

**Contemporary Discourse of Constitutionalism in Pakistan:
A Critical Study in the light of Iqbal's Perception of
Constitutionalism**



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Abstract: *The analysis of the contemporary discourse of constitutionalism in Pakistan as per the understanding of constitutionalism by Allama Muhammad Iqbal is very important. There has been a longstanding debate in Pakistan between Liberals and Conservatives regarding the nature of the constitution. The vision of Iqbal, as reflected in his lectures and poetry, can be critically analyzed and applied on the existing constitutional challenges of Pakistan. This paper will critically analyze the salient points enunciated by the intellectual work of Iqbal and will also analyze its applicability and relevance with the constitutional framework of Pakistan. The findings of this research work are based on the review of the existing intellectual work of Iqbal. This study suggests concrete reforms in the constitutional structure of Pakistan. This study can be very useful in future deliberations aiming at constitutional reforms in Pakistan in the backdrop political vision of Iqbal and how he understands constitutionalism.*

Key Words: Constitutionalism, Allama Iqbal, Political Constitutionalism, Legal Constitutionalism, Concept of Tawhid, Theocracy and Spiritual Democracy

Introduction

The notion of constitutionalism has been the most debated and contested idea in Pakistan since its independence in 1947. The two different speeches of Quaid e Azad Muhammad Ali Jinnah have been interpreted by the liberals and conservatives in different ways that resulted in divergences of opinions and ideologies in Pakistan along with a few other factors. (Mukhtar, S., 2018) Both the schools of thought in Pakistan have proposed different constitutional frameworks and have given their separate political and social agendas as per their ideological backgrounds and long-term visions for Pakistan. One school of thought considers that Muhammad Ali Jinnah made a clear message in his speech about the nature of the state of Pakistan in the future and its constitution, and they vigorously demand for an Islamic character of the constitution of Pakistan. (Hussain, S. A., 2015) Subsequently, the National Assembly of Pakistan also passed Objective Resolution in 1949 to further clarify the will and

intentions of the elected legislature of Pakistan about the future outlook of the constitutional system in Pakistan. Moreover, in all the constitutions of Pakistan, there remained a few special articles to highlight the Islamic character of the state of Pakistan in order to reflect the spirit of the Objective Resolutions, 1949, in the social contracts of Pakistan. On the other hand, the liberals and progressive schools of thought demand a secular, progressive and liberal state of Pakistan without any official religion of the state. This school criticized the passing of the Objective Resolution by the National Assembly in 1949 and also objected to all the Islamic articles present in the constitutions of Pakistan. They are of the view that a state should not have any religion, and the constitution of the state should have the secular and progressive character in its intrinsic nature. This whole debate actually revolves around the concept of constitutionalism which is connected with the general theory that the executive and legislature are legally and

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constitutionally limited to their powers and their authorities or legitimacy is dependent on the observation of these limitations in their true letter and spirit. (Sturm, D., 1970) The liberals claim unlimited and unconditional powers of the legislature and executive as well as individual liberties, whereas the conservatives think that the constitutional powers of the legislature and executive are limited as primary sovereignty belongs to Almighty Allah and legislature and executive have to exercise these powers with certain religious and divine limitations. Both of these schools of thought rely on the speeches of the Muhammad Ali Jinnah to prove their ideologies and arguments. The liberal and progressive schools of thought always refer to the speech of Quaid - e - Azam, which he made in August 11, 1947. (Mukhtar, S., 2018) Whereas the conservatives and religious section of Pakistan quote many other speeches of Muhammad Ali Jinnah, which justify and strengthen their point of view. (Ahmed, J.D., 1973)

There is another perspective of this debate that revolves around the concepts of political constitutionalism and legal constitutionalism within the broader concept of constitutionalism. The idea of legal constitutionalism is recognizing the judicial process as the most effective mechanism to secure the ideals of the society, such as equality of all, human rights, and the rule of law. The proponents and scholars supporting the theory of legal constitutionalism also criticize the corresponding theory of political constitutionalism and consider legal constitutionalism as more effective, relevant, and workable as compared to political constitutionalism. On the other hand, political constitutionalism recognizes the democratic process as more important than the judicial process in attaining the significant outcomes of equality of all, human rights, and the rule of law. The concept of the democratic process means the dominant role of the elected legislature through the majoritarian party in the legislature in order to attain the desired objectives for the stability of society, the collective wellbeing of the people, and the rule of law for the law.

Keeping in view the ongoing debate and conflict of ideologies and political visions in Pakistan regarding constitutionalism as well as emerging theories of political constitutionalism and legal constitutionalism, it is also relevant and necessary to review the understanding of the constitutional future and political ideas of the founding fathers of Pakistan about the

concept of constitutionalism in order to find out the appropriate and effective way out to address the constitutional issues. In addition to the speeches and vision of Muhammad Ali Jinnah, the lectures and poetry of Iqbal are also very helpful to seek guidance and enhance understanding about the constitutional issues of Pakistan by analyzing those ideas and evaluating their nature, scope, and possibility of applicability in the constitutional ground realities of Pakistan. Iqbal highlighted his views about the concept of state, the correlation between spiritualism and state, theocracy, and legislature as an institution for Ijtihad in the modern Muslim state. (Saeed, A., 2008)

Iqbal's views about constitutionalism are best expressed in his lectures titled, "Reconstruction of Religious Thoughts in Islam". (Iqbal, S.M., 1930) Moreover, being a poet and intellectual, his poetry also reflects his political thinking and vision about the nature of the modern Muslim state.

We can also go through the literary work of Allama Muhammad Asad (Asad, M., 1954), who was convinced by Allama Muhammad Iqbal in 1932 to stay in India and dedicatedly work on the objective of reconstruction of Islam in the subcontinent on the lines of the approach of reconstruction of Islam by Allama Iqbal. When Muhammad Asad came to British India, Iqbal had a meeting with him and explained to him the idea of an independent Muslim state in India which came into being as Pakistan in 1947. As a result of the influence of Iqbal, Muhammad Asad had decided to stay in India and started working on various literary works related to the reconstruction of Islamic thoughts. (Amir, Z.M., 2015) History tells us that Muhammad Asad was persuaded by Iqbal to help in broadening the intellectual premises of the future Islamic state, and Allama Asad started his work with great commitment. When Pakistan was created, Muhammad Asad was appointed as the Director of the Department of Islamic Reconstruction in August 1947 by West Punjab by Iftikhar Ahmed Mamdoot. Then in 1949, he was appointed as head of the Middle East division in the Ministry of Foreign Affairs, where he made exemplary efforts to strengthen Pakistan's ties with the Muslim states. Finally, he was appointed as Minister Plenipotentiary at United Nations in 1952, but he sooner resigned and started his exclusive work on religion and reconstruction of Islam with dedication. His autobiography is a very famous book titled "The Road to Mecca" (Asad, M., 1954), and he contributed many other books and translations as well

as Arafat: A monthly critique for Muslim thought, his magazine which he started publishing in 1946

His other worthy books related to the political and constitutional philosophy with reference to Pakistan are “the principles of state and government in Islam” (Asad, M., 2007) and “This law of ours and other essays” (Asad, M., 2001) Moreover, Allama Muhammad Asad also submitted his recommendations on the drafting of Pakistan’s first constitution in his sincere efforts to contribute for the newly created Islamic state. (Amir, Z. M., 1957)

During his stay in the Department of Islamic Reconstruction, he envisioned the important objectives for bringing Islamic values in the newly created Islamic state of Pakistan as follows: Reconstruction of Education, Reconstruction of Islamic Law and Society (Ijtihad, the most important role of the legislature), Reconstruction of Islamic Law and Economics and Reconstruction of the welfare state. The literary work and ideas of Muhammad Asad can also be very helpful and productive in understanding the constitutionalism and political ideology of Iqbal as Muhammad Asad started his work of Islamic reconstruction on the suggestion of Iqbal, and he also sought intellectual and ideological inspiration from the Iqbal.

Concept of Constitutionalism

The concept of constitutionalism means having a belief in constitutional governments. The constitutionalism is a paradigm that deals with the legitimacy and validity of the actions of the governments, and it is more important and mandatory than the concept of mere legality according to the fixed laws of the state. (Sturm, D., 1970) Barnett gives his meaning of constitutionalism as the concept of separation of powers, and accountability of the government. (Sturm, D., 1970)

Constitutionalism also asserts its well-founded claim that the rule of law, separation of powers, protection of fundamental rights, and democracy are well suited and effective to promote the wellbeing of the natural persons living in the state. (Lang, T., 2008)

Moreover, there are two broader themes of constitutionalism: Political Constitutionalism and Legal Constitutionalism. (Bellamy, R., 2007) These two concepts are largely distinguishable from each other on the basis of the notions of judicial independence and democratic process with the

supremacy of parliament. Political constitutionalism encompasses the concept of protection of rights, stability, and the rule of law through the majoritarian rule in the parliament and without any power of judicial review of legislation. (Grewal, D. S., & Purdy, J., 2018) The proponents of this school of thought believe that democratic ideals of equality of concern and respect can be achieved through the democratic process, and the democratic process is more effective and legitimate than the judicial process. On the other hand, legal constitutionalism encompasses that the objectives of the democratic ideals of equality of concern and respect can be best reflected as human rights in the form of fundamental law and can be attained through the judicial process and the powers of judicial review of legislation.

The discourse of Constitutionalism in Pakistan: An Overview

Since the creation of Pakistan in 1947, there has been a continuous and heated debate in Pakistan around the following important questions: Who is sovereign in Pakistan? Do we need an Islamic state of Pakistan with complete implementation of Sharia and Islamic Law?

Which is the supreme law in Pakistan? What are the limitations on the powers and mandate of the parliament of Pakistan to legislate? Do we need religion as part of the state, or do we need to separate state and religion? Do we need a Theocracy in Pakistan, or modern Westminster democracy is suitable for the Pakistani system? What is the concept of nationalism and Muslim Ummah in the context of the religious and political identities of Pakistan? The answer to the above questions and a general debate on these questions can rightly point out and explain the nature and scope of the discourse of constitutionalism in Pakistan.

The real debate on constitutionalism is between Liberals and Conservatives sections in Pakistan. The right-wing, Islamic and conservative sections of Pakistan strongly demand the imposition of Sharia in Pakistan as this country was created in the name of Islam, and Muslims of the subcontinent offered unprecedented sacrifices for the new Islamic state of Pakistan. (Iqbal Chawla., 2015) These right wing sections also demand the imposition of Islamic law so that Muslims can live their lives in accordance with the teachings of Islam as enshrined in the Holy Quran and Sunnah. On the other hand, the liberals and progressive section of Pakistan are continuously

demanding a secular, progressive and liberal Pakistan where all the minorities should live together with Muslims with complete freedom of religion and protection of all other rights and liberties without any discrimination of caste, color, and sex.

Both of these schools relied on the speeches of Muhammad Ali Jinnah, poetry and literary work of Iqbal, and other statements of the founding fathers, including Muhammad Asad. These scholars also consider Pakistan as the Islamic state and Quran as the real constitution of Pakistan, so no law can be made in Pakistan against the teachings of Islam as enshrined in Holy Quran and Sunnah. So a section of extreme right-wing Pakistanis also demands the Imposition of Sharia in Pakistan in the light of the spirit of the Quran and Sunnah to change the lives of the people of Pakistan in its true spirit.

Moreover, the extreme left sections of the Pakistani society view that there should not be any relationship between state and religion, and religion should be a private affair in Pakistan. They are also of the view that the state of Pakistan should be secular and progressive, and Islam should not be the official religion of the state. They also stressed the supremacy of parliament, liberties, and human rights in the state and also criticized many provisions of the constitution of Pakistan, which are related to the principles of Islam as enshrined in the Holy Quran and Sunnah. (Muhammad, H., & Qayyum, A., n.d)

Another important aspect of the debate is also the Muslim nationalism and concept of Pakistani identity around the region of Pakistan. The conservatives are of the view that the state of Pakistan should promote the Islamic identity of the state and also foster the concept of Muslim Nationalism and Islamic Universalism, respectively, as the most important element of the principles of the policy of Pakistan. On the other hand, the liberal section of the Pakistani society always claims to have a secular identity of Pakistan based on the existing territories, languages, unbiased secular history of the region, ethnicities, and tribes of Pakistan without giving and shaping the identity of Pakistan on the lines of Islamic character that is more connected with the Arab's identity of Muslims.

Iqbal's Ideology of Constitutionalism: An Analysis

Iqbal made an exceptional intellectual and literary contribution through his poetry and prose. His main

area of interest and literary work revolves around the themes of metaphysics, religion, spiritualism, and reconstruction of religious thoughts, the progress of Muslims, Muslim identity and Muslim collectivism as well as the political identity and nature of the modern Muslim state. After a very careful review of the literature, one can identify and analyze his political philosophy and views about constitutionalism. (Dr. Tahir Abbas Tayib., 2018) Iqbal was a great proponent of the ideals of spiritual democracy, which is based upon the Islamic ideology as reflected in the interpretation of the Quran and Sunnah. He also elaborated the concepts of Muslim nationalism and Islamic universalism with special importance of spiritual individuals living their lives and performing their responsibilities according to the limits as prescribed by the teachings of Islam. (A., Soomro, S. A., & Chandio, J. A., 2018)

Iqbal also put forward his objective views about a direct relationship between Muslim nationalism and Islamic universalism in order to attain the goal of Islam to ensure peace, brotherhood, and prosperity for all. He frequently maintained that the survival of Islam and Islamic civilization is necessary for the survival and wellbeing of humanity. The most important aspect is to keep intact the political and religious identity of the Muslims across the world, and that is only possible through the strengthening of Muslim nationalism and Islamic Universalism. On the critical analysis of Iqbal's work, it is revealed that he mostly stressed the relationships between the individual, society, and state within the broader domains of spiritualism and religion. (Professor, A., Abbas Tayib, T., & Perveen, S., 2018) Moreover, he also wrote a lot about the relationship between politics and religion and was of a staunch supporter of the view that politics and religion should be inseparable. He firmly believed in the reconstruction of Islam and the role of the Parliament in Ijtihad to cope with the emerging challenges faced by the Muslim world. (Iqbal, M., 1930)

Iqbal was never against democracy and he also recognized the significance of the elections in strengthening democracy and the rule of law. Moreover, he also maintained that Muslims have the right to cast their votes in the elections to choose their representatives in the legislature, but the individual's casting votes and the representatives being elected must work within the realms of the Sharia law. Besides, he also highlighted in his intellectual work that legislature must also work within the limitations

and bounds as prescribed by the Islamic law for the institution of Ijtihad. (Iqbal, M., 1930) Iqbal wrote in his lectures that "the essence of Tawhid as a working idea is equality, solidarity, and freedom and the concept of Tawhid can be the basis for the equality of all within the modern Muslim state. The state is an endeavor to transform the ideal principles of Islam into space-time forces. It is in this sense that the state in Islam is a theocracy, not in a sense that it is headed by a representative of God on earth." (Iqbal, M., 1930) Iqbal declared Tawhid as the basic structure and grundnorm (basic norm) of the Islamic State to ensure equality of all the Muslims and even between Muslims and non-Muslims. (Iqbal, M., 1930)

Moreover, Iqbal maintained in his lectures that the "The state, according to Islam, is only an effort to realize the spiritual in a human organization. But in this sense, all state, not based on mere domination and aiming at the realization of ideal principles, is theoretic"

([Kampffmeyer, G., & Iqbal, M., 1934](#)) As far as Iqbal's approach about nationalism is concerned, he also highlighted this aspect in his lectures as follows, "The nationalist theory of the state, therefore, is misleading inasmuch as it suggests a dualism which does not exist in Islam". (Iqbal, M., 1930)

He was a great supporter of the Ijtihad through the parliament in the modern Islamic state, and to prove his argument, Iqbal also quoted in his book the example of the practice of Turkey as follows, "Turkey's Ijtihad is that according to the spirit of Islam, the caliphate or imamate can be vested in a body of persons, or an elected Assembly" (Iqbal, M., 1930)

Iqbal was a great supporter of the republican form of government and did not oppose the idea of modern democracy and elected governments in the Muslim world. Rather, he was against the dictatorship and considered that the monarchies and dictatorships are against the spirit of Islam and the modern Muslim state should be developed and designed in accordance with the ideals of the modern democratic state with the emphasis on spiritualism and Ijtihad through the institution of the legislature. In his lectures, Iqbal also stated that the republican form of government is in accordance with the spirit of Islam. (Iqbal, M., 1930)

Iqbal even also relate the individual life with the destiny of the people and firmly believe that the individual life and destiny of the Muslims is largely dependent on the form of government in the state. He maintained that the values and goals of Islam are

eternal and universal, so a state based on Islamic ideology and complete democratic nature can be more progressive and prosperous. (Iqbal, M., 1930) In his lectures, he opined that the "The transfer of power of Ijtihad from individual representatives of schools to a Muslim legislative assembly is the only possible form Ijma which can be carried out in modern times and this will secure contributions to the legal discussion from laymen who happen to possess a keen insight into affairs" (Iqbal, M., 1930) The Sharia is the binding force for social integration of Islam and to make the structure of legal system effective and impartial.

Besides, the strong nationalist ideology of Iqbal, which he used to have in his early years of life, had been transformed by the time he reached his last years of life. Then Iqbal turned the proponent of the idea of pan Islamism and Muslims regional identity through a possible institutions like the League of Nations with the collective identity of all the Muslim states as one unified and well-coordinated Muslim Ummah. He also discouraged and looked down upon the ideas of nationalism and imperialism and considered these ideas as lethal for the ideals of Muslim nationalism and Islamic universalism. Iqbal also highlighted his views about this issue in his lecture as follows, "It seems to me that God is slowly bringing home to us the truth that Islam is neither Nationalism nor Imperialism but a League of Nations which recognizes artificial boundaries and racial distinctions for the facility of reference only, and not for restricting the social horizon of its members." (Iqbal, M., 1930)

The most distinguishing and salient feature of the political philosophy of Iqbal is his idea of spiritual democracy. The spiritual democracy embodies the idea of a spiritual society with the spiritual individuals who have a legislature that has the power to perform the functions of Ijtihad to reconstruct Islam in accordance with the emerging challenges, new issues, and rapidly changing socio-political realities of the state. This concept of spiritual democracy was also given by Iqbal in his lectures as follows, "Let the Muslims of today appreciate his position, reconstruct his social life in the light of the ultimate principles, and evolve out of the hitherto partially revealed purpose of Islam, that spiritual democracy is the ultimate aim of Islam". (Iqbal, M., 1930) The idea of spiritual democracy has two-fold meanings in general: Firstly, it implies spiritually strong and empowered individuals who can play an effective role in the stability, progress and wellbeing of the state.

Secondly, it also implies a state which is working in accordance with the spirit of the spiritual democracy and has been doing the spiritual personality building of the individuals as well as society at large so that everybody develop and grow collectively with the principles of inclusiveness and fairness. Both state and individual depends on each other and both can grow and raise themselves together, otherwise there would be chaos and gradual spiritual, social and intellectual deterioration in the whole society. Iqbal states, "This self is personality woven of individuality and sociality both of which develop side by side." (Iqbal, M., 1930) Iqbal was of the view that the whole world can only prosper and develop collectively as a league of nations, if all the states follow the principles of spiritual democracy together and all the states and their individuals become spiritually strong that would ultimately cause economic betterment, political stability, diplomatic triumphs and lasting peace. As far as the correlation between politics and religion is concerned, Iqbal was of the opinion that politics cannot be separated from the religion. He was of the view that if religion is separated from the politics, then there remains only tyranny, avarice, greed and violence. ([Carimo Mohamed, 2014](#))

Debate of Constitutionalism in Pakistan Vis a Vis Iqbal's Understanding of Constitutionalism

The understanding of constitutionalism of Iqbal is quite relevant and applicable on the ongoing political circumstances and constitutional debate of Pakistan. Keeping in view the spirit of two nations theory, popular aspirations of the Muslims of subcontinent during Pakistan's movement, demands of the conservative and religious sections of the society of Pakistan to declare Sharia law as the operating law of Pakistan in line with the teachings of the Islam as enshrined in Holy Quran and Sunnah and the Iqbal's concepts of spiritual democracy, it seems very logical and plausible that the complex and multifarious constitutional issues of Pakistan can be addressed effectively by the application of constitutional vision and political theory of Iqbal in its true letter and spirit. The concepts of Muslim nationalism, Islamic universalism, mandatory correlation of religion and state and the concept of Islamic state without any secular ideology are also very applicable and relevant with the existing ground realities of Pakistan. Moreover, the ideas of Iqbal to propose a role of

lected Parliament for reconstruction of Islam through the institution of Ijtihad, declaring Sharia law as the supreme law of the land in the constitution with vested powers of the Parliament to carry out the functions of Ijtihad and also to legislate in accordance with the limitations and guidelines as decided by the Quran and Sunnah are also very much practical, viable and enforceable in Pakistan. Furthermore, his concept of Tawhid and equality of all before the law without any discrimination of caste, color and sex can also bring an end to the myriad of socio, political and legal issues primarily caused due to the highly stratified and classes based society of Pakistan. So the concept Tawhid can lead Pakistan to a state with equal and fair opportunities for all the citizens without any kind of discrimination whatsoever. ([Riaz, S., 1968](#))

A careful perusal and comparative analysis of Pakistan's constitutional debate and Iqbal's understanding of the constitutionalism as reflected in his literary work ([Allana, G., 1969](#)), particularly his lectures titled, "Reconstruction of Religious Thoughts in Islam" reveal and suggest that the Islamic identity of Pakistan can be maintained and imposition of sharia law can be made through the implementation of the political and constitutional thoughts of Iqbal to attain peace, prosperity and rule of law in Pakistan as a modern Muslim state.

Conclusion

Iqbal has given his thoughts in a very apt and logical way, and it is concluded that the foundation and ideological basis of the Iqbal's political vision and his understanding of the constitutionalism are based upon the Islamic ideology and teaching of Holy Quran and Sunnah. The politics and religion are inseparable. He also recognized the democracy as a valid form of government and was also not in favor of dictatorship and monarchies. However, Iqbal was a great supporter of the concept of spiritual democracy. He was a strong believer of the fact that Muslim states can only become stronger both politically and economically if they adhere to the concept of spiritual democracy. Then his vision of Muslim nationalism and Islamic universalism are still valid and relevant today to make the Muslim states as a powerful and strong bloc among the comity of nations to defend and promote the interests of Muslims across the world.

The political vision and understanding of the constitutionalism by Iqbal also provide a very effective and practical solution of constitutional issues of

Pakistan and this can be applied to transform the concept of western democracy into the spiritual democracy with spiritually strong individuals and collectively a dynamic and pious society with highest standards of morality, justice and rule of law. Moreover, the most important aspect of Iqbal's vision is his suggestion for the empowering the institution of modern legislature to carry out Ijtihad in accordance with the injunctions of Islam as enshrined in Holy Quran and Sunnah to find out the solutions of all the emerging social, economic, family, commercial, legal, political and constitutional issues of the modern and constantly evolving society of Pakistan.

Recommendations for the Constitutional Crises of Pakistan

It is always very important to get the guidance from the vision and ideologies of the founding fathers to cope up with the emerging challenges of the state. In this context, the political vision and understanding of the constitutionalism of Iqbal can be very relevant and appropriate to find out a suitable solution for the longstanding and complicated constitutional crises in Pakistan. Keeping in view the vision of the Iqbal and multifaceted constitutional issues of Pakistan, the following recommendations can be effective and viable:

- a) The Westminster democratic model should be replaced with the Spiritual democratic model of Iqbal by amending the constitution of Pakistan 1973 and incorporating special provisions in the relevant constitutional provisions regarding the qualifications and disqualifications of the members of the

Parliament in the light of the theory of spiritual democracy.

- b) The relevant and important provisions of the religion should be merged with the politics of Pakistan in order to provide a competent, honest and upright political leadership in conformity with the values and injunction of Islam as enshrined in the Holy Quran and Sunnah. This will bring decency, morality and sagaciousness in the politics of Pakistan backed by the pertinent constitutional guarantees.
- c) The Parliament of Pakistan should carry out its legislative functions within the parameters and limitations as imposed and envisaged by Quran and Sunnah. Moreover, the Parliament of Pakistan should also be entrusted with the powers to do the functions of Ijtihad to cope with the emerging socio, political and economic issues through reconstruction of Islam within the broader domain of Maqasid – e- Sharia (Purposes of Islamic Law)
- d) The declaration of Islamic law as the operating law of Pakistan through relevant amendments in the Constitution of Pakistan and all other legislation in the light of the requirements of the Shariah law.
- e) The adoption of the policy through the constitutional amendments to strictly adhere with the concept of Tawhid in its true sense and promoting the concept of Muslim Nationalism and take measures to strengthen the Islamic Universalism to contribute for the strengthening of the idea of "Muslim Ummah". This principle should also be made as the most important part of the foreign policy of Pakistan towards the Muslim world.

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