

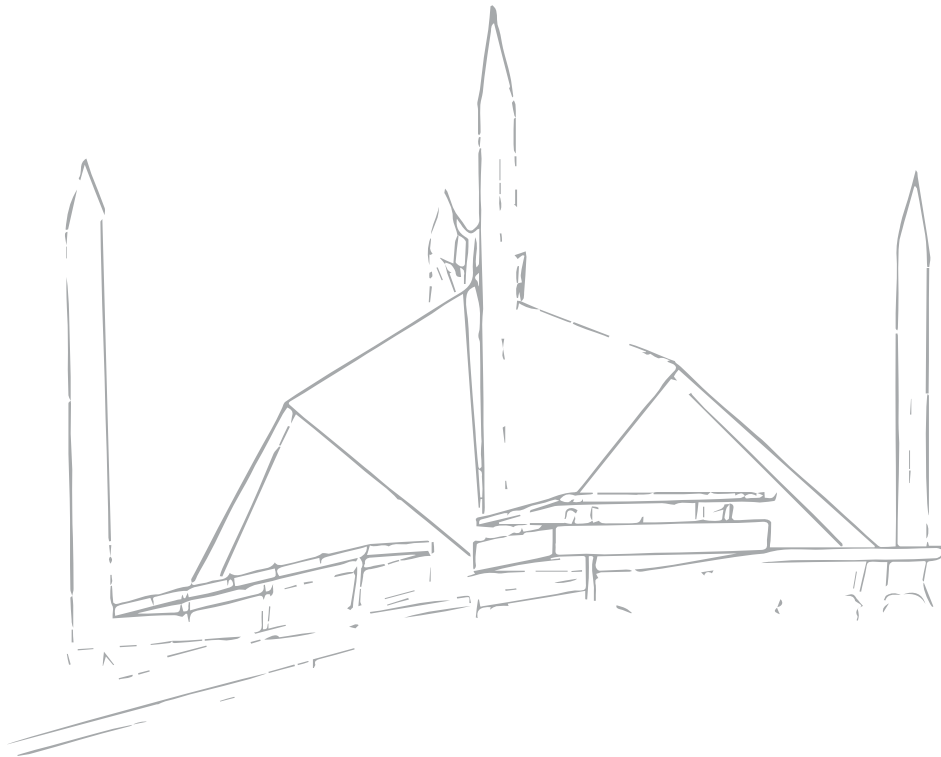


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Methodologies of Teaching Islamic Law (*Shari'ah*) in Law Colleges of Pakistan

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Abstract

The Islamic law's application is mostly on matters concerning personal law of Muslim. Due to the very nature of legal system in Pakistan it follows, that Shari'ah legal studies is vital to be taught and included in the prospectus arrangement especially for Law students, Lawyers, Islamic Legal fraternities and all those who will or might be indulging in judiciary of Pakistan. The purpose of this paper is basically to examine the procedures of schooling, teaching and coaching Islamic law (the Shari'ah) in Law Colleges of Pakistan. The Exam system focusses on the training procedures with reference to topics that are meant for legal theories and ideas as well as subjects that are meant for both legal theories and applied everyday aspects as practiced in the courts of Pakistan. The objective and purpose of this paper is to examine and analyze whether such practices and procedures of teaching is in line and attuned with the existing development of Shari'ah legal practice in the country. This research will basically adopt a qualitative research methodology where the research will be library based and available resources and literatures in the Universities. Finally, the paper will recommend certain upgrading advices in syllabus of Law Colleges related to the teachings of Shari'ah subjects.

Keywords: *Methodologies of Teaching, Islamic Law, the Shari'ah, Legal theories, Practical Aspects.*

1. Importance of Islamic law in Pakistani legal system

Islamisation of Pakistan's legal system has been persistent until the present. It is no longer confined to few distinctive areas of law but has become an essential part of the legal discourse being relied on in the context of a wide range of issues, from the permissibility to erect high rise buildings in Karachi to the dismissal of prime minister under Article 58(2) (b) of the 1973 constitution.¹

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¹ Martin Lau, *The Role of Islam in Legal System of Pakistan* (Leiden-Boston: Martinus Nijhoff Publishers, 2006), p. 24.

The Islamic provisions of pre-1973 constitutions shared a basic structure in respect of their provisions for Islamisation: there was the objective resolution, which served as preamble, containing a common obligation to create an Islamic society and various constitutional provisions asking the state to promote Islam and to bring the legal system in conformity with Islam, Pakistan's first constitution, the 1956 constitution, envisaged to introduce Islamic law.² The first took the form of a 'Directive Principle of State Policy' which obliged the state to take steps 'to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with Islam. However, Article 24 of 1956 constitution provided that 'Directive Principle of State Policy' were not enforceable in any court though the state was to be guided by them in the formulation of its policies. The non-justiciability of Directive Principle of State Policy in effect prevented any attempt to enforce the state to bring the legal system closer to Islam.³

The second instrument focused on the formation of advisory body which would make commendations to the parliament as to the content, application and enactment of Islamic laws.⁴ However, there was no compulsion enforced on the parliament to act upon those recommendations. None of Islamic provisions had any effect on legal system of Pakistan.⁵ After the abolition of 1956 constitution, recommendation on the structure of new constitution for Pakistan adapted a caution approach: legal system should only be subject to Islamisation if different school of Islamic laws could evolve unanimity with regards to the fundamentals of Islam as far as traditions are concerned.⁶ Even objective resolution retained as preamble to 1962 constitution and no legal mechanism was provided for any form of Islamisation of

² Abdul Ghafur Muslim, *Islamization of Laws in Pakistan: Problems And Prospects* 76 (1987).

³ *Ibid.*

⁴ Martin Lau, *The Role of Islam in Legal System of Pakistan* 25 (2006).

⁵ *Ibid.*

⁶ Muhammad Khalid Masud, *Teaching of Islamic Law and Shari'ah: A Critical Evaluation of the Present and Prospects for the Future* 78 (2005).

legal system. Public pressure led to the amendment in 1962 constitution that centered around the reintroduction of 'repugnancy formula' with the only power of recommendations not implementation, it has been confirmed by the Supreme Court of Pakistan in the case of *Tanbeer Ahmed Siddique v Province of East Pakistan* that we cannot use Islamic law to strike down a ruling as unconstitutional and unlawful. The constitution of 1973 consisted a distinct chapter headed 'Islamic Provisions' with extension of the same method as in earlier constitution. Real outline of Islamic law in legal system was noticeable during the era of Zia ul Haq.⁷

2. Importance of objective resolution

Importance of Islamic law in Pakistani legal system can be pragmatic from the fact that Objective Resolution was so important that was made a part of it through article 2A. Its importance was emphasized by Justice Rahman as:

"In an event, if a grundnorm is essential for us I do not have to look upon the western legal academicians to determine one. Our own grundnorm is cherished in our own doctrine that the legal sovereignty over the entire universe belong to Allah Almighty alone and the power exercisable by the people within the limit prescribed by Him a holy belief. This is an unchallengeable and constant norm which is clearly accepted in the Objective Resolution passed by the constituent assembly of Pakistan this has not been repealed by any one so far, nor has been it deviated by any regime, civil or military. Indeed, it cannot be, for it is the ultimate values preserved in the Quran."⁸

Same idea was supported by Justice Sajjad Ahmad as:

"Pakistan was created as a permanent state founded on Islamic ideology and ruled on all the basic norms of that ideology, if god forbids the whole body politics of Pakistan, is re-constituted on an un-Islamic outline which will of course, mean the devastation of its innovative notion. The constitutional concept of Pakistan and the spirits and

⁷ Martin Lau, *The Role of Islam in Legal System of Pakistan* 31 (2006).

⁸ See the Legal Framework Order 1970 and the Interim Constitution of the Islamic Republic of Pakistan 1972.

fundamental norms are embodied through the practice of Objective resolution."⁹

Article 2-A recited with Objective Resolution of the constitution according to some jurists, as well as some decided cases, was enacted on account of an observation in the case of "The State v Zia ur Rehman and others PLD 1973 SC 49.¹⁰ According to that it always formed part of constitutional arrangement and setup of Pakistan. Article 2A read with Objective Resolution; chapter 3A, part VII (the Principle of Policy) of the constitution vis-à-vis the functioning of Federal Shariyat Court and Shariyat Appellate Bench; Article 227 and other provisions of constitution related to Islamisation, are being inferred and applied in various situation.¹¹

3. Role of legislators

The lawmakers have a tremendous and remarkable task before them. The new legislature will not only require meeting the new necessities of the altering situations but also the whole of present law is also to be revised so that it should imitate with the injunctions of Quran and Sunnah.¹² The effectiveness in this respect of the legislators is uncertain. To cater with the insufficiency, a board of legal experts has to be established in order to assist the legislators.¹³

There shall be two houses in the Islamic legislature, the house of jurists and the house of professionals.¹⁴ This dualism is done in order to combine the religious and secular positions in one exclusive character, that is, Islam. Kurdi by putting this idea states that '*A human being has both a body and soul and needs certain*

⁹ Supra, note 22, at p, 258.

¹⁰ Muhammad Khalid Masud, Teaching of Islamic Law and Shari'ah: A Critical Evaluation of the Present and Prospects for the Future 79 (2005).

¹¹ PLD 1989 SC 613, p. 625.

¹² Martin Lau, The Role of Islam in Legal System of Pakistan 33 (2006).

¹³ Abdul Ghafur Muslim, Islamic Studies 270 (1987).

¹⁴ *Ibid.*

*direction lest one faction gains control over another. An equilibrium between these two aspects is indispensable.*¹⁵ In fact, legislature is the chief structure of the Islamic states which chains the secular and the religious position in one unique character: in preservation of belief and managing the matters of the world as *al-Mawardi* states,

*“Islamic state’s most effective branch, the legislature, shall not only consists of an instantly religious structure nor an exclusively secular one. The jurists shall present the religious side and professionals who are specialized in different fields of social sciences, shall present secular side of the government”*¹⁶

Islamic modifications shall be familiarized with both modern educational institutions and the religious old-fashioned institutes, in order to prevent the risk to Islamic institutions by the modern social sciences, spreading of the awareness of Islamic law in our academies and schools would undoubtedly aid to face this risk.¹⁷

Joseph Sachet said,

*“Islamic law is the essence of Islamic believes, we can say that the typical demonstration of the Islamic way of life, the core and kernel of Islam itself... apart from this, a Muslim’s way of living his whole life, the learnings of Arabic literature and the Islamic discipline are deeply infused with the ideals of Islamic law; Islamic law cannot be understood without understanding Islam.”*¹⁸

So essential footsteps must be used for a thought-out programme to give appropriate abode to the education of Islamic law, in the syllabus prescribed for legal training in our colleges and universities.. It requires immediate attention as most of the politicians and legislatures have always been drawn from the legal profession. Iqbal says

“the actual therapy for the potentials of inaccurate interpretation of the straightforward foundations of Islamic law is to modify the present system of legal training in Mohammadan countries, to spread its range,

¹⁵ ‘Abd al-Rahman ‘Abd al-Qadir al-Kurdi, *The Islamic State: A Study Based on the Islamic Holy Constitution* (1973).

¹⁶ Abu’I Hasan al-Mawardi, *Al-Ahkam al-Sultaniyyah* (1973).

¹⁷ *Ibid.*

¹⁸ Joseph Schacht, *Introduction to Islamic Law* (1964).

and to chain it with intellectual study of contemporary jurisprudence”¹⁹

4. Federal Shariat Court

Organizational modifications are both complex and confusing in Pakistan’s legal system. In 1978, “Shariyat Appellate Benches” were imbedded to Pakistan’s four high courts. Their authority involved hearing appeals relating to hudood law verdicts and they were permitted original jurisdiction to hear “Shariyat petitions”.²⁰ Later in 1980, such benches were dispersed and the “Federal Shariyat Court” was established though a long, painful and disjointed labor. The provisions related to the operation of FSC were modified 28 times between 1980 and 1985, by the appliance of 12 distinct ordinances and were assimilated into constitution in 14 subsections covering 11 pages of text. After settling of the dust , FSC came out as a body containing not more than eight judges, choosed by president from the judges of high courts.²¹ The FSC jurisdiction comprise of

- In Zina and Qadhf cases it has appellate jurisdiction against conviction or acquittal from district courts
- In property and prohibition cases it has limited appellate jurisdiction against conviction or acquittal from district courts
- Limited Suo moto jurisdiction to declare laws and practices un-Islamic and hence void
- Original jurisdiction to hear “Shariyat petitions”
- On hudood laws it has revisional jurisdiction decided by any courts included itself

¹⁹ Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (1954).

²⁰ Martin Lau, *The Role of Islam in Legal System of Pakistan* 56 (2006).

²¹ Muhammad Khalid Masud, *Teaching of Islamic Law and Shari'ah: A Critical Evaluation of the Present and Prospects for the Future* 79 (2005).

The pronouncement of FSC is subject to appeal before the “Shariyat Appellate Bench” of the Supreme Court consisted of three regular Supreme Court justices and two ad hoc judges drawn either from FSC or from among ulema.²² But regarding criminal law process following points should be looked upon:

Firstly, original jurisdiction lies with district courts for most major crimes in Pakistan. Specifically, district courts are exercising jurisdiction relating to the enforcement of property, Qadhf and Zina ordinances. Appellate jurisdiction is also exercised by district courts for the purpose of hearing appeals against the remaining hudood ordinance, secondly, judges of district courts have unrestricted and discretionary authority for exercising individual cases either under shariyah or civil law, thirdly, the verdicts of district judges can be appealed to shariyah side to FSL and to high court in the civil side, fourth, all criminal cases are dealt by Supreme Court in its final appeals.²³

It is significant information that most of overpowering superior courts judges in Pakistan is attorneys that are trained professionally in British civil law tradition. It is undeniable that legal qualifications and credentials are mandated constitutionally for selection of Supreme Court and high court judges and the law of constitution lays down that most of FSC bench must be include those who are qualified or practice in high court. 78% of individual served on FSC since its establishment has been former high court judges and 87% of them possessed western style law degree.²⁴

5. Methodologies and syllabus for Islamic law

Critiques have been targeted at methodology related to teaching and learning of Islamic Law during the last century, in particular they have been targeted towards the failure to efficiently reply to the encounters and challenges brought by modern requirements

²² Abdul Ghafur Muslim, *Islamic Studies* 274 (1987).

²³ Murteza Bedir, *Fikih to Law: Secularization through Curriculum* 4 (2004).

²⁴ Charles H. Kennedy, *Islamization and Legal Reforms in Pakistan, 1979-1989* 63 (1990).

in this contemporary world.²⁵ Islam being a religion of the population of one fifth of the world, Islamic Law needs to re-vamp its procedure and methodology in order to safeguard its uninterrupted significance and as a reply to the demands exercised by the globalization and presented by the modernity.²⁶

Preferably, Islamic Law shall answer to the tests at the level of theory and application, brought by the modernism.²⁷ Thus, teaching Islamic Law should be innovative as the related subject in order to cope the modern needs of the contemporary world in light of the principles as stated in Quran and Sunnah.²⁸ Islam should be brought into line with the age and it shall become part of global modernity. Past Islamic civilizations are proud glory for us but stagnancy with revolutionizing innovative concepts at the practical level are somehow against the relevant subject of Islam in this present world. All principles of Islam has to be recalled by the Islamic Law in order to motivate all humans on how to live this contemporary world in co-occurrence and peacetime.²⁹

The purposes and visualization of Islamic learning were preserved in the history through the communication between past (tradition) and innovation (modernity). The modernity helps to develop flexibility while the tradition helps to advance a stable identity.³⁰ Niyozov and Memon (2011) demonstrated the continuousness and the changes in Islamic teaching; its purposes, methods and operations, have gone through five historical periods, namely; the revelation and the promise period, medieval period in which the building of Islamic education was built, colonial period in which Islamic education struggled to survive,

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Abdul Ghafur Muslim, *Islamic Studies* 285 (1987).

²⁸ Joseph Schacht, *Introduction to Islamic Law* (1964).

²⁹ Muhamad Faisal Ashaaria, Zainab Ismaila, Anuar Puteha, Mohd Adib Samsudina, Munawar Ismaila, Razaleigh Kawangita, Hakim Zainala, Badlihisam Mohd Nasira & Mohd Ismath Ramzib, "An Assessment of Teaching and Learning Methodology", *Islamic Studies*, 618 (2012).

³⁰ *Ibid.*

post-colonial period where radical Islamisation emerged, the period of Islamisation in which various views on Islamisation concepts came to exist and Islamic education after 2000.³¹

The Muslim societies are far away from the Islamic ideals of rule of law, justice, sense of responsibility and civility and prosperity, even when the vitality of Islamic law is evident and heartwarming. The question that arises is this vacuum between the knowledgeable gap of Islamic law and the absence of its influence in some way related to the quality of Islamic legal education.³² For the effective implementation of ideals of Islamic law quality of legal education and its social relevancy should be ensured.³³ If we shift our focus to the methodologies of teaching Islamic law in law colleges of Pakistan, following questions should be considered.³⁴

- Whether our curriculum covers all subjects of Islamic law or not?
- Whether Islamic legal education given in colleges is society and development oriented or not?
- Whether faculty members of law colleges in Pakistan are having expertise of Islamic law or not?

5.1. Curriculum of LLB by Higher Education Commotion (HEC)

Curriculum of LLB given by Higher Education Commission includes following compulsory subjects related to Islamic law:

- Islamic Jurisprudence-I
- Islamic Jurisprudence-II
- Islamic Personal Law-I
- Islamic Personal Law-II

Curriculum of LLB given by Higher Education Commission includes following elective subjects related to Islamic law:

³¹ *Ibid*, p. 620

³² A discussion paper was presented at international seminar on "Education in the Muslim Ummah; Present Realities and Future Aspiration," International Islamic University, Islamabad March 13-18, 2005.

³³ *Ibid*.

³⁴ Joseph Schacht, Introduction to Islamic Law (1964).

- Islamic Commercial Laws
- Islamic Legal Maxims³⁵

Islamic Laws – the disciplines and values that deals with the behavior of a Muslim towards his or herself, neighbors, community, family, city, nation and the Muslim institution as a whole, the *Ummah*.³⁶ Similarly, the interaction between societies, communities and public and financial administrations is dealt by the Islamic Law.³⁷ The standards by which all societal activities are categorized, classified and controlled within the overall authority of the state are established by Islamic law. Objectives of Islamic law are, Safeguarding morality in public and private, formation of justice averting suffering on persons and society, educating the individual and avoiding oppression.³⁸ Can these limited subjects on Islamic law help student to understand Islamic law completely? How can a student be able to implement Islamic law when he is not completely aware of it?

5.2. Faculty members teaching Islamic law subjects at law schools

The author has collected some data, related to the subject experts in a few colleges across Pakistan, which shows that only 5% of the teaching faculty, teaching Islamic Jurisprudence are qualified and having the expertise in Islamic Law. The rest are having simple LL.B qualification, which, off course is insufficient to teach this important subject of Islamic Law. The data gathered is as below in the table:

Sr. No	Law College/School/Department	Teacher Name	Specialization in Islamic Law

³⁵ <http://www.hec.gov.pk/english/pages/home.aspx>

³⁶ Muhammad Khalid Masud, *Teaching of Islamic Law and Shari'ah: A Critical Evaluation of the Present and Prospects for the Future* 79 (2005).

³⁷ Abdul Ghafur Muslim, *Islamization of Laws in Pakistan: Problems and Prospects* 76 (1987).

³⁸ Muhammad Khalid Masud, "Teaching of Islamic Law and Shari'ah: A Critical Evaluation of the Present and Prospects for the Future" 79 (2005).

1	Islamia College University Peshawar	Ms. Muniba	Nil/ LLB	Simple
2	Malakand University	Ms. Parveen Gul	Nil/ LLB	Simple
3	Swat University	Dr. Lutfullah and Qazi Obaid Ullah	Yes, background of Sharia & Law	
4	Women University, Swabi	Ms. Maryam Khansher	Nil/ LLB	Simple
5	Abdul Wali Khan University, Mardan	Name was not revealed	Nil/ LLB	Simple
6	Shaheed Benazir Bhutto Women University Peshawar	Ms. Aarzo Farhad Ms. Neelum	Nil/ LLB	Simple
7	Pakistan College of Law, Lahore	Ms. Saiqa	Nil/ LLB	Simple
8	GC University Faisalabad	Different Teachers	Nil/ LLB	Simple
9	Institute of Law, University of Jamshoro, Hyderabad	Mr. Arshad Hussain to LLM Ms. Shabana Kausar to LLB	Nil/ LLB and LLM	
10	University of Swabi	Dr. Zabeh Ullah	Nil/ PhD in Islamic Studies	

6. Conclusion

Apart from incomplete curriculum, main difficulty lies with the commencement of Islamic law. Islamic Law is and should be considered different from Islamic Studies. In the university legal education which is having many problems in its teaching, services, procedure and aims of the education of law overall and Islamic law in particular. If the faculty is unaware of the technicalities of teaching Islamic Law, how could they produce judges, lawyers, bureaucrat, law makers and parliamentarians who could be considered well-versed in Islamic Law? Usually, legal learning in Muslim states is not public and advancement oriented. Circumstances like these calls for a new visualization of Islamic legal teaching, in order to get a clear description of its objective.³⁹

7. Recommendations:

1. A board of experts at law shall be established to assist law and policymakers.
2. Knowledge of the Maqasid al-Shariah is a must for each and every member of the parliament.
3. The primary task of the legislators should be only law making.
4. Essential steps shall be taken for a well-organized programme to up bring the study of Islamic law, in the syllabi recommended for the legal training in our institution education.
5. A comprehensive syllabus of Islamic Law is to be prepared which shall answer the questions of the day.
6. The books on Muhammadan Law shall be replaced with proper books from the classical texts.
7. We need to improve the capacity of the faculty who are involved in teaching subjects of Islamic Law. They should be properly trained.

³⁹ Muhammad Khalid Masud, *Teaching of Islamic Law and Shari'ah: A Critical Evaluation of the Present and Prospects for the Future* 166 (2005)

8. Constitutional institutions, such as the FSC, IIUI and others, shall play its vital role in capacity building of the lawyers, judges, law teachers, parliamentarians etc.