Talaq: Impact of Tensions between Law and Shariah in Pakistan

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In the British India, the rulers replaced Islamic law with their own law and judicial system, in the sphere of public law. However, Islamic was applied in personal issues of the Muslims, with an option of customary law. After independence, the Muslim Family Law Ordinance was passed in 1961, which fundamentally incorporated un-Islamic provisions, particularly, the law relating to divorce procedure. Divorce was made to be effective after a mediation council would have failed to reconcile between a husband and wife, on the expiry of 90 days. It was warmly welcomed by the liberals and vehemently condemned by the traditionalists as it fundamentally conflicted with conservative school of thoughts. To protect it from judicial review, the jurisdiction of the higher courts was barred, on the ground of its conflict with right to religion. Even when the Federal Shariat Court was established with a jurisdiction to Islamize the laws, the family laws were excluded from its review power. Insertion of Article 2-A, the Objectives Resolution as a substantive part of the Constitution, also could not empower the Courts to review it on its conflict with Islamic Injunctions. Although the Courts could not review its legitimacy, however they played an active role to remove its ambiguity and gaps, vigorously applying Islamic law in the sphere of uncodified personal law.

Keywords: Talaq, divorce, Muslim Family Law Ordinance, Muslim personal law, Objectives Resolution

1. Introduction

At the outset, evolution of divorce law has been explained, from the first Muslim arrivals in the subcontinent, passing through colonial rule to the Independence and the MFLO. Then the research article proceeds to explain the procedure of divorce codified by the Ordinance, deviating from the previous laws and practice. Then it goes on to reaction of its proponents and opponents and their respective grounds, advanced in their favor. Since it was apparently insistent with right to religion, therefore, its protection efforts from a potential challenge in the constitutional courts have been highlighted. Not only on the test of a conflict with a fundamental right, it was not sustainable, but, on the ground of its contradiction with Islamic principles, it was also capable to be ceases. The research throws light on the legislative and judicial

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approaches. Before conclusion, it is elaborated, in the light of recent case law, how the Judiciary extended the law, filling the gaps of a written law, in an environment of hard difference of opinion among various sections of the society. Finally, it concludes that now it is an integral part of our legal system, if not impossible, but it would be hard to amend it.

2. Historical Developments

Islamic personal law touched the soil of India long before the military arrival of Islam. First time in its history, the Sultanate of Delhi enforced Islamic law. Mughals also continued with the established system. Although they introduced Islamic public law, but there were many exceptions and exemption for the local population, with different religions and castes. When east India Company was gradually authorised to govern local masses, it also went on with more systematic religious freedoms, relating to marriage, divorce, inheritance and other personal issues. Regulations of 1780, unequivocally, guaranteed that, 'in suits regarding inheritance, marriage, caste and other religious usages and institutions, the laws of the Koran with respect to the Mohammedans and those of the Shaster with regard to the Gentoos will be invariably adhered to; and on all such occasions, Maulvis or Brahmins shall respectively attend the Courts or expound the law and they shall sign the report and assist in passing the decree.'[1]

Initially, the Company Courts were established and were obliged to apply Shariah, even in the sphere of public law. With passage of time, the Company replaced Islamic public law with its own judicial system; however, in the realm of private law, the courts were ordained to apply Muhammedan law with respect to Mohammedans and Hindu law with regard to Hindus. However, the general principles of the English concept of justice, equity, fairness, reasonableness and good conscience were substituted with traditional ones.[2]

Later on, the English law was applied to British citizens and local laws to the local people. However, in a case of conflict, the English legal system was preferred. Finally, when the Raj consolidated its power grip all over Indian sub-continent, then it overhauled the entire legal system. Law started to be codified in form of Acts and Bills. Worthy to note is that almost all

enactments of that era were made over and above Shariah and customary law, ignoring personal beliefs, faith and religion.[3]
To transform the society palatable to the colonial rule, the British, compelled to maintain harmony in various part of India, interestingly, did not extend the application of the new statutes to the whole colony. Instead, they, responding to administrative expediencies, exempted many parts of India from their application; Punjab was one of the beneficiaries, which was the stronghold of custom.[4]Probably, it was mistakenly presumed by the British that it applied to the Muslims as well. Even the customary law dominated the religious laws. Religious laws used to be applied only in the case of absence of established customs. Prior to the partition of India, a number of laws were enacted regarding marriage and divorce of Muslims. The Child Marriage Restraint Act 1929 was enacted wherein it was laid down that no child below the age of 14 would be given in marriage. A great hue and cry was raised by the Muslims. Learning lessons from the history and realizing the risk to their personal law, regarding the preference of customary law over Shariah, they persuaded the British Government to reverse the priority. Their voice was well received by the colonial masters, who were in dire need of maintenance of social harmony. The struggle to reform the law culminated in form of the Shariat Application Act 1937, which provided that Islamic laws would override the customary law. However, creating an exception, it was optional for the Muslims, in a number of their personal law issues, whether to be treated in accordance with Islamic law or customary law. Notably, it was applicable to the whole of Colonial India. [5]

It is worthy to note that the statement of objects and reasons issued with the Bill explained that, apart from the demand of Ulemma, press and activist Muslims' women organizations, 'The Jami'at alUlama Hind, the greatest Muslim religious body, has supported the demand and invited the attention of all concerned to the urgent necessity of introducing a measure to this effect.' No doubt, it is evident that the demand was unanimous from all corners of the Muslim community.[6]Another significant legislation was the Muslim Married Women's Dissolution of Marriages Act 1939 whereby a 'Muslim married woman was given the right of seeking dissolution of marriage through the Court of Law on various grounds, such as cruelty, husband's whereabouts not known for four years, husband having been

sentenced to seven years' imprisonment, husband's neglect to maintain his wife for two years or abstaining from performing marital obligations for three years or for any other cause recognized by Shar'iah.'The Independence Act1947 obliged both India and Pakistan to continue in force all the laws, including the British judicial system, until the respective Constituent Assemblies amended or repealed them.

Owing to the Act, the divorce law was sustained after the partition. In Pakistan, a very weird incident triggered a vigorous campaign to reform the divorce law of the British era, when then Prime Minister of Pakistan, Mohammad Ali Bogra, contracted a second marriage with her sectary, ignoring the fact that he was still legally wedded with his first wife. The Government agreed to form a seven's commission to recommend amendments in the divorce law[7].

The Commission suggested, with a majority of 6:1, that three divorces in one session would amount to one pronouncement and for a divorce to be effective two further pronouncements in two subsequent *tuhrs* would be necessary. Moreover, the expected legislation should provide that 'no person shall be able to pronounce a divorce without obtaining an order to that effect from a Matrimonial and Family Court' or it would be ineffective without registration. The only dissenting member, Moulana Ihtisham-ul-Haq, out rightly rejected the recommendations of the Commission, along with other Ulema and a section of press, arguing that it was inconsistent with the fundamental principles of Islam laid down in Quran and Sunnah. The recommendations invited unfettered criticism; therefore, the idea of a court's prior approval was abandoned in the coming legislation, substituting it with an administrative reconciliation council.[8]

3. Muslim Family Laws Ordinance 1961 and Effective Talaq

Following the recommendations of the commission, which was formed for the specific purpose of reforms in the family laws, an ordinance namely Muslim Family Laws Ordinance was promulgated in 1961. It provides, inter alia, that firstly, any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife. Secondly, whoever contravenes the provisions of sub-section (1) shall be punishable with simple

imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or both. Thirdly, save as provided in sub-section (5) a *talaq* unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman. Fourthly, within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about the reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation. Fifthly, if the wife is pregnant at the time of talaq, then it shall not be effective until the period mentioned in sub-section (3) or the pregnancy, which ever be later, ends. Finally, nothing shall debar a wife whose marriage has been terminated by *talaq* effective under this section from marrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time, unless such termination is for the third time so effective.[9]

Although its nature is mostly procedural, but it accepts substantive rights when it equates three divorces with one and does not oblige for an intervening marriage to remarry after an effective divorce by the mediation council. After its promulgation, the marriages and divorces were registered only for the purpose of Hajj or inheritance. However, the issue of registration of marriage and divorce suddenly came to limelight when Hudood Ordinances were enforced in the late 80's, particularly, when a second marriage became a crime for a female, without getting a divorce under the procedure established by the Ordinance. After a long struggle, it has been remedied now. The recent case law shows that Section 7 is applied purely to family matters, not to criminal issues, regarding divorce and second marriage. The Women Protection Act 2006 has finally settled the issue, providing if a woman herself reasonably believed and convinced a court that her earlier marriage was over, and her remarriage with other person was valid, then for the purpose of criminal law, she would not be liable.[10]

4. So-called Achievements

Perhaps no law in the history of Pakistan has been as hailed or hated like the Muslim Family Laws Ordinance 1961. Its controversial nature still divides our society bitterly. Its

promulgation ensued an extended debate between the modernists and traditionalists[11]. On the one hand, liberals loved it as a master piece of legislation or as an icon in the struggle against traditional section of the society. It was not only welcomed by women rights activists but they guarded it jealously[12]. The proponents or supporters have boasted it as a champion of feminine rights, a high point of Islamic modernism, a greatest innovation of that era or inculcation of modern version of Islam.[13] It is also argued in its favor that it not only obliges the marrying couple to register their marriage contract, but it also contains the arbitrary power of a strong party, the husband, to leave his spouse without any checks or balance. The Arbitration Council's intervention provided under the Ordinance is pleaded as a monitoring factor. Some kind of administrative public institution does provide, according to the supporters, a far more guarantee of women rights than a traditional social check of a couple's families and a society at large. Legally effective pronouncement of three divorces at one time is reckoned as too harsh and an obvious exploitation, while the Ordinance accounts three divorces pronounced at same time as one divorce. It provided an ample opportunity for a divorcing couple to review its damaging impact on them and their children future. Therefore, the provision of 90 days for reconciliation through the Arbitrary Council is an enough protection for both parties to seek a viable solution other than divorce, especially addressing the cases of second marriage, non fertility of women or a male child issue.

Since the Ordinance expressly provides that the separated couple can remarry after the divorce is affected through the Arbitrary Council, without passing through an ordeal of Halalah or an intervening marriage. It is the husband who commits the blunder and then repents to carry on his family; therefore, the divorced wife should not be slaughtered for uncommitted sins. Compelling female to pass through an intervening marriage is barbaric and inhuman. The unequivocal right to remarry without an intervening marriage provides a sustainable relief to a broken family and stability to the society, bestowed by the Ordinance.[14]

In addition, applauding the Ordinance, the supporters advanced the argument that pre-ordinance Islamic personal laws were already unnecessarily too religious and abusively deprived women of right to equality, guaranteed under the international charter,

declarations and conventions. Therefore, it was a totem for women rights. While counting their scores, this school of thought also boasts that the MFLO is still embedded in the legal system of Pakistan; no popular political movement could be launched successfully. Even it survived pro-Islamic Martial Law regime of Zia-ul-haq. [15]Therefore, it is now integral part of life of the majority, which removed a lot of abuses in the traditional practice or customary law.

Although a strong religious section of the society is still tooth and nail opponent of the Ordinance, but their voice is dying gradually. Few scholars went further and justified that the failure of its anti movement is owed to the successful maneuvering of the governments to quite the religious opposition by 'issuing licenses to solemnize *nikah* under this very law and so the ill-educated *moulavis* of mosques were prevented from mobilizing the masses against the Act.'[16]

Although a number of times attempts were made to amend the law, but could not succeed. the President of Pakistan promulgated the Enforcement of Shariah Ordinance 1988, which equipped the Supreme Court and the High Courts with jurisdiction to examine whether Muslim Personal Law (including Muslim Family Laws Ordinance), is in accordance with Islam or not, and if it not, then they had to declare it void/ineffective/not applicable.[17]

5. Conflict with Shariah

As expected, the MFLO was severely criticized and intensively rejected by the religious and traditional section of the Pakistani society since it transgressed express and unanimous provisions of the divorce law, ordained by Quran and Sunnah. Ulema unanimously showed extreme resentment.[18] One religious scholar, who was member of the reform commission and prominent freedom fighter as well, out rightly rejected its recommendations and dissented with an elaborative note. It was also widely condemned by all religious and sectarian parties. The grounds which were developed and advanced against its legitimacy in Islam were that Section 7, regarding divorce procedure, was all in all inconsistent with the injunction of Quran and Sunnah. Firstly, the final termination of a marriage contract in Islam becomes effective after three time pronunciation of divorce. The first one can be revoked by husband after his resilience of relation with his wife within one month, the second is irrevocable, but remarriage with

all requirements of a first marriage can be contracted, again after one month. The third divorce is not only an irrevocable act but remarriage is prohibited without an intervening marriage of the divorced wife only. And if three divorces are pronounced at once then they became effective instantly.[19] On the other hand, the Ordinance counts three divorces pronounced at same time equal to one. Moreover, it does not become legally effective until the expiry of 90 days, which start from its notice to the Chairman of the mediation council. Secondly, the seclusion period, which is known as Iddat, in which a potential divorcee cannot marry with another person is counted from the time when the notice is received by the Chairman. While in Islamic jurisprudence, the period starts from the time of pronouncement of the first divorce[20]. Thirdly, the beginning of seclusion period depends on the marriage consummated or not, or pregnancy of a divorced women, while the law treats all situations equally on expiry of ninety days. Fourthly, the waiting period for remarriage is three months in Islam, but law protracts it to ninety days. Fifthly, the termination of marriage depends on the notice and then expiry of ninety days, while Islamic law is unknown to any notice to an authority or arbitration after a divorce.[21] Finally, the notice by the Ordinance freezes the effects of divorce and after 90 days, except a divorce is reconciled or finalized earlier; the termination of marriage is triggered automatically without any further proceedings by the council or any court intervention.[22]

6. Inconsistency with Fundamental Right to Religion

When human rights embodied in the international legal instruments are enacted to become a part of constitution of a nation state, then they are named as constitutional rights of the citizens against their own state. Again, their incorporation is either made binding or optional. Further, they are classified into positive rights, where a government has to save its financial resources or negative rights, where a government is demanded to restrain to interfere. Mostly, negative rights are named as fundamental rights, which are made obligatory for a state to refrain from intervention, giving judicial power to review their violation. On the other hand, the positive constitutionally guaranteed rights are left to the sweet will of a legislature or an executive, subject to availability of economic resources, debarring judiciary to take cognizance of their violation. Apart from that classification of human rights, few are enacted in a

constitution as absolute rights, where even a legislature or a government is debarred to impose any restrictions; others are subjected to reasonable restrictions imposed legislatively or executively. Some are available to citizens only and others are protected for all, irrespective of their nationality or immigration status. Right to religion is a negative fundamental right subject to reasonable restrictions, available to citizens only. It guarantees, inter alia, that 'Subject to law, public order and morality, every citizen shall have the right to profess, practice and propagate his religion.'[23]

The MFLO was promulgated in the period of Martial Law, however, when the constitution of Pakistan 1962 was enforced, particularly, after first constitutional amendment; it obviously conflicted with fundamental right to religion and was not sustainable. The framer of the Constitution and the MFLO was definitely aware of the fact. As was expected, soon after the Constitution became operative, its constitutionality was challenged. To avoid judicial scrutiny, while protecting their mala fide, it was immunized from the judicial review by the Higher Courts, placing in the Fourth schedule of the Constitution of 1962 as item Number. Moreover, its protection was extended by the Interim Constitution of 1972 Article 7(3), First Schedule, Part III, and Item No.3 under Ordinances promulgated by the President. Knowing its inconsistency, the changing regimes jealously guarded its legitimacy; therefore, it sustained in the Constitution of 1973 as well, providing in the First Schedule under Article 8(1) and (2), The Constitution of 1973.[24] Even after successive pro-Islamic Martial Law did not challenge its constitutional protection from judicial review,"perhaps, because of the secular influences working both in and outside the relevant quarters."[25]Although it remained so dear to or a political expediency of the military regime that its status was not only insulated from the contrary touchstone of fundamental right to religion, but also the Islamization process failed to enable the Federal Shariat Court on the test of its conflict with Islamic law.[26]

Impact of Objectives Resolution

The Independence Act 1947 obliged both dominions of Indian and Pakistan that they would continue with the law and legal system of the British India, until duly amended by the respective Constituent Assemblies. Public law in the British India

was English, but there was a lot of freedom in the personal law based on various religions, faiths, denominations and sects. Since religion was a core factor, in the partition of India and a demand for Pakistan, therefore, soon after Independence, a popular campaign was launched for a constitution based on Islamic principles. While Quaid e Azam, addressing to the annual Sibi Darbar, in February 1948, and keeping in mind his vision of constitutional structure of a nascent state, categorically set out a clear pathway for future saying as:

> *"I have had one underlying principle in mind, the principle of Muslim democracy. It is my belief that our salvation lies in following the golden rules of conduct set for us by our great lawgiver, the Prophet of Islam. Let us lay the foundation of our democracy on the basis of truly Islamic ideals and principles. Our Almighty has taught us that "our decisions in the affairs of the State shall be guided by discussions and consultations."*

In 1949, in the light of vision of the founding father and expectations of the Muslims, the Constituent Assembly passed a resolution, called Objectives Resolution, to assure that the future constitution would be framed in the light of principles of Islam, declaring, inter alia, sovereignty of Almighty Allah over whole universe, enabling the Muslims to live their lives in accordance with Islam, and the protection of minority rights. Although the Constitution of Pakistan 1956 was framed in the light of the Objectives Resolution, however, it could not sustain longer. The Martial Law imposed in1958 was lifted, replacing the Constitution of Pakistan 1962. However, the Resolution was made the preamble of both Constitutions. The second Martial Law abrogated the Constitution of 1962 and, in 1972, an interim Constitution was enforced, which also included the Objective Resolution as its Preamble.

When the legitimacy of Martial Law arose in the Asma Jilani case[27], then Chief Justice of the Supreme Court of Pakistan, Justice Hamood-u-Rehman, observed that the Objectives Resolution was grund norm of the Constitution and stood on a higher pedestal, leading to an impression that it was supra-constitutional. However, in a following case of State v Zia-u Rehman,[28] wherein its supra-constitutional status was contended,

he withdrew from his earlier stand and justified that he never meant that the Resolution was a provision which overwhelmed other provisions of the Constitution, as it was non-substantive of the Constitution. His clarification again led to an understanding that it would be of an overriding effect, after being a substantive constitutional provision. In the era of another Martial Law, when Islamization of laws was in full swing, the Resolution was made an operative of the Constitution under Article 2-A, giving it a supra-constitutional status. Eighth Constitutional Amendment (1985) indemnified the Article 2-A.

However, in the case of *Federation of Pakistan v Mst. Farishta*[29] the Ordinance was held to be falling within the scope of "Muslim Personal Law". The Shari'at Appellate Bench of the Supreme Court, while examining the question of its jurisdiction held that since it was a part of law applicable to Muslims alone and Muslim Personal Law, therefore, its scrutiny was outside the jurisdiction of Shari'at Courts, overruling *Farishta v Federation of Pakistan*, decided by the Shariat Bench of Peshawar High Court[30], holding its provisions contrary to Injunctions of Islam were without jurisdiction.

Again the MFLO was challenged in the Sind High Court successfully, on the ground that it was inconsistent with Article 2-A, when Federal Shariat Court, taking cognizance of its potential conflict, held that held in *Qamar Raza v Tahira Begum*[31]that the constitutional protection to the MFLO was over and it was open to be challenged on the grounds of Objective Resolution, as a substantive part of the Constitution under Article 2-A, and Article 227. The Court further observed that now it was an appropriate time for a High Court to ignore its protection under Article 268 of the Constitution. The approach resulted in cessation of a number of provisions of the MFLO. In 1993, however, the Supreme Court held in the case of *Kaneez Fatma*[32] that the jurisdiction of the Federal Shariat Court did not extend to declare the Objectives Resolution as a supra-constitutional touchstone. The controversy of overriding effect or supra-constitutional character of the Objectives Resolution started from an amendment by the Martial Law authority, which was later indemnified by the Parliament, was laid to rest forever in the case of *Hakim Khan v Government of Pakistan*[33]. It held in the instant case that as the Objectives Resolution was, although it was a substantive of the Constitution,

not self-executory, therefore, it was void of impact of supremacy. No provision of the Constitution could be declared to cease its effect on the ground that it was inconsistent with Article 2-A. Unequivocally, its impact was that it was non-operative part of the Constitution. Justice Shafi-u-Rehman went further to derogate its status saying that even an ordinary law, apart from the Constitution, could not be tested on its touchstone, whether it collided with Shariah or not.[34]

Once again, in Allah Rakha v Federation of Pakistan[35], the Federal Sahriat Court, crossing the limits of its jurisdiction, declared some provisions od the MFLO to cease after a particular date, compelling the Government to replace it with Islamic law. However, in the Hafiz Abdul *Waheed v Asma Jehangir*,[36], the Supreme Appellate Bench of the Supreme Court, deciding on technical grounds of jurisdiction, overturned the excess of constitutional jurisdiction, under Article 203-B(C). It is notable that the Bench limited the protection or exclusion of jurisdiction only to the codified or enacted Muslim personal law, which impliedly empowered the Shariat Court and the Appellate Bench to examine all area of uncodified law.[37]Another barrier in the process of Islamization of laws has been the Supreme Court of Pakistan. Hearing challenges to a lot of decisions by the Supreme Appellate Bench, the Supreme Court reversed the process, like in a recent case of *United Bank* Limited v *Farooq Brothers*, regarding ribah, in which the Supreme Court remanded the case to the Federal Shariat Court, for review of their judgment, on the ground that the economic alternatives of ribah were not practicable for the state, governments and institutions.[38]

No doubt, the Courts did their best to interpret the Islamic law, whether in form of the Constitution or ordinary enactments, in a way, which promoted international conventions, human and fundamental rights, particularly women and children rights, showing activism or self- restraint.[39]Although a successful political campaign could not be launched to get it repealed, ceased or declared null and void, but there has been an intensive opposition and criticism against it conflicting character with Islamic law. Apart from its rejection from traditional religious and political corners, some activist judges and lawyers sustainably have been

aiming at it. Justice Tanzil (WHAT MORE.., 2002) said that in Hakim Khan v Government of Pakistan[40] the Supreme Court could not appreciate that the Objectives Resolution did not need another legislation to be operative. Raising a question if there would be a conflict between an ordinary law and provisions of the Constitution, would the Court have refused to review the law in the light of the Constitution, in absence of Article 8. Moreover, he argued that it was impossible that two conflicting provisions of the Constitution could be operative at the same time, referring to Article 2-A and 45.

Recognizing the binding character of the Supreme Court's decision, he suggested that giving supra-constitutional status to the Objectives Resolution, the following amendments were necessary:

> *"(i) The phrase 'notwithstanding anything contained in the Constitution' be added to Article 2A.*
> *(ii) In order to remove any ambiguity, a new clause (2-B) be inserted in the Constitution as under:*
> *2B. Any provision of the Constitution or law or any custom having the force of law found inconsistent with the principles and provisions set out in the Objectives Resolution reproduced in the annex shall, to the extent of such inconsistency, be void."*[41]

7. Recent Judicial Developments

Regarding notice of talaq under section 7 of the MFLO, the Supreme Court settled the law in an early litigation. A German lady was first married with one person and without being divorced under the procedural regime of the Ordinance she married another person. The question arose whether the second marriage, while being still wedded in the eyes of law, was valid or not. The Court categorically held that a divorce without the procedure laid down in section 7 was no divorce in law at all; therefore, the second marriage was invalid.[42]. Now the notice of talaq under section 7 became a legal prerequisite for a valid talaq. To date, it has been upheld continuously in the following cases.

However, the precedent has been differentiated with cases where the separating parties, by- passing the Ordinance, bilaterally agreed to end the marriage with their free consent, settling all potential liabilities against each other. Therefore, *Kaneez Fatima v. Wali Muhammad*[43] was a case where the *Gurdazi's* rule was

avoided on the ground of different facts. The other exception was to curtail criminal liability, after the promulgation of Zina Ordinance 1979, which made the second marriage, without getting a divorce first, a heinous crime and severely punishable under Islamic law.[44] To arrest its abuse, the Courts instead of the law-maker, came forward and played an active role to save the lives of innocent women, particularly, when the Federal Sharait Court decided in *Noor Khan v Haq Nawaz*[45]that a mother of four children had not committed any crime under the Zina Ordinance (1979) when she married again without getting a divorce under procedural regime of Section 7.[46]Recently, the Lahore High Court, in *Parinian Arooj v Mahmood Sadiq*[47]opined if a woman would take part in the mediation council proceedings; it would amount to a waiver of the right. Therefore, proceedings would be valid. The Sind High Court held, in, that in a case husband divorced and subsequently did not gave the notice to the Chairman of the Arbitration Council, the Council can start proceedings. And if the husband did not deny the fact of divorce during the proceedings, then the requirement of a notice under the Section 7 would not be compulsory for a divorce to be effective. When a husband serve a notice of divorce to the Chairman of the Arbitration Council and within 90 days if he withdraw or revoke it, then the Chairman, after revocation, is not authorized to issue a certificate of divorce.[48]The MFLO is a personal law codified for all Muslims Equally. No sect of Islam can claim any exemption, whether Shia or Sunni. The Lahore High Court, in *Saira Shaukat v District Collector*[49]held that a divorce would not be effective in any form other than the procedure under Section 7. If after a notice of talaq, husband and wife agree to live together before the expiry of 90 days then the notice would be deemed to be withdrawn.[50]Talaq may be any form, but verbal pronouncement of Talaq had to be reduced into writing and had to be conveyed to the Chairman of Union Council with a copy to the wife. Notice to the Chairman need not be on a stamp paper and if the notice of Talaq to the Chairman is communicated to a wife, then delay would suspend the count of days till she gets copy of the notice or intimation.

Regarding the obligation of Halalah, the provisions of the MFLO are very categorical, and the Courts have strengthened it with their sustained stand that the couples could re-marry without any intervening marriage except where they had been divorced

thrice and the third divorce had become effective and in that case they could not re-marry without an intervening marriage[51]

8. Conclusion

No doubt, the MFLO has tremendously changed the landscape of Islamic personal law. It is notable that it did not happen in colonial period but after Independence. A military dictator enforced it and protected to be tested on the touchstone of freedom of religion, while the pro-Islamic laws governments also protected it, by excluding it from the jurisdiction of the Federal Shariat Court to test on the principles of Islam. It failed to be tested on the ground of Islam, even when the Objectives Resolution was made substantive or operative part of the Constitution. In *Hakim Khan* (1992), the Judiciary spearheaded for the purpose. And the subsequent pressure of women rights activists could not allow its amendment to bring it in line with Islamic principles. Even the governments with Islamic agenda could not dare to change. All political movements failed. Therefore, now its repeal seems to be a Hercules job. However, the most convenient way would be to remove the limits and restrictions imposed on the jurisdiction of the Federal Shariat Court. Like the previous Islamization of the laws, it would come up with a solution which could be palatable to each party, in accordance with the Injunctions of Islam. Without it, Islamization of laws would remain a million dollar question in a State, which recognizes the Sovereignty of Almighty Allah over the whole universe.

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[42] Ali Nawaz Gardezi v Muhammad Yusuf PLD 1963 SC 51

[43] Kaneez Fatima (1993: SC 901)

[44] Samina Bibi v SHO, YLR 2004 Lah. 179

[45] Noor Khan v.Haq Nawaz 1982 PLD FSC 265

[46] Menski, 2006: 378

[47] Parinian Arooj v Mahmood Siddique 2010 CLC 258

[48] Rana Zulfiqar v Mairyam Rafique 2007 CLC 1047

[49] Saira Shaukat v District Collector 2006 YLR 1753

[50] Kalsoom v Station Officer 2005 YLR 841

[51] Fazli-e-Subhan v Sabereen PLD 2003 Pesh. 169