Mutfika Faisla Aur Tarmemat* (Karachi: Nazimabad, D-4, 1953), 23-24.

<sup>91</sup> *Ibid*, 23-24.

<sup>92</sup> *Ibid*.

<sup>93</sup> Prem Hari Barma, Prof. Raj Kumar Chakraverty, Shri Sris Chandra Chattopadhyaya, Akshay Kumar Das, Shri Dhirendra Nath Datta, Shri Bhupendra Kumar Datta, Kamini Kumar Datta, Jnanendra Chandra Majumdar, Birat Chandra Mandal and Dhananjay Roy, *The Constituent Assembly of Pakistan Debates*, September 21, 1954, 571.

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appointed to gradually conforming it to Islam.<sup>94</sup> Syed Suleman Nadvi who was most respected by both the government and the *ulema* staged a significant role in the inclusion of these clauses in the draft. Mufti Shafi the member of BTI called upon the citizen of Pakistan to observe Islamic Constitution day on October 22, 1954 and demanded the enforcement of drafted constitution without further delay, Jamaat also endorsed this decision.<sup>95</sup>

Mohammad Ali Bogra declared that the new constitution will be promulgated on December 25, 1954 according to the approved draft. Governor General annoyed by the act of the CA on September 20, 1954 by which it curtailed his discretionary power under the 1935 India act to forbid him from dismissing Prime Minister which he did in the case of previous Prime Minister Nazim ud Din dismissed the CA on the pretext that ‘... Constitutional machinery has broken down...’, he declared emergency in the country as, ‘...Constituent Assembly had lost the confidence of the people...’<sup>96</sup> This decision of Governor General was challenged by Maulvi Tamizuddin Khan in the Sindh High Court which annulled this dismissal but later the Federal Court under Chief Justice Muhammad Munir justified the decision of the Governor-General on April 13, 1955 thus laying the foundation of *Nazaria-e-Zaroorat* ‘doctrine of necessity’.<sup>97</sup> These discussion give a clear picture of the approach of the government in the 2<sup>nd</sup> and the 3<sup>rd</sup> BPC report and the demands of *ulema* which gradually changed from the recognition of Islam as the official religion to finally giving the veto authority to the judiciary over the future legislature to declare any law repugnant to the Quran and Sunnah. Contrarily on the part of the government in the first BPC report mentioning that it is not necessary to mention the measures required to provide Islamic way of life to the provisions which established a permanent Islamic Law Commission and an Institute of Islamic research that are now discussed in this part of study to understand their working

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<sup>94</sup> “Report of the Basic Principles Committee as adopted by the Constituent Assembly of Pakistan”, *The Constituent Assembly of Pakistan Debates*, September 21, 1954, 499-571.

<sup>95</sup> Binder, *Religion and Politics in Pakistan*, 360-361.

<sup>96</sup> Proclamation of emergency vide order no 94(1)54-Cord, dated October 24, 1954.

<sup>97</sup> While justifying the extra constitutional use of emergency by the Governor General, he cited the maxim of Bracton that ‘that which is otherwise not lawful is made lawful by necessity For more details see: Muhammad Nasrullah Virk, “Doctrine of Necessity-Application in Pakistan- Cases of Immense Importance- A Critical Review,” *International J. Soc. Sci. & Education* , vol. 2, issue 2, (2012), 82-87, accessed 24 October, 2017, <http://ijsse.com/sites/default/files/issues/2012/Volume%20%20Issue%20%20,%20%202012/Paper-9/Paper-9.pdf>.

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mechanism and evolve the attitude of the government from its composition and the duties given to it by the constitution.

### 1.6 1956 CONSTITUTION AND MECHANISM TO SADDLE *ULEMA*

After the dissolution of first CA, Governor General called the session of the second Constituent assembly which was to be composed of eighty members. These members were selected indirectly from the provincial assemblies having forty members each from East and West Pakistan. This assembly met for the first time on 7<sup>th</sup> July 1955 and Mohammad Ali Bogra remained the Prime Minister. General Mohammad Ayub Khan and General Iskander Mirza also sworn in as the defence minister and interior minister respectively. In this CA none of the party had the majority, unlike the earlier CA where Muslim League had the majority. It was a coalition government of Muslim League with United Front. Soon this coalition government elected Chaudhry Mohammad Ali as its new Prime Minister and started working to draft constitution considering the draft of the Bogra formula. This assembly approved the One-unit bill on 30<sup>th</sup> September 1955 and on 29<sup>th</sup> February 1956 it approved the draft of 1<sup>st</sup> Constitution of Pakistan which was to be promulgated on 23<sup>rd</sup> March 1956.

*Ulema* were fearful that their prior efforts will result in futile as they were fearful especially from the United Front being based in East Pakistan on the suspicions that they are not sincere to the cause of Islam', which is evident from the letters of Zafar Ahmed Usmani and the speech of Amin Ahsan Islahi from the platform of Jamaat. Zafar Ahmed Usmani wrote a letter to the PM and expressed his concerns: 'through newspapers I came to know that in the future draft of the constitution the Objectives Resolution is amended?' 'Clauses which were agreed regarding repugnancy have been changed?' And 'Hindu member of the legislature has demanded to omit Islamic Studies from the syllabus?' In the end, he said that that I hope that these concerns will prove wrong but if proved otherwise then it will result in increased anarchy and you will not find the nation with you.<sup>98</sup> He received a response through PM's political secretary that, 'Islamic

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<sup>98</sup> Letter from the Zafar Ahmed Usmani, Darul Uloom Ashrafabad, Tando Allahyar Sindh, Reproduced by: Khan, *Tameer e Pakistan Aur Ulamaey Rabbani*, 202-206.

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studies will not be omitted, other concerns are under consideration and I will try to act as per your aspirations as much as possible.<sup>99</sup>

On January 8, 1956 when the Minister for law, Ismail Ibrahim Chundrigar presented the draft of the constitution. Interestingly it was criticised on the one hand for having many Islamic clauses by the East Pakistani parties while simultaneously by the religiopolitical parties to include more Islamic clauses. The *Krishak Sramik* party, termed it ‘*Mullahism*’, Sindh Awami *Mahaz* termed it neither Islamic nor secular, Pakistan Progressive party also criticised it due to its excessive Islamic nature.<sup>100</sup> On the other hand, All Parties Committee on Islamic Constitution held a convention on 12<sup>th</sup> February 1956 it included the representatives of JUI-Islam, JUP, Jamiat Ahl-i-Hadith, Jamaat, Nizam-i-Islam Party they sent government eighteen recommendations to be included in the constitution. They were the reiteration of those recommendation given earlier in repose to the second BPC report discussed above except their change in the instance that they agreed to the appointment of the Commission as suggested in the draft constitution.

Regarding the purposed Commission they recommended that constitution must clarify their qualification that they should be ‘expert of Islam’ and monetary system which were exempted in the draft should also be brought under the scope of the Commission to conform it to the injunctions of Islam.<sup>101</sup> Further, the Commission should present its report twice in a year and Assembly after considering these reports would enact laws accordingly. These recommendations manifest that they were ready to cooperate as their earlier suggestions as earlier they have never agreed to the recommendations of the government to appoint a board instead they wanted this authority to be given to the judges of the supreme court and their representatives be appointed to that Court to take decisions. Now they were trying to conform with the governmentality of the regime by defining the qualification of the members which the government was supposed to appoint according to the constitution by becoming its member.

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<sup>99</sup> Ibid.

<sup>100</sup> Kisan-Mazdoor Party’s statement, “Conditional support for draft constitution”, January 12, 1956, The Pakistan Times. Associated Press, “Reactions to draft constitution” January 15, 1956, The Pakistan Times. Associated Press, “Debates in Constituent Assembly”, January 28, 1956, The Pakistan Times.

<sup>101</sup> This gathering of *ulema* was held on February 12, 1956 as the draft of the Constitution was made public after January 9, 1956. Khan, *Tameer e Pakistan Aur Ulamaey Rabbani*, 228-229. “Maudoodi supports constitution Bill and suggested amendments,” January 28, 1956, The Pakistan Times, Lahore.

## 1.6.1 ISLAMIC LAW COMMISSION AND INSTITUTE FOR ISLAMIC RENAISSANCE

Since the struggle started for drafting the constitution nine years ago, while skimming through the demands of the *ulema* it was evident that *ulema* wanted a mechanism to abstain the future legislatures from drafting any law repugnant to Quran and Sunnah to assure their role in the future political setup. In this regard, they wanted the right of veto for themselves being appointed to the Supreme Court and giving the right of challenging any legislation in the said court. This is clear from the above recommendations of *ulema* in their first convention of 1951, 1953 and 1956. On the other hand, the governmentality was to keep Islam in the centre but through a board or a commission of advisory nature. Further not explicating the qualification of its members. So, having the leverage to appoint anyone as the member of the body having '*De facto*' authority over Islam to extend its control. It is evident in the nature of Islamic Reconstruction authority established in Punjab government in 1947 or the BTI appointed in 1949 and the Commission recommended by the draft of 1956 constitution. Foucault helps us to understand this approach of the respective governments that 'power is not something which is imposed on another but as a network or a web of relations which circulate through society'.<sup>102</sup> The mentality of appointing such Board of conformist nature was in line with the policy of the state to integrate *ulema* in the power corridor. The Constitution was finally promulgated on 23<sup>rd</sup> March 1956, and its article 197 and 198 dealt with the establishment of the Islamic Law Commission (Commission) and an Islamic research Institute (Institute) with the following stated functions.

## 1.6.2 'THE COMMISSION', ITS NATURE AND ROLE

The article 198 of Constitution provided that: 'No law shall be enacted which is repugnant to the Injunctions of Islam as laid down in the Holy Quran and Sunnah, hereinafter referred to as Injunctions of Islam, and existing law shall be brought into conformity with such Injunctions'.<sup>103</sup>

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<sup>102</sup> Sara Mills, *Michel Foucault* (London: Routledge, 2003), 30.

<sup>103</sup> The Constitution of the Islamic Republic of Pakistan 1956, Part 12: General Provisions, Chapter 1, Islamic provisions: Article 198 (1), it further clarified that 'Quran and Sunnah shall mean the Quran and Sunnah as interpreted by that sect' and nothing in this part shall affect the personal laws of the non-Muslims

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The President was to appoint within one year of the promulgation of the Constitution, the said Commission for the following effects:

- ‘(i) as to the measures for bringing existing law into conformity with the Injunctions of Islam, and
- (ii) as to the stages by which such measures should be brought into effect; and
- (iii) to compile in a suitable form, for the guidance of the National and Provincial Assemblies, such Injunctions of Islam as can be given legislative effect.’<sup>104</sup>

In addition, the above said provision of the article 197 of the constitution further provided for the President to ‘establish an organization for Islamic research to assist in the reconstruction of Muslim society on the true basis’.<sup>105</sup> The constitution was silent on the connections of these departments as the research done by the department was to consider by the commission to work for the stated purpose. It was also silent on the qualification and the experience of the expert which were to be appointed to the Commission giving the leverage to the government to appoint anyone which it feels suitable. The *ulema* have earlier pointed out in their recommendations to the draft of the constitution that such members must have at least ten years of teaching experience in a *dini-madrassa*. Secondly, this article not made it compulsory for the legislature to consider its recommendation as was recommend by *ulema* to make it compulsory for the legislature to enact laws based on the recommendations of the commission twice a year.

### 1.6.3 DELAY IN THE APPOINT OF THE COMMISSION AND THE INSTITUTE

The Commission which was provided by the 1956 constitution in article 197 was to be appointed by the government within one year of the promulgation of the constitution. It was exactly one day before the limit was to expired, March 22, 1957, that the notification for the appointment of the Chairman was issued under the ministry of Education and name of its members were announced even with more delay.<sup>106</sup> Before proceeding to the profiles of its chairman and the members of the commission it would be pertinent to discuss what were the reasons for the delay in its appointment

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<sup>104</sup> *Ibid*, Article 198 (3) (i) (ii)(iii).

<sup>105</sup> *Ibid*, Article 197 (1).

<sup>106</sup> Notification No. F. 19(1) 56-Ref dated 22 March 1957, Karachi, The Gazette of Pakistan, Extraordinary published by authority, Registered No. S. 1033, 633.

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through the debates in the National Assembly between 23 March 1956 to the 22 March 1957 when the Chairman of the Commission was announced.

During this one year several members of the legislature pointed to government to appoint the institutions as envisioned by the article 197. Very first reference in this regard was made by the Syed Misbahuddin Hussain a member from East Pakistan, on 28<sup>th</sup> March 1956 that government has allotted any budget for the establishment of the Islamic institution proved in the article 197 of the constitution.<sup>107</sup> In the coming month Maulana Hafiz Athar Ali of the *Nifaz-e-Islam* party, criticised the government on 21 February 1957 in the National Assembly, that the ‘institution provided in the article 197 of the constitution has not yet been set up by the government, so it must take steps for implementing these provisions’.<sup>108</sup> Likewise, demands were reiterated by the Farid Ahmad a member from East Pakistan when he asked that ‘will the minister of education be pleased to state whether an organisation for Islamic research and instruction in advance studies to assist in the reconstruction of Muslim society contemplated in article 197 has been set up? If not, what are the reasons, therefore? Do government propose to take steps to implement the provisions of that article?’<sup>109</sup> similarly, on 9<sup>th</sup> March, Yusuf A. Haroon a member from West Pakistan, asked a question that ‘will the minister of education be pleased to say body stated in article 197 have been set up? If not, Why?’<sup>110</sup>

On the basis of these few references made here it can be said that government benches were criticised several times during the assembly debates to appoint the members of the Commission. So, it cannot be said that government had mistakenly forgotten to appoint the Commission and suddenly someone told the President on March 21, 1957 that you have to appoint the Commission as it was the limit provided in the constitution and the notification was at once issued on 22<sup>nd</sup> March 1957. Instead it is apparent that consciously government delayed the appointment of Commission. From the responses to the questions by the Education Minister, this governmentality of postponing the appointment and searching for ‘suitable ones’ is visible. As in response to the question of Hafiz Athar Ali and Farid Ahmed, the then Minister for Education, Zahir ud Din replied

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<sup>107</sup> Syed Misbahuddin Hussain, *National Assembly of Pakistan debates*, March 28, 1956, 162.

<sup>108</sup> Maulana Hafiz Athar Ali, *National Assembly of Pakistan debates*, February 21, 1957, 855.

<sup>109</sup> Farid Ahmad, *National Assembly of Pakistan debates*, February 23, 1957, 948.

<sup>110</sup> Yusuf A. Haroon, *National Assembly of Pakistan debates*, March 9, 1958, 1066.

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that, ‘... In view of the provision in the constitution for the establishment of Central Islamic Research and Instruction Institute, a provision of PKR 3.5 lakh has been made in 1957-1958 budget and steps are been taken to implement the provision of the constitution’.<sup>111</sup> While in response to the question of Yusuf Haroon the then in-charge of Ministry of Education, Basanta Kumar Das, replied that, ‘... An organising committee has been set up with the approval of President to draw up detailed plans for the working of the proposed institute...’.<sup>112</sup> In the light of the statement on both the instance from the education minister it manifest that the Chairman and the members of the Commission were well thought out names, so in its composition we can trace out the governmentality of the governments. The name of the Chairman of the Commission was Justice Muhammad Sharif as its, a judge of the Supreme Court of Pakistan and it further said that the names of the other members of the Commission will be announced after consultation with the Chairman. It further mentioned that Commission shall submit its report within five years of its appointment which would be laid down before the National Assembly within six months of its receipt and assembly after considering it shall enact the laws in respect thereof.<sup>113</sup> Justice Muhammad Sharif was the judge of Lahore high court and the acting judge of the Supreme Court from 13<sup>th</sup> April 1954 to 1<sup>st</sup> April 1958, during which he was given the additional charge of the said Commission. After the appointment of the Commission, other members were appointed on 17<sup>th</sup> August 1957 with a further delay of five months.

The appointment of the Commission under the Chairmanship of Justice Muhammad Sharif was criticised by the members of the opposition. In this regard Yusuf Haroon brought forward an adjournment motion in the National assembly, to point out the ‘failure to finalise and appoint a commission under article 198 (3) of the constitution. In his speech he said that, ‘government is not serious about bringing the laws of the country in conformity with Quran and Sunnah’ his views were supported by the Khan Muhammad Jalaluddin another member from the opposition, who said that ‘Commission should have been appointed from among the top *ulema* at an early date’.<sup>114</sup> The most severe criticism regarding the qualification of the nominated Chairman was pointed out by the Pir Muhammad Ali Rashidi. His criticism was based on two grounds: firstly the Chairman

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<sup>111</sup> Zahir ud Din, *National Assembly of Pakistan debates*, February 23, 1957, 948.

<sup>112</sup> Basanta Kumar Das, *National Assembly of Pakistan debates*, March 9, 1958, 1066.

<sup>113</sup> Notification No. F. 19(1) 56-Ref dated March 22, 1957, Karachi, The Gazette of Pakistan, Extraordinary published by authority, Registered No. S. 1033, 633.

<sup>114</sup> Yusuf Haroon and Khan Muhammad Jalaluddin, *National Assembly of Pakistan debates*, April 8, 1958, 51 and 55.

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cannot understand Arabic which is the language of Quran and Sunnah and secondly being not an authority on Islamic knowledge, he said that ‘... Judges who have for most of the time carried on with the old system of laws are no longer consistent with Islamic laws or with the laws of Quran and Sunnah... you should have selected the greatest Muslim divine for this purpose’.<sup>115</sup>

From the government benches A. H. Dildar who was the Minister of Food and Agriculture and the Sardar Amir Azam Khan (Law Minister) defended the appointment of one-man Commission. Sardar Amir Azam Khan said that he ‘took over as law minister only three months ago... after consulting with the Chief Justice of the Supreme Court he constituted the Commission... which is now complete with the appointment of its Chairman’.<sup>116</sup> After his statement, the debate went into legal hair-splitting that whether the appointment of its Chairman it can be regarded as the appointment of the Commission. At the end debate finished with the final words from the Law Minister that ‘Commission will be expanded soon... eminent *ulema* shall be considered the list of whom had already been prepared and their profile are being examined... after consultation with its Chairman’.<sup>117</sup>

These debates on the appointment of its Chairman gives us a better idea, whereas on the one hand the speeches of the opposition members, for instance, Pir Muhammad Ali Rashidi who himself had been in government before September 1957 never demanded from his government to appoint the Commission when once he was in opposition he was giving such speeches to criticise the government. Likewise, the Yusuf Haroon who brought forward this adjournment motion, he was the secretary of the party that was ruling before September 1957, at that time he never advised the President to appoint the Commission in those six months after the promulgation of the constitution.

The delay was not because of the fact that it was provided in the constitution on the desire of the ulema and neither because government does not want to nominate it which is evident from the statements of the governmental benches during discussion in the house. Instead it would not be wrong to say that it was because the working of this proposed Commission depended on the stability of the government that itself was crumbling and shattering, this led to the delay in the

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<sup>115</sup> Pir Ali Mohammad Rashidi, *National Assembly of Pakistan debates*, April 8, 1958, 51, 55 and 58.

<sup>116</sup> Sardar Amir Azam Khan, *National Assembly of Pakistan debates*, April 8, 1958, 69.

<sup>117</sup> *Ibid*, 70-71

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appointment of the Commission and those members which were earlier in government and did not asked the President to appoint the Commission but when they became the part of the opposition they started criticising the government for not appointing it. The governmentality in the appointment of Justice Muhammad Sharif as the Chairman of the Commission can be understood in this sense that government wanted to appoint it a broadly-based body that will base its decision keeping in view the legal modalities and not only the principles defined in Quran and Sunnah. Another more explainable reason for not appointing someone from the *ulema* as the Chairman would have led to the criticism on the neutrality of the commission itself because the appoint of an *alim* from one religiopolitical party or a sect would have made it controversial in the eyes of all others.

### 1.6.4 COMPOSITION OF THE COMMISSION

After the appoint of its Chairman the other ten members were appointed on 17<sup>th</sup> August 1957. The names of these members were: Maulana Zafar Ahmad Usmani, Maulana Kifayat Hussain, Maulana Ghulam Murshad, Maulana Akram Khan, Maulana Amin Ahsan Islahi, Dr Syed Ijaz Hussain Jafri, Ghulam Ahmed Parvez, Maulana Raghieb Ahsan, Allama I. I. Qazi and A. K. Brohi.<sup>118</sup> A brief explanation of the profiles of these members will help us to explain the approach and the expectations of the government from this constitutional body which was a predecessor of the Council of Islamic Ideology. Since after the appointment of its members it existed for few months only because the constitution was abrogated and with that it also ceased to exist. It will only be once again from the assembly debates especially during the budget sessions and the personal accounts its members that we can construct if is its member ever met and what they discussed as otherwise there is no official record available about the department in the archives.

Maulana Zafar Ahmed Usmani was a renowned Deobandi *alim*, that hoisted the flag at Dhaka on 14<sup>th</sup> August 1947, as he had played a significant role in the referendum of Sylhet to join Pakistan.<sup>119</sup> He was prominent among those demanding Islamic constitution in this effort he had earlier written

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<sup>118</sup> Notification No. F. 7(6) 56-Ref dated 17 August 1957, Karachi, The Gazette of Pakistan, Extraordinary published by authority, Registered No. S. 1033, 1701.

<sup>119</sup> His books included, *Ahkam-ul-Quran, Ala-i- Alsanani, Imdad-al-Ahkam* for more details above his biography see, *Hayat Sheikh ul Islam Fariyah al umat*, by Allama Zafar Ahmed Usmani, composed by Hafiz Muhammad Akbar Shah Bukhari, *Idara Al-Ruran wa Al-aloom*, Al-Islamia, Karachi, Garden East.

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several letters to the earlier Prime Minister that future constitution must be based on the Islamic principles. In 1954 he shifted to West Pakistan and then afterwards he lived at Tando Allahyar, Near Hyderabad and lived till 1974. Another prominent member was Amin Ahsan Islahi (Islahi), he was among the founding members of Jamaat and member of the central executive of Jamaat and until he resigned from it in 1960 because of difference with Mawdudi.<sup>120</sup> He was a student of Hamiduddin Farahi and after his resignation from Jamaat he kept working on Islam and also established *Idara-i-Tadabbur-i-Quran wa Hadith* in 1981 and a quarterly research journal *Tadabbur* was also published by this institute.<sup>121</sup>

Next member was Ghulam Ahmed Parwez (1903-1985), He was a friend of Dr Allama Mohammad Iqbal, and through this friendship, he met Mohammad Ali Jinnah. In 1938 at the request of Iqbal and instruction of Jinnah he also wrote essays in the monthly magazine of *Tolu-e-Islam* (Dawn of Islam). One of the first cover features to appear in the magazine under Parwez was titled, ‘Mullahs have hijacked Islam.’<sup>122</sup> He had been the member of Muslim League till 1956 and was appointed a member of this Law Commission. After the dissolution of Constitution and the consequent abolition of the Board, he continued to publish his books and deliver lectures about his interpretation of Quran to his followers that were called ‘Parwezi’.<sup>123</sup> As per his interpretations of Islam, ‘No public law can be framed unless all sects unanimously approve it’<sup>124</sup>. He emphasized on ‘literal’ meanings of the Quran, as he says that *Salat* (Muslim prayer) means *Tanzim* (discipline) not prayer as is normally practised.<sup>125</sup> As the influence of political *ulema* increased in the country with the passage of time, he went into desolation and in 1978, it aggravated to this extent that he

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<sup>120</sup> Dr Abdul Rauf, “Life and works of Maulana Amin Ahsan Islahi (1904-1997),” *Pakistan Journal of History and Culture*, vol. xxx, no. 1 (2009): 183-219. His personal website administered by his institution provides information about this biography, <http://www.amin-ahsan-islahi.org/about>, accessed October 25, 2017.

<sup>121</sup> Quarterly research journal *Tadabbur*, <http://www.tadabbur-i-quran.org/a-brief-introduction-to-tadabbur-i-quran/intro-by-shehzad-saleem/>, accessed October 25 2017.

<sup>122</sup> “The rise and fall of a spiritual rebel,” *Dawn*, September 21, 2014. For more details and archive of previous editions of *Tolu-e-Islam* magazine see <http://tolueislam.org>, [www.parwez.tv](http://www.parwez.tv) accessed October 25, 2017.

<sup>123</sup> Ghulam Ahmed Parwez an interview with Pakistan Television not broadcasted, available on you tube tell that “his source of income are the lectures distributed by tape records abroad”, <https://www.youtube.com/watch?v=eX-jZqUdk0c>, accessed March 1, 2017.

<sup>124</sup> Ghulam Ahmed Parwez in an interview available elaborate his views, vision, beliefs, approach, towards Islam. <https://www.youtube.com/watch?v=eX-jZqUdk0c>, accessed March 12, 2017.

<sup>125</sup> “Refuting Ghulam Ahmed Pervaiz Views About Salat by Dr Israr Ahmed”, <https://www.youtube.com/watch?v=GRNYhSnqZP0>, accessed March 12, 2017

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was physically thrashed during a lecture at Mughalpura, Lahore.<sup>126</sup> He died in 1985 at Lahore in desolation, very briefly reported by the press. Javed Ahmed Ghamidi and Dr Israr Ahmed regarded him as '*fitna*' of refuting Hadith.<sup>127</sup>

Kifayat Hussain and Syed Ijaz Jafri were the representatives of the Shia's, which compose the considerable representation in the country. Shia *ulema* differed in religious practices with majority Sunnis which are further divided into various groups. East Pakistan representation was also important to be considered while the appointment of the Council to have them on board. Maulana Ghulam Murshad and Maulana Akram Khan were from East Pakistan. Among them Akram Khan was a Bengali Journalist and founder and the editor of Bengali newspaper, '*The Azad*', President of Muslim League East Pakistan till 1960.<sup>128</sup>

A brief pen picture of the profiles of the members of the Commission appointed after more than a year of the promulgation of the constitution had multi-pronged consequences. On the first hand it had agreed partially on the demands of the religiopolitical parties as at least one of the members of the two religiopolitical parties was appointed as its member. Simultaneously by appointing Ghulam Ahmed Parvez as one its members, a modernist, two *Shia* members and two members from the East Pakistan specifically manifest the approach that even if the said commission would had existed from long there are very blinking chances that these members from so diverse background would have agreed on the uniform set of laws to be promulgated in the times to come. This composition endorses the governmentality of appointing a docile body from among the *ulema* to have their ascent on hand and keeping in controlled and divisive on the other, a technique that ultimately results in the growth of power over the government considering the understanding of Islam among the population which required to have law not to be against Islam. Another aspect of the very less work done by the Commission in few months for which it existed shows that the working of such body depended directly on the stability of the government. So next section will discuss during the few months that Commission existed its functioning derived from the assembly

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<sup>126</sup> Associated Press, "The rise and fall of a spiritual rebel", September 21, 2014, The Dawn.

<sup>127</sup> "Ghulam Ahmed Parvez ki fikar Javed Ahmed Ghamidi ki Nazar Mein", <https://www.youtube.com/watch?v=zgORdSurLXI> and Dr Israr Ahmed's view about Parvez <https://www.youtube.com/watch?v=GRNYhSnqZP0> accessed February 17 2017.

<sup>128</sup> "*Banglapedia, National Encyclopedia of Bangladesh*", [http://en.banglapedia.org/index.php?title=Azad,\\_The](http://en.banglapedia.org/index.php?title=Azad,_The), accessed March 13 2017.

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debates, works its members to further explore the attitude of the government towards the said Commission.

### 1.6.5 FUNCTIONING OF THE COMMISSION

There is no official record or any report about the meetings of the members of the Commission, neither it is possible to interview any of the member of the commission, however through the works and the letters of the commission the blinking glimpses of its functionality can be derived, from the website that is administered by the *Idara Tadabbur Quran* and it mentions that he worked as its members. Similarly, in *Tazkara-al-Zafar*, it is also mentioned that Zafar Ahmed Usmani participated in few meetings of the Commission, and on the working of the Commission he said that ‘... As far as the question of workability of the Commission is concerned, we can only recommend government it solely relies on government to accept it or not’.<sup>129</sup> However a more clear evidence that at least once these members met is available in the Assembly debates. Regarding the functioning of the Commission, on September 8, 1958 during the question answering session, Yousaf A Haroon, referred a question to the Minister of Law, Kamini Kumar Datta, ‘will the minister of Law be pleased to state progress so far made by the Islamic Law Commission...’, he further asked that, when will it complete the work? If it is functional? If no, why? <sup>130</sup> The Law Minister replied that ‘it was completed in August 1957, and its first meeting was held in January 1958 for three days and two more meetings will be held in the financial year’. He further said that ‘it will complete its work by 23 March 1962 and in the first meetings they prepared draft questions to be sent to the learned people within the country and outside... a budget of PKR 2,15,000 was allotted for the institution and is at the disposal of the department...’<sup>131</sup>

This was the last time when the Islamic Law Commission, was discussed in the National Assembly that was dissolved by the President Iskander Mirza almost one month afterwards, and the constitution was abrogated with which this Commission also diminished in the pages of history. So, it can be said about its functioning its only progress was ‘one meeting’, on the basis of which it cannot be said that it indeed contributed anything in the legal apparatus of the country. But more

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<sup>129</sup> Maulana Abdul Shakoor, *Tazkara-al-Zafar*, (Faisalabad: Maktoobat-e-Ilmi, 1977), x.

<sup>130</sup> Yousaf A Haroon, National Assembly of Pakistan Debates, September 8, 1958, 563.

<sup>131</sup> Kamini Kumar Datta, *National Assembly of Pakistan Debates*, September 8, 1958, 563-564.

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important than its functioning was its presence in the constitution and then the future constitution of 1962 carried it forward with other name i.e. Advisory Council of Islamic Ideology. Secondly the profiles of its members exhibited the approach of the then governments to entangle *ulema* in the power corridors to have knowledge to better govern and its presence in the constitution was the start of an un-ending odyssey lastly, its growth and working was directly related to the democratic and political institutions of the country which were packed up due to the Martial law. The constitution of 1956 was abrogated by the President Iskander Mirza on 7<sup>th</sup> October 1958 due to ongoing political chaos which is visible in the resignation of the three Prime Ministers, Hussain Shaheed Suhrawardy, Ibrahim Ismail Chundrigar and Malik Feroz Khan Noon within few months and the reason discussed briefly in the next chapter. Afterwards within weeks, he was also replaced by the then Army Chief and Martial Law Administrator, General Ayub Khan. Next Chapter of the study will discuss the evolution of the Advisory Council of Islamic Ideology as provided by the constitution promulgated by General Ayub in 1962 and its role in the governmentality during the years.

### 1.7 CONCLUSION

In the light of above discussion, it can be deduced that due to the paradoxes in the genesis of Pakistan's creation, the emergent problems after its creation and the specific understanding of Islam among the population it became unavoidable for the government to aloof governance from *ulema* in endeavours to keep otherwise fragile nation united. On the one hand, *ulema* were divided, into sects, religiopolitical orientations and in relation with conformity with the government but paradoxically they wanted themselves to be the linchpin in the future political apparatus of the country. As modern states are always extending their powers over the subjects according to the Foucault, in the same line the governmentality of the Pakistani government was also to extend its control over the religious constituency as well through the appointment of conformist boards. The establishment of the Islamic Law Commission by the 1956 constitution manifest the governmentality by the then government to develop a net around *ulema*. It was not only the government that was keen in providing the provisions related to the Commission, the *ulema* also foresaw their future role in the power corridors through this body. The Commission under discussion here became the base for the provisions that provided the Advisory Council of Islamic Ideology provided by the next government and in addition to that it played hardly any significant

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role during the few months it existed. Still it helps us to conclude that the functioning of the Commission was directly dependent on the will and the stability of the government. As the government during the days when the commission was appointed was itself unsteady and soon packed up by the Martial Law of the President Iskander Mirza with the help of Chief of Army staff General Ayub Khan. The next chapter will deal with the working of the Advisory Council of Islamic Ideology provided by the 1962 constitution during the General Ayub Khan government as the successor of the Islamic Law Commission.

## CHAPTER 2

### GOVERNMENTALITY AND IDEOLOGY THROUGH ADVISORY COUNCIL OF ISLAMIC IDEOLOGY UNDER MILITARY RULE FROM 1962-1971

Previous chapter while going through the working of the Constituent Assembly of Pakistan from 1947 to 1958 attempted to trace the genesis of Islamic Law Commission and the governmentality through the profiles of the appointed members of the said Commission. After the abrogation of the constitution on 7<sup>th</sup> October 1958 by the Iskander Mirza, the said Commission also diminished but left behind the legacy of the government's attempt to have its say over Islam to counter the rising power of *ulema* and another control in its extension over Islam. Later the military government of General Ayub Khan promulgated the 1962 constitution, that provided the Advisory Council of Islamic Ideology (Advisory Council) which is the subject of study for this chapter. This chapter will add to the conclusion by answering the key questions of the study, firstly that what was the intention of General Ayub Khan behind its creation and secondly what role did it manifested in introducing the measures on the names of Islam that later propelled the country due to the demands of the religiopolitical parties and the governmentality of the respective governments *Nifaz-i-Islam*, *Islamisation* in the last years of Ayub government. It concludes that that provisions in the 1962 constitution related to the Advisory Council manifest the governmentality of the Ayub regime, that was to keep a check over it by Islamic Research Institute under Fazlur Rahman, further by keeping its procedures and working confidential to have knowledge about the pulse of the *ulema* to appease the population and keep the non-conformist *ulema* in background. It will further highlight those recommendations of the Advisory Council which Ayub was successful to keep in files, however during years to come they became the rallying cry of the religiopolitical parties and later became the partial part of Pakistani polity.

In this surge the chapter will be divided into five major sections and further sub-sections. First section discusses the imposition of the martial law and the inner views of the Ayub towards the domain of religion and politics because during these years he was the sole contender of power and the narrator of the process which led to the drafting of the constitution. Second section will deal

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with the working of the Constitution Commission on the report of which the 1962 constitution was promulgated, this section will deal sequentially to only those sections which would be relevant with the Islamic clauses and more specifically about the Advisory Council of Islamic Ideology. Next section will deal with the composition and working of the Advisory Council, it is further subdivided into two sections first one will deal with its working from 1962 to 1964 under justice Abu Saleh Muhammad followed by the working under Alauddin Siddiqui. Next section deals with the final days of the Ayub rule and diminishing Advisory Council will be discussed. Finally, the last paragraph will summarise the finding of the chapter.

### 2.1 'NO RETURN TO OLD ORDER'

President Iskander Mirza took over as Governor General due to the ailing health of Malik Ghulam Muhammad on October 6, 1955 and after the promulgation of the constitution took charge as the President and constitutional head of the country. He imposed martial law with the assistance of General Ayub Khan on 7<sup>th</sup> October 1958, who wanted him to take full responsibility of this step. A detailed analyses of the causes of this takeover will be beyond the scope of this study however the ongoing tension between the political parties in the assembly, Krishak Sramik party, Awami League, Muslim league for the interim setup which was supposed to oversee the elections announced for February 1959, attempt of accession of Baluchistan to Iran by the Khan of Kalat, American interests in Pakistan by making it member of defence pacts, and above all the ambitions of Iskander Mirza as presidential election were stipulated soon after the elections of National Assembly, so these were the reasons for the pack up of the political setup and take over by the military, several academic works have already been done in this regard.<sup>1</sup> As per the martial law regulations, the political parties were banned, all cabinets dismissed, General Ayub Khan the Commander-in-Chief of the Pakistan army was appointed as the Chief Martial Law Administrator (CMLA). This martial law remained in doldrums until it was validated by the Supreme Court of the country on 27<sup>th</sup> October 1956 and due to uncertain relations between both Iskander Mirza who by abrogating the constitution had finished his legal post and now relied on the terms with CMLA

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<sup>1</sup> "Causes of failure of Parliamentary form of Government" in *Report of the Constitution Commission, Pakistan* (Karachi: Government of Pakistan, 1961), 8-25. Humayun Mirza, *From Plassey to Pakistan: The family history of Iskander Mirza, the first President of Pakistan* (New York: University Press of America, 1999), 164-188. M. Rafique Afzal, *Pakistan: History and politics 1947-1971* (Karachi: Oxford university Press, 2001), 222-229. and the article 222(1) of the constitution of Islamic Republic of Pakistan 1956 foresaw the elections of the President.

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and an ambitious Ayub Khan who had completely realized that power now rests with him.<sup>2</sup> While giving the decision about the martial law the Chief Justice of Pakistan Justice Mohammad Munir said that ‘a victorious revolution or successful coup d’état was an internationally recognized legal method of changing the constitution.’<sup>3</sup>

Now unless the new constitution was promulgated, the office of the President had no legal source of authority, laying him at the kindness of General Ayub Khan having the muscle power of army behind him. According to the account of Humayun Mirza, his father planned to lift Martial law within a month or so after its imposition.<sup>4</sup> This argument is also intrinsically supported by a statement given by Ayub on October 17, 1958 to the Pakistan Times that ‘there seems a fear in the minds of the people that if martial law is lifted old order will return with its attendants weaknesses and evils and all the goods that has been done will be lost’.<sup>5</sup> Regarding ending the martial law in the same statement, he said that ‘Martial law in the country will not be lifted a minute earlier than the purpose for which it has been imposed has fulfilled’.<sup>6</sup>

A glimpse of newspaper that were pre-censored by the martial law authorities hinder in between the lines the ongoing tension between both, whereby Iskander Mirza planning to establish National Council, appointing new cabinet in which Ayub Khan was given the portfolio of the Prime Minister of the country and was planning to take oath from the new cabinet.<sup>7</sup> Contrarily the newspapers of 28<sup>th</sup> October 1958 with the headline that ‘Mirza steps aside, the decision has been taken in state’s interests’.<sup>8</sup> During his government this day was celebrated officially as the ‘Revolution Day’.

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<sup>2</sup> Dacca High Court, Judges claiming the lack of authority refused to take oath from the commander of East Pakistan, the Iskander Mirza issued the Laws ‘continuation in force’, to validate the laws other than constitution. Both Iskandar Mirza and Ayub Khan were worried about the validity of their action by the Supreme Court. Which it decided on 27<sup>th</sup> October 1958 in group of cases known as, *State vs Dosso* for more detail see: Afzal, *Pakistan: History and politics 1947-1971*, 222-223.

“Courts restored to Power new rule to run close to late constitution,” October 11, 1958, The Dawn.

“Martial law regulations,” October 9, 1958, The DAWN.

<sup>3</sup> “Successful Coup a recognized law giving fact,” October 28, 1958, The Dawn.

<sup>4</sup> Mirza, *From Plassey to Pakistan*, 225.

<sup>5</sup> “Martial law to stay till mess cleared,” October 18, 1958, The Pakistan Times.

<sup>6</sup> President Iskander Mirza, “Martial law for shortest term possible, National Council to be set up,” October 16, 1958, The Pakistan Times. General Ayub, “Martial law to stay till mess cleared,” October 18, 1958, The Pakistan Times. Chief Administrator General Ayub, “All-round mess to be cleared first,” October 18, 1958, The Dawn.

<sup>7</sup> “President Appoints Cabinet, General Ayub made Prime Minister,” October 25, 1958, The Pakistan Times. “New Cabinet being sworn in today, President Mirza to administer oath,” October 27, 1958, The Pakistan Times.

“National body to take over, Mirza outlines transition idea,” October 16, 1958, The Dawn. “General Ayub made Prime Minister, swearing in shortly,” October 25, 1958, The Dawn.

<sup>8</sup> “General Ayub Takes over as President,” October 28, 1958, The Pakistan Times.

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Mirza after the resignation was first flown to Quetta as first step of his exile and later sent to London, on 2<sup>nd</sup> November 1958 never allowed to return even after his death and was buried in Iran.<sup>9</sup> The ouster of Mirza was inevitable as when during press talk he was asked by a reporter that , what will happen if you both (Mirza and Ayub) disagree? The later replied that I will act, and the decision will be mine because the army has the ultimate responsibility...'<sup>10</sup> According to Ayub the main reason for ousting Mirza was because he was too much involved with politicians and policies could not be clear if two men were at the helm of affairs.<sup>11</sup>

After little above three years of his take over and securing himself as President by the constituency of the Basic Democrats, a local government system introduced by his government the 1962 constitution was promulgated that provided the Advisory Council with limited functioning compared to the preceding Commission. This constitution was theoretically speaking based on the recommendations of the Constitution Commission appointed under the directorship of Justice Shahab ud din and practically on the aspiration of the General Ayub that an institution was provided for the likewise purposes with the new nomenclature: Advisory Council of Islamic Ideology. But before going further regarding the provision of the Advisory Council of Islamic Ideology provided by the constitution of 1962 since Ayub was the principle narrator of the process so the working of the Advisory Council will be leashed from the understanding which he had for Islam and the position which he intended to give to the *ulema*, it would be pertinent to have his brief pen picture beforehand.

### 2.1.1 PEN PICTURE OF AYUB KHAN

Ayub Khan was Colonel at the time of partition and was promoted as Brigadier in the life of Muhammad Ali Jinnah, the first Governor General and sent to East Pakistan as Commanding Officer in 1948. He was appointed in 1951 as first Pakistani Commander in Chief of the Army after General Douglas Gracey, despite the fact that he was not the senior most in army's top brass. According to Lawrence Ziring reason for his selection to this post by Liaqat Ali Khan was because he wanted to have good terms with India and expected him being junior appointed to said post to

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<sup>9</sup> Humayun Mirza, *From Plassey to Pakistan: The family history of Iskander Mirza, the first President of Pakistan* (New York: University Press of America, 1999), 226-237.

<sup>10</sup> "General Ayub's press talk," October 11, 1958, *The Pakistan Times*.

<sup>11</sup> "Mirza too much involved with politicians, Ayub tell story of take-over," October 31, 1958, *The Pakistan Times*. "Politics caused Mirza's ouster," *The Dawn*, 31 October 1958.

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support Liaquat's in political endeavours.<sup>12</sup> He got two extensions first one of four years from 1954 to 1958 and second one of two years from 1958-1960 during which he took over the country at the age of fifty-one.<sup>13</sup> Immediately after taking over from Mirza on October 28, 1958 he became the President and abolished the post of Prime Minister through martial law regulations and appointed his trusted General Musa as the Commander of the army. Further on the first anniversary of his takeover he appointed himself as 'Field Marshal' on the suggestion by Zulfikar Ali Bhutto the youngest minister in his cabinet because he was worried about the equality of his rank with the other Generals, especially from General Musa.<sup>14</sup>

Different authors have given divergent opinions about his approach towards dealing the domain of religion and politics, for instance, Freeland Abbot says that 'Ayub Government was successful to keep the problem of religion in the background'.<sup>15</sup> Ian Talbot observes that, 'Ayub did not toy with Islam as a form of legitimization as some politicians had done earlier in the decade'.<sup>16</sup> Farzana Sheikh argues that 'Ayub's modernism program threatened his regime', and it was after the 1965 war, that he tied Islam, Pakistan's identity and Army together in a common defence against India's aggression'.<sup>17</sup> Ayesha Khan argues about Ayub that role of religion in his government was not significant as he did not come to power seeking a mandate from the religious strata for his rule.<sup>18</sup> Christopher Jaffrelot also regards him as a person with modernist inclinations as he had worked

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<sup>12</sup> Lawrence Ziring, *The Ayub Khan era: politics in Pakistan 1958-1969* (Karachi: Paramount publishing enterprise, 1971), 6.

<sup>13</sup> For more details about his background see: Hassan Abbas, *Pakistan's Drift into Extremism: Allah, the Army and America's war on Terror* (New York: M.E. Sharpe, 2005), 32-54, Freeland Abbot, *Islam and Pakistan* (New York: Cornell University Press, 1968), 184-228, Humayun Mirza, *From Plassey to Pakistan: The family history of Iskander Mirza the first President of Pakistan* (New York: University Press of America, 1999), 164-237. Ian Talbot, *Pakistan a new history* (New York: Columbia University Press, 2012), 75-93 and *Friends not masters* by Ayub Khan.

<sup>14</sup> "Note by Mr. Z. A. Bhutto on the elevation of General Ayub to the rank of a Field Marshal," *White paper on the performance of the Bhutto regime: Mr. Z. A. Bhutto, his family and associates*, vol. i, (Islamabad: Government of Pakistan January 1979), iv-v. General (Retd.) Mohammad Musa, *Jawan to General: Recollections of a Pakistani soldier* (Karachi: East and West Publishing Company, 1984), 131. General Musa was assistant Chief Martial Law Administrator and C-in-C of the army after Ayub Khan took over on 28<sup>th</sup> October 1958.

<sup>15</sup> Freeland Abbot, *Islam and Pakistan* (New York: Cornell University Press, 1968), 196.

<sup>16</sup> Ian Talbot, *Pakistan a new history* (New York: Columbia University Press, 2012), 83.

<sup>17</sup> Farzana Shaikh, *Making Sense of Pakistan* (London: Hurs, 2009), 159-160.

<sup>18</sup> Ayesha Khan, "Policy-making in Pakistan's population programme," *Health policy and planning*, vol 11, no 1 (1996): 30-51.

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since long closely with secularizing elite and was to give only minimal concessions to guarantee Islamic legitimacy.<sup>19</sup>

This chapter will contend these arguments on the ground that in the form of appointing the Islamic Research Institute in 1959 to provide his regime the modernist research about the issues and the provision in the 1962 constitution regarding the establishment of the Advisory Council of Islamic Ideology like his predecessors he was not against the intermingling of the domains of religion and politics like his predecessors since his takeover. The governmentality of extending control over Islam by gaining knowledge through the Council continued unprecedentedly and unshakingly during all these years, although it worsened in the final years of his government. He wanted to pursue his policy of conforming *ulema* in the government, except for Jamaat with the other religiopolitical parties he had good terms. The first prominent change from the Islamic Law Commission in 1956 to the Advisory Council of Islamic Ideology was change in its name, and most meaningful was the inclusion of the word ‘Ideology’ in its name, so this section will now explore that what was the purpose of using this word in its name and the connotation of this word with reference to the Advisory Council.

### 2.2 WHAT IS IDEOLOGY?

Indigenously Ideology in Urdu is referred as *Nazaria*, that means vision, thinking, spectrum or the set of beliefs and ideas that are ideal. Believing in any specific ideology gives a vision of the world and the surroundings. Ideology gives a unique vision about certain things, as for instance the ideology of the state in Communalism, Plato’s ‘Utopian republic’ or the Islamic ideology, the expectations from the governments among all of them would be likewise different. In short, Ideology encapsulates a plan of action or a comprehensive way to reach an endeavour.

Various works and authors have given different connotations for this notion for instance, according to the Encyclopaedia of Social Sciences, the ideology whether, revolutionary, reactionary, progressive or traditionalist it transforms the lives of its exponents in accordance with the specific principles.<sup>20</sup> For Marxist, historians like Hamza Alvi, ‘it is a set of beliefs regarding social and

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<sup>19</sup> Christophe Jaffrelot, ed. and trans. Gillian Beaumont, *A history of Pakistan and its origins* (London: Anthem Press, 2002), 244.

<sup>20</sup> Edward Shill, *The Concept and functions of ideology, International encyclopaedia of the society sciences*, vol. 7.

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political issues which attempts to explain, why the world is as it is and what the goals of political action should be'.<sup>21</sup> So for from them ideology is something negative to legitimize the present situation. In work of Foucault this term ideology in its genesis seems very close to term discourse which Foucault defines in these words, 'as set of unwritten rules and structures which produce particular utterances'.<sup>22</sup> In addition to that, there is an entirely different spectrum which is from the *ulema*. As discussed in the earlier chapter that they themselves are divided into several sections having only a few common denominators. Among the common grounds, one can say that for them Islam is a bipolar construction, composed of both Ideology and the religion. In the same line for Khurshid Ahmad of Jamaat-i-Islami: 'Islam as ideology covers every aspect of human life to be shaped by the principles given by Islam itself.'<sup>23</sup> So for them in general Ideology itself is the application of the Islamic principles, although they have difference on the explanation of these principles.

Having seen these definitions it can be said that in the context of Pakistan the ideology is concerned with the interest of the state through Islam, it was related with applying the Islamic principles in the political setup of the country, and theoretically speaking it was related to seeing Islam not as a set of religious practises likes saying prayers, fasting in month of *Ramazan*, going once in life for Haj or paying Zakat but as code of conduct (*din*) by which it meant its application in every aspect on life of day to day life. Recognition by the Pakistani governments that it should be an Islamic ideological state involved the government to get involved in promoting those measures which would help the population to practise their lives according to the principles of Islam.

Now what was meant for Ayub Khan is evident in the forward which he wrote for Javed Iqbal's book, he says that '...Pakistan was based on the Ideology of Islam, and it is only this ideology due to which Pakistan can exist, however we need to redefine it as per the present conditions of life...'.<sup>24</sup> Practically this word, 'Ideology' apart from the name of the Advisory Council of

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(New York: collier and Macmillan, 1972), 66-68.

<sup>21</sup> Fred Halliday and Hamza Alvi, "Introduction" in *State and Ideology in the Middle East and Pakistan* (London: Macmillan Education, 1988), 1-9.

<sup>22</sup> Sara Mills. *Michel Foucault* (London: Routledge, 2003), 54-56.

<sup>23</sup> Khurshid Ahmad, "Islam: Basic principles and characteristics", in *Islam its meaning and message*, ed. Khurshid Ahmad (Leicestershire: the Islamic foundation, 2010), 13-20.

<sup>24</sup> Javed Iqbal, *The ideology of Pakistan and its implementation: with a foreword by Field Marshal Mohammad Ayub Khan* (Lahore: The Pakistan Times Press, 1959), ix.

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Ideology was added in the Political Parties Bill, discussed in the legislature for the restoration of political parties. Law Minister, Muhammad Munir during discussion on the on Political Parties bill, said that, ‘... those parties must not be allowed which are against Ideology of Pakistan’.<sup>25</sup> However it came under criticism from few members most prominent among them was Chaudry Fazal Elahi, he said that, ‘insertion of word ideology will give rise to public controversy because it cannot be defined’.<sup>26</sup> It was after the criticism by some other members that it is vague word that has the potential of being misused to crush the opposition, Muhammad Munir proposed an amendment by inserting the word ‘Islamic’ before the ‘Ideology’, so it said that, ‘prejudicial to the Islamic Ideology or the security of Pakistan’.<sup>27</sup>

Further this term, Islamic Ideology was used a synonymous to the Ideology of Pakistan without considering the fact that this term will be open for multiple interpretation considering a large number of minority population in the country because ultimately even under this political parties act it remained up to the government to define the Islamic Ideology. Another paradox visible here in the statement of Muhammad Munir, being Law Minister that proposed the amendment and defended to use the word Islamic Ideology synonymously with the Ideology of Pakistan obviously that would not have been possible without the ascent of President Ayub, in his inquiry commission report in 1953 where he has written otherwise about the Pakistani government to be an modern democratic government while giving the references of the Mohammad Ali Jinnah’s speeches.<sup>28</sup>

These amendment words by the law minister gives us the precise definition of the word Ideology in the context of Pakistan for the government under Ayub Khan. It was the Islamic discourse which was vital for the security of the Pakistan. This term ‘discourse’ used by Foucault mean a set of unwritten rules. It can be better understood by an example for instance, there are no hard and fast written rules for writing a good essay but students after being enrolled in an institution soon get to know that there is a specific framework and unwritten rules to write an essay. These unwritten

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<sup>25</sup> Muhammad Munir in National Assembly of Pakistan debates, July 9, 1962, 1229.

<sup>26</sup> Chaudry Fazal Elahi in National Assembly of Pakistan debates, July 11, 1962, 1335.

<sup>27</sup> Muhammad Munir in National Assembly of Pakistan debates, July 12, 1962, 1398.

<sup>28</sup> Muhammad Munir, *Report of the Court of inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953* (Lahore: Superintendent Government printing, 1954), 201-203.

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rules form a discourse. Discourse is not a reality instead it is a system that structures the way we perceive reality.

Although this term ‘Islamic ideology’ or the ideological problem of the Pakistan have been in discussion in country since long for instance in 1950, a committee composed of seven members from various faculties of the Punjab University was appointed to define the term, ‘Islamic Ideology’, Alauddin Siddiqui who later became the Chairman of the Advisory Council at that time was the in-charge of the Islamic studies department in the Punjab University. The committee defined it in these words, ‘Universal providence of God, brotherhood of man and perfect equality between all human beings, the only ground of preference and superiority being character and practical goodness as ‘emphasized by the line of prophets ending with Mohammad.’<sup>29</sup> But in the light of above discussion it would not be completely wrong to say that it was for the first time during Ayub’s government i.e. the ideology of Pakistan was given the connotation of ideology of Islam, and it was the government that was to define it as per its will.

The establishment of the Advisory Council of Islamic Ideology was a practical manifestation in this regard, when during budget session of the Assembly several question were raised by the members of the legislature that whether the income from interest in the budget was according to the Ideology of Pakistan, and the taxes received from the import of Alcohol were according to the Ideology of Pakistan which became the pioneering issue due to which the members of the Council were appointed to give their advices. During the coming years these issues became the slogans of the future governments to pursue them as once it was decided that government will not be neutral on such matter then there was no way back. The measure taken during the Bhutto government or Zia government had been in discussion in the Advisory Council during the Ayub years, he was only successful enough to keep them on backburner, however the day he disappeared from the scene they came on forefront. It also explains the reason that while finalising the working procedures of the Advisory Council which were to be finalised by the President its working modalities were to be kept confidential so that they may not become the public pressure on the government during the course of time. The establishment of Advisory Council of Islamic Ideology, in its name encapsulate the vision of Ayub Khan, that it would be a Council of learned people that

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<sup>29</sup> “What is Islamic Ideology, University Committee report,” November 28, 1950, The Pakistan Times.

should be advisory in nature and redefine the Islamic ideology according to the aspiration of the government for the population of the country.

### 2.2.1 AYUB'S DISCOURSE, TOWARDS *ULEMA* AND ISLAMIC IDEOLOGY

Ayub's approach of taking authenticity from the scholars, *ulema*, and head of religiopolitical parties is during early years of his government is embedded in the following statements: 'I cannot believe that any religion can object to population control, because no good religion can object to anything aimed at the betterment of human lot because all the religions, after all, come for the good of the human race and human beings do not come into the world for the religions...' <sup>30</sup> Likewise insight is also available in his biography that: '...If the only way to have an Islamic Constitution was to hand over the country to *ulema*? This was a position which I (Ayub) and people of this country were not ready to accept...' <sup>31</sup>

Despite having such thoughts that *ulema* should not manifest any role in the constitution, long before the promulgation of constitution he appointed the director of the Central Islamic research Institute to I. H. Qureshi and later he was replaced with Fazlur Rahman. <sup>32</sup> Further the Advisory Council of Islamic Ideology was also provided in the constitution despite the fact that the Constitution Commission appointed by him had recommend the Islamic clauses to be kept in the preamble only and not to be included in operational clauses. The above said discourse is embodied more clearly in one of the forwards he wrote for the Javed Iqbal's book: *The ideology of Pakistan and its implementation*. Ayub wrote that that since he took over after the Martial law he has been thinking that one of the biggest problems for the Pakistani nation is that they are divided and needs to be united. He sums up that 'Islamic Ideology' is very important in this regard because it is only

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<sup>30</sup> "Ayub warns against overpopulation menace, family planning talks open," February 25, 1959. Pakistan Times. Ayub while addressing the regional seminar on planned parenthood at Lahore, advocated the population control and responded whether sanction should be taken from *ulema* for popularizing the public opinion about family planning, he set-aside objections by the *ulema* over the birth control and appealed them to cooperate with the population control movement to control the menace.

<sup>31</sup> Muhammad Ayub Khan, *Friends Not Masters: A Political Autobiography* (New York: Oxford University Press, 1967), 194.

<sup>32</sup> Central Institute of Islamic Research was initially proposed by the previous Constitution of 1956 under article 197 (1) of the 1956 Constitution long it was not established until Ayub took over and its first Chairman was appointed I. H. Qureshi and later Fazlur Rahman remained its chairman from 1962 till his resignation in 1969. For more details, see <http://iri.iiu.edu.pk/> accessed March 12, 2017

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the ideology that can control the instincts of the man and if Pakistani nation is united with this ideology then it can never be broken.<sup>33</sup>

Foucault's notion of Governmentality is not only interesting because it merely studies that who is governing? or who is governed? But it also explores the mean by which the shaping of activities is achieved. Ayub wanted on the one hand to keep Islam in the centre of the political stage on the other hand he knew that it could be dangerous for his power to accede to all the demands of *ulema* and the religiopolitical parties. The legislation introduced by him for instance, Family Laws Ordinance, nationalization of *Auqaf* (religious endowments) were already been criticised by the religious quarters which were composed of the religiopolitical parties that were officially banned but were existing on ground with different names or under the cover of social services. It became necessary for him when he switched to the civilian setup to have a conformist advisory body having *ulema* in it with checks and balances to have the reason for obedience behind the laws for the population. The purpose encapsulated in the provision related to the Advisory Council of Islamic Ideology in the 1962 constitution, is also evident in the statement of Muhammad Munir his Law Minister as he said that 'establishment of the Advisory Council was the need of the time', as the Islamic principles needed to be redefined according to the needs of the modern times.<sup>34</sup>

### 2.2.2 ISLAMABAD, THE CAPITAL, ANOTHER MANIFESTATION OF GOVERNMENTALITY

After the establishment of Pakistan, Karachi was declared the capital of the country, because of its geographical location and considering the provincial government infrastructure which resulted in the migration of large number of government servants and the big businessman to the new capital. As Ayub Khan justified his take over based on the economic stagnation of his country so in order to show both internationally and locally the ability of the regime he needed to take some immediate steps. One such measure was the establishment of the new capital that had been planned to be developed near the Margalla hills of Rawalpindi district in Punjab on the border of NWFP. Yahya Khan was made in charge of this task and the new city was named as 'Islamabad', which means the 'abode of Islam'. Harold Isaacs while describing the importance of name says that: '...name

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<sup>33</sup> Iqbal, *The ideology of Pakistan and its implementation*, x-ix.

<sup>34</sup> "Task before the Advisory Council by Justice M. Munir," December 20, 1964, *The Pakistan Time*.

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is surely the simplest, most literal and most obvious of all symbols of identity... the names of Countries usually reflect some image out of the remote or recent past of a people, a place, an idea.<sup>35</sup>

Building this new capital was of multiple significance, firstly because of its name which had the Islam in its nomenclature to show that it would be the abode of Islam at least by name and secondly the approach of the government. Foucault while going through the history of Europe points out that there are three modes of power. Sovereign power, disciplinary power and security (governmentality) power. This development of the new city was directly in relation to the approach of Foucault that a sovereign's primary focus is the territory. The building of the capital a territory was a manifestation in this regard. Markus Daechsel in his work *Sovereignty, governmentality and development in Ayub's Pakistan: The case of Korangi township*, Karachi discusses same approach of the Ayub when he undertook the project to initiate the largest rehabilitation in South Asia at Korangi, Karachi.<sup>36</sup> The author concludes that the purpose of constructing this establishment was to manifest that he can take quick decisions, projecting the success of his regime and further to endorse that his rule was better than his successors.<sup>37</sup> The present study by exploring the working of the Advisory Council manifests that Ayub not only invested on the short-term projects like Korangi township to manifest his power but he also attempted to entangle the population and *ulema* through the web of governmentality in the long term through the Advisory Council in 1962 constitution.

### 2.3 1962 CONSTITUTION AND THE RECOMMENDATIONS OF THE CONSTITUTION COMMISSION

After securing himself being elected as President through 'restricted' elections from the electoral college of eighty thousand Basic Democrats elected from both the wings of the country. He appointed a Commission of ten members five each from East and West Pakistan under the Chairmanship of Justice Shahab ud din, the former Chief Justice for the formulation of new

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<sup>35</sup> Harold R. Isaacs, *Idols of the Tribe: Group Identity and Political Change* (New York: Harper & Row Publishers, 1975), 71-73.

<sup>36</sup> Markus Daechsel, "Sovereignty, Governmentality and Development in Ayub's Pakistan: The case of Korangi township," *Modern Asian Studies*, vol 45, no 1, (January 2011): 131-157.

<sup>37</sup> *Ibid.*

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Constitution.<sup>38</sup> According to its Chairman, in his work *Recollections and reflections* that were published after his death, he wrote that ‘I agreed to head this office on the condition that its report would be made public, irrespective of the fact that whether it is accepted or not by the government...’<sup>39</sup>

This Commission issued a questionnaire in English, Urdu and Bengali of seventy-five pages and it was available to public in the office of the Commissioner and few copies were sent directly to the renowned people/organisations. Its 19000 copies were published and according to the report of the Commission it received the 6269 responses.<sup>40</sup> The report of the Commission recommended to government about the future constitution based on the responses which it received and then the opinion of the members of the Commission themselves. The part of the questioner that is relevant to this study is in the Question no 34 of the said Questioner, that runs as: ‘Do you think is it necessary to incorporate any provision in the new constitution to assist the Muslim the study of the basic values of Islam and their application to the changing conditions of life? If so what special measures do you suggest in this regard?’<sup>41</sup>

Although officially the political parties were banned, however they were working cognitively with the changed names it is evident from the fact that nineteen ulema from the religious parties responded to the questionnaire unanimously. These *ulema* included the prominent names like Maulana Mawdudi, Maulana Abul Hasanat, Mufti Muhammad Shafi and Amin Ahsan Islahi. It was later published as well to generate the public pressure.<sup>42</sup> The report of the Commission mentioned the results of the responses to the above-mentioned question related to the Islamic Clauses, according to which 96.64 percent said that permeable should be kept as such from the late constitution and 97.23 percent favoured the retention of the article 198 of the 1956 constitution

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<sup>38</sup> Members from East Pakistan were: Abu Sayyed Choudhry, Aziz al-Din Ahmad, Aftab al-Din Ahmad, Obaid al-Rahman Nizam and D. N. Barori. Members from West Pakistan were Muhammad Sharif Tufailali, A. Rahman, Arbab Ahmad Ali Jan, Sardar Habib Allah Khan and Mian Nasir A. Shaikh. See: *Report of the Constitution Commission 1961, Pakistan* (Karachi: Government of Pakistan, 1961), title page.

<sup>39</sup> Late Mr Justice Muhammad Shahabuddin, Chief Justice of Pakistan (Retd.), *Recollections and Reflection: Being a summary of view on religious and social life in the sub-continent of Indo-Pakistan*, With an introduction by Mr. Justice Hamoodur Rahman Chief Justice of Pakistan (Lahore: P. L. D. publishers, 1972), 128.

<sup>40</sup> *Report of the Constitution Commission 1961, Pakistan* (Karachi: Government of Pakistan, 1961), 2.

<sup>41</sup> *Ibid*, 145. Complete questionnaire is attached in the appendix of the report 143-178.

<sup>42</sup> “*Ain-i-Commission ke Sawal Nama Ka Ulama Ki Taraf Se Mutfika Jawab*” in Maulana Amin Ahsan Islahi, *Jadeed Islami Riyasat Mein Qanoon Saazi Aur Masail* (Lahore: Dar-ul-Tazkeer, 2005), 411-439.

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which provided for the establishment of the Commission.<sup>43</sup> After giving these result the Commission itself said that the ‘overwhelming majority have not taken in account the complexities involved in these questions so in its opinion the Islamic provisions should only be limited to the permeable and none should be included in the operative clauses’.<sup>44</sup> It further said that ‘if repugnancy provision was to be considered advisable then the expression Quran and the Sunnah should be replaced by principles of Islam with the right of *ijtihad* to meet the requirements of the time and needs of present day society’.<sup>45</sup>

The report of the Commission was submitted to Ayub Khan in a public ceremony held on May 6, 1961, and he appointed an administrative committee, a cabinet committee and a drafting committee to recast the report and draft the constitution according to the vision of Ayub. Finally, the draft committee appointed by Ayub under Manzur Qadir and the Law secretary Abdul Hamid drafted the Constitution. Although Ayub publicly appreciated the working of the Commission but the report was not made public during his government and instead of taking as the must guideline, it was taken as a document with the advice by the drafting committee. For instance, Commission had recommended having Presidential system of the election but through the adult franchise, and not through the electoral college of Basic Democrats. Regarding the Islamic provision, it had advised to keep the Islamic provision to the preamble only and not to be included in the workable clauses. Altaf Ullah has also worked about the conformities and the nonconformities between the recommendation by the Commission and the promulgated 1962 constitution.<sup>46</sup>

### **2.3.1 ADVISORY COUNCIL OF ISLAMIC IDEOLOGY A MANIFESTATION OF GOVERNMENTALITY**

The article 199 to 207 of the promulgated constitution provided the establishment of the ‘Advisory Council of Islamic Ideology’ (Advisory Council). The duties mentioned in the constitution for the Advisory council discussed below leads us to believe that this Council provided by the

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<sup>43</sup> Report of the Constitution Commission Pakistan, 122 and 123.

<sup>44</sup> Ibid, 123.

<sup>45</sup> Ibid.

<sup>46</sup> Altaf Ullah, “*Constitutionalism in Pakistan: A Study of Convergence and Divergence of the Proposals of the Constitution Commission with the Provisions of 1962 Constitution,*” Pakistan Journal of history and culture, vol. xxix, no. 2 (2008): 75-100.

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Constitution was the direct retrospect of the approach of the Ayub Khan, his drafting committee members, and the law minister Muhammad Munir. As per its nature, it was to be an executive body whose members and the Chairman was to be appointed by the President. The constitution limited the membership from five to twelve.<sup>47</sup> It further clarified the qualification of the members that they should have ‘understanding of Islam’ and in addition to that ‘understand the economic, political, legal and administrative problems of Pakistan’.<sup>48</sup> Although this qualification does not explicitly or implicitly disqualify the *ulema* but at the same time it does not mention the specific qualification which only *ulema* possessed as for instance teaching in *Dini Madaris* or having *fatwa* issuing authority which *ulema* have repeatedly demanded to be the qualification of the members of the commission was earlier provided by the 1956 constitution. It was an attempt to keep them at distance from being the sole custodians of faith and at the same time to have voice of the government over Islam through its members, in conjunction with the appointed judges and the bureaucrats or whosoever it deems appropriate.

### 2.3.2 DUTIES OF THE ADVISORY COUNCIL OF ISLAMIC IDEOLOGY

Article 199 to 207 of the promulgated constitution dealt with the duties and the function of the Advisory Council. Its primary function was to respond the questions referred to it by the President, the Governor, National or the Provincial assemblies. Further it can advise measures both the central and the provincial government which would help to enable the Muslim of the country to live their lives according to the principles of Islam.<sup>49</sup> As per the constitution the National/Provincial assemblies were to have no say in the working or the appointment of the Advisory Council. It was to be a Central executive body that was to be appointed by the President and they were to be sent the questions to the Advisory Council to decide repugnancy by the respective assemblies. Further, it was advisory in the sense that, it was not compulsory either for the President or the assemblies to agree to its advice. Further, the constitution provided that says

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<sup>47</sup> Constitution of Pakistan 1962, art. 200.

<sup>48</sup> Constitution of Pakistan 1962, art. 201.

<sup>49</sup> Constitution of Pakistan 1962, art. 199-207, part - X, “Islamic institutions, Chapter 1: Advisory Council of Islamic Ideology,” This section of the constitution deals with the Advisory Council of Islamic Ideology and Islamic Research Institute.

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that in ‘public interest’ any law may be promulgated without waiting the recommendations of the Advisory Council even if it is under discussion in the Advisory Council.<sup>50</sup>

There are few visible paradoxes in the duties of the Advisory Council in the constitution for instance if the law is promulgated by the legislature in public interest and later Council finds it repugnant then what procedure should be followed? The constitution further does not bring into consideration that if the Advisory council gives an opinion that specified law is against the Islam while the President/Legislature opinions otherwise then whose opinion was to prevail. It was also silent about the impact of the recommendations on the minorities in the country, unlike the 1956 constitution which clearly mentioned that nothing in this article related with the Islamic Law Commission shall impact the personal laws of the minorities, the article related with the Advisory Council was silent over this issue, which meant between the lines that having none of the members from among the minority members it had the jurisdiction to examine even the personal laws of the non-Muslim and may recommend to government to change.

In addition to the Advisory Council, the Constitution also provided an Islamic Research Institute, ‘for the purpose of assisting in the reconstruction of Muslim society on a truly Islamic basis’.<sup>51</sup> The Advisory Council was to provide recommendations and the institute was meant to provide research material to its members along with its opinion. The Advisory Council was concerned with the legislative aspect and the having link with the President and the Assemblies, on the other hand, the Institute was concerned with the research which was to assist the Council in this endeavour. The research topics of the institute were to be provided by the Council to which it will come across on the questions referred to it by the legislature.

### **2.3.3 A COMPARISON WITH THE PRECEDING ‘ISLAMIC LAW COMMISSION OF 1956’**

This body envisioned by Ayub was different in its generic composition from its predecessor, Law Commission which was set up in August 1957 by Iskander Mirza. The differences were not confined just to the name but also to its functioning, composition, duties and above the

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<sup>50</sup> Constitution of Pakistan 1962, art. 204 (3).

<sup>51</sup> Constitution of Pakistan 1962, art. 207. More details about the Islamic Research Institute, <http://iri.iiu.edu.pk/index.php/about-2/historical-chronology/>, accessed February 10, 2018.

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expectations from it. It is visible that Advisory Council was not a body of religious experts only, but it included Judges and Bureaucrats as well. Another most significant difference was that the members of the Commission were the members of the religiopolitical parties, whereas this was not the case for majority of the members of the Advisory Council as will be visible in the coming paragraphs when their profiles are elaborated. Another difference was that the Chairman of the Advisory Council was required to consult with the Director of the Institute before giving any opinion to the government, whereas there was no such restriction for the Chairman of the Commission. So, the Advisory Council was to have more checks it was due to this fact that most of the recommendations of the Advisory Council were not unanimous because most of the time the opinion of the Institute working under one director differed with the opinion of the Advisory Council working under many members from different school of thoughts. Further, the Advisory Council was to exist permanently and there was no defined time slot given to it by the constitution to examine the laws. Initially, the Advisory Council was not given the task to examine the existing laws but in first amendment, it was given the additional duty to examine the existing laws as well. Whereas the Commission by the 1956 constitution had been given five years to complete the task of examining repugnancy of laws. Lastly, the Advisory Council was to examine the laws in the light of principles envisioned by Islam where the Commission was asked to examine the laws in the light of principles of Quran and Sunnah. What was the difference in both these two expressions? Actually, this was one of the recommendations given by the Constitution Commission that the word Quran and Sunnah was to be replaced with principles of Islam to solve the sectarian issues, so that laws must not be interpreted in the light of interpretation given by any sect, instead by the commonly agreed principles envisioned by Islam. In sum it would not be wrong to say that although it was the forerunner of the Commission in the new constitution, but it was different in its genesis and working modalities from its predecessor.

### **2.3.4 REACTION OF *ULEMA* OVER THE ADVISORY COUNCIL**

After the coup, the political parties were banned, their offices sealed, signboards removed, funds frozen, disposal of their properties banned, and strict censor policy was enforced by the Martial Law authorities and all newspapers were refrained from making any comments on the imposition

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of Martial Law.<sup>52</sup> In return there was no notable resentment from parties leadership, the reason for this silence was that they neither had the power nor the ground to resist the martial law authorities. However, this official ban on their activities did not affect their passive activities especially with reference to the religiopolitical parties. Few of them started functioning with changed names, for instance, Jamiat-i-ulema Pakistan (JUP) continued functioning under the new name *Nizam-ul-ulema*. The Chairman of the JUP, Maulana Abdul Hamid Badayuni remained the member of the Advisory Council during all the years of the Ayub Government. According to Rafique Afzal this smooth relationship between both was due to Ayub's cordial relation with the Pir of Deval Sharif and Pir of Sarsina Sharif.<sup>53</sup> It was because of this relationship that during the 1964 presidential elections against the Fatima Jinnah they sponsored the *Jamiat-i-Mashaikh* convention to endorse the fatwa that 'any nation that makes a woman its leader cannot progress'.<sup>54</sup>

Other religiopolitical parties remained passive and waited for the right time and responded as and when required during the martial law period of Ayub's rule. For instance, when the questionnaire for the constitution was sent by the Commission, the nineteen *ulema* of the Jamiat-i-Ulema-i-Islam (JUI) and Jamaat responded by a unanimous draft as earlier discussed. Another instance when they were together was against the Family Laws Ordinance and manifested resilience repeatedly. In April-May 1962 elections were held on a non-party basis and the national assemblies were elected. Mufti Mehmood and Ghulam Ghaus Hazarvi of the JUI were elected in the party-less elections held in April-May 1962 so were the part of the legislature. Mufti Mehmood was the President of the JUI being the member of the legislature pressed the President for the restoration of the political parties. It was after the restoration of political parties that they swung openly onto an offensive against the Ayub setup. During debates in the National Assembly Mufti Mehmood demanded from the government to give the Advisory Council the right to examine all the laws of the country and

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<sup>52</sup> "Political parties' funds frozen, General Ayub orders, asks banks to submit accounts," October 17, 1958, *The Pakistan Times*. "Martial law all over Pakistan, Political parties banned," October 8, 1958, *The Pakistan Times*. "Directives to Newspapers, Chief Martial Law Administrator General Muhammad Ayub Khan," October 8, 1958, *The Dawn*. "Recovered party literature to be scrutinized, Martial Law order," October 13, 1958, *The Dawn*.

<sup>53</sup> Afzal, *Political parties in Pakistan 1958-1969*, 127.

<sup>54</sup> "Jamiat of Mashaikh formed," October 13, 1964. Its organizer was *pir* of Dewal Sharif. "Head of the State, verdict of Islam against woman, Monem Khan asks *ulema* to explain truth," October 23, 1964, *The Pakistan Times*. "*Ulama and Mashaikh* to work for Ayub," December 8, 1964, *The Dawn*. "Woman can never become Head of State, Monem Khan quotes *ulema's* fatwa," December 8, 1964, *The Dawn*.

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appoint those experts in Council are that authority on Islamic jurisprudence and legal issues.<sup>55</sup> Later in final days of the Ayub government JUI once again supported Advisory Council as most suitable platform when Ayub Khan said that ‘if the *ulema* can prepare the Islamic laws and they are according to the wishes of the people then he will feel honoured to sign it, but JUI responded that the work should start from the implementation of the Advisory Council’s recommendations’.<sup>56</sup>

Third major party whose relation went from bad to worse during the years of Ayub was Jamaat. During the ban on parties its members remained in contact through its monthly magazine, *Tarjuman ul Quran* and the mobile dispensaries. After the restoration of the political parties, it was among the first ones who reorganised very quickly because members were already well connected. It held a series of meetings from 1<sup>st</sup> to 6<sup>th</sup> August 1962 and several resolutions were passed. Among that resolution, it also demanded the restructuring of the Advisory Council in such a manner that it was supposed to be not dominated by those who do not have the religious knowledge’.<sup>57</sup> Due to its political activities against the Ayub policies, it was once again banned, and its leadership arrested. It was only after the decision of the Supreme Court that ban was lifted it was due to this ban they joined, Combined Opposition Party (COP) that was contesting the Presidential elections against the President.

The nominated presidential candidate of the COP was Miss Fatima Jinnah against Ayub, Jamaat also became part of this alliance. JUI did not supported COP, for nominating a woman as the Presidential candidate, even Mawdudi and other *ulema* were also criticised for supporting a woman candidate. Fatima Jinnah was the sister of Mohammad Ali Jinnah and highly respected in Pakistan. Both the JUI and JUP did not supported Fatima Jinnah on the ground that she is a woman and, the leadership of Jamaat was ridiculously criticized for being the part of the COP and supporting Fatima Jinnah. Untidy relationship of the religiopolitical parties are visible during the Ayub government however, they believed on the Advisory Council as suitable platform subject to the condition that government was to appoint those in majority as its members that had the traditional knowledge about Islam and as the statement of Mufti Mehmood in 1969 mentioned above that if government was genuinely interested in the introduction of Islamic laws then it may start from the

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<sup>55</sup> Mufti Mehmood in National Assembly of Pakistan debates, July 2, 1962, 909.

<sup>56</sup> Muhammad Taqi Usmani, *Nifaz-i-Sharait Aur Us Kay Masail* (Karachi: Maktaba dar-ul-uloom, 2002), 103-109.

<sup>57</sup> “Composition of Islamic Council, Jamaat-i-Islami dissatisfied”, December 8, 1964, The Dawn.

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recommendation of the Council. The trust over the Advisory Council as an institution is also visible from the fact that during the final days of Ayub when there were protests against his government the thrust of the opposition was against the Islamic Research Institute while there was no criticism on the Advisory Council's role.

### **2.4 COMPOSITION OF THE ADVISORY COUNCIL AND ITS WORKING PROCEDURES**

President appointed the first Advisory Council on 4<sup>th</sup> August 1962 having eight members. It had two members from the superior judiciary and almost equal number of members from both the East and West Pakistan. Its Chairman was Justice Abu Saleh Muhammad Akram, he was a judge of the Supreme Court of Pakistan. Justice Muhammad Sharif another judge of the Supreme Court that was earlier the Chairman of the Commission appointed in 1957 as appointed as its member. Other members from East Pakistan were Maulana Muhammad Akram and Maulana Abul Hashim of the Islamic academy Dacca and third member whose name was not mentioned in the first notification but was later nominated was Maulana Abdul Haye Nawakhali. Members from West Pakistan were Maulana Abdul Hamid Badayuni from Karachi president of the JUP and Maulana Kifayat Hussain from Lahore he was also the members of the preceding Commission appointed in 1957.

Appointment of member from the judiciary manifest the President wanted the Advisory Council to work within the legal boundaries defined by the constitution. By which I mean that while recommending the measures or responding to the questions of the legislature the Advisory Council will not only have to see the basic principles of Islam but also the other principles, for instance, the United Nations Charter of Human Rights and other international legal pacts. These judges were to provide the suggestions to the other members of the Advisory Council having the religious knowledge about the practicality of the recommendations.

Dr Ishtiaq Hussain Qureshi the director of the Institute since 10<sup>th</sup> March 1960 was also appointed as the member of the Council to keep both the institutions connected. As according to the working procedures of the Advisory Council, in order to give government its opinion or while responding to the question of Legislature or the President, the Chairman on the behalf of the Council was required to consult Institute to collect material relevant to the posed question. The opinion of the

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Institute and the dissenting member was also being attached with the report of the recommendations and with the Annual report which was to be sent to the President on a yearly basis so that it can be laid down before the National Assembly. Only after one month of the appointment of the Advisory Council, I. H. Qureshi was replaced with Fazlur Rahman on August 4, 1962 both from the membership of the Council and the directorship of the institute.

It held its first meeting on 8<sup>th</sup> October 1962. In which the Chairman along with members with the approval of the President finalized the rules and regulations of its proceeding termed as ‘Advisory Council of Islamic Ideology (Procedure) Rules, 1962’ which were made the part of the Constitution after the approval from the President.<sup>58</sup> As per the Advisory Council working procedures, the Chairman and members were to be appointed by the President for three years and it was to have its head office at Islamabad. All the members were ‘to take oath to keep discussion, deliberations and proceedings of the meetings of the Council strictly confidential’.<sup>59</sup> Presence of at least four members including the Chairman was must to maintain its quorum. Maximum number of members of the Council was left to the President, till its abolishment it never exceeded to maximum of eleven and in addition three advisors (ex-officio members) to whom Council can consult for advice: Governor State Bank of Pakistan, ex-Chairman of National Press Trust, and Chairman/Deputy Chairman of Planning Commission.<sup>60</sup>

The most noticeable lacuna in the working procedures approved by Ayub among its working procedures was that the reports and the working of the Advisory Council were to be kept confidential and its Annual or special reports were not to be made public and marked ‘confidential’. Now it important to ponder that why would the government want to keep its reports secret? According to the procedures, the ‘confidential reports’ were to be sent to the ministry which was then to decide the further action about the report whether it should be sent to the President or Parliament or returned to Advisory Council for reconsideration. The purpose of keeping its

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<sup>58</sup> Notification No. S.R.O. 1265(K)/62, Lahore, November 29, 1962, the ‘Advisory Council of Islamic Ideology (Procedure) Rules, 1962’.

<sup>59</sup> Advisory Council of Islamic Ideology (Terms and Conditions of Members) Rules, 1962. Ministry of Law and Parliamentary Affairs, (Parliamentary Affairs Division), Notification No. S.R.O. 47 (R), Rawalpindi September 4, 1962.

<sup>60</sup> These *ex-officio* members were consulted for the first time in 1963 to give their opinion about the Interest, see “Opinion of S.A. Meenai, the economic advisor of the state bank of Pakistan on the question of Riba” quoted in: Advisory Council of Islamic Ideology, *Annual report of the proceedings of the Advisory Council of Islamic Ideology for the year 1962 and 1963 in Ten years report 1962 to 1972* (Islamabad: Printing Corporation of Pakistan, 2005), 39.

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working secret was because the government wanted its reflection not to be made public so not to give it voice, leaving the ball in the coat of the government always. For instance, if the recommendations of the Advisory Council were made public and the government does not want to implement its recommended measures, it would become difficult for the government to keep the public passive on sentiment that government is sluggish in implementing its recommendations. It would not be wrong to suggest that keeping its reports confidential makes it a ‘real’ advisory institution for the Ayub government. Otherwise, it can become a threatening institution having the public power behind its working, as earlier discussed considering the specific understanding of the Pakistani population makes it necessary for the Pakistani governments to keep its working confidential. It was not until 2005 after approximately forty years of its establishment that government finally decided to make its reports public so that public may know that what has been recommended by the government and among its recommendations which ones were considered by the government.

Another lacuna visible in the working procedure was that the decision making within the meetings of the Council was not based on voting, or by majorities decisions but each member had to give his views, agreeing and the dissenting note to this opinion was to be attached with the report.<sup>61</sup> This made most of the reports of the Advisory Council as subjective recommendations, giving the leverage to the Law Ministry to which report was sent by the Advisory Council. Because if the dissenting report of any of the member or even the institute was attached it gives them the option to send it back to the Advisory Council for reconsideration and give a unanimous view, that made the decision making within the Council more complex. Having Shia and Sunni members in the Council and the modernists like Fazlur Rahman in the body made was impossible to give unanimous recommendations. Thus, once again the government will get the leverage to ignore or shelve the recommendations of the Advisory Council on the plea that they are not unanimous.

### **2.5 WORKING OF THE ADVISORY COUNCIL UNDER ABU SALEH MUHAMMAD TILL FEBRUARY 1964**

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<sup>61</sup> Notification No. S.R.O. 1265(K)/62, Lahore, the 29<sup>th</sup> November 1962, the ‘Advisory Council of Islamic Ideology (Procedure) Rules, 1962’.

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The Advisory Council remained under Abu Saleh Muhammad till 1964, when it was restructured under its new Chairman, Alauddin Siddiqui. During this one year held several meetings at Dacca and Karachi. Several debates were held by its members and its ex-officio members regarding the status interest, alcohol and establishing Institution for Islamic Research. These recommendations were submitted to the Government through a confidential report signed but its Chairman to the ministry of law along with the dissenting views. The official report available at the office of the Advisory Council is however signed by the next Chairman Alauddin Siddiqui, however it mentioned the proceedings of the Council under the first Chairman. While discussing the proceeding of the Advisory Council it is very interesting to see that issues discussed in its initial meetings were those which were pointed out by the opposition members in the legislature during the budget session or other sessions to have opinion that whether these issues were repugnant to the principles of Islam or not?

Most of the work of the council under Abu Saleh Muhammad was derived by the questions raised in the first session of the legislature which manifest the problems confronted by the government having agreed to rule according to the discourse of the Islamic ideology for instance, the question of Ali Asghar Shah a member from East Pakistan from the Wahid uz Zaman, the Minister of Finance when during the budget he announced that ‘amount of 31.61 lakh was gained from liquor import from France, UK and Germany...’. The former asked that, ‘Will the minister will be pleased to state that any income earned from liquor is prohibited by the *Sharia*?’<sup>62</sup> likewise questions were also raised by the Syed Abdus Sultan that whether ‘import of liquor fits with the Ideology of Pakistan?’<sup>63</sup> similar kind of question were also asked about the income from interest on various transaction. These were the discussions which made it inevitable for the governments to appoint Advisory Council to have a view of the government appointed *ulema* body because these were the issues over whom none of the government member was in position to give view that these were according to the principles of Islam or contrary to it. The next part of the study discusses those discussions inside the Advisory Council which were held on these issues to recommend government about them.

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<sup>62</sup> Ali Asghar Shah, *National Assembly of Pakistan Debate*, June 28, 1962, 683.

<sup>63</sup> Syed Abdus Sultan, *National Assembly of Pakistan Debate*, June 28, 1962, 684.

### 2.5.1 INTERNATIONAL RESEARCH ORGANIZATION FOR ISLAMIC RESEARCH

As one of the purpose of the establishment of the Council was to recommend measures according to the principles of Islam considering the present-day conditions, so in during initial meetings members decided to recommend government for setting up an International Research Organization in Pakistan for research on Islamic Law.<sup>64</sup> In this regard, it prepared a detailed scheme for the said organization having connections with the other Islamic countries. This blueprint was sent to the ministry of Law, Law division for onward transmission to the President and the Assembly. The purpose of setting up this organization was ‘to conduct research on Islamic law to make it compatible to the needs of the modern day’.<sup>65</sup> None of the initiatives was taken neither by the Law Ministry which was under Justice Munir who had earlier expected high hopes from the Council. Council being an advisory body, having its no voice because of confidential reports had the only option to repeat its recommendation time and again so during later years, this recommendation was repeated time and again. While skimming through the report of the Council likewise recommendations for the establishment of a research organization was also given in the Blueprint of the Islamic system submitted to the government in 1969 and later in 1971 in its last report after which it ceased to exist unless the 1973 constitution was promulgated.<sup>66</sup> This was because during these years the country witnessed the widespread protest and processions against Ayub government and for the demands of the Islamic system in the country. Consequently, Advisory Council prepared a blueprint for the Islamic system which it considered vital to be enforced in the country to make it Islamic in the real sense. Although this scheme was proposed and repeated time and again but never materialised until during General Zia ul Haq (1977-1988) when an international Islamic University was established at Islamabad to provide a platform to conduct Islamic Research having connections with the other Islamic Countries for the same purposes as were suggested in the first recommendation of the Advisory Council and were repeated during the later years.

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<sup>64</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962 and 1963*, 2.

<sup>65</sup> Ibid.

<sup>66</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1969* and appendix A of *Annual report of the proceedings of the Advisory Council of Islamic Ideology 1971*, 111-119.

### 2.5.2 RIBA/INTEREST FORBIDDEN OR NOT?

In the March 1963 Council received the following reference from the Ministry of Finance:

‘Whether interest in the form in which it appears in public transaction is in conformity with the principles and concepts of Islam? If not, then the Council’s recommendations, under Article 204 (1) (a) of the Constitution, as to means for conforming to Islamic principles in this regard be also sent’.<sup>67</sup>

This discussion that whether the interest that appear in public transitions is according to the Islamic principles or not was the most contentious point of discussion this was related to the economic aspect of the Islamic system and it kept on repeated in several reports of the Council during and after the Ayub Government. It was since 1949 creation of the country when the *Board of Talimaat-e Islamia* discussed in the first chapter had asked the government to take measures for the promulgation of the Islamic economic system. Then the BPC report had said that that within a period of twenty-five years the economic system of the country should be brought in conformity with the Islamic principles. The specific discussions which involved the codification of laws and the principles statement by the government in this regard started during the early days of the Ayub government.

The main reason due to which this question was referred to the Council immediately after its creation because the during the first budget session, when the budget was presented by the finance minister Abdul Qadir, the various provisions came under criticism from various members based on the ground that they were not suitable for the Islamic Ideological country, as for instance Mufti Mehmood on 18<sup>th</sup> June 1962 said that ‘How can I eulogise a budget... where minister of Finance in Budget of Islamic state has a Head Revenue under item of interest’ , likewise criticism was also done by the A. K. Yusuf , M D Shamsuddin Sikander, Nawaz Abdul Ghafoor Khan on the un-Islamic aspects of the budget during the discussion on the budget.<sup>68</sup> The Finance Minister, Abdul Qadir, said that ‘there is a difference between Interest and Usury, we do not allow Usury which is

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<sup>67</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 3.

<sup>68</sup> Mufti Mehmood in National Assembly of Pakistan debates June 18, 1962, 101. A. K. Yusuf in National Assembly of Pakistan debates, June 20, 1962, 212. M D Shamsuddin Sikander in National Assembly of Pakistan debates June 21, 1962, 310. Nawaz Abdul Ghafoor Khan in National Assembly debates of Pakistan June 22, 1962, 335.

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forbidden by the Quran, however this issue may be referred to the Council of Islamic Ideology, because none of us is in position to give fatwa about it'.<sup>69</sup>

The Advisory Council, as required under the procedure, sought an opinion from the Institute and to give its opinion about the interest. The opinion of Advisory Council was sent to the ministry on January 13 1964 which says that, '*Riba* is forbidden as specified in Holy Quran but is in disagreement as to whether interest in the form in which it appears in public transactions would also be covered by *Riba*...'<sup>70</sup> This opinion was submitted by the Advisory Council after nearly ten months when it received reference from the ministry. This recommendation shows the difference of opinion between the members of the Council and the contrary opinion of the director of the Islamic Research Institute. Fazlur Rahman (Rahman) was appointed the director of the institution in 1962 and also the member of the Advisory Council.

Rahman's position on interest in his opinion submitted to the Advisory Council was that, 'since the present-day interest-rate unlike the Quranic *riba* is the mechanism for regulating the supply and demands of credit capital', so these two are not the same...<sup>71</sup> As these two terms interest and *riba* were not same in definition so 'present-day interest rate does not come under the Quranic prohibition'.<sup>72</sup> Likewise opinion was also submitted by the S.A. Meenai, the Economic Advisor of the State Bank of Pakistan being the *ex-officio* member of the Advisory Council said that, *Riba* mentioned in Quran and the interest in public transactions today is different.<sup>73</sup> These opinions by the experts of economic and modernist scholar like Rahman were criticised by those members of the Advisory Council that were having traditional education, for instance Abul Hashim, wrote that plea by the Institute that 'present-day interest is price of the money' is wrong, and he taunt Rahman

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<sup>69</sup> Abdul Qadir in National Assembly of Pakistan debates, June 30, 1962, 832.

<sup>70</sup> "Riba is forbidden, consolidated recommendation on Islamic Economic System" in Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 6.

<sup>71</sup> Opinion of the Central Institute of Islamic Research on Riba and Interest, see Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 7-16.

<sup>72</sup> Ibid.

<sup>73</sup> Opinion of S.A. Meenai, the Economic Advisor of the State Bank of Pakistan, on the Question of *Riba* received by the Advisory Council of Islamic Ideology, in annexure of *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 39-50.

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that by twisting Quran and the Sunnah of the Prophet to suit his fond theories, and he contended that interest in every form is forbidden by the Quran and Sunnah.<sup>74</sup>

This recommendation that non-unanimous and incomplete in the sense that it had completely answered the question sent to back by the ministry of Finance ‘for reconsideration being not comprehensive’, but before the Council could send unanimous recommendations or consider it once again, after the first amendment in the Constitution in which the functioning of the Council was changed later paragraphs will discuss the new role of the Council, so it was also restructured under the new Chairman Alauddin Siddiqui. It was even though earlier chairman and members had not completed their tenure of three years. The reason for this restricting was not because it was unable to give a suitable recommendation about the interest but because of the expectation from the Council under the new duties given to it whereby it was supposed to examine the new and existing laws of the country for repugnancy. Under new Chairman in the surge to have unanimous opinion about interest, it adopted a new strategy according to which a questionnaire was prepared, and a tentative list of persons also prepared to whom it was to be issued in order to give a unanimous opinion about the position of interest in public transactions.<sup>75</sup> However it was unable to reach to any conclusion so it was postponed until December 1969.

The decision in principle about the position of interest was necessary for the Council itself as well because, it was central to examination of many laws as well which it was to examine under its new functioning after the first amendment in the constitution. Some of the laws mentioned in the several reports of Council which depended over the opinion over interest were ‘Interest Act 1839’, ‘Usury Laws’, ‘Repeal Act’, ‘the Government Savings Banks Act 1873’, ‘The *Dehkan* Agriculturists Relief Act 1979’, ‘the Negotiable Instrument Act 1881’, the opinion of the Council over these laws whether they were repugnant or not depended on its decision about the interest. So in December 1969 when during the government of General Yahya Khan, Council under Siddiqui preparing a blue print for the Islamic system of government in the country, it once again took up the issue of

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<sup>74</sup> Comments of Mr. Abul Hashim, Member Advisory Council of Islamic Ideology, on ‘Riba’ submitted by the Central Institute of Islamic Research, Karachi. In the annexure of the Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 35-38.

<sup>75</sup> For information on interest free economy, delegations were sought to be sent to Saudi Arabia and other counties to take the opinions of Muslim jurists for more details see: Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1967*, 28-32.

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interest and it was recommended by the Council that, ‘Interest in any form is forbidden and increase and decrease in interest does not affect its prohibited character’ and regarding the mechanism to change the economic system of the country it said that, ‘Government may appoint a committee of accredited leader of juristic thoughts, experts of banking and laws along with the Council in order to determine steps to be taken for reformation of the existing system in the light of teachings of Islam’.<sup>76</sup>

This change in the stance of the Council from 1962 to 1969 explains the otherwise invisible link between the government, its governmentality and the working of the Council. Among the reason for reaching this conclusion firstly was the resignation of Rahman in October 1969 as his modernist thoughts were a hindrance for this recommendation of the Council. Second reason was the change in the government, as Ayub Khan had already resigned and General Yahya had taken over and protests by the religiopolitical parties for the demand of an Islamic system for the country were also another factor. From the above discussions about the status of interest in the country, it becomes evident although during Ayub government Council was unable to give any unanimous recommendation but still it highlight the problems faced by the government which required it to dealt with these years. Once brought to discussion, although his government was able to keep them in background however during the coming years, these become the backburner issues as during Zia government based on the recommendations of the Council interest free banking system was attempted to be introduced in the country.

Interestingly most of the issues that were sent to for recommendations in the Council later became the part of the Pakistani society and government even if they were ignored by the then government as will be evident in the coming paragraphs, that helps to add to the conclusion that despite its establishment with the governmentality to increase power over *ulema* and integrate them in government its recommendation became the base for many legislation and the foundation of several institutions. another issue that was discussed in most the meetings of the Council like interest issue was about the Alcohol, its consumption, the tax which government gains from its imports, its production in Pakistan and several existing legislation about the Alcohol in country,

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<sup>76</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1969*, 141-142.

the next section will now discuss the debates with in the Council and the shift in the decision makings with the Council during the early years of the Council and the final years when both Rahman, the director of the Institute and Ayub had resigned.

### **2.5.3 TAXES LEVIED ON ALCOHOL, ITS CONSUMPTION AND STATUS OF BEER AND THE RECOMMENDATIONS OF THE ADVISORY COUNCIL**

During the debates of National Assembly in its first session, the issue about the tax that government gains from the import of Alcohol was raised by the opposition members, for instance, Syed Abdus Sultan asked the Finance Minister, ‘if the import of liquor fits in with the Islamic Ideology of Pakistan?’<sup>77</sup> and more staunch criticism and demand from complete ban of wine came from Mufti Mehmood, he said that, ‘How can I eulogise a budget which includes such heads of, Revenue as import duty on Alcoholic liquors...’, in the same speech he also demanded a complete ban on wine in the country.<sup>78</sup> The Finance Minister, Abdul Qadir, while replying to the criticism on the taxes received from the import of Alcohol explained that, ‘total amount of 31.61 lakh was gained from the import of liquor from France, United Kingdom and Germany, so this is very good source on income and by increasing the taxes we actually meant to discourage it’.<sup>79</sup> Another member Akhtar ud Din said during the discussions that, ‘the issue about the taxes from Alcohol need to be decided by the Advisory Council of Islamic Ideology which is provided by the constitution and government needs to take its opinion in this regard’.<sup>80</sup> So the reference was sent to the Advisory Council in July 1963 in the following words, ‘whether consumption of alcoholic drinks and alcoholic medicines by citizens of Pakistan are allowed when a qualified doctor prescribe their use; and secondly whether beer also comes under the category of alcoholic drinks?’<sup>81</sup>

The Chairman of the Council Abu Saleh Muhammad sent this reference to the Director of the Institute as required under the rules to provide the research materiel and its opinion on the subject. However Advisory Council under Abu Saleh Muhammad was unable to give recommendation as

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<sup>77</sup> Syed Abdus Sultan in National Assembly of Pakistan debates, June 28, 1962, 683.

<sup>78</sup> Mufti Mehmood in National Assembly of Pakistan debates, June 18, 1962, 101.

<sup>79</sup> Abdul Qadir in National Assembly of Pakistan debates, June 30, 1962, 832.

<sup>80</sup> Akhtar ud Din in National Assembly of Pakistan debates, June 30, 1962, 833.

<sup>81</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 5.

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it was under consideration while the Council itself was restructured. The newly appointed Advisory Council under the Chairmanship of Alauddin Siddiqui submitted the recommendation in this regard. The recommendation sent to the government was that ‘Alcoholic drinks in all form and varieties are forbidden by Quran and Sunnah irrespective of their quantity and percentage of alcoholic contents, so they urged the President, to take necessary action for banning the serving of Alcoholic drinks in official and public functions’.<sup>82</sup> However this recommendation was sent along with the note dissent by the director of the Institute because it was contrary to the opinion of the members of the Council. According to the opinion of the institute ‘... the manufacturing of alcohol under no circumstance should be prohibited by the government because it is needed for a variety of purposes which includes lifesaving medicines’.<sup>83</sup> Furthermore it also said that whereas the position of *beer* is concerned that that whether it is forbidden by Islam or not, ‘as beer had very low level of alcohol less than five percent, consumption of alcohol, if it does not produce actual intoxication is not prohibited by the Holy Quran and Sunnah’.<sup>84</sup> Based on this recommendation which was not unanimous nothing substantial was done by the government. However, the issues about the Alcohol was discussed time and again in the Council in coming years during the government, as based on it Council recommended to repeal several laws. For instance, when Council was examining: ‘The Sea Customs Act, 1878’ during the examination of laws, it was relevant to tax on the import, export and storage of liquor so Council once again recommended to amend the law or repeal it and asked the government to prohibit the import and export of alcoholic drinks.<sup>85</sup> Third and last time it came under discussion in December 1969, after the resignation of Rahman while preparing the blue print of the Islami system it recommended that ‘the distillation, import, export, purchase, sale and publicity of alcoholic drink should be made a penal offence in the country.’<sup>86</sup>

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<sup>82</sup> “Opinion/advice of Advisory Council of Islamic Ideology on alcoholic drinks, annexure B” in *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1964*, 91.

<sup>83</sup> “Note of dissent by Fazlur Rahman”, July 21, 1964 in *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1964*, 92.

<sup>84</sup> Ibid.

<sup>85</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1967*, 22.

<sup>86</sup> “Prohibition of alcoholic drinks in Pakistan,” in *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1969*, 127-131.

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This interesting changed trend in the working of the Advisory Council in 1964, 1967 and 1969 manifest metaphorically the three-different period of the Ayub government as well and through it the attitude of Council as well. The establishment of the Advisory Council was his attempt to extend his control over *ulema* as well to have the say of State over those matters which involve Islam and to reduce the influence of *ulema* on these affairs. Consequently, the working of its members dependent directly on his grip over the affairs. The gradual swing in the hardening the stance of Advisory Council is very interesting, the gradual shift from demand in 1964 to ban it in public and official gathering to 1969 when it asked to make it a penal offense tell in itself the story. Despite the fact that it was to make decisions based on the same principles why nature of recommendations was different altogether? If it was possible for the same Advisory Council to give the likewise recommendation of declaring its consumption a penal offense in 1964, the answer is no because of changed governmentality during Ayub and later under Yahya Khan. This shows a blinking aspect of the governmentality that it is not always necessary in the case of Pakistan that the attempt by the state to control the population through knowledge always goes into its favour instead it can prove otherwise as well. As in the years to come which will be examined in the coming chapter the body which was created to ‘advance’ the population by the government proved otherwise. The matter brought to discussion in the Advisory Council to have a view considering the condition of the present-day society, later became one of the demand of the religiopolitical parties during the protest against Ayub and the government of Zulfikar Ali Bhutto, who ultimately have to promulgate legislation in this regard, that manifest the importance of the issues being discussed in the Advisory Council.

### 2.5.4 GAMBLING ORDINANCE AND THE ADVERSE OPINION OF RAHMAN

Apart from the issues of Alcohol and Interest in public transactions another important issue that was being brought to discussion in the newly appointed Council that later became one of the demands of the religiopolitical parties during the final years of government under Ayub was ‘The West Pakistan Prevention of Gambling (Amendment) Bill, 1963’. According to the amendment in the bill betting on the horse-race was excluded from gambling and on the criticism of the member it was sent to the Advisory Council. It was sent to the director of the Institute to provide his opinion about the amendment. According to his opinion, ‘gambling (*Qimar*) literally means ‘wagering or taking on pure chance’, if the consideration of it is not valuable but is very trivial and is done for

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amusement it does not seem to come under the ban of *Qimar*'.<sup>87</sup> He said that that amendment proposed in the bill is justified and according to Islamic principles in the opinion of the Institute. Once again as on the previous instances, regarding Interest and Alcohol status the opinion of the Advisory Council members was contrary to the opinion of the institute. The Advisory Council submitted that 'Gambling of all sorts is prohibited irrespective of the fact that it is done in a public place or a private place, betting on horse races in which betting tax is levied by the government as an exception in the bill is also repugnant to the teachings of the Quran and Sunnah'.<sup>88</sup> This recommendation like the previous ones was sent along with the note of dissent by Rahman. Like the previous issues this issue also was taken up during the later years by the governments in the coming years, however being discussed in the Council and due the contrary opinions between the Institute and the Advisory Council it remained in doldrums during the government of Ayub.

Rahman later after his resignation in the final years of Ayub government went to America, while working at university of Chicago while discussing the problems of Pakistan in 1974, he also wrote about the causes of continuous conflict and the tension between the Institute and the Advisory Council. He wrote about the reasons for the difference of opinion between him and the Advisory Council's working. He said the reason of the differences '... while the Institute espoused modernist stance, the general climate of the Council was conservative and reactionary'.<sup>89</sup> Whereas the purpose of the Advisory Council was to provide opinion in the light of modernist demands of the society, due to the number of *ulema* in the Advisory Council, the support of whom was necessary for the government for the discourse of Islamic Ideology its recommendations were reactionary and in the course of years this body that was envisioned to opened the floodgates of *ijtihad* became vehicle for measures that were to be promulgated on the name of Islam, ranging from Hudood laws to Blasphemy laws within a decade of its establishment.

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<sup>87</sup> "Opinion of Fazlur Rahman," in *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year Annual report of the proceedings of 1964*, 94-95.

<sup>88</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1964*, 93.

<sup>89</sup> Fazlur Rahman, "Islam and the New Constitution of Pakistan," in *Contemporary Problems of Pakistan*, ed. J. Henery Korson (Chicago: University of Chicago, 1974), 41.

### 2.5.5 DEFINITION OF A NATIONAL HERO AND THE SCOPE OF THE ADVISORY COUNCIL

Advisory Council was asked by the Home affairs division on November 6, 1963 that ‘if it advises to have a National Cemetery? And what should be the definition of the term national hero? The second part of the question referred to the Advisory Council, explains the ambiguities about the Council in preview of the other departments. As Council was to give opinion about the repugnancy and the issues related with the Islamic principles. So in response to the said reference replied that ‘the definition of the national hero is further from the definition of the Advisory Council’.<sup>90</sup> Regarding the first part of the question, it said that, ‘...dead body can be buried at anyplace specified for the purpose according to the wishes of the heirs and setting up of graveyard for nation heroes does not conflict with the principles of Islam...’<sup>91</sup> The response of the members from the Advisory Council was clarification that such matters does not fall under the functions of the Advisory Council as it will have to be decide in principle regarding the repugnancy of laws in the light of principles of Islam.

### 2.6 NEW ROLE OF THE ADVISORY COUNCIL IN FIRST AMENDMENT TO THE CONSTITUTION DURING THE ELECTION YEAR

Through the first amendment in the Constitution the role of Advisory Council was enlarged in the following words, ‘...to examine all laws in force immediately before the commencement of the Constitution (First Amendment) Act, 1963, with a view to bringing them into conformity with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah’.<sup>92</sup> Since its establishment in 1962, the duties of the Council were to deal with the references sent to it by the government, however by the first amendment in the constitution it was given an additional function like the previous Commission to examine the existing laws of the country for repugnancy. It can be debated whether it was an added duty or the duty from among the earlier Commission that was

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<sup>90</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 51.

<sup>91</sup> “Establishment of National Cemetery, reference to letter No. 4/9/60-Public (1)”, November 6, 1963, Annexure 6 in *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 51.

<sup>92</sup> Constitution of Pakistan 1962, art. 204 (1) (a), sec. 8, added by the Constitution (First Amendment) Act, 1963 (1 of 1964).

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omitted by the 1962 constitution and restored. The removal of the said function from the Advisory Council was obviously conscious effort by the framer of the constitution which were obviously the close confidants of Ayub of the fears from the Council in the times to come it may become a tool of the *ulema* to criticise the legislation promulgated by the Martial Law authorises before the promulgation of the 1962 Constitution. By omitting this duty they secured that it will not pose a challenge to the existing laws and instead it will work as an Advisory body for the future legislation brought for discussion in the legislature and further pacified it keeping it working confidential, to avoid making it a public pressure or a stigma over the government that it is not implementing the recommendations of the body appointed by itself. The most pivotal threat in this regard was from the Family Laws Ordinances introduced one year before the promulgation of the constitution which was very staunchly criticised by the *ulema* of the religiopolitical parties and was declared repugnant by many traditionalist *ulema* the details for which are discussed in the later section of this chapter. Having seen the apprehensions due to which it was given this duty but later in 1964 that was the Presidential election years. In these elections Ayub has to face the constituency of the eighty thousand Basic Democrats for getting re-elected. So, through a Bill moved itself by the government this additional duty regarding the examination of existing laws was given to the Advisory Council. It would now be interesting to carve out that even though during two years since 1962, among the recommendation of Council no legislation was carried out and neither of its response was unanimous, still its duties were increased what was the governmentality for this amendment in the constitution.

The first demand for the enlargement in the role of the Advisory Council was made in the second session of the National Assembly in July 1962. Ayub Khan a member of the Assembly moved a resolution that as per constitution ‘...laws are to be brought in conformity with the Quran and Sunnah’ and criticised the limited powers given to the Advisory Council in this regard, Maulana Abdul Bari another member criticised the constitution on the pretext that it has limited the scope of the Advisory Council in the sense that ‘...examination of existing laws was outside its purview...’, so he demanded the Advisory Council to be vested with the power to examine the existing laws as well, other members that supported this resolution were Abdullah Al Mahmood, Mufti Mehmood, Abbas Ali Khan, Shah Nawaz and Abdul Rashid with the demanded from the

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law minister Muhammad Munir to enlarge the scope of the Advisory Council.<sup>93</sup> In response to the demand of these members on July 3, 1962 a member from the government benches Hasan Akhtar said that ‘in order to enhance the scope of the Council to the existing laws, a bill will be moved by the government in coming months...’<sup>94</sup>

However, it would not be completely correct to say that it was due to the pressure of the opposition parties that amendment was introduced by the government. Instead more certain reason was to remove stigma from Ayub government before for the Presidential elections that his government has done anything repugnant to the Islamic principles. It is also visible from the fact that not just its functioning was changed but it was restructured once again, despite the fact that the three-year tenure of its members was not complete yet. The new Council was restructured, and its new Chairman was Alauddin Siddiqui, who was not a justice rather a professor in the Punjab University, Islamic Studies department that supported rather more openly to Ayub. Immediately after the restructuring of Council, Family Laws Ordinance was also sent to the Council for the determination of its repugnancy which it declared according to the principles of Islam despite the fact that ulema from the religiopolitical parties had declared it repugnant to the principles of Islam. Considering these constraints, it would be correct to say that it was an effort to deflate the pressure of the potential opposition from the religious quarters in the coming months that he had done anything repugnant to the principles of Islam which was vital considering the understanding of Islam among the majority population.

### **2.6.1 PRESIDENTIAL ELECTIONS AND THE ADVISORY COUNCIL A CREDIT CLAIMED**

During 1964 there was a significant change in the political spectrum of the country due to the alliance of parties named as Combined Opposition Parties (COP). Although its chief architect was Khawaja Nazim ud din and Chaudry Muhammad Ali but is had Jamaat on board as well. However,

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<sup>93</sup> Maulana Abdul Bari in National Assembly of Pakistan debates, July 2, 1962, 903. Abdullah al-Mahmood in National Assembly of Pakistan debates, July 2, 1962, 905. Mufti Mehmood’s in National Assembly of Pakistan debates, July 2, 1962, 909, Abbas Ali Khan in in National Assembly of Pakistan debates, July 2, 1962, 912. Shah Nawaz in National Assembly of Pakistan debates, July 2, 1962, 913 and Abdul Rashid in National Assembly of Pakistan debates, July 2, 1962, 916.

<sup>94</sup> Hasan Akhtar in National Assembly of Pakistan debates, July 3, 1962, 970.

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JUP was supporting Ayub, while JUI remained neutral for not supporting Fatima Jinnah being women candidate. The parties in this alliance agreed to the name of Fatima Jinnah to contest the presidential election against Ayub. This was the only common denominator between the parties that included in COP that they have agreed on the name of Miss Fatima Jinnah, as she was the sister of Muhammad Ali Jinnah, the first Governor General and the founder of the country, and it would have been difficult for Ayub and his allies to criticize her, otherwise each party had its own agenda. Fatima Jinnah before being nominated by the COP was aloof from practical politics and participated in charitable works and appearing off and on in the press. For instance, when the 1956 constitution was promulgated on March 23, 1956, she congratulated the nation and when Iskander Mirza was removed from power by the Ayub Khan and she applauded this action of Ayub and regarded the takeover by Ayub has ‘ushered a new era for the country’.<sup>95</sup> Little did she knew that after few years she will be contesting him in Presidential elections. Being the sister of the father of the nation her statements were considered helpful for the authenticity of the respective regimes. It was because of this attribute that the COP chose her to contest election. Her only handicap was that she was a woman in hierarchical society like Pakistan. This handicap was later fully exploited by the government, for instance when the East Pakistan governor, Abdul Monem Khan ‘appealed to *ulema and mashaikh* to explain to the people the truth that Islam did not allow a woman to become the Head of a state’.<sup>96</sup> by securing a fatwa against her and those religiopolitical parties which were supporting her had earlier declared that a woman cannot be the head of an Islamic state. for this purpose, *Jamiat of Mashaikh* was formed, the central organizer of this party was *Pir Sahib Deval Sharif*, after their formation they issued a *fatwa* that women cannot be the head of an Islamic state.<sup>97</sup>

In the Presidential elections of 1964 there were four contesting candidates, however actual contest was between Miss Fatima Jinnah and the Ayub Khan. The electoral college was composed of the

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<sup>95</sup> Miss Jinnah, “People will has triumphed,” March 23, 1956, The Pakistan Times. Miss Jinnah, “Miss Jinnah welcomes Mirza’s exit,” October 29, 1958, The Pakistan Times.

<sup>96</sup> Monem, “Head of the State, verdict of Islam against woman, asks *ulema* to explain truth,” October 23, 1964, The Pakistan Times.

<sup>97</sup> “*Jamiat of Mashaikh* formed,” October 13, 1964, The Dawn. “*Ulema, Mashaikh* to work for Ayub,” December 8, 1964, The Dawn. *Pir* of Dewal Sharif in order to muster more support for Ayub claimed that ‘in the course of mediation the Almighty had favoured him with a Communication which indicated divine displeasure with the Combined Opposition Parties for more details see: Herbert Feldman, *From Crises to Crises 1962-1969* (London: Oxford University Press, 1972), 73.

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Basic Democrats electorate elected from both the wings of the country and the questions and answering sessions were held during which both the candidates were to respond to the questions asked by the Members of the Electoral College (MECs), several of such sessions were held at Karachi, Dacca and Chittagong. During these sessions when he was asked by a questioner that ‘What had his government done to make the country truly Islamic?’ He replied that his Government had introduced compulsory religious education in schools up to the eight class, appointed an Islamic Research Institute to study the basic questions of Islamic traditions and an Advisory Council of Islamic Ideology had been appointed to consider any law which may be suspected of being against the tenets of Islam.<sup>98</sup> While replying to same kind of question that ‘What steps in your capacity as President would you take to make the Constitution Islamic?’ Fatima Jinnah’s response to the same kind of question was, ‘Our country is an Islamic republic, it belongs to Muslims, I do not know what else you mean by Islamic Constitution? a constitution is Islamic when it is framed by keeping in view the Islamic way’.<sup>99</sup> So the establishment of the Advisory Council and the Institute was claimed by Ayub among the services which he provided to make country Islamic, although this was not enough to appease the religious constituency but the response of Fatima Jinnah to same question was far more neutral. It would be difficult to say to what extent the service which Ayub claimed by providing the Advisory Council helped him to secure the elections to prove that he was genuinely ruling according to the principles of Islam but claiming the credit by him in the Presidential campaign explains in itself the importance of the Council in the years to come.

### 2.6.2 RESTRUCTURED COUNCIL UNDER ALAUDDIN SIDDIQUI

After the amendment in the constitution the Advisory Council was also restructured under the Chairmanship of Alauddin Siddiqui (Siddiqui) along with eight other members in February 1964.<sup>100</sup> Siddiqui the new Chairman was the general secretary of the Punjab Muslim League and

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<sup>98</sup> “Ayub and Miss Jinnah answers MECs Questions in Karachi,” December 17, 1964, The Pakistan Times. “Ayub and Miss Jinnah addresses MECs in Chittagong,” December 19, 1964, The Pakistan Times.

<sup>99</sup> “Miss Jinnah replies to MECs questions in Karachi,” December 17, 1964, The Pakistan Times.

<sup>100</sup> Other members were: Vilayet Hussain, Fazlur Rahman, Mr. Abdul Jabbar Khan, Maulana Abdul Hai, Maulana Abdul Hameed Badayuni, Mr. Abdul Hashim and Mohammad Ali (Vice Chancellor of Peshawar University). The tenure of the initially appointed members expired during the year 1965 so three new members Mr. A.B.A Haleem, Maulana Abdul Manan, Mufti Jaffar Hussain were appointed while the other five members including the Chairman were reappointed.

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administrator of the JUI-Islam before partition.<sup>101</sup> After partition, he joined the Islamia College, Lahore as lecturer and later he was joined as in-charge of the newly established Islamic Studies Department at Punjab University, Lahore after the resignation of the Muhammad Asad.<sup>102</sup> He remained the Chairman of the Council till the last meeting of the Council in 1971 during all the years of Ayub Khan and later General Yahya Khan. During this tenure as Chairman of the Council, he was also appointed as Vice Chancellor of the Punjab University, Lahore in 1969 by amending the rules of the Council as the Chairman was otherwise supposed to be whole time employee of the Council.<sup>103</sup>

This restructured Council had four members from the earlier Council while rest five including the Chairman were newly appointed. As far as the composition was concerned the number of those from legal background decreased while those from traditional religious education increased this was despite the fact that now it was to do much of the work with the examination of laws having the additional duty. Justice Munir, the law minister explained the duties and the expectations from the newly restructured Advisory Council in a newspaper article. He said that task before the eight-members appointed by the President to the Advisory Council is very big and they have to discover the principles and the concept of Islam, this work is like digging the gems that lied buried under the crust of centuries.<sup>104</sup> Regarding the qualification of the members appointed he said that ‘they have been selected not only for their understanding and appreciation of Islam but also because they understand the economic, political, legal and administrative problems peculiar to Pakistan’.<sup>105</sup> These statements of law minister in December 1964, manifest the difference between the statement and the practical execution of the regime that is visible from the previous working of the Advisory Council since its establishment in 1962.

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<sup>101</sup> Asad Saleem Sheikh, *Encyclopaedia of Tehrik-e-Pakistan* (Lahore: Sang-e-Meel Publications, 1999), 831.

<sup>102</sup> Proceedings of Meeting of the Syndicate of the University of the Punjab, March 7, 1950 paragraph 15, No. 15 after considering item no. 24 on the deferred agenda, it was decided to accept the resignation of Muhammad Asad and to appoint Mr. Ala-ud-Din Siddiqi as honorary head of the Department of Islamic studies at his place.

<sup>103</sup> Vide notification S.R.O. 47 (R) by the Parliamentary Affairs Division, ‘Chairman to devote whole time to the business of the Council’ was omitted from the ‘Terms and Conditions of Members rules’, see Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1970*, 75.

<sup>104</sup> “Task before the Advisory Council by Justice M. Munir,” December 20, 1964, *The Pakistan Time*.

<sup>105</sup> *Ibid*.

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French philosopher Michel Foucault was not an authority on Islam neither he worked a lot on the Islamic discourse or the changes in the Muslim countries, as his most of the work is concerned with the genealogy of the State, Power, and population especially in the European countries. However, as he lived during the Iranian revolution, and some of his writing are about the way Islamic vocabulary was used by the revolutionaries against the kingship in Iran. He wrote that Shia Islam provided the vocabulary for revolution in Iran and it has the possibility of erecting a political order.<sup>106</sup> From his writing about the Iranian revolution and his understanding of Islamic discourse one of the most intriguing point is that he did not perceived Islamic law as the source of justice rather he suggests otherwise that it is the justice that manufactures laws.<sup>107</sup> He also believes that one of the reason of Iranian revolution was attempts by the Shah of Iran to transform the traditional society of Iran with the European one based on the ideology of his father.

The study about the establishment of the institutions in Pakistan to keep Islam as the source of legitimacy and reason for following in various measures manifest that Pakistani state was not interested in taking any such risk of changing the dynamics of the specific understanding of Islam by the population. Instead it resorted otherwise by bestowing more and more functions to the Advisory Council. The Advisory Council was provided so that it will give its opinion on the issues confronted by the government and simultaneously if it thinks about any act or legislation, for instance like foreign exchange act, or electricity act then it may remove the ambiguity by clearly recognising that Islam is about the principles and not about specifications as assumed by the traditionalists. The newly restructured Advisory Council held its first meeting in May 1964 and gave various recommendations, responded to references and examined many laws, in the following years, this study will now discuss among those recommendations that were later promulgated as legislations in the following years. The one visible difference in the Council under Abu Saleh and Siddiqui was that earlier Council's performance was solely dependent on the reference while during the latter's tenure in addition to the responses of references it recommend as well to establishment new institutions that are discussed in the following sections and will help to

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<sup>106</sup> Sam Binkley and Jeorge Capetillo, ed. *A Foucault for the 21st century: Governmentality, Biopolitics and Discipline in the New Millennium* (Newcastle: Cambridge scholars publishing, 2009), 280-281.

<sup>107</sup> *Ibid*, 281.

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conclude about the role of the Council promulgating the measure on the name of Islam in the country during the period of study.

### 2.7 RELIGIOUS AFFAIRS AUTHORITY

As the Council under Abu Saleh Muhammad had earlier recommended to establish ‘International Research Organisation’, to have links with the Muslim world to have research on Islamic laws, the Council under Siddiqui started its work by recommending through ministry of laws that, ‘President may be requested to establish an organisation namely ‘Religious Affairs Authority’ to promote Islamic values’.<sup>108</sup> It also explained that the purpose of having this authority was to overlook institutions like ‘*Salat wa Tanzim ul Masajid*’ (to organize prayers), ‘*Zakat Wa Bait ul Mal*’ (Muslim welfare tax @2.5 and welfare department), ‘*Amar-Bil-Marooif Wa Nahi Anil Munkar*’ (Order for good and barring from the bad) and ‘*Khidmat -e-Khalq*’ (Social work). This recommendation was not sent to the President by the ministry and instead sent back to the Council for further ‘clarification’, that if Advisory Council wanted ‘a parallel institution to the government or its superior, to look after the religious matters?’<sup>109</sup> This response from the Law ministry manifest that it was out of expectation of the Muhammad Munir, who was the Law minister and expressed hoped from the Council that it will help to aware population about the principles of Islam as interpreted according to the modern needs of the time. Advisory Council clarified about this take of the ministry later that ‘its intention was not as perceived...’, It actually meant that ‘...religious matters should be examined and enforced by public institutions in this regard, a Ministry or a division or a department should be provided, so that Government is able to discharge its responsibility in this behalf fully’.<sup>110</sup> This recommendation manifest that the member of the Advisory Council recommended to have a separate ministry, with the name of Religious Affairs Authority, to overlook the Islamic rituals, like Prayers, Haj, Ramadan and preaching’s, so like Islamic way of life can be encouraged, during the later years this recommendations got further candid and as the later chapter will discuss that even it was been discussed to recommend not praying a penal offense. During government under Ayub Khan nothing considerable was done by

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<sup>108</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1964*, 86.

<sup>109</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1966*, 167-168.

<sup>110</sup> Ibid.

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the government in this regard. It was later in 1974 that a separate Ministry for Religious Affairs was appointed in the country which is further divided into several divisions and overlook tasks like Islamic seminars and coordinating Haj.

### 2.7.1 COLLECTION AND DISBURSEMENT OF ZAKAT, A GOVERNMENTAL DUTY?

Zakat is among one of the major Islamic pillars, it is a type of tax taken from the rich and distributed among the needy and the poor. It has been debated since long that whether its payment by the Muslims is voluntary or it should be the responsibly of the government. Stauncher were the difference between the Shia and Sunni scholars because the former believes it is voluntary while the later believed otherwise. The recommendation of the Council that deduction and disbursement of Zakat is the responsibility of the government in an Islamic government was another recommendation of the Advisory Council that Ayub government was able to keep within the files, however during later years it remerged in Pakistani polity and a Zakat and Ushr system was setup in the country during Zia ul Haq government that is discussed with details in the fourth chapter of the study. Its issue was brought for discussion in the Advisory Council for the first time in 1965. However due to the debate generated in the press due to the opinion of Rahman, director of the institute that Zakat can be deducted at more than two and half percent as said in the Hadith the matter was postponed.<sup>111</sup> On the one hand this difference of opinion on this issue of Zakat, on the other hand it signifies that why government wanted to keep the debates and the recommendations of the Advisory Council confidential so that public debate is not generated on the issues which are close to the heart of the population considering the conservatism in the common population. It was then never discussed until Rahman remained the members of Council till October 1969, after his resignation in the meeting of December 1969 the Advisory Council recommended that Government shall set up a permanent department for the collection, distribution and administration of Zakat.<sup>112</sup> This recommendation kept on seething in the reports of the Advisory until the Council

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<sup>111</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1969*, 124.

<sup>112</sup> Ibid, 124-127.

reappointed after 1973 once again recommended it and finally during Zia government that an institution was established based on the recommendations of the Council.

## **2.7.2 TEACHING ISLAMIC STUDIES FOR DEVELOPING AN UNDERSTANDING OF ISLAM AMONG YOUTH**

As one of the purpose of the establishment of the Advisory Council by the framers of the constitution was to develop an understanding among the population so that their understanding does not depend of the local imam who in most of the cases will teach them about the rituals of Islam only and not the principles especially in the context of modern needs of the society. Advisory Council recommended in this regard to introduce Islamic Studies as a compulsory subject at College and university level as well since it was already a compulsory subject from class one to eight. In addition to introducing the compulsory Islamic Studies, the Council members in their meetings after the 1965 war one the one hand applauded President for successfully defending the country and recommended that compulsory military training may be introduced at college level and in this regard to promote the Islamic spirit of Jihad and the understanding of Islam, compulsory subject of Islamic studies shall be taught from Kinder-garden to university level.<sup>113</sup>

Although this recommendation was unanimous with in the Council that compulsory Islamic studies must be introduced but there were differences among the members especially among the Shia and Sunni members regarding the contents of the syllabus that shall be taught to the university graduates. Shia members believed that ‘separate religious education for the Shia students should be introduced in the colleges and universities’<sup>114</sup>. So Council along with this recommendation submitted a detailed scheme of studies for the Islamic studies having two sections, first one about the life of Prophet Muhammad which would be common to both the Shia and Sunni students and second portion about the religious practises and the beliefs which should be different to both the

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<sup>113</sup> From 6 September 1965 to 23 September Pakistan and India fought a war, the core reason for this war was the unresolved issue of the state of Kashmir, it remains disputed in the light of United Nation resolution of 1948, both India and Pakistan claimed victory in this war, however the issue remains disputed till date. Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1965*, 114.

<sup>114</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1965*, 123. Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1966*, 161-162.

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Shia and Sunni students.<sup>115</sup> These demands were later reiterated once again through the governor of West Pakistan by the Shia members, as General Musa mentioned in his book that all of their demands were accepted and Shia were allowed to manage their religious endowment by themselves, separate Islamic studies portion for them and permission for allowing their *Muharram* processions.<sup>116</sup> The Islamic studies faculty was encouraged by the government to be established however it was not made compulsory during Ayub government, it was during the later governments as discussed in coming chapters that it was made compulsory at university level for all the medical, engineering and all graduation degrees and further as recommended by the Council and agreed by the government at graduation level Islamic studies has two separate portions first portion deals with the life of Prophet and versus from the Quran while the second section covers the religious practises which are different among the Shia and Sunni students. The staunch differences between the two prominent sects shows that government might have realised that, if this was the gravity of the differences then uniform policy of promulgating the measures on the name of Islam can even result in the sharpening of differences among the adherents of sects, however with each passing year these differences got more visible and the population more charged with reference to sectarianism that ultimately Council itself has submitted government recommendations for dealing with the rising sectarianism in the country.

### **2.7.3 RECOMMENDED AMENDMENTS IN ORDINANCES FOR THE WORD, IDEOLOGY OF PAKISTAN'**

As already discussed the mandate of the Council was to determine the repugnancy of the references sent to it in the light of the principles of Islam, however some of its recommendations were very interesting and need to be discussed here as they mentioned that although the examined laws were not repugnant to the principles of Islam but it recommended to add the word, Ideology of Pakistan in the legislation to maintain the integrity and the security of the country. It also gives scholarship to the argument that the discourse of the government under Ayub was to maintain the integrity of

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<sup>115</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1966*, 162-164.

<sup>116</sup> Mohammad Musa, *Jawan to General: Recollections of a Pakistani soldier* (Karachi: East and West Publishing Company, 1984), 203-204. For more details regarding the demand of separate syllabus of Islamic Studies for Shia student see, Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1966*, 161-168.

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the country related with the ideology Islam, that had no precise definition and it was would then be left up to the government to decide its scope. For instance

The Advisory Council was sent ‘Press and publications ordinance, 1963’ by the Information Department to determine if it contradicts with the principles of Islam, Council submitted that it does not contain anything repugnant to the Quran and the Sunnah, but it can be added to it that ‘... any provision against publications which are repugnant to the Ideology of Pakistan or cause direct or indirect sacrilege of Islamic values as embodied in the Quran and Sunnah’.<sup>117</sup> It also shows that the official narrative as discussed during the assembly debates while approving the political parties act, the word ideology of Pakistan was used, similarly Council members recommended to add this word to the ordinance on the ground that any publication shall not be allowed if it is against the Ideology of Pakistan which was meant synonymous to the Islamic values. The precise definition for this ideology or its frame work was not provided however it remains dubious and up to to the government to define it. Another likewise reference sent to the Advisory Council was from the West Pakistan, Assembly on April 29, 1964 to examine the ‘Cinematograph Act 1918’ and ‘West Pakistan Cinematograph Rules 1962’ for advice to bring them in conformity with Quran and Sunnah. The Council recommended that ‘it does not contain any provision repugnant to Quran and Sunnah’, however it suggested that it may be added in the ordinance that ‘such films should be publicly exhibited to popularize the Ideology of State, promote moral, religious, and national objectives’.<sup>118</sup>

One of the most important reference sent to determine the repugnancy were the Family Laws Ordinances, as they were the major source of criticism by the religiopolitical parties on the Ayub government during early years it was declared completely in line with the principles of Islam however latter few amendments were recommended by the same Council, in response to the query from the President in the ordinances related with the inheritance regarding the property of the deceased.

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<sup>117</sup> “Letter no. PS/GOV/124/64 of July 11, 1964, a copy of opinion of Mr. S. A. Hasnie, on the West Pakistan Press and Publications Ordinance, 1963” in *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1964*, 100.

<sup>118</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1965*, 117.

### 2.7.3.1 FAMILY LAWS ORDINANCES AND THEIR REPUGNANCY

Muslim family laws ordinance was promulgated by Ayub Khan on 2<sup>nd</sup> March 1961. They were the combination of laws that regulated the registration of marriages, permission for second marriage, inheritance of the grandson in case the son is deceased and dowry.<sup>119</sup> These laws were said to be deduced from the report of the Commission that was composed of seven person under the Sir Abdul Rashid was appointed as its Chairman, and it recommend the said ordinances however Maulana Ehtesham ul Haq Thanvi disagreed with the recommendations of the Commission.<sup>120</sup> The mandate of this Commission was to remove the prevalent anomalies in the Muslim Family laws, so that uniform laws can be promulgated. The Promulgation of these laws during the initial years of his rule manifest that Ayub regime wanted to reform society and want to show that changes which the new regime intends to introduce compared to the preceding ones. Although he held them tightly and strict censorship policy was introduced not to publish any criticism on these laws, as many traditionist *ulema* were against these laws.

Despite being made laws of the land he needed an authenticity from the people having knowledge about Islam, this became more important when the constitution was promulgated in 1962 and in the first session of the National Assembly a bill was introduced in the Assembly, ‘The Muslim Family Law Ordinance (repeal) Bill’ with the purpose to annul these laws by the Abbas Ali Khan on July 2, 1962.<sup>121</sup> Mufti Mehmood also supported this bill and as evidence in the Assembly he presented the comments by *ulema* from various sects against the ordinance.<sup>122</sup> Muhammad Munir called this repeal bill, highly controversial, he along with Chaudry Fazal Elahi and Abdul Bari suggested that, ‘... soon the Council will be appointed so there should be no hurry to discuss the bill, the answer of this body will be acceptable to all’.<sup>123</sup> It was not just in the National Assembly but after the restoration of the political parties ordinances, it was criticised openly by the Jamaat

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<sup>119</sup> The Muslim family laws ordinance, 1961 (ordinance no. Viii of 1961).

<sup>120</sup> Its first Chairman’s name was Dr Khalifa Shuja ud Din, later Sir Abdul Rashid was appointed as its chairman and other members were Khalifa Abdul Hakim, Maulana Ehtesham ul Haq, Inayat ur Rehman, Begum Shah Nawaz, Begum Anwari G Ahmed and Begum Shamsun Nahar.

<sup>121</sup> Abbas Ali Khan in National Assembly of Pakistan debates on July 2, 1962, 883.

<sup>122</sup> Mufti Mehmood in National Assembly of Pakistan Debates on July 2, 1962, 886.

<sup>123</sup> Muhammad Munir in the National Assembly of Pakistan debates on July 2, 1962, 884. Abdul Bari in the National Assembly of Pakistan debates on July 2, 1962, 888. Ch Fazl Elahi in the National Assembly of Pakistan debates on July 2, 1962, 889 and Farid Ahmed in the National Assembly of Pakistan debates on July 2, 1962, 892.

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as well according to Freeland Abbot, several people were arrested while distributing the pamphlet published by Jamaat that these laws were against Quran and Sunnah further according to *ulema* more than fifty thousand such pamphlets were distributed.<sup>124</sup> This was the background and kind of opposition to these laws that they were sent to the Advisory Council to determine its repugnancy in the light of principles of Islam.

In this resort, they were sent to the Advisory Council to decide their repugnancy. The Advisory Council in 1964 examined it and gave the recommendations unanimously that ‘The Pakistan Muslim Personal Law Bill is in conformity with the teachings and requirements of Islam as set-out in Quran and the Sunnah’.<sup>125</sup> However, it is interesting to note that same Council with few changed members in 1968 changed its stance when one section of these laws that was related to ‘the inheritance of grandchildren and the conditions under which the grand-children by predeceased children of the *propositus* can or cannot inherit?’<sup>126</sup> Council submitted a detailed recommendation unanimously agreed by the majority members and with the dissenting note of Rahman. The Council recommend that ‘...children of the deceased in such circumstances are not among the successors nor any provision shall be made for them through compulsory will’.<sup>127</sup> So they recommend to amend the said section of the laws, however Rahman believed that the present section of family laws ordinance which says that ‘orphan grandchild shall inherit the share of his deceased father as a right’ is not repugnant to the principles of Islam.<sup>128</sup> Whereas on the one hand the recommendations by the Council in 1964 whereby it recommend them not repugnant to the Islamic principles was none the less a handsome gift for the Ayub government, however later in 1968 when it declared a section of the laws to be amended manifest that the working of this Institution was directly dependent on the grip of the government over the affairs as there were

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<sup>124</sup> Freeland Abbott, “Pakistan's New Marriage Law: A Reflection of Qur'anic Interpretation,” *Asian Survey*, vol. 1, no. 11 (1962): 26-32 University of California Press, [www.jstor.org/stable/3023637](http://www.jstor.org/stable/3023637) accessed: 06-11-2017. “Muslim Family Laws Ordinance as commented by ulama in the light of Quran and the Sunnah”. and for more details see: “*Aili Commission Ki report*” in Maulana Amin Ahsan Islahi, *Jadeed Islami Riyasat Mein Qanoon Saazi Aur Masail* (Lahore: Dar-ul-Tazkeer, 2005), 193-355.

<sup>125</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1964*, 103.

<sup>126</sup> “Letter No. F. 1(1)/68-ACII, February 3, 1968, Advice of the Council on the Muslim Family Laws Ordinance, 1961,” in *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year Annual report for the proceedings of 1969*, 143-234.

<sup>127</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1969*, 143-234.

<sup>128</sup> “Fazlur Rahman’s note of dissent,” in *Ibid*, 227-228.

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protest going on against the government among the alleged accusations over the government the promulgation of non-Islamic family laws was also propagated by the religiopolitical parties to bring the population on roads.

### 2.7.4 EXAMINATION OF PENAL LAWS AND ROOTS OF HUDOOD LAWS

According to Foucault ‘... penal system should not be analysed purely as an apparatus of prohibition of one class by another instead it makes possible a mode of political economic management which exploits the difference between legality and illegality’.<sup>129</sup> Pakistan Penal Laws deal with the offences like murder, robbery and other crimes, these crimes were taken as such from the British at the time of partition, when Advisory Council was given the duty to examine the examine all the laws of the country, it also examined the Penal laws as well. In Islamic jurisprudence many of the crimes which are dealt with these penal laws fall under the category of *hudood* (Limits) for which the punishments are prescribed in Quran. For instance, for illegal-sex (*Zina*) the punishment of stoning to death and for theft to chopping hands. There are continuous debates among the scholar regarding the imposition of these punishments that whether they should be applied as such or they should be applied contextually. This debate continuous and the Muslim world appears divided over their implementation. Few countries like Saudi Arabia and Iran do have these laws although with differences in their execution. Advisory Council examined these laws during the year 1964 and 1965 and recommended to amendments them in light of the Islamic principles. It recommended to divide the offenses taken up by the PPC in two categories, first should be those crimes which are mentioned in Quran like murder, physical injuries, adulterating (*Zina*), false accusation (*Qazaf*), Theft and recommended the punishment of whipping, cutting off hands, stoning to death as prescribed by the Quran. Second were those which are not mentioned in Quran and they would continue to be treated for the punishments as already prescribed by the PPC.<sup>130</sup> Another act relevant to the Penal laws was the ‘Evidence Act’ which deals with the testimony of the witnesses. Advisory Council recommended it to be amended along with the enforcement of Hudood punishments because in these laws the number of the witnesses were

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<sup>129</sup> Michel Foucault, *Power/Knowledge: Selected Interviews & other writings 1972-1977*, ed. Colin Gordon, trans. Colin Gordon, Leo Marshall, John Mephram. (New York: Panthon Books, 1980), 134.

<sup>130</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1964*, 82. Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1966*, 138.

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recommend being same as prescribed by Quran.<sup>131</sup> Nothing substantial was done during Ayub era during the said period about the amendment in the Penal Laws or the drafting of the Hudood Laws, it was once again during General Zia ul Haq rule that these laws were framed but it would not be wrong to say that they were being discussed in the Advisory Council during the Ayub government.

### **2.7.5 RECOMMENDATIONS OF THE ADVISORY COUNCIL ABOUT LAWS RELATED TO MINORITIES**

As Advisory Council was an Islamic body, so supposedly it was to recommend about laws that were related to the Muslims of the country, however its recommendation impacted the non-Muslims of the country as well, it is apparent from the recommendations of the Advisory Council, during the examination of the ‘The Caste Disabilities Act, 1850’ that has been inherited from the British as such, it was related to those people who renounce or change their religion. Under the existing laws change in religion was legal and not punishable. The members of the Council recommended that ‘...apostasy of Muslim was a form of rebellion against his religion, and that whereas as a rebel of state should be punished, a rebel of Allah and the Holy Prophet should also be punished’ so in the light of this argument they recommended that act should be amended in such a way that ‘it does not apply to the Muslims renouncing Islam’.<sup>132</sup> So keeping the window open for the conversion of Hindus and Christian to Islam, whereas if any Muslim will change religion in the country he will be liable to be punished.

This opinion of Council members was however opposed by the Rahman who said that ‘Quran indeed gives freedom of religion and conscience to all mankind and declares unequivocally, there is no compulsion of faith’.<sup>133</sup> These discussions also later became the basis of the apostasy laws during Zia ul Haq period and will be discussed in detail in the last chapter. Another act which was relevant to the minorities that was recommended to be repealed by the Council was ‘The Native Coverts Marriage Act, 1866’. The Advisory Council recommend it to be repealed on the ground that Britisher had enacted this law to propagate Christianity and it affected the interest of the

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<sup>131</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1968*, 52-58.

<sup>132</sup> *Ibid*, 63-74

<sup>133</sup> *Ibid*, 70-74.

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Muslims of Pakistan so it may be repealed.<sup>134</sup> When this opinion was submitted to the Ministry of law it referred back the matter to the Council inquiring ‘whether similar advantages cannot be given to the citizens of Pakistan embracing Islam?’, Council in December 1967 meeting responded that ‘the privileges envisaged in the act, for Christians cannot be allowed to persons embarrassing Islam as these are not conformity with the Sharia.’<sup>135</sup> Majority of the discussions remained confined to the correspondence between the ministry and the Advisory Council. It was during the later regimes that recommendations of the Advisory Council that several of the laws were repealed and large number of amendments were made in the legal body, however their discussion during these years were important because it was based on these discussions that these issues were highlighted.

### 2.8 CAUSES OF DIFFERENCES BETWEEN THE COUNCIL AND THE INSTITUTE

One most noticeable point in majority of the recommendations and the responses of the references of the Advisory Council was the that they mostly given with note of dissent either by the institute or some Shia member of the body. The second reason is self-explanatory because most of the time of any measure or recommendations were to do anything with the personal laws the sect or the education system then *Shia* member would point out the difference of opinion. However, the tense relationship with the Institute needs to be explained more as the on the one hand the overall attitude within the Council after 1964 was quite traditional due to large number of *ulema* in the body whereas the Institute under Rahman was working on modernist lines.

#### 2.8.1 MODERNIST APPROACH IN CLASH WITH TRADITIONALIST ONE

The working of Advisory Council under 1962 constitution was very much dependent on the Institute for its working because as per the working procedures before giving any recommendations to the Council it was to consult with the Chairman’s of the institute. Its opinion if contrary was to be attached with the recommendations sent to the government. Rahman was the Director of the Institute and a member of the Advisory Council appointed by Ayub. Institute was

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<sup>134</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1966*, 172.

<sup>135</sup> Advisory Council of Islamic Ideology, *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1967*, 24.

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initially under the Ministry of Education till 1965 and later it was also bought under the Ministry of Law and Parliamentary affairs like Advisory Council.<sup>136</sup> Institute published research magazines namely *Fikr-o-Nazar* an (Urdu monthly Journal) and *Al-Dirasat al Islamiya* (Arabic Quarterly) *Sandhan* (Bengali Journal) and *Ummah* (English journal). According to Rahman the ‘narrow-mindedness and rigidity of education in the *Madaris* was indeed responsible for the subsequent intellectual stagnation of Islam’.<sup>137</sup>

During his directorship at institute, he published a book, *Islam*, in 1966.<sup>138</sup> In this book, he traced the development of Islam as an intellectual tradition. However, he was accused of discrediting the *wahi* (revelation of Prophet), views about angels and the ‘doctrine of *Miraj*’ and was referred as ‘apostate’, and a ‘munafiq’ (hypocrite) by misquoting his statements from the book and pulpit of the mosque as was used against him due to which ultimately he has to resign from the membership of Council and the directorship of Institute. On 5<sup>th</sup> September 1968, Ayub Khan's diary mentioned about his resignation, he wrote ‘...the administrators at the centre and the provinces got cold feet, some of them persuaded the doctor to resign, he must have also got frightened. After all, it is not easy to stand up to criticism based on ignorance and prejudice, So, I had to accept his resignation with great reluctance in the belief that he will be freer to attack the citadel of ignorance and fanaticism from outside the governmental sphere.’<sup>139</sup> After resignation, Rahman departed from Pakistan and took a teaching position at an American University in Chicago. Interestingly when Institute’s working was criticized by protesters there was no criticism on the performance of Advisory Council instead JUP which had its member in the Advisory Council demanded the implementation of the recommendations of the Advisory Council despite earlier demanding the resignation of Rahman.<sup>140</sup> His resignation also opened the ways for the Advisory Council to give those recommendations which it was unable to give since 1964 like declaring interest/*riba* completely forbidden, Consumption of Alcohol and bear to be a penal offence and recommendations regarding establishing a system of Zakat deduction by the government. The protests of the religiopolitical parties against Rahman and Institute because of his interpretations

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<sup>136</sup> Notification no F. 24(23)/65- A, July 20, 1965 by the Ministry of law and Parliamentary Affairs (Law Division).

<sup>137</sup> Fazlur Rahman, *Islam* (Chicago: Holt, Rinehart and Winston, 1966), 5.

<sup>138</sup> *Ibid*, 11-29.

<sup>139</sup> Craig Baxter, ed., *Diaries of Field Marshal Mohammad Ayub Khan 1966-1972* (Karachi: Oxford University Press, 2007), 253.

<sup>140</sup> Usmani, *Nifaz-i-Shariat Aur Us Kay Masail*, 103-110.

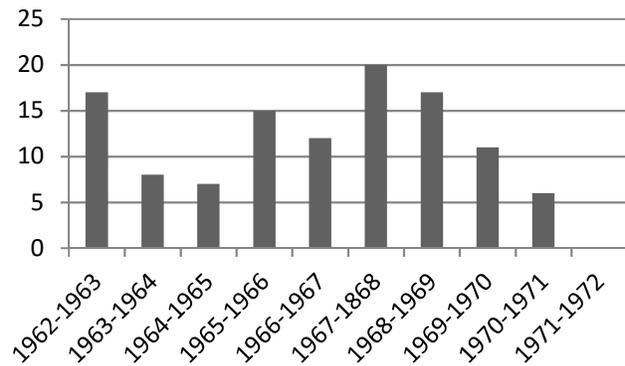
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of Islam considering the age of reason manifest that further give scholarship to the argument that Pakistani society where the understanding of Islam in was based on these priests, imam and traditionalist *ulema* any they were not ready to cooperate with any modernistic interpretation. This episode further peddled Pakistan in surge of codification of Islamic laws in coming years which ultimately resulted in sectarianism in the country instead of proving a source of unity among the people.

### 2.8.2 NO CRITICISM BY *ULEMA* ON THE WORKING OF THE ADVISORY COUNCIL

Interestingly whereas the working of Institute was criticised by the *ulema* and protests were, none of the member demanded the implementation of the working on the recommendations of the Advisory Council. The figure on the right shows the number of days the meetings of Council were held during years of Ayub government. Although it would not give a precise idea that what kind

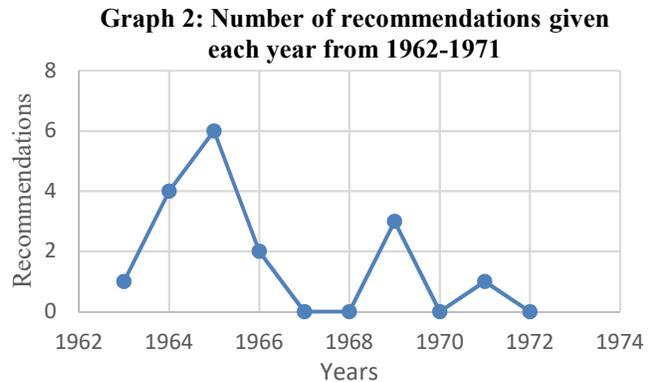
**Graph 1: Number of days Advisory Council's members met from 1962-1971**



of discussion were held in these meetings. Still its working to quite an extent depended on the references which were received by the Council. So, if less reference were received the numbers of its meetings will also decline. So, it would not be wrong to say that its working directly depended on the stability of regime. The declining trend in the number of meetings of the Advisory Council during the last two years shows that the grip of the government over the affairs was on abatement as the time passes and it is not merely by chance that in the last year of its existence it met only six days in a complete year. The falling curve after 1968 elaborate the self-explanatory story itself that the regime was on the decline now. Manifesting that regime is weak and became easy for the member to understand that instead to give more recommendations it would be better to demand the implementation of already given reference. This figure also shows another trend that whenever the new Council members were appointed then there was a boost in the number of meeting, and consequently the rise in the number of recommendations.

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This second figure exhibit that since its first meeting till last the number of recommendations were on rise for first three years and later it started to decline and when the tenure of the first Advisory Council members completed and new members were appointed in 1966 while the Chairman remained the same there was once again



increased in the number of recommendations that again started declining from the following years. It also shows that numbers of recommendations were maximum in 1965 and gradually it started to decline which was the retrospect to the declining power of the regime especially after the Tashkent Declaration and the protests which led to the resignation of the Director of the Institute.

### 2.8.3 GOVERNMENTALITY WITH THE CHANGING REGIME

Advisory Council since its first meeting on 8<sup>th</sup> October 1962 to its last meeting on 7<sup>th</sup> July 1971, gave recommendations in a wide variety of ranges from the establishment of Religious Ministry to discouraging the marriages between the Muslims and non-Muslims and were sent to the government on yearly basis through Ministry of Law in confidential reports. Occasionally Ministry forwarded the report to President or Legislature and most of the time they were returned to the Advisory Council for ‘further clarifications’ because of the difference of opinion between the Council and institute. The majority of these recommendations were not taken up during the government of Ayub, which gives a general impression that it was an institution with only mere importance. However, many of its recommendations matured in the years to come they were implemented by Zulfikar Ali Bhutto’s government or during in General Zia ul Haq’s government in providing the sense for these regimes which expresses that the methodology utilized by Ayub to keep religion in background backlashed after the decline of Ayub and the Advisory Council established to provide interpretation according to modern needs proved otherwise.

### 2.8.4 THE COUNCIL UNDER LEGAL FRAMEWORK ORDER

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It is interesting to mention here that 1968 was the year that witnessed many unconnected events all over the world: Blacks in America rose in rebellion against the assassination of Dr Martin Luther King (Holy week uprising), student movement in Berlin challenging its divide on 4<sup>th</sup> April 1968, Russian tanks marched over Prague to displace government, Mexican Government killed one hundred demonstrators to ensure smooth conduct of Olympics, so it was a year that witnessed many rebellious events. So was it for Pakistan where Zulfikar Ali Bhutto the ex-minister in his cabinet, launched his own political party with the name Pakistan People Party, Sheikh Mujib also launched a movement from East Pakistan against Ayub government and religiopolitical parties used the pulpit of the mosque against Ayub regime starting with protest against Rahman the director of the Islamic Research Institute. Ayub Khan resigned due to protests which culminated in 1968 and finally, he gave powers to Yahya Khan instead to the speaker of the legislative assembly as he was supposed to do as written in the Constitution. Yahya after taking over abrogated the constitution and became Chief Martial Law Administrator.

### 2.9 CONCLUSION

This chapter attempted to answer the two basic key questions of the study during General Ayub's government from 1958 to 1969 by exploring that what were the intentions of his government for the establishment of Council and what role did it manifest in introducing the measures on the name of Islam in the country during and after Ayub government. First section of the chapter after giving an overview about the approach of Ayub to the Islam and the *ulema* concluded that his technique of governing involved using Islam as the source of unity among the population especially from both the East and the West Pakistan is evident when the constitution promulgated based on his narration provided the Advisory Council of Islamic Ideology. Secondly it would be partially wrong to say that he was against the religiopolitical parties, although Jamaat was kept at bay from influencing the government directly, but this does not mean his government did not resort to Islam because at the same time the members from the parties like JUP and in the *Sufi and Mashaikh* convention that supported him in presidential election were appointed as its members. Thirdly during the presidential campaign, he used the provisions that provided the Advisory Council as advantage to manifest that his government was interested to make the laws and society of the country Islamic. As it was the President who approves the *modus operandi* for the Advisory Council, so by appointing variety of members from the judiciary, religiopolitical

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parties, variety of sects, keeping parity between both the wings of the country this became a body with a very less potential to give unanimous recommendations as can be seen in most of its recommendations having note of dissents. This was also the reason that the internal environment of the Council was different from that of Institute which was under the directorship of a single person Rahman that was to act as the research wing for the Advisory Council that did not had its own research wing. Keeping in view the importance of the *ulema* government was not in position to appoint all the modernists to the Advisory Council, Although his government was successful to a considerable extent by keeping the recommendations of the Council in the files, however during the years to come, most of its recommendations became the basis of many legislations that propelled Pakistan to introduce more and more legislations codified on the basis of the Islamic principles by the later governments.

It can be said by going through the initial two sections of the chapter that intention for the establishment of the Advisory Council was an endeavour to provide synthesized principles for the Islamic *corpus juris* this suited the political strategy of his government. As regards the differences between the working of the Advisory Council and the Islamic Law Commission discussed in the previous chapter apart from the name was its coupling with the Institute whose director was Rahman, whose research on the issues sent by the Council was based on the scepticism of the religious knowledge. It was because of this mismatched coupling between these two institutions, that most of the recommendations of the Advisory Council remained divided as the internal environment in the Council was traditional having the members from various sects and few from the religiopolitical parties while the environment of the Institute was modernist. These difference of opinion between the both gave government the choice to neglect most of the recommendation of the Advisory Council even by the ministry of law on the pretext that they were not unanimous and needed more elaborations. Secondly after 1965 war when the power of Ayub started declining gradually the newly appointed Council's composition also changed and the number of those having modern education further declined and while those using the word 'Maulana' with their names increased, likewise the stance of the Advisory Council in its recommendation more traditionalist instead of looking for *ratio legis* of the text they get locked in the golden age of convention and tradition by recommending Hudood laws, Zakat laws and the apostasy laws. The chapter end with the conclusion that the recommendations given by the Council

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during the Ayub era persisted and became the stockpile for the upcoming governments to achieve their ends, on the basis of which a general conclusion will be reached at the end of study.

## **GOVERNMENTALITY OF DEMOCRATICALLY ‘ELECTED’ GOVERNMENT THROUGH COUNCIL OF ISLAMIC IDEOLOGY 1973-1977**

The previous chapter discussed genesis of the Advisory Council introduced by the 1962 constitution and role it had during the military government from 1962 to 1971. In this regard, it concluded that provision in the 1962 constitution that was abrogated in 1969 related to the Advisory Council manifest the governmentality of the Ayub regime to keep a check over *ulema* appointed in it through the appointment of Fazlur Rahman. Further by keeping its working confidential to have the knowledge about the pulse of the *ulema* to appease population on one hand and on the other hand to keep the *ulema* against government in haze. It also gave scholarship to the argument that government under Ayub was successful to keep its recommendations in files, however during elected government of Bhutto which is the subject of topic here, these recommendations became the rallying cry of the opposition parties and some of them led to subsequent legislation.

This chapter as the title suggests will explore the governmentality of the elected government under Zulfikar Ali Bhutto through the provisions in 1973 constitution that provided an increased role for the Council of Islamic Ideology. As a result of which many measures taken on the name of Islam from 1973 to 1977 that had already been recommended by the Council. It will conclude that 1973 constitution promulgated by the elected government provided an increased functioning on the part of the Council compared to its predecessor institutions. This resulted in increased influence of religiopolitical parties to have their say on the process of legislation being in opposition. It further shows the aspiration of the Bhutto government to have unanimous constitution and to gain more popularity before going for fresh elections which were the need of time due to changed geographical circumstances after 1971 separation of East Pakistan. It will further add to the final conclusion that by offering its membership to the leader of the opposition and promulgating legislation based on some of its recommendations to appease the population manifests the governmentality of the Bhutto government.

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In this surge this chapter is composed of four major sections, which are further divided into subsections. The first section deals with discussions related to the establishment of the Council in 1973 constitution, it discusses in its subsections, the impact of the separation of East Pakistan from West that was visible in the constitutional development process, government's point view on the provisions related to the Council, the aspiration of the religiopolitical parties from the Council and lastly the compromises and reconciliations reached when the constitution was promulgated. The second major section of the chapter deals with the *modus operandi* of the Council and its composition that will help to understand the governmentality of the elected governments and its consequent impact on its recommendations. The third section deals with the recommendations of the Council and consequent impact of the first report of the Council sent to the National Assembly that resulted in the change of working procedures of the Council. Last section will deal with the increase in the importance of the Council after elections of 1977, when its membership was offered to the leadership of the opposition and final paragraphs of the chapter will summarise the additions which this chapter will contribute to the conclusion of this study.

#### **3.1 REGIONALIST IDEOLOGY VERSUS ISLAMIC IDEOLOGY, AN EPISODE OF THE SEPARATION OF EAST PAKISTAN**

One substantial change for the study period in this chapter is that Pakistan after December, 1971 was different both, geographically and demographically from the one that existed prior to this date as it lost more than half of its population, nearly one-seventh of its territory and reduced the minority population of the country to less than three percent in 1972 compared to nearly fourteen percent in 1951.<sup>1</sup> Due to this reason, the title of this chapter refers Bhutto government as 'elected'. Although the government was elected democratically through adult franchise but the elections through which it was elected were conducted in 1970 when Pakistan was demographically and geographically different. However, based on 1971 election results Bhutto and the assembly member formed the National Assembly and drafted the 1973 constitution which provided the Council of Islamic Ideology. The reasons for the separation of East from the West Pakistan were complex, and the germs of secession were visible since day one. Furthermore, when the differences

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<sup>1</sup> Population Census of Pakistan 1972, Population by religion and urban & rural areas 1972 (Islamabad: Population census organization, n.d.), 20. Census of Pakistan 1951, Provisional tables of population Census Bulletin No 1, Office of the Census Commissioner, (Karachi, April 1951), 1.

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ranged from the multiple interpretations of the Pakistan resolution, then language controversy and among the reasons for the delay in constitution making the issues of provincial autonomy. The foremost reason of the separation was the military operation by the Pakistani army in the eastern Pakistan which ended with the surrender of Pakistan army on December 16, 1971. This led to the contested narration of the reasons and outcomes of this civil war for Pakistan and war of Independence for Bangladesh. detailed reason for this ‘war of liberation’ as called by Bengali nationalists and the ‘imposed war by India’ according to the Pakistani nationalist would be beyond the scope of this study, as many accounts are already available about this episode of history.<sup>2</sup> However, it would be pertinent to discuss the implications of this episode with reference to the increased role of the Council and the greater influence of *ulema* in the political spectrum of the west Pakistan which afterwards started its course more firmly to become Islamic and was called the ‘Islamic Republic of Pakistan’ by the 1973 constitution.

After 1971, Pakistan was a homogenous country with reference to the numbers of the Muslim population which is visible from the number of votes which the religiopolitical parties secured as discussed in next section of this chapter which explicates the desire for mixing the notion of religion and politics in the years to come. This was one of the differences prior to 1971 as seen in earlier chapters that among the reasons for delay on agreeing to constitution—the major concerns of the religiopolitical parties based in West Pakistan regarding the increased role of Islam in the polity whereas the concerns of the Eastern Pakistani political parties revolved around provincial autonomy with very few exceptions. Another visible impact was the psychological fear in the minds of the remaining population of more geographical losses, and they came to this belief through the campaigns and slogan of the religiopolitical parties that one of the reasons for the secession of the part of the country was the distance of the preceding governments from Islam. This fear in the population and the subsequent confidence in the religiopolitical parties attire is visible during the constitutional development process, where most of the members started their argument that sole purpose of drafting the constitution was to make country Islamic which will be

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<sup>2</sup> For more details regarding the separation of East Pakistan see: Lt. General JFR Jacob, *Surrender of Dacca: birth of a nation* (New Delhi: Manohar publications, 1997). Siddiq Salik, *Witness to surrender* (New York: Oxford University Press, 1997). Safdar Mehmood, *Pakistan divided: study of the factors and forces heading to the breakup of Pakistan in 1971* (Lahore: Institute of Islamic culture, 1989). Zaheer, Hasan. *The separation of East Pakistan: the rise and realization of Bengali Muslim nationalism* (New York: Oxford University Press, 1994). G. W. Chaudry, *The last days of united Pakistan* (London: C. Hurst & Co Ltd, 1974).

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discussed in detail when the discussions about the constitutional development are held later in chapter. This attitude resulted in increasing the influence of the religiopolitical parties and increase in their demands for more measures to make society Islamic retrospectively more compromises by the government members and the increased role of the Council of Islamic Ideology. This was despite the fact that no one learned from the previous episode during the Ayub Khan government that the governmentality of especially the West Pakistani infatuated politicians of using the Islamic discourse for the security of the country resulted in breakup of the country. Interestingly, the same kind of thoughts were written by Ayub Khan in 1959 while writing the foreword of the Justice Javed Iqbal's book that '...Pakistan was based on the Ideology of Islam, and it is only this ideology due to which Pakistan can exist, however we need to redefine it as per the present conditions of life...'.<sup>3</sup> After resignation from government having seen the power dynamics during retirement life, he had a changed opinion about the Islamic Ideology which he had earlier mentioned as the only bond due to which the country can exist. He wrote:

'... Islam as propounded by the theologian has ceased to be a living philosophy, it does not offer socio-economic satisfaction in an institutionalized form. Beside the pull of parochialism and Bengali nationalism is so great that any remedy for constitution that does not take these actors across into consideration is bound to fail...'.<sup>4</sup>

He wrote this note on April 1, 1969 in response to the newspaper article that traced the political ills of the country and as diagnosis proposed to use Islamic ideology as the bond to keep people bounded. In this text, Ayub disagreed from the diagnosis suggested that Islam can be used to keep the nation bounded. However, those in government and opposition instead of shifting to some other discourse to promote nationalism, like common geography or common culture instead went ahead otherwise and once again resorted with more vigour to the Islamic ideology instead of regionalist ideology. This shift after the 1971 is visible from the assembly debates of the constitution development discussed in the subsequent paragraphs resorted that how the country once again to the same Ideology which had earlier failed to keep the united because of Bengali

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<sup>3</sup> Javed Iqbal, *The ideology of Pakistan and its implementation: with a foreword by Field Marshal Mohammad Ayub Khan* (Lahore: The Pakistan Times Press, 1959), ix.

<sup>4</sup> Ayub Khan started writing these diaries in September 1966 till October 1972, and they were meant to published after thirty years of the final entry. Ayub Khan, in *Diaries of Field Marshal Mohammad Ayub Khan 1966-1972*, ed. Craig Baxter (Karachi: Oxford University Press, 2007), 311.

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nationalist ideology and after 1971 propelling Pakistan to the politics of Islam to appease the population and thus consequently the permanent constitutional body for the said purpose that was Council of Islamic Ideology became more important.

### **3.2 A BLEND OF RECONCILIATIONS AND COMPROMISES, 1973 CONSTITUTION**

After the defeat in East Pakistan, the Chief Martial Law Administrator, General Yahya Khan resigned due to growing dissent in the army and handed over the reins of the country to Zulfikar Ali Bhutto (Bhutto) on 20<sup>th</sup> December 1971. Bhutto, after taking over as Chief Martial Law administrator appointed, Lt. General Gul Hassan as Commander-in-Chief of the army, and enacted the provisional constitution and the first session of the National assembly was called on April 14, 1972, later a constitution committee was appointed by the assembly of twenty-five members that submitted its draft to the National Assembly on December 31, 1972. This committee was able to prepare this draft only after an accord was reached between the government and other parties which included the religiopolitical parties as well regarding the key issue most important among them was to make an Islamic constitution for the country.

The debates on the constitution continued till April 10, 1973, when after the last day negotiations that were related to the increased role of the Council of Islamic Ideology under discussion below were compromised between both the opposition and the government in surge to have a unanimous constitution after Bhutto as President authenticated the draft. Despite the hindrances that the elected representatives were chosen in different geographical and democratic circumstances this constitution has the credit when compared to the preceding constitutions that all the stakeholders including the representative of the three prominent religiopolitical parties in the assembly JUI, JUP and Jamaat were its signatories based on which it can be said that in comparison with the preceding constitutions it represented the clearer aspiration of the population. This constitution like its predecessors provided provision for the establishment of the Council of Islamic Ideology, changes in its functions compared to the ones provided in the preceding constitution and the reasons for these changes are discussed with details in the later sections. Apart from the role of the Council this constitution had new clauses like, Islam was declared the official religion of the country, it

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was made compulsory for the head of the state to be Muslim, and in policy it asked the state to maintain good terms with the Muslim countries internationally.<sup>5</sup>

The number of Islamic clauses in the constitutional development process of Pakistan has been on increase since 1956 to 1973. As discussed in the first chapter of the study while discussing the report of the *Board of Talimaat-e Islamia*, several of these demands like the head of state to be Muslim; Islam to be official religion were reiterated time and again by those having religious education and were leading the religiopolitical parties. It is debatable that whether it was Bhutto government that once again wanted to resort to Islam to appease population for the new mandate through fresh elections, or it was due to the changed position of the religiopolitical parties, Jamaat, JUI, JUP in the National Assembly that led to this shape of the constitution or it was in the vested interest of the both to have these clauses in the constitution. Hassan Abbas has suggested that after the separation of East Pakistan, Bhutto was in unique position to shift the emphasis on Islamic ideology that was being echoed by the earlier establishments as being the only commonality in both wings; instead he may have used alternative secular vision like geographic unity of the Indus river valley. Furthermore, Qasim Zaman has argued otherwise that *ulema* were the ‘custodians of change’ in the country so it was not possible to defy their demands by any government.<sup>6</sup> Before proceeding further directly to the role of Council, it is necessary to understand the perspective in which it was established and functioned because its working depended directly on the will of the government the linchpin of which was Zulfikar Ali Bhutto. In this regard, it would be pertinent to have a pen picture of Bhutto.

Several works have already been done on the personal and the political profile of Zulfikar Ali Bhutto.<sup>7</sup> He was the son of Shahnawaz Bhutto a Sindhi feudal lord was a graduate of Oxford

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<sup>5</sup> The Constitution of the Islamic Republic Pakistan 1973, part I, Introductory, section 2, “Islam to be the state religion”, part II, chapter 2, section 31, “Islamic way of life” and section 40, “strengthening bond with Muslim world” and part III, chapter 1, section 41, “A person shall not be qualified for election as President unless he is a Muslim...”.

<sup>6</sup> Hassan Abbas, *Pakistan’s Drift into Extremism: Allah, the Army and America’s war on Terror* (New York: M.E. Sharpe, Armork, 2005), 95-107 and Muhammad Qasim Zaman, *The ulama in contemporary Islam: custodian of change* (New Jersey: Princeton University Press, Princeton, 2002), 181-190.

<sup>7</sup> Sajjad Bukhari, *Zulfikar Ali Bhutto: Vialdat Se Shadat Tak* (Lahore: Fiction House, 1994). Shahid Javed Burki, *Pakistan under Bhutto 1971-1977* (London: Macmillan press ltd, 1980). Stanley Wolpert, *Zulfi Bhutto his life and times of Pakistan* (New York: Oxford University Press, 1993). Mubashir Hassan, *The mirage of power: an inquiry into the Bhutto years* (Karachi: Oxford university press, 2000). Kausar Niazi, *Zulfikar Ali Bhutto* (Lahore: Jang Publishers, 1989). Syed Abdul Quddus ed., *Zulfikar Ali Bhutto politics of charisma* (Lahore: Progressive publishers, 1994). Rafi Raza, *Zulfikar Ali Bhutto and Pakistan 1967-1977* (Karachi: Oxford university press, 1997). Sayid Ghulam Mustafa

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University in law. His first assignment as the representative of the Pakistan state was when he went to Geneva in March 1958 to head a Pakistani delegation to participate in a conference at United Nations on the Law of the Sea. It was during this assignment when in order to win the loyalties of Iskander Mirza he fawned him by telling that ‘when the history of our country is written by objective Historians, your name will be placed even before Jinnah, Sir, I say this because I mean it, and not because you are the President of my country’.<sup>8</sup> Soon after his return, he was invited by Mirza to join the cabinet as Finance minister but almost synchronously the setup was folded due to the takeover by General Ayub Khan in October 1958.

Ayub retained Bhutto in his cabinet and within one and half years of Ayub’s take over he was appointed in charge of more than half a dozen ministries which were earlier retained by Ayub himself. Wolpert believes it was because ‘He was smart, young, his lack of prior political involvement in politics and he had relatively few enemies... His weaknesses were virtually unknown, but because of his father, everyone knew his name.’<sup>9</sup> Bhutto was elected unopposed in 1962 elections from Larkana and tasted the power in close quarters until the summer of 1966. It was only after Tashkent declaration that he developed distance from Ayub and he agreed to leave for Europe ‘for long leave due to health reasons’.<sup>10</sup> During his stay at Europe he met J. A. Rahim and Dr Mubashir Hassan who became the ideological father of the new political party established with the name Pakistan People Party (PPP) with a fourfold manifesto, ‘Islam is our faith, Democracy is our polity, Socialism is our economy and all power to People’.<sup>11</sup> Next presidential elections were announced in December 1969, and after Agartala conspiracy, Bhutto launched his party as an alternative to the people. In this surge, he has to compete with the religiopolitical parties who were already having good terms with the Yahya government and accusing Bhutto of being inclined to socialism, which they dubbed as against Islam.

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Shah, *Bhutto the man and the martyr* (Karachi: Sindhica Academy, 1993). Nafis Siddiqi. *Bhutto Se Bhutto Tak* (Lahore: Jang publishers press, 1990).

<sup>8</sup> “Confidential letter from Z. A. Bhutto to the President of Pakistan, Major General Iskander Mirza in April 1958” in *White Paper on the performance of Bhutto regime*, vol. I, January 1979 (Government of Pakistan: n.p., 1979), i.

<sup>9</sup> Wolpert, *Zulfi Bhutto his life and times of Pakistan*, 59.

<sup>10</sup> *Ibid*, 108.

<sup>11</sup> “Manifesto of Pakistan People Party 1970 & 1977”,

<http://bhutto.org/Acrobat/Manifestos%20of%20Pakistan%20Peoples%20Party.pdf>, accessed February 4, 2018.

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As far as the religiopolitical parties were concerned, Freeland Abbot wrote in his work that ‘the government of Ayub had been largely successful in keeping the disparate views of modernists and traditionalists in the background but that it will have to be faced someday’.<sup>12</sup> Interestingly it was immediately after his downfall that they gained ground in the backdrop of the 1971 episode where the impression was given that due to six points of Sheikh Mujeeb, ‘Islam is in danger, or Awami league wanted to destroy Pakistan that was synonymous to Islam’.<sup>13</sup> It was in this background that a ‘Pakistan lover’ became synonymous to ‘Islam lover’. During the government of General Yahya as Martial law administrator Jamaat-i-Islami (Jamaat) shifted from the earlier stance of anti-establishment and came close to the government which is evident when Jamaat entitled Yahya Khan in 1969 as ‘Ghazi, the defender of Islam’.<sup>14</sup> Prior to these years Jamaat had always adopted confrontational politics with the respective governments, the reason for this attitude of the government under General Yahya according to Rafi Raza was the hope to have a divided parliament by encouraging the increasing the contenders after the elections where no one will have majority. Thus, Yahya would be the final arbitrator in afterward settlements. Hussain Haqqani also points out same kind of power settlement formula about the invisible charisma of military named as ‘Sher Ali formula’, after the name of Yahya’s minister of information and national affairs, Major General Sher Ali Khan.<sup>15</sup>

The religiopolitical parties in their constituencies presented the Pakistan People Party (PPP) as champion of the Socialism that was completely against Islam. For instance, in December 1970 Mawdudi said, ‘Bhutto’s defeat will be a decisive victory of Islam over socialism’.<sup>16</sup> Jamaat was not just countering PPP on political front but on the ideological ground as well. Humeira Iqtidar points out that when a grand *Kissan* conference (Peasant gathering) was held from March 23-25, 1970 at Toba Tek Singh, Jamaat in order to counter it organised *Shaukat-i-Islam* (glory of Islam)

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<sup>12</sup> Freeland Abbot, *Islam and Pakistan* (New York: Cornell University Press, 1968), 196.

<sup>13</sup> *The Bangladesh Papers* (Lahore: Vanguard books Ltd, 1978), 82-84.

<sup>14</sup> Khurshid Hassan Meer, “criticized Professor Ghafoor Ahmed saying that during Yahya government, Jamaat said to Yahya Khan, you are *Ghazi*, defender of Islam”, in *National Assembly debates (Constitution Making)*, March 7, 1973, (Islamabad: Printing Corporation of Pakistan, n.d.), 831. It was in this backdrop that Yahya Khan’s manoeuvring that Indian delegation, which was not allowed to attend the Islamic Summit conference in Rabat, Morocco despite having arrived there.

<sup>15</sup> Rafi Raza, *Zulfikar Ali Bhutto and Pakistan 1967-1977* (Karachi: Oxford university press, 1997), 31. Hussain Haqqani, *Pakistan between the mosque and military* (Washington: Carnegie Endowment for international peace, 2005), 53-56.

<sup>16</sup> Maulana Mawdudi, “Nominees of Jamaat would sweep the polls”, December 7, 1970, *The Dawn*.

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conference.<sup>17</sup> The popular slogan of peasant conference was ‘*Jera Vahuay, Ohoi Khaway*’ (the one he who tilt will have the right to eat), which was in line with the slogan of Bhutto whereas the one of *Shaukat-i-Islam* conference was ‘*Socialism Ka Qabristan, Pakistan, Pakistan*’ (Graveyard of socialism would be Pakistan).<sup>18</sup>

The statistical data of the 1970 elections, manifests the growing strength of not just Jamaat but also of other religiopolitical parties. In this election, Jamaat appeared to be the second largest party with 151 contesting candidates across both wings: only less than Awami League which was contesting with 170 candidates all in East Pakistan. Although Jamaat was successful to win elections only in four constituencies but still participation with candidates in both East and Wings exhibited the level of confidence inculcated in it by the ‘establishment’, which was manoeuvring with the desire to have no clear majority for any political party. Jamaat was able to secure six percent of total votes which were second largest after Bhutto’s PPP, leaving only those constituencies where Jamaat supported other candidates to secure its prestige. For instance, in Lahore, Jamaat supported Javed Iqbal the son of Dr Muhammad Iqbal in wish to defeat Bhutto as he was contesting Bhutto in elections on the Convention Muslim League ticket. Although he was defeated in election but yet he secured more than thirty-three thousand votes against seventy-eight thousand votes of Zulfikar Ali Bhutto.<sup>19</sup> In 1970 general elections, religiopolitical parties, Jamaat-i-Islami (Jamaat), *Jamiat Ulema-e-Islam west Pakistan* (JUI) and *Markazi Jamiat-ul-Ulema Pakistan* (JUP) secured 6, 7 and 8 percent of votes respectively compared to 39 percent votes of Bhutto’s Pakistan People’s Party in West Pakistan that later became Pakistan.<sup>20</sup> These figures give a glimpse that influence of these parties in the upcoming legislature for the demand of introduction of measures on the name of Islam and examination of all the laws for repugnancy. It was because of this immense pressure by the religiopolitical parties that Bhutto once again capitalised like his predecessors on the Islamic discourse to govern and to extend his power over the Islamic discourse.

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<sup>17</sup> Humeira Iqtidar, *Secularizing Islamists? Jama'at-e-Islami and Jama'at-ud-Da'wa in urban Pakistan* (Chicago: The University of Chicago Press, 2011), 80-85. Toba Tek Singh is a city in in central Punjab, famous due to the fiction story of Saadat Hussain Manto, it was famous during those years as revolutionary city because it was the only city where Ayub got only two more votes during presidential election against Fatima Jinnah.

<sup>18</sup> Ibid.

<sup>19</sup> Pakistan Forum, “Islam Lovers Routed,” Middle East Research and Information project, vol. 1, no. 2, (December 1970-January 1971): 9-12, accessed [www.jstore.org/stable/2569013](http://www.jstore.org/stable/2569013), February 1, 2018.

<sup>20</sup> Gilanis’ Index of Electoral Record 1970-2013, “Pakistan National Election: 1970”, vol 1, (April 2013): 5, [http://www.gallup.com.pk/bb\\_old\\_site/election/1GIER1970.pdf](http://www.gallup.com.pk/bb_old_site/election/1GIER1970.pdf), accessed October 5, 2018.

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So, despite being in government he was not the sole narrator of the whole process that led to the development of the constitution instead it was combination of compromises and reconciliations by both the opposition and the government especially with reference to those related with the Council under discussions here.

The National Awami Party (NAP) and JUI formed coalition government in two provinces of NWFP and Baluchistan and a strong opposition at centre. National Assembly met for the first time on 14<sup>th</sup> April 1972 and adopted an interim constitution until the new constitution was promulgated and gave a vote of confidence to Bhutto as President. It also appointed an all-party committee of twenty-five members to draft a permanent constitution. The representatives of the religiopolitical parties in the committee were: Mufti Mehmood, Professor Ghafoor Ahmed and Maulana Shah Ahmed Noorani from JUI, Jamaat and JUP respectively. The Committee worked behind the closed doors for three months but due to the differences of opinion, the committee was unable to complete the task within the initial deadline given to it of three months. However, after the accord reached between the parties on basis of principles to have an Islamic constitution on October 20, 1972, was finally presented in the Assembly for debate on December 31, 1972.

#### **3.2.1 PERSPECTIVES ON THE ESTABLISHMENT OF COUNCIL OF ISLAMIC IDEOLOGY**

This section will now trace out the demands of the opposition during the constitutional debates, when the draft prepared by the twenty-five-members committee was presented in the National Assembly. As already mentioned, the committee had the representatives from the Jamaat, JUI and JUP. After being presented in the National Assembly, the draft was presented article wise and discussions, amendments and notes of dissents were voted, consequently if approved amendments were made part of it. These long debates continued in the session of the Assembly from December 31, 1972 till the April 10, 1973 the day when the constitution was given assent by the President Zulfikar Ali Bhutto and approved by the members of the Assembly for depositing it in the National museum. The importance and the stacks of the Council are evident from the fact that it was among those last issues which were ultimately decided on the last day during the meetings between the opposition and the President Bhutto. Yahya Bakhtiar (Attorney General), pointed the demands of the opposition due to which they were boycotting the final session of the parliament. He said

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regarding the Council of Islamic Ideology they demand that , ‘If twenty-five percent members of the House point out that measure before discussion is un-Islamic it can be referred to the Council and until it is being decided by the Council, no law shall be passed in that regard’.<sup>21</sup> However as was evident during the debates and from more than ten notes of dissents by several members from the opposition related with the duties. Moreover, working composition of the Council explains the expectations from the Council of the Opposition and later criticism by the government members and the ultimately those agreed on April 10 manifested the governmentality of government that ultimately made the opposition to accept the approach of the government.<sup>22</sup>

Among the most visible demand in these notes of dissents was that it was aimed to give Council the authority over the legislature so that if any legislation is put in house, and it is pointed out by the twenty five percent members that it is against the principles of Quran and Sunnah then it will be sent to the Council and until when it is decided by the council it will not be discussed in the Council. However as was evident in debates that Law minister Abdul Hafeez Pirzada, Khurshid Hassan Meer and the Attorney General, Yahya Bakhtiar criticised the opposition on several occasions that, ‘they want final say of the Council in framing the laws’ which cannot be given to it as it is not an institution that is answerable to people.<sup>23</sup> Hafeez Pirzada the law minister’s reply to this demand of the opposition was that, ‘... do you want Council to be a Court?... they demand twenty percent members to decide the future of any legislation... this is against the parliamentary traditions...’.<sup>24</sup> Likewise was the response of Yahya Bakhtiar regarding this demand of the final authority over the Council that, ‘...in modern times, you have to move quickly, swiftly to make legislations, Council will take time so by this demand a minority in the House will paralyse the working of the majority government...’.<sup>25</sup> Despite stating that it was not possible to accommodate

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<sup>21</sup> Yahya Bakhtiar in *National Assembly of Pakistan debates (Constitution making)*, April 10, 1973, 2422.

<sup>22</sup> Note of dissents: Item no. 1646 (Maulana Zafar Ahmed Ansari), item no. 1649 (Maulana Zafar Ahmed Ansari, Professor Ghafoor Ahmed, Maulana Shah Ahmed Noorani, Sardar Shaukat Hayat Khan, Sardar Sher Baz Khan Mazari, and Maulana Abdul Haq), Item no. 1650 (Maulana Abdul Haq), Item no. 1651 (Maulana Abdul Haq, Mufti Mehmood), Item no 1652 (Maulana Mohammad Zakir), Item no 1653 (Maulana Abdul Haq), Item no 1654 (Mohammad Azam Farooqui, Sahibzada Saifiullah), Item no. 1655 (Maulana Zafar Ahmed Ansari), Item no 1656 (Professor Ghafoor Ahmed, Maulana Shah Ahmed Noorani Siddiqui, Sirdar Shaukat Hayat Khan, Sardar Sher Baz Khan Mazari), item no 1657 (Maulana Abdul Haq) and item no 1674 (Malik Muhammad Akhtar) during debates on article 227 to 230 in *National Assembly of Pakistan debates (Constitution making)*, April 7, 1973, 2236-2247.

<sup>23</sup> Khurshid Hassan Meer in National Assembly of Pakistan debates (Constitution making), March 7, 1973, 837.

<sup>24</sup> Hafeez Pirzada in National Assembly of Pakistan debates (Constitution making), March 8, 1973, 967.

<sup>25</sup> Yahya Bakhtiar in *National Assembly of Pakistan debates (Constitution making)*, April 10, 1973, 2422.

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this demand which according them was against ‘parliamentary traditions’, the draft that was authenticated on April 10, 1973 as result of negotiations held between the President and the leaders of the opposition amendment were introduced that were approved by the House with clear majority.<sup>26</sup>

The finally approved and authenticated draft provided the mechanism that if 2/5<sup>th</sup> of the total members of the House referred any measure under discussion it will be referred to the Council.<sup>27</sup> So instead of 1/4<sup>th</sup> as demanded by the opposition the number of members required to demand sending legislations to the Council was increased to 2/5<sup>th</sup>, so that opposition cannot paralyse the working of the majority government. This was a compromise on the part of the government to include it in the constitution. However, the bigger compromise in this regard was from the opposition, which agreed that, even if the legislation was under consideration by the Council, it can be promulgated as law. However, if later Council decides that the sent law is against the injunctions of Islam, the National Assembly, Provincial Assembly, President or the government shall reconsider the law so made.<sup>28</sup>

The compromise and reconciliation between both the opposition in the government related to this demand of giving the Council final say over legislation manifested clearly the governmentality. On the one hand it was not possible for those in government to completely side-line the demands of the opposition considering their position in the population and to stigmatise the constitution that it was un-Islamic so was not approved by them.<sup>29</sup> On the other hand, by increasing the percentage of members that can involve the council in any legislation from twenty percent to forty percent was a smart move in the sense that any government will have at members more than the said percentage. It reduced the governmental fear that a small number of members can paralyse the working of the government. Lastly, the supremacy of the legislature over the Council was ensured

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<sup>26</sup> “Bhutto in his Aide-Memoire to the Opposition leaders on the evening of the passing of the Constitution” in *Constitution making in Pakistan, 1973*, National Assembly Secretariat (Karachi: Manager publications, 1975), 129.

<sup>27</sup> The constitution of Islamic Republic of Pakistan, article 229.

<sup>28</sup> The constitution of Islamic Republic of Pakistan, article 230 (4).

<sup>29</sup> Maulana Mawdudi, “*Hukmran Party ko Apni Pasand Ka Aien Musalat Nahi Karne Dia Jai Ga*”, February 10, 1973, The Nawa-i-Waqt. Jamaat-i-Islami, “*Jamaat ne Islami Ain me Pandra Rahnuma Asool Dai Dye*”, February 11, 1973, The Nawa-i-Waqt. Maulana Baki of JUI, “*Ulema Ne Islami Ain Ke Nifaz Ke Lye Intikhabat Me Hisa Liya*”, February 6, 1973, The Nawa-i-Waqt. Mian Tufail Muhammad, “*Quran wa Sunnat Ke Munafi Qawaneen Ko Roknay Ka Koi Tareeka Tajveez Nai Kia Gaya*”, January 4, 1973, The Nawa-i-Waqt.

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through the fact that legislation can be promulgated in public interest even if it is under consideration at the Council however if later it is declared repugnant then Assembly shall be reconsidered.

Among the other points of difference related to the Council between the government members was the appointment of a female member in the Council. According to Abdul Hafeez Pirzada, this issue first came to discussion during the Constitution Committee proceedings before the draft was presented to the House for discussion. Pirzada cited the note of dissent of Begum Nasim Jahan who was the member of the Committee, ‘one female shall also be appointed as the members of the Council...’ and Mufti Mehmood said in reply that, ‘... if you do this, the accord is broken’, so Pirzada said that it was because of this reason that it was not mentioned in the draft constitution that was presented to the Assembly.<sup>30</sup> Later this issue came to discussion once again when the duties of the Council were discussed on April 7<sup>th</sup> in the House and on the amendment proposed by the Dr Mrs. Ashraf Khatoon in article 228. She spoke in her speech that, ‘... attitude of many *ulema* is hostile towards problems of women... so I appeal to the minister of law, through the speaker to accede to our request’.<sup>31</sup> Later Begum Nasim Jahan, also gave speech, in which she said that Council is a very important body in the constitution so it is very important to have women in this body, during the proceedings of the Constitution Committee ‘...the *ulema* assured that this provision will not be put in constitution. However, they have no objection to have women in Council, she further added that ‘as promise may not be fulfilled so we request law minister for the women representation in the Council’.<sup>32</sup>

In response to these speeches by the women members, the Law Minister, once again pointed out that, ‘it was on the demand of Mufti Mehmood that we give assurance that one female member may be appointed but it should not be mentioned in the constitution’, however Pirzada said that, ‘he was in support of the amendment proposed that one lady member must be there.’<sup>33</sup> Later the voting was done on this amendment and eighty-three member voted for this amendment, and it

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<sup>30</sup> Abdul Hafeez Pirzada in *National Assembly of Pakistan debates (Constitution Making)*, March 8, 1973, 967.

<sup>31</sup> Dr Mrs. Ashraf Khatoon Abbasi in *National Assembly of Pakistan debates (Constitution Making)*, April 7, 1973, 2243.

<sup>32</sup> Begum Nasim Jahan in *National Assembly of Pakistan debates (Constitution Making)*, April 7, 1973, 2244.

<sup>33</sup> Abdul Hafeez Pirzada in *National Assembly of Pakistan debates (Constitution Making)*, April 7, 1973, 2244.

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now in article 228 (3) (e), that provides that at least ‘one member is woman’.<sup>34</sup> and it was adopted, further it is necessary to mention here that opposition were boycotting the proceedings of the National Assembly and it was only three days later on April 10, that further amendments were done in these articles after successful negotiations between the President Bhutto and the leaders of the opposition resultantly these articles were made part of the constitution and one hundred and twenty five members voted for these articles as enshrined in the present constitution. The compromises and the reconciliation in this regard with reference to the representation of ladies in the Council, and once again it was the government member’s opinion that prevailed but the stance of the opposition was very interesting as discussed earlier that Mufti Mehmood was giving verbal assent and assurance that they have no objection if female members are appointed but not to mention it in the constitution and the mistrust of the female members of the House due to the attitude of ulema. It further clarifies the conservatism of *ulema* that even though they compose the major chunk of the population, they were not ready to assure that at least one among the fifteen members would be woman. However later after the negotiations of the April 10 the finally approved draft authenticated by the President at last included the clause which assured that in the composition of the Council at least one member is women in the Council.

Among the other demands that government and opposition already agreed in the draft of the constitution committee, that seven years were to be given to the Council, to present its final report in the house and interim report earlier, and House based on which was to enact laws. Several government members during the final debates took credit of this aspect of the Council. As for instance. Rana Mohammad Hanif Khan, that was appointed finance minister later, said that his government has empowered Council in the constitution by giving it seven years to examine all the laws, and so it has absolute power... now it is up to the Council and we will not be responsible if fails to perform its duty.<sup>35</sup> Another member Col. Habib went further ahead by saying that, ‘...members of the Council will frame a new era of thought... Pakistan will become a torch bearer to all the Islamic countries’.<sup>36</sup> These statements as will be seen in the last section of the chapter with details that during protest several government members will point out that *ulema* themselves

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<sup>34</sup> The constitution of Islamic Republic of Pakistan, article 228 (3)(e).

<sup>35</sup> Rana Mohammad Hanif Khan in *National Assembly of Pakistan debates (Constitution Making)*, April 9, 1973, 2342.

<sup>36</sup> Col. Habib in *National Assembly of Pakistan debates (Constitution Making)*, April 9, 1973, 2398.

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have agreed to give Council seven years and only after three years they are protesting for not introducing the Islamic laws. Second important factor necessary to mention is that until the government of Bhutto completed its five years and the next elections were announced only one report of the Council was directly sent to the National Assembly. This report was not put for discussion by the government. Afterwards the working mechanism of the Council were changed. According to the new rules the reports of the Council from 1976 onward were to be submitted to the Ministry of Religious Affairs to add another bureaucratic red tape to the working of the Council. It also served the purpose that the report of the Council may not become the demands of the opposition or the public against the government.

### 3.3 INSTITUTIONAL GROWTH FROM ISLAMIC LAWS COMMISSION 1956 TO COUNCIL OF ISLAMIC IDEOLOGY 1973

The debates about the Council and reasons for the increased duties and the functioning both from the perspective of the opposition and the government are already discusses above. The mechanism that provided the Council in this constitution is visibly different from the earlier Advisory Council and the Islamic Laws Commission provided by the 1962 and 1956 constitution because clauses related to the Advisory Council were not discussed among the elected representatives. Instead they were only the members of the Constitution Commission appointed by Ayub Khan that even though in response to the quantitative results of questionnaire, they wrote in their report that it shall be provided only if government deems inevitable to provide such an advisory institution. However, the procedure through which the Islamic Law Commission was provided in the 1956 constitution was quite long and complex, as it was under discussion since the approval of the Objectives Resolution, then the recommendations of the *Board of Talimaat-e-Islamia*, and consequent amendments in the debates of the three drafts of the Basic Principles Committee and the finally the promulgated constitution by second Constituent Assembly that was elected indirectly. Despite the fact that provided by the three different constitutions that evolved in entirely different circumstances, the common thread between the three bodies was the governmentality to keep control over *ulema*. Interestingly, the duties and the functioning of these institutions was never criticised by the religiopolitical parties, which formed most the time the larger part of opposition.

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Since having provided these institutions, the respective governments that had been discussed by Iskander Mirza and the General Ayub Khan, appointed members who were in conformity with their political strategy including those from the religiopolitical parties as well. The governmentality of the Iskander Mirza government is also visible from the statement of Chaudry Zahoor Elahi, the member of National Assembly from 1973 to 1977, that when Iskander Mirza was imposing Martial law he said, ‘I don’t break Islamic Law Commission, if it does not recommend anything...’<sup>37</sup> So as seen in first chapter of the study with details that the purpose was to appoint the Islamic Law Commission, and simultaneously to expect that it will not recommend anything or even if it recommend anything it was to be kept confidential, so that it will not become a pressure group. Likewise, the conclusion of the second chapter was that the Advisory Council was supposed to work in collaboration with Islamic Research Institute under the directorship of Fazlur Rahman. Thus, making it inevitable that his approach was to clash with those who were the graduates of religious seminaries and were not ready to accept the interpretations of Islam as informed by the age of reason and instead were stuck on the literal implementations. However, the Council under discussion here was an extension with reference to the increased mandate which it had compared to other differences was the aspect that it had the direct access to the ears of both the National and Provincial assemblies. The final report that was expected in seven years and any other interim report was to be presented in the House and action was to be taken in respect thereof. The later sections of the chapter will discuss that whether any report was sent to the National Assembly or not? And if it was presented whether it was discussed? And what made government to change the working procedures that after its first report, Council’s working procedures were amended that it cannot send its recommendations directly to the National Assembly and instead they were to be sent to the ministry of religious affairs to add bureaucratic red tape to its recommendations. Before going further in this regard this section will make dissection of the clauses related to the Council to explore the evolution of the body since March 1956 to April 1973.

First duty under article 227 was that all the laws of the country shall be brought in conformity with Quran and Sunnah, it also elaborates that Quran and Sunnah in this regard shall mean as interpreted by respective sects and lastly it states that nothing in this part shall affect the personal laws of the

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<sup>37</sup> Chaudry Zahoor Elahi in *National Assembly of Pakistan Debates (Constitution Making)*, February 27, 1973, 385.

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non-Muslim citizens.<sup>38</sup> The notable change in the said clauses from the previous constitution was that it replaced the text, ‘principles of Islam’ and replaced it with injunctions of Islam as set out in Quran and Sunnah’ and further added that Quran and the Sunnah as interpreted by their sects to their personal laws. This was a substantial change because on the one hand it recognised the sect as part of the constitution, and I infer that it was due to this reason that in the later clauses while laying down the criteria for appointing the members of the Council, it further mentioned that it shall be composed of members from all the sects. The inclusion of members from all the sects was to impact the working of the Council, the government was aware of it, leave apart the Sunni and Shia difference, even within Sunni sect, Mufti Mehmood and Shah Ahmed Noorani belonged to different sects. This fact was highlighted several times by the government, for instance Kausar Niazi the religious minister during the 1977 protests on the demand of Pakistan National Alliance for the imposition of *Sharia* pointed out that ‘they are demanding Islamic *Sharia* from the government if they are so sincere I challenge Shah Ahmed Noorani to pray (*Namaz*) behind Mufti Mehmood, I will resign’<sup>39</sup>. The reason behind his confidence was because of his awareness of the internal differences between both sects. These were the kind of differences between the sects, so having members from distinct sects and to draft agreed legislation was a gigantic task which was given to the council, this was in line with the governmentality of the regime to appease the population, that the government is sincerely interested in implementing the measures, which *ulema* need to agree first.

The next article 228 of the constitution deals with the composition of the Council, laying down that ‘Council shall be constituted within ninety days of the commencement of the Constitution...’, with members not less than eight and not more than fifteen... while appointing the members of the Council ‘the President shall ensure that ‘so far as practicable various schools of thought are represented in the Council... and ‘not less than two members persons of whom is or has been the Judge of Supreme Court or High Court and at least one women member.<sup>40</sup> The composition was changed to the extent from the preceding institution that the number of members was increased from eight to fifteen and for the Advisory Council in 1962 constitution it was not mentioned that the school of thoughts shall be considered for appointing the members. This article does not

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<sup>38</sup> The constitution of Islamic Republic of Pakistan, article 227 (1) (2) (3).

<sup>39</sup> Kausar Niazi, *Aur Line Cut Gai* (Lahore: Ahmed publications, 1987), 34-35.

<sup>40</sup> The constitution of Islamic Republic of Pakistan, article 228 (3) (a) (b) (d).

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elaborate the criteria that what proportionate each sect will have in the Council because it is a debatable subject in the country because population census till date has never taken data about the adherents of sects.

Another noticeable change in the functioning of the Council was the change in procedure through which a question or a reference is to be sent to the Council. The constitution laid down that, ‘the President, the governor or ‘2/5<sup>th</sup> of the total membership of House or Provincial Assembly can refer to Council for advice on the question whether a proposed law is repugnant to injunctions of Islam’.<sup>41</sup> As for the earlier Council, any member could refer a question or a reference to the Council regarding its repugnancy. However, for the Council provided by the 1973 constitution, it required a considerable number of the members to send a legislation or question under discussion for consideration. This change was significant in the sense that government did not want the Council allowed to be used to delay any legislative process. It was in this regard that it further mentioned that after receiving the question ‘Council was to response within fifteen days, about the period which it expects to furnish the advice on the question or the reference received by it.’<sup>42</sup> This article further mentions that in ‘public interest if the House/President/Governor considers that proposed law for which question of repugnancy is raised cannot be delayed to wait for the response of the Council, it may be promulgated, later if the Council advises that it is contrary to ‘injunctions of Islam, then house shall reconsider the laws so made’.<sup>43</sup> The second part of this clause was also new whereby it was made clear that if the sent reference is declared repugnant it shall be ‘reconsidered’ which was obviously an increase in the authority of the Council compared to its predecessors. Although it was silent further that what if the opinion of both differed, and after reconsideration House considers it necessary to be promulgated, it was silent on the issues that in the case of conflict in opinion whose view was to prevail, it gives that insight of the framers that House being an elected body while council being an appointed body it the opinion of the House that will matter more.

Finally, the article 229 of the constitution laid down that within seven years Council shall submit its final report within seven years of its appointment to both the houses and the provincial

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<sup>41</sup> Ibid, article 229 1 (a) (b) (c) (d), (2) (3) (4).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

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assemblies, who after considering these reports shall enact laws in respect thereof within two years.<sup>44</sup> The Advisory Council in the 1962 constitution had not such a time slab to complete the examination of laws, while the Islamic Law Commission in 1956 was provided fifteen years to complete the task. Although both the opposition and the government had two different takes from this, for the opposition it was like the report of the Council once presented to the Assembly will become public voice and will result in pressure of the government to carry out the legislation; and simultaneously for the government it was like buying time knowing that it will be difficult for the Council to draft any such draft which would be agreed by all the members belonging to different school of thoughts. Secondly, the fixed time slot of seven years to examine all the laws also had two implications, on the one hand it gives enough time to government and agreement to the principle that member of the constitution draft committee which included the Mufti Mehmood, Shah Ahmed Noorani and Abdul Ghafoor that at least seven years were needed for the examination laws. Furthermore, this fact was also pointed out by the Bhutto during his speech on 4 March 1977, when the protests of the Pakistan Nation Alliance were at climax that government has failed to introduce Islamisation in the country. Bhutto declared that they (*ulema*) themselves had agreed that seven years were required at least, by now only three and half years have passed, and they are on roads for this demand'. He further added, 'if they thought that it can be done earlier why they did not pointed it when they agreed to the constitution?'<sup>45</sup> While saying this Bhutto intentionally forgot that during these years many recommendations of the Council were sent to the government, and very few took the form of legislation in fact only those which suited his political strategy. It was mainly during the protests of Pakistan National Alliance (PNA) in order to calm them down that few more like declaring, Friday to be the public holiday, banning alcohol and gambling in the country were announced. From the above discussion following points can be deduced about its new role that it was to manifest in the political spectrum of the country.

Having discussed the increased functioning on the part of the provisions related with the Council, there were many others who did not agree during discussions of the constitution making. For instance, Maulana Muhammad Ali, on March 20, when the article 66 was under discussion

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<sup>44</sup> Ibid, article 229 (4).

<sup>45</sup> Zulfikar Ali Bhutto, "Z. A. B Shaheed Announces Ban on Alcohol, Gambling and Night Clubs," March 4 1977, accessed January 26 2018 <http://bhuttolegacyfoundation.com/bhutto/z-a-b-shaheed-announces-ban-on-alcohol-gambling-and-night-clubs>.

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purposed an amendment that, ‘cases of disqualification may be referred by Chief Election Commissioner to the Council of Islamic Ideology for advice’.<sup>46</sup> Voting was done in this regard and amendment was not made part of the draft. Another likewise demand was made by the Zafar Ahmed Ansari, who was the member of the BTI appointed in 1949 and was members of the National Assembly discussing the draft of the constitution, he demanded that, ‘... proceedings of the *Board of Talimaat-e-Islamia* must be made part of the assembly proceedings...’ and later on another instance he demanded while the discussion on the article 48 of the constitution were going on that ‘before proceeding to pass orders on any petition... President shall refer it to the Council of Islamic Ideology... and shall exercise only if it that is permissible’<sup>47</sup> the purpose of this demand was that as has been discussed in the first chapter that BTI recommended a likewise appointed that was to appointed by the President with veto authority over the legislature. However majority of the demands of the opposition during the debates of constitution making that were voted failed as obviously government was in majority resultantly the opposition boycotted the proceedings it was after the negotiations between the opposition leadership and the government at April 10 that compromises with reference with the Council were reached and some of the demands of the opposition related with the Council were incorporated in the finally promulgated draft. Based on the above discussion it can be said that following were the changes that were visible in the promulgated constitution about the Council.

#### 3.3.1 CHANGE IN ITS NAME

One of the most visible change was in its name as the adjective ‘Advisory’ was removed from its nomenclature. This change was decided during the proceedings of the Constitution Committees and there was not opposition from any government members for removing the word advisory from its name which is visible from the fact that the draft presented in the assembly by the Law Minister already had the new name. It highlighted that opposition’s take on this was it would not be an advisory institution like its predecessors instead it will have authority over the legislature as was visible in debates that several opposition members wanted its recommendations to be accepted as a must for the legislature and even went ahead as the courts are given authority to annul any law

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<sup>46</sup> Maulana Muhammad Ali in *National Assembly of Pakistan Debates (Constitution Making)*, March 20, 1973, 1611.

<sup>47</sup> Zafar Ahmed Ansari in *National Assembly of Pakistan Debates (Constitution Making)*, February 26, 1973 and March 16, 1973, 342 and 1444.

if it contradict with the fundamental rights likewise this authority must also be given to the court to annul any law that contradicts with the principles of Islam, as is visible in the amendments proposed by Professor Ghafoor on behalf of JUI, Jamaat and JUP, ‘... as basic rights are given to courts so the courts should also be given authority whether legislations are in accordance with Islam or not’.<sup>48</sup> These aspirations of the opposition explain that change in name, and to this extent government had no objection but regarding the further aspiration, untimely compromises were reached to reach a constitution with consensus.

### 3.3.2 DISAPPEARANCE OF THE ISLAMIC RESEARCH INSTITUTE

Another noticeable change clear from the above-discussed duties was that the role of Islamic Research Institute was no more included in the Council’s working. In the 1962 constitution as earlier discussed that Advisory Council was to submit its recommendations based on the research provided to it by the Institute, which acted like the research wing of the Council, whose opinion even if dissenting was to be attached with the report. Although institute existed as an autonomous institution, and Council might consult it for opinion, however it was not mentioned that it was compulsory to make its recommendations part of the reports submitted to the legislature as was the case previously; during later years it was attached with International Islamic University established during the Zia government. The Council as provided by the constitution soon established its own research wing as there was no provision in the duties bestowed to the Council to consult Islamic Research Institute. So, during the visit of the religious minister, Kausar Niazi on the demands of the members of the Council, the minister promised to get approved the following posts for the research wing of the Council; Research scholars, Research Officers, Assistant Research officers so that Council can function properly.<sup>49</sup>

From the above discussion it is evident that the role of the Institute was nominal in the 1973 constitution promulgated by the elected government, and the role of the Council was firmer compared to its predecessors. So, what was the reason of this attire of these two institutions? whether it was because of the assumption that the institute has not worked properly while the advisory Council had performed extraordinary? Answer to this question is, categorically no. It was

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<sup>48</sup> Professor Ghafoor in *National Assembly of Pakistan Debates (Constitution Making)*, March 7, 1973, 1002.

<sup>49</sup> Council of Islamic Ideology, *Salana Aboori Report 1974-1975*, 95-96.

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the institute under Dr Fazlur Rahman, that had published several research journals and tried to recommend institutionalized Islam considering the realities of the modern-day conditions. According to Rahman it was because ‘during his tenure as director of the institute 1962-1968 and member of the Council 1964-1969 in the Institute and the Council there was a continuous tension and frequent conflict between two because former espoused a modernist stance while the general climate within the Council was conservative and often even reactionary.’<sup>50</sup> However, the working under Rahman as director of Institute was called by one member of the opposition as attempt to introduce ‘*new religion*’ and he further said that ‘...it was only because of Allah that we got rid of him’.<sup>51</sup> So, it became apparent from the attitude of the opposition that it was because of the stigma attached with the Institute because of its modernistic and contextual interpretation of Islamic principles—like suggesting an increased rate of Zakat or declaring not the Alcohol but the intoxication forbidden was responsible for the diminished role of the Institute in 1973 constitution. On the other hand, the governmentality of appeasing the opposition and the population let the government members not to take stand on the role of the institute.

#### 3.3.3 COUNCIL’S PROCEEDINGS IN URDU

Another significant change in the working of the Council compared to its predecessors was that from 1973 onward most of the working and the reports of the Council were carried out in the declared National language, Urdu. The reports and the working mechanism of the Advisory Council were sent to government in English, however the Annual reports after the 1973 constitution were sent to the government in Urdu. One of the explainable reasons for this change was that after 1971 many members of the assembly even if they understood English they used to give their speeches in Urdu. For instance, Mufti Mehmood, Maulana Kausar Niazi, Khurshid Ahmed were some such important names. So, it may be called another impact of the of the episode of the 1971. Before the separation of the East Pakistan, it was probably because of Bengali members that most of the proceedings were in English. Although this change in language was not to impact the working the Council however it will become more important during later years when some the legislations like Hudood laws during Zia government, that were initially drafted in Arabic

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<sup>50</sup> Fazlur Rahman, “Islam and the New Constitution of Pakistan,” ed. J. Henery Korson, *Contemporary Problems of Pakistan* (Leiden: E. J. Brill, 1974), 30-45.

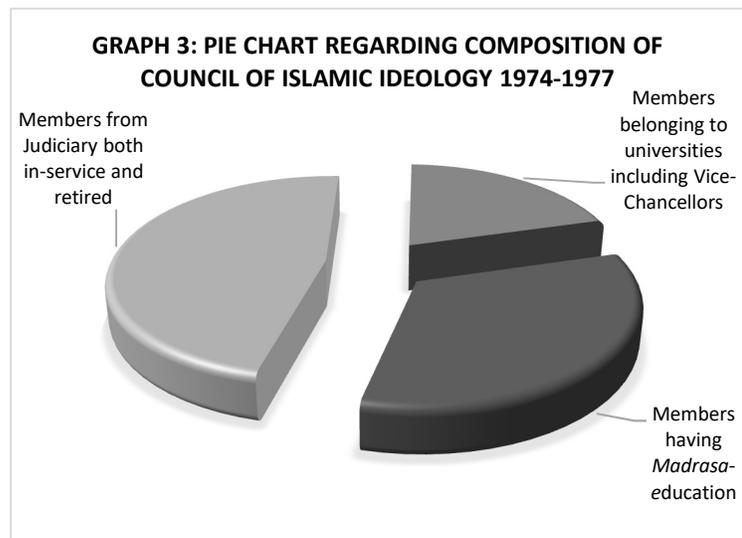
<sup>51</sup> Chaudry Zahoor Elahi in *National Assembly of Pakistan Debates (Constitution Making)*, February 27, 1973, 385.

at the office of Council were then later translated to Urdu and English impacted the implementation of these laws.

### 3.4 PROFILES OF THE MEMBERS OF THE COUNCIL, A PEN PICTURE

The first council members along with the Chairman was appointed on February 2, 1974 under the Chairmanship of the Chief Justice, Justice Hamoodur Rahman.<sup>52</sup> A glimpse into the qualification of fourteen members exhibits the governmentality of the Bhutto government. Based on the qualifications the pie chart below splits the members of the Council with reference to their qualification into three broader categories. The largest chunk is the seven members from judiciary, they were: Justice Hamoodur Rahman, Justice Afzal Cheema, Justice Jamil Hussain Rizvi, Justice Qazi Muhammad Gul, Justice Z. A. Channa, Justice Abdul Hai Qureshi and Justice Qadar Nawaz Awan. The second biggest part of

the pie in dark black colour represents those five members of the Council which were from having education from the religious seminaries so will be referred as *ulema* their names were: Maulana Mohammad Idrees, Maulana Muhammad Haneef Nadvi, Muhammad Baksh Muslim, Maulana Najamul Hassan and Maulana Ehtesham ul Haq. And the



smallest portion of the pie chart represents those that were having university education and were working in the modern educational institutions their names were: Miss Kaneez Yousaf, Dr Abdul Wahid J Hali Pota and Dr Shamin Akhtar.

It is evident that more than half of the members of the Council were from judiciary which included both serving and retired. Before going ahead further to see what impact of such composition was

<sup>52</sup> Notification No. F(2) 73-All, Council of Islamic Ideology, *Salana Aboori Report 1974-1975* (Islamabad: Council of Islamic Ideology, n.d.), 2.

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on the working of the Council it would be pertinent to see a brief pen picture of these members. From the members of this group, the most prominent was the Chairman of the Council Justice Hamoodur Rahman. He became Chief Justice of the Supreme Court during General Ayub Khan Government on November 18, 1968 and remained on this post till October 31, 1975.<sup>53</sup> From 2<sup>nd</sup> February 1974, he was appointed as the Chairman of the Council of Islamic Ideology as well in addition to his assignment as Chief Justice. After his retirement from the head of the judiciary, he remained the full-time Chairman of the Council till 1<sup>st</sup> February 1977. In the judicial history of Pakistan, he is famous for his report ‘Hamoodur Rahman Commission report’, which was an inquiry report of the commission set up by Bhutto government to determine the causes for the separation of East Pakistan and the defeat of the Pakistan Army.<sup>54</sup> Considering this profile and nature of duties it is not difficult to assume that being the Chief Justice in the Supreme Court, it would have been difficult for him to spare a much of time for the working of the council.

The other prominent member from the judiciary, prominent in the sense that he joined as a member in 1974 and later after Hamoodur Rahman remained the Chairman of the Council for the next stint was Justice Afzal Cheema. During his professional and political journey, he remained from Deputy Speaker of the legislature during Ayub era, judge of the high court, acting Chief Justice, member of the Council during Bhutto government and the Chairman of the Council, during General Zia ul Haq government. He started his career as a politician and became a member of the National Assembly from Toba Tek Singh in 1962. He remained Deputy Speaker in the legislature during Ayub government till 21 January 1965. Later he joined judiciary and was part of the bench that under Chief Justice Anwar ul Haq, gave a decision regarding the validation of General Zia’s takeover of civilian government on 10<sup>th</sup> November 1977. Afterwards, on 26<sup>th</sup> September 1977, he was appointed as the Chairman of the Council. Another member from the judiciary was Jamil Hussain Rizvi, he was retired judge of High Court. He had his background from politics as well as he served as Minister of Law and Rehabilitation

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<sup>53</sup> *Supreme Court of Pakistan Annual Report June 2015-May 2016* (Islamabad: Supreme Court of Pakistan, 2016), 219-224.

<sup>54</sup> This report was not made available to public officially, until forty years after ‘India Today’ published parts of it, Samar Halarnkar, “Army atrocities, wide spread corruption as prime reason for defeat in East Pakistan”, India Today, August 21, 2000.

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in West Pakistan from 1960 to 1965 and as later appointed to the high court as judge, He remained the member of Council from 1974-1977 and later reappointed from 1981-1984. The Other members having the background from judiciary were: Justice Qazi Muhammad Gul, Justice Z A Channa, Justice Abdul Hai Qureshi from Supreme Court of Pakistan and Justice Qadir Nawaz Awan a retired judge of High Court. Tellingly, there were seven members from judiciary nearly half of the totally appointed members.

Among those members which were not from the judiciary and neither having the traditional religious education were academicians holding government postings in public sector universities or the research institutions. The academics comprised of; Dr Miss Kaneez Yousaf she was the first female vice-chancellor of University of Islamabad, later renamed as Quaid-i-Azam University. She was the first and the sole women member of the Council. Another member was Dr Abdul Wahid J Hali Pota he was the director of Islamic Research Institute and member of the Council. Another addition in the list was Dr Shameem Akhtar, a professor at Karachi University. Among those having the traditionalist (*madrassa*) education, it would be important to mention that they were not directly the representatives or nominations of the JUI, JUP and Jamaat. Nonetheless, they were criticised for being appointed as the members of the Council for not having adequate required qualification by the religiopolitical parties. The members were: Maulana Mohammad Idrees serving at Jamia Ashrafia, Lahore; Maulana Muhammad Haneef Nadvi, working as the deputy director of the Islamic Culture Department from ahl-e Hadith sect; Maulana Muhammad Baksh Muslim, who was a custodian of the mosque at the mosque of *Lohari Gate*, representing Ahl-e-Sunnat. The list also adds Maulana Najam ul Hassan, who was custodian of a mosque in Peshawar City; and finally, Maulana Ehtesham ul Haq was from Nazimabad Karachi.<sup>55</sup>

This composition of the Council having majority members of whom were unable to give full time to Council especially the judges. Further by not appointing from among the *ulema* as was aspired by the religiopolitical parties as evident in the Assembly debates in the constitution making shows the consistency in governmentality of the government. The approach was of both having on paper the Council and not having the Council as a pressure group in sense that it works behind the closed doors and its members met very rarely. So, the overall impact of this composition would be that it

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<sup>55</sup> Council of Islamic Ideology, *Salana Aboori Report 1974-1975*, 2.

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may be unable to complete the task bestowed upon it to complete the work of examining all the laws of the country the specified period of seven years. Having agreed to the increased role of Council, this governmentality was inevitable for the government to have it so composed to avoid it becoming a pressure group in the hands of the opposition already accusing Bhutto of being inclined towards socialism it serve the same purpose of the extending the control of the government over the issues pertaining to Islam. It was for this reason that as the Constitution required that in its composition at least two members shall be from judiciary, instead seven members were appointed its members so that the recommendations should not be based on the utopian aspirations, instead they must also consider the other principles as well including the international agreements and charters agreed by the state and further not to give the impression that it is an *ulema* Council or the *fatwa* issuing body. Although statistically the number of persons having modern education and serving as public officials was much higher compared to that of *ulema* but still if we compare it with the Advisory Council the percentage of *ulema* was on rise.

An insider's account about the working of Council also gives credence to the argument that increased number of members from the judiciary and especially the chairman as the Chief Justice, impacted the working of the Council. As per the rules it was the chairman that was to decide the agenda of the meeting. Abdul Jabbar Khan writes about that Chairman of Hamoodur Rahman regarding his working as Chairman of the Council. He says that chairman 'was unable to give enough time to the affairs of the Council due to his busy schedule at Supreme Court resultantly the matters of the Council were administered by the Secretary of the Council'.<sup>56</sup> The office of the Council was situated at Samanabad, Lahore in a rented home and the total staff of the Council numbered twenty. The rented house was so ill-equipped that it did not have a hall where the members could meet. Resultantly, its meetings were held in room of Punjab Assembly and files and documents were sent using horse carts because Council had no vehicle of its own. Due to these constraints the meetings were held very rarely once after three months for one or two days.<sup>57</sup> This was insider's view of the Council in 1973 which once again supports the earlier argument about the governmentality that although the members were big names that includes: seven judges, two

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<sup>56</sup> Abdul Jabbar Khan, "*Islami Nazaryati Council Me Pachees Saal*", The Daily Pakistan, February 21, 1999. He joined Council on November 6, 1973 and after his retirement as senior translation officer from the Council wrote in the Daily Pakistan about this twenty-five years spent in the Council.

<sup>57</sup> Ibid.

vice-chancellors making the majority to be the part-timers, with only nominal honorarium. This shows the governmentality of the Bhutto government to appease the population on one hand by providing the body in the constitution. On the other hand, by appointing part-time member and making its proceedings confidential, kept the council under its control and intended to use it as and when needed. Furthermore, the appointment of members from the diverse backgrounds had the in-built arrangements which ensured that much of debates cannot translate into demands for legislative materialization.

#### 3.4.1 'MODUS OPERANDI'

The Council members met for the first time on March, 30 1974 after their appointment and finalised their *modus operandi* and were subsequently notified by the President and were made part of the official gazette as 'Council of Islamic Ideology (Procedure Rules)'.<sup>58</sup> According to these rules, its offices was to be located at Islamabad and its proceedings were to be held in *Urdu* 'unless otherwise allowed by the Chairman' and were to be kept 'Strictly Confidential'.<sup>59</sup> These procedures laid down the 'Honorarium of two thousand per month for the Chairman and one thousand per month for the members excluding the pension or salary if any, drawn by him/her'.<sup>60</sup> One very vital issue that that is not mentioned in these rules is the decision-making procedure within the Council during the consideration of a reference or the question received from the government, the code of procedure is silent over this issue. As per the ongoing routine in the Council agenda is decided by the Chairman and then the research material prepared by the research division of the Council is sent to the members for consideration with the date of meeting to discuss the issue. If any member should be unable to take part in the upcoming meeting he/she will notify in this regard to the Chairman.<sup>61</sup> After having views of the members, the decisions are taken by the Chairman and if any member disagrees with the view of the Chairman, he may submit a dissenting note in this regard. The proceedings of the Council were to be kept confidential. However, things have changed over the period of years as presently now often the Chairman conducts press briefings about the meetings of the Council about the discussion. While going

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<sup>58</sup> Council of Islamic Ideology Procedure Rules 1974 in Council of Islamic Ideology, *Salana Aboori Report 1974-1975*, 27-31.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Waqas Ahmed, Interview by author of the research officer at the office Council of Islamic Ideology, July 7, 2017.

through the proceedings of the Council, it is difficult to suggest that on any issue the decision was taken democratically. Mostly, the view of Chairman prevailed which is also more understandable for the newly appointed Council whose Chairman was Chief Justice of the Supreme Court and almost five members were judges of Supreme Court and the representative of *ulema* were *khatib* of the mosques.

#### 3.4.2 RESPONSE OF THE OPPOSITION ON THE APPOINTMENT OF MEMBERS

As earlier discussed the religiopolitical parties had aspired a veto power for the Council to annul any legislation which that considered repugnant to Quran and Sunnah. In addition to this, they aspired themselves to be consulted while appointing its members. Contrarily, first they were considering that mentioning in the constitution that its report will be presented to the legislature that would enact law according to the recommendation, was synonymous to veto. Secondly, while appointing the members of the first Council, the Bhutto government did not consult any opposition, thus none of their party representative which they had otherwise sought was to be appointed in the Council. On the appointment of the Council's member Abdul Sattar Niazi, General Secretary of the JUP said at the appointment of the members of the Council that: '*Government has not consulted any religious party in appointing its members*'.<sup>62</sup> In the same press briefing he said that government should have taken into consideration before appointing its member, that they should have been '*popular among the masses...*', *authority on Quran and Sunnah, Arabic, Persian, Roman, English, American, Russian, Chinese legal systems*.<sup>63</sup> This statement shows the cognitive desire of the opposition that without criticising specifically any one members that he or she does not possess the required qualification, they criticised all the members of the Council the utopian criteria provided only those persons shall be appointed should have every knowledge possible was indeed near to impossible. More specifically the demand that, 'popular among the population' manifest the hidden intimidation that only those members were to be acceptable to his party that were to be provided from among themselves. Such criticism on the composition of the Council was also done by the Mufti Mehmood and Maulana Abdul Mustafa Al-Hazari criticised the qualification of the members of the Council. The Mufti Mehmood said that, '*Government has appointed such members*

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<sup>62</sup> Maulana Abdul Sattar Niazi, "*Islami Mushawrti Council Me Ghair Numainda Afrad Ku Numaindgi Di Gai Hai*", The Nawa-i-Waqt, February 12, 1974

<sup>63</sup> Ibid.

*in Council that had political reasons...* and demanded to restructure Council and appoint new members that shall be authority on Islamic knowledge'.<sup>64</sup> This bottom line of the criticism by the opposition members in newspapers and later during Assembly debates manifest in-between the lines that they were not happy with the composition of the Council because its members were appointed without consulting their opinion, so they were to criticise any one that was appointed. Government was also aware of this intimation of the opposition of using the Council as resort against the government, later when the tenure of the first members expired in February 1977, and protests against the government were or climax, they offered the membership to the leaders of the opposition with the promise that within six months the legislation would be promulgated on the recommendations of the Council, details of which are discussed in the later sections of this chapter.

#### 3.4.3 DIVERSE ASPIRATIONS FROM THE COUNCIL

What were the hopes of the general masses from the Council? The answer to these questions is visible in a letter published by a daily newspaper. This letter was sent by the employee's union of the Pakistan Tourism Development Corporation to the President and the Council of Islamic Ideology to take action against their Managing Director. It stated that '*one big officer does not like the name of Allah*'.<sup>65</sup> According to the details provided in the newspaper during a meeting the said officer stopped employees from uttering the word 'Allah' in conversation. This one instance shows that aspirations of the common people that they were assuming it to be a *Dar-ul-Fatwa* (Islamic verdict giving body), which actually it was not. So, on the one hand the opposition was not happy with the with the Bhutto government for not consulting them while appointing the members of the Council. On the other hand, the public was having high hopes from the Council and government was contented by appointing the part-time members to the Council, so that it can have knowledge passively and cognitively to adopt only those recommendations that suited their political strategy. Bhutto knew this from day one that elections on the basis of which the government was established were conducted in entirely different circumstances for united Pakistan prior to 1971. The geographical changes required to have new endorsement from masses through elections and it was

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<sup>64</sup> Mufti Mehmood in *National Assembly of Pakistan Debates*, June 24, 1976, 159. Maulana Abdul Mustafa Al-Hazari in *National Assembly of Pakistan Debates*, June 24, 1976, 163.

<sup>65</sup> Pakistan Tourism Development Corporation, "*Aik Ala Afsar Ku Allah Ka Nam Pasand Nahi*", The Nawa-i-Waqt August 9, 1973.

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also one of the demands of the opposition to have fresh elections in the country after the promulgation of the constitution. Considering the understanding of Islam among the population and its importance to secure its vote bank, he wanted to have enough legitimacy carried out on the name of Islam to gather the support among the population and flatten the balloon of the opposition, Bhutto government needed to take measures on the name of Islam. This thinking became more and more clear when the election manifesto of the 1977 galvanised the measures taken on the name of Islam by his government from 1973 to 1977. He was just waiting for the right time to conduct elections, one such time was after the organisation of Islamic Summit (OIC) in 1974 at Lahore.

Kausar Niazi was one of the close associates of Bhutto as he was the general secretary of the PPP and was first minister of Religious Affairs he wrote in his book that Bhutto for the first time talked with him about the elections after the OIC on September 15, 1974.<sup>66</sup> He said to Niazi that ‘he thinks that it the best time to dissolve the assemblies and held fresh elections’, later at another instance Bhutto said him that his legal team which according to Niazi was headed by Abdul Hafeez Pirzada ‘was not ready to accept his desire’.<sup>67</sup> Niazi further wrote that this legal team had made Bhutto realize that he needed not to be afraid of the *ulema*, because of the charisma which he has gained after the organization of the second Islamic summit in Pakistan.<sup>68</sup> Having organised a summit of the Islamic countries at Lahore, Bhutto seemed very satisfied and he thought that it would be enough to appease the population that he is liked by the Muslim world leadership so he is suitable for the term Islamic in the Republic of Pakistan. This aspiration that he wanted to use the steps taken on the name of Islam to win the next elections can be seen when he went for elections in 1977, he wanted to mention among the prominent achievements of his government, ‘to declare Ahmadis non-Muslim’, ‘successful organisation of Islamic Summit’, and declaring Friday to be public holiday, ‘changing the name of Red Crescent to *Hilal-e-Ahmer*’.<sup>69</sup> The Chairman of the Council, Dr Hamoodur Rahman, later after the removal of Bhutto from government also pointed out this attitude of the Bhutto government that, ‘... *his government only took the advantage by implementing only showcase recommendations like declaring Friday as*

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<sup>66</sup> Niazi, *Aur Line Cut Gai*, 14.

<sup>67</sup> *Ibid*, 15-16.

<sup>68</sup> *Ibid*.

<sup>69</sup> “Manifesto of Pakistan People Party 1970 & 1977”, <http://bhutto.org/Acrobat/Manifestos%20of%20Pakistan%20Peoples%20Party.pdf>, accessed February 4, 2018.

*public holiday, prohibiting alcohol and gambling while ignoring all other recommendations like Zakat and Ushr...’.*<sup>70</sup> From the attitude of his government it would not be wrong to say that Bhutto was waiting for the right time for the conduct of elections, However his government was successful in keeping control over the Council in the sense that its first annual report which was to presented in the National Assembly was never discussed and later its working mechanism were amended so that Council cannot send its reports directly to the Parliament but to the Ministry that would decide the future fate of its recommendations that whether they would be sent back to the Council or to the legislature.

### **3.5 ‘ISLAMIC SOCIAL SYSTEM’ AND THE RECOMMENDATIONS OF THE COUNCIL TO THE GOVERNMENT**

Council started its work by taking forward the recommendations given by the Advisory Council especially during its last reports in 1969 and 1970, whereby it was working to give a comprehensive report to introduce an Islamic social system in the country. In this section of the chapter I will discuss briefly those recommendations which were either taken up by the Bhutto government and if ignored by his regime later by his preceding Zia regime. While going through each recommendation we will reach to the conclusion that how the recommendations of Bhutto became the part of the polity without giving the credit to the Council and gradually government had to amend the working procedures of the Council so that these recommendations might not become a public pressure for the government. The measures taken up by the Bhutto government on the name of promoting Islam and expecting to gain the support of the population and the confidential recommendations of the Council during those years gave an idea about the second key question of the study that what cognitive role did Council manifest in developing the governmentality of using Islam to have legitimacy from the population.

#### **3.5.1 PUBLIC HOLIDAY IN AN ISLAMIC COUNTRY**

One of the foremost recommendations of the Council was to declare ‘Friday as public holiday’ and it was ultimately announced by Bhutto while addressing the last session of the Parliament at

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<sup>70</sup> Hamoodur Rahman, “*Bhutto Government Ne Zakat Aur Ushr Ke Bary Me Islami Nazaryati Council Ki Sifarishat Parliament Me Paish Nahin Ki Thin*”, The Nawa-i-Waqt, December 16, 1979.

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January and announcement in this regard was to take effect from July 1, 1977.<sup>71</sup> The annual report of the Council also mentioned the reason that why Friday shall be made the public holiday instead of Sunday. It says that the reason for this recommendation is that ‘...*Sunday was announced public holiday by the British because they were Christian, and they attended the Church on this day*’.<sup>72</sup> This recommendation was then later repeated in the second annual reports during the Bhutto government as well.<sup>73</sup> It would be important to mention here that while giving the recommendations regarding the public holiday there was no reference given from the Quran or the Sunnah to give some link that Friday shall be public holiday, instead it provided a remote link that because Sunday is the sacred day for Christians so Friday shall be taken up a sacred day for Muslims and thus a public holiday.

Bhutto in his speech at the last session of the National Assembly on January 7, 1977 said that, ‘... I take this decision because we are a Muslim country... and it has been an anomaly and I rectify it’.<sup>74</sup> In this speech he announced that from next financial year starting from 1st July 1977, the holiday of the week will no longer be Sunday, it will be Friday. While criticising the opposition he said that, ‘I am happy this decision has been taken by my government whose party was declared *Kafir*, by those who recognise themselves as monopolists of Islam...’.<sup>75</sup> This announcement by him in the last session before going for the election clearly points out the attitude of his government, going for the next elections with the credit of promulgating the measures in the name of Islam. After the elections although opposition did not accept the results of the elections yet the Assembly in its session of May 11, 1977 amended the Negotiable Instrument act 1881, through a bill. Thus, instead of Sunday, Friday was substituted as public holiday.<sup>76</sup> This change was projected by the government members in the house as one of the biggest achievements of Bhutto government towards the imposition of Islam in the country and to criticise then on-going protests of the PNA after the election due to alleged rigging. It exhibits the governmentality of the regime to take up those recommendations which would be eye-catching. Moreover, no reference was made

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<sup>71</sup> Council of Islamic Ideology, *Salana Aboori Report 1975-1976*, 97 and Zulfikar Ali Bhutto in *National Assembly of Pakistan Debates*, January 7, 1977, 91.

<sup>72</sup> Council of Islamic Ideology, *Salana Aboori Report 1975-1976*, 97.

<sup>73</sup> *Ibid*, 97; Council of Islamic Ideology, *Salana Aboori Report 1976-1977*, 259.

<sup>74</sup> Zulfikar Ali Bhutto in *National Assembly of Pakistan Debates*, January 7, 1977, 91.

<sup>75</sup> Zulfikar Ali Bhutto in *National Assembly of Pakistan Debates*, January 7, 1977, 91.

<sup>76</sup> S. M. Masud, The Minister for law and parliamentary affairs, The negotiable instrument (Amendment Bill, 1977 in *National Assembly of Pakistan Debates*, May 11, 1977, 166-190.

that it was on the recommendation of Council, instead it was projected as the priority of the Bhutto himself as earlier pointed out that ‘it was an anomaly which he rectified’, which gives scholarship to the argument that as knowledge provider the recommendations of the Council although were not given direct credit, however they were promulgated whenever they suited the political strategy of the government.

### 3.5.2 LEAVING *NAMAZ* (PRAYER) A PENAL OFFENSE OPINION SOUGHT FROM THE COUNCIL?

Another recommendation of the Council was to provide such an environment where population of the country can pray regularly. *Namaz* is among one of the five pillars of Islam and it is the religious duty of each Muslim to pray five times a day. This issue came under discussion when the provincial government of North West Frontier Province (NWFP, now called Khyber-Pakhtunkhwa) sent a reference to the Council that it desires that the Council proposes a new legislation which can declare not offering prayer a penal offense to be promulgated by the Provincial Assembly'.<sup>77</sup> This issue was debated in length during the meetings of the Council that whether it is the duty of the state to declare leaving prayer a punishable offense or it may be left to the relation of the Allah with the person. Regarding the first part of the reference it responded that ‘it is out of the scope of the Council to draft any legislation for the legislative assemblies’, regarding the second part it recommended that in the opinion of the majority of the members of the Council the habit of praying can be encouraged through motivations and not through punishments which can result otherwise. However, punishment may be given to that person who disrespects prayers.<sup>78</sup>

The discussion within the Council on this issue were very interesting, as its members were divided on this opinion, and there were two different point of views in the Council. One point of view was shared by those members of the Council who were appointed because of having madrassa education as *ulema* and while the other point of view was of the experts of law and the academicians appointed in the Council. Among those who were against the opinion for any such legislation were; Justice Gul, Justice (Retd.) Kadir Nawaz Awan, Justice Afzal Cheema, Dr Moin-

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<sup>77</sup> Council of Islamic Ideology, *Salana Aboori Report 1975-76*, 127.

<sup>78</sup> Ibid.

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ud-din Baqai, Dr Miss Kaneez Yousaf, Dr Professor Shamim Akhtar and Maulana Najamul Hassan. Their basic argument was that prayer is a personal affair between the man and his Creator, so the better mode of making people punctual for prayer instead of introducing punishment would be to introduce other measures like encouragement to students through teachers and providing breaks in government offices during prayer timings and *azan* on radio and television.<sup>79</sup>

The contrary opinion was given by Maulana Muhammad Baksh Muslim, Maulana Zia ul Haq Qasmi, Ehtesham ul Haq and Maulana Muhamad Hanif Nadvi, they believed that being an ‘ideological state’, it was the duty of the state to make a department named as *Muhtasib* (Accountability Bureau), while quoting the example of Saudi Arabia, where all the markets are closed and if somebody does not observe prayer he is liable to be punished.<sup>80</sup> They also countered the argument that in Quran, and the traditions of Prophet and pious caliphate there was no such institution by saying that, at that time the offenders of prayers were rare. Adding further, during the Abbasid rule, a *Muhtasib* institution was established.<sup>81</sup> They further said that this institution shall not only take care of the prayers but also about the fasting and other religious practises. some other measures like introduction of conduct column in the annual confidential reports of the government servants was also demanded by these members.<sup>82</sup> In sum all the members agreed to the opinion that *Namaz* timing must be compulsorily observed at least in government offices and a break must be provided during the *Namaz* timings at the governmental offices and educational institutions.<sup>83</sup> Despite the fact that it was clear it’s the function stated for the Council in constitution this reference from the NWFP government for the Council to draft a legislation in itself exhibits a paradox because otherwise it was supposed to draft the legislation and then if considerable members of the parliament point out then it can be sent to the Council to be examined for repugnancy. As the provincial government was later dissolved by the centre so nothing substantial was done in this regard. This repose of the Council of only an examining body for the legislations was itself contradicted by the Council when during Zia era it became a law drafting body.

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<sup>79</sup> Ibid, 232, 236, 243

<sup>80</sup> Ibid, 232, 236, 243

<sup>81</sup> Ibid, 227.

<sup>82</sup> Ibid, 243.

<sup>83</sup> Ibid, 127.

### 3.5.3 HIJRI CALENDAR IN AN ISLAMIC COUNTRY

Islamic calendar is called *Hijri* calendar, it starts from the migration date of the prophet Muhammad from Makkah to Medina in 610 A.D. It is different from the Gregorian calendar used most commonly and internationally that is solar calendar. However, *Hijri* calendar being lunar has been followed by the Muslims to determine the religious festivals like *Eid*, *Ramzan* and *Haj*. The Council in order to enhance Islamisation of social system, also recommended to introduce Islamic calendar as it might help to bring consensus among the population to celebrations or commemorations i.e. *Eid-ul-Fitr*, *Eid-ul-Azha*, *Muharram* commemorations.<sup>84</sup> There were differences on the sighting of moon between the government and the local committees to celebrate the events on one and the same day in all the country. In this regard as Bhutto government had earlier passed the resolution for the appointment of the ‘*Ruet-e-Hilal Committee*’ (*Ulema* panel to announce the sighting of moon for Muslim months).<sup>85</sup> Once again it was later during Zia ul Haq government that Islamic calendar year, months and dates were also mentioned on the official papers along with the existing Gregorian calendar.

### 3.5.4 NATIONAL DRESS TO BE PROMOTED

Another recommendation reiterated in the annual reports of the Council was about the national dress, it recommended government to promote the national dress by encouraging the government officials by wearing it. It proposed government to encourage *Shalwar Kameez* as the national dress and *dupatta* in addition for the females. Nothing substantial was done in this regard during Bhutto era and it was not until 1982 when General Zia ul Haq made it compulsory for all the official working in the Secretariat to wear the national dress i.e. *Shalwar Kameez* and it was made the uniform of the schools as well.

### 3.5.5 ORGANISATION OF ISLAMIC COOPERATION, SUMMIT 1974

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<sup>84</sup> Council of Islamic Ideology, *Salana Aboori Report 1976-1977*, 259.

<sup>85</sup> Maulana Kausar Niazi, “*Ruet-e-Hilal Committee Committee Ki Qarardad Itefaq-e Rai Sey Manzoor Kar Li Gai*”, *The Nawa-i-Waqt* January 24, 1974.

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The constitution of 1973, provided that the state of Pakistan shall endeavour to strengthen the ties with the Muslim countries.<sup>86</sup> Council in several of its recommendations had cited the example of the Saudi Arabia and the other Muslim countries specially while working during the examination of laws. Some authors have referred the links of Bhutto with the leaders of the Muslim world because of ‘middle east oil boom’ or the new policy of ‘bilateralism’ introduced by Bhutto in the foreign policy.<sup>87</sup> However one additional aspect would be to gain more popularity by inviting not just the heads of the Muslim countries but also the important personalities from the Muslim world. In this regard his government invited Imam of Holy mosque of Medina, Sheikh Abdul Aziz Saleh to Islamabad to lead the Friday prayer at Lal Masjid, Islamabad on February 13, 1976.<sup>88</sup> Bhutto himself welcomed them and the Friday prayer gathering was held in which Prime Minister participated in order to project to population that Prime Minister is very much liked by the Muslim leadership and they acknowledge the services rendered by Bhutto to the Islamic world.<sup>89</sup> Another benchmark step in this regard of having good terms with the Muslim world was organising Organization of Islamic Cooperation summit (OIC) at Lahore. This conference was followed by the pictures of Bhutto in press along with several leaders of the Muslim world after the Friday prayer at *Badshahi* Mosque, Lahore. As earlier discussed that Bhutto in his conversation with Kausar Niazi said that it was the climax of his popularity in his opinion, and he thought it to be the ideal time to conduct election in the country.<sup>90</sup> Just when the things were looking settled for Bhutto and he was thinking about elections an apparently incident which initially seemed of local nature in the town of Rabwah near Sargodha, central Punjab brought the leadership and the population on roads against the Government with the demands to declare Ahmadi’s a non-Muslim.

### 3.5.6 GOVERNMENTALITY OF USING COUNCIL AS ARBITRATOR DURING ANTI-QADIANI DISTURBANCES

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<sup>86</sup> The Constitution of the Islamic Republic Pakistan 1973, in part II, chapter 2, section 40, “strengthening bond with Muslim world”.

<sup>87</sup> Omar Farooq Zain, “Zulfi Bhutto’s foreign policy: Vocalization for self-reliance and vivification of integrity,” Pakistan Journal of Social Sciences, vol 32, no 2 (2012): 427-435, [https://www.bzu.edu.pk/PJSS/Vol32No22012/Final\\_PJSS-32-2-11.pdf](https://www.bzu.edu.pk/PJSS/Vol32No22012/Final_PJSS-32-2-11.pdf), accessed February 5, 2018.

<sup>88</sup> “*Masjid-i-Nabvi Ke Imam Aj Islamabad Me Namaz-i-Juma Parhain Gay*”, The Nawa-i-Waqt, February 13, 1976.

<sup>89</sup> “*Opposition Ke Rahnomaon Ku Imam Majid-i-Nabvi Sey Milne Ki Ijazat Nai Di Gai*”, The Nawa-i-Waqt, March 2, 1976.

<sup>90</sup> “*Bhutto Ne December Tak Intikhabat Ke Tyarian Mukamal Kar Lene Ki Hidiyot Dai Din*”, The Nawa-i-Waqt, July 2, 1974. And see Niazi, *Aur Line Cut Gai*, 14-15.

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*Qadiani* also called Ahmadi or *Lahori* are the followers of Mirza Ghulam Ahmed in Pakistan, they are accused of not believing in the finality of the Prophethood by the other sects in Pakistan and since the creation of Pakistan this issue brought protesters on the roads led by the political opponents and the *ulema*. On the other hand, *Qadiani* say that they believe in the finality of the prophet Muhammad, but they regard their Khalifa as ‘*Messiah*’.<sup>91</sup> This demand of declaring them non-Muslim was not new, even before the partition of Pakistan there were tense relations between them and the other religious parties. These disturbances turned into riots in 1953 when the religious parties came on roads against the federal government of Khawaja Nazim ud din with the demand to declare *Ahmadis/Qadiani* non-Muslims. However, his government took firm stand on the ground that it is not the responsibility of the state to declare any sect non-Muslim without their consent and refused to accept this demand and instead imposed Martial law in Punjab by dismissing the provincial government. Later an inquiry commission held under Muhammad Munir held the inquiry for the causes of disturbances and published a report in which he criticized the attitude of the *ulema*.<sup>92</sup> Almost twenty years later once again the Punjab witnessed the riots by *ulema* for demanding the legislation that they should be declared as non-Muslims after the Rabwah incident. As a result of the protests in September 1974 the legislature of the country declared Ahmadis non-Muslims according to the law of land, before being discussed in the legislature, Bhutto announced that issue may be referred to the Council and let it decide about the issue.<sup>93</sup> However the religiopolitical parties did not agree to the suggestions because they believed that issue is already decided, and they are demanding legislation. Initially, the event which happened on 29<sup>th</sup> May 1974 at Rabwah seemed of local nature but soon through the pulpit of the mosque it spread across the country like wildfire, once again showing the power of the *ulema* and the religiopolitical parties to the government. Rabwah was the city which is the centre of the Ahmadi activities and their and large number of *Ahmadis* lived in this city.

There are actually different versions about how this incident unfolded. According to Zafrulla Khan, an Ahmadi, Jamaat students devised a plan of provoking the Ahmadi community of anger, he said

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<sup>91</sup> Mirza Ghulam Ahmed, *The Need for the Imam*, trans. Chaudhry Muhammad Ali (London: Raqem Press, 2007), 1-55. For details regarding *Qadiani* believes see, <https://www.alislam.org/>

<sup>92</sup> M. Munir, *Report of the Court of inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953*, (Lahore: Government printing, 1954), 292-293.

<sup>93</sup> Kausar Niazi, “*Qadianion Ka Masla Islami Council Ke Supurd Krne Ka Imkan*,” *The Nawa-i-Waqt*, June 12, 1974.

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this clash was engineered and managed, it resulted in slight injury of few students they were the members of the Jamaat, they spread it to the whole country.<sup>94</sup> While the other version from taken up by the opposition was that as the *Qadiani*'s were distributing the preaching material so students of Nishtar Medical College stopped them from doing so, while on their way back on their way back from Peshawar, Ahmadi crowd was waiting for them at the railway station and in their attack, number of students got badly injured.<sup>95</sup> The news spread throughout the country through the pulpit of the mosque and it was said that the Rabwah has become a state within state. The government on the other hand, in order to control the protests appointed a judicial tribunal under Justice K. M. Samadani and directed the national newspapers from publishing anything related to the Rabwah incident except the proceedings of the tribunal given in the form a press report to keep population passive.<sup>96</sup> The protests and strikes continued resultantly Bhutto conducted meetings at Governor House Lahore, in these meetings he was accompanied by Mohammad Hanif Ramay (Chief Minister of Punjab), Maulana Kausar Niazi (Religious Minister), Sheikh Rashid, Malik Miraj Khalid (PPP, Punjab) and they met separately with Mian Tufail, Nawabzada Nasrullah Khan, Mohammad Yousaf Nadvi, Allama Ehsan Elahi Zaheer that were leading the protests.

The budget session of National Assembly was already in the session at the time of Rabwah incident when Professor Ghafoor, Maulana Ghulam Ghous and Chaudry Zahoor Elahi presented an adjournment motion to demand reply from government on Rabwah incident.<sup>97</sup> The intensity of the political capital involved was visible from the fact that there was even the exchange of hot words between Chaudry Zahoor Elahi and Maulana Ghulam Ghous that who was to speak first on the adjournment motion until it was accepted by the speaker. The Law minister Pirzada said that '*prima facia*, the matter is in provincial jurisdiction... the Chief Minister of the province has announced to hold an inquiry under judge of High Court...'.<sup>98</sup> The movers of the adjournment motion however in their speeches emphasised the importance of taking up this motion out of turn. For instance, Professor Ghafoor said that, '*... there are thousands of people in Islamabad police*

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<sup>94</sup> Muhammad Zafrulla Khan, *Ahmadiyyat: The renaissance of Islam* (Rabwah: Tabsheer publications, 1978), 347. And for more details see Ahmadiyya encyclopedia, <http://www.wikiahmadiyya.org/history/hazrat-mirza-ghulam-ahmad/1974-pakistan-riots#TOC-22-May:-Attack-at-Rabwah-Rail-Station>, accessed February 8, 2018.

<sup>95</sup> Chaudry Zahoor Elahi's adjournment motion in *National Assembly of Pakistan Debates*, 31 May 1974, 38-39.

<sup>96</sup> Editorial, "*empty pages*," *The Nawa-i-Waqt*, June 1, 1974.

<sup>97</sup> Chaudry Zahoor Elahi and Maulana Ghulam Ghous in *National Assembly debates*, May 31, 1974, 33-34.

<sup>98</sup> Abdul Hafeez Pirzada in *National Assembly of Pakistan debates*, May 31, 1974, 34.

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*stations and government hostel... if the house accepts it for discussion then it will help in making the situation better*'.<sup>99</sup> After all these discussions the adjournment motion was accepted and Chaudry Zahoor Elahi read the motion that was related to '...the failure of the Federal government in protecting life and property at Rabwah railway station, where one compartment of Chenab Express was attacked on May 29, 1974...' <sup>100</sup>

As it was pointed out during the initial debates by the members of the opposition that it was not a small issue, the later events proved this in real sense as later it resulted in the constitutional amendment according to which the followers of the *Qadiani* believe were declared non-Muslims. While these discussions were going on in the assembly, in order to further pressurise the government which initially seemed resistant to accept the demand of the opposition, they established *Tahafuz-e Khatm-e Nabuwat* fund (Monetary collection for the funds to protect the finality of Prophet) and deadline was given till June 30 to declare *Qadiani*'s non-Muslim and a complete shutter down strike was observed.<sup>101</sup> Here it would be beyond the scope of the study to go into further details in the protests that ultimately resulted in the situation that Bhutto government to accept the demand of the opposition. Instead this study will attempt to trace out the expectation from the Council under discussion here to play its role in subduing the pressure of the opposition.

A brief glimpse through the events of these days it becomes evident that Bhutto government was against the idea that government should declare the *Qadiani*'s non-Muslim this is also visible in his speech in the National Assembly, that '... this debate has already ended when we agreed on the oath of the Prime Minister and President... we have appointed Court of Inquiry in regard to Rabwah incident...' <sup>102</sup> He was referring to the oath in the constitution because it already mentions that the bearer of the office shall believe in the finality of the prophethood. However, the most significant reason which seems more valid here that government was not interested to accept the stance of the opposition was because it would make them more popular in public and bring government on backfoot and succumbing to this demand may have resulted in near future for more staunch demands. Bhutto said during these meeting with the leader of religiopolitical parties

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<sup>99</sup> Professor Ghafoor Ahmed in *National Assembly of Pakistan debates*, May 31, 1974, 36-37.

<sup>100</sup> Chaudry Zahoor Elahi in *National Assembly debates*, May 31, 1974, 38.

<sup>101</sup> Maulana Mufti Mehmood, "*Majlis-i-Amal Tahafuz-e Khatm-e Nabuwat Aur Muthidai Jamhoori Mahaz Ki Appeal Per Pury Mulk Me Mukamal Hartal*", *The Nawa-i-Waqt*, June 15, 1974.

<sup>102</sup> Zulfikar Ali Bhutto in *National Assembly of Pakistan debates*, June 3, 1974, 129-131.

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clarified that ‘considering the present international scenario it would not be appropriate to declare them non-Muslim immediately and suggested that it would be appropriate to refer the issue to the Council of Islamic Ideology to decide’.<sup>103</sup> In response to the offer of Bhutto to discuss this issue in the Assembly after the approval of the budget and with the consent of assembly to send this issue to the Council of Islamic Ideology, Mufti Mehmood the leader of the movement replied in a press conference. He said that ‘Prime Minister Bhutto is not serious is declaring *Qadiani*’s non-Muslims, although he had announced this matter to be discussed after budget and with the approval of assembly it will be referred to Council of Islamic Ideology, but we think doing this will be like putting the issue to background and once again demanded to arrest Mirza Nasir (the spiritual leader of *Qadiani*’s).<sup>104</sup>

Among the reason that why Council was unable to play the role which the Bhutto government aspired it to manifest was first al the reservations of the opposition on the members of the Council which is evident in the criticism on the profiles of the members just days before the negotiations in the national assembly debates. Several members of the House, Maulana Abdul Haq, Chaudry Ghulam Rasool Tarar, Maulana Abdul Hakeem, Professor Ghafoor and Sahibzada Saif Ullah criticised the qualification of the members of the Council, and the law minister Abdul Hafeez Pirzada replied that, ‘...appointment of the members is the right of the President whosoever he deems appropriate he can appoint...’.<sup>105</sup> This in itself explains the reason of mistrust and make it such a body whose position of arbitration would be acceptable to the already religiously charged opposition with the backdrop of such protest a decade earlier. Another reason for the opposition for not agreeing to accept the proposal of sending *Qadiani* issue to the Council, was because they believed that it is an already settled issue and they have already given many lives in protest and 1954 and more importantly it was a great opportunity for them to popularize themselves against Bhutto.

Due to the failure of these negotiations and the ongoing protests and processions, government agreed to hold a special session of the assembly to hold in camera as a special committee on this

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<sup>103</sup> Kausar Niazi, “*Qadianio Ka Masla Islami Council Ke Supurd Krne Ka Imkan*,” The Nawa-i-Waqt, June 12, 1974.

<sup>104</sup> Maulana Mufti Mehmood, “*Islami Council Ya Supreme Court Ke Suprad Krna Es Masly Ku Sarad Khany Me Dalny Ke Mutradif Hu Ga*,” The Nawa-i-Waqt, June 17, 1974.

<sup>105</sup> Starred Question, response of Abdul Hafeez Pirzada in *National Assembly of Pakistan*, June 5, 1974, 228-230.

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issue and on September 7, 1973 the bill was passed for the Second Amendment in the constitution according to which they were added to the definition of non-Muslim in the constitution.<sup>106</sup> Mufti Mehmood, leader of the *Majlis-i-Amal Tahafuz-e Khatm-e Nabuwat*, gave the credit for this legislation to the unity among the *ulema* and they expressed hope that this unity will continue until the complete Islamic system is announced in the country and announced to commemorate upcoming Friday as *Youm-e-Tashakur* (Thanks day) on September 13, 1974 for their success to declare *Qadiani's* non-Muslim.<sup>107</sup>

Once the passed this legislation was promulgated by Bhutto government, although it was not willing for the said constitutional amendment, now he was eager to take full credit of this amendment and asked his religious minister to launch a propaganda campaign in this regard. Kausar Niazi, his religious minister later wrote in his work that Bhutto said him to look into the matter as he felt that ‘... *ulema* have taken the full credit of the legislation and his government had got nothing out of it despite the fact that it is his government that promulgated it’.<sup>108</sup> It was because this background that Mirza Nasir the leader of *Qadiani's* in an interview to the Associated Press of America alleged that, ‘Bhutto engineered the riots of May 1974, because he wanted to prop up his crumbling prestige by winning over the support of the extremist...’.<sup>109</sup> This legislation, on the one hand, exhibited the strength of the religious parties but simultaneously it was a failure on the part of governmentality to use Council to act on its part. The government wanted to refer this issue to the Council but *ulema* did not want this issue to be sent to Council because they considered that the issue is already settled, and further they did not trust the profiles of the members of the Council which were solely the choice of the government. Another aspect of the event is that it manifested the increased strength of the *ulema* in terms of their influence on the population that they can bring the government to accept their demands even if it was not suitable to its political strategy. In order to supervise the issues, pertain to Islam government after the second amendment also establishment Ministry of Religious Affairs to supervise the religious matters. It was among one

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<sup>106</sup> The Constitution of the Islamic Republic Pakistan 1973, in Chapter 5, section 260 (3) (b). added to the constitution by the act 49 of 1974 on September 17, 1974.

<sup>107</sup> “*Markazi Majlis-i-Amal Islami Nizam Ke Nifaz Ke Lye Koshish Jari Rakhy Gi Aur 13 September Ku Youm-e-Tashakur Manany Ki Appeal*”, *The Nawa-i-Waqt*, September 9, 1974.

<sup>108</sup> Niazi, *Aur Line Cut Gai*, 12.

<sup>109</sup> Dr Syed Rashid Ali, “Pakistani Constitutional Amendments of 1974: Declaring *Qadiani's* as a non-Muslim Minority” <http://alhafiez.org/rashid/constipak.html> accessed on January 18, 2017.

of the recommendations of the Council initially given during Ayub era.<sup>110</sup> It also materialised in 1974 in different circumstances during the elected government of Bhutto.

### 3.6 AMENDMENTS TO THE WORKING PROCEDURES OF THE COUNCIL AFTER THE FIRST ANNUAL REPORT

One most visible event which explains the approach of the government towards the Council was the change in its working procedure. According to the change the Council was barred to send its interim or final report to the House directly, instead it was to be sent to the ministry of religious affairs that was to decide its fate that whether it was to send to the House or sent back to the Council. The first report of Council was sent to the National Assembly in November 1975. This report had recommendations majorly based on the Islamic social system that was prepared by the previous Advisory Council, and the discussions that were held within the Council from February 1974 till November 1975. This was the only report that was presented directly to the House, but it was never discussed by the members of the House, despite the demands by the members of the opposition. In response to a question by Maulana Abdul Haq about the performance of the Council, Malik Mohammad Akhtar the minister of parliamentary affairs said that we have received the first annual report of the Council, and it will soon be presented to the House.<sup>111</sup> In response, Maulana Ghulam Ghous Hazarvi said that, ‘... we request you to present report in this session of Assembly...’.<sup>112</sup> Malik Mohammad Akhtar replied that, ‘...relevant minister is ill, so report will not be presented now, however soon it will be presented...’.<sup>113</sup> It was on November 26 1975, in the same session that first interim report of the Council was tabled in the House, however no discussion was held on the recommendations.

The attitude of the government was criticised by Rao Khurshid Ali Khan, Maulana Ghulam Ghous Hazarvi and Maulana Abdul Haq criticised the government for not implementing the recommendations given by the Council. For instance, the recommendations like declaring Friday

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<sup>110</sup> *Annual Report for the proceedings of Advisory Council of Islamic Ideology 1964-1965*, 86. *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1966-1967*, 167-168. Council of Islamic Ideology, *Salana Aboori Report 1974-1975*, 9-10.

<sup>111</sup> Maulana Abdul Haq and Malik Muhammad Akhtar in *National Assembly debates of Pakistan*, November 18, 1975, 149-152.

<sup>112</sup> Maulana Ghulam Ghous Hazarvi in *National Assembly of Pakistan Debates*, November 18, 1975, 152.

<sup>113</sup> Malik Muhammad Akhtar in *National Assembly debates of Pakistan*, November 18, 1975, 152.

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instead of Sunday as public holiday and use of Hijri calendar in the country.<sup>114</sup> Once presented to the Assembly the recommendations of the Council were also published by the daily newspapers.<sup>115</sup> This report included the demand from the government to declare Friday as a public holiday, the introduction of *Hijri* calendar, promotion of national dress, a ban on alcohol and gambling. No one was pointing out it was not only the government that was to implement these recommendations, instead it was the house that was to discuss these advisory recommendations and promulgate legislations in this regard. Government was getting stigmatised that it is not even implementing the recommendations of its own appointed body. This was the main reason that the working procedures of the Council were changed and then afterwards none of its reports was presented directly to the Assembly, instead it was to be sent to Ministry of religious affairs. Regarding the official version for changing the working procedures of the Council was that, ‘as per the rules of the Parliament such reports can be presented by the government only to the House’.<sup>116</sup> This amendment is significant to be understood here because during the election year because the opposition was already demanding a ban on liquor, gambling and Islamisation of laws and the other measures discussed above that were recommend by the Council in its interim report.<sup>117</sup> It was not suitable for the government to be stigmatised that it was hesitant in implementing the recommendations of the body which was appointed by itself for the aforesaid purpose. This amendment was synonymous with the crippling power of the Council so that it shall have no more direct access to the ears of the parliament directly, instead, it was handed over to the bureaucratic red tape to be routed through the hierarchies of the Ministry. Considering the pressure of the opposition and their demand of Islamisation, the government had sensed the potential threat from Council, as few months after the presentation of the first interim report changes in its procedures were carried out.

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<sup>114</sup> Rao Khurshid Ali Khan, Maulana Ghulam Ghaus Hazarvi and Maulana Abdul Haq in *National Assembly of Pakistan debates*, November 18, 1975, 149-152.

<sup>115</sup> “*Islami Nazayati Council Ne Jumma Ko Haftawar Chutti Krny Ki Sifarish Kar Di*”, *The Nawa-i-Waqt*, June 30, 1976.

<sup>116</sup> Council of Islamic Ideology, *Salana Aboori Report 1975-1976*, 94. Miscellaneous part, Council in its session amended the rules of procedure 1974.

<sup>117</sup> Asghar Khan, “*Tehrik-i-Istaqlal Islami Nizam Ke Nifaz Ke Lye Qaumi Assembly Me Tarmimi Bill Pesh Kre Gi*,” *The Nawa-i-Waqt*, March 2, 1976. Mufti Mehmood, “*Sharab Aur Sood Per Pabandi Kyn Nai Lagai Jati*,” *The Nawa-i-Waqt*, April 11, 1976.

### 3.7 PAKISTAN NATIONAL ALLIANCE PROTESTS AND LEGISLATION BASED ON THE RECOMMENDATIONS

After the announcement of elections in 1976, the opposition parties including the religious parties considered better to contest against Bhutto as an alliance so a political alliance was formed among all the opposition parties, this alliance was named as Pakistan National Alliance.<sup>118</sup> The nine parties were: Jamaat-e-Islami, Jamiat Ulama-e Pakistan, Jamiat Ulema-e Islam, Muslim League Functional, Muslim League Qayyum, Baluchistan National Party, Communist Party, National Democratic Party and Pakistan Democratic Party. According to Kausar Niazi, Bhutto was worried due to this alliance and through agencies, he manoeuvred that the alliance leader cannot agree to the name of Asghar Khan, to whom he considered as his potential rival and instead agree on the name of Mufti Mehmood, who according to him had no international standing.<sup>119</sup> The election manifesto of the PPP mentioned the steps taken by the Bhutto government to Islamise the country in the section of 'promises fulfilled', it mentioned the legislations for declaring the Ahmadi's non-Muslim, Islamic Summit in the country, declaring Friday as the public holiday, International *Seerat* conference and arrangement of the visit of the imams of the Holy mosques from Makkah and Medina, legislation regarding the publication of error free Quran, changing the name of Red crescent to the *Hilal-e-Ahmer* and further promised that in future it will declare Quranic education compulsory for all the students.<sup>120</sup> On the other hand, the opposition was united on a single point agenda of getting rid of Bhutto and the demands for the Islamic system based on the Quran and Sunnah.<sup>121</sup>

The elections for the national assembly were conducted at 7<sup>th</sup> March 1977, and in the preliminary results PPP got a clear majority in the National Assembly, PNA accused PPP of rigging the election and announced to boycott the provincial elections and announced to start agitations. These agitations which started with the demand of the new elections gradually turned into the demand to

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<sup>118</sup> "Hizb-i-Ikhtilaf Me Shamil Tamam Jamato Me Itihad Ho Gaya," The Nawa-i-Waqt, January 11, 1977,

<sup>119</sup> Niazi, *Aur Line Cut Gai*, 38.

<sup>120</sup> Zulfikar Ali Bhutto, *Quran-i-Pak Ko Aam Taleem Ka Lazmi Juz Bana Dia Jai Ga, PPP Ka Intikhabi Manshoor*," The Nawa-i-Waqt, January 25, 1977. And "Manifesto of Pakistan People Party 1970 & 1977", <http://bhutto.org/Acrobat/Manifestos%20of%20Pakistan%20Peoples%20Party.pdf>, accessed February 4, 2018.

<sup>121</sup> Mufti Mehmood, "Mulk Me Quran and Sunnat Ka Nizam Muakamal Tor Pe Nafiz Kia Jai", The Nawa-i-Waqt, January 9, 1977. Asghar Khan "Mulk Me Shariat Ke Mutabik Adilana Nizam Qaim Kren Gay," The Nawa-i-Waqt, February 14, 1977.

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introduce *Nizam-i-Shariat*.<sup>122</sup> Initially, Bhutto stood firm to counter the demand of the opposition that there are no provisions for the conduct of new elections, but through agitations and strikes opposition brought him to terms and he agreed to the demand of *Nizam-i-Shariat* through Council of Islamic Ideology.<sup>123</sup>

The stint of the majority of the members of the Council had expired after 18<sup>th</sup> December 1976. Therefore, Bhutto in order to control the protests and the accusations by the opposition that he was not serious in implementing the Islamic legal system in the country, reminded them of their commitment while signing the constitution as they agreed that the Council shall be given seven years to examine all the laws and given other recommendations. It had only been little more than three years and they were once again protesting on road. As they had agreed to the role of Council in the Constitution they shall give it three more years to complete its work. Adding further, he said that he can restructure the Council and can appoint, Maulana Mawdudi, Mufti Mehmood, Shah Ahmed Noorani, Ehtesham ul Haq and a Shia scholar which they nominated in the new Council.<sup>124</sup> Although these negotiations failed but under the pressure of the protests some of the recommendation of the Council that were earlier kept in files were promulgated by the Assembly elected after the 1977 elections.

#### 3.7.1 BAN ON ALCOHOL, ‘THE PROHIBITION BILL’, 1977

Another most debated issue in the Advisory Council during Ayub government and in new Council during Bhutto government was about the status of Alcohol by the government. Whether it is forbidden in every form and its consumption be declared as a punishable offence? During earlier discussion from 1963-1969, the dissenting opinion was from the Islamic Research Institute under Dr Rahman as hurdle for the Council members to declare its consumption a penal offence. His point of view was that it is not the Alcohol that is barred by Islam but it is the ‘intoxication’ which is forbidden, for example in beer there is very low percentage of alcohol, so it cannot intoxicate an

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<sup>122</sup> Mufti Mehmood, “*Nai Aam Intikhabat Karany Aur Shari Nizam Ke Nifaz Ka Fori Tor Per Elan Kia Jai*”, The Nawa-i-Waqt, April 17, 1977.

<sup>123</sup> “*Wazeer-i-Azam Ne Nizam-i-Shariat Nafiz Krne Ke Mutaliba Tasleem Kar Lia, Islami Nazaryati Council Dubara Tashkeel Di Jai Gi*”, The Nawa-i-Waqt, April 18, 1977.

<sup>124</sup> Maulana Kausar Niazi in *National Assembly of Pakistan debates*, May 10, 1977, 156.

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individual so it may not be banned.<sup>125</sup> It was only after the resignation of the Rahman that Advisory Council recommend in a unanimous recommendation that Alcohol is forbidden in every form. This recommendation was repeated time and again during Bhutto government to declare its consumption a penal offence and ban its production.<sup>126</sup> The NWFP province under Chief Minister Mufti Mehmood had already passed the legislation, on May 5, 1972 and likewise demands were also resolution was also presented in the National assembly. According to Kausar Niazi while giving the speech at the time of introduction of the Prohibition Bill, it was postponed because, ‘... at that time government had more important things to do’ so on May 10, 1977 legislation was presented in the House.<sup>127</sup> During the years several members from the opposition benches for instance Rao Khurshid Ali Khan, Maulana Ghulam Ghous Hazarvi and Maulana Abdul Haq once pointed out this issue after the first report of the Council that was presented in the House.<sup>128</sup>

Bhutto was accused by the religiopolitical parties that he consumes alcohol that’s why he does not want to ban it, processions were held in major cities of the country for projecting the accusation that the leader of the Islamic country cannot drink alcohol and demanded it to be declared a penal offence. The Prime Minister finally due the protest of the PNA which initially started with accusations of rigging in the election and developed into the demand of implementing *Nizam-i-Shariat*. He accepted the demand of the opposition and announced to use Council for restructuring the laws in the light of Quran and Sunnah starting by banning Alcohol and gambling recently the process of implementing *Sharia* has already started.<sup>129</sup> Legislation in this regard was promulgated through bill approved by the National Assembly on May 10, 1977 to prohibit, manufacture, sale and consumption of the alcohol named as ‘The Prohibition Bill 1977’. Kausar Niazi and the other government members, for instance, Malik Mehdi Hassan, Abdul Aziz Bhatti, Ghulam Rasool Tarar, Naseem Ahmed Ameer, applauded the promulgation of this legislation, however the

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<sup>125</sup> *Annual report of the Proceedings of the Advisory Council of Islamic Ideology for the year 1964-1965*, 86.

<sup>126</sup> Council of Islamic Ideology, *Salana Aboori Report 1974-1975*, 11; Council of Islamic Ideology, *Salana Aboori Report 1975-1976* 97; and Council of Islamic Ideology, *Salana Aboori Report 1976-1977*, 263.

<sup>127</sup> Maulana Kausar Niazi in *National Assembly of Pakistan debates*, May 10, 1977, 133.

<sup>128</sup> Rao Khurshid Ali Khan, Maulana Ghulam Ghous Hazarvi and Maulana Abdul Haq in *National Assembly of Pakistan debates*, November 18, 1975, 149-152. “*Sharab Aur Sood Per Mukamal Pabandi Laga Kar Islam Ka Nizam Nafiz Kia Jana Chahye*”, *The Nawa-i-Waqt*, June 16, 1976.

<sup>129</sup> Zulfikar Ali Bhutto, “*Wazir-i-Azam Ne Nizam-i-Shariat Nafiz Krne Ka Mutaliba Tasleem Kar Lia*,” *The Nawa-i-Waqt*, April 18, 1977. “*Sharab Aur Jooa Per Pabandi Ke Zarye Shariat Ke Nifaz Ka Aghaz Kar Dia Gaya Hai*,” *The Nawa-i-Waqt*, April 29, 1977.

protesting opposition remained on roads. One of the reasons for this was that they were demanding the re-election of both the provincial and national assemblies because of the accused rigging. It was also one of the reasons that this legislation was promulgated by an ordinance instead of the approval from National Assembly. During the debates about the said bill, the religious minister also pointed out that '*Council of Islamic Ideology is in the process of restructuring, formal invitations have been sent to Mufti Mehmood, Maulana Abul Ala Mawdudi, Maulana Shah Ahmed Noorani*'.<sup>130</sup> He further said that '*Prime Minister has assured that the recommendations of the Council within next six months will be implemented*'.<sup>131</sup> The timing of the promulgation of this bill by the Assembly based on the recommendations of the council and the announcements that within next six months the recommendations will be taken up, explains the importance of the Council in the critical times for the government. Another aspect which becomes clear from this episode is that when the first council was appointed none of the religiopolitical parties was consulted, while in 1977 during the critical times for the government under the pressure of ongoing protests, the membership was offered to the leadership of the opposition to make it a more functional body. Thus, government was ready to accept the demands through the channel of the Council instead of directly succumbing to the monopoly on Islam by the leadership of the opposition. This section of the study will now discuss the legislations promulgated that were recommended by the Council.

#### **3.7.2 BAN ON GAMBLING, 'THE PREVENTION OF GAMBLING BILL 1977'**

Bhutto announced ban the gambling in the country in a press briefing and the legislation in this regard was introduced and passed on the same day at May 13, 1977. This bill prohibited the gambling on horse race as well it was applicable to both the Muslims and non-Muslims, unlike the earlier one related to Alcohol which had an exception for non-Muslims. Ban on all kind of gambling has been recommended by the Council since the times of its establishment under the Ayub government. For the first time this issue was discussed in 1963 during Ayub Khan government when, 'The West Pakistan Prevention of Gambling (Amendment) Bill, 1963' was discussed in the Advisory Council, then again in 1966 when the Council recommended that gambling of all sorts is prohibited irrespective of the fact that it is done in a public place or a private

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<sup>130</sup> Maulana Kausar Niazi in *National Assembly of Pakistan debates*, May 10, 1977, 156.

<sup>131</sup> *Ibid.*

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place, betting on horse-race in which betting tax is levied by government as exception in the said bill was also said repugnant to the teachings of the Quran and Sunnah.<sup>132</sup> During the Ayub government before 1969, this opinion was not unanimous because of the contrary opinion of the Rahman, that ‘if the consideration of gambling is not valuable but is very trivial and is done for amusement it does not seem to come under the ban of *Qimar*’.<sup>133</sup> However later when the council started working during the Bhutto government, it recommend once again for the complete ban on the gambling it was finally on May 13, 1977 that bill was passed by the National Assembly that itself was contentious between the government and the opposition demanding the re-elections. When the bill was passed, Prime Minister Bhutto addressed the session of the House and said that, ‘... they used the slogan *Nizam-i-Mustafa*, but we spelt it out and I announced in Lahore the immediate application of some *Sharia* laws...’<sup>134</sup> The promulgation of these three steps declaration of Friday as public holiday, ban on Alcohol and banning gambling in three consecutive days that were based on the recommendations of the Council and some of the demands of the opposition demanding the re-election manifest that government was not interested to accept the monopoly on the subject of Islam by the opposition.

#### 3.7.3 THE RECOMMENDATIONS ON ZAKAT

*Zakat* is the religious tax of the Muslim which is taken from the rich at a specific rate and distributed among the poor. It has remained a subject of debate among the scholars that whether it is the duty of the state to devise a mechanism in this regard or whether it shall remain voluntary. It was because of these differences of opinion that this issue had been under discussion during various meetings of the Advisory Council since 1963 and it was unable to chalk out a mechanism for its deduction or disbursement. It once again came to light in 1974 before the newly appointed Council as the unfinished project of the previous Advisory Council. Council decided to publish a questionnaire to the *ulema* from the various Muslim countries in order to reach the conclusion that would be acceptable to all the school of thoughts.<sup>135</sup> By the year 1977, it recommended the government that ‘deducting Zakat is among the basic duties of the state’ and legislation in this

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<sup>132</sup> *Annual report of the Advisory Council of Islamic Ideology 1964-1965*, 93.

<sup>133</sup> “Opinion of Dr Fazlur Rahman,” in *Annual Report of the Proceedings of the Advisory Council of Islamic Ideology for the year Annual report of the proceedings of 1964*, 94-95.

<sup>134</sup> Zulfikar Ali Bhutto in *National Assembly of Pakistan*, May 13, 1977, 297.

<sup>135</sup> Council of Islamic Ideology, *Salana Aboori Report 1975-1976*, 105-106.

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regard may be drafted by the legislature, that can be sent to the Council for the examination of its repugnancy in the light of principles of Quran and the Sunnah.<sup>136</sup>

Later during Zia ul Haq government when the legislations were promulgated based on the recommendations of the Council the ex-Chairman of the Council Hamoodur Rahman, also blamed that ‘Bhutto government received the recommendations for introducing the *Zakat and Ushr* but he only took the advantage by declaring Friday as holiday and ignoring all other recommendations of the council’.<sup>137</sup> The most explainable reason for the Bhutto government for taking up this recommendation in May 1977 was because it involved the complex mechanisms that were visible later when the it was adopted by the Zia government and resulted in the sectarian conflicts during the later years, while Bhutto government was not in position to take any such risks so it was better to take those recommendations only that were unanimous among all the sects and were eye-catching as well.

Another issue that was related with the economic system of the country recommend by the Council was about the status of interest in the country. This issue had also been under discussions in the Council since its establishment in 1973. The Advisory Council during Ayub government had reached to the unanimous conclusion that ‘*Riba* is forbidden’ that too only after the resignation of Rahman but it failed to give government tangible recommendations to provide a substitute economic system compared to the one prevailing based on interest. Council in its meetings of 1976-1977 reiterated its recommendations that ‘there is no confusion that *riba* is forbidden so it should be abolished from the country’.<sup>138</sup> It recommended government to draft a legislation and chalk out a mechanism in in this regard. It once again during General Zia government recommended to establish interest free economic system in the country that is discussed with details in the next chapter.

#### 3.7.4 RECOMMENDATIONS TO INTRODUCE *HUDOOD* LAWS

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<sup>136</sup> Council of Islamic Ideology, *Salana Aboori Report 1976-1977*, 262.

<sup>137</sup> Hamoodur Rahman, “*Bhutto Government Ne Zakat Aur Ushr Ke Bary Me Islami Nazaryati Council Ki Sifarishat Parliament Me Paish Nahin Ki Thin*”, *The Nawa-i-Waqt*, December 16, 1979.

<sup>138</sup> Council of Islamic Ideology, *Salana Aboori Report 1976-1977*, 256.

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The word *Hudood* is the plural of *Hadd* which literally means fixed punishments, or those punishments which are prescribed by the Quran and the Sunnah. Council recommended that punishments which are prescribed by the Quran and Sunnah for the crimes related to *Zina*, theft and false accusations should be replaced with those prescribed in the Pakistan Penal Code. Although the legislation in the form of ordinances was promulgated by the General Zia after his take over. The recommendations of the promulgation of these laws was already in discussion during the meetings of the Council since final years of the General Ayub Khan government in 1968, when Advisory Council recommended to introduce 'Islamic punishments' in the Country of whipping, *hath katna* (cutting hands) and *Rajm* (stoning to death) for several crimes like adultery, theft and *Zina* (forceful sex) in its annual report of 1966 and 1968.<sup>139</sup>

In its annual report of 1976-1977 during the examination of the several sections of the Pakistan Penal Code (PPC) the Council recommended the government to amend the punishments for the above said crimes. In this regard it recommended eight amendments in its various sections. These recommendations were related to the incorporation in section 53, 'whipping may be included because it is specifically mentioned in Quran and is more deterrent'.<sup>140</sup> Further it recommended to amend various sections and incorporate the '*Qazf* (false witness) '*Qisas* and *Diyat*' (Revenge for blood / Compensation for blood), clauses in the Pakistan Penal Code and punishments like stoning to death, cutting hands. In the same report it further recommended to incorporate the hudood punishments and procedures in the 'The Evidence Act 1872', 'The North-West Frontier Constabulary Act, 1915' and The Inland Mechanically, Propelled Vessels Act, 1917.<sup>141</sup> When the Prohibition bill related to Alcohol was promulgated by the House and the punishment prescribed in this bill was, ten thousand Pakistani rupees fine and up to two years of prison. Kausar Niazi while replying to the criticism about these punishments that why Islamic punishments were not provided by the bill during the discussions. He replied that '*why they demand to put punishment of whipping while the bill passed by them in NWFP in 1972, prescribed the punishment of up to six months and one thousand rupees fine*'.<sup>142</sup> This shows the paradox in the demands of the

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<sup>139</sup> *Annual Report of the Council of Islamic Ideology 1967-1968*, 52-58 and *Annual Report of the Council of Islamic Ideology 1966-1967*, 138.

<sup>140</sup> Council of Islamic Ideology, *Salana Report 1976-1977*, 271-276.

<sup>141</sup> *Ibid.*

<sup>142</sup> Kausar Niazi in *National Assembly of Pakistan debates*, May 10, 1977, 217.

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religiopolitical parties as when they promulgated the legislations these punishment were not prescribed even at provincial level while they were demanding these to be promulgated when the Bhutto government were taking the measures on the name of Islamic laws.

### 3.8 DEADLOCK AND MILITARY TAKEOVER

The legislations which were named as start of application of Sharia, in May 1977, related to the prohibition of Alcohol, banning gambling and Friday as public holiday were named as another trick by the opposition parties.<sup>143</sup> Protests and strikes continued, government attempted to control the situation by persuading leadership of opposition both submissively and aggressively, by negotiations and by imposing martial law over some cities. Several options like referendum, fresh provincial assembly elections were also on table. However, all of this resulted futile as on night of July 5, 1977 the country was taken over by Bhutto's out of seniority appointed General Zia ul Haq. Next chapter will discuss in detail about the role of the Council during his government.

### 3.9 CONCLUSION

Council of Islamic Ideology as per the 1973 constitution was different in its genesis from the one provided in the predecessor constitution. In the light of above discussions, it can be said about the genesis of the Council in the 1973 constitution drafted by the elected government, compared to its predecessors it was not at all advisory. The changes were limited not only to its nomenclature but to the extent that its recommendations were to be sent directly to the legislature which was to enact legislation in respect thereof, thus it had direct access to the ears of law makers. Secondly it was given a definitive time slot of seven years to completely examine the laws and submit its final report to the legislature for recommendations based on its reports, House was to enact laws. These two added attributes of the Council manifest the institutional growth of the body from the Islamic Law Commission as provided by the 1956 constitution and the Advisory Council of Islamic Ideology by the 1962 constitution. The reasons for these increased roles of the Council in the constitution promulgated by the first directly elected government were multiple; first of all, the episode of 1971, that resulted in the separation of the eastern part of the country, which propelled

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<sup>143</sup> Nawabzada Nasrullah, "Pakistan Qaumi Itehad Ne Wazeer-i-Azam Bhutto Ka Pesh Krda Formula Mustarad Kar Dia, Qaumi Itehad Bhutto Ko Wazeer-i-Azam Tasleem Nai Krta Aur Qaumi Assembly Ko Gair Qanuni Samajhta Hai", The Nawa-i-Waqt, April 19, 1977.

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the remaining country once again to the politics of Islam to keep the remaining country united. Secondly, the increased aspiration of the religiopolitical parties on the one hand while simultaneously the craving of government to end the monopoly of the *ulema* before going for the fresh election to renew its mandate in changed geographical circumstances. So, it was the result of reconciliations and compromises between both the government and opposition to give new and increased roles to the Council in the 1973 constitution.

Regarding the second main key question of the study that what role did it play in the governmentality of this government. This gives credibility to the argument that first of all the composition of the Council, itself manifested the governmentality of the government, as most of the members including the Chairman that was Chief Justice of the country as well, were appointed as part-time members. Secondly amendment in its working procedures by which it was abstained from having direct access to the ears of parliament, manifested the sensitivity of the government of not getting stigmatized for not implementing the recommendations of its own appointed body. So, once reconciled for the increased role of the Council, government attempted to keep it under the control by using the knowledge provided by it in on the hand and simultaneously to avoid becoming Council a pressure group for government. Some of the recommendations of the Council, like the prohibition of Alcohol, declaration of Friday as public holiday and banning gambling were indeed promulgated and it would be difficult to say that whether it indeed was the aspiration of the government to enforce the laws based on Islamic principles or it was due to the protest of the opposition. However, the role of Council was important in this regard, as government did not want to give impression that it was implemented on the pressure of the protesters.

Finlay, offering the membership of the Council to the leaders of the opposition shows the importance of the Council for the government to use it as a buffer institution in the times of crisis, although Council failed to provide rescue to the government on both the instances first in 1974 when government aspired to send the *Qadiani* issues to the Council and secondly during the PNA protest by providing its membership to the members of the opposition. This failure in the aspired role of the government however does not undermine the importance of the Council ;as on the first instance, the reason of refusal by the opposition was because it believed that Ahmadi issue is already settled and need not be discussed for any new opinion ;and on for the second instance the

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refusal to take membership was based on the argument was mistrust on Bhutto government as they were protesting for fresh elections.

## THE COUNCIL OF ISLAMIC IDEOLOGY AND GOVERNMENTALITY OF 'NIFAZ-E-ISLAM' DURING GENERAL ZIA UL HAQ GOVERNMENT 1977-1988

The previous chapter discussed the genesis of the Council of Islamic Ideology in the 1973 constitution and its functioning during the Bhutto government. It concluded that 1973 constitution promulgated by the elected government provided an increased functioning on the part of the Council compared to its predecessor institutions, which was the result of increased influence of religiopolitical parties to have their say on the legislation process being in opposition and the aspiration of the Bhutto government to have unanimous constitution and to gain more popularity before going for fresh elections which were the need of time due to changed geographical circumstances. It further adds to the final conclusion that by offering its membership to the leader of the opposition and promulgating few legislations based on some of its recommendations to appease the population manifests the governmentality of the Bhutto government to better govern. As the measures taken by the Bhutto government on the name of Islam, to turn opposition passive failed and the protests which started with the accusation of the riggings in the election of March 1977 gradually transformed to the demand of *Nizam-i-Mustafa* (Islamic system by the Prophet) in the country. These conditions led to another takeover of the country by the armed forces and this time by General Zia ul Haq (Zia), a general appointed out of seniority by Bhutto himself.

It is very common to accuse Zia government of being responsible for the Islamisation of the laws and society in the country.<sup>1</sup> Having gone through the earlier government and the working of the Council and its predecessors it is visible that each one has drawn its political strategy to ruse power keeping in consideration the Islamic sentiments and using the Islamic discourse and knowledge sought from the recommendations of the Council of Islamic Ideology i.e. Islamic governmentality, although the intensity of each was varying. This chapter will contend the prevailed view regarding Zia being solely responsible for the Islamisation of the country. Instead, it will contend by contrasting the laws and measures promulgated during his government by contrasting them with the recommendations of the Council that in addition to his personal religious zeal, political strategy

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<sup>1</sup> Charles Kennedy, "The implementation of the Hudood ordinance in Pakistan," *Islamic Studies*, vol. 26, no. 4 (1987): 307-319, accessed January 24, 2018, <http://www.jstor.org/stable/20839856>. William L. Richter, "The political dynamics of Islamic Resurgence in Pakistan," *Asian Survey*, vol. 19, no. 6 (1979), 545-557; Lawrence Ziring, "From Islamic Republic to Islamic State," *Asian Survey*, vol. 24, no. 9 (1984), 931-946.

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to counter Bhutto paranoia, the Council as a law drafting body impacted sternly the mode of his government. Further, through the working of the Council, this chapter also dissects the approach of Zia government towards Islamisation during three different metaphorical phases of his eleven years of rule under three different chairs of the Council.

### 4.1 GENERAL ZIA UL HAQ A PEN PICTURE

Zia was from a humble background, born in middle-class family of India in 1924, received commission in the army after the second world war, several works have been done about his personal profile.<sup>2</sup> After going through these works it can be said that he was personally a practising Muslim who will never drink and say his prayers regularly and most importantly till his appointment as army Chief he was sensible enough that keep his religious interpretations confined to himself, as he never imposed it upon his juniors or his peers. Zia's first known contact with Bhutto was in 1974 when he was given the task by the high command to preside the Attock Court Martial.<sup>3</sup> These Court proceeding gave him a chance to come close to Bhutto. By making him listen the resentment of junior officers against the senior generals made him realized reflexively that the resentment among the juniors was so much that even if Bhutto appoints a junior officer as the head of army there will be no resentment during later years.

Now coming to the more important point that what made Bhutto to select Zia as the army chief by superseding a long line of Generals? In this regard, Lieutenant General Faiz Ali Chishti one Zia's colleague in his work, cites an incident that when Zia was core commander of Multan a city in central Punjab Pakistan, Prime Minister Bhutto visited Multan, Zia 'ordered all the officers along with their wives and children to line up on route to welcome him'.<sup>4</sup> Hassan Abbas, cites on another instance that 'Zia in full ceremonial dress waited for Bhutto outside dining hall and when Bhutto

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<sup>2</sup> Hassan Abbas, *Pakistan's Drift into Extremism: Allah, the Army and America's war on Terror* (New York: M.E. Sharpe, 2005), 89. Mohammad Waseem, *Pakistan under martial law 1977-1985* (Lahore: Vanguard Lahore Books Ltd, 1987), 1-41. General K. M. Arif, *Working with Zia: Pakistan's power politics 1977-1988* (Karachi: Oxford University Press, 1995), 1-63.

<sup>3</sup> Court-Martial proceeding were held at Attock Jail and Major General Zia ul Haq presided the Martial law court, he held several meetings with the Prime Minister Bhutto to keep him updated about the proceedings of the court. ISPR Press Release, "Sazishi 11 Aur 12 April Ki Darmiani Rat Me Iqtidar Pe Qabza Krna Chahty Thy", May 13, 1973, The Nawa-i-waqt; APP, "Hakoomat Ka Takhta Ulatny Ka Nam D-Day Rakha Gaya Tha, Sazishi, General Ihsan ul Haq Ko Chief of Staff Bnana Chahty Thay", July 26, 1973, The Nawa-i-Waqt.

<sup>4</sup> Lieutenant General Faiz Ali Chishti, *Betrayals of Another Kind: Islam, democracy and the army in Pakistan, rev. and enlarged* (Lahore: Jang publications, 1996), 65.

came out after lunch and asked what it was that he was doing there? He had no difficulty keeping a straight face to say that he felt his duty to personally stand guard for the security of his leader'.<sup>5</sup> From these two incidences, it is visible that through his manoeuvres of 'dutifulness' he was able to secure the confidence of Bhutto that he has no intention to participate in politics. Bhutto himself was the master of purveying to reach the top that has been discussed in the previous chapter, the way he flattered General Iskander Mirza and General Ayub Khan on various instances to win their confidence, but instead of understanding the 'dutifulness' of Zia he became a victim of these tactics. Zia got appointed to the post of army chief in 1976 by superseding a good number of senior Generals after the retirement of General Tikka Khan. Bhutto himself during trial termed his appointment of Zia, in these words: '... I fail to understand why the respondent (Zia ul Haq) considers himself to be the symbol and spokesman of the Armed forces of Pakistan because a year ago, I made the biggest mistake of my life by appointing him Chief of the Army Staff...'.<sup>6</sup>

### 4.1.1 'ISLAM KA SIPAHI...' (Soldier of Islam)

This Coup that took place at night of 4<sup>th</sup> July 1977 was code named operation 'Fair play'. In the words of K. M. Arif, it was carried out 'smoothly without being a bullet fired, although some slaps were inflicted... and public approved it silently because public protests and strikes ended...'.<sup>7</sup> In his first address, as Martial law administrator on 5<sup>th</sup> July Zia said that

*'...Neither I have any political ambitions nor does the army want to be taken away from the profession of soldiering... During next three months I will not dissipate my energies as CMLA on anything else except the election...I took this challenge only as soldier of Islam... Pakistan was created in the name of Islam and could survive only is it sticks to Islam for which Islamic system is intensely required...'.<sup>8</sup>*

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<sup>5</sup> Abbas, *Pakistan's Drift into Extremism*, 90.

<sup>6</sup> Begum Nusrat Bhutto Petitioner v. The Chiefs of the Army etc. PLD657, SC657 (petition No.I-R, 1977).

<sup>7</sup> Arif, *Working with Zia*, 96-105. when military team went to arrest political leadership of PPP at night of July 4, 1977, he cites an incident when Mr Abdul Hafeez Pirzada's servant was slapped before he confirmed his master's presence in the house.

<sup>8</sup> General Muhammad Zia ul Haq. "Address to the nation July 5, 1977", [https://www.youtube.com/results?search\\_query=zia+ul+haq+5th+july+speech](https://www.youtube.com/results?search_query=zia+ul+haq+5th+july+speech), accessed March 10, 2018; APP, "Mulk Me Martial Law Laga Dia Gaya Chief of Army Staff Ka Radio Aur Television Per Qaum C Khitab", July 6, 1977, The Nawa-i-Waqt.

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His self-imposed entitling of soldier of Islam reminds the prediction given by the Bhupendra Kumar Datta (Datta) member from East Punjab, in the first Constituent Assembly on March 8, 1949 while the permeable of the Objectives resolution was debated that related the ‘sovereignty to the Allah’, which provided, it is Allah that delegates power to anyone in the country and he/she will be answerable to Almighty in this regard. Datta pointed out that the clauses related to the ‘sovereignty’, will be open to multiple interpretations by the political adventurer in the time to come, as, ‘...He has only to forge a further link and get it delegated through the state to himself and declare he is the ruler of Pakistan, anointed by his maker...’<sup>9</sup> he further pleaded that with this preamble in the times to come ‘...we shall be confronted with such problems, maybe in more irresistible form... demand for the institution of Caliphate or for the introduction of the *Muhtasib* system or even the abolition of all the baking system...’<sup>10</sup>

From the speech of the Zia, it was visible that the ‘political adventurer’ which Datta has predicted has arrived. As he justified his takeover by being given this authority to rule of the country being the soldier of Islam, and the overwhelming demands for the changes in the baking system, and the introduction of Islamic laws was already on roads during the protests against the Bhutto government. After the takeover instead of abolishing the constitution like the previous military takeovers, he used a more technical term of ‘abeyance’ and promised to conduct elections within ninety days and go back to barracks. Paradoxically very next day of his first speech he announced the court to give punishments as prescribed by the Islam.<sup>11</sup> This very first step by the Martial law administrator determined the course of his future politics, which is most often referred as Islamisation of the laws and the country which attempted to cover every aspect of the society from legal apparatus to social system of the country.

His usurpation of power was validated by the Supreme Court of Pakistan in Nusrat Bhutto case, under the ‘doctrine of necessity’.<sup>12</sup> The most interesting justification for the imposition of his

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<sup>9</sup> Bhupendra Kumar Datta’s address to the Constituent Assembly of Pakistan, March 9, 1949 in *The Constituent Assembly of Pakistan Debates*, Official report, vol. V (Karachi: Government of Pakistan, 1949), 14.

<sup>10</sup> Ibid, 16.

<sup>11</sup> Muhammad Zia ul Haq, “*Pakistan Me Pehli Bar Islami Shariat Ke Mutabiq Saza Dene Ke Lye Martial Law ka Zabita Jari Kar Dia Gaya*”, July 11, 1977, *The Nawa-i-Waqt*.

<sup>12</sup> Doctrine of Necessity was for the first time validated by the Supreme Court, *The State v. Dosso* case PLD SC 553 (1958), that was a murder case by a person named Dosso from Baluchistan and was convicted by the local Council of elders. The Lahore high court declared the conviction unconstitutional, but state challenged it in the Supreme

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martial law was mentioned by the Justice Afzal Cheema, in his part of the decision. He went ahead to justify 'doctrine of necessity' in the light of Islam, by citing the several verses from the Quran, traditions of the of the prophet and incident from the Muslim history to prove the point 'that necessities make permissible acts otherwise, prohibited'.<sup>13</sup> His examples from the Sunnah, and the events of the pious caliphate like 'where a Muslim in order to save his skin, been permitted to even to go to the extent of a verbal denial of his belief...'.<sup>14</sup> In this decision, he attached the doctrine of individual necessity with the doctrine of state necessity in order to justify the takeover by the Zia to restore normalcy in the country. He was the Chairman of the newly appointed Council as well. Zia restricted Council which was already vacant as the term of its previous Chairman, Justice Hamoodur Rehman had already expired. From July 5, 1977 to August 17, 1988, the Council was thrice restructured.

The first Council was appointed after two months of his take over, under the chairmanship of Justice Cheema, with fourteen other members. As the Council members are appointed for three years. The second Council was appointed after a gap of nine months on May 31, 1981 under the Chairmanship of Justice Tanzil ur Rehman and nineteen other members as through a presidential ordinance the maximum number of its members was increased from fifteen to twenty.<sup>15</sup> The tenure of the members under Justice Tanzil expired in May 1984, and the third Council was appointed on May 7, 1986, after the gap of almost two years under Dr Abdul Wahid J. Halepota. Now I will dissect while going through the reports of the Council of Islamic Ideology the role which it manifested during these three different stints which can be metaphorically related with the three visible parts of Zia's power. The first one since take over till the judicial hanging of Bhutto in 1979 as he was in a state of paranoia. The second phase of his power was after the death of Bhutto, as he was confident and sole contender of power and the last phase when after the Movement for the restoration of democracy, the martial law rule finished and there was power struggle between Zia

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Court, which decided against the earlier verdict few days after the Martial law by the Iskander Mirza based on Kelson's theory of legal positivism that 'peaceful revolution or Martial law is legal as long as it satisfies common people', *The State v. Dosso case and others*, PLD SC 533 (1958).

<sup>13</sup> *Begum Nusrat Bhutto v. Chief of Army Staff and Federation of Pakistan*. PLD 1977, SC657. In the judgment announced on November 10, 1977, from page 83 to 87 he cited several references from Quranic verses from *Al-Baqar II-173*, *Al-Inam VI-119*, *Al-Nahl XVI-115* to justify the validity of Martial law.

<sup>14</sup> *Ibid.*

<sup>15</sup> The Constitution of Pakistan 1973, in section 1, article 228, through the Presidential Order no. 16 of 1980 and by the Fourth Amendment in Constitution maximum number of members was increased from fifteen to twenty.

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and his elected Prime Minister Muhammad Khan Junejo. Before switching to metaphorically compare the performance of Council with the above-said stints it would be appropriate to see gradual transformation during the years since creation till 1977, the demand for the Islamic way of life changed to the *Nifaz-i-Islam* which further changed to Islamisation during the years when Zia took over and what does this word mean for Zia regime especially with reference to the Council in his political strategy?

### 4.2 A TRANSFORMATION FROM ‘ISLAMIC WAY OF LIFE’ TO THE ‘NIFAZ-I-ISLAM/ISLAMISATION’

Immediately after the creation of Pakistan as discussed in the first two chapters that most visible demand from Maulana Asad, Maulana Mawdudi and from those who aspired the mixed domain of religion with politics like Shabir Ahmed Usmani in the Constituent Assembly debates was the promotion of Islamic *Islami Tarz-e-Hayaat*, (Islamic way of life) in the country. During later years it was particularly after the separation of East Pakistan as discussed in the last chapter that they demanded Nizam-i-Mustafa (system of Prophet), it was transformed into an official slogan of Islamisation after the takeover by Zia. In principle what was the difference between the ‘Islamic way of life’ the initial demands and the ‘Islamisation’ the official rhetoric during Zia regime. As it appeared that that Islamisation during Zia era, is referred as the governmental drive to transform the laws drafted on the ‘western principles’ which included those inherited from the British Raj to those laws which were deduced from the Islamic principles.

Islamisation drive was different from the earlier demand for the promotion of Islamic way of life in the sense that it made to believe the population that the present legal system was un-Islamic, so it was an anomaly that the Islamic system of governance was not yet implemented in the country despite thirty years had passed. Another distinguishable fact about this drive called Islamisation of a Muslim dominated society, which may be referred as more Islam for an already Muslim dominated society, is that it was not just confined to the legislation. Instead it led to the involvement of the state in those spaces of life which were otherwise sought to be the personal. For instance, prayer is a personal act of an individual, it is between the individual and the God, however, if state takes it as a responsibility to make sure that each person prays five times a day he/she will be liable to be punished. similarly, Zakat is also a pillar of Islam, it is debatable that

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one should pay it as per his/her own convenience or it is the state that will introduce a system for its deduction and the distribution and if someone does not pay it then he/she is liable to be punished. So, what seems visible in all this process during Zia era is that codification for those acts of the individuals which were otherwise personal were brought under the scope of the state. Once again, it remains debatable that whether the legislations were to be deduced based on the principles or they were to be taken as such they were implemented fourteen hundred years ago, during the Pious Caliphate (632-661 AD) after the death of Prophet Muhammad (PBUH). It would be beyond the scope of this study to examine or to analyse the nature of legislation promulgated or their impact, instead it would focus only on the recommendations of the Council, which were sent by the Council to the Zia regime and their impact on the overall governmentality.

### 4.3 COMPOSITION OF THE COUNCIL

The Council was thrice restructured during the Zia government, this section will now provide a brief introduction of the profiles of the Chairman and the name of the other members to give an idea about the changing attitude of the government towards the composition of the Council. For the first time, it was restructured on September 2, 1977, after two months of his take over. He further said at its inauguration that, 'earlier governments had not implemented the recommendations of the Council, however now they will be implemented'.<sup>16</sup> Although the number of members was kept same the profiles were different with reference to the qualification, as the percentage of those from the judiciary and the academia declined and while those having madrasa education increased. As seen in the previous chapter that during Bhutto government the Council had more than half of its members from judiciary and academia, now it had only a fraction. As Zia can be regarded as the sole narrator of the whole process as Chief Martial Law Administrator so the composition of the Council in three different stints represents his governmentality with reference to Islam.

#### 4.3.1 THE COUNCIL, UNDER JUSTICE AFZAL CHEEMA

Justice Afzal Cheema (Cheema) was as its Chairman on 2<sup>nd</sup> September 1977, he has been the member of the Council during Bhutto government since 1974. He came from a political

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<sup>16</sup> APA, "*Islami Nazaryati Council Ki Tashkeel E Now Kar Di Gai*," September 2, 1977, The Nawa-i-Waqt.

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background; his early career was as a politician as he was elected a member of the Provincial Assembly from Lyallpur-IX in 1951 on the ticket of Jinnah Muslim League that was headed by the Nawab Iftikhar Hussain Mamdot, later he remained deputy speaker of the Assembly in 1962 and due to the ailing health of the Tamizuddin Khan, remained the acting speaker for some time as well.<sup>17</sup> Later he was appointed as the Judge of the Supreme Court of Pakistan and the member of the Council of Islamic Ideology during Bhutto Government. His understanding of the Islamic principles can be seen when as Chairman of the Council, he went to the USA and described his understanding of the western culture in these words, ‘... despite having liberty in the USA people are in desperate search of peace, they use Alcohol, sex to treat it, but their problems are increasing day by day...’, the solution which he prescribed was the preaching of Islam to them.<sup>18</sup> After taking over as Chairman of the Council, its office was shifted from Lahore to Islamabad in a rented building, he thanked Zia in these words: ‘...In last thirty years, this is the first instance that a temporary government is so sincere and active to implement *Shariah*...’<sup>19</sup> Among the other fourteen members, those having the experience in the judiciary were, retired Justice Salah-ud-din, Khalid Ishaq Advocate and A. K. Brohi. While those having the religious education were Maulana Muhammad Yousaf Banuri, Khawaja Qamar-ud-din Pir of Sial Sharif, Mufti Sayyahuddin Kakakhel, Mufti Muhammad Hussain Naeemi, Maulana Zafar Ahmed Ansari, Maulana Muhammad Taqi Usmani, Mufti Jaffar Hussain Mujtahid, Maulana Muhammad Haneef Nadvi, Dr Zia ud din and Tajamal Hussain Hashmi. Later in June 1978, three other members were also included Maulana Shams-ul-Haq Afghani, Allama Syed Muhammad Razi and Dr Mrs Khawar Khan Chishti as the only female member of the Council.

In another isolated event on the same day when Zia announced the restructuring of Council, the name of the city Lyallpur that was based on the name of Sir James Broadwood Lyall (the Governor of Punjab) since 1904 in central Punjab Pakistan was changed to Faisalabad. Apparently, this measure was taken to commemorate late King Faisal of Saudi Arabia, practically it was after the statement of the Dr Maarouf Al-Dawalibi the advisor of the King of Saudi Arabia’s that, ‘if Pakistani government implements the Islamic system in the country, the Saudi government will

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<sup>17</sup> Afzal Cheema, “Some reflections of the early parliamentary life,” in *Golden Jubilee Session Punjab Assembly proceedings 1937-1987* (Lahore: Provincial Assembly of Punjab, 1988), 85-90.

<sup>18</sup> Afzal Cheema’s in: *Islami Nazaryati Council Salana Report 1978-1979* (Islamabad: Printing Corporation of Pakistan Press, 1979), 7-8.

<sup>19</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 8.

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open the gates of treasury for it'.<sup>20</sup> Zia was in dire need of the international recognition after his take over. This change in the name of the city was not only important to appease the Saudi government, but also it was significant to inculcate in the mentality of the population that British colonial tradition will now be changed under his regime.<sup>21</sup>

### 4.3.2 THE COUNCIL, UNDER JUSTICE TANZIL UR REHMAN

As the earlier Chairman, Justice Cheema joined *Motamar Al-Alam Al-Islami*, (the Muslim world Congress) Asia branch, the Jeddah based Saudi funded organization of the Organization of Islamic Conference, So Justice Tanzil ur Rehman from the Sindh High Court was appointed as the Chairman of the Council. Through the presidential order the number of members in the Council were also increased from fifteen to twenty, the other appointed members were Justice Syed Jameel Hussain Rizvi, Pir Sahib Qamar ud din Sialvi, Allama Syed Ahmed Saeed Kazmi, Professor Maulana Muntakhib ul Haq Qadri, Maulana Ahmed Rizvi, Maulana Shams ul Haq Afghani, Mufti Siyah ud din Kaka Khel, Maulana Muhammad Ubaid Ullah, Qazi Saadullah Muhammad Hussni, Maulana Abdul Ghafar Hassan, Allama Ali Ghanzafar Kararvi, Dr Abdul Wahid J. Halepota, Dr Zia ud Din Ahmed, Professor Dr Sharafat Ali Hashmi, Maulana Zafar Ahmed Ansari, Sheikh Ghayas Muhammad, Abdul Malik Irfani and Mrs Khawar Khan Chishti.<sup>22</sup> Zia presided its inaugural session and expressed hope from the 'new Council that will give a comprehensive report about the election system'.<sup>23</sup>

### 4.3.3 THE COUNCIL, UNDER DR ABDUL WAHID J. HALEPOTA

The chairmanship of the Council under Tanzil ur Rehman, ended at May 31, 1984, while the new Council was appointed at May 7, 1986 after a gap nearly two years. Its Chairman was Dr Abdul Wahid J. Halepota and the other members were, Justice (Retired) B. G. N. Qazi, Mr. Justice (Retired) A. G. Khattak, Maulana Zafar Ahmed Ansari, Mufti Sayyahuiddin Kakakhel, Maulana

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<sup>20</sup> Dr Maarouf Al-Dawalibi advisor of Saudi King. "*Islami Nizam Ke Nifaz Ke Baad Saudi Arab Ke Khazano Ke Moo Pakistan Ke Lye Khol Deye Jain Gay*," October 25, 1978 *The Nawa-i-Waqt*.

<sup>21</sup> Staff Reporter, "*Lyallpur Ka Nam Shah Faisalabad Rakh Dia Gya*," September 2, 1977, *The Nawa-i-Waqt*.

<sup>22</sup> Notification No 28(2)-Admin I/80, May 31, 1981 the Ministry of Religious Affairs Government of Pakistan, printed in *Islami Nazaryati Council Salana Report 1981-1982*, 15.

<sup>23</sup> Address of the President Zia ul Haq in the inaugural session of the Council of Islamic Ideology, June 22, 1981 at Federal Secretariat, Islamabad printed in *Islami Nazaryati Council Salana Report 1981-1982*, 24-44.

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Muhammad Malik Kandhlawi, Maulana Abdullah Khilji, Maulana Muhammad Mateen Hashmi, Maulana Mufti Muhammad Hussain Naeemi, Professor Maulana Muntakhib ul Haq Qadri, Mufti Zafar Ahmed Naumani, Begum Nisat Fatima, Maulana Abdul Ghaffar Hasan, Allama Talib Jauhari, Dr Zia-ud-din Ahmad, Dr Hassan-uz-Zaman, Sheikh Ghayas Muhammad and Abdul Malik Irfani.<sup>24</sup> The chairman Dr Abdul Wahid J. Halepota (Halepota) has served as the director of the Islamic research institute and during the year from 1977-1986.

One of the most distinguishing aspect of his directorship at the Islamic Research Institute was that no note of dissent was ever sent to the Council during his term as its director to the different issues that were sent to the Council. It was again an *ulema* dominated body and majority members were new, only there were two members i.e. Zafar Ahmed Ansari and the Mufti Sayyahuddin Kakakhel were the part of the Council and were reappointed to the Council under Halepota. Zia himself presided the inaugural session of the newly appointed Council. In his address we can find out the underlined reasons for the gap of two years until a new Council was appointed, second most distinguishing feature about this Council was that most of its members were new and lastly what he expected from the new Council. While expressing resentment about the earlier Council said that, ‘... earlier Council overplayed its role by stretching over beyond its recommendatory status...’<sup>25</sup> He expressed desire from the new Council that ‘... that it would not be right for the Council to remain dormant, it should adopt the middle course within these two extremes’ further he advised that new Council ‘...shall draw its foremost attention to the proposed *Shariat* Bill that has been circulated by the Senate for eliciting public opinion’<sup>26</sup>.

### 4.4 SHIFT FROM A RECOMMENDATORY BODY TO ONE DRAFTING THE LEGISLATIONS

One noticeable change in the working of the Council during the Zia regime compared to its predecessors was that in the absence of any legislative body and constitution in abeyance, it was given the task by the Martial law administrator for not just to recommend but instead to draft the legislations. It was despite the fact that earlier Council having the same functions in the constitution

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<sup>24</sup> Notification No. 27 (4)/79-Admn. I. May 7, 1986 the Ministry of Religious Affairs and Minorities Affairs, Government of Pakistan, printed in *Islami Nazaryati Council Salana Report 1986-1987*, 3.

<sup>25</sup> Addressed of the President Zia ul Haq, May 27, 1986, in *Islami Nazaryati Council Salana Report 1986-1987*, 13-16.

<sup>26</sup> Ibid.

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under Chief Justice Hamoodur Rahman in 1975 had returned the reference sent by North West Frontier Province government to draft legislation for declaring refusing to pray a punishable offence. The earlier stance of the Council was that that 'it cannot draft the legislation, it can only review legislation which is sent to it'.<sup>27</sup> In the absence of any law-making body under the temporary setup of the Martial Law, the Council adopted the new function. It was given the task of transforming society fabric into Islamic society so presuming that earlier nothing was done in this regard. This process of transformation of religious, judicial, educational, communications and cultural transformation was named by the regime as the Islamisation of the country. In this regard, the much of the working was to be carried out by the Council to aid regime. The Council also had the support from the Saudi king, as his special adviser visited Council frequently during these months when the legislations were drafted.

This support is also evident from the fact available in the Council reports that for instance the legislation for the Hudood laws were initially drafted in Arabic and later these were translated into Urdu and English and sent to the President to be promulgated in the form of ordinance through the ministry of religious affairs. Despite this significant change in the function of the Council, its reports were to be kept 'confidential', but as the justification of the government was the introduction of Islamisation so for the public opinion the population was mostly kept aware that presently what are the tasks before the Council, in the speeches of the Martial Law administrator and the press briefings by the Council.<sup>28</sup> The terms of the Council under the chairmanship of Justice Cheema remained cordial during the first three years, despite the fact that promulgation of recommendations sent by the Council was selective by the government. For instance, when the Hudood ordinances were promulgated, the legislations of the *Diyat* laws that were related with the blood money for forgiveness were not promulgated. The most justifiable reason for this was because the cases of Bhutto was under trial, so this could have gone against the cases already going in courts, which were later said to have not to be impacted by these new legislations. The next chairman, Tanzil was different in his attitude from Cheema, so the attitude of the government towards the plan sent by the Council came under criticism from the Council. These differences are

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<sup>27</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Aboori Report 1975-1976*, 127.

<sup>28</sup> For example, see "Council ke Arkan Ka Rishwat Aur Aqarba Parwari Khtam Krny Say Mutaliq Ghour," October 7, 1977, Nawa-i-Waqt. "Islami Nazaryati Council Ne Mahreen Iqtisadiyat Aur Bankaro Ka Panel Muqarar Kar Dia," November 29, 1977, Nawa-i-Waqt. "Islami Nazaryati Council Pakistani Awam Ki Tawakoat Per Pura Utry Gi, Hakoomat Ne Islami Sharia Nafiz Krne Ka Ehad Kr Rakh Hai," March 4, 1978, The Nawa-i-Waqt.

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discussed with details in the later section of the chapter. It was because of these difference that it was demanded by the members of the Council that the working procedures of the Council must be amended by the President to the extent that its reports can be published so that people of the country must know about its working. Despite the verbal promises by the President, nothing practical was done in this regard during the Zia government reasons for this are self-explainable that his government wanted to keep all the option open and the reports of Council sent to the President in a confidential manner provide him with the option in the form of measures that can be promulgated however making it open to public would have resulted otherwise as pressure on his government to implement all of its recommendations even if they suited his political interests or not.

### 4.4.1 ROADMAP OF *NIFAZ-I-ISLAM* AS PLANNED BY THE COUNCIL

The roadmap given by the Council to transform the present society into Islamic one as perceived by its members was multiple fold and complex. It was not focused solely on the introduction of the Islamic punishments as was commonly perceived instead it also included the introduction of other measures like inculcating simplicity, censored media and fear from Allah among the people.<sup>29</sup> Some of the said steps required the legislations while many cannot be introduced through the legislations. For instance, how can a legislation inculcate fear of Allah in the minds of the population or for that matter the simplicity among the common people? The Council for such measures asked to adopt a gradual strategy, like for the introduction of simplicity it recommended to revise the educational curriculum, changing the priorities of the national media and asked those in government like the government servants to wear national dress which would result in the promotion of simplicity in the years to come.<sup>30</sup>

Despite being given the comprehensive report by the Council on what to do and how to do, the Zia government which was in Bhutto paranoia, selected among these recommendations initially only those which were of deterring consequences. So Hudood laws were introduced as ordinances to change the penal laws of the country so that traditional Islamic punishments as mentioned in Quran, like whipping, stoning to death can be inflicted to create deterring effect among the population. The promulgation of these laws among the many other recommendations like the

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<sup>29</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 11-209.

<sup>30</sup> *Ibid*, 208-209.

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introduction of welfare system reflects the governmentality that considering the fact that Bhutto was alive and a continuous threat for his government. It was on February 10, 1979 that Zia announced that plan of *Nifaz-i-Islam* in the country should be started with the imposition of the Islamic punishments. It was because of this political strategy of his government that his policy of Islamisation became closely associated with the punitive aspect of Islam only instead of the welfare system provided by the Islam.

### 4.5 *EID-E-MILAD-UN-NABI* AND THE ANNOUNCEMENT OF HUDOOD AND THE ZAKAT ORDINANCES

The term Hudood is the plural of word *Hadd*, which literally means: limit, forbid, or abstain. The ordinance defines it as ‘*Hadd* means punishment ordained by the Holy Quran or Sunnah’.<sup>31</sup> Strict punishments for the deterrence were the need of the Zia especially during the phase of Bhutto paranoia, on the other hand, the literal implementation of the Islamic punishments was the desire of the *ulema* who were now dominating the Council, so in line with the governmentality of the regime Council sent the draft of the ordinance through the ministry of religious affairs to the president. However, it took almost two years until when they were promulgated as legislation. He announced these laws in a speech addressed to the nation on February 10, 1979. This date was specifically chosen because it was 12 Rabi ul Awal in Islamic calendar the day of the birth of Prophet Muhammad. Zia announced the promulgation of these six ordinances. Among them the *Zakat and Ushr* ordinance that was related with the deduction and disbursement of the Zakat was to be applicable from July 1979 while the rest were applicable from the date of their announcement. These ordinances dealt with, ‘offences against property (enforcement of Hudood, ordinance no VI of 1979)’, that was related to the punishments prescribed for the theft. Offences of Zina (enforcement of Hudood, ordinance no. VIII of 1979), it was related with the crimes related to sex like adulteration and fornication. Offences of *Qazaf* (enforcement of Hudood, ordinance no. VII of 1979) that was related with false accusations and lastly, the prohibition (enforcement of Hudood, ordinance no. IV of 1979) it dealt with the alcoholic drinks, and it repealed the earlier ‘prohibition act of 1977’ that was introduced by the Bhutto government and was related to the ban of alcohol. These ordinances in combination are called Hudood ordinances.

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<sup>31</sup> The offense of Zina (enforcement of Hudood) ordinance VII of 1979, section 2, definitions(b).

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These ordinances were recommended and drafted by the newly appointed Council under Justice Cheema. Although the discussions about these laws were not new to the Council, as regards the history that when for the first time the Council recommended the replacement of punishments prescribed in the penal laws inherited from the British to be replaced with the *Hudood* laws was in 1968 during the final days of General Ayub.<sup>32</sup>

The nature of these laws has been debated and several authors have criticized Zia for promulgating the ordinances which according to them were not according to Quran and the Sunnah or because they were meant for the personal gains.<sup>33</sup> However much of the works lacks the role of the Council and the international involvement especially the Saudi government while these laws were discussed in the closed doors of the Council office that was shifted in a rented building at Islamabad from Lahore after the Marti law. Among the other most distinguishable personalities from Saudi Arabia that came to Council during the year 1977-1988 while it was in the process of drafting the legislation of the Hudood laws were, Al-Sheikh Abdul Aziz bin Abdullah (Custodian of Masjid-al-Haram, Makkah), Al-Sheikh Saeed Al-Jandool (Minister in Saudi Arabia), Sahita Aldaktora Ahmad (Secretary, Nadwa-al-alamiya Saudi Arabia), Dr Maarouf Al-Dawalibi (Personal advisor of Saudi King Khalid bin Abdul Aziz and President *Motamar Al-Alam Al-Islami*). The report of the Council also mentions explicitly that meetings for drafting the Hudood laws were held under the presidentship of Dr Maarouf Al-Dawalibi in Arabic and later they were translated into Urdu and English.<sup>34</sup>

These laws are till date, the laws of the land despite the attempts by the later government to amend them because of the controversies involved in the application of these laws. The Council which was established to build consensus became a law drafting body, although none of the person was ever stoned to death as prescribed in the punishments neither did the hands cutting took placed of anyone proved of theft, but still, it does not mean that these laws had no implications. On the part of the Council they expressed the institutional growth, further complicated were the modalities

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<sup>32</sup> Advisory Council of Islamic Ideology, *Annual report of the proceedings of the Advisory Council of Islamic Ideology for the year 1968*, 52-58.

<sup>33</sup> Dr Muhammad Farooq Khan, *Hudood Aur Qisas-wa-Diyat Ordinance Ka Tanqidi Jaiza Quran-o-Hadeeth Ki Roshni Mein* (Peshawar: Aurat foundation, 2004). Dr Muhammad Aqeel Hashmi, *Hudood Ordinance: Kitab Wa Sunnat Ki Roshni Mein* (Lahore: Aurat foundation, 2004). Justice Javed Iqbal, *Qanun-i-Zina Par Ek Nazar* (Islamabad: Aurat foundation, 2006).

<sup>34</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 41.

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which were attached with the application of these laws. For instance, they needed the new courts, and judges that shall be experts on Islamic laws. In this regard later based on the recommendations of the Council, the Federal Shariat Courts were also established with the jurisdiction to annul any law from ab-initio if that is found against the Quran and Sunnah. Soon this jurisdiction came in direct clash with the government when the punishment of stoning to death was declared by the court as a un-Islamic punishment. The government instead of complying with the decision of the Court removed the judges and appointed new ones that later declared this punishment according to the Islamic principles. In order to observe the implications of the Hudood laws, the Council under the second Chairman, Tanzil, examined the application of these laws, and observed that ‘...the purpose for which they were promulgated are far from being achieved...’ as a remedy Council recommended government to ‘appoint *ulema* from the recognized *Dini Madaris* to plead the cases related to the *Hudood* crimes...<sup>35</sup> so later *ulema* judges were also appointed by the government in these courts to deal with the cases related with the Islamic issues. The next section will discuss those changes in the legal structure that involved the establishment of several new institutions based on the recommendation of the Council in subsequent years.

### 4.5.1 COUNCIL’S RECOMMENDATIONS FOR BRINGING THE JUDICIAL STRUCTURE IN LINE WITH ISLAM

After the promulgation of the Hudood ordinances, the Council recommended in its nineteenth meeting 11-29 July 1979 discussed that ‘...no *Hadd* punishment has been imposed yet by the courts’ so it recommended some more measures to be taken up by the government, one among them was that ‘...at least three judges shall be appointed in each high court to deal specifically with the *Hudood* cases’.<sup>36</sup> However while going through the proceedings and the reports of Council there was nothing recommended specific about the establishment of the Sharia benches which were gratified along with the High Courts by the Zia regime on December 2, 1978, through a ‘Sharia Benches of Superior Courts order’ that was to take effect from February 10, 1979. According to this order, the benches known as Sharia Benches were constituted in the High Courts and an appellant bench in the Supreme Court. Later they were disbanded in 1980 and were replaced by the Federal Shariat Court (FSC) and a Shariat appellant bench in Supreme Courts having the

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<sup>35</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1982-1983*, 20-21.

<sup>36</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1978-1979*, 86.

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three *ulema* as judges in the FSC out of eight Muslim judges. For this purpose, chapter 3 was incorporated in the part VII constitution. While discussing the role of the Council during the Zia regime it would be pertinent to discuss very briefly the role of the FSC in the examination of laws, because in addition to being the court, under article 203-D it was given the suo-moto jurisdiction in March 1982 that empowers it to study ‘whether any law is repugnant to the injunction of the Quran and Sunnah’.<sup>37</sup> It was same duty which is given to the Council in the constitution, however, the major difference was that this court had the force of implementing its decision. Because its decisions were binding over the high courts and the subordinate courts under article 203-D and secondly if it declares any law repugnant to the Quran and Sunnah it has the power to declare it as such and to specify the date on which the said decision will take effect. Having seen the right of veto of the FSC even above legislature, it was nearly the same kind of institution that was recommended earlier by the *Board of Talimaat-i-Islamia* which was appointed in 1949 by the first Constituent Assembly to recommend to Basic Principles Committees the measures related to Islam and were discussed in the first chapter of this study.

However very soon the working of the FSC in the coming years came in clash with the interest of the regime it happened when the FSC declared on the question of *Rajam* (stoning to death punishment in the Hudood ordinances for the person found guilty of adultery or fornication), declared that stoning to death is not supported by the Islamic law as punishment of adultery, however, this decision was not acceptable to Zia. Resultantly the Chief Justice Salahuddin was removed and the FSC was reconstituted by appointing three *ulema* as judges in Court and further, it was also empowered to review its own decision, and the new court held that stoning to death was Islamic punishment.<sup>38</sup> This event once again manifests the governmentality that it was ready to accept only those measures which suited its political strategy. Similarly bestowing the duty of the examination of laws in addition to the Council to the FSC, led to the less role of the Council in this regard. It was probably because of this reason that after this duty was given to the FSC that there are hardly any recommendations from the Council regarding the repugnancy of laws under

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<sup>37</sup> The constitution of Islamic Republic of Pakistan, article 203-C.

<sup>38</sup> Dr Parvez Ahmed and Dr Syed Mussawar Hussain Bukhari, “Federal Shariat Court an intrigue un-ravelled,” IOSR journal of engineering, vol. 3, no 5 (2013): 7-10, [http://www.iosrjen.org/Papers/vol3\\_issue5%20\(part-1\)/B03510710.pdf](http://www.iosrjen.org/Papers/vol3_issue5%20(part-1)/B03510710.pdf), accessed March 10, 2018.

the Chairman Halepota. This also manifests the governmentality of the regime if empowering the *ulema* through the FSC but keeping it conformist to the desire of the government.

#### **4.5.2 SHARIA FACULTY AND THE INTERNATIONAL ISLAMIC UNIVERSITY**

Sharia faculty was established at Quaid-i-Azam University, Islamabad on the recommendation of the Council to provide the training session to the judges and magistrates so that they can implement the Islamic laws which the government was striving to promulgate in the country. This Sharia faculty was later upgraded to International Islamic University, as the Faisal mosque Islamabad. King Abdul Aziz University, Saudi Arabia gave the financial support to establish this faculty and later for the Islamic International University to be established as Faisal mosque Islamabad, named after Shah Faisal of Saudi Arabia. International Islamic University provides a significant role in producing the student which were the graduates of the Islamic jurisprudence.

#### **4.5.3 EVIDENCE ACT, 1872 CHANGED INTO *QANUN-E-SHAHADAT* ACT, 1984 BASED ON THE RECOMMENDATIONS OF THE COUNCIL**

Evidence act that was drafted by the British in 1872 was taken as such after the creation of Pakistan. It had been discussed in the various meetings of Council to bring it into conformity with the injunctions of Quran and Sunnah. For the very first time, it was discussed in 1962 and some of the sections of the act were recommended to be amended but as in 1963 Advisory Council was given the task to examine all the laws of the country, so detailed recommendation regarding about the evidence act were postponed.<sup>39</sup> It was then taken up in June 1968, and it was pointed by the Advisory Council under the Chairmanship of Alauddin Siddiqui and the other members that Muslim law of evidence was fundamentally based on moral values, and therefore it lays emphasis on the moral calibre of the witness, whereas the evidence act was based on the common law system of jurisprudence under which an opportunity for presentation of fact and law was given to the opposing parties and the court then decides the case after discussing and evaluating the evidence brought on record.<sup>40</sup> However, it did not recommend to repeal the evidence act instead

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<sup>39</sup> Advisory Council of Islamic Ideology, *Annual report of the proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 4.

<sup>40</sup> Advisory Council of Islamic Ideology, *Annual report of the proceedings of the Advisory Council of Islamic Ideology for the year 1968*, 53.

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recommended amendments in the several sections of this act during the year 1968 and 1969.<sup>41</sup> During Zia era the based on the same argument that the genesis of the evidence act being drafted by the British not considering the principles of the Islam the Council under Tanzil recommended to repeal the act and promulgate a new law that was named as, ‘Qanun-e-Shahadat Order, 1982’.

It was promulgated as the *Qanun-e-Shahadat* order, 1984 after the two years while being discussed at the Federal Council and the several communications and meetings were held between the Chairman of the Council with the President during these two years until the term of Tanzil expired. The promulgated law was different in its wording compared to the draft sent by the Council, however many sections of the law were same as were recommended by the Council earlier in 1982 and 1983. Especially the article 17 of the *Qanun-e-Shahadat order*, that provided that ‘... the instrument shall be attested by two men or one man and two women, so that one may remind the other’.<sup>42</sup> This section was provided as such by the draft that was sent by the Council to the President.<sup>43</sup> Another aspect in the episode that resulted in the change of evidence law to the *Qanun-e-Shahadat* necessary to mentioned for highlighting the overemphasised role of the Council is that President was not interested to repeal the evidence act and instead desired Council to recommend amendments becomes visible from the fact that, Council was sent a letter from the President secretariat in January 1981 to examine the law of evidence in accordance with the Quran and Sunnah.<sup>44</sup> Whereas the Council wanted him to repeal the earlier law and promulgate the new one. Ultimately the view of the Council was accepted by the President and new legislation was promulgated, but still Council was not content about the newly promulgated law because of the amendment carried out by the Federal Council without consulting the Council member in the finally promulgated draft.

As far as the reasons are concerned that why the Council wanted the repeal of earlier law, it said that that ‘it is not possible to amend the Evidence Act, as a lot of changes were required instead it needs to be repealed and new law to be promulgated’ and it sent the draft of the *Qanun-i-Shahadat*

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<sup>41</sup> Ibid, 52-58; *Annual report of the proceedings of the Advisory Council of Islamic Ideology for the year 1969*, 133-136.

<sup>42</sup> *The Qanun-e-Shahadat Order 1984*, Gazette of Pakistan, article 17 (2) (a).

<sup>43</sup> Council of Islamic Ideology, *Muswada Islami Qanun-i-Shahadat Ordinance 1982* (Islamabad: Council of Islamic Ideology, 1982), 8.

<sup>44</sup> Letter no. 8/1981 dated: January 2, 1981 in *Islami Nazaryati Council Salana Report 1981-1982*, 58.

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ordinance in August 1982 to the President, Federal Council, ministry of religious affairs and minorities. Later it was sent back by the Federal Council to translate the draft in Urdu, so English draft was sent in January 1983. In February 1983, Council in response to the questions from the President in which he asked ‘why new laws are required and would it not be better to amend the earlier one by incorporating the changes?’, The Chairman of the Council met the President himself and presented him a ‘Memorandum with reference to the Qanun-e-Shahadat’.<sup>45</sup> It pointed out several legal reasons like moral credibility of the witness, requirement of the witnesses under the cases related to Hudood ordinances and in addition to that it mentioned that earlier act was drafted by the British, and while drafting it they had not considered the ideals provided in the Quran and Sunnah, Now as Pakistan is an Islamic country so new law must be promulgated and previous one repealed. Finally it was later in 1984 that *Qanun-e-Shahadat* 1984 was promulgated, according to the legal experts, for instance, Tahir Wasti in his work, mentions that the newly promulgated law, retained many principles and sections of the Evidence act and some new sections from the text of the Council’s sent draft like article 17, 163, 164, 165 and 166 were grafted into the said ordinance that was promulgated with the new name.<sup>46</sup> This is how the recommendations of the Council impacted the legislative process during these years despite the fact that Zia was not even happy sometime in implanting them. It was probably because of this over the emphasized role that that when the term of Tanzil expired in May 1984, the new Chairman was not appointed by the President until May 1986 and for two years without Chairman it remained without any noticeable activity.

### 4.5.4 LAW OF *QISAS* AND *DIYAT*

*Qisas and Diyat* are the Arabic words, *Qisas* literally meaning is revenge, and *Diyat* means the blood money, paid either to the victim or the deceased of the victim in case he has died. Council under Cheema recommended the draft of the ordinance along with the other four ordinances which were promulgated by Zia as CMLA on 10<sup>th</sup> February 1979.<sup>47</sup> The other ordinances were promulgated, this one that was related to the *Qisas and Diyat* was singled out by Zia. It shows that

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<sup>45</sup> Council of Islamic Ideology, *Muswada Islami Qanun-i-Shahadat Ordinance 1982*, viii-x.

<sup>46</sup> See Tahir Wasti, *The application of the Islamic criminal law in Pakistan: Sharia in practice* (Leiden: Brill, 2009), 245-246.

<sup>47</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1978-1979*, 15-77.

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as the governmentality of the regime to enforce the punishments, which were of punitive natures, at the same time only those recommendations were taken which suited its political strategy. However, the recommendation related to this legislation kept on been reiterated by the Council in its several reports. The most obvious reason that explains the reason for not promulgating this law was the Bhutto factor, as he was under trial and the promulgation of this ordinance which deals with the blood money could have resulted in the acquittal of the Bhutto and would have made the situation worse for Zia.

The said draft was sent back to the Council under Cheema when Justice Tanzil became its Chairman in 1981, he once again sent the draft of the said ordinances to the government.<sup>48</sup> The CMLA secretariat through the ministry of religious affairs sent the proposed draft to the secretary of the ministry of interior and all the chief sectaries of Punjab, NWFP, Sindh and Baluchistan. According to Wasti the author of the work in which he worked on the evolution of the *Qisas and Diyat* laws, several comments and reservations were received, which included the reconsideration of several clauses, add more explanations and the suggestions which included that instead to promulgate a new law, or simply to remove the un-Islamic provisions by amending the PPC in the Shariat Court decision in *Gul Hassan Khan v state* PLD 1980 FSC I.

The draft of the ordinance remained debated in the Majlis-i-Shura which was appointed by the Zia regime. The members of the *Shura* were appointed under article 4 of 1981 PCO. It was appointed on 24<sup>th</sup> December 1981 as an interim arrangement. Its members were chosen on the recommendation of the deputy commissioners of the districts and further scrutiny of the agencies that they were not the supporter of the deposed Bhutto regime. It came for discussion in the Shura on 18<sup>th</sup> January 1982 and on 25<sup>th</sup> July 1984 the debate on it was completed and was sent to President for promulgation, however once again it was postponed. This case study of this law shows the selectivity among the laws of Islamisation process even as regards the legislation shows the selectivity on the part Zia, from among the knowledge provided in the form of reports by the Council. However, on the part of the Council, importance is encapsulated in the fact that these laws were sent back to the Council still, they were repeated several times during the annual reports

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<sup>48</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1981-1982*, 57.

of the Council and ultimately, they became the part of the legal corpus of the country after the death of Zia in 1997.

#### **4.5.5 ZAKAT AND USHR ORDINANCE, THE DIFFERENCES OF COUNCIL ON ITS IMPLEMENTATION**

Although the priority of the regime was to emphasize on those recommendations during the initial years which were of punitive nature, however in addition to such recommendations, Council also recommended introducing a comprehensive system of *Zakat and Ushr*. The literal meaning of Zakat is ‘growth’ as well as ‘purification’ while in figurative context it is the Muslim welfare tax which is taken from the rich and distributed to the poor for the social assistance and is considered as one of the most basic pillars of the Islamic economic system. Islamic economic system is based on the principles given in the Holy Quran and the traditions of the Prophet. The precise modalities have been the source of debate among the various scholars globally.<sup>49</sup> The reason for these debates are because the Islamic economic system is not a separate branch of jurisprudence or set of hard and fast rules but based on the basic principles devised from the Holy Quran, Sunnah and the practices of the pious caliphate. Two basic principles of this Islamic economic system are Zakat and the abolition of interest also called *riba*. This chapter will now discuss one by one both as recommended by the Council and the way Zia regime implemented it and the reservations of the Council over the implemented ordinance which will manifest the governmentality of the regime in the implementation of its recommendations.

It was during the initial plan prepared by the Council under Cheema to Islamise the country, that it recommended that ‘it is the responsibility of the state under the Sharia to collect Zakat and spend it on those who deserve it’.<sup>50</sup> In this regard, it submitted a detailed recommendation that how to enforce the *Zakat and Ushr* system in the country with included general guidelines. Next year in 1978 it drafted an ordinance regarding the collection and the distribution of the *Zakat and Ushr* and further recommend that it should be as such implemented in the country. Zia aspired to

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<sup>49</sup> For more details see, Sayed Afzal Peerzade, ed. *Readings in Islamic fiscal policy* (Delhi: Adam publishers & distributors, 1996), 1-86. Farishta G. de Zayas, *The law and philosophy of Zakat: The Islamic social welfare system* (Damascus: Al-Jadidah printing press, 1960), 3-48. Nasim Shah Shirazi, *System of Zakat in Pakistan: an appraisal* (Islamabad: International Institute of Islamic Economics, 1996), 1-15. Mohammed Arif, ed. *The Islamic voluntary sector in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 1991), 1-6.

<sup>50</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 162.

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implement the system of Zakat by initially implementing it in few cities as a pilot project.<sup>51</sup> However Council's based on the reports in the newspapers mentioned in its report about the implementation of the system, mentioned that it came across through newspapers that, the government intends to implement in initially in few cities, it reiterated that system of Zakat should be implemented in all the country at once.<sup>52</sup>

Zia regime promulgated on June 24, 1979, Zakat and Ushr (organization) Ordinance which provided setting up an organisation at central, provincial, district tehsil and local level respectively. The member of many of these committees were elected by the population living in that area respectively and they, in turn, would select among themselves the Chairman for the above tier. There were around 39,000 local Zakat committees, their task was to identify and verify those who deserve for the Zakat donations these committees were to work on voluntary basis. After its promulgation the first and the most powerful voice against it was from the from the Shia leadership, Mufti Jafar Hussain who was the President of the Shia Board and earlier resigned from the Council due to the difference on Zakat ordinance, said in a press briefing that in our last meeting with President Zia, he had assured us that reservations of *Fiqh Jafiria* will be addressed, as now the *Zakat and Ushr* organisation ordinance is already promulgated so now we demand that a separate ordinance may be issued to declare *Shia* exempted from compulsory deduction.<sup>53</sup> Another voice against the ordinance from the *ulema* that was not Shia was from Mufti Mehmood was he said that 'Zakat is a *ibadait* don't enforce it compulsorily'.<sup>54</sup>

The proceedings of the Council manifest the internal difference within the Council member, during the discussion on the modalities of the Zakat and Ushr ordinance. It was due to these differences that two Shia members of the Council, Mufti Jafar Hussain resigned due to the 'difference of opinion on the compulsory deduction of Zakat' under the Chairmanship of Cheema and Allama Ahmed Saeed Kazmi 'due to personal reasons' under the Chairmanship of Tanzil resigned from

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<sup>51</sup> "23 March Sey Char Shehro Me Tajrabati Tor Per Zakat Ka Nizam Raji Kar Dia Jai Ga," March 21, 1978, The Nawa-i-Waqt.

<sup>52</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 138-141 and 178.

<sup>53</sup> Mufti Jafar Hussain, "*Fiqh Jafria Ko Aaini Tahafuz Dene Ke Lye Ordinance Jari Kia Jai*," June 30, 1979, The Nawa-i-Waqt.

<sup>54</sup> Mufti Mehmood, "*Quran Aur Sunnat Per Mabni Islami Nizam Ka Fori Nifaz Intihai Zaroori Hai, Zakat Aik Ibadat Hai Ese Zabardasti Wasool Na Kia Jai*", June 12, 1978, The Nawa-i-Waqt.

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the Council.<sup>55</sup> Zia in attempt to minimize the differences met with the Shia *ulema* deputations and it was decided that Shia-Sunni committee will be established to end the differences on this issue. Council appointed a specific panel with economic experts and they held various session for the recommendations of the council to draft them in the form of laws and sent to Zia for promulgation in the form of an ordinance. The final draft sent by the Council was then vetted by the ministry of finance and the ministry of law and was sent to President Zia in form of an ordinance which was promulgated on June 21, 1980.

This ordinance provided for the compulsory deduction of the Zakat from the saving account of all the banks on the 1<sup>st</sup> of Ramadan every Islamic year, functioning of the Zakat Councils and a separate account for the maintenance of Zakat money was to be opened at the State Bank of the country to keep the money separate for the other public funds. The Council under Tanzil was also among those which criticized the implementation of this ordinance. Council in its report, while referring to an article published by the ‘Economist’ from London, in which it criticized the Zakat system introduced by the Pakistani government, it said that ‘...Pakistan’s small investors remained un-impressed, they prefer interest...’<sup>56</sup> Council decided to reviewed *Zakat and Ushr* ordinance which was promulgated by the government with the one recommended by the Council because it observed that ministry of the finance without consulting with the Council members has amended due to which it lost its purpose and it failed to produce the result which were desired. In this regard it pointed out almost twenty-five deviations in the draft which were pointed out in the report of the Council, Council sent the review to President Zia that, it has mentioned in the Council’s draft that Zakat is payable on *Zahiri and Batini amwal* (visible and hidden belongings), but the amended draft says that is should be applicable on Gold, Silver and Prize bonds it was not made compulsory to be paid but it was *ikhthari* (optional) and said that this deviation resulted in the fewer zakat collections the thought-out amount, because of very fewer collections the amount of zakat given to deserving people is so less than it cannot even fulfil their basic needs.<sup>57</sup>

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<sup>55</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1978-1979*, 1; *Islami Nazaryati Council Salana Report 1981-1982*, 300. in later case Allama Talib Jauhari was appointed as the Shia member of the Council

<sup>56</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1981-1982*, 196-203.

<sup>57</sup> *Ibid*, 225-229.

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It proposed the Zakat to be collected on the *Zahiri and Batini* (apparent and hidden) income both but the ordinance promulgated deviated from this At 22 June 1981 President asked that whether ‘Zakat amount can be used for such an institution which provide the necessary things for business to orphans, widow and needy’ council appreciated that president wanted the amount of zakat to be used for helping the needy said that Council’s earlier report about the *masarif* of Zakat has already been submitted and it is fine to be carried on.<sup>58</sup> Council supported the idea that it is good to establish industries to help the needy with the said amount of Zakat.<sup>59</sup> Council criticized the zakat ordinance on the basis of these points in the report of 1981-1982. Another criticism by the Council was that most of the part of the zakat deducted is from the saving accounts and these accounts are of the middle-class people whereas big businessman kept their money in the current accounts which are excepted for deduction of Zakat as per the promulgated ordinance, whereas the draft of the Council exempted none this also resulted in the low collections of the Zakat. So, in the opinion of the Council the present legislation is indirectly supporting the rich by collecting from the middle class only which is completely against the spirit of this legislation as recommended by the Council.

Another criticism by the Council itself on the promulgated draft was because of the delay in the implementation of a system for *Ushr*. As the *Ushr* ordinance was postponed while announcing the Zakat ordinance on 20 June 1980. *Ushr* Committees were composed of the members from the Federal Council appointed on July 1, 1982. This committee sent various question to the council about the implementation of the recommendations of the Council regarding Council’s recommendation. This committee submitted its report to *Majlis-e-Shura* on 21 October 1982.<sup>60</sup> Lastly, the Council also recommended that those who are excepted in the light of amendment after its promulgation, for instance, those who are adherent of *fiqa Jafria*, they may be liable to pay *falahi* tax (Welfare Tax), this tax shall be applicable to the non-Muslim as well. Allama Talib Jauhari in 1982-1983 who appointed as the Shia member after the resignation of Allam Ahmed Saeed Kazmi, pointed to this recommendation that this should be applied to non-Muslim only because the adherent of *Fiqh Jafria* pay Zakat already on their own, this additional tax will be a burden over them.<sup>61</sup> He further said that Pakistan is not a Shia dominated country like Iran, neither

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<sup>58</sup> Ibid, 227.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid, 58-93.

<sup>61</sup> Ibid, 48-51

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a Sunni dominated like Saudi Arabia over here a large number of people live who belong to different *fiqh* and each needs to be respected according to its own *fiqh*.<sup>62</sup> The working tensions between the Council, especially under Tanzil and the Zia regime, became evident on this issue, secondly, the sectarian outlook of the country also became exposed. When the Shia population gather outside Islamabad and protested against the ordinance. Resultantly government in April 1981 amended the ordinance and exempted Shia population from the compulsory deduction of Zakat, after the submission of the affidavit that they belong to the *Shia* community.

### 4.5.6 RISE IN SECTARIANISM AND THE RESPONSE OF THE COUNCIL

Pakistan is predominantly a Muslim dominated country, but the population is divided into several sects, as discussed with details in the first chapter under the section, understanding of Islam in Pakistan. No official census of the country gathers the sectarian data, of the population, which gives the benefit to the representatives of the religiopolitical parties specially to increase the numbers of their sects. According to a careful analysis following the sectarian vista of the Pakistani society with reference to the sectarian divide: Sunni (Barelvi 45%, Deobandi 11%, others 19%), Shia (17% *Athna Ashari*, 3% others).<sup>63</sup> A noticeable impact of the codification of the laws on the name of the Islam by the Council was the galvanisation of the sectarian differences which were earlier not very prominent. Several scholars have studied the Zia regime from this perspective as for instance Ian Talbot writes that Zia's Islamisation not only divided the country along lines of minority and majority sects, it divided the majority into mutually hostile factions of their own.<sup>64</sup> Another scholar Mariam Abu Zahab wrote that Zia's Islamisation is responsible for the militant sectarianism between the *Tehrik –e Nifaz-e Fiqh-e-Jafria* and their militant outfit *Sipah-e Mohammadi* and JUI's subsidiary *Sipah-e Sahaba Pakistan*.<sup>65</sup>

It would be wrong to say that Zia government was unaware of the sectarian disturbances in the country due to the ongoing codification of laws. This concern is evident in a letter sent to the

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<sup>62</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1982-1983*, 48-51.

<sup>63</sup> Michel Boivin, *Le Pakistan et l'islam: Anthropologie d'une république islamique* (Téraèdre: Paris, 2015), 25. Other Sunni include *ahl-hadith*, *ahl-e Quran* and those who do not recognize any seminary for interpretations, Other Shia include *Ismaili*. The percentage of religious minorities is taken from: Pakistan Bureau of statistics, Government of Pakistan, "Population by religion," <http://www.pbs.gov.pk/content/population-religion>, accessed March 17, 2018.

<sup>64</sup> Ian Talbot, *Pakistan: a modern History* (New York: St. Martin's, 1998), 251.

<sup>65</sup> Mariam Abou Zahab, "The regional dimensions of sectarian conflicts in Pakistan" in *Pakistan Nationalism without a nation*, ed. Christophe Jaffrelot (New Delhi: Manohar Publishers, 2002), 116.

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Council by the ministry of interior ‘...to propose such measures that can result to minimise the sectarianism in the country...’.<sup>66</sup> The response of the Council in this regard was very interesting, as ‘...it is natural that as the pace of Islamisation is speeding up there is visible rise in sectarianism and it is because of the international conspiracy against the Islamic renaissance in Pakistan...’<sup>67</sup> The concerns by the ministry in the above said letter, in order to reduce the sectarianism show an attempt to reduce the influence of *ulema*, on the other hand the reaction of the Council was more important which encapsulates the idea that there is no going back on the attempt for the codification of laws was started.

### 4.6 INTEREST-FREE BANKING, A CONTENTIOUS ISSUE BETWEEN THE COUNCIL AND GOVERNMENT

What is interest? Whether the interest used in public transactions falls under the category of *riba* (the term used in Quran)? If simple interest is banned or the complex interest is also banned? If it is forbidden (*haram*) then how will the modern banking system function? These were the questions which had been in discussion in Council and its predecessor institution Advisory Council since 1963. The very first time this issue was discussed in the Advisory Council after its establishment was in 1962. This was raised by some of the members of the assembly to the government and it was then sent to the newly appointed Advisory Council. It was asked in the reference that, ‘Whether interest in the form in which it appears in public transaction is in conformity with the principles and concepts of Islam?’<sup>68</sup> The said reference further asked the Advisory Council that a comprehensive mechanism may be chalked out for the guidance of the regime, in case it considers present-day interest contrary to the Islamic principles.

It was not until 1969 that too after the resignation of the President Ayub and the director of the Islamic Research Institute Dr Fazlur Rahman who otherwise believed that present-day interest is the different from the mediaeval times interest that Advisory Council finally recommended unanimously that interest involved in public transactions fall under the category of *riba* so it is

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<sup>66</sup> Letter no. 3 (5)/83-POLL dated January 9, 1984 by the Ministry of interior in *Islami Nazaryati Council Salana Report 1983-1984*, 306.

<sup>67</sup> *Ibid*, 315.

<sup>68</sup> Advisory Council of Islamic Ideology, *Annual report of the proceedings of the Advisory Council of Islamic Ideology for the year 1962-1963*, 3.

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*Haram* (forbidden).<sup>69</sup> However advisory Council was unable to chalk out any mechanism in this regard that how to abolish it from the economy. Then once again this issue of preparing a mechanism was discussed in the Council under the Chairmanship of Justice Hamoodur Rehman in January 1976, and it was decided to prepare a questionnaire and send it to the State Bank of Pakistan, Economics department of the universities, scholars from following, Muslim countries, Saudi Arabia, Iran, Egypt and Indonesia. Based on the said questionnaire any further development was awaited that the tenure of the members of the Council finished. After the takeover by Zia and the in surge of codification of Islamic laws, it was among others it was also the task of the Council under Justice Cheema to chalk out an interest free mechanism for the country.

The Council under Cheema that in pursuance of chalking out the mechanism for the abolishment of interest established a separate panel of experts on November 1977 having the experts on economics. The Chairman of the panel was Dr Ihsan Rasheed (Professor Economics at Karachi University) and its convener was Dr Zia ud Din the member of the Council while the other members were Dr Rafiq Ahmed (Vice Chancellor Punjab University, Lahore), Sheikh Mehmood Ahmed, Abdul Jabbar Khan (President Habib Bank Limited), Noor-ul-Islam Mian (Director Institute of economic studies, Peshawar University), Dr Nawab Hayder Naqvi, Dr Mian M. Nazir (Professor of Economic Peshawar University), D. M. Qureshi (MD, Bankers equity Ltd Karachi), Professor Shakar ullah (Professor, Baluchistan University), Dr A.H. Siddiqui (Director of administrative studies), Khadim Hussain Siddiqui (member Pakistan Banking Council), Abdul Wasay (Bank of Credit and Commerce International Karachi), Dr Syed Muhammad Hassan al Zaman (State Bank of Pakistan).<sup>70</sup>

This panel in its, in its first interim report regarding the Islamic economic system, submitted recommendations regarding the imposition of *Zakat and Ushr* system in the country, in the same report regarding the abolition of interest it recommends adopting a step by step approach by the government because it was very complex and deep-rooted in the society. In November 1978 it submitted another interim report to end *riba* (interest) in public sector institutions as the first step

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<sup>69</sup> Advisory Council of Islamic Ideology, *Annual report of the proceedings of the Advisory Council of Islamic Ideology for the year 1969*, 141-142.

<sup>70</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1978-1979*, 227.

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and establish model banks in the country to make functional the interest free banking.<sup>71</sup> Consequently, Zia announced from July 1979 to end interest in three public sector financial institutions, National Investment Trust, House Building Finance Corporation of Pakistan, Investment Corporation of Pakistan while the final report was still awaited from the panel that was later submitted in June 1980.

This otherwise confidential report unlike the all other earlier reports was given the ascent to be published by the Zia for this purpose it was translated in Arabic as well. the given purpose for publishing this report was so that, ‘...*other Muslim countries can also benefit from this working of the Council...*’.<sup>72</sup> This report provides the several options that were discussed during the several meetings regarding which mode to be adopted to shift to interest-free economic system country. Among the three options that were finally discussed, the first one was to establish an example bank that would do dealings without interest and later other banks will follow it, the second option was to introduce interest-free counters in all the existing banks and lastly adopt a gradual mechanism in three years in three steps.<sup>73</sup> Among these three options, Council decided to adopt the last option in which as first step it recommended to first of all finish interest in transactions between the State Bank of Pakistan and the other local banks in their dealings from July 1980. The next step was from July 1981 it involved ending interest from more complex public transactions like Government bonds, saving certificates and Investment banking’s further instead of fixed profit to introduce bonus or other incentives to attract investments. The last phase that was recommended to start from July 1982 was to introduce profit and loss sharing accounts in all the banks and with reference to international transactions that involved interest it recommended to encourage dealings with the Islamic countries instead of western countries.

Like the earlier case of the *Zakat and Ushr* legislations that were promulgated on the recommendations of the Council but resulted in the differences because when these recommendations took the form of legislation. The same happened with the recommendations about the interest-free banking. This was because although Council has given its recommendations

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<sup>71</sup> Council of Islamic Ideology, *Consolidated recommendations on the Islamic economic system* (Islamabad: Government of Pakistan, 1983), 28-31. APP, “23 march Se Char Shehron Me Tajarbatī Tor Per Zakat Ka Nizam Rajī Kr Dia Jai Ga,” March 21, 1978, *The Nawa-i-Waqt*.

<sup>72</sup> Council of Islamic Ideology, *Bila Sood Bankari Report 1980*, (Islamabad: Islamic Research Institute, 2002), 1-5.

<sup>73</sup> *Ibid*, 32-40.

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considering ground realities still government had its own political strategy and above that several obligations like international agreement and which were not taken care by the Council while devising the strategy to switch to the interest-free banking system. The first step taken by the government among the report sent to the government was the introduction of profit and loss sharing account counters alongside the interest-based banking in the commercial banks of the country from January 1981.

This selection of the above said choice instead of adopting the full set of recommendations was criticised by the Council during the year 1983-1984 when it examined the implementation of its report on interest-free banking in the country. Council in its report stated criticism on the government by citing a newspaper clipping:

‘Meccanized Banking... Pakistan’s small savers remained unimpressed, they prefer interest, despite hints from the government that interest-free accounts would probably record a profit in the first year higher than the ten percent now paid on the fixed deposits... after two months much less than ten percent among that most of that money had been transferred by civil servant and soldiers under some pressure from the government, a little came from the industrialists... uncertainty persists, there is nothing to beat interest’.<sup>74</sup>

Council in its meetings criticised the government for not implementing its recommendations completely, in its session of June 28, 1981 members passed a resolution that ‘the steps taken to abolish interest by the government are different from the ones recommended by the Council, it cited the example that in the present system government is using the ‘mark up and mark down’ terms which is nothing except the other names of the interest.<sup>75</sup> The second main criticism made on the government by the Council members that it did not start the task of ending interest from governmental dealing and instead started it from finishing it from the public transactions.<sup>76</sup> The Council had recommended adopting this approach so that public shall see the sincerity in the dealings that government itself is not taking profit. But the way government implemented it shows that it was more interested to implant in such a way that it would create public attention so express that government is doing a lot to finish interest from the country. Another criticism by the Council

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<sup>74</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1981-82*, 188-190.

<sup>75</sup> *Ibid*, 173.

<sup>76</sup> *Ibid*, 182.

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was that it has recommended imposing plenty on those who fail to pay the loan to the bank, but the government has kept the interest in this section of the ordinance.

In a nutshell by going through the recommendations of the Council, it becomes clear that the mechanism adopted by the government to finish interest had some points taken from the report of the Council was very different from the strategy which was suggested by the Council. The reasons for this were obvious, the political strategy of public appeasement, sticking to the international obligations and above all not to loosen the revenues of the government by abolishing from internal dealings at once. It was because of these differences that Council in its evaluation said that, ‘... the *present system is nor Islamic nor practicable...*’, it is because of this reason that despite the use of government media that it is not more than five percent people that had shifted to these interest-free counters. The copy of these reservations that were discussed in these meetings was sent to the President Secretariat, through the military secretary of the President and to the ministry of religious affairs.

In response to these reviews by the Council Ministry of finance, finance division, internal finance wing responded to the concerns of the Council in these words, ‘mark-up system was the easiest and convenient method to be adopted for banking operations which are quite complex in nature’<sup>77</sup> This reply by the finance ministry was that under Ghulam Ishaq Khan shows that, Council while drafting its recommendations had overlooked the complexities of the present economic system which involved the introduction of the Mark-up and Mark-down system in the banking sector instead of interest rate. The differences on the part of Council continued with reference to way government implemented its recommendation on interest persisted. For instance, later, Council asked the government to issue a general directive to the banks and other institutions that, ‘...by June 30, 1984 entire operations of the banking systems are conducted within the limits prescribed by Shariah.’<sup>78</sup> Further, it send the proposal to the government for arranging the training of the banking officials from the international institute of Islamic Economies at Islamic University, Islamabad.<sup>79</sup> So one the one hand whereas the officials of the ministry of finance were thinking that members of the Council are not considering the practical realities, likewise, the members of

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<sup>77</sup> Ibid, 196-203.

<sup>78</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 194-201.

<sup>79</sup> Ibid, 212-216.

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the Council were assuming that they were unaware of the basics of the Islamic economy. The lack of interest in the working of the Council by the President is visible in the fact that despite the fact that Council had so many reservations about the launched Islamic economic system that was supposed to be at the core of the Islamisation drive, nothing substantial was done on the part of the government to end its reservations.

This tense relationship between the Council regarding the introduction of the interest-free banking system in the country manifests the governmentality that on the one hand the Zia regime, the complexities between the romantic recommendations which the regime considered difficult to be implemented and attempt to implement them as per its political strategy. Secondly, Tanzil ur Rehman's criticism on the working of the government shows that the attitude of the Council under him was different from the one under Cheema. This attitude of Tanzil explains the reason that why the new council after the term of Tanzil expire in 1984 was appointed under Halepota after a long gap of nineteen months.

### 4.6.1 LEGISLATION REGARDING THE SANCTITY OF RAMAZAN

Ramazan is a holy month for the Muslims, during which they fast and do not eat anything from sunrise to sunset. It has been since the establishment of the Advisory Council in 1962 that it had recommended the government of that time to introduce such measures which can be used to increase the sanctity of the Ramazan so that Muslim population is encouraged to fast regularly. As earlier it has only recommended, it was Cheema during the first year of it drafted the legislation in this regard that was named as '*Qanoon Ehtram-e-Ramazan ul Mubarak*'.<sup>80</sup> Legislation for the above said recommendation was promulgated in the form of the ordinance '*The Ehtram-e-Ramazan Ordinance, 1981*' XXIII of 1981 on June 25, 1981. This ordinance prohibited any Muslim that is under the obligation to fast shall eat and drink in public places and was liable for plenty of five hundred Pakistani rupees or the imprisonment that may extend from three to six years, in case of violation. It provided exceptions of some places from this law like hospital canteens, railcar dining, canteens of primary schools, in addition to these restrictions it also barred

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<sup>80</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 142-145.

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the cinema houses and the theatres to remain closed during the month of Ramazan, three hours after the sunset.<sup>81</sup>

The most interesting aspect about this ordinance is that draft for this ordinance was sent to the government in 1978 while the ordinance in this regard was promulgated in 1981. This explains the governmentality of being selective among the recommendations provided by the government. It further shows that the sole purpose was not the Islamisation but instead to take up those recommendations which would result in government's additional control over the population. Another related communication to the Ramazan, between the Zia and the Council during the year 1982 was regarding using the modern techniques to ascertain the sighting of the moon. Zia asked Council under Tanzil through a reference that 'Whether a computer can be used to ascertain the birth of moon?'<sup>82</sup>. As the Muslim *Hijri* calendar which starts with the year when Prophet of Islam migrated from Makkah to Medina and is a lunar calendar, so the start of each month depending on the visibility of moon. It has been a long-standing dispute to ascertain the visibility of moon, the reason for this dispute is multiple disputes among the *ulema* that whether physically sighting of the moon is compulsory? or at an age when man has already landed on the moon that scientific calculations can be used to ascertain that at some specific place the birth of moon is confirmed. Council responded to the reference that '*in the light of Sharia, Computer cannot be given the authority to decide the birth of moon because actual sighting moon is compulsory in case of twenty-nine days for the month*'.<sup>83</sup> The conservative attitude of the Council is explainable considering its composition and its earlier take on the issues like the Hudood laws. It further ascertained that even if the government ever aspires to take some modernistic measures to develop consensus among the religious stockholders, Council was to resist.

### 4.7 ISLAMIC SYSTEM OF ELECTION AS PROPOSED BY THE COUNCIL

A very interesting instance of selectivity among the recommendations was the episode when its recommendations came in clash directly with the political strategy of Zia regarding the amendments in the system of elections. After the takeover, Zia has promised to conduct elections

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<sup>81</sup> The Ehtram-e-Ramazan Ordinance, 1981 as promulgated on June 25, 1981.

<sup>82</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 8.

<sup>83</sup> *Ibid*, 8-11.

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within ninety days which he did not and instead launched an Islamisation drive to get rid of Bhutto. Election issue once again came to limelight when Bhutto was no more in the scenario when he asked Council through a reference with the subject, 'Elections in the light of Islam' on July 24, 1979.<sup>84</sup> This reference asked Council to provide research and recommend such system of election that would be according to the principles of Islam.

The subject of the reference encapsulates the aspired response by Zia from the Council, that he wanted changes in the existing system of election that was parliamentary, and President was only the constitutional head. More importantly, he wanted these changes on the pretext that earlier system was not-Islamic because it will give the reason of obedience for the new system considering the understanding of Islam among the common people. This wish is also clear in the words of K. M. Arif, 'Zia was against the parliamentary democracy based on the political parties because he considered that they were not in consonant with Islam...'.<sup>85</sup> This fear is explainable in the sense that a General take took over the country after arresting his elected prime minister needs to be fearful of a parliamentary system that would give voice to those that were against his government. About using Islam to condone his fear it is a matter of debate that whether it provide a specific system of elections or just provide the guiding principles to be followed by the government that comes to power. Council's conformist recommendations in this regard would have given him a legitimate reason to overhaul the whole system of election as per his aspirations. He wanted a political setup that would assure control of power under him.

In order to give opinion about it, Council set up a committee, that was composed of following members: Justice Afzal Cheema, Maulana Zafar Ahmed Ansari, Dr Zia-ud-Din, Khalid M. Ishaq and Maulana Muhammad Taqi Usmani. Committee member replied in response to the above-discussed reference that in order to give opinion election system, 'first Council will have to answer questions like: What is the purpose of State in Islam? What are the Basic principles of an Islamic state?' it only then that it would be in a position to recommend an Islamic system of election.<sup>86</sup> As the term of the Council under Cheema was about to expire so this was left up to the next Council

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<sup>84</sup> "Election in the Light of Islam" by President Zia ul Haq, July 24, 1979 in *Islami Nazaryati Council Salana Report 1981-1982*, 310-312.

<sup>85</sup> Arif, *Working with Zia*, 232.

<sup>86</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1978-1979*, 385-388.

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to decide about the system of elections by the members of the committee. However, the Chairman of the Council differed from the rest of the members and wrote in his opinion that

*‘...as more than eighty percent population of the country is uneducated and live in rural areas so it cannot be expected that they can give a very conscious opinion and the member they will elect will be very eligible... The present system of elections which is basically the western democratic system is not in conformity with Islam...’*<sup>87</sup>

Zia which was already fearful of elections it was a handsome gift because it gave him more time as it was yet to be decided that what is the Islamic system of election, but it was said that western democratic system is not in conformity with Islam. When the next Council members and Chairman were appointed after a gap of nearly nine months on June 22, 1981 under the Chairmanship of Justice Tanzil ur Rehman (Tanzil). Zia himself presided the inaugural session of the Council and once again asked Council to give its opinion on system of elections that postponed by the earlier Council. Council under Tanzil submitted a detailed report with the title, *‘Islam ka Nizam-i-Mumlikat Basilsisla Intikhabat’* (Islamic system of government with reference to elections). This report provided that: *‘adult franchise is not against Islam’*, *‘women have the right to vote’*, *‘non-Muslims have no right to cast vote for the Muslim candidates’*, and one of the most unfavourable aspects of this report for Zia would have been that it provided that *‘Party based elections are not against Islam.’*<sup>88</sup> Lastly, it further said that *‘Presidential system of government is close to Islamic system but this does not mean that Parliamentary system of elections is un-Islamic’*<sup>89</sup>

This report had several setbacks for Zia, as on the one hand, they had not declared the party-based elections un-Islamic as was aspired by Zia, secondly, they said that President shall be answerable to the House. However, the most handsome gift this report had for him was when it provided that Presidential system of elections is close to the Islam. This report was not unanimous, it had two dissenting notes. First, one by the Mufti Siyah ud din Kaka Khel which related to the otherwise

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<sup>87</sup> Afzal Cheema, “Islamic system of elections” in *Islami Nazaryati Council Salana Report 1978-79*, 393-398.

<sup>88</sup> *Islami Nazaryati Council Salana Report 1981-1982*, 345.

<sup>89</sup> *Ibid*, 346.

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opinion on the party-based elections and giving the right of vote to women and second note of dissent was from Maulana Abdul Ghafar Hassan wrote that '*adult franchise is against Islam*'.<sup>90</sup>

Instead of considering this report and accepting its recommendations that were obviously against his political strategy of prolonging his rule and holding party less elections, this report was referred back to the Council for 'reconsideration'. In this regard, he himself visited the Council on February 14, 1983 and addressed its members along with Chairman and asked them to reconsider it. Second revised report of the Council was sent to the government with the following title, 'Constitutional recommendation for an Islamic system of Government'. It differed in many aspects from the previous one. As it recommended President to be the Head of the state, the member of the House will elect two people from among themselves or outside out of these two, one shall be elected by the adult franchise.<sup>91</sup> The second big change was in its earlier stance regarding the political parties it said that in the light of Quran and Sunnah 'elections on the political parties basis are not valid'.<sup>92</sup> This change in the stance of the Council has the same members exhibit the influence which Zia was having over the Council.

Interestingly the same Council members one year earlier in their initial report has suggested that elections based on party basis are not against Islam, but after one-year changed their opinion that election based on political parties are not valid. It was working in line with the governmentality of the regime, still, it was not enough for Zia. By the year 1983, he had already ruled for nearly six years and the Movement for Restoration of Democracy (MRD) was also gathering strength. MRD was a political movement of twelve political parties, assorted a group name as a Movement for the Restoration of Democracy, most prominent among these parties were Pakistan People's Party and the GDP, they have given the ultimatum to the Zia government to announce election plan by August 1983. The movement was pacified after the leadership of these parties was arrested. Simultaneously as another attempt to keep the population controlled the second report of the Council regarding the system of election was also made public by publishing it. The purpose of publishing it was to minimize the pressure that government is working to introduce the system of

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<sup>90</sup> Ibid.

<sup>91</sup> Council of Islamic Ideology, *Islami Nizam-i-Hakoomat Kay Bary Mein Dastoori Sifarishat* (Islamabad: Printing Corporation of Pakistan, 1983), 10.

<sup>92</sup> Ibid, 21.

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elections based on the recommendation of the Council. This new report was although favourable to Zia but still its several clauses like the two candidates for the presidentship to be nominated by the House and the President to be answerable to Judiciary and the house would have been difficult for him to legitimize his position.

Instead of asking once again the Council to reconsider it, he established another committee known as Ansari Commission, after the name of its Chairman, Maulana Zafar Ahmad Ansari and eighteen other members, to submit their opinion about the Islamic system of government for Pakistan. Later he decided to get himself elected as President, through a referendum which asked the population to vote for him as President, if they want the Islamisation to persist in the country. This whole episode where the opinion of the Council was sought, then it was asked to reconsider and later a separate commission was appointed for their opinion shows the selectivity among the recommendations of the Council. It further gives scholarship to the argument that instead of accepting its recommendations for the Islamisation they were to be used to better control. Lastly, the change in the stance of the Council itself from its first report on the system of elections and second report after 'reconsideration', shows both the influence of the government on the Council and the importance of the recommendations of the Council for the legitimacy of the government.

### **4.8 AMENDMENTS IN THE PAKISTAN PENAL CODE RELATED TO BLASPHEMY AND THE *QADIANI'S* ON THE RECOMMENDATIONS OF THE COUNCIL**

*Qadiani/Lahori* were declared non-Muslim in 1974, through the second amendment in constitution, Bhutto at that time wanted to send the issue to the Council to decide about it, however, due to the protests taking place in the country, the legislation was passed and as per constitution they were declared non-Muslim, it had been discussed with details in the last chapter. The governmentality of the Zia government about the *Qadiani's* was clear as early as in 1979 when Abdul Salaam a Pakistani scientist received Nobel prize in 1979 for his contribution in Physics but because he was a *Qadiani* and there was no mention from the Pakistani government that it was the achievement of a Pakistani citizen. It was only when India invited him for an award that Zia also invited him for awarding civil award and later he was to give a talk in a ceremony at Quaid-i-Azam

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University, Islamabad but that too was cancelled due to the protest of Jamaat-i-Islami students wing in the university.<sup>93</sup>

The stricter legislation regarding them were made parts of the Pakistan Penal Code during the later years through several additions/amendments that further affected the community which had already been declared non-Muslim by the constitution, these additions included the punishments if they called themselves Muslim or refer their worshipping place as Masjid and directly or indirectly refer themselves as Muslim. Interestingly these amendments which were incorporated in the penal code through sections 298 (a) (b) (c) were recommended by the Council. Further two other amendments 295 (b) and (c) which were related with the blasphemy and prescribed the severest death plenty were also made the part of the Penal laws these were also recommended by the Council through the ministry of religious affairs. Before going into the details directly that when Council recommended introducing strict blasphemy laws, it would be better to see a brief history of these laws that from where they were inherited by the Pakistani government.

The history of the blasphemy laws goes back to the pre-partition Pakistan, when the British drafted the Indian Penal code and with the purpose to keep the adherents of multiple religions calm, several clauses were made part of Indian Penal Code in 1870. The four sections which dealt with such crimes were 295, 296, 297 and 298 in the Indian Penal Code, and these sections were not specific to any one religion. Section 295 dealt with the ‘intentional damage or defilement of place or object of worship...’ and it prescribed the punishment of the term which may extend to two years or fine or both. Rest of the sections 296, 297 and 298 deal with the ‘disturbing religious sentiments’, ‘trespassing on the place of burial’ and ‘intentionally insulting an individual’s religious feelings’ respectively and the punishment mentioned for each was up to one year or fine or both.<sup>94</sup>

There was one amendment by which the British added 295 (2) to these laws in 1927 it was after the incident when Mahashe Rajpal, published a pamphlet, ‘*Rangeela Rasool*’, that had ‘derogatory’ remarks about the holy prophet of the Muhammad, according to the Muslim believes. He was acquitted by the Punjab High Court and was later killed by Ilm Din, a nineteen-year-old

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<sup>93</sup> Abbas, *Pakistan’s Drift into Extremism*, 105.

<sup>94</sup> International commission of jurists, *On Trial: The implementation of Pakistan’s Blasphemy laws* (Geneva: International Commission of jurists, 2015), 8-9.

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boy.<sup>95</sup> This amendment was related with the ‘deliberate and malicious act intended to outrage religious feelings...’.<sup>96</sup> Once again it was not specific to Islam or any other religion. After partition, the same penal code was taken as the Pakistan penal code. Council examined it during Ayub Khan for the first time and suggested amendment in the penal laws, especially while discussing the *irtidad* laws. During the Zia ul Haq government, these laws were made specific to the Muslim and the sentences were extended to the death sentence or life imprisonment and the fine.

Now this section will discuss them briefly that how Council recommend it and the way regime enforced them, *Qadiani* already declared by non-Muslim during the Bhutto government in 1974 the issue was once again came to light on 24<sup>th</sup> June 1981, when the interior ministry sent a pamphlet printed by the *Qadiani*'s with the title, ‘*Islam, Mazhabi Azadi Aur Azaadi Zameer Ka Zamin*’ (Islam assures religious freedom and religious thinking) to the Council for its opinion.<sup>97</sup> While giving an opinion on this the Council pointed out to the government that ‘there is no law prohibiting *Qadiani* from calling themselves Muslims’, so ‘it recommended to draft such a law on the urgent basis’.<sup>98</sup> However no legislation in this regard was carried out, then for the second time, it was highlighted in 1982, while apostasy issue (by apostate they meant if someone leaves Islam after adopting it) was under discussion in the Council. Council discussed it the scenario that if a Muslim becomes a *Qadiani* which is a non-Muslim as per the constitution, so he is also an apostate which is liable to be punished to death if he does not repentance within three days, so it recommended government to promote apostasy ordinance draft of which was sent to the government.<sup>99</sup> Further, it continued to say that giving derogatory remarks about Prophet Muhammad (PBUH) is also apostasy so it recommended that ‘whosoever wilfully says or does

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<sup>95</sup> Hashim Rashid, “Remembering Ghazi Ilm Din Shaheed: The Construction of Memory, Religious Affect and Blasphemy in the Muslim Public Sphere in Colonial Panjab and Contemporary Pakistan,” *Südasien-Chronik - South Asia Chronicle*, vol 7(2017): 201-225, <https://edoc.hu-berlin.de/bitstream/handle/18452/19501/09%20-%20Forum%20-%20Rashid%20-%20Remembering%20Ghazi%20Ilam%20Din%20Shaheed.pdf?sequence=1>, accessed June 26, 2018.

<sup>96</sup> International commission of jurists, *On Trial*, 8-9.

<sup>97</sup> Letter No: 2/84/PCP July 28, 1980, in *Islami Nazaryati Council Salana Report 1981-1982*, 48.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Islami Nazaryati Council Salana Report 1982-1983*, 23-25; *Islami Nazaryati Council Salana Report 1983-1984*, 98-102.

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anything which is derogatory directly or indirectly, shows or tends to show irreverence towards the Holy Prophet Muhammad PBUH shall be punished with death'.<sup>100</sup>

During the same year, it recommended to the government that any person professing himself as Ahmadi and whether he belongs to *Qadiani* group of Lahore group shall not name his/her place of worship as 'Masjid' and further they cannot use *Azan* as a call for the worship.<sup>101</sup> It recommended the punishment that may extend to one year or the fine not exceeding thousand rupees and the punishment of three years and fine for the second offence.<sup>102</sup> In the same recommendations, it also mentions that Ahmadi shall not refer himself as Muslim directly or indirectly if he does so he will be liable to the fine of three years or fine of not exceeding five thousand or both.<sup>103</sup> These provisions were promulgated in the form of a bill moved in the assembly elected after 1985 elections and were passed within hours and made part of the penal laws as 296-C. So, it would not be wrong to say that it was on recommendations of the Council that these laws were promulgated and have been debatable internationally since their promulgation because they were used largely to target the non-Muslim minority members.

### 4.8.1 THE RECOMMENDATIONS FOR BANNING THE LITERATURE OF THE BAHAI'S COMMUNITY

Baha'is are a religious community which lives in Pakistan, their teachings are based on the teachings of Baha Ullah's that belonged to Bagdad to whom its follower consider the messenger of God and his call for the construction of a divine world civilization.<sup>104</sup> Their ideological centre is in the city of Haifa, Israel, and they have some centres in Karachi for their community as well. Council was sent some religious literature by the Ministry of Religious Affairs that was published by the Baha'is community to examine its repugnancy, Council later recommended that '*that religious literature is blasphemous to the Islamic principles so it must be banned and recommends to take legal necessary action against the community*'.<sup>105</sup> First of the despite the fact that Baha'is

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<sup>100</sup> "*Saza Shatm-i-Rasool*" in *Islami Nazaryati Council Salana Report 1983-1984*, 6.

<sup>101</sup> These recommendations were sent to the ministry of religious affairs through letter no 4(35) 82 RC/I/I 21 February 1984 attached in *Islami Nazaryati Council Salana Report 1983-1984*, 7.

<sup>102</sup> *Ibid*.

<sup>103</sup> *Ibid*, 6-8

<sup>104</sup> For more details regarding Baha'is believes, <http://www.bahai.pk>, accessed March 8, 2018.

<sup>105</sup> Letter no. 6(11)A-D J (R&I)89 dated August 5, 1980 by the Ministry of Religious Affairs attached in *Islami*

did not claim themselves to be Muslim unlike the case of *Qadiani's*, so recommendation of the Council in this regard was strange. Secondly, it asked the government to take action against them. It was later in 1985 when through an amendment in the constitution validated by the newly elected Assembly under article 260(3)(b), added in the definition of non-Muslims, Baha'is were also added along with Christians, Hindus, Buddhist, Parsi, and Qadiani.<sup>106</sup>

### 4.8.2 NO MORE FAMILY PLANNING DEPARTMENT RECOMMENDED BY THE COUNCIL

Population planning was introduced during the early years of the Ayub government, as discussed in the last chapter, the purpose was to control the growing population. During the protest which led to the removal of the Ayub government, this measure of population control was projected by the protesters as an attempt by the government of promoting extra-marital sex. This population programme persisted during the Bhutto government, without any notable opposition neither by the Council under Hamoodur Rehman nor by the opposition in the House. However, Zia after taking over stopped the funds that were earlier allocated for the said programme.<sup>107</sup> The program was once again launched in 1980 after United States funds started flowing in Pakistan and Ayesha Khan claims that it was under pressure of the United Nations, USAID and World Bank that something must be done for the public health.

Zia appointed Dr Attiya Inayatullah, as the advisor for President on the Family Planning and the in charge of the programme. However, throughout these years, unlike Ayub who made public statements about the population control, Zia neither supported it publicly nor any noticeable public media campaign was allowed in this regard. Dr Attiya Inayatullah knew well that it was necessary to have the support from the religious quarters for the success of the programme, in this regard had the Council being a governmental body supports this programme her it would increase the public saying of her department. She wrote to the Council at least twice, on December 15, 1980 and October 9, 1983 to provide detailed recommendations regarding 'Islamic Laws and population planning'. The Council under Tanzil prepared a comprehensive report which was sent to the

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*Nazaryati Council Salana Report 1981-1982*, 49-50.

<sup>106</sup> The Constitution of Pakistan 1973, in article 260 (3)(b).

<sup>107</sup> Ayesha Khan, "Policy making in Pakistan's population program," Health policy and planning, vol 11, no 1 (1996): 30-51.

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President, *Majlis-e-Shura* and the Ministry of Religious Affairs in 1984. This report recommended that the arguments given in her note regarding the family planning are not according to Islam, instead, it said that family planning, ‘...with the fears of financial constraints is not allowed in Islam.’<sup>108</sup> It further said that family planning at the state level will lead to apostasy, promotion of illegal sex, shortage of population for the defence purposes and economic prosperity, so population planning department shall be closed.<sup>109</sup> It was because of the involvement of international donors over the government that it was difficult to just finish the department. To avoid being getting stigmatised for supporting this ‘un-Islamic programme’ in the words of Council, this department was attempted to be camouflaged. As Ayesha Khan mention in her study that ‘through an ordinance, the government transformed the field activities of the department to the provinces and attempts were made to merge it with the Health department’.<sup>110</sup> Although the program was not closed however by not supporting it officially its importance was reduced to a larger extent. This attitude of government regarding persisting this population control department despite having a clear report from the council once again gives scholarship to the argument of selectivity among the recommendations of the Council that suited their interests.

### 4.8.3 PROPOSED CHANGES IN THE EDUCATIONAL SYSTEM BY THE COUNCIL AND THEIR IMPACT

The impact of the Islamisation drive launched by the Zia government was not just limited to the legislation. The Council under Cheema submitted detailed recommendations for the reorienting the educational system of the country, in the light of the Islamic principles. Among these recommendations, those that were taken by the government are discussed in this section of the study. These recommendations were different from the ones that were earlier given by the Council which ranged from promoting compulsory Arabic language or teaching Islamic studies at university level. Under the Zia government, these included the rewriting of the curriculum books of not just the Islamic studies but to include the Islamic knowledge in all the disciplines, like science, philosophy, economics, politics, psychology, law, history and geography.<sup>111</sup> A glimpse of

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<sup>108</sup> Council of Islamic Ideology, *Khandani Mansobabandi Report* (Islamabad: Printing corporation of Pakistan, 1984), 80.

<sup>109</sup> *Ibid*, 81.

<sup>110</sup> Ayesha Khan, “Policy making in Pakistan’s population program”, 38-42.

<sup>111</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1988*, 189-198.

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the textbooks taught in the country during the decade of Biology, Chemistry and social studies gives a perfect view of how they were changes to include the Islamic perspective. However, it would be necessary to mention here that it was not only the Council that recommended such changes. The Ministry of Education's special committee and National Education policy 1979 also recommended incorporating such changes. Another important implication of the recommendation of the Council was the recognition was regarding the recognition of certificates of *Dini-Madaris* equivalent to the other educational institutions although again in this regard the other committee like the National Committee for *Dini-Madaris* under Halepota was also important, but the working of the council as discussed later in the recognition of their degrees equivalent to the masters was also important. Now I would mention few of the changes visible in the Pakistani education system which had at least some credit to the Council if not solely for pointing out the regime to change them obviously the selection among the available recommendations was made by the government to prolong its rule.

### 4.8.4 ARABIC TO BE MADE COMPULSORY AT SCHOOLS

The promotion of Arabic language was also among one of the recommendations of the Council which was repeated time and again, especially under the Chairmanship of Justice Hamoodur Rehman during the Bhutto government, because it considered for an understanding of the Quran it is necessary that student must have a good know-how of the Arabic language. However, it was the takeover of the Zia that Council under Cheema on November 27, 1977, recommended that 'Arabic must be made compulsory in all the educational institutions' among the other measures it recommended introducing the subject of *Fiqh* in the graduation of the law and introduce Arabic as a compulsory subject till graduation.<sup>112</sup>

### 4.8.5 REORIENTATION OF THE CURRICULUM ACCORDING TO THE 'IDEOLOGY OF PAKISTAN'

The Council under Cheema recommended that only introducing a compulsory course is not enough, instead it recommended that, from class one to five, separate time must be kept for the

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<sup>112</sup> Council of Islamic Ideology, Recommendations on Education 1962-1993 (Islamabad: Printing corporation of Pakistan, 1993), 19-20.

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reading of the Quran so that by that time student finish the verbal reading of the Quran, while at college level a permanent faculty of the Islamic studies must be established and most importantly the teacher of the Islamic studies should be the graduates of the *dini-madaris* or must having training from the faculty of the Islamic studies. Similarly, for the various higher levels of the faculty of Islamic studies, the graduates of the *dini-madaris* must be given preference. This step also involved the recognition of the *dini-madaris* by the government. The autonomy of the *dini-madaris* was also one of the demands of the *ulema* so government appointed the National Committee for the *Dini Madaris* in January 1979. Its Chairman was Halepota, who was the director of the Islamic Research Institute and was later appointed the Chairman of the Council after Justice Tanzil. The aim of this committee was to provide the recommendation to integrate them the *Dini madaris* in the mainstream educational institutions.<sup>113</sup>

In order to have the opinion of the Council on the matters of national curriculum the Chairman of the Council was appointed by the President as the Chairman of National Education Commission, this commission was to serve as the ‘*Think Tank for consultations on various educational problems nationwide on curriculum and its reorientation in accordance with the ideology of Pakistan*’.<sup>114</sup> This commission with reference to the promotion of religious education, recommend to have at least six classes of Islamic studies in one week, hundred marks of Islamic studies and Pakistan Studies at the graduation level, teaching of Islamic studies at the medical, vocational and engineering institutions as well, finishing co-education and using Urdu as the medium of the teaching in many of the education institutions of the country. In the same line, it also recommended a full fledge training program for the teachers of the primary schools in the mosques close to their homes, so that Islamic ideology can be better inculcated in them.<sup>115</sup> Many of these changes were taken up the regime gradually, as for instance see the syllabus of the medical college it included the teaching of Pakistan studies and Islamic studies was introduced at all the levels in the country.

### 4.9 IMPACT OF THE RECOMMENDATIONS OF THE COUNCIL ON THE DAY TO DAY LIFE IN PAKISTAN

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<sup>113</sup> Jamal Malik, *Colonialization of Islam: Dissolution of traditional institutions in Pakistan* (New Delhi: Manohar publishers, 1996), 132-133.

<sup>114</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1981-1982*, 243.

<sup>115</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 283-287.

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The recommendations of the Council impacted the polity of the country through the changes in the legislation, educational curricula, banking system and altogether they impacted the basic social fabric of the country for example it became common to see verses from Quran or the Sunnah written on the wall of the public sector building, during 1977-1988 during many public ceremonies the public officials used to wear *Shalwar Kameez* (local dress) instead of pant shirt which was portrayed as the western dress and so on. These changes were not the result of the legislation but the actions of the regime or sometimes through the office orders. Islamic conduct of the civil servants was to be noted in their Annual confidential reports, based on which their promotions were decided, so it impacted their attitude and the consequently the public as well.

### 4.9.1 RECOMMENDATIONS FOR PRAYERS

One of the recommendations that has been reiterated by the Council in many of its reports was the involvement of the government to encourage the people to pray five times a day, the recommendation given during Ayub era, by the Advisory Council as discussed in the previous chapter were however not punitive nature rather they included the measures to encourage, for instance by declaring Friday as public holiday so that people can participate in the Friday prayers easily, or providing the break to the government employees during duty timing for the *Namaz*. However, during Zia era, the recommendations in this regard became of more elaborative nature. The recommendation given by the Council under the chairmanship of Justice Afzal Cheema (1977-1980) and Chairman Justice Tanzil from (1981-1983), in this regard were providing the break during the prayer timing but also to include a column in the annual confidential reports of the government employees to monitor their attitude towards religious practices, and break in the offices during the prayer timings, and make it compulsory for the town planning to construct a mosque in new towns, establishing mosques on Railway stations and airports, break in the schools at the time of prayers, pause for the passengers of buses and vans during the prayer timings, Friday prayer to made compulsory and impose fine in case one does not pray, diaries for the children's to have initials from the administrator of the mosques to make sure that they pray five times a day.<sup>116</sup> The hardened stance on the part of the Council is clear with the passage of time as the Council

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<sup>116</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 12-16; Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1982-1983*, 126-127; and Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 1-4.

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under Cheema recommend that call for prayer (*Azan*) should be announced on tv while during second Chairman, while under Tanzil it recommended that recorded voice of *Azan* is not correct way, instead live voice from the respective tv station should be given to invite the people and after the call for the next thirty minutes TV channels shall be shut down so that people can go for prayers.<sup>117</sup> In order to encourage people the bathrooms on the Aeroplan's, and trains should be provided facilities to do abolition.<sup>118</sup> And the younger student must have pocket diaries to pray five times a day so that they get habitual to the *Namaz*.

### 4.9.2 QURANIC VERSES TO BE HANGED ON PROMINENT PLACES:

Another most visible aspect of the government offices of Pakistan, especially after the takeover by the Zia government, was the visibility of the Quranic verses on the walls of the offices. As the Parliament of Pakistan itself has *Kalma Tayyaba* inscribed over it. It would not be wrong to say that it was the Council that in order to give Islamic colour to the Pakistani government offices recommended this change. In its recommendation, it not only just recommended to write these verses, but it gave a separate set of Quranic verses for the Judiciary, Army and the educational institutions to hung on prominent places.<sup>119</sup>

The apparent purpose of this recommendation on the part of the Council seems that it aspired the government functionaries to work to perform their duties as expected from them by the Quran and as aspired by Allah which was in line with the concept of 'Sovereignty of Allah' as aspired by the constitution. The government's take on this was that it would show that government institutions

Illustration 1: *Kalma Tayyaba* inscribed at National Assembly's front wall



Illustration 2: Quranic verses in the Senate Hall.



<sup>117</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 13-14; and Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 1-5.

<sup>118</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 1-5.

<sup>119</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 203-209.

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were to work in line with the instructions of Quran. The long-range impact of these recommendations was enormous, as Quranic verses with their translations came started appearing in common conversations as for instance people started their conversations with Bismillah and quoting the verses of Quran to make their work justified.

### 4.9.3 AUSTERITY MEASURES AND THE RECOMMENDATIONS OF THE COUNCIL

Traditional dresses of Pakistani society are different in different parts of the country from North West Frontier Province (now called Khyber Pakhtunkhwa), Punjab, Sindh, Baluchistan and Gilgit Baltistan areas.

These dresses are based on the distinct climatic conditions of those areas. The otherwise undeclared official dress was Pant-Shirt or the Pant-Coat used by the rich people and the top government functionaries. It was during the Zia government that in order to promote simplicity in the Pakistani society, Council recommended the government to

declare *Shalwar Kameez* as a national dress in the country and to declare it compulsory for the official ceremonies.<sup>120</sup>

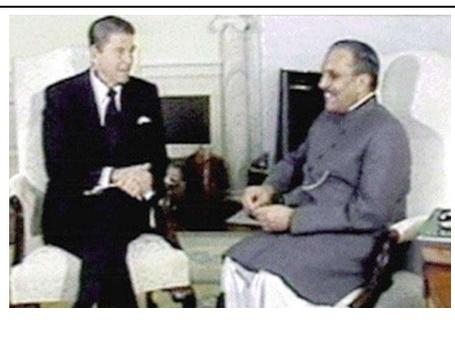
Among the other measure that was recommended by the Council to promote simplicity, it recommended to ban the construction of luxury houses, only one or two Car companies allowed to operate in the country and the use of cycle as the mean of transportation for the public servants.<sup>121</sup> It appeared to be one of visible change in the

country during the era that *Shalwar Kameez* became the official dress in different public ceremonies. It became more important as well that wearing this national dress became synonymous with the Islamic culture of the country. President Zia despite being the Chief of Army staff as well and despite wearing army uniform which was obviously Pant-Shirt, he used to appear in the public

*Illustration 3: Using Cycle to promote simplicity*



*Illustration 4: Meeting with American President while wearing National dress*



<sup>120</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-78*, 209 and Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1981-1982*, 221. APP, "The day Zia rode a cycle November 20, 1979", April 4, 2010, <https://www.dawn.com/news/871044>, accessed March 10, 2018.

<sup>121</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1978-1979*, 365-369.

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ceremonies by wearing a national dress as is visible in the picture when he is having meetings with the American President Ronald Reagan.<sup>122</sup> These are the changes on the basis on which it can be said that the recommendations of the Council that also suited the Islamisation narrative of the Council impacted not only the legislative development of the country but to the basic fabric of the society which ultimately resulted to the emergence of the new class in the country which considered wearing of Pant-shirt as an un-Islamic dress in the years to come in the Pakistani society.

### 4.9.4 BAN ON MUSIC AND PROGRAMME BASED ON *TABLIGH*

During the year 1977 having recommended the promotion of simplicity and Quranic verses in the government offices the Council invited the Additional Secretary of the ministry of information, Director General of the Pakistan Broad Casting, Programme manager of the Pakistan television and other concerned officers to take part in the special meetings the Council along with other members to decide the future of the Media in the country. It may be important to point out that only available source of information for the majority population was the state-owned television, namely Pakistan Television and Radio Pakistan. In the above said the members of the Council discussed to change the priorities of the media to inculcate the feelings of Islam in the minds of the population. It was recommended to start programmes like of ‘*Dars-e Quran*’, (teachings of Quran) in dramas and special features to galvanise the Islamic history and Muslim heroes further during the breaks of the programmes interesting anecdotes of the Islamic scholar should be broadcasted in an interesting way.<sup>123</sup> The material in this regard was once again provided by the council and list of scholar that that can give opinion to state television and Radio to make its programmes interesting and informative. The most interesting and important thing is that the members of the Council kept this in mind that the inculcation was to be done in such a way that it does not appear that it was a propaganda campaign, instead the message was to be provided cognitively so that population shall learn Islam in an absorptive manner. During later years under the chairmanship of Tanzil the stance of the Council was more conservative it demanded a ban on

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<sup>122</sup> “Pakistani President Zia ul Haq meeting with U.S. President Ronald Reagan on December 7, 1982”, <https://www.geo.tv/latest/128761-Zia-assured-Reagan-of-not-making-nuclear-weapons-CIA-documents>, accessed June 10, 2018.

<sup>123</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1978-1979*, 382-383.

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the Video Cassette players, Movies and ban the images of the film stars on biscuits and candies for kids, increase the timing of the Quranic lecture programs on the Pakistan Television.<sup>124</sup>

The impact of these recommendations was enormous, *Azan* the call for prayers was broadcasted regularly on the television, many programmes related to the teachings of Quran were started on the television and strict censorship was also imposed on the advertisement and this went to this extent that contemporary foreign authors noted that there is the word ‘Islamic’ everywhere, for instance talk of an ‘Islamic cargo fleet’, ‘Islamic Science foundation’, Islamic newsprint industry’, ‘Millat cup by the Pakistan tennis association’.<sup>125</sup> Ian Talbot also mentions that on the national television, ‘Jinnah the secularist had now to be depicted as the Jinnah the theocrat’.<sup>126</sup> These changes in the media on the recommendation of the Council which were the only source of the information for the majority population got impacted by the recommendations of the Council during these years.

### 4.10 A COMPARISON OF THREE CHAIRMAN’S OF COUNCIL WITH THE THREE METAPHORICAL PHASES OF ZIA GOVERNMENT

General Zia ruled little above ten years from July 5, 1977 till he died August 17, 1988 in a plane crash near Bahawalpur, the reason for which are not certain till date. Having bird's eye view of his nearly eleven years of rule, metaphorically there are three distinct phases which are evident. First from takeover till the execution of Bhutto in April 1979 after being pleaded guilty by the Courts and dismissal of mercy petition by Zia as President. During this stint, he was in a state of Bhutto paranoia and was trying to settle down in power corridors. During this phase, many steps based on the recommendations of Council under Justice Cheema were taken up while keeping the emphasis on those that were of punitive nature.

The second phase of his rule was since the execution of Bhutto till the non-party based legislative assembly was elected and Muhammad Khan Junejo, Zia’s own selected among the other available candidate was nominated as the Prime Minister. During this second phase, he was confident

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<sup>124</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 277-278.

<sup>125</sup> W. Eric Gustafson and William L. Richter, “Pakistan in 1980: weathering the Storm,” *Asian Survey*, vol 21, no 2, (1981): 162-171, [www.jstore.org/stable/2643761](http://www.jstore.org/stable/2643761), accessed June 26, 2018.

<sup>126</sup> Ian Talbot, *Pakistan: a modern History* (New York: St. Martin’s, 1998), 245.

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because Bhutto was no more and secondly the invasion of Soviet Union over Afghanistan has made him an ally of USA, to fight its proxy war and the funds were flowing in. So, because of both the domestic and international condition his martial law government was apparently in full control and few attempts by the remnants of the Bhutto's party were well controlled. During this phase, the terms between the Council's Chairman Justice Tanzil and Zia government were as cordial as they were under the earlier Chairman, Cheema. Some of the measures promulgated like *Zakat ordinance* and Interest-free banking resulted in increased sectarianism in the country.

Last phase of Zia's rule was from March 1985 onward till his death when he was intense relationship with the newly elected non-party-based legislature which ultimately led to extent that he dismissed the Prime Minister Junejo government on 29 May 1988 few months before his unanticipated death on the pretext that it was not working in line with the Islamisation due to his personal differences. During this phase, the Council under Chairman Halepota was once again in line with the government's approach and was passive in the matter sent to it by the government. Based on these three phases this section will argue that the working of the Council gives another insight to have glimpse regarding the approach of Zia government towards using Islam in legitimising its rule in the times of paranoia, stability and chaos respectively.

After the takeover, the intention of using Islamisation was clear in Zia's mind despite promising to hold elections within ninety days, first of all by calling himself the soldier of Islam and next day when he announced that military courts will give punishment according to the 'Islamic laws'.<sup>127</sup> As these military courts were established as a martial law administrative measures, so how can they be termed Islamic courts? merely on the basis that were authorized to prescribe punishments of whipping or cutting hand? This announcement exhibited his course of future that Islam was to be used for rest of his rule for this purpose the Council with its mechanism of sending confidential report could be helpful in his endeavour. Further among the PNA leadership that was earlier protesting against Bhutto with the demand of Islamisation some parties like Jamaat, Muslim League (Pagara Group), and joined the regime and Jamiat-i-Ulema Pakistan (JUP) and Jamiat-i-Ulema Islam (JUI) were in sequester deal with Zia regime. The ambition of those joined the government were different, some of them were in the hope that regime will launch the Islamisation,

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<sup>127</sup> "Chori Ke Mujremo Ko Hath Katny Ki Saza Di Jai Gi, Pakistan Me Pehli Bar Islami Shariat Ke Mutabiq Saza Dene Ke Lye Martial Law Ka Zabita Jari Kar Dia Gaya", July 11, 1977, The Nawa-i-Waqt.

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as they thought as it was one of their demand during the protests against Bhutto, and few only wanted to get rid of Bhutto, as he was the biggest hurdle in their political ambitions.

However, the role of the Council as an institution was acceptable to the religiopolitical parties which is evident in the statements of Mufti Mehmood that expressed hope that instead of establishing another institution ‘the Council was a better platform for the given purpose of Islamisation in the country if the regime was sincere...’<sup>128</sup> It made Council more important for the government and instead of being only recommendatory body it became a law drafting body a role which it had earlier refused to perform during Bhutto Government when it was asked to draft a legislation by the provincial government of North West Frontier Province as discussed in the last chapter. In addition to the support by the religiopolitical parties as suitable platform what makes it more suitable was its previous working to stigmatise the previous Bhutto government that earlier its recommendations were ignored. working on the subject since 1962 and much of the work was already available, all he needed was to appoint his handpicked *ulema* in it. Further because of the confidential nature of its recommendations he can choose whatsoever measure that suited his political strategy to be taken up both to appease the population and the religiopolitical parties that were suitable for his government.

First phase of the rule coincides with the Chairmanship of Justice Cheema, who had already ‘impressed’ Zia, in the Supreme Court judgment that validated his Martial law being the member of the Court by linking the ‘doctrine of necessity’ with the verses from Quran by making a correlation of the individual doctrine of necessity with the doctrine of necessity for the state. The plan of action to be taken by the regime to introduce the measures on the name of Islam was chalked out by the Council. It was multipronged that was supposed to impact, legal, social, economic, educational and media communication so that its impact are brought in all the sectors and comprehensive recommendations were sent. However, as the regime was in a state of Bhutto paranoia, so its priority was to promulgate among the available measures those which were for the deterrence like the punishment of whipping, hand cutting, stoning to death and so on. Council during this term despite being a constitutional body it was not its mandate to draft the legislation during the Bhutto government it had already refused to draft a legislation demanded from it by the

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<sup>128</sup> “*Qaumi Itehad Ne Shariat Commission Ke Qayam Ki Tajveez Mustarad Kar Din*,” September 21, 1978, The Nawa-i-Waqt.

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NWFP assembly for declaring leaving prayer a penal offense on the plea that it can only examine the drafted legislation and not a law drafting institution. Hudood laws were drafted by the Council during this duration and among those except for the laws of *Qisas and Diyat* rest were promulgated. This reason for this exception as discussed earlier were the Bhutto paranoia because they had the potential to have favoured the case of Bhutto which was in the courts. This shows the selectivity of the government among the sent recommendation but there was no resentment or the sign of protest from the Council members, however, such attitude was different when the Council was under Justice Tanzil the next chairman.

The ‘honeymoon’ phase between the Council and President Zia was no more when it was under Tanzil. This also coincided with the disappearance of Bhutto from the political scenario as he was hanged in murder case of Muhammad Ahmed Khan the father of Ahmed Raza Kasuri his political opponent, who died by firing on his car at 11 November 1974 and later mercy petitions submitted on his behalf were also rejected by President Zia, in words of Roedad Khan, ‘without even reading...’<sup>129</sup> It was after his death that strict martial law regulations were introduced according to which political activities were banned, and he defied openly from his earlier promise of holding election within ‘ninety days’ and public punishments of whipping were carried out for the deterrence purposes.<sup>130</sup> This phase of stricter martial law continued until six years later when partyless elections were held and Muhammad Khan Junego was nominated by Zia as the Prime Minister to share power with him. During this phase for three years the Chairman was Justice Tanzil and at least for two years, no one was appointed as the Chairman of the Chairman. The reason for keeping this seat vacant for such a long time can be traced very easily in the address of the President himself when he appointed Halepota as the next chairman and at its inauguration, he said that, ‘... due to sheer exuberance, its predecessors overplayed its role stretching beyond its recommendatory status which did not help the matters...’<sup>131</sup> This statement very clearly points out the uneasy terms between the President and the Council during the chairmanship of Tanzil.

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<sup>129</sup> Roedad Khan, *Pakistan a dream gone sour* (Karachi: Oxford University Press, 1997), 81; “*Bhutto Aur Char Doosry Mulizimo Ko Saza-e Moot Ka Hukam*”, March 19, 1978, *The Nawa-i-Waqt*.

<sup>130</sup> “*Intikhabat Ghair Moeena Moodat Ke Lye Moltavi, Tamam Sisyasi Sargarmyo Per Pabanadi Laga Di Gai*”, October 17, 1979, *The Nawa-i-Waqt*; “*27 Badkaro Ko Kooray Laga Deye Gai, Hazaro Afrad Ne Ibratnak Manzar Daikha*”, October 26, 1979, *The Nawa-i-Waqt*.

<sup>131</sup> “*Address of the President Zia ul Haq*” in *Islami Nazaryati Council Salana Report 1986-1987*, 13-14.

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The difference became visible when the Zakat ordinance was introduced and was later amended, likewise were the difference when the interest-free banking system was introduced, and another such incidence was not introducing the legislation related to the *Qisas and Diyat* ordinance. Among the other causes of difference were the demand from the Council to be given the status of an independent autonomous status of a ministry for itself so that it will not have to route its recommendation through the ministry but directly to the President and the *Majlis-e-Shura*, and further it wanted to amend its working procedures to the extent that its proceeding can be published and should not be confidential.<sup>132</sup> The purpose of these demands was that once the reports of the Council will be published and available to public they will become the public pressure for the regime and it will become difficult for the government to side-line its recommendations and to choose only those which suited their political interest.

Zia during an Ulema Convention on 21 August 1980 also announced regarding this demand of the Council that it will be given permission that its report can be published however this promise like the earlier promise of ‘ninety days’ of elections remained without maturity and no notification was accorded in this regard.<sup>133</sup> Except for few reports which the regime wanted to be circulated to the public as for instance the second report of Council which recommended that ‘Presidential system was closest to the Islamic system of government’ was allowed to be published.<sup>134</sup> Similarly in October 1983, the members of the Council were nominated as the ex-officio members of the *Majlis-i-Shura*, however this offer was replied with negative comments by the Chairman on the following ground that ‘Ex-officio members have no right to vote and privileges secondly he and six other members were the government servants so been nominated in a public body...’<sup>135</sup> In May 1984 the term of the Chairman and the other members expired, it was because of the extraordinary difference and the demands which the President cannot fulfil that next Council was not appointed until May 1986, this gap of two years manifest the approach of Zia due to the working of the Council during the regime that he considered that it was not in line with his governmentality.

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<sup>132</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1981-1982*, 275-280.

<sup>133</sup> Zia promised so at the *ulema* convention on August 21, 1980 at the occasion of *Ulema* convention however Council was unable to get written approval in this regard, *Islami Nazaryati Council Salana Report 1980-81*, 279-280.

<sup>134</sup> Council of Islamic Ideology, *Islami Nizam-i-Hakoomat Kay Bary Mein Dastoori Sifarishat* (Islamabad: Printing corporation of Pakistan, 1983), 9-12.

<sup>135</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 354-356.

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Another significant reason for the Council to be critique to the government apart from the relations between Tanzil and Zia was that it was time when the complexities started arising from the measures taken from 1977 to 1980, for instance, related to the Hudood ordinances, Zakat deduction and disbursement complexities and in the introduction of the interest free profit and loss banking accounts. During the year 1982-1983, the Council received twenty-five references from the various ministries related to the issues like ‘with what strength the whipping shall be carried out?’, ‘whether music band is allowed in the army?’, ‘using computer to see the moon for deciding the Islamic months?’, ‘whether women can be appointed to the *Sharia* courts?’.<sup>136</sup>

Another aspect which galvanises the difference of the Council that the Islamisation that was the official emblem of the regime was not going as was thought by the government for the public opinion, so Council was asked by the government to prepares report about the hurdles in the Islamisation of the country. The Council prepared a comprehensive report on said subject and in this report it blamed the ‘attitude of bureaucracy’, ‘lack of motivated government officers’, ‘lack of projection to the working of Council in the media’, ‘sectarian differences’, ‘indiscriminate use of English language in executive and judiciary’ as the obstacles in the Islamisation of the country.<sup>137</sup> As a solution to these impediments it suggested to review the entire policy of gradual enforcement of sharia to be reviewed, create a new class of committed civil servants, government may issue an ordinance to declaring all laws to be void to the extent of their repugnancy to the Quran and Sunnah and that the provisions so found by the Federal Shariat Court shall be substituted by the provisions of Islamic law with effect from some certain date, the date purposed by the Council was June 30, 1983.<sup>138</sup> It further recommended that similarly all the fiscal laws should be declared void exactly after the one year of the above-said date.<sup>139</sup>

The criticism over the Zia government by the Council under Tanzil was not just hidden and in-between the lines of the proceedings of the Council but it was open as well for instance Advocate Syed Afzal Hayder, who had been the member of the Council during later years, mentions a

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<sup>136</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1982-1983*, 226-228.

<sup>137</sup> “A Note for the Meeting convened by the President on January 26, 1983 as prepared by Chairman and four members of the council namely Maulana Zafar Ahmed Ansari, Dr Zia ud Din ahmed, Mufti Sayyahuiddin Kakakhel and Mr. Abdul Malik Irfani. Charter of Duties, impediments and solution to those impediments in *Islami Nazaryati Council Salana Report 1982-1983*, 108-125.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

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statement of Zia, from a ‘*Shariat Conference*’ where President was the chief guest, and in response to the criticism of the Chairman of the Council for carrying out the Islamisation as per the plan given by the Council, Zia said, ‘*if I give all the powers to you for ten days, then can you complete the process of Islamisation...?*’<sup>140</sup> This time the criticism was specifically on the Interest free banking system that was introduced by the government. The Chairman criticised the ‘mark-up’ and ‘mark-down’ terms used in the interest-free banking system. His point of view was these terms were not recommended by Council in its draft, these are just another name of interest.<sup>141</sup> The finance minister, Ghulam Ishaq Khan, knowing that the Chairman of the Council was also to attend the conference brought some pages of the report sent to his ministry about the said legislation. He presented one such page that mentioned these terms, which mentioned the use of ‘mark-up’ in the new system, the Chairman’s point of view in this regard was that showing this one page in ‘*out of context*’ as in earlier pages it was mentioned by the Council that ‘it was allowed only under four conditions’.<sup>142</sup>

This incident specifically points out the nature of differences between the Council and the government of Zia because the recommendations of the Council were based on ideal conditions, while the government has to consider my ground realities as well. Another while demanding the application of its recommendations, the chairman of the council will also forget the internal difference between the opinions of the members of the Council. As was visible while the draft of the *Zakat and the Ushr* ordinance was prepared *shia* member of the council resigned from the council membership due to differences of opinions. The last meeting of the Council under the Chairman Tanzil was held at the office of the Council on May 30, 1984, and President addressed the members and Chairman, in his speech, on the one hand, he appreciated the Council’s working simultaneously adding that ‘many of the recommendations of the Council were not pragmatic...’ and at the end he said, it is the political strategy (‘*Siyasi Hikmate Amlī*’) or our weakness in faith, (‘*Iman Ki Kamzoori*’), all the recommendations cannot be implemented....’<sup>143</sup> This speech explains the summary of the strategy of the Zia government with reference to Islamisation that most pivotal for him was the political strategy. So, the selectivity among the recommendation was

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<sup>140</sup> Syed Afzal Haider, *Islami Nazariyati Kaunsal: Irtiqai Safar Aur Karkardagi* (Lahore: Dost publications, 2006), 962.

<sup>141</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1983-1984*, 247.

<sup>142</sup> *Ibid*, 247.

<sup>143</sup> *Ibid*, 345.

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natural that only those recommendations were to be implemented that were to suit its interests and it was also not necessary to implement them in the same way as they were sent by the Council instead they be amended to that extent that was the need of the political strategy. This was the reason that interests of the Council came in direct clash with that of the government that resulted in the changed position of the Council during the later years of the Zia government.

It was due to all the above discussed tense terms that the new Council was appointed after the gap of nearly two years, and at the inauguration of the new Council under the Chairmanship of Dr Abdul Wahid J. Halepota. It was after the Movement for Restoration of Democracy by the remnants of the political parties that Zia after getting himself elected through referendum as President held election on a non-party basis. Among the elected members of the *Majlis-e-Shura*, Mohammad Khan Junego was nominated as the Prime Minister. President in its inauguration addressed the Council appointed in June 1986 after a gap of nearly two years through a letter in which he addressed to the members of the Council sent through the Prime Minister on June, 8 1986 said that 'he expects that present Council shall work in coordination with the Federal Shariat Court and operate within the ambit of its status...'<sup>144</sup> during these two years from May 1986 till the August 1988 the death of Zia, Council's performance remained in a hybrid state. The number of foreign dignitaries declined in this phase and the President never again visited the Council or chaired any session of the Council, which he used to do in earlier years. Further during this span, the members of the Council very rarely met. It was practically in a dormant phase, none of the specific recommendations were given by the Council under Halepota except for responding to the reference that what does it say about the 'demolition of the mosques being constructed on illegal land', 'protection of papers over which Quranic verses are written' or 'touching Quran without abolition' by the ministries was discussed in the House. The Council in order to further limit its working further sent a letter to the relevant ministry through the ministry of religious affairs that 'as per the constitution, it is only the President, Governor, Parliament, or provincial assembly that can send the reference to the Council'.<sup>145</sup> The purpose was to make it clear to the relevant ministries of not considering it a decree issuing body, instead, it was a body that was to work for the issues that were concerned only with the legislation.

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<sup>144</sup> Ibid.

<sup>145</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1986-1987*, 121-122.

## Chapter 4

The above discussion show that Council's recommendations manifested an important role in developing the governmentality of the regime, especially the working of the Council in the initial almost six years of the Zia regime in order to fulfil the desire of the government to use Islamic measures to prolong his rule and to delay the election and it was due to increased role of the Council that after Tanzil for long time new Council was not appointed, and even when it was appointed its jurisdiction was cleared that it was to work in coordination with the Federal Shariat Court that resulted in the limited working of the council in the years to come.

### 4.11 CONCLUSION

The situation in which Zia took over, due the PNA protests which centred around the demand of Islamisation needed him to rule through specific registers that involved keeping politics of Islam at centre. His personal religious background and zeal towards religion was also important in addition these two factors the role of the council as an institution which provided cognitively the complete plan to carry out Islamisation in the country of all the sectors which included social, political, economic and legislative zones cannot be undermined. The knowledge provided by the Council in the form of recommendations to carry out the Islamisation was selectively taken by the government with special emphasis on that legislation which were of deterrence nature, for instance promulgating the Hudood laws but signalling the *Qisas and Diyat* laws that were related to blood money for forgiveness as they might have given benefit to Bhutto that was under trial. There was no resentment on the part of the Council under Justice Cheema on this selectivity. However, this equation became uneven when the next chairman criticised the government for ignoring the recommendations of the Council and disrupting the plan given by the Council, despite the official narrative of ongoing Islamisation in the country. This points out the difference in attitude of Zia government towards the recommendations of the Council was different in three different metaphorical phases of his rule, under Bhutto paranoia, during stable government and in relations with Junejo government respectively correlated with Council under Justice Afzal Cheema, Justice Tanzil ur Rehman and Dr Abdul Wahid J. Halepota. From the findings of this chapter it can be deduced that during the first few years when Zia was in Bhutto paranoia, the recommendations of the newly established Council under Cheema like the Hudood ordinances were promulgated in hast without even considering their long-term implications. The equation between the Council and

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the government were cordial despite the fact that some of the recommendations were signalled however after 1980 during the second term of the Council under Tanzil, when Zia regime has already received international recognition and international aid was flowing in due to the US support of the Afghan war. It was during this term that the recommendations of the Council related to the welfare of population like *Zakat and Ushr* ordinance and interest-free banking were taken by the government. The promulgation of the laws during this phase resulted in the tense relations between the Council and the government. The demands of elevating the status of the Council as a ministry and publishing its report was also turned down, however, the selectivity among its recommendations remained consistent as the report of the Council related to the system of elections that recommended Presidential system close to Islam was published. It was due to this resisting role of the Council for the government that next Council was appointed after the gap of nearly two years under the Halepota with the aspiration to remain in line with the policy of the government. The Council under Halepota once again came in line with the regime and it recommended the *Shariat* ordinance sent to it by the government according to Islam and its working was confined mainly responding to few references sent to it by the Majlis-e-Shura without any significant impact.

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## CONCLUSION

The Council of Islamic Ideology and its predecessors, the Advisory Council of Islamic Ideology and the Islamic Law Commission through their reflections and recommendations retrospect the issues faced by the society during the respective governments. The aspiration of the respective governments in providing likewise institutions in the constitution of 1956, 1962 and 1973 drafted in entirely different circumstances shows the governmentality of depending on the consistent Islamic discourse. The recommendations of the Council further reflected how gradually the demand for the promotion of Islamic way of life from the early years of the creation of the country gradually transformed into the demand of Islamisation.

The first constitution of the country was promulgated after nine years of its creation and one of the reasons for this delay was the contentious debates regarding the future role of Islam in the political setup of the country. The one perceived by the *ulema* leading the religiopolitical parties, of appointing a body of experts on *Sharia* with veto over the legislature or having a position of *Sheikh-ul-Islam*; or giving the authority to the judges to determine the repugnancy of laws. The Islamic Law Commission (Commission), as an advisory body reflected the governmentality of the framers of the constitution that wanted supremacy of the legislature, and their better control over the population against the growing popularity of the leaders of the religiopolitical parties. The first chapter of the study traced the genesis of the Islamic Law Commission, in the 1956 constitution. It argued that roots of this Commission go to the *Board of Talimaat-e-Islamia* (BTI) established in 1949 by the Basic Principles Committee (BPC) member and to the Department of Islamic Reconstruction, set up by the Provincial government of West Punjab in 1947.

The department established by the provincial government of Punjab is taken as the first attempt to influence the Constituent Assembly members to establish a likewise department at Centre to deal with the future role of Islam in the constitution of the country. The first step in the constitutional development of the country was Objectives Resolution on March 12, 1949 that ascertained the future involvement of the principles of Islam in the political domains of the country and thus indirectly the role of *ulema* as well. The first formal inclusion of *ulema* in the central government was the appointment of the BTI by the members of the BPC. Their task was to guide the framers of the constitution on the issues that were related with the Islam, like the role of Head of state in

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an Islamic government, status of women candidate for being the Head of State or the duties of a government in Islam. The governmentality in nominating those as members of the Board that did not belong to any of the religiopolitical parties expresses the aspiration of government to counter their pressure of considering them as sole custodian of Islam in the country. A brief comparison of the report of BTI with the draft of the first report of BPC, shows that contrary to the recommendations of the BTI that had recommended appointing a body of ‘experts on *Sharia*’ the BPC report presented in the CA, shove aside all of its reflections. However, point of interest for this study in episode of the working relations between the BTI and BPC was that despite not incorporating considerations the BPC report mentioned that, BTI was consulted on several issues. It shows the desire of those in power to assure the members of the Constituent Assembly that *ulema* body appointed by the government had been consulted, thus it is not against the principles of Islam. It also explains the reason that why the report of the BTI was kept confidential from the remaining members of the Constituent Assembly and it was limited only to the members of the sub-committee which held discussions with its members.

This episode of the working relation of the BTI that was a government-appointed *ulema* body and the BPC composed of the members from the government to draft the constitution, manifested the governmentality that it wanted to appoint an *ulema* body to have the assent of the *ulema*, but intended to keep its proceedings passive, reports confidential and its nature advisory. So that it can serve the purpose of having assent from *ulema* to appease the population whose understanding of Islam was and is based on these *ulema* to better control the population. These are among the common traits that are been traced in all these three bodies provided by the 1956, 1962 and 1973 constitutions in subsequent chapters.

The rejection of the BPC’s first report by the members of the CA for having less role of Islam as envisioned by the Objectives Resolution resulted in the shift in the attitude of both the government and religiopolitical parties. The BTI nominated members joined *ulema* that then afterwards appeared as a complete stack holder in the constitutional development process and impacted the legislative development of the country. This can be seen clearly when the second report of the BPC drafted by same members of the BPC had provisions for the establishment of an *Ulema* Board and the third report of the same BPC envisioned giving this authority to the judges of the Supreme Court to abstain the future legislature from drafting any laws contrary to the principles of Islam.

## Conclusion

These were the compromises under the pressure of the *ulema* and the desire of the constitution makers to incorporate *ulema* in the government that 1956 constitution provided the Islamic Law Commission as a governmental body to recommend measures to promulgated on the name of Islam and examine the repugnancy of existing laws.

Islamic Law Commission as provided by the 1956 constitution and the provisions related to the Islamic Law Commission in the constitution manifest the governmentality of its framers, that it was not as demanded by the *ulema* to have veto authority over the legislature. Instead, it was an institution of advisory nature. Another fact that was agreed by the framers was that it was to be given five years to complete the task of examining all the laws and transforming the society according to the principles provided by Islam. Thus, by giving five years it encapsulated the idea that it was not a simple task to percolate legislations based on general principles that had been debatable among those that were aspiring for it.

Once provided by the constitution Iskander Mirza, the President took nearly one complete year, to appoint a one-member commission that was later expanded with a further delay of few months. This delay and sluggishness in the appointment of its members explains another crucial factor that the working of Commission was like a mirror image of the government's stability and will. As during these days, government itself was crumbling since twice the Prime Ministers were changed and voices for changes in constitution were already in the House once the elections were held as envisioned by the 1956 constitution. Another factor that becomes evident by nomination of the Justice Sharif a justice of the Supreme Court, and not nominating someone having the religious education points out to the fact that government aspired this commission not just to work in the light with the principles of Islam but also to keep in view the legal complications, constitutional duties and international obligations while providing the recommendations.

Along with the abrogation of the 1956 constitution, the Islamic Law Commission also disappeared in the pages of history. However, during the months that it existed since its appointment its members and based on one meeting held by its members it cannot be said that it had a significant role in impacting the working of the government which itself was already crumbling after 1956. None the less its presence in the constitution, delay in its appointment, the profile of its members, and the duties as an institution help us to understand the governmentality of the framers of the

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constitution and those in power which was to have an *ulema* body to have knowledge about the pulse of the population. The important thing was they wanted to keep its working advisory and passive so that they will have the option of selectivity among the option available so that it appears that steps taken on the name of Islam were to make country more Islamic to have popularity among the population based on its recommendations and can counter the religiopolitical party's narrative of ruling the country against the Islamic principles.

Advisory Council of Islamic Ideology was the forerunner of the Islamic Law Commission that was provided by the 1962 constitution. The constitution which was promulgated by his military government in 1962 provided Advisory Council of Islamic Ideology as the forerunner of the Islamic Law Commission, like its predecessor. The change in its name from Islamic Law Commission to the Advisory Council of Islamic Ideology manifests the approach of the Ayub that it was to be an advisory body to provide recommendations to his government. This change in its nomenclature further explains directly his approach of using Islamic Ideology, as the nationalist discourse to keep otherwise fragile nation united. Further by keeping its recommendations confidential having the government intended to have the control over its reflections to select only those which suited his political strategy to better rule and rest to be kept in files so that they did not become public pressure for the government.

During this transition the change in its name, the institutional growth and mutations in its role are visible. Advisory Council evolved in the sense that it was no more to exist for a definite time like its successor for five years, instead it was to exist indefinitely obviously until the constitution is the law of the land to work as advisory body for the government on one hand while countering *ulema* who were otherwise against the Ayub government. Further its recommendations as per its proceedings were to be kept confidential, so that it would be up to the government to choose among them whichever were suitable to the government to avoid them becoming the public pressure for the religiopolitical parties to blame the government that it was not sincere in implementing the measures to make society Islamic.

Another evolution in the role of the Advisory Council was that its working was coupled with the Islamic Research Institute, whose purpose was to conduct Islamic research to give material based on which Council was to give recommendations. The major change in its duty compared to its

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predecessor was that it was not given the duty to examine the existing laws. However, before campaigning for the Presidential elections and due the criticism on the government especially regarding the Family laws, that in the first constitutional amendment it was given the duty of examining the existing laws as well to determine their repugnancy. The recommendation of the Advisory Council which were otherwise recommended by the Advisory Council and were taken up by the government were few in number that included the compulsory introduction of Islamic studies at colleges and introduction of army training in the educational institutions. One of the reason due to which most of its recommendations did not even reached the House for discussions or the President was that they were referred back to it by the ministry because of being non-unanimous.

One of the major reason of the difference in the recommendations of the Council was its disagreement with the Islamic Research Institute (Institute) under Dr Fazlur Rahman. The primary cause of these differences was that because the internal environment of the Council was conservative because of the presence of the *ulema* from the conformist religiopolitical parties like the Jamiat Ulama-e Pakistan that was favouring Ayub against Jamaat. Whereas the working environment of the institute was modernist because of approach of its director. The differences between both the institutions ranged on a variety of issues for instance regarding the status of alcohol the Advisory Council members were unanimous that it is completely forbidden while the opinion of the institute was different that it is not alcohol that is forbidden instead its intoxication. Likewise, traditional was the stance of Advisory Council with reference to gambling and introducing a system of Zakat deduction while contrary was the opinion of the Institute over these issues. The difference of opinion of these two institutions favoured the government as most of the recommendations sent to the President, were send back by the Ministry of Law claiming they were not unanimous so needed more considerations.

The number of recommendations given by the Advisory Council that became the legislation is not significant to figure out its role in Ayub government instead more important were the internal debates within the Council which highlighted those issues that soon became the slogans of the religiopolitical parties during the final years of the Ayub government. As some of the members of the Advisory Council were from those parties which were earlier supporting the government and during final years went against it from instance for Jamiat Ulama-e Pakistan. During the final days

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when protests against Ayub government were on the climax and the resignation of the director of the Islamic Research Institute, resulted in the unanimous recommendations of the Advisory Council for devising a blueprint of the Islamic social order. The recommendations related with the introduction of Zakat deduction, complete ban on Alcohol, gambling and the changing the penal laws to Hudood laws came in line with the demands of religiopolitical parties which were at the forefront in protests to the government. Further many among these recommendations were among those that were promulgated in less than a decade after the government of Ayub finished.

This Advisory Council transformed into Council of Islamic Ideology (The Council) by the 1973 constitution, that was drafted by the members of Assembly that were elected in 1971 before the separation of the Eastern part of the country as Bangladesh. This separation of East Pakistan had deep impacts on the remaining population of the Pakistan that is evident during the constitution-making debates that resulted in the increased mandate for the Council. The conflict of interest between both the Zulfikar Ali Bhutto (Bhutto) government and the opposition dominated by the *ulema* is evident from the fact that provision related to Council in the constitution were among the last-minute compromises between both. Bhutto persuaded the opposition by giving the Council mandate to present its report directly to the legislature that would enact legislation with in particular time increases the mandate of the Council. The framers of the constitution due to the increased demands of the religiopolitical parties present in the House, removed the adverb, advisory from its name. However more important with reference to the evolution of the Council was not the change its name instead giving it the direct mandate to have access to the ears of the parliament.

The reasons for the empowered role of the council in the 1973 constitution were multiple, the most significant among them was the episode of 1971 that resulted in the separation of the eastern part of the country as Bangladesh. Due to which the religiopolitical parties got a larger base among the population that was already psychological feared of more geographical loses resorting once again to Islamic discourse to remain a geographical entity. Simultaneously Bhutto government also need the support of the population to get clear majority in the upcoming elections the suitable time for which Bhutto was looking for from April 1973 till January 1977 due to which he compromised a lot with the demands of *ulema* to get popularity among the population. Once agreed to the role of

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the Council in the constitutional setup, the Bhutto government attempted to keep the recommendations of the Council confidential from the legislature as well.

The Council members appointed by the Bhutto government were majorly from the judiciary, in service made that changed it into a body dominated by the part-time member which is evident from the fact that the number of meetings during the three years declined compared to those held by its predecessor institution. Regarding the institutional growth of the Council, it was provided with its research wing so that it would not have to rely solely on the Institute as was earlier the case. The amendment in the working procedures of the Council in 1975 to the effect that it was abstained from sending its reports directly to the legislature shows that government had realised the potential danger, being stigmatised for not promulgating laws based on the report of its own appointed body. This report recommended the government to announce Friday as a public holiday, measures to deduct and disburse Zakat, replace the penal laws with the *Hudood* laws. This proved to be the only report that was presented directly to the legislature by the Council. Through this amendment in its working procedures, the government wanted its recommendations to be kept passive, as these were the demands that were in line with the demands of the PNA protesting against Bhutto ultimately resulting in the takeover by General Zia in 1977. It was due to this stigmatisation of the Bhutto government with reference to the Council that during final years, the protesting opposition refused to accept the control of the Council as acceptable vehicle of Islamisation.

The compromises of the Bhutto government since its takeover in attempt to get more popular before the next elections resulted in propelling Pakistan to the odyssey of Islamisation. This started from the increased role of the Council in the 1973 constitution, followed by signing the anti-*Qadiani* laws 1974, declaring Friday as public holiday 1976, legislation against alcohol and gambling 1977 and offering membership of the Council to the leader of the religiopolitical parties. Thus, unintentionally laying the pedigrees for the Islamisation the pretext over which his own appointed army chief, General Zia ul Haq took over the country and ruled for next decade.

The working of the Council during the long eleven years of the Zia government from July 5, 1977 to August 11, 1988 is metaphorically compared with three visible stints under three of its chairmen i.e. Justice Afzal Cheema, Justice Tanzil ur Rehman and Dr Abdul Wahid J. Halepota. On the basis

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of which it is argued that working of the Council during respective period implicitly shows the governmentality of the Zia. The first one was immediately after his take over during this phase council turned into a law drafting body to introduce not just the legislation but also the measures like the emphasis of national dress, that impacted the basic fabric of the society. During this phase Zia was in state of paranoia as Bhutto was alive and potential threat to his rule, so many of the recommendations of the Council especially those which were related with the punishments like, stoning to death, cutting of hands, whipping for various crimes likes adultery, theft and false accusation respectively had been introduced in the form of Hudood laws. However, simultaneously some of the recommendations of the Council like *Qisas and Diyat* laws that were drafted by the Council and sent along with other Hudood laws were set aside by Zia as they did not suit his political interests. Other measures like the introduction of national dress, prayer breaks in the government offices, writing qur'anic versus in the government offices, control of media were supported by the government based on the recommendations of the Council. During this phase, the relations between the government and the Council under Justice Cheema remained cordial despite the selectivity of the government among its recommendations.

After the expiry of the term under Justice Cheema, the Council under Justice Tanzil marks the second stint of Council in Zia government and metaphorically second phase of his government, as by then the 'ghost' Bhutto was no more in the scenario so Zia was confident as he was the sole contender of power. During this phase, the Chairman of the Council criticised the government on several occasions for not just ignoring its recommendations but even criticising those like *Zakat and Ushr* ordinance and interest-free banking ordinance that were promulgated by the government. During this phase, the Council requested the President to allow it to publish its proceedings so that people may come to know about its recommendations. Another major point of difference between the Council and the Zia government was when in its recommendation regarding the Islamic system of elections it did not categorically declared the party-based elections un-Islamic. After the expiry of Justice Tanzil's term as chairman, the gap of nearly two years before the next Chairman Dr Abdul Wahid J. Halepota (Halepota) was appointed as its chairman. The working remained confined mainly to compiling the working of the earlier Council and the *Sharia* ordinance, that was been discussed in the House for legislation.

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Based on the information sought from its proceedings, debates in the legislatures, and going through the official documents and discussion held in the previous sections it would not be wrong to say that the causes of Council's existence during these years were varying however it can certainly be said that it was not only due to the demands of *ulema* that it persisted in all the three constitutions. Governments also required an institution to have knowledge about the pulse of the *ulema* considering their position in society due to specific understanding of Islam among the population to better govern them. The expectation of both the government and the religiopolitical parties from the same institution were not only different but divergent as on the one hand *ulema* desired to have a veto authority over the legislature which assured their permanent role in the political domain of the country through their representation in the Council. Paradoxically, at the same time governmentality was to have a department with checks, whose recommendations were to be kept confidential so that government would have the choice to select among those recommendations that would appear to be the initiatives of the government's desire to introduce Islam into the life of common people. Most interestingly as is clear from the earlier discussions that once provided in the constitution while appointing its members government was quite conscious. For instance, the appointment of the members of the Islamic Laws Commission, provided by the 1956 constitution took complete one year. Carefulness was not in the sense that they should be authority on Islam instead, those that would not pose challenge to the government. Ch. Zahur Illahi, said that the then President (Iskander Mirza), while abrogating the 1956 constitution said, *'I do not abolish this Commission...if I am assured that they will not give any recommendation...'*<sup>1</sup>

The constitution of the 1962 that was promulgated by the military government of Ayub Khan was different from the one that was recommended by the Constitution commission appointed for this purpose. It explains that why the report of the Constitution Commission was not made public by the Ayub government despite the earlier assurances that its recommendations would be made public. The provisions related to the Advisory Council were among those differences, so it was the governmentality of the military government as well to keep it an institution to have its recommendations. The composition of the Advisory Council had the same governmentality that those people were nominated as its members that would not pose challenge to the government.

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<sup>1</sup> Ch. Zahur Illahi, National Assembly of Pakistan Debates (Constitution Making), February 27, 1973, 385.

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Further by keeping its working confidential the government ensured that it would not pose a threat to the government and its recommendations would not become demands of the opposition and it would not be stigmatised of not implementing its recommendations. The constitution of 1973 that was drafted and discussed by the elected representatives of the country removed the word Advisory from its name and increased its mandate to the extent that its reports were to be submitted directly to the House for discussion. The Zulfikar Ali Bhutto government after the promulgation of constitution once again kept the same governmentality of keeping its workings confidential. In his desire to have unanimous constitution initially while drafting the constitution the Council was given the right to send its recommendations directly to the legislature. However, after the first report in 1975 the working procedures were amended to avoid its recommendation from becoming public pressure. The Bhutto government also anticipated its active role against the religiopolitical parties during the protest of 1974 and later during the Pakistan National Alliance protests with the demands of Islamisation in the country.

The change in the working and the attire of the Council was visible with the change in governments, the most visible contrast was between the government of General Ayub Khan and General Zia ul Haq. During Ayub government the use of Islamic discourse was minimal as he attempted to keep it in the background while Zia relied solely on the Islamic discourse. The working of the Council during both this governments retrospect the issues faced by the society and the governmentality of having them been discussed but reflections of the Council members to be kept confidential. The working of the Council during the said governments shows that number of recommendations that were taken by the government to be implemented varied, however the role of Council remained consistent. The study further points out that the impact of the recommendations of the Council was not only limited to the legal fabric of the country but further it had impacts on the social, economic and educational layout of the society. Its cognitive role in the measures like, Friday to be public holiday, banning of Alcohol, Blasphemy laws and even the creation of institutions like Federal Shariat Court, International Islamic University which otherwise seemed to be taken to Islamise the population were based on the recommendations of the Council.

In nutshell, it can be said that the nature of its duties and composition of the Council changed, as an institution with the respective changes in the governments. Based on the findings of study it

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can be said that all the governments during the period of study resorted on recommendations provided by the Council to promulgate measure on the name of Islam although the magnitude of which varied depending on their political strategy. The recommendations of the Council not only impacted the legislation but also the social fabric of the country on the basis of which it can be said that it manifested a larger role in the polity of the country as was earlier perceived. The Council will continue to persist till the 1973 constitution remains the law of the land. This study ends with the death of Zia government leaving the room open for the researches in the coming years to work on the reports of the Council which would prove the mines of knowledge from multiple perspective to explore the politics of religion in Pakistan in the years to come.

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## APPENDIX 1

### ISLAMIC LAW COMMISSION AS PROVIDED IN THE 1956 CONSTITUTION

#### **Article 197**

(1) 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.

(2) Parliament may by Act provide for a special tax to be imposed upon Muslims for defraying expenses of the organization set up under clause (1), and the proceeds of such tax shall not, notwithstanding anything in the Constitution, from part of the Federal Consolidated Fund.

#### **Article 198**

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

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in clause (3).

(3) Within one year of the Constitution Day, the President shall appoint a Commission-

(a) to make recommendations-

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

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

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

The Commission shall submit its final report within five years of its appointment and may submit any interim report earlier. The report, whether interim or final, shall be laid before the National Assembly within six months of its receipt, and the Assembly after considering the report shall enact laws in respect thereof.

(4) Nothing in this Article shall affect the personal laws of non-Muslim citizens, or their status as citizens, or any provision of the Constitution.

*Explanation:* In the application of this Article to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.

## APPENDIX 2

### ADVISORY COUNCIL OF ISLAMIC IDEOLOGY AS PROVIDED IN 1962 CONSTITUTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1. Added by the Constitution (Fast Amendment) Act, 1963 (1 of 1964), section 8
  2. Submitted, *ibid*, for the original sub-clause (b)
  3. Substituted by the Constitution (First Amendment) Act, 1963, (1 of 1964), s.8 for "6"
  4. Article 205 re-numbered as clause (1) of that Article, *ibid.*, section 9
  5. Clause (2) added *ibid*.
  6. Art, 198, Constitution of 1956
  7. Art, 198, Constitution of 1956

## APPENDIX 3

### COUNCIL OF ISLAMIC IDEOLOGY AS PROVIDED IN 1973 CONSTITUTION.

#### 228. Composition, etc., of Islamic Council.

- 1 There shall be, <sup>1</sup>constituted within a period of ninety days from the commencing day a Council of Islamic Ideology, in this part referred to as the Islamic Council.
2. The Islamic Council shall consist of such members, being not less than eight and not more than <sup>2</sup>[twenty] as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.
3. While appointing members of the Islamic Council the President shall ensure that—
  - (b) so far as practicable various schools of thought are represented in the Council;
  - (c) not less than two of the members are persons each of whom is, or has been a Judge of the supreme Court or of High Court;
  - (d) not less than four of the members are persons each of whom has been engaged, for a period of not less than fifteen years, in Islamic research or instruction; and
  - (e) at least one member is a woman.
- <sup>3</sup>[(4). The President shall appoint one of the members of the Islamic Council to be the Chairman thereof.]
- (5) Subject to clause (6), a member of the Islamic Council shall hold office for a period of three years.
- (6) A member may, by writing under his hand addressed to the President, resign his office or may be removed by the president upon the passing of a resolution for his removal by a majority of the total membership of the Islamic Council.

#### 229. Reference by <sup>4</sup>[Mijlis-e-Shoora (Parliament)], etc. to Islamic Council. -

- The President or the Governor of Province may, or if two fifth of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic Council for advice any question as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

#### 230. Functions of the Islamic Council.

- (1) The functions of the Islamic Council shall be
  - (a) to make recommendations to <sup>5</sup>[Majlis-e-Shoora (Parliament)] and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of

- Islam as enunciated in the Holy Quran and Sunnah;
- (b) to advise a House, a Provincial Assembly the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the Injunctions of Islam; <sup>2</sup>
3. to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect; and
4. to compile in a suitable form, for the guidance of [Majlis-e-Shoora (Parliament)] and the Provincial Assemblies, such injunctions of Islam as can be given legislative effect.
- (2) When, under Articles 229, a question is referred by a House, a Provincial Assembly, the President or a Governor to the Islamic Council, the Council shall, within fifteen days thereof, inform the House, the Assembly, the President or a Governor, as the case may be, of the period within which the Council expects to be able to furnish that advice.
- (3) Where a House, a Provincial Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of the Islamic Council is furnished, the law may be made before the advice is furnished Provided that, where a law is referred for advice to the Islamic Council and the Council advises that the law is repugnant to the Injunctions of Islam, the house or, as the case may be, the Provincial Assembly, the President or the Governor shall reconsider the law so made.
- (4) The Islamic Council shall submit its final report within seven years of its appointment, and shall submit an annual interim report. The report, whether interim or final, shall be laid for discussion before both Houses and each provincial Assembly within six months of its receipt, and [Majlis-e-Shoora

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1 For the notification constituting the Council of Islamic Ideology, see Gazette of Pakistan, 1974 Extraordinary, Part II, Page For the Council of Islamic Ideology (Term and Conditions of Members) Rules, 1974, see Gazette of Pakistan, 1974 Extraordinary, Part II, Page 1727.

2 Substituted by Constitution (Fourth Amendment ) Order. 1980 (P.O No. 16 of 1980) section 2, for the word "fifteen" (w.e.f. November 30, 1980).

3 substituted by the Constitution (Fourth Amendment Order), 1982 (P.O No. 13 of 1982) section 2 (w.e.f. September 22, 1982) for: (a) the President shall appoint one of the members referred to in paragraph (b) of clause (3) to be the Chairman of the Islamic Council."

4 The words "Majlis-e-Shoora (Parliament)" were substituted by the Revival of the Constitution of 1973 Order, 1985, P.O. No. 14 of 1985 (hereafter referred to as P.O. No. 14 of 1985) Art. 2 and Sch. Item 1, for the word (Parliament), in this article, and in the succeeding provisions of the Constitution, for the word "Parliament". Whenever occurring the words and brackets "Majlis-e-Shoora (Parliament)" shall be substituted w.e.f. March, 2, 1985.

5 The words "Majlis-e-Shoora (Parliament) were substituted by the Revival of the Constitution of 1973 Order, 1985: P.O. No. 14 of 1985 (hereafter referred to as P.O. No. 14 of 1985) Art. 2 and Sch. Item 1. for the word (Parliament). In this article, and in the succeeding provisions of the Constitution for the word "Parliament" wherever occurring, the words and brackets "Majlis-e-Shoora (Parliament) shall e submitted w.e.f. March 2, 1985.

6. For the Council of Islamic Ideology (Procedure) Rules, 1974, see Gazette of Pakistan, 1974, Extraordinary, Part II, pages 771-

(Parliament)] and the Assembly, after considering the report, shall enact laws in respect thereof within a period of two years of the final report.

**Rules of Procedure.**--- The proceedings of the Islamic Council shall be regulated by rules of <sup>6</sup> procedure to be made by the Council with approval of the President.



## APPENDIX 4

### GOUVERNEMENTALITÉ AU PAKISTAN : UNE ÉTUDE DU CONSEIL DE L'IDÉOLOGIE ISLAMIQUE (1956-1988)

#### Résumé en français

Le sous-continent a cessé d'être sous domination britannique la nuit du 15 août 1947, émergeant en deux états souverains séparés, à savoir l'Inde et le Pakistan. Le territoire du Pakistan fut rebaptisé la « République islamique du Pakistan » le 23 mars 1956 après la promulgation de sa première constitution et ce nom dure jusqu'à nos jours. Le nom d'un pays, comme celui d'un individu, est une des caractéristiques les plus perceptibles de son identité et peut refléter son histoire, sa raison d'être, comme l'identité de sa population. De même, cette expression indique le lien sous-jacent entre « islamique », « République » et « Pakistan ». Elle traduit l'idée que les gouvernements successifs, pour arriver au pouvoir et prolonger leur contrôle sur la population, devaient recourir à des registres spécifiques, parmi lesquels le plus significatif était le fait que les lois comme les autres mesures qu'ils promulguaient se devaient d'être en accord avec les principes islamiques. Cette expression semblait s'affirmer comme une revendication en faveur de la promulgation d'une législation garantissant un mode de vie islamique, par l'imposition de lois islamiques et pour le moins, d'aucune loi ni mesure qui ne contrevienne aux principes de l'islam. C'était à cet effet que la constitution de 1956 prévoyait la création d'une Commission Législative Islamique, d'un Conseil consultatif de l'Idéologie Islamique et d'un Conseil de l'Idéologie Islamique, et les constitutions de 1962 et de 1973 se fixèrent des objectifs à peu près semblables. Ces institutions sont le sujet de cette étude, profitant du fait qu'en 2005 ont été rendus publics les rapports confidentiels sur leurs activités des années écoulées. Ces rapports contiennent des informations de valeur concernant les visées des gouvernements successifs dans leurs relations avec le(s) Conseil(s). Cette étude entend examiner leurs activités et les mettre en parallèle avec les développements sociaux, politiques

et législatifs et entend faire une ébauche de la gouvernamentalité au Pakistan et par conséquent du rôle du Conseil et de ses prédécesseurs dans les mesures prises par les gouvernements pakistanais successifs au nom de l'islam entre 1956 et 1988.

Depuis la création du Pakistan, ses gouvernements successifs ont dû faire face à la question controversée de savoir quel rôle l'islam devait jouer dans la législation et dans l'examen des lois héritées des maîtres coloniaux ou issues des normes sociales du pays. Une autre raison pour cela était l'interrogation regardant la nature même de la nation : le Pakistan avait-il été créé dans l'idée « d'élever haut l'étendard de l'islam dans le monde » ou bien dans celle de devenir un lieu où « puissent cohabiter des hommes de toutes religions, castes ou crédos – ce qui n'a rien à voir avec les affaires de l'état ... » ?<sup>1</sup> Un autre aspect dont il faut tenir compte, c'est la pression exercée par le leadership des partis politico-religieux, tant à l'intérieur de l'Assemblée constituante qu'en dehors d'elle. Nous ferons référence à ce groupe de personnes dans cette étude comme les ulémas (pluriel d'« âlim », expert en sciences théologiques islamiques). C'est un groupe tout à fait hétérogène et complexe dans le contexte du Pakistan, et qu'on ne peut définir en fonction de la seule formation théologique, ni exclusivement par l'appartenance aux instances dirigeantes d'un parti politico-religieux. Ce terme uléma est discuté avec plus grand détail dans le premier chapitre de la thèse, il sera pertinent ici de mentionner qu'en dépit des divergences parmi les ulémas sur ce qu'ils entendent par le rôle de l'islam, il y avait toutefois unanimité entre eux sur le fait que la constitution devait être basée sur des principes islamiques, et cette revendication sous-entendait bien sûr, qu'ils étaient eux-mêmes l'autorité appelée à définir tout ce que recouvre ce terme d'« islamique » dans la future forme de gouvernement du pays. Cette étude, au lieu de se concentrer spécifiquement sur les

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<sup>1</sup> Maulana Shabbir Ahmed Usmani, *The Constituent Assembly of Pakistan debates*, Official Report, vol. V (Karachi: Government of Pakistan, 1949), 44-45. Mohammad Ali Jinnah, *The Constituent Assembly of Pakistan debates*, Official Report, vol 1, no 2 (Karachi: Government of Pakistan, 1947), 18-20.

ulémas ou les autres institutions proéminentes du pouvoir, comme l'armée ou la bureaucratie civile, entend se concentrer sur la politique adoptée par les gouvernements successifs à travers son maintien des institutions comme le Conseil et ses prédécesseurs. Afin de mieux explorer cette relation du Conseil et de ses prédécesseurs avec les gouvernements successifs, il sera intéressant d'emprunter un certain vocabulaire aux ouvrages de Michel Foucault.

Les idées de Foucault ont influencé la connaissance de diverses disciplines : histoire, économie, philosophie, anthropologie jusqu'aux stratégies de pouvoir adoptées par les états en Europe moderne. Ce qui distingue Foucault de la plupart des philosophes contemporains est le fait qu'il n'a pas élaboré une théorie monolithique de la structure étatique, au lieu de cela il a fourni une large gamme d'idées et d'outils d'analyse pour décrypter le discours, la connaissance, la gouvernementalité, le pouvoir, la folie et la sexualité. En outre, il désirait que les chercheurs s'approprient ses idées plutôt que d'en rester de simple lecteurs.

La première partie du titre de cette étude, « La gouvernementalité au Pakistan » est la manifestation pratique de cette approche, qui vise à utiliser les idées fournies par Foucault pour appréhender l'approche des différents gouvernements, à commencer par ceux élus indirectement, comme celui de Iskander Mirza (1956-1958), puis le gouvernement militaire du Général Ayub Khan (1958-1969), le gouvernement élu de Zulfikar Ali Bhutto (1973-1977), jusqu'à un autre régime militaire, celui du général Zia ul Haq (1977-1988). Il est pertinent de mentionner ici que cette étude ne sera pas une analyse tout à fait foucauldienne, mais au lieu de cela, elle se servira du vocabulaire fourni par Foucault pour expliquer la relation entre le Conseil, ses prédécesseurs et les gouvernements successifs. Le terme « gouvernementalité » est issu du mot « gouvernemental » qui signifie littéralement « concernant le gouvernement ».

Foucault a utilisé cette notion dans la série de cours qu'il a donnés au Collège de France à la fin des années 1970, concernant la « généalogie de l'état »<sup>2</sup>

La série de cours donnés par Foucault du 11 janvier 1978 au 5 avril 1978 a été traduite comme « Security, Territory and Population ». Ces cours se concentrent, entre autres, sur la manière dont le pouvoir de l'état a évolué, particulièrement en Europe occidentale après le 19<sup>ème</sup> siècle. Foucault, lors de son cours du 8 février 1978, demanda : « pourquoi faut-il étudier la gouvernementalité ? », avant d'y répondre lui-même : « afin d'aborder le problème de l'État et de la population ... »<sup>3</sup> Dans cette série de cours, il a évoqué trois notions étendues liées aux formes de pouvoir, en les mettant en relation avec différentes phases de l'histoire : « l'État de justice » (le pouvoir souverain), « l'État administratif » (le pouvoir disciplinaire) et « l'État de gouvernement » (qu'il a lui-même plus tard renommé « gouvernementalité »).<sup>4</sup> Le pouvoir souverain correspond aux lois écrites et aux litiges, tandis que le pouvoir disciplinaire correspond au « règlement et à la discipline de la société concernant la vie quotidienne » et la troisième forme de pouvoir, la gouvernementalité correspond à une gestion de la population en utilisant des techniques qui la mène à se comporter d'une certaine manière.<sup>5</sup> D'après Foucault, la gouvernementalité est un processus par lequel le pouvoir souverain du Moyen-Âge se transforma en pouvoir disciplinaire aux quinzième et seizième siècles et devint progressivement gouvernementalisé au dix-neuvième siècle.<sup>6</sup> Il définit ainsi le pouvoir, qui : « ne doit pas être compris en termes de répression, car la compréhension de l'exercice du

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<sup>2</sup> Michel Foucault, *Society Must be Defended: Lectures at the College de France 1975-1976* (New York: Picador, 2003); Michel Foucault, *Security, Territory, Population: Lectures at College de France 1977-1978* ed. Michel Senellart, François Ewald and Alessandro Fontana, trans. Graham Burchell and Arnold I. Davidson (City: Palgrave Macmillan, 2009) and Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978-1979* (City: Palgrave Macmillan, 2008).

<sup>3</sup> Foucault, *Security, Territory, Population*, 161.

<sup>4</sup> Ibid, 87-133.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

pouvoir a plutôt tendance à se faire en termes liés à l'amour : 'l'amour du maître' et le 'désir (des masses)' »<sup>7</sup>. La gouvernementalité est apparue selon Foucault en Occident après le 19<sup>ème</sup> siècle et nous vivons actuellement dans une ère de gouvernementalité et ce sont ces techniques qui permettent aux états présents d'exister en Europe.<sup>8</sup> Il affirme que la gouvernementalité est un type de pouvoir qui a mené au développement d'instruments spécifiques d'une part et de connaissances d'autre part.<sup>9</sup> Il observe également que l'exercice du pouvoir à travers la gouvernementalité peut être plus effectif que l'utilisation de techniques coercitives ou de techniques d'emprisonnement dans le but de créer des corps gouvernables.<sup>10</sup> À la lumière des discussions ci-dessus, on peut dire que la gouvernementalité ne consiste pas seulement à examiner un savoir dirigé mais permet aussi d'identifier les outils et les moyens par lesquels un comportement spécifique de la population peut être atteint à travers la connaissance que l'on a acquise d'elle.

La notion de gouvernementalité a été envisagée différemment par divers auteurs. Selon Sara Mill, « ce n'est pas juste l'analyse de qui peut gouverner et de qui doit être dirigé, mais aussi le moyen par lequel les activités des autres sont orientées. »<sup>11</sup> D'après le Dr Thomas Lemke, la gouvernementalité : « concerne la constitution réciproque des techniques de pouvoir des régimes et leurs modes d'intervention. »<sup>12</sup> Andrew Barry indique quant à lui que c'est une notion « européocentrique », qui « ne parvient pas à expliquer comment les transformations à un niveau national sont reliées aux évolutions internationales. »<sup>13</sup> À la lumière des discussions

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<sup>7</sup> Michel Foucault, "Powers and strategies" in *Power/Knowledge: Selected interviews and other writings 1972-1977*, ed. Colin Gordon, Trans. Colin Gordon, Leo Marshall, Johan Mepham, Kate Soper (New York: Pantheon Books, 1980), 134.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Foucault, *Society Must be Defended*, 37-50.

<sup>11</sup> Mills, *Michel Foucault*, 47.

<sup>12</sup> Dr Thomas Lemke, "An Indigestible Meal? Foucault, Governmentality and State Theory," *Scandinavian Journal of Social Theory*, no. 15 (2007): 1-2.

<sup>13</sup> Andrew Barry, "The European Community and European government: Harmonization, mobility and space," *Economy and Society*, no. 22 (1993): 314-326.

évoquées ci-dessus, on peut dire que la gouvernementalité concerne l'exercice du pouvoir, mais pas nécessairement par la contrainte, ce qui est éclairé par le fait que Foucault utilise le terme diriger (gouverner) et qui signifie « suivre une direction, dans le sens de soutien, d'aide. » Ce qui est évident dans cette approche est que la gouvernementalité est centrée sur une population et pas un territoire, une structure ou un état, dans la mesure où ceux-ci sont déterminés par l'exercice du pouvoir. La gouvernementalité représente un nouveau paradigme dans lequel la connaissance est connectée au pouvoir, pour fournir au gouvernement un moyen de contrôle de la population plus efficace. C'est en raison de cet aspect dynamique que beaucoup d'auteurs ont employé cette idée pour rendre compte de l'approche du gouvernement dans le monde moderne. C'est dans ce contexte que cette étude empruntera cette notion de gouvernementalité et s'en servira pour étudier l'établissement du Conseil, sa survie et son travail avec les divers gouvernements pendant ladite période, afin de mettre en lumière les visées tactiques des différents gouvernements pakistanais à travers leur manière de traiter la question de l'approbation des revendications des ulémas et des partis politico-religieux concernant l'introduction de mesures islamiques de plus en plus présentes au sein de l'État.

La gouvernementalité peut être définie comme l'exercice des techniques qui guident le comportement de la population d'une manière que le gouvernement considère appropriée pour mieux gouverner. Pour donner un cadre à ces techniques, le gouvernement a besoin d'une connaissance qui peut être confirmée par une certaine classe des spécialistes de leurs champs respectifs. Par exemple, un économiste peut fournir la connaissance technique des appréhensions économiques de la population et l'analyste de défense peut fournir les informations techniques sur les attentes de la population au sujet du gouvernement dans la perspective de la sécurité. De même, les ulémas peuvent fournir la connaissance au gouvernement des besoins de la population quant au rôle actif de l'islam dans le domaine politique, plus particulièrement dans la mesure où la compréhension de l'islam dans cette

société est basée sur les interprétations données par ces mêmes ulémas. Il reviendra en fin de compte à la stratégie politique du gouvernement de mettre en pratique les recommandations des ulémas qui conviennent à son propre intérêt. Comme Mitchell Dean l'indique dans son étude, les gouvernements le sont « pour chacun et pour tous », ainsi le gouvernement implique les domaines de la santé, du bien-être, de la prospérité et du bonheur de la population.<sup>14</sup> Dans le cas du Pakistan, le bonheur de la majorité de la population implique aussi la compréhension de son poulx au sujet de l'islam. Cette étude essaiera d'étendre le concept de gouvernementalité fourni par Foucault à l'analyse des raisonnements gouvernementaux afin de mieux appréhender l'imbrication des pouvoirs au sein du gouvernement pakistanais et pour explorer la généalogie du Conseil de l'Idéologie Islamique et des institutions qui l'ont précédé, ainsi que d'examiner son travail et ses évolutions à travers les différents changements de régimes.

Cela nous mène maintenant à la deuxième partie de la thèse, c'est-à-dire « l'étude du Conseil de l'Idéologie Islamique de 1956 à 1988 ». Dans la constitution de 1973, le Conseil de l'Idéologie Islamique a été établi comme une institution permanente du pays devant être composée de personnes détentrices d'une connaissance de l'islam ou d'une compréhension des problèmes politiques, légaux et administratifs du pays. Le but déclaré de cette institution était l'examen de toutes les lois du pays, sept ans après sa création, pour répondre aux questions dirigées à des fins consultatives par la législature au Conseil afin que ce dernier recommande des mesures au gouvernement qui puissent être traduites en termes de lois.<sup>15</sup> La disposition liée au Conseil dans la constitution de 1973 montre que dans un pays à majorité musulmane comme le Pakistan, la majorité croit ou est encouragée à croire, que la raison d'être du pays est l'islam. Dans un tel contexte, il est évident que le gouvernement sera amené à régner en gardant

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<sup>14</sup> Mitchell Dean, *Governmentality: the power and rule in Modern Society* (London: Sage Publications Ltd, 2010), 28.

<sup>15</sup> The Constitution of the Islamic Republic Pakistan 1973, in Part IX, article 228 (2) and article 230 (a) (b) (c) (d).

le paradigme de l'islam au centre de ses préoccupations. Ceci s'explique aussi par le fait que les gouvernements pakistanais, depuis l'établissement du pays, ont été confrontés aux revendications répétées des ulémas pour obtenir un rôle plus important dans le processus législatif du pays et d'autre part, par le besoin qu'a le gouvernement de les garder sous contrôle.

Les dispositions qui ont déterminé les conditions de l'établissement de la Commission Législative Islamique dans la constitution 1956, première constitution promulguée neuf ans après la création du pays, ne peuvent être comprises que si l'on tient compte des contradictions liées à la création même du pays, tant avant qu'après 1947. La première mesure législative prise par l'Assemblée constituante après la création du pays fut l'approbation de la Résolution des objectifs passée en 1949. Ce devait être le préambule des constitutions futures, et incluait la mention que la constitution à venir devrait être rédigée en fonction de principes islamiques. Cette résolution avait pour base le mouvement qui a culminé dans la création du nouveau pays. « *Pakistan Ka Matlab Kia? La Ilaha Illallah.* »<sup>16</sup> C'était un des slogans les plus utilisés lors des rassemblements de la Ligue musulmane en Inde pendant les dernières années du Mouvement du Pakistan, plus particulièrement après 1945. Cette expression, dans sa nomenclature même, expose le type de religiosité instrumentalisée par le mouvement en question. Depuis sa fondation en Inde en 1906, la Ligue musulmane s'est affirmée comme héraut de la création du Pakistan. Au contraire, les partis politico-religieux musulmans, comme le Jamiat Ulema-e-Hind (JUI-Hind), Majlis-i-Ahrar-ul-Islam (Ahrar) et Jamaat-e-Islami (Jamaat) étaient hostiles au point de vue de la Ligue musulmane,<sup>17</sup> principalement en ce qu'ils croyaient que la direction « bourgeoise » de la Ligue serait incapable de créer un système de

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<sup>16</sup> Le Pakistan ne signifie rien d'autre sauf l'Allah. C'était le titre de la poésie écrite par le Professeur Asghar Sodai en 1944.

<sup>17</sup> Ziya-ul-Hasan Faruqi, *The Deoband school and the demand for the Pakistan* (London: Asia Publishing House, 1963). Kamran Aziz, "Religion and politics in Pakistan: The Role of the Jamaat-i-Islami 1972-2007" (PhD Thesis, University of Punjab Lahore, 2011), 222-229; *Seyyed Vali Reza Nasr, Mawdudi & the making of Islamic Revivalism* (New York: Oxford University Press, 1996).

gouvernance islamique dans le nouveau pays<sup>18</sup>. Cependant, certains ulémas étaient aussi en faveur de la Ligue, comme Shabir Ahmed Usmani, qui soutenait le point de vue nationaliste musulman séparatiste défendu par la Ligue musulmane. En réponse à la question « les musulmans peuvent-ils voter pour le Congrès ? », il avait répondu qu'en dépit du rejet de la Ligue par quelques ulémas, « il ne pouvait pas recommander aux musulmans de voter pour le Congrès. »<sup>19</sup> Après avoir rencontré Jinnah, il devint membre de la Ligue en 1944 et fonda plus tard la Jamiat Ulema-e-Islam (JUI) en 1945 pour contrer la propagande du Congrès et du Jamiat-i-Ulema-Hind contre la Ligue musulmane.

Le leadership de la Ligue comprenait l'importance du vote communal musulman lors des élections de 1945-1946 pour lui permettre de gagner du terrain sur le Congrès. Après avoir obtenu le support de JUI sous la direction de Shabir Ahmed Usmani, et afin de renforcer son emblématique religieuse, la Ligue nomma un comité de 12 membres, le comité des ulémas et des *mashaikh*, dans le but pour d'obtenir un soutien massif de la population musulmane.<sup>20</sup> Ces manœuvres permirent à la Ligue d'obtenir un succès au-delà de ses espérances au sein de l'électorat musulman au cours des élections de 1945-46. Après la création du Pakistan, beaucoup d'ulémas précédemment hostiles, ou du moins ne soutenant pas la création du Pakistan, s'empressèrent pourtant d'émigrer vers la nouvelle terre afin de « sauver les musulmans du Pakistan. » Shabir Ahmed Usmani fut nommé membre de l'Assemblée constituante par le leadership de la Ligue. Bien que les ulémas ne fussent pas dans une position majoritaire à l'Assemblée, ils occupaient pourtant une position cruciale, jouissant du soutien

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<sup>18</sup> Khalil Ur Rehman, "Sheikh Zafar Ahmad Usmani Aur Unki Ilmi Khidmat" (PhD Thesis, University of Punjab Lahore, 1991), 144-160, accessed November 8 2016, <http://eprints.hec.gov.pk/8507/1/5847H.html>.

<sup>19</sup> Ibid.

<sup>20</sup> Government of Punjab, *Report of the Court of Inquiry Constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953*, (Lahore, Superintendent Government Printing, 1954), 255.

de nombre de *pirs* dans la législature, comme par exemple celui de Manki Sharif.<sup>21</sup> Il sera débattu dans le premier chapitre de l'étude si ce fut seulement en raison de la pression des ulémas ou bien du discours du gouvernement, que la Résolution d'objectifs fut approuvée par la première Assemblée constituante et que le département de la Renaissance Islamique fut fondé au Pendjab.

Après l'approbation de la Résolution des objectifs, Maulvi Tamizuddin Khan fut nommé à la tête du Comité des Principes de Base désigné pour rédiger le projet de constitution. La presse affirma que le projet de constitution serait prêt avant 1950.<sup>22</sup> Cependant ce n'est qu'en 1956 que la constitution fut promulguée, une des raisons attribuées à ce délai furent les discussions menées autour du rôle appelé à jouer par l'islam dans la constitution. La fondation de la Commission Législative Islamique fut envisagée par la constitution afin de mettre les lois existantes en conformité avec « les injonctions » du Coran et de la Sunna, et de recommander les mesures à mettre en place dans l'appareil législatif afin d'affirmer le caractère islamique du pays.<sup>23</sup> Le Conseil devait par la suite collaborer avec l'Institut de Recherches Islamique pour offrir aux ulémas les outils d'une recherche moderne permettant de les aider à trouver la solution aux questions de la vie actuelle.<sup>24</sup> La gouvernamentalité sera explorée à travers l'examen de la composition et des travaux de ladite Commission dans le premier chapitre de l'étude.

Cette constitution fut abrogée en 1958, ladite Commission a ainsi disparu des pages de l'Histoire. Cependant, le chapitre suivant de l'étude tracera ses origines entre la nomination du Conseil consultatif d'Idéologie Islamique prévu par la constitution de 1962, et sa mise en œuvre

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<sup>21</sup> Jinnah, Amin-al-Hasanat collection (Manki collections) in Sayed Wiqar Ali Shah, "Muslim Politic in the North-West Frontier Province 1937-1947" (PhD Thesis, University of Oxford, 1997), 18-240.

<sup>22</sup> Mazhar Ali Khan, "Pakistan's Future Constitution", Pakistan Times, June 8, 1949.

<sup>23</sup> The Constitution of Islamic Republic of Pakistan, Article 198 (1)(2)(3)(4)

<sup>24</sup> *Ibid*, Article 197 (1) (2).

par un dirigeant militaire, le général Ayub Khan, administrateur en chef de la loi martiale. Les différences idéologiques concernant les modalités de fonctionnement, les attentes et les discours du gouvernement seront étudiées à travers les travaux du Conseil consultatif dans le deuxième chapitre de l'étude. Après l'abrogation de cette constitution et la démission d'Ayub, un autre général, Yahya Khan prit le contrôle du pays et la partie orientale du pays devint le Bangladesh après la guerre de 1971 et le Pakistan occidental devint ce qu'on appelle aujourd'hui le Pakistan.

Le chapitre suivant discute la disposition liée à l'établissement du Conseil de l'Idéologie Islamique envisagée par la constitution de 1973. On explorera dans ce chapitre ce qu'était l'intention du tout premier gouvernement démocratiquement élu eu égard à la création du Conseil et on observera en quoi il différait du Conseil consultatif précédent. Plus loin, on discutera le rôle d'une opposition religieuse dominée par les partis politico-religieux au regard de l'interaction du gouvernement avec le Conseil d'Idéologie Islamique. Le fonctionnement du Conseil et les mesures promulguées par le gouvernement et recommandées par le Conseil seront mises en lumière, et sur cette base, on conclura en jugeant du rôle joué par le Conseil dans la gouvernabilité. Finalement le gouvernement de général Zia ul Haq, qui prit le contrôle du pays au gré de protestations contre le gouvernement Bhutto, centrées sur la demande pour l'imposition d'un système islamique dans le pays en 1977, sera étudié en détail dans ce chapitre. Au lieu de se concentrer sur l'approche de Zia en faveur d'une islamisation ou la genèse des législations promulguées pendant son gouvernement, cette étude se concentrera sur le rôle du Conseil pendant les dix ans de son règne. On étudiera aussi le fonctionnement du Conseil lors des différentes phases du gouvernement de Zia des premières années, alors que ce dernier essayait de prendre en main les affaires du gouvernement, puis après la pendaison de Bhutto, époque dont nous retiendrons ses interactions avec le Conseil. Enfin, nous scruterons ses dernières années, après l'élection et pendant la lutte du président Zia

avec Mohammad Khan Junejo le Premier ministre, période où l'on comparera le fonctionnement du Conseil sous trois directeurs différents. La gouvernementalité de ce gouvernement à travers le travail du Conseil est le centre de notre intérêt dans ce chapitre.

Cette étude s'arrêtera à l'année 1988, à la fin du gouvernement de Zia. Comme cette institution durera tant que la constitution 1973 fera force de loi, elle continuera à exercer son rôle dans la gouvernementalité dans les années à venir. Cette étude a dû se confiner à ladite période de temps, d'abord en raison du nombre de page limité de cette thèse. Deuxièmement, cela nous permet d'analyser différents types de gouvernement qui ont existé au Pakistan pendant ces années. Cette période de temps couvre la Commission Législative Islamique pourvue par la constitution de 1956 rédigée par l'assemblée constituante indirectement élue, le Conseil consultatif prévu par la constitution de 1962, rédigée par le régime militaire, le Conseil d'Idéologie Islamique décrit par la constitution de 1973, rédigée par un gouvernement directement élu, et finalement le gouvernement militaire de Zia pendant lequel il est devenu un des pivots du pouvoir. En dernier lieu, cette variation des modes de gouvernement pendant le laps de temps délimité par cette étude, la rend intéressante dans le sens où pendant ces années le Pakistan est passé par deux longs régimes de loi martiale sous le général Ayub Khan (1958-1969) et le général Muhammad Zia ul Haq (1977-1988), ceux-ci ayant eu des approches entièrement différentes quant à l'introduction de l'islam dans l'appareil étatique. L'étude vaut aussi pour son examen du premier gouvernement directement élu de Zulfikar Ali Bhutto (1973-1977). La cohérence dans ces trois constitutions regardant les dispositions qui ont pourvu à cette institution, en font un cas d'étude particulièrement remarquable pour étudier la façon dont elle a persisté et s'est développée en tant qu'institution pendant ces années. C'est pour ces raisons que le temps de cette étude historique a été limitée du début à 1988. La présente étude n'éclaire donc pas le travail du présent Conseil. Toutefois, une solide compréhension du passé

du Conseil et de ses antécédents aidera sans doute les chercheurs futurs à mieux expliquer son rôle litigieux actuel.

Finalement, avant de se diriger vers la question clé de l'étude, il serait important de mentionner ici que les rapports annuels du Conseil et du Conseil consultatif, comme leurs procédures de travail étaient confidentiels et destinés au seul usage des gouvernements. C'est seulement après 2005, durant le gouvernement du général Parvez Musharraf, et sous la direction du Dr. Khalid Masud que ses rapports précédents furent rendus publics. C'est à cause de cette contrainte que très peu d'ouvrages ont traité du Conseil et de ses prédécesseurs, et plus spécifiquement peu d'historiens, d'experts légaux, de sociologues ou d'experts en sciences politiques lui ont accordé leur attention au moment où s'est effectuée cette étude. Il ne sera donc pas erroné d'affirmer que cette étude sera une des pionnières à étudier les rapports annuels et les rapports spéciaux du Conseil pour contraster le fonctionnement des gouvernements en ce qui concerne les mesures prises au nom de l'islam eu égard aux recommandations du Conseil et de ses prédécesseurs.

Cette étude tente de déterminer les raisons qui ont mené à l'établissement et la persistance du Conseil de l'Idéologie Islamique et de ses prédécesseurs dans les constitutions de 1956, 1962 et 1973. Ce faisant, elle explore aussi le rôle joué par le Conseil et son prédécesseur pendant lesdites années dans la gouvernamentalité en contrastant les mesures introduites au nom de l'islam par les gouvernements successifs avec les recommandations du Conseil. La question suivante joue un rôle clé dans cette étude : quelle était l'intention du gouvernement en créant le Conseil de l'Idéologie Islamique et ses prédécesseurs et comment il est parvenu à survivre, se transformer et évoluer durant les divers gouvernements au pouvoir entre 1957 et 1988 ? Cette question s'articule autour de nouvelles sous-questions, premièrement : comment le fonctionnement interne du Conseil explique l'approche des divers gouvernements consistant à

utiliser l'islam pour mieux gouverner ? Deuxièmement : en quoi le profil des membres du Conseil manifeste la gouvernementalité des gouvernements respectifs ? Et finalement : le mérite des dispositions liées au Conseil ou à ses prédécesseurs revient-il aux ulémas ou aux gouvernements respectifs ? La deuxième question clé de l'étude est liée aux travaux du Conseil, à savoir : quel rôle a été joué par les recommandations de Conseil dans les mesures législatives promulguées au nom de l'islam durant la période que couvre cette étude ?

La compréhension actuelle du sujet, basée sur les études disponibles, est que le rôle du Conseil nommé par le gouvernement servait à fournir au gouvernement une justification à toutes ses décisions, et sa création était destinée à apaiser les ulémas qui exigeaient l'établissement d'une institution semblable depuis la création du pays. Les découvertes de cette étude s'inscrivent en faux contre cette vue dominante. Contrairement à l'opinion qui a cours, l'hypothèse centrale de la présente étude, affirme que bien que les ulémas exigeaient l'établissement d'une telle institution, l'intention du gouvernement en la créant était d'acquérir une connaissance des sentiments des ulémas à travers ses recommandations confidentielles, afin de choisir les mesures qui conviennent le mieux à sa stratégie politique visant à apaiser la population. Dans cette configuration, le Conseil a joué un rôle passif mais significatif dans l'introduction de plusieurs mesures législatives au nom de l'islam pendant ladite période, tout en restant en grande partie invisible en raison du rôle plus visible d'autres institutions et la nature de ses rapports confidentiels. Cette étude est divisée en quatre chapitres. Les trois premiers chapitres traitent du rôle de la Commission Législative Islamique, du Conseil consultatif d'Ideologie Islamique et du Conseil d'Ideologie Islamique dans la constitution de 1956, 1962 et 1973 respectivement. De plus, ces chapitres examinent aussi le rôle que ces institutions ont joué dans la gouvernementalité des gouvernements respectifs et les mesures prises par les gouvernements respectifs sur les recommandations du Conseil. Le quatrième chapitre traite du travail du

Conseil sous le gouvernement militaire de général Zia ul Haq et finalement la conclusion récapitulera les découvertes de l'étude.

## **ÉBAUCHE DES CONTOURS DE LA GOUVERNEMENTALITÉ DU DÉPARTEMENT DE RECONSTRUCTION ISLAMIQUE DE 1947 À LA COMMISSION LÉGISLATIVE ISLAMIQUE DE 1957**

Après la création du Pakistan, l'Assemblée constituante a adopté la loi de 1935 comme sa constitution provisoire jusqu'à ce que sa propre constitution soit rédigée. La première institution établie comme corps gouvernemental chargé de recommander des mesures pour renforcer l'islam au sein de la société fut, au niveau provincial, le « Département de Reconstruction Islamique » fondé en 1947. Ce chapitre tracera l'odyssée du pays, de la naissance de ce département au Pendjab jusqu'à la « la Commission Législative Islamique » qui a été prévue par la première constitution du pays promulguée en 1956. Les conclusions de ce chapitre aideront à répondre à la question clé de l'étude qui traite de l'influence du Conseil de l'Idéologie Islamique. Il ajoutera par ailleurs à la conclusion en rendant manifeste l'approche du gouvernement pendant ces années qui ont plus tard abouti à l'établissement du Conseil consultatif de l'Idéologie Islamique (1962) et du Conseil de l'Idéologie Islamique (1973) dans des années suivantes. Il conclut que l'établissement de la Commission de Lois Islamique selon la constitution de 1956 démontre la gouvernementalité des gouvernants de cette époque-là, qui élaborent un système de contrôle des ulémas, cependant ce n'était pas seulement le gouvernement qui avait intérêt à de telles dispositions, les ulémas aussi désiraient aussi obtenir un rôle dans le cadre du gouvernement. Deuxièmement le fonctionnement de la Commission Législative Islamique était directement lié à la stabilité du gouvernement qui lui-même chancelait. Cette commission a donc fourni les raisons pour la création du Conseil

consultatif de l'Idéologie Islamique et le Conseil de l'Idéologie Islamique dans les constitutions ultérieures.

### **COMPOSITION DE LA COMMISSION LÉGISLATIVE ISLAMIQUE DE 1957**

Les membres de la Commission Législative Islamique ont été nommés le 17 août 1957. Leurs noms étaient : Maulana Zafar Ahmad Usmani, Maulana Kifayat Hussain, Maulana Ghulam Murshad, Maulana Akram Khan, Maulana Amin Ahsan Islahi, Dr Syed Ijaz Hussain Jafri, Ghulam Ahmed Parvez, Maulana Raghیب Ahsan, le juge Allama J. A. Qazi et A. K. Brohi.<sup>25</sup>

Une brève évocation des profils de ces membres nous aidera à expliquer l'approche et les attentes du gouvernement vis-à-vis de cet organisme constitutionnel, prédécesseur du Conseil de l'Idéologie Islamique. Il ne dura que quelques mois seulement après la nomination de ses membres, comme la constitution fut abrogée et de ce fait, il cessa d'exister. Ce sera seulement à partir des débats de l'assemblée, particulièrement pendant les sessions budgétaires, et des comptes-rendus personnels de ses membres que nous pouvons savoir si ses membres se sont jamais rencontrés et si oui, ce qu'ils ont discuté comme par ailleurs, il n'existe aucun rapport officiel disponible au sujet de ce département dans les archives.

Maulana Zafar Ahmed Usmani était un alim Deobandi renommé, qui avait hissé le drapeau du Pakistan à Dacca le 14 août 1947, ayant joué un rôle significatif au référendum de Sylhet pour rejoindre le Pakistan.<sup>26</sup> Il était proéminent parmi ceux qui exigeaient une constitution islamique. Dans cette perspective, il avait écrit plusieurs lettres aux Premiers ministres précédents, les enjoignant à faire en sorte que la constitution future soit basée sur des principes islamiques. En 1954 il déménagea au Pakistan occidental et s'installa à Tando Allahyar, près

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<sup>25</sup> Notification No. F. 7(6) 56-Ref dated 17 August 1957, Karachi, The Gazette of Pakistan, Extraordinary published by authority, Registered No. S. 1033, 1701.

<sup>26</sup> *Hayat Sheikh ul Islam Firiya al umat*, by Allama Zafar Ahmed Usmani, composed by Hafiz Muhammad Akbar Shah Bukhari, *Idara Al-Ruran wa Al-aloom*, Al-Islamia, Karachi, Garden East.

de Hyderabad et y vécut jusqu'en 1974. Un autre membre en vue était Amin Ahsan Islahi (Islahi), il faisait partie des membres fondateurs de la Jamaat et était membre du comité central de la Jamaat jusqu'à ce qu'il en démissionne en 1960 en raison de divergences avec Mawdudi.<sup>27</sup> C'était un étudiant de Hamiduddin Farahi et après sa démission de la Jamaat, il continua de travailler pour l'islam et établit *Idara-i-Tadabbur-i-Quran wa Hadith* en 1981 ainsi qu'un journal de recherche trimestriel *Tadabbur*, qui fut publié par cet institut.<sup>28</sup>

Le prochain membre fut Ghulam Ahmed Parwez (1903-1985), un ami de Dr. Allama Mohammad Iqbal et à travers cette amitié, il put rencontrer Mohammad Ali Jinnah. En 1938, à la demande d'Iqbal, et suivant les instructions de Jinnah, il écrit un article dans le magazine mensuel *Tolu-e-Islam* (l'Aube de l'Islam). Une des premières couvertures du magazine qui parut sous la direction de Parwez fut intitulée, « les Mollahs ont détourné l'Islam. »<sup>29</sup> Il avait été membre de la Ligue musulmane jusqu'en 1956 et fut nommé membre de cette Commission Législative. Après la dissolution de la constitution et l'abolition consécutive du Conseil, il continua à publier des livres et donner des discours au cours desquels il continua d'exposer son interprétation du Coran à ses adeptes qui ont été appelés '*Parwezi*'.<sup>30</sup> Conformément à son interprétation de l'islam, « aucun droit public ne peut avoir force de loi, à moins que toutes les sectes ne l'approuvent unanimement ».<sup>31</sup> Il a souligné les significations « littérales » du Coran, affirmant par exemple que la Salat (la prière Musulmane) signifie *Tanzim* (la discipline) pas la

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<sup>27</sup> Dr Abdul Rauf, "Life and works of Maulana Amin Ahsan Islahi (1904-1997)," Pakistan Journal of History and Culture, vol. xxx, no. 1 (2009): 183-219. <http://www.amin-ahsan-islahi.org/about>, accessed October 25, 2017.

<sup>28</sup> Quarterly research journal *Tadabbur*, <http://www.tadabbur-i-quran.org/a-brief-introduction-to-tadabbur-i-quran/intro-by-shehzad-saleem/>, accessed October 25 2017.

<sup>29</sup> "The rise and fall of a spiritual rebel," Dawn, September 21, 2014. For more details and archive of previous editions of Tolu-e-Islam magazine see <http://tolueislam.org>, [www.parwez.tv](http://www.parwez.tv) accessed October 25, 2017.

<sup>30</sup> Ghulam Ahmed Parwez une interview avec la Télévision du Pakistan non diffusée, disponible sur Youtube "his source of income are the lectures distributed by tape records abroad", <https://www.youtube.com/watch?v=eX-jZqUdk0c>, accessed March 1, 2017.

<sup>31</sup> Ghulam Ahmed Parwez dans une interview disponible élaboré ses avis, vision, croyances, approche, vers Islam. <https://www.youtube.com/watch?v=eX-jZqUdk0c>, accessed March 12, 2017.

prière pratiquée normalement.<sup>32</sup> Comme l'influence des ulémas politiques augmentait significativement dans le pays, il se retira de la vie politique en 1978. Il fut même passé à tabac lors d'un discours à *Mughalpura*, Lahore.<sup>33</sup> Il est mort en 1985 à Lahore dans la solitude, son décès étant à peine rapporté par la Presse. Javed Ahmed Ghamidi et le Dr. Israr Ahmed l'ont qualifié de « *fitnah* » et de réfuteur de *Hadith*.<sup>34</sup>

Kifayat Hussain et Syed Ijaz Jafri étaient les membres issus de la communauté *shia*, qui représente une partie considérable de la population du pays. Les ulémas chiites diffèrent dans la pratique religieuse avec les sunnites majoritaires, et sont de plus divisés en nombreux groupes. Il était aussi important de tenir compte de la représentation du Pakistan oriental dans la composition du Conseil afin de leur faire justice. Maulana Ghulam Murshad et Maulana Akram Khan venaient du Pakistan oriental. Akram Khan était un journaliste bengali et fondateur et rédacteur du journal bengali « Azad », ainsi que président de la Ligue musulmane du Pakistan oriental jusqu'en 1960.<sup>35</sup>

Ce rapide tracé du profil des membres de la Commission nommés plus d'une année après la promulgation de la constitution permet de montrer les ramifications qui sous-tendaient la composition de cette Commission. Tout d'abord, on avait cédé partiellement aux demandes des partis politico-religieux, dans la mesure où au moins un des membres des deux partis politico-religieux avait été nommé dans la Commission. En nommant Ghulam Ahmed Parwez, un moderniste comme un ses membres, ainsi que deux membres chiites et deux membres du

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<sup>32</sup> "Refuting Ghulam Ahmed Pervaiz Views About Salat by Dr Israr Ahmed", <https://www.youtube.com/watch?v=GRNYhSngZP0>, accessed March 12, 2017

<sup>33</sup> Associated Press, "The rise and fall of a spiritual rebel", September 21, 2014, The Dawn.

<sup>34</sup> "Ghulam Ahmed Parwez ki fikar Javed Ahmed Ghamidi ki Nazar Mein", <https://www.youtube.com/watch?v=zgORdSurLXI> and Dr Israr Ahmed's view about Parwez <https://www.youtube.com/watch?v=GRNYhSngZP0> accessed February 17 2017.

<sup>35</sup> "Banglapedia, National Encyclopedia of Bangladesh", <http://en.banglapedia.org/index.php?title=Azad>, The, accessed March 13 2017.

Pakistan oriental, il y avait très peu de chances que les membres de cette commission, même si elle durât longtemps, se soient mis d'accord sur un ensemble uniforme de lois promulgables. Le choix de cette composition révèle une gouvernamentalité qui consiste à nommer un organisme docile parmi les ulémas, permettant d'obtenir leur assentiment d'un côté, et de les garder sous contrôle en les divisant de l'autre, technique qui aboutit toutefois sur le long terme à installer les ulémas dans les corridors du pouvoir, en raison du besoin ressenti par la population d'une loi islamique. Le peu de travail accompli par la Commission durant les quelques mois de son existence montre que le fonctionnement de tels institutions dépend entièrement de la stabilité du gouvernement en place.

## **LE FONCTIONNEMENT DE LA COMMISSION**

Il n'y a aucun document officiel ou rapport au sujet des réunions des membres de la Commission, il n'est pas non plus possible d'interviewer l'un des membres de la commission, toutefois à travers les travaux et les lettres de la commission on peut se faire une idée de son fonctionnement, par exemple en parcourant le site web administré par le Idara Tadabbur Quran, et qui mentionne qu'il y a travaillé comme membre. De même, dans *Tazkara-Al-Zafar*, il est également mentionné que Zafar Ahmed Usmani avait participé à quelques réunions de la Commission, et avait déclaré au sujet du travail de la Commission « ... Pour ce qui est du fonctionnement de la Commission, nous ne pouvons que faire des recommandations au gouvernement, le fait qu'elles soient acceptées ou pas dépend entièrement du gouvernement »<sup>36</sup>.

Cependant il existe des indications plus claires prouvant que ces membres se sont rencontrés, et ce dans les comptes-rendus de débats et de discussions ayant eu lieu au sein de l'Assemblée.

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<sup>36</sup> Maulana Abdul Shakoore, *Tazkara-al-Zafar*, (Faisalabad: Maktoobat-e-Ilmi, 1977), x.

Le 8 septembre 1958, lors de la session de questions-réponses concernant le fonctionnement de la Commission, Yousaf A. Haroon adressa une question au ministre des questions législatives, Kamini Kumar Datta, « Monsieur le ministre aura-t-il l'obligeance d'énoncer les progrès accomplis par la Commission Législative Islamique... », il demanda en outre quand son travail serait complété, et si la Commission était fonctionnelle, et sinon, pourquoi <sup>37</sup>. Le ministre des questions législatives répondit : « La Commission a été établie en août 1957, et sa première réunion s'est tenue en janvier 1958 pendant trois jours et deux réunions supplémentaires se tiendront pendant l'exercice budgétaire ». Il a par ailleurs ajouté qu' « elle terminera ses travaux avant le 23 mars 1962 et lors des premières réunions elle a rédigé une série de questions préparatoires qui seront posées aux hommes de science du pays et de l'étranger... un budget de 215 000 PKR a été attribué à la Commission et se trouve à la disposition dudit département... » <sup>38</sup> [2]

Ceci fut la dernière fois que l'on discuta de la Commission Législative Islamique à l'Assemblée nationale, qui fut dissoute par le Président Iskander Mirza, à peu près un mois après et la constitution fut abrogée, ce qui ne contribua pas à fixer dans les mémoires cette Commission. Ainsi, tout ce que l'on peut dire au sujet de son fonctionnement, son seul progrès enregistré, est qu'il s'est tenu « une réunion », qui n'a d'ailleurs pas contribué à modifier l'appareil législatif du pays. Mais plus que ses « accomplissements », c'est la présence dans la constitution et la suivante de 1962, d'une disposition la reconduisant sous un autre nom, celui de « Conseil consultatif de l'Idéologie Islamique ». Ensuite, le profil de ses membres met en lumière l'approche des gouvernements de cette époque, qui souhaitaient installer des ulémas dans les corridors du pouvoir dans le but d'acquérir une connaissance qui les aide à mieux gouverner. Le fait que l'existence de cette commission soit prévue par la constitution marque

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<sup>37</sup> Yousaf A Haroon, *National Assembly of Pakistan Debates*, September 8, 1958, 563.

<sup>38</sup> Kamini Kumar Datta, *National Assembly of Pakistan Debates*, September 8, 1958, 563-564.

le début d'une odyssée qui se poursuit jusqu'à nos jours. Sa croissance et son travail sont directement liés aux institutions démocratiques et politiques du pays qui ont été mises en sommeil en raison de la Loi martiale.

La constitution de 1956 fut abrogée par le Président Iskander Mirza le 7 octobre 1958 en raison du chaos politique en cours, et qui transparaît à travers la démission successive de trois Premiers ministres : Hussain Shaheed Suhrawardi, Ibrahim Ismail Chundrigar et Malik Feroz Khan Noon, en l'espace de quelques mois et pour la raison discutée brièvement dans le chapitre suivant. Quelques semaines plus tard, le Président fut à son tour remplacé par le Chef des armées et administrateur de la loi martiale, le général Ayub Khan. Le chapitre suivant de l'étude discutera de l'évolution du Conseil consultatif de l'Idéologie Islamique prévu par la constitution promulguée par le général Ayub en 1962 et son rôle dans la gouvernamentalité durant ces années.

## **GOVERNEMENTALITÉ ET IDÉOLOGIE DU CONSEIL CONSULTATIF DE L'IDÉOLOGIE ISLAMIQUE SOUS LE RÉGIME MILITAIRE DE 1962-1971**

Le gouvernement militaire du général Ayub Khan a promulgué la constitution de 1962, qui a pourvu à l'existence du Conseil consultatif de l'Idéologie islamique (le Conseil consultatif) qui est le sujet d'étude de ce chapitre. Ce chapitre apportera quelques éléments à la conclusion en répondant à quelques questions-clés de l'étude, d'abord en essayant de savoir quelle était l'intention du général Ayub Khan en créant cette institution et deuxièmement quel a été exactement son rôle dans l'émission des recommandations au nom de l'Islam, et qui entraînèrent le pays dans les revendications des partis politico-religieux de *Nifaz-e Islam*. On s'y posera aussi la question de la gouvernamentalité des gouvernements successifs et de l'islamisation des dernières années du régime Ayub. Il conclura en disant que les dispositions de la constitution de 1962 liées au Conseil consultatif manifestent la gouvernamentalité du

régime Ayub, qui désirait encore davantage affermir son contrôle à travers une instrumentalisation de l’Institut de Recherches Islamiques sous Fazlur Rahman, tout en gardant ses procédures de fonctionnement confidentielles et afin de prendre le pouls des ulémas pour apaiser la population. Il mettra aussi en évidence le fait que nombre des recommandations du Conseil consultatif ont été mises de côté par Ayub. Ces mêmes recommandations qui devinrent des années plus tard le cri de ralliement des partis politico-religieux et furent encore plus tard intégrées à l’appareil législatif de l’état pakistanais.

## **FONCTIONNEMENT DU CONSEIL CONSULTATIF DE L’IDÉOLOGIE ISLAMIQUE**

Les articles 199 à 207 de la constitution traitaient des devoirs et de la fonction du Conseil consultatif. Sa fonction primaire était de répondre aux questions adressées par le Président, le Gouverneur, les assemblées provinciales ou nationale. De plus, il pouvait suggérer des mesures tant au gouvernement central que provinciaux, dans le but d’aider les musulmans du pays à vivre en accord avec les principes d’Islam.<sup>39</sup> Selon la constitution, les assemblées nationales/provinciales n’avaient aucun mot à dire dans le travail ou la nomination du Conseil consultatif. Ce devait être un corps exécutif central nommé par le Président et ce dernier devait envoyer ses questions au Conseil consultatif pour décider de l’islamité des lois votées par les diverses assemblées. D’autre part, c’était un conseil de nature consultative dans le sens où, ses recommandations n’avaient pas force de loi. Or, la constitution prévoyait que “dans l’intérêt public”, toute loi pouvait être promulguée sans attendre l’avis ou les recommandations du Conseil consultatif, même si elle était en train d’être discutée par le Conseil.<sup>40</sup>

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<sup>39</sup> Constitution of Pakistan 1962, art. 199-207, part - X, “Islamic institutions, Chapter 1: Advisory Council of Islamic Ideology,”

<sup>40</sup> Constitution of Pakistan 1962, art. 204 (3).

Il existe quelques contradictions apparentes dans les devoirs du Conseil consultatif énumérés dans la constitution. Par exemple si la loi est promulguée par la législature dans l'intérêt public et le Conseil postérieur la déclare non islamique, il n'est pas indiqué quelle procédure devait être suivie. La constitution n'apporte pas non plus de lumière dans le cas où le Conseil consultatif déclare une loi non islamique tandis que le Président ou l'assemblée émet un avis opposé, quant à savoir quel avis doit prévaloir. La constitution était aussi silencieuse sur l'impact des recommandations sur les minorités du pays, contrairement à la constitution 1956 qui mentionnait clairement qu'aucune des recommandations de la Commission Législative Islamique n'aurait d'impact sur les lois personnelles des minorités. L'article en rapport avec le Conseil consultatif était silencieux à ce sujet, ce qui voulait dire entre les lignes, que comme il n'y avait aucun membre des minorité au sein de la Commission, celle-ci devait avoir la compétence d'examiner les lois personnelles des non-musulmans, voire de recommander au gouvernement de les modifier.

En plus du Conseil consultatif, la Constitution a aussi pourvu à un Institut de recherches Islamique, « dans le but d'aider à la reconstruction de la société musulmane sur une base authentiquement Islamique. »<sup>41</sup> Le Conseil consultatif devait fournir des recommandations et l'Institut le matériel de recherche à ses membres avec son avis. Le Conseil consultatif était concerné par l'aspect législatif et entretenait un lien avec le Président et les Assemblées, d'autre part. L'Institut était voué à la recherche pour soutenir le Conseil dans ses efforts. Les sujets de recherche de l'Institut devaient être fournis par le Conseil, qui devait donner ses recommandations aux questions mentionnées par la législature.

## **COMPOSITION ET PROCÉDURES DE TRAVAIL DU CONSEIL CONSULTATIF**

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<sup>41</sup> Constitution of Pakistan 1962, art. 207. More details about the Islamic Research Institute, <http://iri.iiu.edu.pk/index.php/about-2/historical-chronology/>, accessed February 10, 2018.

Le Président a nommé le premier Conseil consultatif le 4 août 1962, composé de huit membres. Parmi lesquels, deux membres issus du pouvoir judiciaire supérieur et un nombre presque égal de membres provenant du Pakistan oriental et occidental. Son directeur était le juge Abu Saleh Muhammad Akram, de la Cour suprême du Pakistan. Le juge Muhammad Sharif, autre juge de la Cour suprême était le précédent directeur de la Commission nommée en 1957. Les autres membres provenant du Pakistan oriental étaient Maulana Muhammad Akram et Maulana Abul Hashim de l'académie Islamique de Dacca et le troisième membre dont le nom n'a pas été mentionné dans la première notification, ayant été nommé plus tard, fut Maulana Abdul Haye Nawakhali. Les membres venant du Pakistan occidental étaient Maulana Abdul Hamid Badayuni président du JUP de Karachi et Maulana Kifayat Hussain de Lahore, tous deux étant aussi membres de la précédente Commission nommée en 1957.

La nomination de membres issus du pouvoir judiciaire montre que le Président voulait que le Conseil consultatif fonctionne dans le cadre des limites légales posées par la constitution. Par quoi nous entendons qu'en recommandant des mesures ou en répondant aux questions de la législature, le Conseil consultatif devait non seulement considérer les principes de base de l'islam, mais aussi d'autres principes, comme par exemple, la Charte des droits de l'Homme des Nations Unies ainsi que d'autres traités internationaux. Ces juges devaient fournir des suggestions aux autres membres du Conseil consultatif ayant une connaissance théologique regardant l'aspect pratique des recommandations.

Le Dr Ishtiaq Hussain Qureshi fut nommé directeur de l'Institut le 10 mars 1960, et fut en même temps nommé membre du Conseil, afin de maintenir une cohérence entre les deux institutions. Selon les procédures de fonctionnement du Conseil consultatif, pour donner au gouvernement son avis ou répondre à la question de la législature ou du Président, le directeur de l'Institut devait guider le Conseil à rassembler le matériel pertinent regardant la question

posée. L'avis de l'Institut, ainsi que celui de tout membre en désaccord était attaché au rapport des recommandations ainsi qu'au rapport annuel qui devait être envoyé au Président pour pouvoir être présenté à l'Assemblée nationale. Seulement un mois après la nomination du Conseil consultatif, I. H. Qureshi fut remplacé le 4 août 1962 par Fazlur Rahman, tant dans le Conseil dont I. H. Qureshi était membre, que dans l'Institut dont il était président.

Il tint sa première réunion le 8 octobre 1962, au cours de laquelle le directeur et ses membres, avec l'approbation du Président, finalisèrent le règlement de son fonctionnement sous la forme du « Conseil consultatif de l'Idéologie Islamique (Procédure), 1962 » et qui devint partie intégrante de la Constitution après l'approbation du Président.<sup>42</sup> Selon les procédures du Conseil consultatif, le directeur et les membres devaient être nommés par le Président pour trois ans et le Conseil devait siéger à Islamabad. Tous les membres devaient « prêter serment afin de préserver toute discussion, débat ou comptes-rendus des réunions du Conseil strictement confidentiels ».<sup>43</sup> La présence d'au moins quatre membres incluant le directeur était nécessaire pour garantir son quorum. La décision quant au nombre maximal de ses membres appartenait au Président, et jusqu'à son abolition il n'a jamais excédé onze membres et trois conseillers (des membres *ex officio*) que le Conseil pouvait consulter pour avis : le Gouverneur de la Banque Nationale du Pakistan, l'ex-président du National Press Trust, et le Président/Vice-président de la Commission de planification.<sup>44</sup>

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<sup>42</sup> Notification No. S.R.O. 1265(K)/62, Lahore, November 29, 1962, the 'Advisory Council of Islamic Ideology (Procedure) Rules, 1962'.

<sup>43</sup> Advisory Council of Islamic Ideology (Terms and Conditions of Members) Rules, 1962. Ministry of Law and Parliamentary Affairs, (Parliamentary Affairs Division), Notification No. S.R.O. 47 (R), Rawalpindi September 4, 1962.

<sup>44</sup> "Opinion of S.A. Meenai, the economic advisor of the state bank of Pakistan on the question of Riba, Advisory Council of Islamic Ideology, *Annual report of the proceedings of the Advisory Council of Islamic Ideology for the year 1962 and 1963 in Ten years report 1962 to 1972* (Islamabad: Printing Corporation of Pakistan, 2005), 39.

La lacune la plus considérable dans les procédures de travail approuvées par Ayub était que les rapports et le travail du Conseil consultatif devaient être gardés confidentiels, comme ses rapports annuels ou spéciaux, qui ne devaient pas être rendus publics. Il est intéressant de se demander pourquoi le gouvernement voulait garder ces rapports secrets ? Selon les procédures, « les rapports confidentiels » étaient envoyés au ministère qui décidait ensuite si le rapport devrait être envoyé au Président ou au Parlement ou renvoyé au Conseil consultatif pour réexamen. Le but de ce secret était que le gouvernement voulait pouvoir mener sa réflexion sans intervention extérieure, et garder son entier pouvoir décisionnaire. Par exemple, si les recommandations du Conseil consultatif étaient rendues publiques et le gouvernement ne voulait pas les mettre en œuvre, il pourrait s'avérer difficile pour le gouvernement de satisfaire le public et de se préserver de ses critiques concernant la lenteur ou le refus de la mise en œuvre des recommandations. Il ne serait pas erroné de suggérer que le maintien de la confidentialité fasse du Conseil une institution authentiquement consultative auprès du gouvernement Ayub. Dans le cas contraire, l'institution aurait pu acquérir un pouvoir politique à travers son travail, comme nous l'avons discuté plus haut au sujet de l'approche particulière de la population pakistanaise, qui crée cette nécessité du secret pour le bon fonctionnement des gouvernements. Ce n'est qu'en 2005, près de quarante ans après l'établissement du Conseil, que le gouvernement a finalement décidé de rendre public les rapports, afin que le public puisse savoir lesquelles des recommandations ont été mises en œuvre par le gouvernement.

Une autre lacune notable dans le mode de fonctionnement de la commission concernait le fait que la prise de décisions dans les réunions du Conseil n'était pas basée sur un vote, ou sur des décisions prise à la majorité des voix, mais chaque membre devait donner ses avis, soit consentir soit désapprouver, et tout désaccord était marqué par une note attachée au rapport.<sup>45</sup>

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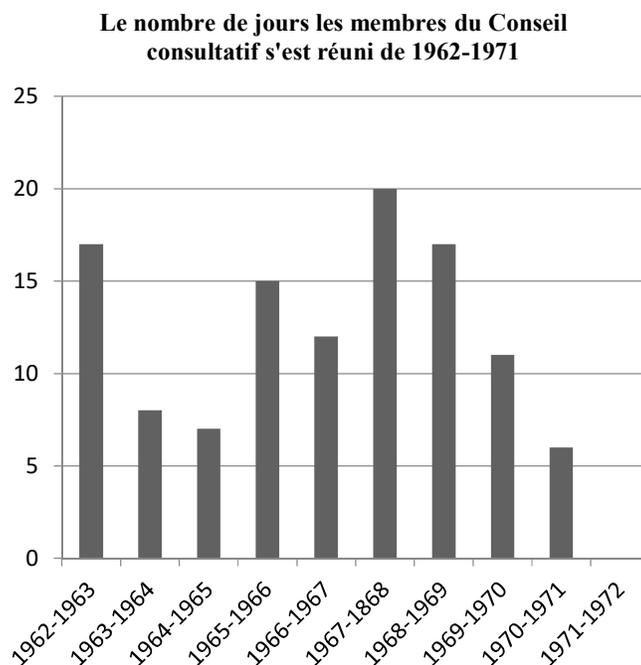
<sup>45</sup> Notification No. S.R.O. 1265(K)/62, Lahore, the 29<sup>th</sup> November 1962, the 'Advisory Council of Islamic Ideology (Procedure) Rules, 1962'.

De ce fait, la plupart des rapports du Conseil consultatif apparaissent comme une série de recommandations subjectives, offrant au Ministère des questions législatives une justification aisée pour éventuellement les rejeter, comme les objections offraient une possibilité légale de renvoi de la recommandation pour réexamen afin de parvenir à une décision unanime, ce qui rendait la prise de décision au sein du Conseil bien plus complexe, notamment en raison de la présence de membres chiites, sunnites ou modernistes comme Fazlur Rahman dans cet organisme. Ainsi, ceci représente une autre arme dans les mains du gouvernement pour se permettre d'ignorer ou de mettre en suspens les recommandations du Conseil consultatif.

### **LES ULÉMAS N'OBJECTENT PAS AU TRAVAIL DU CONSEIL CONSULTATIF**

Il est intéressant d'observer que le travail de l'Institut a été souvent critiqué par les ulémas et les protestations se concentraient sur le fait qu'aucun membre n'exigeait la mise en œuvre des recommandations du Conseil consultatif. Dans la table ci-dessus, le chiffre à droite montre le nombre de jours durant lesquels les

réunions de Conseil se tinrent pendant les années de gouvernement Ayub. Bien qu'il ne donne pas une idée précise de la nature des discussions durant ces réunions, il permet tout de même de se faire une idée sur le volume de son travail, qui dépendait du nombre de fois qu'il était saisi pour



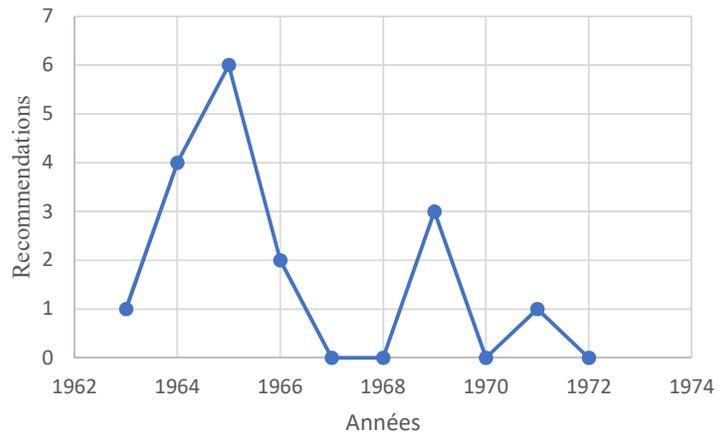
discuter d'une question et émettre sa recommandation. Il n'est pas erroné de dire que son travail dépendait directement de la stabilité de régime.

La tendance à la baisse du nombre de réunions du Conseil consultatif pendant les deux dernières années montre que la mainmise du gouvernement sur les affaires de l'état s'estompait. Ce n'est donc pas par hasard si la dernière année de son existence il s'est tenu seulement six jours de réunion au cours de l'année. La courbe qui chute après 1968 met en lumière de manière le fait que le régime était sur le déclin. L'affaiblissement visible du régime aurait pu pousser les membres à demander une mise en œuvre des recommandations plutôt que d'en traiter davantage de nouvelles. Cette figure montre aussi une autre tendance. Quand les nouveaux membres du Conseil furent nommés, il y eut une augmentation du nombre de réunions et par conséquent une hausse du nombre de recommandations.

Cette seconde figure montre que de sa première réunion jusqu'à la dernière, le nombre de recommandations augmenta

**Nombre de recommandations données chaque année de 1962-1971**

les trois premières années et se mit à décliner par la suite quand de nouveaux membres furent nommés en 1966 après que les premiers aient fini leur terme, tandis que le directeur du Conseil



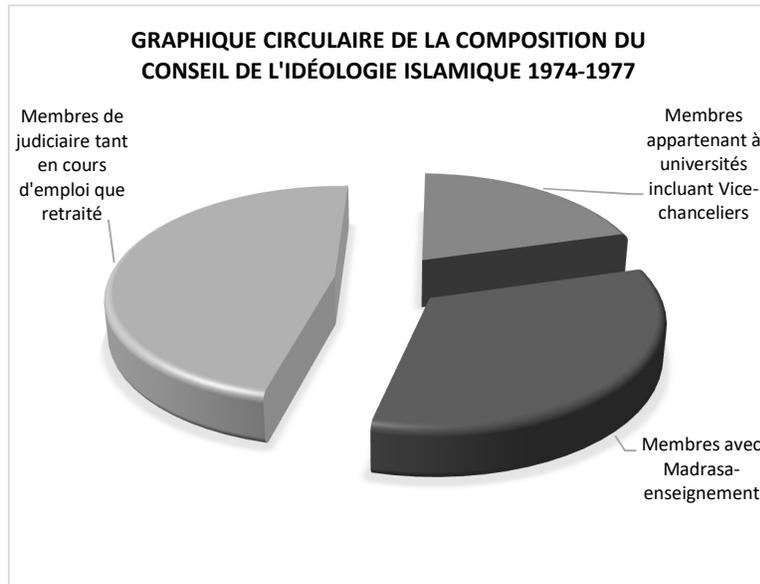
consultatif resta le même, à ce moment-là on observe une nouvelle augmentation du nombre de recommandations, suivi d'une nouvelle baisse dans les années suivantes. Ce graphique montre aussi que les nombres de recommandations atteignent leur apogée en 1965 et se mirent à baisser graduellement, réfléchissant le déclin du régime particulièrement après la Déclaration de Tachkent et les protestations qui ont mené à la démission du directeur de l'Institut.

## **LA GOUVERNEMENTALITÉ DU GOUVERNEMENT DÉMOCRATIQUEMENT 'ÉLU' EN FONCTION DU CONSEIL DE L'IDÉOLOGIE ISLAMIQUE 1973-1977**

Cette section comme le titre le suggère explorera le gouvernementalité du gouvernement élu sous Zulfikar Ali Bhutto à travers les dispositions de la constitution de 1973, qui ont donné un rôle accru au Conseil de l'Idéologie Islamique. En conséquence de quoi beaucoup de mesures prises au nom de l'Islam de 1973 à 1977 avaient déjà été recommandées par le Conseil. Cette partie se conclura sur le constat que la constitution de 1973 promulguée par le gouvernement élu a été la cause d'un fonctionnement accru du Conseil comparé aux institutions qui l'ont précédé. Ceci aboutit à une influence accrue des partis politico-religieux, alors dans l'opposition, et qui jouèrent des pieds et des mains pour avoir leur mot à dire dans le processus législatif. Par ailleurs, on observe la volonté du gouvernement Bhutto d'avoir une constitution unanime et de gagner en popularité avant d'appeler de nouvelles élections, la nécessité du moment après les circonstances nouvelles et la sécession du Pakistan oriental de 1971. Il ajoutera d'ailleurs à la conclusion finale qu'en offrant son adhésion au leader de l'opposition et promulguant la législation basée en certaines de ses recommandations pour apaiser la population se manifeste la gouvernementalité du gouvernement Bhutto.

### **COMPOSITION DU CONSEIL**

Les premiers membres de Conseil y compris son directeur, furent nommés le 2 février 1974 sous la présidence du Président de la Cour Suprême, le juge Hamoodur Rahman.<sup>46</sup> Un regard rapide sur le profil des quatorze membres



expose la gouvernementalité du gouvernement Bhutto. Basé sur les qualifications des membres, le graphique circulaire ci-dessous divise les membres du Conseil en trois grandes catégories. La plus grande, la plus visible, est celle des sept membres du pouvoir judiciaire : le juge Hamoodur Rahman, le juge Afzal Cheema, le juge Jamil Hussain Rizvi, le juge Qazi Muhammad Gul, le juge Z. A. Channa, le juge Abdul Hai Qureshi et le juge Qadar Nawaz Awan. La deuxième catégorie du camembert, en couleur noire sombre, représente les cinq membres du Conseil liés au domaine des séminaires religieux, composé des ulémas suivants : Maulana Mohammad Idrees, Maulana Muhammad Haneef Nadvi, Muhammad Baksh Musulman, Maulana Najamul Hassan et Maulana Ehtesham ul Haq. Enfin la portion la plus restreinte du graphique circulaire représente ceux qui provenaient de l'enseignement universitaire et travaillaient dans des institutions éducatives modernes : Melle Kaneez Yousaf, Dr Abdul Wahid J Hali Pota et Dr Shamin Akhtar.

Il est évident que plus de la moitié des membres du Conseil provenaient du pouvoir judiciaire, y compris des juges à la retraite. Avant d'aller plus loin, il serait bon d'avoir un aperçu de ces

<sup>46</sup> Notification No. F(2) 73-All, Council of Islamic Ideology, *Salana Aboori Report 1974-1975* (Islamabad: Council of Islamic Ideology, n.d.), 2.

membres, le plus en vue étant le directeur du Conseil, le juge Hamoodur Rahman. Il devint Président de la Cour Suprême pendant le règne du général Ayub Khan, le 18 novembre 1968 et est resté à ce poste jusqu'au 31 octobre 1975.<sup>47</sup> Le 2 février 1974, il fut nommé directeur du Conseil de l'Idéologie Islamique en plus de son statut de président de la Cour Suprême. Après sa retraite, il resta Président à plein temps du Conseil jusqu'au 1<sup>er</sup> février 1977. Dans l'histoire juridique du Pakistan, il est célèbre pour son « rapport de la commission Hamoodur Rahman », un rapport d'enquête de la commission mise en place par le gouvernement Bhutto pour déterminer les causes de la sécession du Pakistan oriental et la défaite de l'armée pakistanaise.<sup>48</sup> Considérant son profil et la nature de ses devoirs notamment dans son rôle de juge en chef de la Cour suprême, il est facile de comprendre qu'il n'avait pas beaucoup de temps à consacrer à ce Conseil.

L'autre membre en vue du pouvoir judiciaire, le juge Afzal Cheema, fut proéminent dans le sens qu'il rejoignit le Conseil comme membre en 1974 et prit plus tard la relève d'Hamoodur Rahman comme directeur du Conseil. Pendant son terme professionnel et politique, il resta porte-parole adjoint de la législature de l'ère Ayub, juge de la Cour Suprême, Chief justice, membre du Conseil pendant le gouvernement Bhutto et directeur du Conseil pendant le gouvernement du général Zia ul Haq. Il a commencé sa carrière comme politicien et est devenu membre de l'Assemblée nationale de Toba Tek Singh en 1962. Il est resté le porte-parole adjoint de la législature pendant le gouvernement Ayub jusqu'au 21 janvier 1965. Plus tard il rejoignit le pouvoir judiciaire et fit partie du jury, qui sous le Chief Justice Anwar ul Haq, émit

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<sup>47</sup> *Supreme Court of Pakistan Annual Report June 2015-May 2016* (Islamabad: Supreme Court of Pakistan, 2016), 219-224.

<sup>48</sup> Samar Halarnkar, "Army atrocities, wide spread corruption as prime reason for defeat in East Pakistan", *India Today*, August 21, 2000.

un verdict en faveur de la prise de contrôle du gouvernement par Zia ul Haq le 10 novembre 1977. Par la suite, le 26 septembre 1977, il fut nommé directeur du Conseil.

Un autre membre du pouvoir judiciaire était Jamil Hussain Rizvi, juge de haute-cour à la retraite. Il avait été politicien et avait également servi au Ministère des affaires législatives et de la Réhabilitation au Pakistan occidental de 1960 à 1965 et fut plus tard nommé juge à la Cour Suprême. Il resta membre du Conseil de 1974 à 1977, avant d'y être nommé de nouveau de 1981 à 1984. Les autres membres issus du milieu judiciaire étaient : le juge Qazi Muhammad Gul, le juge Z A Channa, le juge Abdul Hai Qureshi de la Cour suprême et le juge Qadir Nawaz Awan, juge retraité de la Cour Suprême. En tout, il y avait sept membres issus du pouvoir judiciaire presque la moitié des membres du Conseil.

Parmi les membres ne provenant pas du monde judiciaire ou religieux traditionnel, se trouvaient des universitaires détenteurs de postes dans des universités du secteur public ou des institutions de recherche. Les universitaires étaient : Dr. Kaneez Yousaf, qui fut la première présidente (vice-chancelière) femme de l'Université d'Islamabad, plus tard rebaptisée Quaid-i-Azam University. Elle fut la première femme membre du Conseil. Un autre membre était le Dr. Abdul Wahid J Hali Pota, directeur de l'Institut de Recherches Islamiques et membre du Conseil. Une autre addition dans la liste était Dr Shameem Akhtar, professeur à l'Université de Karachi. Parmi ceux qui avaient reçu une éducation traditionaliste, il est important de mentionner qu'ils n'étaient pas directement les représentants ou les nominés du JUI, JUP et Jamaat. Ainsi, ils ont été critiqués par les partis politico-religieux pour avoir été nommés au Conseil sans avoir les qualifications adéquates. Ces membres étaient : Maulana Mohammad Idrees servant à Jamia Ashrafia, Lahore, Maulana Muhammad Haneef Nadvi, directeur adjoint du Département de Culture Islamique de la secte des *Ahl-e Hadith*, le Maulana Muhammad Baksh Muslim, responsable de la mosquée de Lohari Gate, représentant les *Ahl-e-Sunnat*. La

liste comprend aussi Maulana Najam ul Hassan, qui était le responsable d'une mosquée dans la Ville Peshawar ; et finalement, Maulana Ehtesham ul Haq était de Nizāmābād, à Karachi.<sup>49</sup>

## **LE CONSEIL DE L'IDÉOLOGIE ISLAMIQUE ET LA GOUVERNEMENTALITÉ DU 'NIFAZ-E-ISLAM' PENDANT LE GOUVERNEMENT DU GÉNÉRAL ZIA UL HAQ 1977-1988**

C'est un lieu commun que d'accuser le gouvernement de Zia d'être responsable de l'islamisation des lois et de la société pakistanaises.<sup>50</sup> Ayant passé en revue les gouvernements précédents et leur collaboration avec le Conseil et ses organismes prédécesseurs, il apparaît clairement que chacun a dessiné sa propre stratégie politique de conservation du pouvoir en utilisant les sentiments islamiques de la population, en se servant d'un discours islamique, et en utilisant la connaissance acquise grâce aux recommandations du Conseil de l'Idéologie Islamique, c'est-à-dire en adoptant une gouvernamentalité islamique, bien que chacun l'ait fait avec une intensité variable. Ce chapitre contestera la vue prévalente d'après laquelle Zia fut entièrement responsable de l'islamisation du pays. Au lieu de cela, il mettra en parallèle les lois et les mesures promulguées pendant le gouvernement Zia en les contrastant avec les recommandations du Conseil. En plus de l'ardeur religieuse personnelle de Zia, de sa stratégie politique guidée par sa « peur paranoïaque de Bhutto », il faut aussi tenir compte du Conseil comme organisme rédigeant des lois, et qui a eu un impact considérable sur le mode de gouvernement de Zia. Plus loin, à travers l'examen du travail du Conseil, ce chapitre dissèque

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<sup>49</sup> Council of Islamic Ideology, *Salana Aboori Report 1974-1975*, 2.

<sup>50</sup> Charles Kennedy, "The implementation of the Hudood ordinance in Pakistan," *Islamic Studies*, vol. 26, no. 4 (1987): 307-319, accessed January 24, 2018, <http://www.jstor.org/stable/20839856>. William L. Richter, "The political dynamics of Islamic Resurgence in Pakistan," *Asian Survey*, vol. 19, no. 6 (1979), 545-557; Lawrence Ziring, "From Islamic Republic to Islamic State," *Asian Survey*, vol. 24, no. 9 (1984), 931-946.

aussi la démarche du gouvernement de Zia vers l'islamisation pendant trois phases différentes de ses onze ans de règne, sous trois directions différentes du Conseil.

## **COMPOSITION DU CONSEIL**

Le Conseil a été restructuré trois fois pendant le gouvernement Zia, cette section fournira maintenant une brève présentation des profils des directeurs et le nom des autres membres pour donner une idée de l'attitude changeante du gouvernement envers la composition du Conseil. Il fut restructuré la première fois le 2 septembre 1977, deux mois après la prise du pouvoir. Zia déclara d'ailleurs lors de son inauguration qu'aucun « des gouvernements précédents n'avaient mis en œuvre les recommandations du Conseil, cependant maintenant elles seront mises en œuvre ».<sup>51</sup> Bien que le nombre de membres ait été maintenu, le profil des membres changea remarquablement, notamment en ce qui concerne leurs qualifications, comme le pourcentage d'entre eux issus du pouvoir judiciaire et du monde universitaire recula tandis que le nombre de ceux issus de l'éducation traditionnelle des madrasas augmenta. Comme il a déjà été vu dans le chapitre précédent, le gouvernement Bhutto avait nommé plus d'une moitié de membres issus du pouvoir judiciaire ou du monde universitaire, catégories ne représentant qu'une fraction sous Zia, qui fut l'unique autorité décisionnaire impliquée dans ce processus en tant qu'administrateur de la loi martiale. La composition du Conseil à travers ces trois restructurations représente donc entièrement sa gouvernementalité.

## **LE CONSEIL ET LE JUGE AFZAL CHEEMA**

Le juge Afzal Cheema (Cheema) devint directeur du Conseil le 2 septembre 1977. Il avait été précédemment membre du Conseil pendant le gouvernement Bhutto et ce depuis 1974. Il est

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<sup>51</sup> APA, "Islami Nazaryati Council Ki Tashkeel E Now Kar Di Gai," September 2, 1977, The Nawa-i-Waqt.

issu du milieu politique. Sa première carrière fut celle de politicien, ayant été élu membre de l'Assemblée provinciale dans la circonscription de Lyallpur-IX en 1951, pour le parti de la Ligue musulmane-Jinnah qui était dirigée par le Nawab Iftikhar Hussain Mamdot. Plus tard il devint porte-parole adjoint de l'Assemblée en 1962 et en raison de la santé fragile de Tamizuddin Khan, il devint porte-parole officiant pendant un certain temps.<sup>52</sup> Plus tard il fut nommé juge à la Cour suprême du Pakistan et membre du Conseil de l'Idéologie Islamique sous le Gouvernement Bhutto. On peut avoir une idée de sa conception islamique, lorsque directeur du Conseil, il voyagea aux États-Unis et décrivit sa manière d'appréhender la culture occidentale dans ces mots : « ... malgré la liberté accordée au peuple des États-Unis, celui-ci est engagé dans une quête désespérée de paix, et pour la trouver, utilisent l'alcool et le sexe, mais leurs problèmes augmentent jour après jour ... », la solution qu'il prescrivit était de prêcher l'islam aux Américains.<sup>53</sup> Après qu'il soit devenu directeur du Conseil, son bureau a été déménagé de Lahore à Islamabad dans des locaux loués. Il remercia Zia en ces mots: « ... Lors des trente dernières années, c'est la première fois qu'un gouvernement provisoire est si sincère et actif pour l'imposition de la Shariah ... »<sup>54</sup> Parmi les quatorze autres membres, ceux ayant une expérience dans le milieu judiciaire étaient : le juge à la retraite Salah-ud-din, l'avocat Khalid Ishaq, et A. K. Brahoui. Tandis que ceux ayant une éducation religieuse étaient le Maulana Muhammad Yousaf Banuri, Khawaja Qamar-ud-din Pir de Sial Sharif, le Mufti Sayyahuddin Kakakhel, le Mufti Muhammad Hussain Naeemi, Maulana Zafar Ahmed Ansari, Maulana Muhammad Taqi Usmani, le Mufti Jaffar Hussain Mujtahid, Maulana Muhammad Haneef Nadvi, Dr Zia ud Din et Hussain Tajamal Hashmi. Plus tard en juin 1978, trois autres

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<sup>52</sup> Afzal Cheema, "Some reflections of the early parliamentary life," in *Golden Jubilee Session Punjab Assembly proceedings 1937-1987* (Lahore: Provincial Assembly of Punjab, 1988), 85-90.

<sup>53</sup> Afzal Cheema's in: *Islami Nazaryati Council Salana Report 1978-1979* (Islamabad: Printing Corporation of Pakistan Press, 1979), 7-8.

<sup>54</sup> Council of Islamic Ideology, *Islami Nazaryati Council Salana Report 1977-1978*, 8.

membres ont été aussi inclus : Maulana Shams-ul-Haq Afghani, Allama Syed Muhammad Razi et Dr. Khawar Khan Chishti, seul membre féminin du Conseil.

Dans un autre événement isolé, survenu le jour même où Zia annonça la restructuration du Conseil, le nom de la ville Lyallpur, tiré du nom de Sir James Broadwood Lyall, gouverneur colonial du Pendjab, a été changé en Faisalabad. Cette mesure fut apparemment prise pour commémorer le roi Faisal d'Arabie Saoudite. Elle s'éclaire en fait à la lumière de la déclaration du Dr Maarouf Al-Dawalibi, conseiller du Roi d'Arabie Saoudite : « si le gouvernement pakistanais met en œuvre un système islamique dans le pays, le gouvernement saoudien est prêt à ouvrir les portes de sa trésorerie pour l'aider en cela ». <sup>55</sup> Zia avait un grand besoin de reconnaissance internationale après sa prise de pouvoir. Ce changement de nom d'une ville ne servit pas seulement d'appât au gouvernement saoudien, mais représente également un clair message destiné à la population et d'après lequel l'héritage de la tradition coloniale britannique allait être remis en cause sous son régime. <sup>56</sup>

## **LE CONSEIL ET LE JUGE TANZIL UR REHMAN**

Comme le directeur précédent, le juge Cheema rejoignit la branche asiatique du Motamar Al-Alam Al-Islami, (le Congrès mondial Musulman), organisation basée à Jeddah et fondée par l'Organisation de la Conférence Islamique. Le juge Tanzil ur Rehman, de la Cour Suprême du Sindh fut nommé directeur du Conseil. Par ordre présidentiel l'adhésion comme membre du Conseil passa aussi de quinze à vingt ans, les autres membres étaient le juge Syed Jameel Hussain Rizvi, le Sahib de Pir Qamaruddin Sialvi, Allama Syed Ahmed Saeed Kazmi, le Professeur Maulana Muntakhib ul Haq Qadri, Maulana Ahmed Rizvi, Maulana Shams-ul Haq

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<sup>55</sup> Dr Maarouf Al-Dawalibi advisor of Saudi King. "Islami Nizam Ke Nifaz Ke Baad Saudi Arab Ke Khazano Ke Moo Pakistan Ke Lye Khol Deye Jain Gay," October 25, 1978, Nawa-i-Waqt.

<sup>56</sup> Staff Reporter, "Lyallpur Ka Nam Shah Faisalabad Rakh Dia Gya," September 2, 1977, The Nawa-i-Waqt.

Afghani, le Mufti Siyah ud Din Kaka Khel, Maulana Muhammad Ubaid Ullah, Qazi Saadullah Muhammad Hussni, Maulana Abdul Ghafar Hassan, Allama Ali Ghanzafar Kararvi, Dr Abdul Wahid J. Halepota, Dr Zia ud Din Ahmed, le Professeur Dr Sharafat Ali Hashmi, Maulana Zafar Ahmed Ansari, le Sheikh Ghayas Muhammad, Abdul Malik Irfani et Mme Khawar Khan Chishti.<sup>57</sup> Zia présida sa session inaugurale et exprima l'espoir que « le nouveau Conseil produira un rapport exhaustif sur le système électoral. »<sup>58</sup>

## **LE CONSEIL ET LE DR ABDUL WAHID J. HALEPOTA**

La direction de Tanzil ur Rehman prit fin le 31 mai 1984. Le nouveau Conseil fut nommé le 7 mai 1986, après un laps de presque deux ans. Dr Abdul Wahid J. Halepota fut établi comme son président, et ses autres membres étaient : le juge (retraité) B. G. N. Qazi, le juge (retraité) A. G. Khattak, Maulana Zafar Ahmed Ansari, Mufti Sayyahuiddin Kakakhel, Maulana Muhammad Malik Kandhlawi, Maulana Abdullah Khilji, Maulana Muhammad Mateen Hashmi, Mufti Maulana Muhammad Hussain Naeemi, Professeur Maulana Muntakhib ul Haq Qadri, Mufti Zafar Ahmed Naumani, Mme Nisat Fatima, Maulana Abdul Ghaffar Hasan, Allama Taliban Jauhari, Dr Zia-ud-din Ahmad, Dr Hassan-uz-Zaman, Sheikh Ghayas Muhammad et Abdul Malik Irfani.<sup>59</sup> Le président Dr Abdul Wahid J. Halepota (Halepota) servit comme directeur de l'Institut de Recherches Islamiques pendant les années 1977-1986.

L'aspect le plus remarquable de ses années à la tête de l'Institut de Recherches Islamiques fut qu'aucun point de divergence n'a été jamais envoyé au Conseil concernant les différentes questions soumises pour délibération au Conseil. C'était de nouveau un organisme dominé par

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<sup>57</sup> Notification No 28(2)-Admin I/80, May 31, 1981 the Ministry of Religious Affairs Government of Pakistan, printed in *Islami Nazaryati Council Salana Report 1981-1982*, 15.

<sup>58</sup> Address of the President Zia ul Haq in the inaugural session of the Council of Islamic Ideology, June 22, 1981 at Federal Secretariat, Islamabad printed in *Islami Nazaryati Council Salana Report 1981-1982*, 24-44.

<sup>59</sup> Notification No. 27 (4)/79-Admn. I. May 7, 1986 the Ministry of Religious Affairs and Minorities Affairs, Government of Pakistan, printed in *Islami Nazaryati Council Salana Report 1986-1987*, 3.

les ulémas et la majorité des membres étaient nouveaux, excepté deux, à savoir Zafar Ahmed Ansari et le Mufhti Sayyahuddin Kakakhel. Zia lui-même présida la session inaugurale du Conseil nouvellement nommé. Dans son adresse on peut découvrir les raisons évoquée du laps de deux ans avant que le nouveau Conseil ne soit nommé. La seconde caractéristique remarquable de ce Conseil était que la plupart de ses membres étaient nouveaux. Zia déclara finalement ce qu'il attendait du nouveau Conseil. Faisant part de son ressentiment envers le précédent Conseil, il déclara : « ... le Conseil précédent a outrepassé son rôle en dépassant les limites de son statut consultatif... »<sup>60</sup> Il a exprimé le désir que le nouveau Conseil « ... ne soit pas seulement un organisme inactif, il devrait adopter le moyen cours entre ces deux extrêmes. » Par ailleurs, il informa le nouveau Conseil qu'il « ...devrait porter toute son attention sur la proposition de Sharia Bill circulé par le Sénat pour susciter l'opinion publique. »<sup>61</sup>

## **CONCLUSION**

Le Conseil de l'Idéologie Islamique et ses prédécesseurs, le Conseil consultatif de l'Idéologie Islamique et la Commission Législative Islamique, reflètent, à travers leurs recommandations, les questions auxquelles dût faire face la société aux époques des différents gouvernements. La volonté des gouvernements au pouvoir de préserver ces institutions, dont l'existence avait été envisagée par une constitution rédigée dans des circonstances entièrement différentes, ainsi que de maintenir la confidentialité des recommandations, montre une gouvernementalité qui s'appuie de manière récurrente sur un discours islamique cohérent. Les recommandations du

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<sup>60</sup> Addressed of the President Zia ul Haq, May 27, 1986, in *Islami Nazaryati Council Salana Report 1986-1987*, 13-16.

<sup>61</sup> Ibid.

Conseil ont reflété par ailleurs la manière dont la demande pour la promotion d'un mode de vie islamique depuis les premières années de la création du pays a progressivement évolué.

La première constitution du pays a été promulguée neuf ans après sa création et une des raisons du retard furent les débats houleux concernant le rôle envisagé pour l'Islam dans la configuration politique du pays. Le rôle envisagé pour les ulémas dirigeant les partis politico-religieux, fut d'abord d'avoir le pouvoir de nommer un organisme d'experts en Sharia et doté d'un pouvoir de veto sur la législature ou ayant une position de Sheikh-ul-Islam. Une autre option était l'octroi d'une autorité aux juges leur conférant le pouvoir de déterminer l'islamité des lois. La Commission Législative Islamique, comme organe consultatif, reflétait la gouvernamentalité des fondateurs de la constitution, qui visaient la suprématie de la législature et un meilleur contrôle de la population, s'opposant ainsi à la popularité croissante des leaders des partis politico-religieux. Le premier chapitre de la présente étude a tracé la genèse de la Commission Législative Islamique dans la constitution de 1956. Il a soutenu que les racines de cette Commission remontent au Conseil de Talimaat-e-Islamia (BTI) établi en 1949 par le Comité de Principes de Base (BPC) et le Département de Reconstruction Islamique, établi par le gouvernement provincial du Pendjab occidental en 1947.

Le département établi par le gouvernement provincial du Pendjab apparaît comme la première tentative d'influencer les membres de l'Assemblée constituante en vue de l'établissement d'un département identique au Centre visant à traiter de la question du futur rôle de l'Islam dans la constitution du pays. La première mesure constitutionnelle du pays fut l'adoption de la Résolution des objectifs du 12 mars 1949, qui affirma l'engagement à venir en faveur des principes de l'islam dans les domaines politiques du pays, affectant de manière implicite l'avenir des ulémas. La première inclusion formelle d'ulémas dans le gouvernement central était la nomination du BTI par les membres du BPC. Leur tâche était de guider les fondateurs

de la constitution sur les questions regardant l'islam, comme le rôle du chef d'État dans un gouvernement islamique, le statut de femmes candidates au poste de chef d'État ou les devoirs d'un gouvernement en islam. La gouvernementalité qui transparaît à travers la nomination des membres du Conseil, qui n'appartenaient à aucun des partis politico-religieux, montre la volonté du gouvernement de contrer le désir de ces partis de se voir considérés comme seuls représentants légitimes de l'islam dans le pays. Une brève comparaison du rapport du BTI avec le projet du premier rapport du BPC, montre que contrairement au BTI, qui recommandait la nomination d'un corps d'experts dans la Sharia, le rapport du BPC présenté à l'Assemblée constituante fait table rase de ces recommandations. Cependant, le point d'orgue de cette étude dans l'épisode des relations de travail entre le BTI et le BPC était le fait que, malgré le rejet des recommandations par le BPC, ce dernier affirma que le BTI avait été consulté sur plusieurs questions. Cette remarque expose le désir des détenteurs du pouvoir de rassurer les membres de l'Assemblée constituante concernant le fait que le corps des ulémas nommé par le gouvernement avait bien été consulté, et que les décisions concernées ne contrevenaient donc pas aux principes de l'islam. Cela explique aussi la raison pour laquelle le rapport du BTI ne fut pas révélé aux autres membres de l'Assemblée constituante et il fut réservé aux seuls membres du sous-comité chargé des discussions avec les membres de l'Assemblée.

Cet épisode de la relation de travail du BTI, qui était un corps d'ulémas nommé par le gouvernement, avec le BPC, composé de membres du gouvernement chargé de rédiger le projet de constitution, manifeste la gouvernementalité en ce qu'il montre que la nomination d'un organisme d'ulémas se fit dans le but d'obtenir leur consentement de manière manifeste, tout en gardant ses procédures cachées, ses rapports confidentiels et la nature du dit organisme consultative. Ce consentement des ulémas avait un rôle d'apaisement de la population, dont la compréhension de l'islam se basait sur les interprétations que leur donnaient ces mêmes ulémas, avec pour but ultime un meilleur contrôle de la population. Ce sont les traits communs

qui ont pu être dégagés de ces trois organismes dont l'existence est prévue par les constitutions de 1956, 1962 et de 1973, comme nous l'avons évoqué dans les chapitres précédents.

Le rejet du premier rapport du BPC par les membres de l'Assemblée constituante, le rôle de l'islam y étant jugé insuffisant conformément à la Résolution des objectifs, a abouti à un changement d'attitude tant des partis politico-religieux que du gouvernement. Les membres nommés par le BTI se joignirent aux ulémas, et apparurent par la suite comme partie prenante dans le processus d'élaboration de la constitution, ayant un impact remarquable sur le développement législatif du pays. Ceci apparaît clairement quand le deuxième rapport du BPC rédigé par les mêmes membres, et qui contenait des dispositions pour l'établissement d'un conseil d'ulémas, et le troisième rapport du même BPC envisageait par ailleurs de conférer cette autorité aux juges de la Cour suprême pour empêcher la future législature de rédiger des lois contraires aux principes de l'islam. Tels furent les compromis faits sous la pression des ulémas et la volonté des rédacteurs de la constitution d'intégrer au gouvernement des ulémas comme la constitution de 1956 prévoyait la création d'une Commission Législative Islamique comme corps gouvernemental consultatif visant à recommander des mesures promulguées au nom de l'islam ainsi qu'examiner l'islamité des lois existantes.

La Commission Législative Islamique prévue par la constitution de 1956, ainsi que les dispositions qui y sont liées, manifestent la gouvernementalité de ses fondateurs, dans la mesure où la revendication des ulémas pour obtenir le droit de veto sur la législature ne fut pas satisfaite. Au lieu de cela, cette institution garda une nature consultative. Un autre fait qui avait été accepté par les fondateurs, était le délai de cinq ans envisagé pour accomplir la tâche d'examen des lois, ainsi que celle de transformation de la société selon les principes de l'islam. Ce délai de cinq ans démontre ainsi que ce n'était pas une tâche simple que de passer au peigne fin des lois basées sur des principes généraux qui avaient été vivement débattus parmi ceux qui

les créèrent. Une fois la constitution promulguée, Iskander Mirza, le Président mit presque une année entière pour nommer une commission à un membre, qui s'élargit par la suite en l'espace de quelques mois. Ce retard, cette lenteur dans la nomination de ses membres explicitent un autre facteur crucial, à savoir que le travail de la Commission reflétait la volonté mais aussi la stabilité du gouvernement. Comme à cette époque le gouvernement lui-même chancelait, les Premiers ministres étant changés deux fois et les voix en faveur d'un amendement de la constitution se faisant déjà entendre dans l'Assemblée une fois que les élections auraient lieu comme prévu par la constitution de 1956. Un autre facteur que révèle la nomination du juge Sharif à la Cour suprême plutôt qu'un juge ayant reçu une éducation religieuse, c'est le fait que le gouvernement ne voulait pas seulement que cette commission travaille à la lumière des principes de l'islam, mais aussi garde à l'esprit les complications légales, les devoirs constitutionnels et les obligations internationales en émettant ses recommandations.

Avec l'abrogation de la constitution de 1956, la Commission Législative Islamique disparut des pages de l'Histoire. Cependant, pendant les quelques mois de son existence après sa nomination, et du fait qu'il ne tint qu'une seule réunion, on ne peut pas affirmer qu'il eut une influence significative sur le travail du gouvernement, qui lui-même s'effondra après 1956. Néanmoins sa présence dans la constitution, le retard dans sa nomination, le profil de ses membres et ses devoirs en tant qu'institution nous aident à comprendre la gouvernamentalité des fondateurs de la constitution et les aspirations des gouvernants qui se dotèrent d'un corps d'ulémas pour mieux prendre le pouls du peuple. Le plus important pour le gouvernement était de garder la nature consultative et passive de cette institution, afin de garder son pouvoir discrétionnaire et afin qu'il donne l'impression que les mesures prises au nom de l'islam conféraient un caractère islamique au pays, facteur déterminant pour maintenir la popularité du gouvernement, mais aussi moyen de prévenir toute attaque des partis politico-religieux l'accusant de gouverner le pays à l'encontre des principes islamiques.

Le conseil consultatif de l'Idéologie Islamique était le précurseur de la Commission Législative Islamique prévue par la constitution de 1962. La constitution promulguée par le gouvernement Ayub en 1962 prévoyait en effet un Conseil consultatif de l'Idéologie Islamique. Le changement de son nom, de « Commission Législative Islamique » en « Conseil consultatif de l'idéologie Islamique » manifeste l'approche d'Ayub, qui l'envisageait comme un organe purement consultatif chargé de fournir des recommandations à son gouvernement. Ce changement de nomenclature révèle par ailleurs l'approche instrumentale qu'Ayub adopta envers l'idéologie islamique, comme du discours nationaliste, tout cela dans le but de préserver l'unité d'une nation par ailleurs fragile. En outre, en gardant ses recommandations confidentielles, le gouvernement avait l'intention de garder le contrôle de la réflexion afin de pouvoir opter pour celles seules qui convenaient à sa stratégie politique de bonne gouvernance, tandis que les autres recommandations furent jetées dans les oubliettes de l'histoire, ne pouvant ainsi jamais plus être utilisées pour pressuriser publiquement le gouvernement.

Pendant cette transition, son changement de nom, la croissance institutionnelle et les mutations dans son rôle sont visibles. Le Conseil consultatif s'est développé en ce qu'il n'était plus destiné à exister pour un temps défini, comme son successeur qui était censé durer cinq ans. Son existence devint donc indéfinie, bien évidemment tant que la constitution reste la loi suprême du pays, avec pour but de faire office d'organe consultatif pour le gouvernement d'une part, tout en contrant d'autre part les ulémas qui s'opposaient au gouvernement d'Ayub. D'ailleurs, ses recommandations, selon sa propre procédure, devaient être gardées confidentielles, afin qu'il ne dépende que du gouvernement de choisir parmi elles celles qui lui paraissaient les plus appropriées à la conduite du gouvernement.

Une autre évolution dans le rôle du Conseil consultatif fut que son travail allait désormais de pair avec l'Institut de Recherches Islamiques, dont le but était de mener une recherche

islamique destinée à fournir le matériel sur la base duquel le Conseil devait émettre ses recommandations. L'évolution principale de ses devoirs, comparé à son prédécesseur, était que l'on ne lui donnait désormais plus la mission d'examiner les lois existantes. Cependant, avant l'organisation de la campagne pour les élections présidentielles et en raison des critiques auxquelles faisait face le gouvernement, particulièrement en raison des lois familiales, il fut donné au conseil la responsabilité d'examiner les lois existantes afin de déterminer leur islamité. Les recommandations du Conseil consultatif qui furent prises en compte par le gouvernement furent peu nombreuses, et inclurent notamment l'introduction obligatoire des études islamiques dans les universités et l'introduction d'une formation militaire dans les institutions éducatives. Une des raisons pour lesquelles la plupart de ces recommandations ne parvinrent pas à l'Assemblée ni au Président pour être discutées, fut que le ministère les renvoya, invoquant la raison qu'elles ne faisaient pas l'unanimité parmi le Conseil consultatif et l'Institut de Recherches Islamiques.

Une des raisons majeures de la différence dans les recommandations du Conseil était son désaccord avec l'Institut de Recherches Islamiques sous le Dr Fazlur Rahman. La cause principale de ces différences était que l'environnement interne du Conseil était conservateur en raison de la présence d'ulémas des partis politico-religieux conformistes, comme la Jamiat Uléma-e Pakistan, qui favorisait Ayub contre la Jamaat, tandis que l'environnement de travail de l'institut était moderniste en raison de l'approche de son directeur. Les différences entre les deux institutions s'exprimaient sur un nombre de questions, par exemple le statut de l'alcool. Les membres du Conseil consultatif étaient unanimes à dire que l'on devait l'interdire complètement, tandis que l'avis de l'Institut était que l'alcool ne devait pas être interdit, mais seulement l'ivresse qui pouvait résulter de sa consommation. De même, la position du Conseil consultatif était de nature traditionnelle en ce qui concerne les jeux de hasard et l'introduction d'un système de déduction de la Zakat tandis que l'avis de l'Institut sur ces questions y était

opposé. La divergence d'opinions de ces deux institutions a favorisé le gouvernement comme la plupart des recommandations envoyées au Président, étaient renvoyées par le Ministère des questions législatives, affirmant qu'elles n'étaient pas unanimes et nécessitaient davantage de réflexion.

Le nombre de recommandations du Conseil consultatif qui furent intégrées à la législation n'est pas significatif pour comprendre son rôle au sein du gouvernement Ayub. En revanche, les débats internes revêtaient une grande importance au sein du Conseil, et mettaient en lumière des questions qui devinrent bientôt les slogans des partis politico-religieux durant les années finales du gouvernement Ayub. Comme certains des membres du Conseil consultatif appartenaient aux partis qui soutenaient auparavant le gouvernement, et au cours des années qui virent sa fin, ils se retournèrent contre celui-ci, comme c'est le cas de la Jamiat Ulema-e Pakistan. Pendant les jours de la chute du gouvernement, durant lesquels les protestations contre le gouvernement Ayub atteignirent leur apogée, la démission du directeur de l'Institut de Recherches Islamiques, aboutit à une recommandation unanime du Conseil consultatif pour mener à bien l'ébauche d'un projet d'ordre social islamique. Par exemple, les recommandations liées à l'introduction d'une organisation chargée de déduire la Zakat, l'interdiction complète de l'alcool, des jeux de hasard, et la transformation du droit pénal en lois Hudud s'alignèrent sur les revendications des partis politico-religieux qui étaient au premier rang de la contestation anti-gouvernementale. Par ailleurs, nombre de ces recommandations furent promulguées dans la décennie qui suivit la fin du gouvernement Ayub.

Le Conseil consultatif fut transformé en Conseil d'Idéologie Islamique par la constitution de 1973, rédigée par les membres de l'Assemblée élus en 1971, avant la séparation de la partie orientale du pays qui devint le Bangladesh. La sécession du Pakistan oriental eut un profond impact sur la population restante du Pakistan, impact qui transparaît à travers les débats liés à

la rédaction de la constitution et aboutit à un mandat accru pour le Conseil. Le conflit d'intérêts entre le gouvernement de Zulfikar Ali Bhutto et l'opposition dominée par les ulémas, est mis en lumière par le fait que la disposition liée au Conseil dans la constitution correspond à un compromis de dernière minute entre les deux parties prenantes. Bhutto persuada l'opposition qu'en octroyant au Conseil le mandat de présenter son rapport directement à la législature, qui promulguerait la législation dans un temps déterminé, il augmentait le mandat du Conseil. Les rédacteurs de la constitution, en raison des revendications accrues des partis politico-religieux au sein de l'Assemblée, enlevèrent l'adjectif « consultatif » de son nom. Cependant l'élément le plus important marquant l'évolution du Conseil n'était pas son changement de nom, mais plutôt le mandat qui lui donnait un accès direct aux membres du Parlement.

Les raisons de ce rôle accru du conseil dans la constitution de 1973 étaient multiples, la plus significative parmi celles-ci étant l'épisode de 1971 qui aboutit à la sécession de la partie orientale du pays et de son émergence comme pays indépendant, le Bangladesh. Ceci permit aux partis politico-religieux d'élargir leur base auprès d'une population déjà inquiète des dangers pesant sur l'intégrité territoriale du pays, lui présentant le discours islamique comme seul rempart permettant de préserver cette intégrité. De manière identique, le gouvernement Bhutto eut aussi besoin du soutien populaire s'il voulait obtenir une majorité tranchée lors des élections à venir, et il essaya d'obtenir ce soutien d'avril 1973 à janvier 1977, pour lequel il accepta nombre de compromis avec les ulémas.

Les membres de Conseil qui furent nommés par le gouvernement Bhutto étaient majoritairement liés au pouvoir judiciaire, ce qui transforma le Conseil en un organisme dominé par des membres ne pouvant y travailler qu'à temps partiel, comme le montre le fait que le nombre de réunions tenues pendant ces trois années déclina drastiquement comparé à l'institution qui l'avait précédé. Quant à la croissance institutionnelle du Conseil, elle fut

favorisée par son propre département de recherches, lui permettant de ne pas dépendre entièrement de l'Institut, comme c'était le cas auparavant. L'amendement des procédures de fonctionnement du Conseil en 1975, l'empêchant d'envoyer ses rapports directement à la législature, montre que le gouvernement avait réalisé le danger potentiel de se voir stigmatisé pour ne pas promulguer des lois basées sur les rapports d'un organisme nommé par ses propres soins. Ce rapport recommandait au gouvernement de déclarer le vendredi jour férié, d'annoncer des mesures pour déduire et déboursier la Zakat et de remplacer le droit pénal par les lois de Hudud. Ceci fut le seul rapport présenté directement à la législature par le Conseil. Par cet amendement dans ses procédures de travail, le gouvernement voulait maintenir le statut passif des recommandations, revendications qui étaient parallèles à celles contre le gouvernement Bhutto et qui aboutirent à la prise de pouvoir par le Général Zia en 1977. C'est cette stigmatisation du gouvernement de Bhutto, au regard de son utilisation du Conseil, qui fit que pendant les dernières années de son règne, l'opposition refusa d'accepter le rôle du Conseil comme instrument légitime de l'islamisation.

Les compromis effectués par le gouvernement de Bhutto, depuis sa prise de contrôle, dans sa tentative d'accroître sa popularité avant les élections à venir, aboutirent paradoxalement à lancer le Pakistan sur les chemins d'une islamisation. Ceci a commencé par le rôle accru du Conseil dans la constitution 1973, suivi par l'approbation des lois anti-*Qadiani* en 1974, l'officialisation du vendredi comme jour férié en 1976, la législation contre l'alcool et les jeux de hasard en 1977 et l'offre aux dirigeants partis politico-religieux de prendre la tête du Conseil. Le gouvernement Bhutto mit ainsi en place sans le vouloir une islamisation qui servit de prétexte à son propre chef des armées, le général Zia ul Haq, pour s'emparer du pouvoir dans la décennie qui suivit.

Le travail du Conseil pendant les onze longues années du gouvernement Zia du 5 juillet 1977 au 11 août 1988 est divisé en trois périodes correspondant à ses trois différents directeurs, à savoir le juge Afzal Cheema, le juge Tanzil ur Rehman et le Dr. Abdul Wahid J. Halepota. Sur cette base, il est avancé que le travail du Conseil pendant ladite période montre implicitement la gouvernementalité de Zia. La première période se situe immédiatement après sa prise de pouvoir, durant laquelle le Conseil évolua en un organisme législatif, chargé d'ébaucher des projets de loi, mais aussi des mesures comme la priorité donnée au port du costume national, qui a eu un impact sur le psyché de la société. Pendant cette phase, Zia était dans un état de paranoïa, comme Bhutto représentait une menace pour son autorité. Ainsi, nombre de recommandations du Conseil, particulièrement celles relatives aux punitions comme la lapidation à mort, le tranchage des mains, le fouettage pour divers crimes comme l'adultère, le vol et la fausse accusation avait respectivement été présentées sous la forme de lois Hudud. Cependant, en même temps, certaines des recommandations du Conseil comme les *Qisas* et les lois *Diyat*, rédigées par le Conseil et envoyées avec d'autres lois Hudud furent ignorées par Zia comme contraires à ses intérêts politiques. D'autres mesures comme l'introduction du costume national, les pauses pour la prière dans le secteur public, l'affichage de versets coraniques dans les bureaux de la fonction publique et le contrôle des médias furent encouragées par le gouvernement sur la base des recommandations du Conseil. Pendant cette phase, les relations entre le gouvernement et le Conseil sous la direction du juge Cheema restèrent cordiales malgré la sélectivité du gouvernement au regard de ses recommandations.

À la fin du terme du juge Cheema, le Conseil, sous l'égide du juge Tanzil marque le début de la deuxième partie du travail de Conseil sous le gouvernement de Zia et la deuxième phase de son gouvernement, le danger de Bhutto ayant été écarté, Zia gagna en confiance, comme plus personne n'était là pour contester son pouvoir. Pendant cette phase, le Président du Conseil critiqua le gouvernement à de nombreuses reprises, pas seulement pour avoir ignoré ses

recommandations, mais aussi pour la promulgation de décrets regardant la Zakat et le *Ushr* et les transactions bancaires exemptes d'intérêts sous une forme qui ne convenait pas au Conseil. Pendant cette phase, le Conseil demanda au Président de lui permettre de publier le compte-rendu de ses activités, afin que le public puissent être informé de la nature de ses recommandations. Un autre point de contention entre le Conseil et le gouvernement de Zia, fut le refus du Conseil de condamner le système démocratique basé sur les partis politiques comme contraire aux principes de gouvernance islamique. Après la fin du mandat du juge Tanzil-ur-Rehman, il y eut une vacance de deux ans avant que le président suivant, le Dr. Abdul Wahid J. Halepota (Halepota) soit nommé son président. Son travail resta d'ailleurs principalement confiné à la compilation des travaux du Conseil précédent et aux questions liées au décret de la Sharia, qui était discutées dans l'assemblée comme un projet de loi.

Basé sur les informations de ces comptes-rendus, les débats de la législature, les documents officiels et ce qui a été dit précédemment, il ne serait pas erroné d'affirmer que la raison d'être du Conseil pendant ces années put varier. Toutefois, on peut certainement avancer que ce fut seulement à la demande des ulémas que le maintien du Conseil fut garanti dans les trois constitutions. Les gouvernements exigeaient également qu'une institution reflète la sensibilité des ulémas, eu égard à leur place dans la société en raison d'une conception particulière de l'islam au sein de la population, ceci afin de mieux la diriger et la contrôler. L'attente tant du gouvernement que des partis politico-religieux regardant cette même institution était non seulement différente, mais divergente, comme d'une part, les ulémas aspiraient à obtenir un pouvoir de veto sur la législature qui leur garantirait un rôle permanent dans le paysage politique du pays incarnée par leur représentation dans le Conseil. Paradoxalement, en même temps, la gouvernamentalité exigeait d'avoir un département avec des pouvoirs de contrôle, dont les recommandations devaient être maintenues confidentielles afin que le gouvernement puisse exercer son pouvoir discrétionnaire sur ces recommandations, qui devaient apparaître

comme l'expression de la volonté du gouvernement d'introduire l'Islam dans la vie du peuple. Il transparaît de la discussion qui précède, qu'une fois la constitution pourvue de ces provisions, le gouvernement agit avec grande précaution en procédant à la nomination des membres de ces Conseils. Par exemple, la nomination des membres de la Commission de Lois Islamiques, pourvue par la constitution de 1956 prit une année entière. La question ne concernait pas le fait qu'ils deviennent ou non l'autorité de référence en matière d'Islam, mais plutôt qu'il ne constituent pas un danger pour le gouvernement. Ch. Zahur Illahi, déclara que le Président de cette époque (Iskander Mirza), en abrogeant la constitution de 1956 a dit, « *je ne supprimerais pas cette commission...si j'avais la garantie qu'ils n'émettront aucune recommandation ...* »<sup>62</sup>

La constitution de 1962 qui a été promulguée par le gouvernement militaire d'Ayub Khan différait de celle recommandée par la commission nommée à cet effet. Cela explique pourquoi le rapport de la Commission de la Constitution n'a pas été rendu public par le gouvernement Ayub, malgré les assurances précédentes que ses recommandations seraient rendues publiques. Les dispositions liées au Conseil consultatif faisaient partie de ces différences, c'était donc la gouvernementalité du gouvernement militaire aussi que de le maintenir comme une institution pour bénéficier de ses recommandations. La composition du Conseil consultatif reflétait la même gouvernementalité dans la mesure où ses membres ne constituaient pas un danger pour le gouvernement. De plus, en gardant son travail confidentiel, le gouvernement s'assurait ainsi qu'il ne constituerait pas une menace et que ses recommandations ne seraient pas récupérées par l'opposition pour l'accuser de ne pas mettre en œuvre lesdites recommandations. La constitution de 1973, rédigé et discutée par les représentants élus du pays, enleva le terme « consultatif » de son nom et accrut son mandat dans la mesure où ses rapports devaient être soumis directement à l'assemblée pour discussion.

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<sup>62</sup> Ch. Zahur Illahi, National Assembly of Pakistan Debates (Constitution Making), February 27, 1973, 385.

Le gouvernement de Zulfikar Ali Bhutto après la promulgation de la constitution fit usage de la même gouvernementalité en gardant ses travaux confidentiels. Dans son désir d'avoir une constitution unanime, alors qu'il n'en rédigeait encore que l'ébauche, le Conseil se vit octroyer le droit d'envoyer ses recommandations directement à la législature. Cependant, après son premier rapport de 1975, ses procédures de travail furent amendées afin d'éviter que ses recommandations puisse se transformer en pression publique. Le gouvernement Bhutto a aussi prévu son rôle actif contre les partis politico-religieux pendant la contestation de 1974 et plus tard, pendant les protestations de l'Alliance nationale du Pakistan, qui comprenait des demandes d'islamisation du pays.

Le changement des procédures de travail du Conseil devint visible avec le changement de gouvernement, le contraste le plus visible étant entre le gouvernement du général Ayub Khan et celui du général Zia ul Haq. Pendant le gouvernement Ayub, l'utilisation du discours islamique était minimale comme Ayub essayait de le maintenir à l'arrière-plan tandis que Zia s'appuyait entièrement sur un discours islamique. Les travaux du Conseil, pendant ces deux gouvernements, reflète les questions à laquelle la société était confrontée et la gouvernementalité que représente le fait de débattre de ces questions au sein du Conseil de manière confidentielle. Le travail du Conseil pendant lesdits gouvernements montre que le nombre de recommandations qui furent retenues par le gouvernement pour être mis en œuvre varia. Cependant le rôle de Conseil resta cohérent. L'étude indique d'autre part que l'impact des recommandations du Conseil ne s'est pas limité à la structure législative du pays, mais s'est étendu à la configuration sociale, économique et éducative de la société. Son rôle cognitif dans les mesures comme, l'officialisation du vendredi comme jour férié, l'interdiction de l'alcool, les lois contre le blasphème et même la création d'institutions comme la Federal Sharia Court, la fondation de l'Université Islamique Internationale, qui semblaient une simple mesure d'islamisation du pays, fut en réalité recommandée par le Conseil.

Sommaires toutes, on peut affirmer que la nature de ses devoirs et la composition du Conseil évoluèrent en même temps que les gouvernements successifs. En se basant sur les découvertes de cette étude, on peut avancer que tous les gouvernements de la période étudiée ont recouru aux recommandations fournies par le Conseil pour promulguer des mesures au nom de l'islam, dont l'ampleur divergeait en fonction de leur propre stratégie politique. Les recommandations du Conseil ont non seulement eu un impact sur la législation, mais aussi le tissu social du pays. On peut donc affirmer que le Conseil a manifesté un plus grand rôle dans la gouvernance du pays qu'il ne l'était généralement admis jusqu'à présent. Le Conseil continuera d'exister tant que la constitution de 1973 sera appliquée. La présente étude se termine sur la fin du gouvernement Zia, laissant une place ouverte aux chercheurs pour explorer dans les années à venir les rapports du Conseil, véritables mines d'informations pour décrypter la question complexe de l'instrumentalisation politique de la religion au Pakistan dans les années qui ont suivi le régime de Zia.