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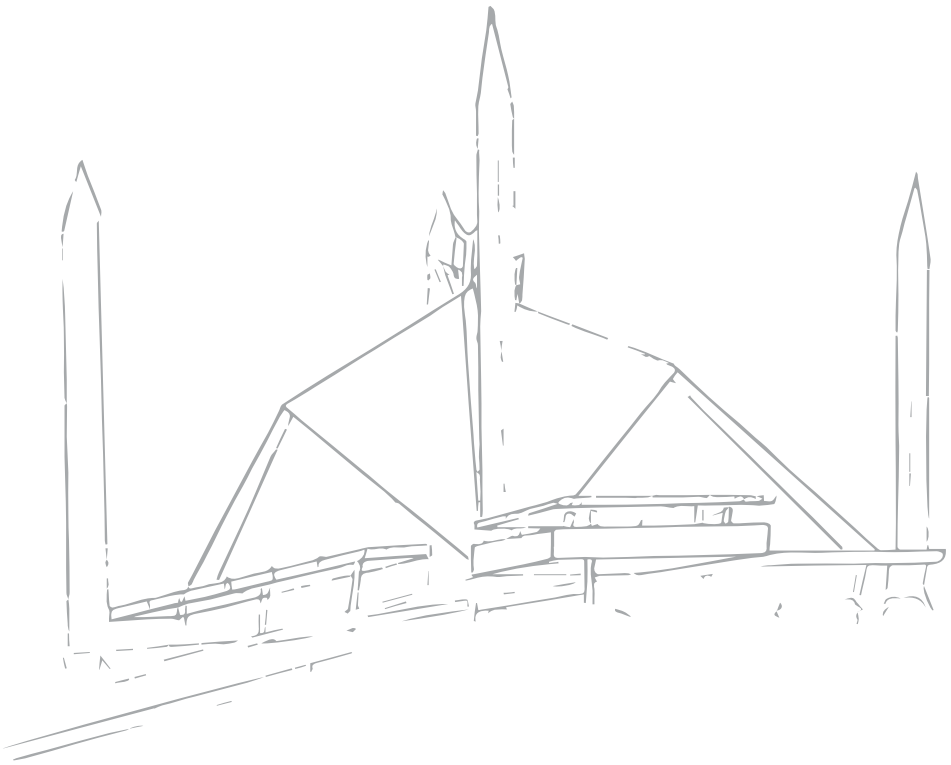

Islamization of Restitution of Conjugal Rights by Federal Shariat Court of Pakistan: A Critique

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Abstract:

In Pakistan's constitutional dispensation, the Federal Shariat Court (FSC) is empowered to declare those laws invalid which are found to be repugnant with Islamic injunctions. By the same constitutional provision, it endows Islamic sanctity or sacredness to laws which are held to be in conformity to Islamic injunctions. The paper problematizes the constitutional authority of the FSC by exploring the process of Islamization of the suit for restitution of conjugal rights (RCR). The suit for RCR was engrafted into Anglo-Muhammadan law during British colonial era through various patchworks which has recently been held by the FSC to be in consonance with the injunctions of Islam. In this background, the paper raises some questions as to the jurisdiction of the court and how that jurisdiction/authority is exercised. It posits that 'default legal infrastructure' is placed at a privileged position and its Islamicity is presumed to be well-rooted, unless it is questioned from an extremely narrow window available to aspirants of judicial Islamization of laws in Pakistan.

1. Introduction:

Ever since her independence, Pakistan has been struggling to enroot its ideological foundation as purportedly envisioned by its forefathers. Though the claim, that her forefathers were of the view that she would be converted into a laboratory for experimenting Islamization in all walks of lives, have its own dissidents. They controvert the above claim from various perspectives and some of them argue that the main motivation behind the struggle for freedom was based merely on protecting and safeguarding the economic interests of Muslims. Further the fear that in one unified democratic country, it would be hard for Muslims to protect their interests/rights from the majority rule of

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Hindus. Anyhow, the politics of the independent country, religious sentiments of masses and religio-political parties pushed her to reinvigorate its ideological foundation on Islam.

This journey towards Islamization, to the dismay of minority members, started quite early when the 'Objectives Resolution' was passed by the first Constituent Assembly in 1949. Thereafter, one may notice a number of provisions in successive constitutions of the country which reinforced its religious identity and established numerous institutions/bodies tasked with Islamization of laws. But whatever was the nature of such provisions and institutions, the key role always remained with the parliament to pronounce which law is considered to be Islamic or UnIslamic. However, this position drastically changed after martial law was imposed by General Zia-ul-Haq in 1977. He usurped power with a solemn promise to introduce rigorous process of Islamization with utmost vigor and determination. Since he dislodged the so-called existing democratic setup, he came up with an innate idea to further squeeze, not just temporarily but on permanent footings, the authority of elected representatives by establishing an autonomous institution of the Federal Shariat Court (FSC). It was assigned the task to ascertain Islamicity and adjudicate upon Islamicity of existing and future legislative instruments, which hitherto was a domain of the parliament in all constitutional dispensations. The Shariat Courts were initially established as special benches in High Courts of each province, which were later converted into the FSC as an autonomous constitutional institution, independent of the main stream judiciary. In addition to the constitutional establishment of FSC, wide powers to the martial law administrator were granted, which included his prerogative to man the FSC with the personnel of his own choice and bring changes into its procedures according to the exigencies best known to the incumbent regime. Since, neither the political aspects of establishing the FSC nor its maneuvering through various modes, is at issue in the present paper, therefore it would suffice to start with the premise that the FSC was established with authority to adjudicate upon and to declare legislative instruments and legally enforceable customs as repugnant to Islamic injunctions. This authority could be exercised by FSC while hearing the petitions filed by individuals,

as well as on its own motion, vide *suo motu* powers of the court. The jurisdiction conferred upon the FSC, in the Constitution of 1973, was subject to various restrictions, which included its limitation to ascertain Islamic validity of Constitution, Muslim personal law, procedural and financial laws.

The paper intends to problematize the jurisdiction of FSC by primarily focusing on its recent two decisions which have conferred Islamic sanctity to the suits for RCR. To reach at this conclusion, the paper will explore some landmark decisions pronounced during the British colonial era, which eventually formed the bases for the RCR in Indian subcontinent. The purpose of this analysis is to establish that how an apparently normal suit of contemporary times, whose Islamic authenticity was difficult for the FSC to doubt, had troubled and shaky foundations. Additionally, in an independent section, the paper points out that restitution is different from reconciliation, and how the coercive jurisdiction of any outside institution is likely to destabilize, rather than strengthen, a marital relationship.

Since the analytical ambit of the paper is limited solely to the issue of RCR, therefore jurisdictional analysis of the FSC has been conducted in this context exclusively, and one may argue that some broad generalizations as articulated in the conclusion may not prove accurate when some different analytical factors are taken into account. Without assuming absoluteness of the analysis conducted and the conclusion provided, this paper primarily focuses on bringing to light anomalies in the jurisdiction of FSC and problematizing the claim, often peddled ahead by aspirants of judicial Islamization, that this process could usher an authentic and viable Islamic legal system in Pakistan.

2. British Era Important Cases on the RCR:

This section aims to examine historical traces of RCR in the Indian subcontinent, with particular reference to land mark cases. The analysis of these cases highlights the theoretical foundations of RCR and dilates upon how this remedy was initially perceived in the legal system of subcontinent and how such perception

underwent a paradigmatic shift within a short span of time by its judicial engineering at various levels/forums.

Before the advent of the British Raj, it is argued that no comparable remedy like the RCR was available in either Muslim or Hindu religious laws.[1] Haj Mahomed Ullah ibn S. Jung, after discussing some aspects related to the RCR, concludes that "[t]his part of Anglo-Muslim Law is absolutely the product of legislative and judicial development…."[2] The same author further argues that "they [i.e. cases] conclusively show that the Courts in British India [with reference to the RCR] have been more guided by the principles of the English Law."[3]

The first case in this context is *Ardaseer Curestjee v Perozeboye*.[4] The parties to the suit were 'Parsee' married couple living in Bombay, which was a presidential town then under British Raj. The husband contracted second marriage and left her first wife - respondent in the present case- unattended. She filed a suit against her husband to take her back to nuptial abode. The suit was tried in the Ecclesiastical side of Supreme Court of Bombay which passed the decree against husband. During the course of the proceedings, the husband challenged the jurisdiction of the court as to maintainability of such suits, but his objections did not convince the Chief Justice whose opinion according to the charter of the court had to prevail. Hence, he filed appeal against the Supreme Court's decision to the Privy Council. This was the first case, decided by the Privy Council, dealing with maintainability of the RCR suits in Indian subcontinent. At that time, the judicial system under British Raj was bifurcated into Ecclesiastical side and civil side of the courts. The suits in the Ecclesiastical side were decided according to Ecclesiastical law which was based on doctrines of Christian church. According to Ecclesiastical law, polygamy was not allowed and was treated as adultery. In case of

[1] Preet Singh, *Restitution of Conjugal Rights: A Comparative Study* (PhD Thesis, Maharshi Dayanand University
1995) 98-99.

[2] Al-Haj Muhomed Ullah ibn S. Jung, *A Dissertation on the Development of Anglo-Muslim Law in British India*
(The Juvenile Press: Allahabad 1932) 27.

[3] Ibid, 28.

[4] 1856 IA (Privy Council) 265

adultery, a Christian wife was entitled to have separation from bed and board along with alimony. But in no case a decree for RCR could have been pronounced on Ecclesiastical side of courts. However, in the present case, the husband contracted another marriage without dissolving the first one, which was lawful under Parsee law according to the Privy Council. The Husband was happily living with the second wife and the first wife was claiming to have conjugal unity enforced in the Ecclesiastical jurisdiction of the court. If such jurisdiction was exercised, it would have amounted to enforcing and recognizing polygamy which according to doctrines of Christian church was nothing other than adultery. The Privy Council ruled that "change in essential character" through enforcing the RCR and recognizing polygamy, albeit indirectly, would denude its sanctity as Ecclesiastical law. Hence, the apex court in categorical terms said that "… a suit for the restitution of conjugal rights -strictly an Ecclesiastical proceeding- could not consistently with the principles and rules of Ecclesiastical Law, be applied to the parties who profess the Parsee religion,…".[5] In such uncharacteristic situation, where Privy Council was hesitant to indirectly recognize polygamy under Ecclesiastical law, it found a tactical way to pronounce a possibility that such remedy could be availed on civil side of the Supreme Court's jurisdiction that had more flexibility and adaptability to accommodate various religions and local customs.[6]

The significance of this decision lies in the fact that on the one hand it asserted Christian roots of the RCR in absolute and categorical terms as a tool to enforce monogamy, and on the other it opened window for the natives, having different religions and customs, to seek this remedy from civil jurisdiction of British courts. Hence, along with reassuring the religious and sacred nature of the RCR, Privy Council left open its secular use through civil jurisdiction for all people not professing Christianity.

Anyhow, this decision initiated the process of 'indigenization' of the RCR and gradually masked its complex

[5] Ibid, 267-8
[6] Ibid, 267

religious and historical baggage.[7] It further laid the foundations for various religious communities, inhabited in Indian subcontinent, to construct their own justifications for resorting to RCR.[8] From the perspective of Muslim Personal law the most important case on the RCR is *Moonshee Buzloor Ruheem v Shumsoonissa Begum*.[9] In this case, the court overemphasized the contractual nature of marriage under Islamic law and expressed astonishment as to how a marital contract could be envisioned without the prospect of 'specific performance'. The Privy Council, while addressing the question of whether a Muslim husband could force his wife, without the latter's consent, to return to cohabitation through civil courts of India, observed that, "[i]f a law which regulates the relations of the parties gives to one of them a right, and that be denied, the denial is wrong; it must be presumed that for that wrong there must be a remedy in a Court of Justice."[10] The Council concluded that, "their Lordship have no doubt that the Mussulman Husband may institute a suit [for the RCR] in the Civil Courts of India, for declaration of his right to the possession of his Wife, and for a sentence that she return to cohabitation; and that suit must be determined according to the principles of the Mahomedan law."[11] While providing reasoning behind the judgment, the Privy Council acknowledged that it did not discover any comparable remedy to the RCR in *Hedaya*, which only stated that the disobedient wife or the wife going abroad without her husband's consent would be deprived of maintenance until she returns to submission. The council held that "it seems implied throughout, that she, from the time she enters his house, is under restraint, and can only leave it legitimately by his permission, or upon a legal divorce or separation, made with his consent."[12] This case confirmed the possibility of pursuing the

[7] Rebecca R. Grapevine, 'Family Matters: Citizen and Marriage in India, 1939-1972' (PhD Thesis, University of Michigan 2015) 110.

[8] Shahbaz Ahmad Cheema 'Indigenization of Restitution of Conjugal Rights in Pakistan: A Plea for its Abolition' 2018 (5)1 LUMS Law Journal 1-18

[9] (1867) 11 Moore's Indian Appeals 551

[10] Asaf A. A. Fyzee, Cases In The Muhammadan Law of India and Pakistan (Oxford University Press 1965) 294.

[11] Ibid, 296.

[12] Ibid, 296.

RCR through civil jurisdiction of British courts as articulated in *Ardaseer Curestjee v Perozeboye* with an additional proclamation that the parties to the RCR might raise defenses under the personal law based on their religion, which they were supposed to follow.

The third important case in this domain is *Abdul Kadir v Salima*[13] which was decided by Allahabad High Court. It provided the much-needed religious sanctity to the RCR, by equating it with the spouses' right of cohabitation, under Islamic law. Justice Syed Mahmood, in is judgment, reproduced extracts from legal texts to conclude that the incidents of a Muslim marriage, such as husband's obligation of dower and mutual rights of cohabitation, flow simultaneously. His analytical discourse, based on authoritative books, gave an unflinching impression as if the spouses' mutual rights of cohabitation were an equivalent to the RCR.[14]

The distance travelled by the RCR within three decades was nonetheless amazing from the first decision of Privy Council to the last-mentioned decision of Allahabad High Court. Three decades ago, the Privy Council was hesitant to extend the RCR under Ecclesiastical jurisdiction to natives due to its distinctive Christian roots. About a decade later, the same council candidly acknowledged that such remedy was not found in *Hedaya*. And lastly, the first Muslim Judge of any High Court in British India portrayed it as comparable to spouses' mutual rights of cohabitation under Islamic law. There is no marital system in which spouses do not have rights of cohabitation and sailing on the logic of Justice Mahmood, the RCR then became an indispensable corollary to all of them. It is interesting that this 'Christianization' of Islamic family law took place under the authority of a Muslim judge, albeit he himself was Anglicized

[13] (1886) 8 All 149

[14] Shahbaz Ahmad Cheema 'Revisiting *Abdul Kadir v Salima*: *Locus Classicus* on Civil Nature of Marriage?'
(2018) XXXIII (XLIX) *Al-Adwa* 63-78.

through his education in England as a student at Cambridge University and later as a barrister of Inns of Courts.[15]

3. Judgments of FSC on the RCR:

In 2015, the FSC pronounced two judgments relating to the RCR. Both are titled as *Nadeem Siddiqui v Islamic Republic of Pakistan*.[16] The first judgment relates to Section 5 (along with its schedule) of the Family Courts Act 1964 which empowers the family courts to grant the decree for the RCR, whereas the second pertains to the procedure for enforcement of such decrees as laid down in Civil Procedure Code 1908. In the first reported judgment, the petitioner challenged the provision, which empowered the family courts for granting the relief of RCR, as unconstitutional and against the injunctions of Islam. While relying on Quranic precept contained in 4:35, related to reconciliation between spouses in cases of discord, it was contended that the family courts could not grant decrees for the RCR nor could "force an unwilling wife to live with her husband against her wishes."[17] The court did not have any objection as to the importance of reconciliation between spouses, and to this extent, both the court and the petitioner were on the same page. But the thorny issue before the court was to determine the length of time, to which the court should wait before granting the decree for RCR. The petitioner maintained his stance resolutely that the court was not authorized to issue such decrees in the first instance, hence, the question of ascertaining time for this purpose was of no consequence. On this response, the court noted that "[t]he learned counsel, however, could not cite any Verse or Hadith to support his contention. Obviously, the stance taken by the learned counsel is neither logical nor judicious."[18] The court further observed that if the spouses were allowed to live separately for some time, it would have severe emotional and moral consequences for both, in addition to

[15] Alan M. Guenther (2004) Syed Mahmood and the Transformation of Muslim Law in British India (PhD Thesis) McGill University, Canada.

[16] PLD 2016 FSC 01 and PLD 2016 FSC 04

[17] PLD 2016 FSC 01 at 02

[18] PLD 2016 FSC 01 at 03

adversely affecting the wife, who does not have any other source of income than her husband's. The best course in this situation according to the court would be to resolve the marital controversy in either way -restituting conjugal rights or petitioning for khula. After such analysis of the issue, the court concluded that "[t]he learned counsel could not satisfy the Court as to how the impugned section which authorizes the family courts to issue decree for restitution of conjugal rights is repugnant to injunctions of Islam. As mentioned above, he could cite no specific Verse or Hadith which puts an embargo on the Family Court and restraint it from passing an order for restitution of conjugal rights if the wife is not ready for dissolution of marriage on the basis of Khula."[19]

This judgment does not engage in an elaborate qualitative analysis of the Islamicity of RCR on its own, rather assumes inherent Islamic authenticity of RCR and thereupon requires the petitioner to prove otherwise. This judicial approach demonstrates how 'defaults legal system' enjoys a distinguished position.

The second judgment of the FSC on the RCR distinctively pertained to the procedure for enforcement of the decree of RCR. The relevant provisions of the Civil Procedure Code, i.e. rules 32 and 33 of Order XXI, empower the courts to attach and sell the property of willfully defaulting spouse along with legally obliging the husband to pay periodic amount for non-compliance of such decree. The petitioner was of the view that the RCR and its enforcement procedure were potent enough to compel an unwilling wife to seek dissolution. He explained that a husband, after securing a decree for the RCR, might initiate a coercive procedure for enforcement of the decree exposing his wife to unbearable economic crises. This situation did not leave any opening for the defaulting wife except to file proceedings for dissolution.[20] Hence, according to the petitioner, there was a direct nexus between the coercive procedure for enforcement of decree for RCR and dissolution proceedings, and declaring the former as against Islamic injunctions might reduce the frequency of the

[19] PLD 2016 FSC 01 at 03-04
[20] PLD 2016 FSC 04 at 07

dissolution suits. While highlighting the significance of the procedure for enforcement of judicial decrees, the court said that "… if after the whole exercise, a decree passed, a judgment delivered is not complied with or not taken to its logical end, the whole exercise becomes meaningless."[21] A wife once entering into a marital bond was bound to follow its conditions and if she wanted to get rid of the bond/tie, it was not appropriate to stay away in contravention of the RCR decree, rather to initiate dissolution proceedings as per the court.[22]

Since the petitioner attempted to forge a nexus between the frequency of dissolution proceedings initiated by wives and the coercive procedure laid down for execution of RCR decree, he referred divine precepts in this context and based his arguments on them. But the court found such precepts as unrelated to the matter under inquiry and concluded that "… even on merits, the learned counsel has not been able to refer to any specific provision in the Holy Quran, Hadith or even Fiqh which could support his contentions."[23] Additionally, the court, while relying on its constitutional mandate,[24] held that it could not evaluate any legal provision falling within the domain of Muslim Personal Law and Procedural Law.[25]

There are some points to be highlighted that the court kept on emphasizing that the petitioner was unable to specify any Quranic verse or saying of the Prophet which would have pointed out that the RCR was inconsistent with the injunctions of Islam. Hence, the burden to problematize the religious sanctity from Islamic perspective was exclusively put on the petitioner. It means that the court succumbed to the adversarial method of inquiry, to which the judges in our country are accustomed to. The court unconsciously overlooked the constitutional mandate[26] empowering it to assume *suo motu* jurisdiction which is difficult to be exercised without resorting to inquisitorial manner of inquiry.

[21] PLD 2016 FSC 04 at 08
[22] PLD 2016 FSC 04 at 08
[23] PLD 2016 FSC 04 at 09
[24] Art. 203-B(c)
[25] PLD 2016 FSC 04 at 09
[26] Art 203DD???

Though the jurisdictional provisions of the FSC could be read otherwise and the court could have been held to have inquisitorial jurisdiction, but the manner in which the court has exercised it over the years give impression as if it would exercise its jurisdiction preferably and generally through adversarial method of proof. This approach puts the burden on the petitioners to bring convincing evidence before the court and if they could not produce that quality of evidence, their petitions are destined to be dismissed. The standard of quality of such evidence has been raised to such a degree that it is difficult to meet without bringing before the court some definitive verses of the Quran and sayings of the Prophet. In absence of such definitive evidence, Islamicity of any existing legislative instrument is presumed to be well-founded and secured. Furthermore, such judicial approach of the FSC implies that whenever any verse is capable of reading in more than one way, that interpretation would be given judicial sanctity that favors the 'default legal system'.

4. Restitution vs. Reconciliation:

The FSC in the first case on the RCR made a reference to verse 4:35 of the Quran[27] and highlighted that reconciliation is always a preferred option.[28] And thereafter it assumed as the RCR is the most appropriate way to make spouses reconcile. This Quranic verse has a specific reference to carry out reconciliatory efforts with the assistance of arbitrators from both spouses before dissolution, when that remains to be the only option. Even if this verse is read as a general command for resorting to reconciliation between spouses, it does not support the conclusion drawn by the FSC as to rule Islamicity of the RCR. Rather the verse makes the opposite clearer, that reconciliation would not be affected unless both the spouses have submitted to it voluntarily.

Restitution in its most mild and softest form implies some sort of compulsion and coercion which could never be watered

[27] "And if you fear a breach between the two (husband and wife) then appoint an arbitrator his people and an arbitrator from her people. If both desire peace Allah will make of one mind. Certainly Allah knows all, Aware about all things." (4:35)

[28] PLD 2016 FSC 01 at 2-3

down to the level of reconciliatory efforts by any judicial or legislative gimmickry. It would not be out of place to mention that when Justice Mahmood pronounced his aforementioned decision[29] at that time imprisonment of the defaulting spouse was one of the options for execution of the RCR decrees. This option was obliterated in the first quarter of 20th century from the Civil Procedure Code 1908 while leaving other options intact such as attachment of property.[30] Assuming in such a situation that restitution is not different from reconciliation is not less than self imposed fantasy.

Syed Maududi in his small treatise on rights and duties of spouses has regarded mutual blissfulness and affection as one of the prime objectives of marriage under Islamic law.[31] There are many verses in the Holy Quran which portray a married life as an epitome of harmonious and affectionate relationship.[32] There are a number of other verses which make a point that if married relationship could not be maintained with affection and friendliness, then it is better to dissolve it politely and courteously.[33] It is a fact that there is no specific verse and hadith which affirm unambiguously the Islamic validity of the RCR, but there are plenty to show repugnance that married life can never be carried on under Islamic law through compulsion and coercion.

In my analysis of the cases of the RCR in another article,[34] I have pointed out how this remedy is a readymade ply, in the hands of unscrupulous husbands, which does not give a remotest semblance to any iota of harmony, affection and serenity of married life. It is not tactical use which makes the RCR as objectionable, rather state's complicity, by retaining it as a legal remedy, makes it more obnoxious and intolerable. And the recent decisions of the FSC conferring Islamic authenticity on the RCR

[29] Abdul Kadir v Salima (1886) 8 All 149

[30] Rule 32 of the Civil Procedure Code, 1908.

[31] Syed A. A. Maududi, *Haqooq uz Zojjain*, Adara Tarjman ul Quran, Lahore, Pakistan at 21.

[32] Ibid, 21-22

[33] Ibid, 23-24.

[34] Shahbaz Ahmad Cheema 'Indigenization of Restitution of Conjugal Rights in Pakistan: A Plea for its Abolition' 2018 (5)1 LUMS Law Journal, 1-18.

have added more sludge to the muddy situation. Though every case has its own specific context, but sometimes cross case comparisons make imperceptible absurdities and contradictions more appreciable and evident. The FSC[35] led the Supreme Court[36] to articulate that an adult virgin cannot be married without her consent and there was no legal necessity to procure the consent of her *wali*/guardian. It is astonishing that the same FSC ruled that what was necessary for contracting marriage, i.e. consent of bride, was not so essential for continuing marriage, and some sort of compulsion and coercion by the state was legitimate in the RCR.

The FSC in its famous case titled *Saleem Ahmad v Government of Pakistan*[37] dealing with the case of dissolution of marriage, even before adducing evidence by spouses, held that such legislative provision could not be declared as repugnant to Islamic dictates. Here what the FSC was assuming that when reconciliation was not possible, dissolution should have been resorted to, without wasting further time and energies. But when it is compared with the rationale in the decisions under examination on the RCR, the FSC appears to put its weight for maintaining the option of compulsion and coercion for continuity of married life. Lack of reconciliation made the FSC to dissolve without pursuing the long-drawn procedure of suits in *Saleem Ahmad v Government of Pakistan*, the same situation of irreconcilability guided the FSC to compel the defaulting spouse into nuptial abode once again. In Saleem Ahmad the FSC poised the question that "Should she be pushed back to her husband to remain tongue tied, tight lipped, depressed and dejected, having a miserable survival throughout her whole life?"[38] In the present petitions, she was actually pushed to that situation and that too with coercive machinery of the state reinforcing her husband's decree.

[35] Muhammad Imtiaz v State PLD 1981 FSC 308; Arif Hussain & Azra Parveen v State PLD 1982 FSC 42; Muhammad Ramzan v State PLD 1984 FSC 93; Muhammad Yaqoob v State 1985 PCr.LJ 1064.

[36] Abdul Waheed v Asma Jehangir PLD 2004 SC 219.

[37] PLD 2014 FSC 43

[38] PLD 2014 FSC 43 at 58

This contradictory and absurd logic can only be brought home when it is examined in light of the jurisdictional approach evolved by the FSC over the years; that it has to protect rather stamp with Islamic authenticity upon that stance which has already found favor of the parliament. It means that default legal system/infrastructure is always considered a blued eyed child of FSC and the aspirants of rigorous Islamization have to explore other options, and that other option is not other than the parliament to which they always feel difficulty to get in. Eventually, the court's jurisdictional approach makes it unequivocal that though it was constituted to grab the authority of the parliament as to determine Islamicity or otherwise of legislative instruments, however it has ended up reassuring the exclusive legitimacy and competency of the parliament except for a very narrow domain directly in conflict with definitive Islamic precepts.

5. Conclusions:

The paper explains the influential nature of our socio-political context in which we, as institutions, operate and function. That context limits our opinions in a particular way and prevents us to recognize the alien-ness of those things to which we have become accustomed to, over the years. Interpretive and constructive efforts are not carried out in vacuum; rather they are carried out in structures which have both cognitive as well as corporeal existence, hence they are bound to be influenced by such factors. Sometimes piece meal semblances and isolated normative sources join together to formulate a picture under the influence of existing circumstances, which without such context would have been difficult, if not impossible, to achieve or had never been constructed in the past. This is how Anglo-Muhammadan law developed a theological foundation of the RCR which has ultimately been upheld by the FSC in its decisions. The paper further illustrates the illusive nature of boundaries amidst 'secular' and 'sacred'. The RCR was once recognized as sacred in the context of Christianity, however later on it was stripped of its sacredness and transformed into secular/civil nature in order to make it accessible for people of other religions inhabited in Indian subcontinent. The final turn, in the form of the FSC's recent

decisions on the RCR, impinged it once again sacredness, however this time it was not from the perspective of that religion (i.e. Christianity) which initially espoused it but under the emblem of Islamic law. It is interesting to note that British Raj once denuded the sacred and religious aspect of the RCR for its smooth application to non-Christians in Indian subcontinent; however the FSC adorned it with religious sanctity for maintaining its application to Muslims in Pakistan.

In addition thereto, the jurisprudence developed by the FSC over the years lean in favor of 'default legal system' and puts burden on petitioners for bringing 'invalidity argument' into play, lacking which their petitions are to be dismissed. This judicial attitude of the court is against the constitutional mandate which specifically empowered the court to resort to *suo motu* jurisdiction. This jurisdiction is difficult to be exercised without resorting to inquisitorial mode of inquiry. The question here could be raised for contemplation: why inquisitorial mode of inquiry has been confined to *suo motu* proceedings by the FSC and the relatively less cumbersome adversarial manner is generally adopted in all other kinds of petitions!

By presuming the religious validity of default legal system/infrastructure, the FSC has basically jeopardized that very perspective with which it was initially established by General Zia's regime, viz. to create a parallel yet more effective institution than the parliament to carry out the mission of Islamization of laws. Apparently the FSC takes cognizance of such cases with a staunch presumption that the laws made by the parliament are Islamically valid unless their religious authenticity is definitively disputed by aspirants of judicial Islamization. Consequently, the FSC, through its jurisdictional maneuvering, has rendered ineffective the spirit behind shifting such authority from sole prerogative of the parliament to that of a non-elected judicial body, i.e., FSC. What was envisioned to be achieved with the establishment of FSC that cause has been lost by the very institution itself.