

Poverty Reduction and Muslim World

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As a social science economics studies unlimited desires and basic needs of individuals and society. Throughout human history institutions and companies made variety of choices on allocating limited and insufficient resources to satisfy the wants of individual. It has been observed that economics is one of the strongest spheres of human life. Self-interest is very powerful motive behind any economic activity. Individuals and firms both have their targets to maximize the output of production therefore competitive markets are the ultimate result. This competition leads towards difference of social classes in society based on income group. As a social science distribution, including poverty and allocation are exclusively discussed. Numerous studies focused on the issue of poverty particularly after industrial revolution in seventeenth century. Adam smith (1723-1790) particularly discussed the causes of poverty and exclusively presented his suggestions on this important issue.

Experts have observed a significant development in various sources of income on the global level. Present world is collectively richer than that of the earlier decades of previous century. This collective economical development is not only concerned with the West but also it includes Eastern countries vividly, even the discovery of oil in the Arab world made her prosperous and this important change also happened in the previous century. As a result most of people in different societies were not benefited equally but these developments divided people between haves and have not. This difference of income groups introduced new social classes and made social life more complex than previous. Varieties of problems and issues at different levels have their roots in this change. Therefore, who can deny this fact that the other side of this prosperity is very alarming and painful as it generates economic disparity in different regions and countries of the world. Poverty anywhere is threat everywhere.

What the Poverty is?

Poverty is the state of one who lacks a certain amount of possessions or money. Absolute poverty or destitution refers to being unable to afford basic human needs which commonly includes clean and fresh water, nutrition, health care, education, clothing and shelter.(1) In this regard poverty has become burning issue of each part of the globe. The poorest 40 % of the world's population counts for 5 % of global income. The richest 20% accounts for the three quarters of the world income.(2) Poverty level

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estimated by World Bank is that one living on less than 1 US \$ per day.(3) Another bitter aspect mentioned in the same report is that almost three billion people are living on less than 2 US \$ which is moderate poverty rate according to the World Bank.

Present State of Poverty on the Globe

The policy makers, experts and scholars are urged to investigate the nature and extent of poverty. Enormity and seriousness of the issue shows that governments alone are not able to overcome and solve the problems caused by poverty. States had been creating the necessary enabling instruments and making pro-poor policies but social justice and role of rich people of the society were equally important.

The World Bank periodically prepares poverty assessments of countries in which it has an active program, in close collaboration with national institutions, other development agencies, and civil society, including poor people's organizations. Assessments report the extent and causes of poverty and propose strategies to reduce it. Countries have varying definitions of poverty, and comparisons can be difficult. National poverty lines tend to have higher purchasing power in rich countries, where standards used are more generous than in poor countries. Poverty measures based on an international poverty line attempt to hold the real value of the poverty line constant across countries, including when making comparisons over time. (4)

Due to the logical aftermath of the capitalistic system, a peculiar group of people achieved stupendous development but, on the contrary, an increase in the rate of poverty is much bigger than the prosperity of that peculiar group. Almost 80% of the people belong to rural area, particularly those who belong to Asia and Africa.

Role of Religious intelligentsia:

Mostly, religious people address the issue of population sentimentally, they condemn all kinds of population planning schemes and there is no doubt in the fact that population of the Muslim countries could be a major strength provided that human resource management properly got attention but the poor literacy rate of the Muslim countries and a shortage of educational institutes not only increase poverty rate but also produce illiteracy and unorganized way of life, which is also contrary to Islamic teachings. Usually these two issues, illiteracy and disorganization in social structure, receive a little attention from religious *ulema*, hence a comprehensive analysis of social phenomenon remains unattended. On the other hand variety of steps are needed to address this issue because level of poverty is a nightmare for the policy makers. Many steps have been taken but these need to be accompanied by purposeful actions by the political

leadership. Further, these all should be supported by community involvement, members of civil society and non-governmental organizations. The challenge of human deprivations could be tackled by collective and collaborative efforts but unfortunately results at all levels and almost in each part of the world are very disappointing. Poverty and misery free society is a colorful slogan by United Nations, Governments, NGO's, World Bank and commissions but net result is only exploitation. Large numbers of deprived and poor people are doing back breaking jobs but they fail to meet basic needs. Children are compelled to offer their services in the labor market and they are ready to work on any price and condition of work. This increasing trend of child labor contributes towards the unemployment of adults as well. So far as the child labor is concerned, few people in the Muslim societies actively work against it (only as a fashion), but neither the Islamists nor the liberal groups could derive any practical strategy. Religious scholars mostly focus on rituals in seminars and conferences but normally ignore the social, political, and economic justice ensured in the teachings of Islam. Even they are unaware of the issue and they lack the capability to conduct any solid analysis about their failure in disseminating the real picture of the problem in modern context.

Evil of Child Labour:

Rich people do not pay all wages to a laborer who does his work with too much hard work in a long duration, and, similarly state institutes and the reformer of social justice never raise their voices for poor and deprived classes. Therefore, families with less income unable to send their children to school as well as unable to go for any recreational activities and, on the other side, though we observe that western organizations propagates that child labor is highly condemnable but they do not provide any substitute for earning their livelihood. Thus all their activities go in vain.

Again this is a fact that children of these families are compelled to go for labor and hard work due to the cruelties of capitalistic system.

Although the condition of the people of South Asia in this regard is too much poor but Muslims of the same part are rather poorer. Though, secular states, capitalistic system, democracy, civil society and NGOs got the opportunity to show their performance but their efforts could not enjoy any positive result.

Mr. Umar Chapra is of the view "the inequities generated by laissez-faire capitalism gave rise to the welfare state, which provided a ray of hope on the capitalist horizon. The welfare state was not, however, based on a world-view different from that of capitalism. All it did was to combine the price mechanism with a greater role of the state in the economy to ensure higher economic growth and greater stability and equity. The unprecedented

growth during the two decades of the fifties and the sixties and the continually rising welfare spending by the governments have, however, failed to remove poverty, fulfill needs and reduce inequalities even in the worlds richest countries. (5)

Muslim World and Poverty:

Another significant aspect of this backwardness is that a great part of the whole population of the world consists of Muslim world which is currently estimated 1.6 to 1.7 billion. It is expected that if present rate of increase of Muslim population continues that by 2030 One out of Three person will be Muslim.(6) The question is still there why they are under the spell of poverty despite of having natural resources in abundance. If the reason behind this vicious circle is religion then we observe during the previous century that none of the economic system, institution, and individuals were under the control of religion, however, Islamic world did not loose its strength against western civilization in the way to get economic prosperity, thus Islamic world not only witnesses a clash on social and political level but also faces strain and complexities economically altogether.

Though the religious leadership and Islamic institute work and make the mind of individuals against the usury system but, unfortunately, again it is a fact that, even the Muslim states as an authoritative institute work to bring the income sources of the Muslim world under global interest-based economy. In this regard it is clear that none of the systems is easy to make comprehensible theoretically unless it is practically extended. The same matter is with Islam. Today Islam is being considered just like other religions of the world a ritual based discipline rather than complete code of life. The social, economic and political aspects of Islam are not being conceived on one hand and the other side of the picture reflects that having no economic model based on Islamic teachings throughout Muslim world, issues like poverty are not being addressed in the directions of Islam.

In this prospective it is the dire need of the hour that in order to alleviate poverty one must analyze the economic teachings of the second largest religion (Islam) of the world. However, as the Islam is the complete system of life so it would be unwise to study its economic system as a part of the whole though its partial study have much more things to appreciate but implementing it as a part would be an unworkable phenomenon. Syed Maudoodi writes that Islamic pattern of life gets inspiration and strength from faith and worship and faith and worship flourish in Islamic pattern of life. They are just like the organs of a living body, which become dead and defunct when detached from the living body. Application of Islamic faith and rituals in an un-Islamic pattern of life would mean placing of human

is not replaced by the respective legislative assembly within the specified time then the decision of the FSC will become an enforceable law. This process of judicial scrutiny of the laws on touchstone of Islam and thereafter their coercive substitution is an innovative idea. Hirschl has coined a new terminology for such a constitutional arrangement where religion is promoted and streamlined through the modern apparatus of constitution particularly courts.(12)

This constitutional process is one of the reasons that the institution of FSC is criticized. The critics are of the view that one particular institution should not be vested with such an effective power to override the collective will of the legislature manifested in form of laws. Moreover, it is not a judicial function to go beyond any law to question its vires. The principal role of the judiciary is to implement the laws enacted by the parliament: whereas this institution is decorated with powers which in true spirit of any constitutional dispensation must be exercised by elected representatives.

The strength of above-referred arguments of the critics of the FSC is derived from strict theory of separation of powers. According to judicial pronouncements of the superior courts in Pakistan the constitutional arrangements in the country does not adhere to the theory of separation of powers in letter and spirit rather the Pakistani constitutional scheme should be properly termed as tri-chotomy of powers among different pillars of the state.(13) In this constitutional scheme, every pillar of the state is required to observe what has been assigned to it by the constitution irrespective of the fact that the same does not fit well within the pure theory.

There are two important narratives of the FSC which give impression as if this institution was established with ulterior motives to downgrade the status of women. The First narrative is linked to the process of Islamization in the country initiated by General Zia. It is contended that he carried out this process to serve his political purposes and to provide legitimacy to his usurpation of power from democratically elected government of Zulfikar Ali Bhutto.(14) As the FSC was established by him then there must be something in this initiative which would have strengthened his regime. This narrative is not entirely unconvincing as General Zia was interested to prolong his government, but simply viewing the FSC's role as an extension of his politically motivated process of Islamization may lead to a distorted picture.

Another narrative is based upon the analysis of cases of coercive sexual relationship. The courts in these cases have time and again converted the allegation of rape by a victim woman into a confession of consensual sexual relationship if she fails to prove the element of coercion.(15) Decisions of this nature by the FSC are problematic and difficult to vindicate on any ground. Both of these narratives along with the constitutional objection of bestowing the legislative powers upon the FSC are prevalent and dominant perspectives on the role and efficiency of this institution. Without challenging the veracity of these, this paper intends to present an altogether different perspective so that the reader may keep in view a full-fledged picture before making his opinion.

The FSC's Contribution to Progressive Interpretations of Islam:

This section will catalogue those decisions of the FSC which are progressive and reformist in nature. As a limited space is available here, I will enlist two categories of cases. The earlier part of this section deals with the cases relating to family and women in a relatively detailed manner while the later part briefly refers to the cases pertaining to administration of justice. The reason for exploring the former category of cases in a detailed manner is that most often than not the negative portrayal of the FSC is imbedded on gender related issues. Let us now analyze the cases to bring forth the progressive trends fostered by the FSC.

There are Muslim scholars who are of the view that women cannot be appointed as judges or hold political offices as the same would go against the general import of the concept of *qawama* as enunciated in the Quranic verse 4:34. (16) In Ansar Burney's case,(17) which was decided by the then Chief Justice Aftab Hussain of the FSC along with two other judges, it was laid down that women can be appointed as judges and magistrate. The appointment of women as judges was challenged in this landmark case on four grounds: that their work as judges violate the requirements of *purdah*/veiling; judicial function was never assigned to any woman in the period of the Prophet Muhammad and his companions; woman's evidence is half than that of man, and they do not fulfill the requirements of a judge as enunciated by Islam.(18)

The court observed that if the evidence of two women is equivalent to one man in certain cases the same would not lead to the conclusion that two women must sit as judges in a case which is heard by a male judge.

brain in the skull of a gorilla or replacing his limbs with human limbs. It does not mean that this tragedy with Islam relates only to a small group of modern educated persons. Even those who love Islam with their heart and soul and have a deep respect and attachment for Islam, may they be modernists or orthodox, all of them are confronted with this malady.(7) Therefore Islam views life as an organic body where political, economic, social and moral walks of life are interrelated and form one entity. Quran invites towards complete system of life rather few rituals. Quran says: "O ye who believe! Enter into Islam whole heartedly, follow not the foolsteps of the evil one". (8)

So Islam considers the issue of poverty and recommends its solution in the total framework of human life. It becomes clear after reading Quran that Islam does not secure the rights and benefits of Muslims but in this world it protects the rights of non- Muslims as well. In this regard such mode of production or any activity related to trade and commerce is prohibited which may cause physical, spiritual or any other harm to mankind. Therefore piety, equality, fraternity, justice, benevolence and co-operation are the basic values in economic system of Islam. Quran says: "Allah commands justice, the doing of good and liberality to kith and Kin and He forbids all shameful deeds, and injustice and rebellion" (9) The Holy Prophet (PBUH) placed a high value on the economic welfare of the people. He liked to see the Muslims well-off rather than hungry and destitute. There are some traditions which suggest that he Holy Prophet (PBUH) desired to see his followers at a higher echelon on the ladder of development. After establishing the state of *Madina*, one of the first steps, which the Holy Prophet (SAW) took, was the establishment of *mu'wakhhat* (brotherhood) among the *Ansars* (helpers) of *Madina* and *Muhajjirs* (immigrants) from Mecca. This brotherhood was in fact, a step towards the economic rehabilitation of the newly arrived immigrants. Unfortunately Muslim economists have failed to present their case in a persuasive manner otherwise Islamic principal have outstanding potential to meet the challenge of poverty. (10)

Actions against poverty usually are of surface level where rulers and politicians never go beyond statements. Instead of propagating Islam as a complete code of life, Islam is being presented only as a part of the whole. Tariq Ramadan observed it is impossible, in present-day circumstances, to undertake reforming human realities, mind-sets, understandings, and societies without having a broad view of what the problems are and becoming intercurrently involved on several levels, with the issues being so interrelated. But when construing contemporary Islamic thought, one cannot but observe that it is a strangely---albeit most significantly---absent from

some contemporary essential debates, or, at least, lagging far behind developments. The reasons are always the same, I think: a very timid, defensive attitude about issues that *fuqaha* have poor knowledge of; the lack of general, well structured, fully developed vision among scholars, thinkers, and workers in various fields of expertise; and finally, the tension within the whole community, which is obsessed with maintaining the most visible and restrictive norms. This is most glaring in the matters related to the economy and ecology: an earnest, realistic ethical thought cannot approach either of them in isolation, and one must not fail to note all the necessary conclusions and all the concrete consequences that such a combined approach leads to in either field of activity.(11)

Muslim world in general and their leaders in particular need to conclude with clarity that variety of efforts, campaigns, strategies and all types of economics systems are failed to reduce poverty. United States of America is no doubt driving force of the world but poverty has become serious threat to its international agenda. The World Bank estimated 1.29 billion were living in absolute poverty in 2008.(12) Almost 1.7 billion people in the world are living in poverty (Wikipedia). Time has come that integrated and holistic approach of Islam should be considered as a solution of problems related to Muslim world as well as it is the only pattern which can benefit all the mankind. Islam does not ensure the betterment of only Muslims but in this materialistic world it emphasize all Muslims to be purposeful and productive for non-Muslim world as well.(13)

Muslim world has sufficient materialistic base to make appropriate efforts if Muslim leaders clearly define cost and prioritize all kinds of actions in accordance with the teachings of Islam in Surah *al-Muzammil* it has been focused that seeking the grace of Allah is a term frequently used by Holy Quran for economic activities.(14)

Suggestions:

To address the issue of poverty Muslim world needs to develop productive capacities of people by quality education and skill training.

Local cooperative organizations should be developed to ensure an incentive for self development and community involvement.

Poverty cannot be fought without the availability of physical resources therefore Islam had laid great emphasis on credible government ensuring accountability and transparency. Muslim states have to design such strategies and policies to provide appropriate resources. Syed Hasanuddin writes that it is basic responsibility of an Islamic society to take care of those who have no power of resources to earn. In order to meet such responsibility, an Islamic government has been given the power to collect zakat and fay. The income attained from zakat and fay will only be spent on the poor needy and deserving people.(15)

Any strategy to fight poverty should not visualize borrowing from other countries on interest rather cooperation between Muslim countries on the basis of equity participation in joint ventures should be encouraged.

To combat poverty and misery in Muslim world potentialities of people should be developed by establishing institutions. People should be enabled

by increasing level of literacy, exposure and skill training so that they might be able to earn their livelihood and contribute in economic growth of society accordingly.

People living in rural or urban areas of any society are equally entitled to receive basic facilities such as education, health, transport, clean water, electricity and telecommunication. The strategy based on Islamic principles of economics and social justice can tackle the unbalanced development between rural and urban members of society.

Islamic system of *Zakah*, Charity and Alms provide social and economic security to the deserving, orphans, deprived and needy segments of the Muslim society.

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Federal Shariat Court as a Vehicle of Progressive Trends in Islamic Scholarship in Pakistan

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Introduction:

Pakistan secured independence from the British Colonial government in 1947. From the early days of its independence, there has been a contested debate whether Pakistan should be declared as an Islamic country or not. This debate was very much there when its first Constituent Assembly adopted the Objectives Resolution in March 7th 1949.(1) Pakistan, in its different constitutions, has unequivocally pronounced its allegiance to Islam, e.g., Article 2 of the present Constitution, 1973, declares that Islam shall be the state's religion.(2) Moreover, the state has been constitutionally obliged to take measures to create such an atmosphere where its Muslim citizens would live according to dictates of their religion.(3)

Many institutions were established to carry out the task of Islamization in the country, e.g., Islamic Research Institute, Council of Islamic Ideology.(4) The main job of these institutions was to do research on issues pertaining to Islam and then present that to the legislative assemblies for enactment. The final authority to codify the same lied with the legislative assemblies; hence the role of such institutions was merely advisory in nature.(5) This particular downside of such institutions was one of the main considerations for establishment of the Federal Shariat Court (hereafter referred to as FSC).

The paper intends to explore the role of the FSC to highlight that it has contributed to progressive trends in Islamic scholarship. For the purpose of analysis, I have selected few judgments of the FSC. For the sake of clarity, the paper does not argue that the FSC has never contributed to traditionalist constructions of Islam or led to woman unfriendly implications rather the point at issue is that always aligning it with traditionalism or retrogressivism is a wrong way of approaching the contributions of this institution. There is another spectrum to view the role of the FSC based on another set of facts which this paper will present.

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The paper is divided into two main sections in addition to this introduction and a conclusion. The next section will briefly trace the origin of the FSC along with its powers. This section will be followed by another more detailed one which would showcase some decisions of the FSC to substantiate the main thesis of this paper.

Origin and Powers of the FSC:

After the implementation of Martial law by late General Zia-ul-Haq in 1977, it was quite unsurprising for many in the country that he would employ Islamic card to satisfy the sentiments of the opposition alliance, namely Pakistan National Alliance. The alliance was constituted to contest election in the country against Zulfikar Ali Bhutto's Pakistan Peoples Party. But the alliance was defeated in the general election in 1977 and converted its political struggle into a religious movement named Tahrik Nizam-i-Mustafa.(6) It was this background when General Zia usurped the power after deposing Zulfikar Ali Bhutto. Thus he had little option not to ride on the same sentimental waves caused by the opposition alliance's movement.(7)

In 1979, General Zia constituted the Shariat Benches at all High Courts in different provinces. These benches were assigned the same task which was allocated to the FSC after its establishment. The FSC was established in 1980 as an independent court rather than as an annexure to already existing High Courts.(8) Probably the establishment of an independent FSC was meant to protect it from being influenced from other benches of the same High Court and give more sanctity to its decision. The purpose was to provide it more autonomy than it would have exercised as Shariat Benches of the High Courts. This view is strengthened when we analyze the powers of the FSC. According to Article 203GG (9) of the Constitution of 1973 the decisions of the FSC are binding on all courts subordinate to it in addition to the High Courts.

Article 203D lays down the original jurisdiction of the FSC.(10) The FSC is constitutionally required to pronounce those laws of the country as null and void which are inconsistent with the Quran and Sunnah of the Prophet. These laws would then be replaced by the respective legislative assemblies within a specified time; and if that is not done within the prescribed period then the impugned law would cease to be law of the country.(11) Article 203D also states that if the law declared to be unislamic

Because if this argument is extended to its logical conclusion then one judge cannot adjudicate in the cases of *Hudood* and *Qisas* as the number of witnesses required in these cases is either four or two male witnesses.(19) The contention relating to veiling was refuted by references to interpretations of various Hadiths and opinions of different Imams.(20) With respect to the argument that women were never appointed to this office during the period of the Prophet and companions, the court held that the original principle is permissibility if there is no explicit prohibition in the Quran and Sunnah.(21) Thus when it has not been prohibited by the Quran and Sunnah to appoint them as judges then mere non-appointment by these holy personalities would not have any legally binding effect.

In this case, the petitioner's exclusive reliance was upon the verse of *qawama* and a famous Hadith that a nation cannot attain worldly as well as spiritual success if it is governed by a woman.(22) To arrive at an appropriate appreciation of concept of *qawama*, the court analyzed numerous commentaries of the Quran, its lexical constructions and conceptual foundation of suzerainty of man over woman in different civilizations. The court then construes this concept in terms of responsibility of a husband towards his wife and relates it to a famous saying of the Prophet that everyone is responsible in his/her respective domain.(23) The court concludes that the concept of *qawama* cannot be interpreted to "give any particular triumph to the husband over the wife".(24)

The court argues that the opinions of some Imams for not favoring the appointment of women as judges might be influenced by the circumstances of their age that it was difficult for women to maintain decorum of the courts. But in our age when there are laws, e.g. law of contempt, to maintain the prestige of courts there is no need to be scared in this respect.(25) The women were consulted and their evidences were acted upon by the Prophet and companions, hence the argument proffered on behalf of the petitioner that they lack in intelligence is unfounded.(26) The court did not find any merit in the petition as to appointment of women judges, hence dismissed.

This judgment is one of the best expositions of Islamic law on equality of rights of men and women. This case has been cited by Mashood Baderin in his celebrated book on human rights in Islam to buttress his argument for eligibility of women to hold political offices including judicial

responsibility.(27) On the one hand, this decision has exposed the bias underlying some traditional constructions of certain passages of the Quran and sayings of the Prophet, and on the other, it has categorically affirmed that women are as capable and competent in light of Islamic Jurisprudence as men considered to be.

Once again in Mian Hammad Murtaza Vs Federation of Pakistan,(28) the issue of competency of women for appointment as judges in matters of family laws was contested. The court while referring to Ansar Burney's case states that it has attained finality as the appeal against the decision of the FSC in the Shariat Appellate Bench of the Supreme Court was dismissed as time barred. Thus this court cannot be approached to get into a settled controversy one again.

Age of majority is another gender related issue. It has been a contentious issue in Islamic law; whether physical maturity/puberty should be regarded as criterion for majority or there is any possibility to hold that a certain age can also be regarded as such. Whatever criterion is set for majority it would have many implications for women and their rights in Islamic law. According to many scholars, the basic yardstick in majority is puberty as there is no set mechanism to ascertain mental maturity. In certain instances age has also been treated as a criterion. As a whole the age has not been very favorably held to be representative of one's majority.(29) The FSC in Muhammad Fayyaz and others Vs Federation of Pakistan(30) has dealt with this issue. The petitioner in this case contested that Sec. 3 of Majority Act(31) is repugnant to injunctions of Islam. The Sec 3 states that a child will be presumed to have attained majority in age of 18 years and if a guardian has been appointed with respect to a child then his age of majority will be 21 years. Relying upon the opinions of Muslim jurists, the petitioner was of the view that a child attains puberty much earlier than 18/21 years. The court did not agree to the contentions of the petitioner and held the said Sec. to valid in light of Islamic injunctions. The court in its judgment has pronounced that it has great regard for opinions of the learned scholars, but the same cannot substitute the Quran and Sunnah. The latter sources have not laid down any criterion for majority and the favorable treatment of puberty as a criterion has not been substantiated by them. The court concludes that it is in interest of litigants that there should be some

ascertainable criterion for majority instead of leaving this issue to be settled in each and every case on the basis of puberty of the parties.

In another attempt to protect and promote the rights of women, the FSC ordered that women should be appointed as vice chancellors to Woman University. In 1985 an ordinance was issued for establishment of Women University.(32) This ordinance did not categorically state that women should be preferably appointed as its vice chancellors. The FSC in exercise of its suo moto jurisdiction ordered the government that a clause should be inserted in the ordinance to make it sure that maximum effort should be made to appoint a woman as vice chancellor of the university.(33)

If there is any discrimination among citizens on the basis of gender then that is something which must be remedied. The law dealing with matters of citizenship was enacted in 1951 and known as Pakistan Citizenship Act. This law granted a right of citizenship to a foreign woman if she married a Pakistani husband under Sec. 10. The same sort of privilege was not accorded to a Pakistani woman in the law. In news clipping it was reported that a Pakistani wife could not get citizenship for her foreign husband. The same news item was converted by the FSC into suo moto petition(34) to analyze whether this discriminatory provision was against the principle of equality and fairness enshrined in injunctions of Islam. The FSC's decision was subsequently reported as *In Re: Gender Equality*.(35) This is another important decision of the FSC which brings forth its gender sensitive posture.

The FSC issued notices to different government departments to present their stance as to discriminatory treatment of Pakistani woman marrying a foreign husband. Numerous objections were raised by them. Crux of these objections is as under: in our society, status of a foreign husband is not equivalent to a foreign wife; equal treatment to both would contribute to already worsened problem of unemployment; and this facility might have been exploited by enemies for their nefarious purposes, etc.(36)

The FSC was not convinced by these arguments and took a stance that unless there is anything in the Quran and Sunnah to support this kind of provision the same cannot be allowed to survive on the statutes of Pakistan. In addition to its repugnancy to Islamic injunctions, it also violates the equality provisions of the Constitution of Pakistan, 1973. During the course of its analysis, the FSC has pointed out that the Convention of Nationality

of Married Women does not confer any right to a wife to get her husband a nationality on the basis of her national status.(37) Thereafter, the court observes that Islam envisages something different from the above convention. The court concludes that a foreign husband would be entitled to nationality of his wife on the same pedestal on which a foreign wife is entitled to have nationality of her husband; though these enabling provisions would not take away the right and responsibility of the state to deny such right to those who might be a threat to national security.(38)

There is another important decision of the FSC on Muslim Family Laws Ordinance, 1961, which support the main argument of this paper. Let us first briefly state the history of this ordinance and then indulge into highlighting the main implications of the decision regarding gender issues. The ordinance was enacted by late General Ayub Khan on the recommendations of a commission constituted to suggest changes in laws relating to Muslim family in 1955. The commission issued its recommendations in 1956, but they could not be enacted into legislation as they were vehemently criticized by the religious segments of the society. General Ayub took a bold step to codify them. Additionally, he and the subsequent governments in the country made conscious effort to provide security to this piece of legislation from judicial review on the basis of fundamental rights. The similar sort of security was also extended to this law from the FSC's jurisdiction at the time of latter's establishment.(39) Thereafter, a furious judicial battle took place in the courts to bring this law to judicial scrutiny.(40)

At last the FSC assumed jurisdiction with respect to the Muslim Family Laws Ordinance in a case titled Allah Rakha Vs. Federation of Pakistan.(41) Quite astonishingly the decision of the FSC does not seem to be satisfying the traditionally religious segment of the society as the court has taken a firm stance to foster protection of women in family matters. One of the objections of some religious scholars directed against the process of registration of marriages provided in Sec.5 of the Muslim Family Laws Ordinance. They are of the view that there was not any provision in the Quran and Sunnah to make registration compulsory.(42) The court, while observing that non-registration per se does not invalidate a marriage if that is solemnized as per injunctions of Islam, suggested to the government that

punishment of non-registration should be enhanced to make compliance of this provision more effective.(43)

The procedure to regularize polygamous marriages in Sec. 6 has been another bone of contention. Some religious segments were against laying down any procedure for taking permission from the existing wife before getting into another contract of marriage. The court held that the procedural aspect of Sec. 6 is entirely reformative and should be amended in a way to make it more protective to wife's interest. Hence, this procedure cannot set aside on the basis of any objection founded in the Quran and Sunnah.(44) In another contentious issue pertaining to Sec. 4 of the Muslim Family Laws Ordinance, the court suggested to the government to introduce a concept of mandatory will for orphaned grandchildren instead of giving them through process of inheritance. According to the court, this amendment on the one hand would not violate any Islamic injunction and on the other protect the rights of orphaned grandchildren.(45)

There is another important aspect in which the FSC has decisively contributed to emancipate women from unnecessary fetters put upon them by their unscrupulous family members. Some Sunni scholars are of the view that an adult virgin cannot get herself married without the consent of her guardians. This traditional stance had been taken as a plea by the families of those girls who get themselves married without their parents' consent to register cases of illicit sexual relationship against them and their husbands. As judicial dispensation carried out in Pakistan, appeals against such cases are heard by the FSC. The FSC in such appeals affirmed the rights of adult virgin girls to marry by their own choice and hence the cases of this nature were quashed many times.(46)

In late 1990s, an adult virgin girl married to her teacher without her parent's consent. The controversy regarding her competency to marriage was decided by Lahore High Court in two various petitions differently and ultimately, the matter was tabled before the Supreme Court of Pakistan. The Supreme Court relying on the decisions of the FSC concluded that an adult virgin has a right to marry by her own choice and the same cannot be taken away in any manner under the garb of guardian's consent.(47) The Supreme Court held that the decisions of the FSC are binding on all courts including the High Courts and whenever a decision is rendered by any High Court disregarding any judgment of the FSC then such decision of the High Court is bad in law.(48) Thus the Supreme Court put this long drawn controversy to a gender sensitive conclusion and in this regard the decisions of the FSC came to its rescue.

The decisions analyzed above in this section relate to gender issues and one way or another protect and promote rights of women. As pointed out in the opening paragraph of this section, I will also be briefly referring to some other decisions pertaining to administration of justice and the

purpose is to underline that progressive trend of the FSC is not restricted to one particular dimension only.

In a case titled *Dr Mahmood ur Rahman Vs. Federation of Pakistan*(49) it was held by the FSC that charging court fee as per market value of a subject matter is against the injunctions of Islam. In this case the petitioner challenged various laws on the ground of repugnancy to Islam and the court directed to the respective governments to amend all such provisions in the laws. In another case(50) dealing with an important issue of administration of justice, i.e. period of limitation, it was observed by the FSC that there is nothing in the Quran and Sunnah to proscribe period of limitations for different sorts of remedies.

In *Dr Abdul Malik Irfani Vs. Federation of Pakistan*,(51) the petitioner challenged some sections of Law Report Act 1875 which were amended by Act of 11 of 1990. These sections lay down that no judgment should be published without permission of the court which has pronounced it. It is worthwhile to point out here that this law was initially introduced the notion of precedent on a firm basis by facilitating systematic publication of law reports in the Indian Subcontinent. After going through the record and arguments of councils, the court dismissed the petition as it did not find in the law anything repugnant to Islam.

Conclusion:

The FSC was established by General Zia as part of his efforts to Islamize the country. It was provided a firm foundation by engrafting an exclusive chapter 3A into the Constitution. The most criticized aspect of the FSC has been to declare the laws enacted by various legislative assemblies as null and void if they are found to be inconsistent with the Quran and Sunnah. This criticism is channeled through many mediums, e.g. constitutional theory, patriarchal structure of Islamic resurgence and discriminatory application of Islamic laws against women. To some extent, the manner in which the FSC has discharged its judicial function, it has substantiated the objections. But this is not the whole truth about role and contribution of the FSC; it has time again pronounced such judgments which are progressive in nature though grounded in Islamic perspective. The paper has analyzed some decisions of this sort and argued that over-emphasis on negative portrayal may distort its genuine contributions. Though the paper has analyzed more cases related to gender issues, the same trend is also discernable in other kinds of decisions as highlighted with reference to a few cases pertaining to administration of justice. All the judgments analyzed in the paper were meant to be and has brought to forth that the FSC has been a vehicle for fostering progressive trends in Islamic scholarship. As a whole, the FSC's role in domain of Islamic scholarship is bound to challenge the authority hitherto exercised exclusively by traditional religious segments of the society.

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