

ISLAMIC PROVISIONS

227. Provisions relating to the Holy Qur'an and Sunnah. (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.

¹[**Explanation.** In the application of this clause to the personal law of any Muslim sect, the expression "Qur'an and Sunnah" shall mean the Qur'an and Sunnah as interpreted by that sect.]

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

NOTES

1. **Scope.** Article 227 of the Constitution of Pakistan (1973) is to be enforced through the Council of Islamic Ideology, whereas Article 203-B is to be enforced through Courts. In Article 227 the scope and sphere of Council of Islamic Ideology is very wide whereas in Article 203-B the jurisdiction of the Courts is limited both in point of time and also as regards certain subjects mentioned therein. To come nearer to the point in hand, Article 203-B excludes from its purview examination of "Muslim Personal Law", whereas, there is no such exclusion from the purview of the Council of Islamic Ideology. Allowing both these Articles to operate in their respective spheres, the conclusion is inevitable that all such laws which apply to Muslims in their capacity as Muslims, whether these are statutory laws, or are applied under sanction of a statute, are left to be dealt with by the Council of Islamic Ideology and are not to be gone into by Courts and this is what the phrase "Muslim Personal Law" for the purpose of its exclusion in the context means. In other words, the aforesaid phrase does not mean the pure religious laws of the Muslims, but means—(if we can so put it)—the special law administered as "Muslim" or under the denomination "Muslim" to Pakistani Muslims which may sometimes be different from the corresponding portions of pure "Muslim Laws" as administered in certain Muslim States

¹ Added by Constitution (Third Amdt.) Order 1980 w.e.f. 17 Sept. 1980.

unaffected by the non-Islamic Legislation or juristic influence. [PLD 1981 S.C. 120] So long as the existing statutes were not brought in conformity with injunctions of Islam, their interpretation, application and enforcement, wherein discretionary judicial elements were involved, only that course would be adopted which was in accord with the Islamic philosophy, its common law and jurisprudence. [PLD 1991 S.C. 368; PLD 1989 S.C. 613; 2004 PTD 122] Islamic value shall have to be adopted and commitment to enforcement of Sharia have to be manifested if enforcement of Sharia is to be made in living reality. [PLD 2000 S.C. 760] Every law to be framed by the Parliament has to conform to the injunction of Islam and if any such law is found to be repugnant to the injunctions of Islam the Federal Shariat Court as well as Shariat Appellate Bench of the Supreme Court has the power to scrutinize the said law on the touchstone of Islamic injunctions and take the necessary declaration as contemplated in Article 203D of the Constitution. [PLD 2000 S.C. 225] Where existing laws or any provision thereof on examination by the Federal Shariat Court are declared repugnant to the injunctions of Islam, such laws or provisions thereof ceases to have effect on the day on which the decision of the Court takes effect. [PLD 2001 S.C. 18]

Repugnant. Meaning and scope of the terms "repugnant" is not limited only to the actual state of being contrary *i.e.*, contrariety, conflict, antagonistic, opposite or being disparate of the letter of the NASS/Injunctions of Islam alone but would also cover the case when an impugned provision of law, law itself or a custom is, disagreeable, repulsive, offensive, distasteful, inconsistent, incompatible, irreconcilable or even averse to the spirit of the NASS *i.e.*, Injunctions of Islam. [PLD 2010 FSC 1]

228. Composition, etc., of Islamic Council. (1) There shall be 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 ²[twenty], as the President may appoint from amongst person having knowledge of the principles and philosophy of Islam as enunciated in the Holy Qur'an 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—

- (a) so far as practicable various schools of thought are represented in the Council;
- (b) not less than two of the members are persons each of whom is, or has been, a Judge of the Supreme Court or of a High Court;
- (c) not less than ³[one third] 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

² Subs. by Constitution (Fourth Amendment) Order 1980 w.e.f. 30 November 1980.
³ Subs. by Constitution (Eighteenth Amendment) Act, X of 2010 for the word "four".

(d) at least one member is a woman.

⁴[(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.

NOTES

1 Scope. Council of the Islamic Ideology has been assigned a special advisory role which is to give effect to provision of Article 227(1) of the Constitution. Provision of Chapter 3-A of Part VII of the Constitution create a special jurisdiction for examination of vires of various laws (but not executive orders, decision or actions) in the light of injunctions of Islam and an existing law can be declared to be repugnant to the injunctions of Islam to the extent of repugnancy in the law or any other provision thereof. [2000 CLC 2034]

229. Reference by ⁵[Majlis-e-Shoora (Parliament)], etc. to Islamic Council. The President or the Governor of a Province may, or if two-fifths 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 ⁵[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 Qur'an 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;
- (c) 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 Subs. by Constitution (Fourth Amdt.) Order 1982 w.e.f. 22 Sept. 1982.

⁵ Subs. by P.O. 14 of 1985 w.e.f. 2 March 1985.

(d) to compile in a suitable form, for the guidance of ⁵[Majlis-e-Shoora (Parliament)] and the Provincial Assemblies, such Injunctions of Islam as can be given legislative effect.

(2) When, under Article 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 the 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 ⁵[Majlis-e-Shoora (Parliament)] and the Assembly, after considering the report, shall enact laws in respect thereof within a period of two years of the final report.

231. Rules of procedure. The proceedings of the Islamic Council shall be regulated by rules of procedure to be made by the Council with approval of the President.

NOTES

Since the inception of Pakistan the desire to introduce Islamic way of life for the Muslim citizens of the State has found expression in different enactments. In the draft Constitution prepared by the first Constituent Assembly, a Board of Ulema was to be set up, to propose legislation from an Islamic angle. Article 198 of the Constitution 1956 provided that no law would be enacted which was repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah, and the existing law would be brought into conformity with such Injunctions. The 1962 Constitution provided establishment of Advisory Council of Islamic Ideology and the Islamic Research Institute with a view to achieve generally the same object. The present Constitution also contains likewise provisions and envisages establishment of a Council of Islamic Ideology whose primary function is to bring all the existing laws in conformity with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

The Council consists of not less than eight and no more than 15 members which are to be appointed by the President. A person to be qualified for appointment as a member of the Council should be equipped with (i) special knowledge of the principles and philosophy of Islam as enunciated in the Holy Qur'an and Sunnah, and (ii) should have full understanding of the economic political, legal or administrative problems of Pakistan. The criterion prescribed by the Constitution ensures that a person considered to be appointed as a member of the Council should not only have a thorough knowledge in the religious matters but should be well versed with the current political, economic and administrative problems of the country.

While making appointment of members to the Islamic Council, the President is to ensure:

- (a) as far as possible various schools of thoughts are represented in the Council;
- (b) at least two members should be such person who are or have been Judges of the Supreme Court or of a High Court;
- (c) there shall be at least four persons having not less than fifteen years experience in Islamic research; and
- (d) at least one member should be a woman.

The members of the Council are appointed for a term of three years. A member may be, by writing under his hand addressed to the President, resign from 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.

Functions of the Council.

- (i) **Recommendatory.**
 - (a) The Council is required to make recommendations to the Parliament and the Provincial Assemblies as to the ways means by which the Muslims of Pakistan may be enabled to order their lives, individually and collectively, in accordance with the principles and concepts of Islam as laid down in the Holy Qur'an and Sunnah. It is primary function of the Council as is provided by the Constitution and in this matter it may act suo motu.
 - (b) It is 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
 - (c) To compile in a suitable form, such Injunctions of Islam as can be given legislative effect.
- (ii) **Advisory.** The President, the Governor of a Province or if two fifth of its total membership so requires; a House or a Provincial Assembly, may refer for advice any question to the effect that the proposed law is not repugnant to the Injunctions of Islam. The advice of the Council seems to be optional and may or may not be accepted by the body making reference.

It has been provided that whenever a question is referred to the Islamic Council, it must within fifteen days inform the referring agency the period within which it expects to be able to furnish that advice. This gives the referring authority an opportunity to determine whether it is possible for it to wait for the advice. If the President, a House, a Provincial Assembly or the Governor, as the case may be, which have referred the matter to the Council is of the view that it is not possible, in the public interest, to wait the advice of the Council it

may make law before the advice is furnished, if the Council reports that the law so referred is repugnant to the Injunctions of Islam, the referring authority must reconsider the law so made.

Besides submission of annual interim reports it is incumbent on the Council to submit its final report within seven years in respect of the functions assigned to it. The reports whether interim or final thus received will have to be laid before the Parliament or a Provincial Assembly as the case may be for discussion within six months of its receipt which shall enact laws in respect thereof within a period of two years of the final report.

To bring the laws into conformity with the Holy Qur'an and Sunnah is a colossal task. If the object be merely to draw up a list of those legal rules which are in conflict with the Holy Qur'an and Sunnah, it may perhaps be possible to state the repugnancies and inconsistencies between the two; but if, on the other hand, as is apparent from provisions made in the Constitution, the object is to recast all the existing laws into what may be called the Islamic mould, the task presents formidable difficulties and can only be performed by those who are fully conversant with both the systems. Any attempt to discover the ratio decidendi from decisions and precedents and the essential principle from a textual statement and to apply such ratio decidendi and principle to modern conditions presupposes, on the part of those entrusted with the job, a thorough conversance with the complexities of present-day life and international relations and thought. This function has been entrusted to the Council of Islamic Ideology, whose members, in recognition of the principles stated above, are to be appointed by the President, having regard to their knowledge of the principles and philosophy of Islam and the understanding of the economic, political, legal or administrative problems of Pakistan. On the right selection of the men chosen for this work will depend whether the Council perform the functions entrusted in an unhesitatingly acceptable manner.

