

Islamization of Laws in Pakistan during the Rule of General Zia Ul Haq

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Abstract

A ceaseless effort was unleashed for Islamization process of the legal system in Pakistan during the regime of Zia ul Haq (1977-88). The legal system developed during this era remained under debate since it left significant impact on Pakistani political, judicial and administrative spheres.

Although, the Islamic laws were ordained by Almighty Allah for the benefit the people of Islamic state but did the Zia's government incorporate them with the same spirit or intentions were otherwise. This paper will critically examine the different aspects of Islamization process and its after-effects on the society.

The methodology used in this paper is based upon both primary and secondary sources including books, articles, journals and newspapers.

Keywords: *Legislation, Zia regime, Pakistan, Islamization, legal system, and politics.*

Introduction

Islamization of laws remained an enigma throughout the legislative history of Pakistan. At the time of its creation, the country inherited the legacy of colonial laws developed through a blend of English legal system and local administrative requirements. Since, Islam remained a dominant factor during the Pakistan Movement; Islamization of legal system was a logical demand after its independence. The Objective Resolution of 1949 brought a pitched battle among various factions of intellectuals for paving the way to their desired legal systems. Although, Pakistan was intended to be a Muslim state, but the mechanism to implement such vision was intentionally weak, vague or ill defined¹. *Ulema* urged that *Sharia* should be the only practical form of legal system whereas secular and modernists interpreted merely the broader principles of Islam such as justice equality, equity and consultation as the guiding principles for legal system. Principles of policy provided an Islamic face to the first constitution of Pakistan in 1956 but these broader principles were not enforceable in the courts of law despite the country bearing official title of Islamic Republic. This constitution was abrogated and replaced by the

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Constitution of 1962 but Islamization was still used only as political cosmetic. President General Ayub Khan added a few Islamic enactments but expressed a rejection of the Islamic laws He repeatedly expressed that:

"The only way of having an Islamic constitution was to hand over the country to the Ulema and beseech them 'lead kindly light'."

The process of Islamization had already been started by Zulfikar Ali Bhutto under the pressure of Islamic parties, despite having his personal inclination toward secularism. Indeed, his populist slogan "Islam, Democracy and Socialism" gave him a landslide victory in the first general election held in 1970, which also reflected the electric spirit of Pakistan's South Asian Muslim identity.³ He committed a grave mistake for his lack of preference towards Islamic ideology as a progressive force to meet the demands of modern times.⁴ Dissatisfied by the pace of Islamization process under the government of Zulfikar Ali Bhutto, Pakistan National Alliance (PNA) consisting of Islamic parties, supported by the political opponents of Zulfikar Ali Bhutto, launched a campaign for implementation of Islamic laws under the banner of Tehrik-e-Nizam-e-Mustafa. General Zia ul Haq, after assuming power, was under immense pressure to align his policies with the popular public sentiments of that period. Subsequent developments in the regional scenario, particularly, the commencement of Afghan War added further strength to the need translation of Islam in country's legal system. In his first televised speech to the country as head of state General Zia ul Haq declared that:

*Pakistan which was created in the name of Islam, will continue to survive only if it sticks to Islam. That is why I consider the introduction of [an] Islamic system as an essential prerequisite for the country.*⁵

Islamization had its multilateral utility for the Zia's regime; it was meant to utilize the pro-Islamic public sentiments against Soviet Union, declared as infidels and it helped him prolong his rule. Therefore, Islamization of laws was the primary policy of the Zia's regime.⁶ Apart from the alterations to the structure of the judicial system, the enactment of the blasphemy laws and the controversial *hudood* laws governing areas of personal morality also formed a very important place in this programme. Significant changes were made to the laws

which were questioned by moderate elements in society; right wing, political and legal commentators.⁷

Legislative Development towards Islamization

Immediately, after assuming the power, General Zia ul Haq announced the promulgation of Islamic laws relating to adultery, rape and consumption of alcohol on December 1, 1978. To pacify the *Ulema*, he promulgated Islamic laws in installments; these efforts culminated into the process of coating the existing laws in Islamic brand with the commencement of *hudood* laws being passed by handpicked *Majlas Shoora*. As parliament was not in session so these laws could not become Acts; they remained as ordinances and orders. Followed by this, the *Shariat* benches were established all over the country on February 9, 1979; and for this purpose, the constitution was amended to legitimize these courts and:

*High Courts were also empowered to declare any such law or act of the Governments as null and void, which was in contravention with the Islamic laws on petition/request/application from any citizen, any provincial government or federal government of Pakistan.*⁸

Only two days later, on February 11, 1979, another measure towards Islamization was announced through introduction of Islamic penal laws; by the end of the same year another amendment in the law was introduced in the form of *Qisas* and *Diyat* Ordinance. On December 12, 1979, the Council of Islamic Ideology prepared a draft for this law; however, it could get its final shape in 1983. The role of Islamic Council of Ideology also remained obscure. This council was established during the regime of Zulfikar Ali Bhutto but it was reconstituted by General Zia ul Haq with enhanced number of membership.⁹ To provide ideological oversight and justification for the acts of government, the Islamic Ideological Council was activated six weeks after General Zia's coup and was entrusted with preparing an outline of an Islamic state. It also had a panel on Islamic law.¹⁰ The functions of the council were redefined to evaluate the laws and to forward the recommendations to make the laws consistent with *Quran* and *Sunnah*. The recommendations made thereby included fixation of prayer timings, promulgation of *hudood* laws, establishment of *Nazim-e-Zakat*, *riba* free banking, application of *Nazimeen-e-Salat*, elimination of bribery, to make Islamic Studies and Pakistan Studies compulsory subjects up to B.A/B.Sc. level, introduction

of the laws of *Qisas*, *Diyat*, Evidence, and Islamic law of Preemption¹¹.

In the middle of next year, the government enacted *Zakat* and *Usher* Ordinance and collection of *Zakat* was started in June 1980. This act met with resistance from various factions of *Ulema*, particularly *Shias*. The *Zakat* Ordinance called for the compulsory deduction of 2.5% charity tax from all banks' saving accounts. This measure met with widespread protests, particularly from Pakistani *Shia* community, led by the *Tehrik-e-Nifaz-e-Fiqh-e-Jafria* who objected to being forced to abide by rules ordained by the *Sunni Hanafi* law rather than a *Jafari fiqh*. In response to protests in 1980, Zia revised the provisions for the payment of *Zakat* for *Shias*. The ordinance was subsequently amended to exempt anyone who believes that compulsory deduction of *Zakat* is not in accordance with their belief.¹² Islamic Ideological Council suggested the government to eliminate usury from the state-run financial institutions. To meet with this challenge, a three-phase plan was submitted to the government on September 22, 1980, whereby, steps were taken to introduce interest-free banking in Pakistan. As a replacement, a system of profit/ loss sharing was introduced in all the nationalized banks of the country.

In order to further strengthen his rule, General Zia Ul Haq introduced Provisional Constitutional Order on March 24, 1981. Parliament was suspended and substituted with a body of handpicked people called *Majlis-e-Shoora*. The establishment of *Majlis-e-Shoora*, practically, conveyed the message to the people that the process of Islamization had been started. This body, however, had no substantial bearing and the final authority to decide the matters belonged to the President.¹³ The newly introduced Constitutional Order provided for the attendance of three scholars during the proceeding of Federal *Shariat* Court. *Ehtram-e-Ramzan* Ordinance was introduced in 1981 to provide for measures to observe the sanctity of the month of *Ramzan*¹⁴. This ordinance provided the opportunity to the law enforcement personnel to fleece money from those who were caught eating at public places.

On March 19, 1982, punishment of life-imprisonment for desecration of Holy Quran was promulgated through a Presidential Order. During the same year *Usher* Ordinance was

also enforced. The following year was marked with the enactment of *Qisas* and *Diyat* Ordinance with the approval of *Majlise Shoora*. On August 14, 1983, the national day of Pakistan, Zia ul Haq announced *Nizam-i-Salat*, a state-backed system to ensure the performance of congregational prayers by all the Muslims. In 1984, the law of evidence was replaced by Islamic *Qanoon-i- Shahadat*. The amendments in the law of evidence (*Qanoon-e-Shahadat*) severely affect the rights of women.¹⁵ In 1986, a new law was introduced to award capital punishment for derogation of Holy Prophet (PBUH). After almost 11 years, in June 1988, Zia ul Haq announced *Shariat Ordinance* declaring *Sharia* as the supreme law of the land. During the same year, *Usher* Ordinance was also enforced.¹⁶ This Ordinance ensured the Islamization of education and economy, besides the appointment of *Ulema* as judges and *Muftis* as court advisors; this ordinance was passed two months before the end of his rule.

Impact of Zia's Islamic Laws and Public Response

Islamization of laws brought forth a mixed public opinion; which was extolling, rough, unsettled, suffocating and compulsive simultaneously. Public opinion can be viewed through its division into different sections e.g. intelligentsia, politicians, *ulemas* and the masses. Promulgation of Islamic laws was taken as just and yielding of a long-standing aspiration by the ordinary masses. Pakistan was created to implement the rules of Islam for its people; after the creation of Pakistan, although, promises were made in the constitutions of 1956 and 1962 for an Islamic system yet, ground realities remained unchanged. With the implementation of Islamic laws, common people started thinking that they would soon receive the benefits of Islamic system, however, the litigation system and inherent vacuum of the aforementioned laws affected maximum to the same section of society. Soon their hopes changed into disappointments and aspiration for fair justice exhausted. The real purpose of the promulgation of Islamic laws was to legitimize the authoritarian rule of General Zia-ul-Haq. When Europe & USA showed their grave concern about “*Shariat Laws*” the response of the Zia government was well encompassed by Prof. Ghaffoor Ahmad in his book, *Zia Kay Akhari Das Sal* as:

“The Promulgation of said ordinances were a shallow step towards the Islamization Process. However, the United States did not like even this exhibitioner step and an explanation was being called from the government. In an official response, the government of Pakistan cleared its position and informed America that, the recently promulgated “Islamic Laws” neither will be superior to the constitution nor the supreme law of the land. Pakistan foreign office dispensed an order to its embassies in Europe, the messages of the aforesaid nature should be forwarded to the concerned governments¹⁷.”

In Roedad Khan’s view, Zia was “determined to recreate the Islamic legal and social order which had originated in the tribal area more than a thousand years ago”.¹⁸ It has never happened that the hand or feet of a rich person, politician or a bureaucrat amputated, who plundered the wealth of the nation insensitively. While the political opponents and the poor were awarded the punishments of stripes in public. It was viewed as a mockery of Islamic laws, where a certain privileged section was immune to the laws confirmed by God. Simultaneously, *Zina* Ordinance created more mess and vulnerability for women than providing them a legal shield. Under this law, if a woman was raped and she had to lodge an FIR, then she would have to produce four saint like witnesses. If she was unable to provide such witnesses, she was to be punished with 80 strips under the *Qazaf* Ordinance. Most sections of society declared it a gross gender discrimination, which is severely condemned by Islam and always entitled both man and woman liable for their deeds. Although politicians were criticizing the pseudo-Islamization of Zia yet, they were only interested in replacing him. While Zia claimed himself as the custodian of Islamization in Pakistan; how 95 % Muslim population could oppose Islam which was manipulated by Zia for his own interests. To serve his political purposes he declared this process as the centerpiece of his system.¹⁹ Categorically Islamic legal systems as ordained by Allah, implemented by His prophet Muhammad (PBUH) and the Pious Caliphs, remained equally unquestioned; but the mode of implementing Islamic laws pushed the poor masses into a dual system of justice. Police remained in exploiting their own fellow citizens in the name of Islamic laws. The jubilance of the public was justified when these laws were promulgated in the country, because people took it as a transparent mechanism of justice as existed during the golden days of Islam. Later on, the

dejection of the people was justified, because the plight of unprivileged section remained the same due to a limited section of the society, which was privileged and immune to law. The Zia's policy of Islamization had little substantial impact on the state or society; the only beneficiary of these laws was President Zia ul Haq himself, who through his Islamic slogans and steps taken for Islamization kept the people busy and satisfied and on this pretext successfully prolonged his rule.²⁰

Conclusion

General Muhammad Zia ul Haq assumed power through a military coup in 1977. The political situation of the country was in serious turmoil during those days and *Tehreek-e-Nizam-e- Mustafa* was on the rise against the previous government of Zulfikar Ali Bhutto. General Zia thought the survival of his rule by satisfying the popular sentiments of that time through the introduction of Islamic laws in the country, therefore he introduced various cosmetic changes in the existing English laws to brand them as Islamic laws. In this regard, various legal reforms were introduced such as *Hudood Ordinances*, *Qanoon-e-Shahadat Ordinance* etc. In addition to that *Qiyas* and *Diyat Ordinances* were also instituted by Zia-ul-Haq but were promulgated by later government of Nawaz Sharif. These laws were never intended to be implemented as Islamic system in letter and spirit rather were a drive to win the sympathy of Islamist groups / parties to strengthen his autocratic rule. During this time special courts named Federal *Shariat* Courts were established, however, these courts were never empowered to implement their decisions and their mandate remained unclear. It was a parallel judicial system with obscure set of functions which gradually lost its utility with the tide of time. Similarly, a Council of Islamic Ideology was also constituted which could not leave remarkable impact on the ideological foundations of the country. These councils were finally used to appease the religious class through lucrative appointments. Since Pakistan has different Islamic sects; no serious effort was made to bring all the factions on the same page, rather the government enjoyed strength through the policy of division. Various Islamic sects could not reconcile their stance on the nature and modalities of the Islamic laws, therefore, no solid move toward achieving the goals of Islamic society could ever

be made. Consequently, it spread a negative impression that Islamic laws are flawed and impracticable and cannot meet the challenges of modern society. It tarnished the image of Islam as a progressive and living force. This concludes that such acts motivated by the personal motives to strengthen / prolong an autocratic rule and to win the popular sentiment of public instead of building an Islamic society where a practical and implementable Islamic legal system is willingly followed by every stratum of society.

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